



Protecting customers in the non-household retail market -final proposals and a draft customer protection code of practice

- an Ofwat consultation

1. Introduction

- 1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing the interests of customers of water and sewerage companies in England and Wales. CCWater has four regional committees in England and a committee for Wales.
- 1.2 In order for the new non-household (NHH) retail market to operate effectively from April 2017 it will be important to ensure that NHH customers are protected, in certain circumstances, from some of the problems encountered in other sectors. Our research has highlighted some of these issues¹ and shown that NHH customers expect some protections to be put in place in a new market².
- 1.3 Therefore, we welcome the opportunity to respond to Ofwat's consultation on '*Protecting customers in the non-household retail market*' and the draft customer protection code of practice.

2. General Comments

- 2.1 We are generally supportive of Ofwat's final proposals for protecting NHH customers. The majority of issues covered in the draft Code of Practice follow the positions CCWater took in our response³ to Ofwat's earlier consultation.
- 2.2 However, there are two outstanding issues where we do not agree with either the position adopted or the wording contained within the draft Code of Practice. Our concerns relate to Proposal 16 on back-billing and Proposal 19 on the Complaint Handling Process do raise causes for concern.

Proposal 16 - Back-billing

- 2.3 We do not agree that the changes that Ofwat has made for this proposal following earlier consultation are "limited" (as suggested in the table on page 10 of the consultation document). In fact, the information given in section e of the Final Response table is misleading where it states the following:
"The Code of Practice]...prohibits Retailers from back-billing beyond the previous financial year..."

¹ [Lessons Learned: A cross-sectoral study of issues that have been detrimental or a risk to customers through the introduction of market reform](#)

² [Uncharted Waters: Customers expectations for competition in the water industry](#)

³ [Protecting customers in the non-household retail market consultation: CCWater response](#)

- 2.4 In the more detailed explanation of the policy on page 36 it is explained that the limit on back-billing will **only** apply to micro-businesses. It is unclear why Ofwat has chosen to limit this to micro-businesses only. The question in December's consultation related to all "eligible non-household" customers, therefore it is misleading to now include this qualification without explanation and to suggest it is a continuation of the earlier proposed policy line. In our view the limit should apply to all eligible non-household customers, as the question in December's consultation suggested; to do otherwise would be unnecessarily discriminatory.
- 2.5 We continue to support Ofwat's reasoning against back-billing (set out when outlining this proposal in the earlier consultation); it will help to incentivise companies to get their data right. Removing the limit on back-billing for customers other than micro-businesses (a limit that would still allow the recovery of up to 23 months worth of charges) removes this data-quality incentive from companies and places the risk associated with incorrect billing on the customer.
- 2.6 Ofwat has highlighted the damage that an unexpected back bill can have on small businesses. However, it has the potential to be equally as damaging for a Small or Medium Sized Enterprise (SME). Therefore we urge Ofwat to stand by its original proposal and limit back-billing for all eligible NHH customers.

Proposal 19 - Complaint Handling Process

- 2.7 In its summary of responses to the earlier consultation (section 3.6.2) Ofwat highlights our feedback that the role of CCWater should be defined in a company's complaint procedure. It is therefore disappointing that no mention of the statutory consumer representative body is made in section 10 of the draft Code of Practice.
- 2.8 CCWater's role in complaint handling is well established in legislation and regulations. Section 29 of the amended Water Industry Act 1991 gives CCWater powers to make representations on behalf of the customer against a water undertaker or licensed water supplier (amended in the 2014 Act to Water supply licensee). We have worked with Ofwat and the industry on the Service Incentive Mechanism (SIM) guidance that was published in 2015. Appendix one of the SIM document⁴ contains CCWater's guidance for companies on complaint handling which has historically been supported by Ofwat and the water companies. We suggest this complaint handling guidance should be included in the Code of Practice as an appendix and should be the basis for all new licensees in setting up their own complaint procedures.
- 2.9 CCWater must be involved in the process for NHH customers with a complaint against their retail provider. This is a legislative requirement and it is important that eligible NHH customers should have the same level of protection as other customers. It would also protect those SMEs that are less able to manage a complaint on their own against their retailer or wholesaler.

⁴ [Service incentive mechanism - guidance for collating customer service information for calculating the SIM score](#)

- 2.10 This will also ensure CCWater can monitor any customer issues arising from retail market reform. Customer complaints are a valuable source of information both for individual customer issues and any systemic problems that arise. We expect that this information will be important to the regulator and retailers in helping them gauge the effectiveness of the new market. It is therefore essential that CCWater is made aware of any issues as soon as possible.
- 2.11 Our annual complaint report will help inform NHH customers' views on which companies are delivering the best service and this will help them make an informed decision when choosing a supplier.
- 2.12 Section 3.4 on switching focusses on scenarios that would see NHH customers changing retailer. However, there appears to be no specific consideration of residential properties under development. According to Ofwat's March 2016 consultation on supplementary eligibility guidance, properties that are in development stage will be eligible in the NHH retail market until such time as a householder moves into the completed property. We are concerned that initially classing these properties as eligible has potential for customer detriment if the process for switching the responsibility from a retailer to an appointed water company as the property becomes ineligible is not efficient. We would welcome a discussion with Ofwat about our concerns and the potential impact on customers.

3. Response to questions

Q1 Do you agree with our proposed approach to the governance of the code of practice?

- 3.1 We agree that the existing Interim Code Panel is not comprised of the right representatives to consider proposed changes to the Code of Practice. We also agree that the costs of setting-up and administering a new panel are likely to be disproportionate.
- 3.2 On this basis, we agree that Ofwat should consider proposed changes and make a decision following consultation. We believe it would be sensible to make any changes as soon as possible. The exception would be if there is likely to be an adverse impact on companies which will require an extended period of preparation to manage effectively in order to protect customers. Equally there should be the flexibility to enact urgent changes that show clear customer detriment.

Q2 Do you have any views as to whether the code governance and modification should be included in the code or the licence/appointment?

- 3.3 Ofwat outlines some of the issues with the current licence modification arrangements in the consultation document, notably the differences in requirements for incumbent licence holders and Water Supply and Sewerage Licence (WSSL) holders. These current arrangements would not satisfy level playing field requirements and could result in undue influence among larger WSSL holders at the expense of smaller retailers.

- 3.4 In view of the above we would support governance arrangements forming part of a modified licence that will create a common framework for code modifications. We also believe this should include an appeals procedure to allow market participants to challenge Ofwat's decisions to enact (or not enact) any change proposals.

Q3 Who should be able to raise changes to the code of practice?

- 3.5 We believe that any party should be able to propose changes to the code of practice. However, it will be the role of Ofwat, through consultation, to consider the merits of any such change and to make a decision on whether or not it should be enacted.
- 3.6 Consumer representative bodies such as CCWater and others will be in a position to take a wider view of the market than companies which may propose, or consider, changes only from their own perspectives.
- 3.7 Ofwat could prescribe a minimum level of information to be provided with any change proposal, possibly through the use of a standard form.

4. Enquiries

- 4.1 If you have any questions about CCWater's response to this consultation, please contact:

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