

1 February 2019

**Response by Castle Water to Consultation on Retail Exit Code
(Non-Price Protections)**

Castle Water supports increased transparency of terms and conditions, and more effective promotion of the market.

Ofwat's proposals are difficult, if not impossible, to implement on a customer by customer basis – there is no realistic basis to be able to assess “no worse off” against error/informal convention or change in market arrangements.

With 90% of water charges determined by Wholesale charges, a Retailer cannot control whether a customer is “no worse off”.

Concerns about “Advance Billing” are over-stated. Only c. 0.1% of customers have made complaints in this regard, and only 25 of these customers chose to switch to payment in arrears when given the option. Conversely, given the working capital arrangements requiring Retailers to pay in advance (or provide security), the independent retailer is only viable if payment terms can be financed, which is not possible if all customers are billed fully in arrears, given the significant time lag between a customer receiving a bill and paying it (across the industry [REDACTED]). Castle Water's default billing process is working capital neutral: we issue an invoice twice per year covering a 6 month period which is payable in the middle of the invoicing period (so that 3 months are paid in advance and 3 months are paid in arrears). The independent retail model can be demonstrated to offer customers very significant advantages, in terms of cost reductions, fairness and effectiveness in challenging Wholesalers.

1. Executive Summary

- 1.1 We agree with the policy objectives listed by Ofwat in its consultation on potential changes to the non-price protections in the Retail Exit Code (the “**Consultation**”) – i.e. consumer protection, promoting competition, simplicity and proportionality.
- 1.2 We believe that the best way to achieve these four objectives is through retailers being transparent about their terms and conditions of supply (i.e. a version of option 2 in the Consultation). This will enable customers to engage with the newly competitive market by making informed decisions about their existing and preferred terms of supply; overall value for money taking into account broader customer service factors; and, ultimately, whether to stay with their existing supplier or switch to a supplier that better suits their needs.
- 1.3 We believe that this is the most effective way to ensure a vibrant, well-functioning competitive market and safeguard customers' interests now and in the longer term. To the extent that some customers may remain reluctant to engage with the market, a

proportionate remedy would be to manifest the above principles in an enhanced form in the Retail Exit Code. This is considered in more detail below.

1.4 Whilst the Consultation recognises the value of this broader context at the level of principle, in contrast its preferred option is justified by reference to a volume of complaints about 'advance billing' that, as we shall show below, is poorly evidenced or based on misunderstandings or data errors; and is then extrapolated to other, unspecified, detriments with no evidence; and no substantive case that the measures it proposes are proportionate to such detriments. We therefore suggest that Ofwat is focusing on the wrong issue. Rather than imposing unjustified regulatory burdens on responsible suppliers in an attempt to address the symptoms of the consumer issues in this market, it should instead be seeking to address their root cause.

1.5 We therefore have serious concerns about some of the other options considered in the Consultation, including the proposal to prohibit retailers from making any changes to non-price terms (or certain types of non-price term) for each customer or defined customer group on a deemed contract (option 3), or to require retailers to demonstrate that such customer or customer group will be no worse off before making a change (option 4). We also have concerns about the level of detail at which Ofwat is proposing to require retailers to analyse and compare their terms of supply with the *status quo ante*. We believe these proposals are neither practicable nor would achieve the objectives set out in the Consultation, for the following reasons:

(i) **The proposals would be detrimental to the development of a well-functioning market.** By imposing a substantial burden on retailers (see below) the proposals would create a significant barrier to entry. In particular, a blanket ban on retailers billing customers for some of their charges in advance rather than in arrears (however achieved) would impose a significant barrier to entry for non-vertically integrated suppliers, thereby perpetuating a vertically integrated structure which is against the grain of the market opening policy and thus the interests of customers;

(ii) **The proposals would stifle innovation and embed the *status quo*.** Prohibiting retailers from making any changes to certain non-price terms, or requiring them to demonstrate that customers are not worse off before they do so, would tend to embed the *status quo*, stifling innovation. [REDACTED]
[REDACTED]
customers' interests would be better served by encouraging a vibrant and competitive market that encourages retailers to differentiate their offers so that customers can choose the supplier that best meets their needs.;

(iii) **The proposals would be highly complex and impracticable for retailers to implement.** Retailers such as Castle Water have hundreds of thousands of customers on deemed contracts. It is not realistic to require these retailers to identify the basis on which every one of these customers was previously supplied, compare this to the terms that the retailer intends to offer and determine (with even reasonable accuracy) whether they would put the customer in a worse position. Many terms will not be comparable and whether their effect is net positive or negative will depend on the customer's particular characteristics of

demand and use. In addition, [REDACTED]
[REDACTED]
[REDACTED] and

- (iv) **The proposals would therefore be disproportionate. The proposed changes would place a significant burden on retailers in circumstances where it is not clear that there is a widespread problem that needs to be addressed.** The Consultation places significant emphasis on billing arrangements and complaints that it has received from customers about being billed in advance by their new retailer when they were previously billed in arrears. Just [REDACTED] of Castle Water’s customers have complained about advance billing [REDACTED]
[REDACTED] We believe that the vast majority of our customers are happy with our billing practices. It would be wholly disproportionate to impose such substantial burdens in these circumstances.

- 1.6 These issues are considered in more detail in the sections that follow, where we provide more detailed feedback on options 2 to 4.
- 1.7 Ofwat suggests that its preferred option (option 4) would “*remove any ambiguity that may exist about our expectations of the way retailers should treat customers on deemed contracts*”.¹ In practice, option 4 would create significant ambiguity. Ofwat’s assertion ignores the substantial challenges in determining whether customers would be worse off. The Consultation also contains a number of internal inconsistencies regarding how Ofwat expects that this assessment should be carried out in practice. In some parts of the Consultation Ofwat suggests that retailers could make changes provided that they can “*clearly articulate what the impact on individual customers will be*,”² whereas in others it suggests that they could do so provided they “*can demonstrate with a reasonable level of accuracy that their full range of customer groups [...] are no worse off*”.³ It is therefore not clear whether the assessment would be done at the level of individual customer or customer group. The Consultation is also inconsistent in terms of whether the assessment would need to be carried out in respect of new customers only, or retrospectively in respect of existing customers as well. In the Consultation, Ofwat states that it “*recognise[s] that some retailers may have already made changes to their terms and conditions for customers on deemed contracts*” and that “*it is not our intention to take retrospective action*”,⁴ but the revised Retail Exit Code states that “*where a Retailer has made changes to a Scheme of Terms and Conditions during the period after the Go Live Date and before 1 April 2020, it must assess those changes against paragraph 3.2.6 above [introducing the no worse off principle], and if necessary, make further changes to*

¹ Page 19 of the Consultation.

² Page 19 of the Consultation.

³ Page 20 of the Consultation.

⁴ Page 20 of the Consultation.

*the Scheme of Terms and Conditions to bring it into compliance by 1 April 2020*⁵ suggesting that retailers would need to amend the terms to which existing customers are subject if they cannot demonstrate that those customers are not worse off relative to the terms in force before the Go Live Date (or transfer date if later but before 1 April 2020).

1.8 To the extent that Ofwat does introduce any changes, it is critical that these do not have retrospective effect (in either sense referenced above). [REDACTED]

1.9 Defined terms used in this response are the same as those used in the Consultation.

2. Castle Water agrees in principle with the option to require retailers to be transparent about changes to non-price terms (option 2)

2.1 We agree in principle with Ofwat's proposal that retailers should be transparent with customers about changes to their contracts in circumstances where their previous supplier has exited the market and they have not actively selected their new supplier.

2.2 We agree that ensuring that customers have the information they need to make an informed choice will encourage customers engage with the market, helping to realise the benefits of a competitive market. When writing to customers both ahead of and after market opening, each of Thames Water and Castle Water, separately, were careful to explain clearly the right to switch, and to signpost the Open Water website. Similar communications from some other retailers failed to do this. The results of this can be seen in [REDACTED].

2.3 For its part, not least recognising that many of the complaints that we have received from customers about their bills are the result of misunderstandings about their previous billing terms, Castle Water has therefore taken significant steps to be transparent with its customers. For example:

(i) Our terms of supply and billing practices have consistently been open and transparent. For example, customers have always (i.e. including under their previous terms of supply) been subject to two standing charges. However, unlike our customers' previous suppliers, we identify these charges on bills separately so that customers understand the basis upon which they are being charged. [REDACTED]

(ii) Where we discover that a customer has been incorrectly charged, we have used data analysis to identify other customers that may be affected by the same issue and contacted those customers in order to resolve the position. To date we have identified over [REDACTED] data errors, resulting in a reduction in wholesale charges of over £[REDACTED] million annually which has been passed on to affected customers. Once all cases are resolved, we estimate that the savings in wholesale charges

⁵ Paragraph 3.2.8 of the revised Retail Exit Code.

will total around £ [redacted] million [redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

- (iii) We take a proactive and responsible approach to customer service and compensation. For example, we, directly contacted customers who might have been eligible for compensation due to outages as a result of the Beast from the East, seeking details of the period of outage. We also made late payment GSS compensation payments where customers were not identified promptly, even though the Wholesaler had determined not to do so; and
- (iv) We proactively informed all our customers of their right to switch and explain how they can do so (pointing them in the direction of the Open Water website). Both Castle Water and Thames Water provided information on the right to switch, the NHH Market, and the Open Water website, in three separate letters. Having seen correspondence from other retailers, there has been an obvious difference in approach.

2.4 Although we agree that transparency is important, we have significant concerns about the level of detail at which Ofwat is proposing to require retailers to analyse and compare their terms of supply with the *status quo ante*. In particular, we are concerned about the proposal to require retailers to identify any proposed change to customers' non-price terms, and to explain the potential impact this might have on them, for the following reasons:

- (i) Given the record keeping practices of historic incumbent providers, it is not always clear what the previous supply arrangements of customers on deemed contracts were – [redacted]
[redacted]
[redacted]
- (ii) Retailers may have hundreds of thousands of customers on deemed contracts. For example, Castle Water currently has approximately [redacted] customers on deemed contracts. It is wholly unrealistic and disproportionate to expect retailers to examine forensically the previous terms of so many customers – indeed given the above issue it is in practice impossible to do so correctly;
- (iii) Many non-price terms will not be comparable. Whether they leave a customer net better or worse off will depend on the individual circumstances of a customer (which the retailer will not necessary be aware of). For example, under the terms of their contracts with [redacted] had the right to require a 12 month security deposit to be paid where payment was received more than 21 days after the bill date. Our current estimate is that fewer than 10% of customers consistently pay within this timeframe. By contrast, our default payment terms require 3 months' worth of charges to be paid in advance and 3 months in arrears,

but we have not required any customer to pay a security deposit in the event of late payment; and

- (iv) The terms and conditions of retailers may differ in a large number of imperceptible ways. Identifying each of these changes and explaining its potential impact risks burdening customers with a large volume of irrelevant information. For example, Invicta Water Limited's (formerly South East Water) terms and conditions include the following limitation of liability: "*Subject to Clause 10.3, we are not liable to you for: 10.2.1. any loss of revenue, loss of profit, loss of contract, economic loss, business interruption or any consequential or indirect loss, however it is caused, even if it could have reasonably been foreseen, and whether it is caused by our negligence or not; and/or [...]*". Castle Water's terms and conditions contain the following limitation of liability: "*Subject to clause 9.1 we shall not have any liability to you whether in contract tort, delict (including negligence), breach of statutory duty, or otherwise: 9.2.1. for any loss of revenue, loss of profit, loss of contract, business interruption or for any indirect or consequential loss arising under or in connection with the provision of Services to you, howsoever it is caused, even if it could have reasonably been foreseen, and whether it is caused by our negligence or breach of contract or not [...]*". Drawing specific attention to any subtle differences in the precise drafting of these clauses and trying to explain their potential impact on a customer is unlikely to be meaningful, and again to differ according to the circumstances in which they are invoked.

2.5 Instead, we consider that it would be more effective and proportionate for an Acquiring Retailer to send a single communication to all customers setting out the terms and conditions of supply with their new retailer, drawing particular attention to billing and payment options, and informing them of their right to switch and how to do so should they wish to.

2.6 This will allow customers to establish what their new terms are and to decide whether they are happy with these, or whether they wish to exercise their right to different payment arrangements or to change supplier. Otherwise the risk is that retailers will overwhelm customers with excessive – and quite probably imperfect – information, meaning that they simply do not engage with that information or are misled by it. Provided that retailers inform customers of the non-price terms to which they will be subject, customers are the best judges of what impact these changes will have and whether they consider them to be acceptable, whether they wish to change them, or would prefer to switch.

Given that the arrangements for market opening were designed and implemented by the relevant bodies before most retailers could enter the market, the official arrangements made to publicise the opportunities it would afford to customers were less effective than was desirable; and practice was inconsistent between different retailers. Castle Water was not given the opportunity to participate in discussions regarding raising awareness of the market, despite actively seeking to be involved. This was coordinated by Ofwat and MOSL. Castle Water should not be given increased regulatory burdens as a result of ongoing failure on the part of these bodies adequately to publicise the new market.

3. Castle Water does not support the option to impose a ban on changes to specific non-price terms and conditions in deemed contracts (option 3)

- 3.1 We disagree with proposals to impose a ban on retailers changing particular non-price terms. In particular, we have significant concerns about the proposal to prohibit retailers from changing the billing terms for customers on deemed contracts (therefore preventing retailers from billing customers that had previously been billed in arrears, wholly or partially in advance instead).
- 3.2 Such a change would be wholly disproportionate, is not necessary to safeguard the interests of customers that have transferred automatically to a retailer because their incumbent supplier has exited, would create a significant barrier to entry for non-vertically integrated retailers and ossify inefficient terms and stifle innovation.⁶ Each of these points is considered in more detail below.

Concerns about advance billing appear to be overstated

- 3.3 It is not clear how widespread concerns about advance billing actually are:
- (i) Average business water bills are £2,000 per annum, significantly lower than energy bills. For most NHH customers, water bills are a small part of their overall business expenditure. Whether they are billed in advance or in arrears may therefore not be material to them. [REDACTED] [REDACTED] However, water services are generally vital to the continuing operation of most customers (as either their customers and/or employees are likely to need access to water). We firmly believe that service improvements delivered by Castle Water compared to the previous incumbents – for example, rapid response to supply failures, consolidated invoicing across wholesale boundaries, payment of GSS compensation, resolution of historic billing errors - are of equal if not greater importance to customers. This is reflected in our Trustpilot score. Castle Water has the highest rating of any of the four big water retailers, at 8.0, compared with a score of only 1.5 for [REDACTED] [REDACTED]
- (ii) We have received [REDACTED] complaints in total since market opening relating to advance billing (equivalent to just [REDACTED] of our total customer base). Only [REDACTED]% of all the complaints we receive relate to advance billing, suggesting that other issues are more important to customers. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] As a standard part of our complaint response, we remind customers of their right to switch and signpost the Open Water website. Only [REDACTED] customers complaining about advance billing have transferred to other retailers;⁷

⁶ See page 19 of the Consultation, where Ofwat recognises the risk that option 3 could have this latter effect.

⁷ 56% of customer complaints to the Consumer Council for Water in October 2018 by customers transferred from South East Water (which previously invoiced charges partly in advance), the peak month for such complaints, are categorised by Consumer Council for Water as “anonymous”. It is impossible to know whether these have merit or not.

(iii) A number of complaints about advance billing are likely to have been triggered by an active lobbying campaign organised and facilitated by [REDACTED]. We had separate complaints from approximately [REDACTED] (i.e. [REDACTED]% of the total number of complaints received by Castle Water on this issue). [REDACTED]

(iv) In October 2018 we introduced a Pay as You Go (“PAYG”) payment option where customers are billed and pay for water and waste water services in arrears. This has therefore given those customers that do not wish to be billed in advance an additional payment option. Customers can choose their billing period (anywhere between 30 days and 90 days following their previous invoice), and either provide their own meter reading or ask us to read their meter. The PAYG payment option has been promoted widely [REDACTED] [REDACTED] customers switched to this option in its first three months. [REDACTED].

3.4 Our conclusion therefore is that advance billing *per se* is not nearly as much of an issue as lobby groups have suggested. The fact that very few customers have decided to take up Castle Water’s PAYG option suggests that being billed partly in arrears is not important to the vast majority of customers.

Customers do not need protection from all forms of advance billing

3.5 Ofwat states that its proposals are motivated by ensuring that customers who are reluctant to engage with the market for whatever reason are adequately protected.

3.6 As a preliminary point, we would emphasise that competition does not just protect those who actually engage in the competitive process by switching provider. The threat that customers may switch if a retailer’s terms are considered unattractive acts as a constraint on their behaviour and encourages them to offer competitive price and non-price terms.

3.7 More fundamentally, however, we disagree with the notion implicit in the Consultation that any form of advance billing is somehow unfair, especially given: that Castle Water is required to pay all Wholesale charges in advance, or to provide security against those charges; and that there is a significant disconnect between billing and paying, with most customers paying only several months after they receive their bill.

3.8 As explained in previous correspondence, our default billing process is working capital neutral: we issue an invoice twice per year covering a 6 month period which is payable in the middle of the invoicing period (so that 3 months are paid in advance and 3 months

are paid in arrears).⁸ In practice, [REDACTED]
 [REDACTED]
 [REDACTED] Analysis of financial accounts across water retailers shows that customers typically pay bills in 70-80 days.

- 3.9 The Consultation gives an example of the potential financial implications to a customer of a switch from being billed in arrears to being billed in advance. The example assumes that a customer who was previously billed in arrears is now billed one year in advance and has a nominal cost of capital of 10%. Assuming the customer's annual water bill is £500, the financial cost of the change is therefore £50 per year (assuming that the customer pays promptly, rather than several months later as is usual practice)
- 3.10 This example is arithmetically correct, but is not representative for Castle Water's customers (we cannot comment on other retailers). A more realistic example would be a customer moving from quarterly in arrears billing to our working capital neutral structure. Using Ofwat's notional 10% cost of capital, and a £500 annual bill, this would give an annual cost of capital of £20, assuming payment in line with industry norms. As Castle Water also offers a £50 credit for customers that switch to direct debit, the net change for a customer that switches to direct debit would be positive for the first year. Ofwat's chosen cost of capital is also contentious: peer to peer lenders typically offer rates of c. 6.5% for unsecured credit. Adjusting the cost of capital to 6.5% would reduce the working capital cost to £12.75 per annum. This compares with a cost of over £50 incurred by Castle Water resolving a single "bilateral" query with the wholesaler – the majority of queries relate to errors in water charging going back many years.

Imposing such a prohibition would create a significant barrier to entry

- 3.11 We agree with Ofwat that it is important that customer protection measures do not stifle innovation, hamper the development of effective competition or restrict the ability of customers to secure the deal that best suits their specific requirements.⁹ We also agree that an ability to change default terms and conditions is necessary and proportionate to enable retailers (particularly non-vertically integrated retailers) to compete effectively in the market, and to provide efficient billing on a basis across geographic areas to business customers previously billed on a variety of bases.¹⁰
- 3.12 Preventing flexibility on payment terms by banning retailers from requiring any form of advance billing for customers that were previously billed in arrears would severely restrict the ability of non-vertically integrated retailers to serve transferred customers given: the payment terms for wholesale charges; and the pattern of payment by customers [REDACTED]

⁸ Other payment terms are also available to customers, as highlighted by Castle Water in previous correspondence. In particular, large accounts (with spend in excess of £20,000 per year) and trade effluent accounts are invoiced monthly and pay in arrears and unmetered customers are billed annually in advance. All customers have the option to pay by direct debit. Customers that select this option are billed annually in advance with payments collected each month. Customers that switch to monthly direct debit receive a £50 incentive.

⁹ See page 6 of the Consultation.

¹⁰ See page 14 of the Consultation.



- 3.13 If Ofwat wants to encourage a dynamic market, with a wide range of different types of retailers offering differentiated services, it must give retailers the flexibility to manage the balance of customer service and working capital requirements appropriately.
- 3.14 For an independent retailer, working capital is the single greatest operating cost and the single largest hurdle to being able to compete with vertically integrated companies. There is no allowance in the retail margin for an average working capital period of 6 months (i.e. 3 months of charges, 1 month advance payment (or security) for wholesale charges plus 2 months of debtor days). The cost of such a working capital requirement if Ofwat's assumed cost of funds of 10% is applied, is 5%, which is over 70% of the entire allowed retail margin.

Imposing such a prohibition would ossify inefficient arrangements and limit innovation

- 3.15 We also agree with Ofwat that imposing such a ban could ossify existing arrangements and limit the ability of retailers to innovate or make efficiency improvements that enhance the overall customer service offering. For example, there is a major difference in the payment collections processes of Castle Water and [redacted] made [redacted] disconnection visits per year in order to enforce payment. By contrast, Castle Water has made around [redacted] per year, relying instead on timely and accurate invoicing. This is clearly more efficient and has generated cost savings for customers [redacted] and also reduced substantially the number of customers that face the inconvenience and stress of a disconnection visit.

4. Castle Water does not support the option to insert a general principle into the Retail Exit Code that consumers on deemed contracts must be no worse off (option 4)

- 4.1 We also strongly disagree with the option of inserting a general principle into the Retail Exit Code that customers on deemed contracts should be “no worse off”.
- 4.2 It is not clear whether Ofwat is proposing that the assessment of whether customers on deemed contracts are “no worse off” would be done at the level of an individual customer or for particular customer groups. At one point in the Consultation, Ofwat states that retailers would only be able to introduce a change where they are “able to clearly articulate what the impact on *individual customers* will be and are able to demonstrate to customers (and if challenged by Ofwat) why, and how, customers will at least be no worse off as a result of those changes” (emphasis added).¹¹ However, it goes on to state that “we expect retailers to be able to demonstrate with a reasonable level of accuracy that their *full range of customer groups* (e.g. by volume, billing method or other characteristics) are no worse off than they were before market exit” (emphasis added).¹²

¹¹ See pages 1 and 19 of the Consultation.

¹² See page 20 of the Consultation.

4.3 Both of these approaches are equally problematic from our perspective for the reasons set out in detail below. Although requiring an assessment by individual customer would be more burdensome, there are no recognised “customer groups” in the sector in respect of which the net effect of changes could be assessed, making this option equally impractical. Moreover, as each retailer could adopt its own definitions of customer groups a common approach to compliance would be impossible. Of greater impact, the REC does not apply to Wholesale charges. These represent around 90% of the prospective bill. Changes to these charges are outside a Retailer’s control. As has been seen with the decision of the Trading Disputes Committee to enforce charging based on Industry Level Estimates, charges can be increased, even multiplied, in order to comply with the market arrangements. In these circumstances, under Ofwat’s proposal the Retailer would be unable to pass through the increased Wholesale charges, but would be bound to pay the increased charges to the Wholesaler.

4.4 Ofwat states that it is not its intention to ossify existing arrangements, stifle innovation or prevent retailers from making efficiency enhancing changes that may actually benefit customers. However, we believe that introducing such a change would have such an effect, would impose a disproportionate burden on retailers and would create barriers to entry which would undermine competition in the long-run:

- (i) As explained above (see paragraph 2.4(i)), it is not always clear what a customer’s previous terms of supply, or the supplier’s billing practices for individuals, actually were; and [REDACTED] Such a comparison may simply therefore not be feasible, and would lead to customers incurring nugatory costs;
- (ii) As also explained above (see paragraph 2.4(ii)), Acquiring Retailers may have hundreds of thousands of customers on deemed contracts (Castle Water currently has .approximately [REDACTED] accounts on deemed contracts). It is wholly unrealistic and disproportionate to expect retailers to be able to prove there were no unusual terms agreed by a customer to determine whether new terms will make them worse off and to retain any pre-existing terms where customers could be worse off. Retailers should be able to rationalise their contracts to achieve efficiencies;
- (iii) The opening of the market has led retailers to differentiate their offers. It is simply not possible to do a line by line comparison of different terms and conditions to determine whether they make customers better or worse off (see also in this respect paragraph 2.4(iii)). Whether a change makes a customer better or worse off will also depend on their individual circumstances and preferences, which is not something that Castle Water (or other retailers) will know. As explained above, Castle Water has introduced a number of improvements for customers including resolving historic charging errors, consolidating invoices and being more transparent with customers (for example, in relation to compensation for service outages). It also operates a default working capital neutral billing process, which for all the reasons above it considers is fair and also sustainable, but this does mean that some customers are now invoiced for more of their charges in advance [REDACTED] Notwithstanding this Castle Water has the highest

Trustpilot rating of any of the four large water retailers. Ofwat should encourage this diversity as it gives customers meaningful choices so that they can choose the option that suits them best;

- (iv) A “no worse off” principle could lead to perverse outcomes. For example, it could result in any customer that was previously incorrectly undercharged continuing to benefit from that error, at the indirect cost to others. The retailer would, however, continue to have to pay wholesale charges in full. Historically, a significant proportion of our customers have been billed inaccurately (with some customers overcharged and others undercharged) – [REDACTED]. For example, some customers such as churches and scout huts were simply not charged for water, by convention only. Many customers were incorrectly not charged for highways and surface drainage and some customers had excessive charges due to faulty meters. It is unclear how a longstanding error, or an *ad hoc* billing convention, would be viewed when judged against the proposed “no worse off” principle; and
- (v) Customers’ interests can be safeguarded without a general requirement that retailers cannot introduce changes for customers on deemed contracts that would make them worse off. If customers are unhappy with the terms and conditions offered by their new supplier they can always switch. We accept, however, that some customers are not familiar with the NHH market, and would support more active publicity. We therefore believe that existing protections in the Retail Exit Code could be enhanced in certain respects. This could, for example, involve introducing a requirement to inform customers both at the outset and then annually about the different tariff, billing and metering options available to them from their supplier, encouraging them to check that they are on the best deal for their specific requirements; and about their right to switch and details of how to do this (including a link to the Open Water website) and/or to inform customers. Transparency requirements such as these would be a far more effective and proportionate approach than the other proposals set out in the Consultation.