

24 January 2019

Trust in water

**Customer Protection Code of
Practice – consultation on
decision to accept and amend
Change Proposals– CP-0001**

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About this document

The suite of market codes were developed as part of the legal and regulatory framework designed to govern and underpin the Non-Household Retail Market. These codes are:

- **Market Arrangements Code** – which makes provision for how the retail market operates, inclusive of appointing a Market Operator and providing how this operates and setting up a Panel to oversee specific codes and any changes to these;
- **Wholesale Retail Code** – which sets out the relationship between Wholesalers and Retailers, and how the market should operate;
- **Retail Exit Code** – which places obligations on Licensees who acquired customers via a Retail Exit regarding terms and conditions;
- **Interim Supply Code** – which provides the arrangements necessary to ensure continuity of supply and protections for consumers and other market participants where a Licensee ceases to supply, for example as a result of insolvency; and
- **Customer Protection Code of Practice** – which sets out the minimum standards that all Retailers must comply with in their dealings with Non-Household Customers, it also sets out the minimum standards of behaviour that we expect from Retailers.

This document sets out, for consultation, our proposed decision on the Customer Protection Code Change Proposal (“**the Change Proposal**”) set out in our consultation [Modifications to the Wholesale Retail Code and the Customer Protection Code of Practice - a consultation](#) (“**the November Consultation**”).

This document has four chapters, and is structured as follows:

Chapter 1 provides background information, details about how to respond to this consultation and information regarding the code governance arrangements and modifications.

Chapter 2 deals with the proposed change to the Customer Protection Code of Practice (“**CPCoP**”) to address an inconsistency in, and between, the Wholesale Retail Code (“**WRC**”) and the CPCoP (“**Phase I Change Proposal**”). The inconsistency relates to billing and invoicing following the issue of a Final Settlement Report. We propose imposing a restriction on Retailers billing and invoicing Non-Household Customers up to a maximum of 24 Months. This restriction on billing and invoicing will not however, apply to a bill or invoice for a negative sum i.e. refunds or account

credits. For the reasons set out in section 4 of this document, we consider that our proposed decision relating to the inconsistency rectification must be considered urgent under section 5.2.2 of the CPCoP, and we are therefore consulting for less than 28 calendar days in this instance.

Chapter 3 discusses the additional proposed changes we consulted on in the November Consultation (“**Phase II Change Proposal**”). We are proposing:

- To require Retailers to pass on payments to Non-Household Customers where there has been a recalculation of Primary or Non-Primary Charges and a payment is made by the Wholesaler to the Retailer;
- To require Retailers to include within their Terms and Conditions of Supply how they will deal with payments due to a Non-Household Customer, following a recalculation of Primary or Non-Primary Charges and a payment is made by the Wholesaler to the Retailer;
- To amend the definition of ‘Back-bill’ to account for the changes we are proposing to make to the restriction on billing; and
- To extend the requirement to issue a final bill within the specified timeframe to all Non-Household Customers, so that it no longer applies to Micro-businesses only.

We do not consider the Chapter 3 changes to be urgent under section 5.2.2 of the CPCoP, and we are therefore consulting for 28 calendar days on our proposed decisions outlined in Chapter 3.

Chapter 4 outlines our next steps, including next steps in relation to comments received in response to question 9 of the November Consultation.

The defined terms referred to in this document are as defined in the WRC, the CPCoP and the Market Arrangements Code (“**MAC**”), as appropriate.

1. Chapter 1 – Background, governance and responding to this consultation

1.1 Background

This consultation is on our proposed decisions in respect of the Change Proposal and has been developed following consideration of responses received to a Request for Information and the November Consultation.

The Phase I Change Proposal, that we are proposing to accept, is intrinsically linked to changes we have proposed to the WRC which will rectify an inconsistency between the Market Terms and Business Terms of the WRC. These changes primarily concern billing and invoicing following the issuing of a Final Settlement Report by the Market Operator. The proposed changes will not impact billing or invoicing arrangements prior to market opening in April 2017.

We submitted a draft change proposal for the WRC to the Panel on 23 October 2018 which set out how we intended to address the inconsistency. As a consequence of this, a Request for Information was circulated to Trading Parties by the Panel Secretariat on 24 October 2018. This Request for Information also included our proposed modifications to the CPCoP concerning billing and invoicing following the issue of a Final Settlement Report.

Following the consideration of responses to the Request for Information, we amended our proposal and published the November Consultation. In addition, we developed some additional proposed changes to the CPCoP, the Phase II Change Proposal. We identified that some related provisions within the CPCoP could be modified to ensure that the high level of customer protections already offered in the CPCoP were maintained and, further, to improve upon some of those protections.

The November Consultation set out our:

- proposed changes to the WRC and the CPCoP to address the inconsistency in, and between, the WRC; and
- additional proposed changes to the CPCoP which we developed following consideration of the responses received to the Request for Information.

Our change proposal for the WRC was considered at a Panel meeting on 16 January 2019. On 23 January 2019, we received a recommendation from the Panel to approve the changes we proposed to the WRC to address the identified inconsistency relating to billing and invoicing following the issue of the Final Settlement Report.

1.2 Code governance arrangements and modification

Where the Authority raises a change proposal under the CPCoP, section 5.1.1 requires us to consult with each affected Retailer and any other person the Authority considers appropriate. It also stipulates that any such consultation shall contain the same information as a Customer Protection Code Change Proposal as set out at section 5.1.2 of the CPCoP. The November Consultation satisfies this requirement.

We have considered the responses provided to the November Consultation, and this document is the consultation on our proposed decisions to accept, reject or amend the proposed changes.

After this consultation has concluded, responses will be considered and a final decision will be made as soon as reasonably practicable. We will issue a final decision on the proposals outlined in Chapter 1 (relating to the inconsistency issue) by no later than 28 February 2018, to ensure alignment with any changes under the WRC.

In accordance with section 5.2.4, our final decision shall include:

- The reasons for the proposed change;
- The scope and impact of the potential change, including consideration of potential risks;
- An evaluation against our statutory duties and the Code Principles;
- Any relevant evidence considered (including consultation responses received);
- Implementation timescales, which will take into account the likely impact on Retailer's exiting systems and processes; and
- The date from which the change will take effect.

1.2.1 Urgency of the proposal

Section 5.2.2 provides that consultations under this section should generally be for a minimum of 28 calendar days, except in the case of urgency.

We have deferred the RF Settlement Run under the WRC until 28 February 2019 to enable us time to resolve the inconsistency in the WRC. Any code modification to address this issue must be implemented by this date to avoid uncertainty regarding a Wholesaler's ability to invoice a retailer following issue of the Final Settlement Report.

We consider it necessary that any code modifications made to the WRC and CPCoP to address the identified inconsistency should be implemented at the same time. This is to ensure that the regulatory framework is aligned and that Retailers are not left exposed to charges which they are unable to recover from the relevant Non-Household Customers.

As the Phase I Change Proposal is intrinsically linked to our proposed solution to rectify the inconsistency in the WRC, we consider that it is urgent. The decision on the Phase I Change Proposal should, therefore, also be issued by 28 February 2019. In order to ensure that any changes required may be implemented at the same time, it is necessary that we consult for a period shorter than 28 calendar days generally required under the CPCoP. We have, however, ensured that affected Retailers and relevant consumer bodies have been notified of this consultation.

Due to the non-urgent nature of the Phase II Change Proposal we are consulting on our proposed decision on these changes for the full 28 calendar days.

1.3 Responding to this consultation

We welcome your views on the Phase I Change Proposal proposed decision set out in sections 8 and 9 of this consultation by **7 February 2019**.

We welcome your views on the decision for the Phase II Change Proposal, set out in sections 11 and 12 of this document, by **21 February 2019**.

Please submit email responses to CPCOPcodechange@ofwat.gsi.gov.uk, with the subject **“CPCoP consultation – CP0001”** or post them to:

CPCoP consultation – CP0001
Ofwat
Centre City Tower
7 Hill Street
Birmingham
B5 4UA

We will publish responses to this consultation on our website at www.ofwat.gov.uk, unless you indicate that you would like your response to remain unpublished. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000 (FoIA), the General Data Protection Regulation 2016, the Data Protection Act 2018, and the Environmental Information Regulations 2004. For further information on how we process personal data please see our [Privacy Policy](#).

If you would like the information that you provide to be treated as confidential, please be aware that, under the FoIA, there is a statutory ‘Code of Practice’ which deals, among other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

2. Chapter 2 – The inconsistency in, and between, the WRC and the CPCoP (Phase I Change Proposal)

2.1 Background to the Settlement Process in the WRC

The WRC sets out the Settlement Process which is the process of calculation of the Primary Charges in respect of each Supply Point. Settlement Runs are undertaken by the Market Operator as part of the Settlement Process, and there are six planned Settlement Runs for each Invoice Period, for the first six Invoice Periods (section 4.13.1 Market Terms). A Settlement Report is issued by the Market Operator after each Settlement Run and these Settlement Reports are the only basis for invoicing Primary Charges. The last Planned Settlement Run is 'RF', and is, ordinarily, undertaken 16 months after the end of the relevant Invoice Period. Following the Final Settlement Run, the Final Settlement Report will be issued for the Invoice Period and the data is crystallised within the central system.

Under sections 2.2.8 and 3.2.8 of the Market Terms, Retailers and Wholesalers, as Data Owners, have a general duty to ensure that the Data Items for which they are the Data Owner are up to date, accurate and complete. Where the Data Owner itself identifies an error, it is under an obligation to correct the relevant Data Item(s) as soon as it becomes aware of the error. Trading Parties should therefore use the processes and procedures provided for in CSD 0105 (Error Rectification and Retrospective Amendments) to undertake error rectification and retrospective amendments before the Final Settlement Run, where this is possible.

The Market Terms provides that the Market Operator may carry out Unplanned Settlement Runs (section 4.13.4). There are three different types of Unplanned Settlement Run. These are

- i) Corrective;
- ii) Dispute; and
- iii) Post RF.

Trading Parties should rely on the next Planned Settlement Run and the Settlement Process wherever practicable in preference to using an Unplanned Settlement Run. All three types of Unplanned Settlement Run have individual Thresholds which must be met before they can be requested. These Thresholds restrict availability of these runs and therefore limit the potential impact on Non-Household Customers.

Corrective Settlement Run

The Corrective Settlement Run is a complete recalculation of all Supply Points in relation to one Invoice Period. Both the Wholesaler and Retailer must agree that there is a material error and jointly request this run. It can be completed in relation to any Planned Settlement Run, although must be requested pre-invoice. The Market

Operator will undertake the Corrective Settlement Run as soon as possible following receipt of a request (Market Terms section 4.13.4(d)).

Post RF Settlement Run

A Post RF Settlement Run can be undertaken after the Final Settlement Report has been provided by the Market Operator. The Wholesaler and the Retailer must agree a set of combinations of Supply Points and Service Components which are to be re-calculated (Market Terms sections 4.13.4(e) and 4.14).

The Post RF Settlement Run can relate to one or more Invoice Periods and must be requested within 28 months of the date of publication of the relevant Final Settlement Report.

Dispute Settlement Run

There are four types of Dispute:

- i) Trading Dispute;
- ii) Market Operator (MO) Dispute,
- iii) Market Arrangements (MA) Code Dispute; and
- iv) Non-Trading Dispute.

A Dispute Settlement Run may only be undertaken following a Trading Dispute or a MO Dispute.

Schedule 9, paragraph 3.2.2 of the MAC provides that Trading Parties can raise a Trading Dispute up to 28 calendar months after the date of publication of the Final Settlement Report in which the error in the Data Item occurred, except where a Trading Party wishes to dispute a Post RF Settlement Report, in which case it has 20 Business Days following receipt of that report in which to raise a Trading Dispute. Where the Trading Dispute has been referred to the Trading Disputes Committee it may, in some circumstances, require the Market Operator to perform a Dispute Settlement Run.

Where the Retailer and/or the Wholesaler consider that there has been Inaccurate Settlement, there are specified circumstances in which it/they are able to raise an MO Dispute. Following an MO Dispute, if referred to an expert, it may be considered that a Dispute Settlement Run is required.

2.2 Reasons for the proposed change

2.2.1 Customer Protection Code of Practice

The CPCoP sets out for Retailers how they should interact with and treat Non-Household Customers, including micro-businesses. It is designed to protect Non-Household Customers by imposing obligations on Retailers. It covers

- Sales and Marketing;
- Provision of Information to Non-Household Customers;
- Transfers of Non-Household Customers;
- Billing; and
- Complaint Handling and Dispute Resolution.

Section 9.3.1 imposes a restriction on Retailers back-billing Non-Household Customers. It provides that:

“Retailers shall not bill or invoice a Non-Household Customer for or recover charges in respect of water supplied or sewerage services provided to that Non-Household Customer for any period for which a Final Settlement Report has been provided by the Market Operator”.

The restriction on the back-billing of Non-Household Customers normally equates to approximately 16 months because this is the time in which the Market Operator is ordinarily required to issue the Final Settlement Report for a particular Invoice Period.

Given that the restrictions on back-billing in the Market Terms and the CPCoP are linked it is necessary that, where a change is made to the Market Terms, a consequential change will need to be made to the CPCoP. A failure to make the consequential change would result in Retailers being exposed to charges incurred by a Non-Household Customer which they would then be unable to recover from that Non-Household Customer.

2.2.2 Inconsistency in the WRC between Market Terms and Business Terms

Section 4.14.8 of the Market Terms imposes a restriction on Wholesalers back-billing Retailers which prevents Wholesalers from updating invoices and bills, for both positive sums and negative sums, once the Final Settlement Report has been issued.

In contrast, section 9.3.9 of the Business Terms allows Wholesalers to issue a revised invoice based on an Unplanned Settlement Report, which means that Wholesalers are able to update invoices once the Final Settlement Report has been issued where there has been an Unplanned Settlement Run.

This inconsistency results in uncertainty for Trading Parties regarding billing and invoicing following the issue of a Final Settlement Report. In addition, there is currently an inconsistency concerning payments of negative amounts (i.e. refunds or credits) after a Final Settlement Report has been issued.

2.3 The Proposal to address the inconsistency in the WRC

We consulted on our proposed modifications to the CPCoP to address the identified inconsistency from 14 November 2018 to 5 December 2018. The proposed changes we consulted on are detailed below.

We are proposing amendments to the CPCoP to ensure the back-billing provisions within the CPCoP are consistent with the relevant provisions which govern billing and invoicing by the Wholesaler to the Retailer within the WRC.

We consider that it is important to align the restriction imposed on Retailers back-billing Non-Household Customers within the CPCoP to the similar restriction imposed on Wholesalers back-billing Retailers in the WRC to ensure that Retailers are not left exposed to charges from a Wholesaler which they are then unable to recover from the relevant Non-Household Customer.

Consistent with the change we are proposing to the WRC, we propose imposing a restriction on Retailers billing and invoicing Non-Household Customers up to a maximum of 24 Months. This restriction on billing and invoicing will not however, apply to a bill or invoice for a negative sum i.e. refunds or account credits.

The restriction for back-billing Non-Household Customers will ordinarily remain at approximately 16 Months. The only exception to this being where a Post RF Settlement Report or a Settlement Report following a Dispute is issued, in which case a Retailer would have an additional eight Months¹ after provision of the Final Settlement Report by the Market Operator (a total of 24 Months following the end of the Invoice Period to which the bill relates) to back-bill the Non-Household Customer.

The proposed modifications to the CPCoP are set out in Appendix 1. For the Phase I Change Proposal, we propose an implementation date of **28 February 2019**.

¹ See Appendix 1 for proposed addition of definition of 'Month' to the CPCoP. 'Month' shall have the meaning given in the WRC. The WRC defines 'Month' as, "save where the context otherwise requires, shall mean a calendar month;"

2.4 Evidence considered

2.4.1 Restriction on back-billing Non-Household Customers

The CPCoP, when published, placed a restriction on the back-billing of all Non-Household Customers which equated to approximately 16 months. We consider it is important to maintain appropriate protection for Non-Household Customers from receiving long back dated bills, but the mechanisms for Trading Parties to amend inaccurate data, in limited and time-bound circumstances, enabling longer-term accurate invoicing and billing for the benefit of the market as a whole must also be preserved.

We consider that the Phase I Change Proposal continues to provide appropriate protection for Non-Household Customers from receiving long back dated bills, whilst ensuring that Retailers are not left exposed to charges from Wholesaler which they are unable to recover from Non-Household Customers.

2.4.2 Analysis of other sectors

We considered how back-billing is managed for Non-Household Customers in other sectors, including Energy and Telecoms. We noted that, in general, Non-Household Customers are only protected from back-billing by statutory limits (of six years).

Restriction on back-billing	Sector	
	Energy	Telecoms
Business Customers	Statutory (except for microbusinesses – 12 months)	Statutory

2.4.3 Request for Information – WRC Draft Change Proposal

The Request for Information sought views on our proposed approach, set out in our draft change proposal, to addressing the identified inconsistency. It was published on 24 October 2018 and closed on 7 November 2018 and outlined our proposed changes to amend the restriction on back-billing to both the WRC and the CPCoP.

Nine Wholesalers, nine Retailers and the Consumer Council for Water responded to the Request for Information. Our full analysis of the responses and response to these can be viewed in section 8.4 of [the November Consultation](#).

The majority of respondents (eight Retailers and eight Wholesalers) expressed support for the proposed changes outlined in the draft change proposal. Eight Retailers and seven Wholesalers considered that extending the back-billing period for Non-Household Customers, in limited circumstances, to resolve the inconsistency in the WRC would strike a fair balance between maintaining adequate protections for Non-Household Customers whilst enabling the recalculation of Primary Charges.

Three Retailers and two Wholesaler respondents discussed the impact of the proposed changes on refunds/credit bills or invoices within their responses to the Request for Information. One Retailer expressed concern that Retailers may be required to refund Non-Household Customers much further back than the period for which Retailers would be able to receive a refund from the Wholesaler. Another Retailer suggested that a definition of invoice should be added to the CPCoP to provide clarity to ensure that credit invoices are not limited. We updated the drafting of our proposed changes to the WRC and CPCoP to confirm that bills or invoices for negative sums (i.e. refunds or credits) will not be affected by the proposed change, which is to restrict back-billing for positive sums.

The majority of respondents to the Request for Information indicated that the impact on business systems, processes and accounting as a result of the proposed change would be low.

A number of comments were made which fell outside of the scope of the Request for Information and no other responses resulted in a change to our proposal to address the inconsistency in and between the WRC and the CPCoP. However, we developed additional proposed changes to the CPCoP following consideration of the Request for Information responses and set out our proposed decision for consultation on these additional changes in Chapter 2.

2.4.4 The November Consultation

The November Consultation outlined our updated proposal to amend the WRC and CPCoP to address the inconsistency in, and between, the WRC and the CPCoP. It also sought views on additional proposed changes to the CPCoP. This section discusses the responses we received to the November Consultation in relation to the Phase I Change Proposal.

17 out of 19 respondents expressed support for the proposed change to the WRC and CPCoP to address the identified inconsistency. The same respondents also considered that the proposal strikes a fair balance between maintaining a restriction on back-billing Non-Household Customers and permitting the recalculation of Primary Charges in some limited circumstances. One Retailer and the Consumer Council for Water did not agree with the proposed change. We have summarised below the relevant consultation responses to the Phase I Change Proposal.

A Retailer highlighted that it agrees with a respondent to the Request for Information which suggested that Retailers should be able to bill for an extended period where the Non-Household Customers' actions have resulted in an inability to issue an accurate bill or invoice. This point was considered during the [consultation on the draft CPCoP](#), published in March 2016. The feedback we received to this consultation suggested that it would be difficult to define inappropriate behaviour and several respondents sought further clarity on this. So, instead of describing situations where a Non-Household Customer or Retailer were or were not at fault, the reference to inappropriate behaviour in the draft CPCoP was removed. We are not reconsidering this point within this Phase I Change Proposal, as it falls outside of the scope of addressing the inconsistency in the WRC. We would however, consider a Customer Protection Code Change Proposal submitted in relation to this issue should the Retailer respondent, or any other stakeholder, wish to raise this.

We note the concern raised by one Retailer and the Consumer Council for Water that the Phase I Change Proposal could be viewed as eroding customer protections. The majority of Non-Household Customers are unlikely to be affected by the Phase I Change Proposal as the restriction on back-billing will remain at approximately 16 months for them. The Phase I Change Proposal will only impact Non-Household Customers who have an inaccurate read and that, either combined with other Non-Household Customers' inaccurate reads or in isolation, meets the relevant Materiality Threshold for a Trading Party to request a Post RF or Dispute Settlement Run. A Retailer will only have up to eight Months following the issue of the Final Settlement Report to issue a back-bill to a Non-Household Customer.

- It is important to note that Trading Parties must pay a fee for Unplanned Settlement Runs and as such there is an incentive to ensure that Data Items are up to date, accurate and complete. We consider that there should be a mechanism by which amendment to a bill or invoice can be made following the issue of the Final Settlement Report. This opportunity for data correction is necessary to provide for the possibility of erroneous or unidentified data errors which meet the Materiality Threshold and are therefore likely to be of significance to Trading Parties if they cannot be rectified. Enabling recalculation of Primary Charges in these limited circumstances, will help to

ensure accuracy of Non-Household Customer bills going forward and in the longer term will help to avoid subjecting business customers as a whole to further significant costs.

2.5 Proposed decision

We propose to approve the Phase I Change Proposal.

As set out in section 8 above, when reaching our proposed decision we have considered the scope, impact and risks of the Phase I Change Proposal along with evidence obtained from our own research, the Request for Information and the November Consultation.

The inconsistency in, and between, the WRC and CPCoP requires resolution to address uncertainty for Retailers and Wholesalers regarding billing and invoicing following issue of the Final Settlement Report by the Market Operator which could have wider and more significant implications for the market. Aligning the regulatory framework is necessary to ensure that Retailers are not left exposed to charges which they are unable to recover from the relevant Non-Household Customers. We consider that the proposal strikes a fair balance between maintaining a restriction on back billing for Non-Household Customers whilst enabling the recalculation of Primary Charges, in some limited circumstances. The majority of respondents to both the Request for Information and the November Consultation agreed with this view.

It should be noted that the restriction on back-billing will remain unchanged, at approximately 16 months, for the majority of Non-Household Customers. Trading Parties should use the existing market mechanisms provided in Code Subsidiary Document 0105 to undertake data correction prior to the Final Settlement Run or can request Corrective Settlement Runs to rectify errors in Settlement Reports. In both these instances, the restriction on back-billing will remain at approximately 16 months. Unplanned Settlement Runs (including Corrective Settlement Runs) should be used only where absolutely necessary, and only where the relevant Materiality Thresholds have been met.

Under sections 2.2.8 and 3.2.8 of the Market Terms, Retailers and Wholesalers, as Data Owners, have a general duty to ensure that the Data Items for which they are the Data Owner are up to date, accurate and complete. Where the Data Owner itself identifies an error, it is under an obligation to correct the relevant Data Item(s) as soon as it becomes aware of the error.

Trading Parties are currently working on data improvement plans that are focussing on improving some elements of underlying data quality (for example the number of long unread meters and meter location data) which should assist in reducing the number of Unplanned Settlement Runs which are requested. We fully expect Trading Parties to be adhering with their respective obligations within the WRC and to be

correcting Data Item errors as and when they become aware of them. This in turn will help to ensure that the use of Unplanned Settlement Runs is kept to a minimum.

2.5.1 Proposed decision on the date of implementation

It is our proposed decision that the implementation date for this change will be **28 February 2019**.

We have considered the potential impact on Retailers existing systems and processes and sought views on this as part of the Request for Information and the November Consultation.

The majority of respondents to the November Consultation highlighted that, should the proposal be approved, there would be no or low impacts on business systems, processes and accounting. One Retailer highlighted that the inclusion of an exception to the standard approximate 16 Month restriction on back-billing adds some complexity in terms of billing processes.

Another Retailer highlighted that the Phase I Change Proposal will impact its accounting practices and may have additional resource requirements in business areas such as settlements and customer services and complaints. It was suggested that consideration should be given to the implementation date for this proposal due to the amendments which will be required to be made to Terms and Conditions of Supply.

Given the responses received, on balance, we are satisfied that the impacts of the proposed change will be low. We can confirm that should this proposal be approved, the implementation date will be 28 February 2019, to align with any approved changes to the WRC.

3. Chapter 3 – Additional proposed changes to the CPCoP (Phase II Change Proposal)

3.1 Proposed changes

During the development of the Phase I Change Proposal, further consideration was given to the provisions in the CPCoP which relate to billing or invoicing, which included the analysis of responses received to the Request for Information on the draft change proposal. We identified that some related provisions within the CPCoP could be modified to ensure that the high level of customer protections already offered in the CPCoP are maintained and, further, to improve upon some of those protections. The proposed additional changes to the CPCoP, upon which we sought views in the November Consultation are detailed below.

3.1.1 Change 1 – Payments

The November Consultation set out our proposal to insert an additional requirement into the CPCoP for Retailers to pass on payments to Non-Household Customers where there has been a recalculation of Primary or Non-Primary Charges and a payment is made by the Wholesaler to the Retailer.

We proposed this change following consideration of responses to the Request for Information. It was highlighted by three Retailer and two Wholesaler respondents that the drafting of our original proposal to modify the WRC also prevented refunds from being made outside of the 24 month timeframe. This is because a bill or invoice under the WRC can be either for a positive or negative sum, a negative sum being a refund or credit. This led us to consider further the provisions for billing and invoicing for negative sums (i.e. refunds or credits) in the CPCoP. We noted that there is no requirement in the CPCoP for Retailers to pass on refunds/credits to Non-Household Customers. However, we consider that it would be beneficial to have an express provision to prescribe an obligation to pass on payments of this nature to Non-Household Customers.

3.1.2 Change 2 – Payment information in Terms and Conditions of Supply

The November Consultation proposed a change to require Retailers to include, within their Terms and Conditions of Supply, how they will deal with payments due to a Non-Household Customer where a payment is made by the Wholesaler to the Retailer following a recalculation of Primary or Non-Primary Charges.

This will provide certainty for Non-Household Customers by ensuring that there are clear provisions in Terms and Conditions of Supply about how any payments due under Change 1 (above) will be processed.

3.1.3 Change 3 – Definitions

The November Consultation proposed a modification to the definition of Back-bill and Reasonable Repayment Plan for a Back-bill.

3.1.4 Definition of Back-bill

We proposed an amendment to the definition of Back-bill to ensure that this aligned with the timeframe within which Non-Household Customers may receive a Back-bill.

A Retailer respondent to the November Consultation highlighted that it considered that the proposed definition would prevent a Retailer from issuing any Back-bill for the 24 months preceding the bill or invoice. We have made further amendments to the proposed new definition, to add clarity. However, the principle of the proposed change remains the same, namely the alignment of the definition of Back-bill with the proposed modified timeframe within which a Non-Household Customer may receive a Back-bill. The revised legal drafting can be reviewed in Appendix 1 of this document.

3.1.5 Definition of Reasonable Repayment Plan for a Back-bill

We noted that, in order to maintain the original intention of the timeframe for a Reasonable Repayment Plan for a Back-bill, it was necessary to amend the definition. When we originally consulted on the draft CPCoP, in March 2016, we considered that Micro-businesses should have the same amount of time over which the Back-bill was accrued to be able to repay it. Thus, in the November Consultation, we proposed that the definition should be amended to provide Micro-businesses with the opportunity to repay a Back-bill over a period of 24 Months.

Responses to the November Consultation indicated that increasing the timeframe over which a Reasonable Repayment Plan for a Back-bill is available may cause cash flow issues for Retailers, particularly small and/or new entrant Retailers. Following consideration of this and other responses to the November Consultation, we have amended our proposal. We propose the timeframe within the definition of Reasonable Repayment Plan for a Back-bill should remain at 12 months. We are now only proposing to amend this definition to incorporate the new definition of 'Month'.

3.1.6 Change 4 – Final bill

We are proposing to extend the requirement to issue a final bill within the specified timeframe to all Non-Household Customers, so that it no longer applies to Micro-businesses only. Extending this requirement to all Non-Household Customers should reduce the number of Back-bills which are issued after a Non-Household Customer has switched to a new Retailer. The intention is to create as positive experience of switching as possible for all Non-Household Customers, as they will receive their final bill within six weeks of switching or the termination or expiry of their Terms and Conditions of Supply.

3.1.7 Proposed implementation date

The proposed date of implementation for change 1 to 4 is **three weeks following the date of our decision document**.

We consider the proposed implementation date to be reasonable as it provides Retailers time to make any necessary amendments, whilst ensuring that the proposed changes, which will be of benefit to Non-Household Customers, are implemented as soon as possible.

3.2 Evidence considered (the November Consultation) and our response

Responses to the November Consultation provided evidence for us to consider to reach our proposed decision in respect of changes 1 to 4.

16 out of 19 respondents to the November Consultation were in favour of proposed changes 1 to 4. One respondent made no comments in respect of proposed changes 1 to 4. One Retailer respondent did not support these proposed changes and another Retailer supported them in part. The comments received in response to the consultation on proposed changes 1 to 4, and our response, have been detailed below.

3.2.1 Change 1 – Payments

Respondents to our November Consultation were largely in favour of this proposed change.

Only one respondent was not in favour of this proposal. This respondent suggested that the proposal assumed that Non-Household Customer bills are based on Wholesale Charges and suggested that the requirement to pass on refunds should only be applicable where this is the case. It was suggested that if a Non-Household Customer has not been billed while Wholesale charges are in Dispute, that customer would nonetheless be due a refund under the proposed change. As such, this respondent considered that the incentive is being placed on Retailers to charge customers, even where the charges are known to be inaccurate.

Our proposal is that payments should be passed back to Non-Household Customers in the proportion that their bills have been affected. Therefore, if Primary Charges have not been used to calculate the amount owed by a Non-Household Customer and there has been no error in the calculation of charges, no refund would be due to that Non-Household Customer. Similarly, if a Non-Household Customer has not been charged during a Dispute, no refund would be due as no bill or invoice would have been impacted by the recalculation of Primary Charges following resolution of the Dispute.

3.2.2 Change 2 – Payment information in Terms and Conditions of Supply

Respondents to the consultation were largely in favour of this proposed change. However, a Retailer considered that it is not necessary to introduce a requirement to

include in Terms and Conditions of Supply information on how compliance with the obligation to pass refunds onto Non-Household Customers will be ensured. It stated that if this is implemented, sufficient time must be provided to allow this to be introduced into new Terms and Conditions of Supply when existing ones expire, rather than requiring Retailers to update their current contracts.

CCWater recommended that the Phase II Change Proposal should be implemented as soon as possible as they will provide benefits for Non-Household Customers.

We consider that it will be beneficial for Non-Household Customers to have clear information on how refunds will be passed onto them. We are of the view that the proposed implementation date of three months following the date of our decision document is a reasonable timeframe for implementation.

3.2.3 Change 3 – Definitions

Back-bill

A Retailer respondent suggested that the proposed modification to the definition of Back-bill was incorrect. It indicated that the proposed definition would prevent a Retailer from issuing any Back-bill for the 24 months preceding the bill or invoice. It recommended that the definition remain as it is.

We have added clarity to the proposed definition of Back-bill to address this concern. We do, however, still consider that this change is necessary to align the definition of Back-bill to the timeframe within which a Back-bill can be received.

Reasonable Repayment Plan for a Back-bill

A respondent suggested that the definition should be clear that it only relates to a bill or invoice issued after a Post RF or Dispute Settlement Run.

Two Retailer respondents expressed concern that increasing the timeframe over which a Reasonable Repayment Plan for a Back-bill is available will have a negative impact on cash flow. This was raised in particular in the context of small and new entrant Retailers.

With regard to the proposed increased timeframe of 24 Months, it was highlighted that a Retailer is required to pay a Wholesaler within 15 Business Days of receiving a bill or invoice. It was argued that this proposal will therefore have a negative impact on a Retailers' working capital and cash flow.

A respondent suggested that the timeframe for a Reasonable Repayment Plan for a Back-bill is not linked to the period in which a Back-bill can be issued. As such, this respondent felt that the timeframe of availability should not be extended from 12 to 24 months.

We have considered the responses to the November Consultation which suggested that the timeframe for a Reasonable Repayment Plan for a Back-bill should not be increased from 12 to 24 Months. In particular, we note the concerns that doing so may cause cash flow issues for Retailers. It was highlighted that this could particularly affect small and new entrant Retailers. We also note that the proposed change may have a disproportionate adverse impact on Retailers that have a high proportion of Micro-business customers. As such we have amended our proposed change, see section 3.3.3 below.

The Consumer Council for Water (“**CCWater**”) suggested that a Reasonable Repayment Plan for a Back-bill should be extended to Small and Medium Enterprises (“**SMEs**”). We consider that the extension of this provisions to SMEs could have negative cashflow impacts on Retailers, particularly small ones. We will, therefore, not be extending the availability of a Reasonable Repayment Plan for a Back-bill to SMEs.

3.2.4 Change 4 – Final bill

A Retailer suggested that it may not always be possible to issue a bill within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply if there is an outstanding operational request requiring Wholesaler action. Another Retailer expressed concern regarding this obligation, suggesting that some Retailers may not be providing actual Transfer Reads in line with market requirements, which increases the credit risk for the outgoing Retailer and reduces the market experience for the customer.

We note the concern raised by two respondents to the November Consultation regarding instances where they consider that they may be prevented from doing so. However, Retailers are already required to provide Micro-businesses with a final bill within the six week timeframe and we consider it is reasonable to extend this to all Non-Household Customers. The issues flagged by the respondents to the November Consultation could arguably be experienced with any final bill, including those for Micro-businesses where the six week timeframe is already in operation.

3.3 Proposed decision

Having considered responses we received to the November Consultation it is our proposed decision to accept change 1, 2 and 4 and we are proposing to amend change 3.

3.3.1 Change 1 – Payments

It is our proposed decision to accept the change. We consider that it should be standard practice for Retailers to pass on payments due to a Non-Household Customer following a recalculation of Primary Charges. We are of the view that it will be beneficial to have an express provision to prescribe this obligation. In addition, this proposed change will improve upon protections already provided within the CPCoP.

3.3.2 Change 2 – Payment information in Terms and Conditions of Supply

It is our proposed decision to accept this change. The majority of respondents to the November Consultation were supportive of this proposed change. We consider that it will be beneficial for Non-Household Customers to have clear information about how refunds will be passed onto them.

3.3.3 Change 3 – Definitions

Back-bill

It is our proposed decision to amend our proposal to change the definition of Back-bill. We have added clarity to the proposed definition of Back-bill to address concern raised in response to the November Consultation, see section 3.2.3. Whilst we have amended the proposed definition to add clarity, we still consider amendment of the definition of Back-bill is necessary to align this to the timeframe within which a Back-bill can be received.

Reasonable Repayment Plan for a Back-bill

It is our proposed decision to amend this proposal. We considered concerns raised by some respondents to the November Consultation that the proposed change could have a negative impact on Retailer cashflow. In particular, the proposed change may have a disproportionate adverse impact on Retailers that have a high proportion of Micro-business customers.

We have amended our proposal to revert to the original 12 Month timeframe for a Reasonable Repayment Plan for a Back-bill. We are now only proposing a change to incorporate the new definition of 'Month'. Although we have amended this proposed change, we do expect Retailers to engage and communicate with Non-Household Customers and attempt to reach solutions to meet customer needs.

3.3.4 Change 4 – Final bill

It is our proposed decision to accept the change to require a final bill to be issued to all Non-Household Customers, as opposed to just Micro-businesses, within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply.

We consider that the change will introduce benefits for switching and provide all Non-Household Customers with certainty regarding when they will receive a final bill. We are of the view that this change will also assist in reducing the number of Back-bills issued to Non-Household Customers once they have switched Retailer. This in turn will help to create as positive experience of switching as possible for all.

3.3.5 Implementation date

It is our proposed decision that the implementation date for the Phase II Change Proposal will be **three months after the date of our decision document**.

We have considered responses to the November consultation and the potential impact on Retailers existing systems and processes. We do not intend to amend the proposed implementation date. On balance, we consider that three months following the decision provides a reasonable timeframe for Trading Parties to implement the required changes, whilst ensuring that Non-Household Customers benefit from the changes as soon as possible.

4. Chapter 4 – November consultation question 9, conclusions and next steps

4.1 Obligation to keep Non-Household Customers informed – question 9 of the November Consultation

Question 9 of the November Consultation asked:

“What are your views on amending the CPCoP to include an obligation on Retailers to keep Non-Household Customers informed throughout a Dispute or a Post RF process that may result in them receiving a Back-bill?”

Although we did not propose a change, question 9 of the November Consultation was intended to seek views on whether an obligation to keep Non-Household Customers informed should be included in the CPCoP. This question was included in the consultation following concerns raised by CCWater that Non-Household Customers may receive unexpected bills.

4.1.1 November Consultation responses to question 9

There were mixed responses to this question.

It was argued by one respondent that Retailers should have discretion and be able to exercise reasonable judgement as to the information they provide to Non-Household Customers. This respondent indicated that in many cases where a Dispute or Post RF Run has been requested, it will already have reduced the Non-Household Customer’s bill to reflect the expected outcome. A Wholesaler suggested that the change would result in Retailers being required to use a degree of judgement as to what stage in the process the initial communication should take place. It considered that this should ideally be as soon as possible in the process but only after sufficient due diligence and investigation has taken place. It argued that this would be at the point in time when the process is formalised.

Another respondent considered that Retailers should have the ability to retain Non-Household Customer data after the Post RF window has closed. The respondent considered that the proposed changes would allow Retailers to keep information in accordance with GDPR.

A Retailer highlighted that if Ofwat intends to introduce a change to the CPCoP to include an obligation that Retailers must keep Non-Household Customers informed throughout a Dispute or Post RF process that may result in a Back-bill, the wording must be absolutely clear as Back-bill is a defined term.

A Wholesaler stated that it agrees with this principle but expected to see the legal drafting explicitly in the consultation on the proposed amendments to the CPCoP in January 2019.

A Retailer suggested that this change could unfairly raise expectations of a refund or unnecessary worry or concern of an increased bill. It considered that Non-Household Customers should be informed when a Dispute has been settled, not during.

4.1.2 Next steps

We have fully considered responses to the November Consultation in relation to whether the CPCoP should include an obligation on Retailers to keep Non-Household Customers informed throughout a Dispute or a Post RF process that may result in them receiving a Back-bill. We feel that the responses received require further reflection, and legal drafting should be prepared for consultation prior to any decision is made in respect of this.

We will analyse the consultation responses further and may consult on a change to the CPCoP at a later date.

4.2 Conclusion and next steps

The consultation on the Phase I Change Proposal (relating to the inconsistency in, and between, the WRC and CPCoP) will close on **7 February 2019**.

The consultation on the Phase II Change Proposal (Changes 1 to 4) will close on **21 February 2019**.

Following the closure of both consultations, we will consider responses prior to issuing our final decision. See section 2 of this document for details about how to respond to this consultation.

We intend to publish our decision on the Phase I Change Proposal and the WRC change Proposal (CPW055) on the same date, as both are directly linked.

We will endeavour to make the decision on the Phase II Change Proposal as soon as practicable.

Appendix 1 – Legal drafting

Phase I Change Proposal drafting

Section 1, Definitions and interpretation is amended to include the following definitions:

WRC Dispute	has the same meaning as 'Dispute' in the Wholesale-Retail Code;
Invoice Period	has the meaning given in the Wholesale-Retail Code;
Month	has the meaning given in the Wholesale-Retail Code;
Post RF Settlement Report	has the meaning given in the Wholesale-Retail Code;
Settlement Report	has the meaning given in the Wholesale-Retail Code;
Unplanned Settlement Report	means a Settlement Report carried out following a WRC Dispute or a Post RF Settlement Report;

As a consequence, the definition of 'Reasonable Repayment Plan for an Outstanding Debt' will be amended to take account of the new definition of 'Month', as follows:

Reasonable Repayment Plan for an Outstanding Debt	<p>means a process for repayment of an Outstanding Debt pursuant to Section 7.1.4 which offers the relevant Non-Household Customer time to pay that amount by agreed instalments, over a period nominated by the Non-Household Customer being no longer than:</p> <ul style="list-style-type: none"> (i) The period which the debt accrued, if it accrued over a period of less than 12 Months; or (ii) 12 Months, in any other case;
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Section 9.3.1 is deleted and replaced as follows:

Retailers shall not bill or invoice a Non-Household Customer for or recover charges in respect of water supplied or sewerage services provided to that Non-Household Customer for any Invoice Period for which a Final Settlement Report has been provided by the Market Operator unless the following circumstances apply:

- (a) the bill or invoice is for a negative sum; or
- (b) where:
 - i. the Market Operator has issued an Unplanned Settlement Report in respect of the relevant Invoice Period;
 - ii. the bill or invoice is in accordance with the Unplanned Settlement Report; and
 - iii. the bill or invoice is issued within the eight (8) Month period following the issuing of the Final Settlement Report.

Phase II Change Proposal drafting

Payments

Section 1, Definitions and interpretation is amended to include the following definitions:

Non-Primary Charge	has the meaning given in the Wholesale-Retail Code
Primary Charge	has the meaning given in the Wholesale-Retail Code
Wholesaler	has the same meaning as Contracting Wholesaler given in the Wholesale-Retail Code

Include a revised paragraph 7.1.3 as detailed below and amend subsequent paragraph numbering as appropriate:

7.1 Provision of information to Non-Household Customers about Terms and Conditions of Supply.

- 7.1.1 Retailers shall be transparent with their Non-Household Customers about the Terms and Conditions of Supply which apply to them and any proposed changes to those Terms and Conditions of Supply.

7.1.2 Where Terms and Conditions of Supply are in writing, Retailers shall ensure they are in plain and clear language.

7.1.3 **The Retailer must include in the Terms and Conditions of Supply details of how it will comply with the obligation in paragraph 9.3.3 to pass on any payment from a Wholesaler to the Retailer following a recalculation of the Primary Charge or Non-Primary Charge;**

7.1.4 If the Terms and Conditions of Supply are due to expire, Retailers must write to the relevant Non-Household Customer at least 30 calendar days prior to the expiry date advising them of the following:

- (a) the upcoming expiry of the Terms and Conditions of Supply and the expiry date;
- (b) whether the Non-Household Customer can renew the Terms and Conditions of Supply on the same basis and, if so, how;
- (c) other Terms and Conditions of Supply available from the same Retailer (if any), in particular the Retailer's current charges and whether the Non-Household Customer is on the Retailer's cheapest deal available for that Non-Household Customer;
- (d) that the Non-Household Customer will be moved onto a Scheme of Terms and Conditions (if the Non-Household Customer is in a retail exit area) or the Retailer's standard, general or default Terms and Conditions of Supply (if the Non-Household Customer is not in a retail exit area) if the Non-Household Customer does not respond to the Renewal Notice;
- (e) the Minimum Information Requirements;
- (f) if the Non-Household Customer is in a retail exit area, that the Authority can direct a Licensee other than the Non-Household Customer's current Retailer to supply them on the terms contained in a Scheme of Terms and Conditions; and
- (g) if the Non-Household Customer is not in a retail exit area, that a relevant undertaker may provide Terms and Conditions of Supply.

7.1.5 Retailers shall inform their Non-Household Customers of their right to raise a formal dispute with them in relation to sums due under the relevant Terms and Conditions of Supply, how to do so, the deadline by which such a dispute must be raised, whether a Reasonable Repayment Plan for an Outstanding Debt is available and the consequences of failing to pay or raise such a dispute, in particular that the Retailer may submit a Cancellation Request in certain circumstances.

Amend the title of Section 9.3 to '**Retrospective Amendments**' and insert new paragraph 9.3.3 as detailed below²:

9.3.1 Retailers shall not bill or invoice a Non-Household Customer for or recover charges in respect of water supplied or sewerage services provided to that Non-Household Customer for any Invoice Period for which a Final Settlement Report has been provided by the Market Operator unless the following circumstances apply:

- (a) the bill or invoice is for a negative sum; or
- (b) where
 - i. the Market Operator has issued an Unplanned Settlement Report in respect of the relevant Invoice Period;
 - ii. the bill or invoice is in accordance with the Unplanned Settlement Report; and
 - iii. the bill or invoice is issued within the eight (8) Month period following the issuing of the Final Settlement Report.

9.3.2 Retailers shall offer a Micro-business a Reasonable Repayment Plan for a Back-bill.

9.3.3 Where the Retailer receives a payment from the Wholesaler following a recalculation of a Primary Charge or a Non-Primary Charge the Retailer is obliged to pass on this payment on to all Non-Household Customers in the same proportion to which the recalculation has affected their invoices or bill.

Amending the definition of back-bill and Reasonable Repayment Plan for a Back-bill

Section 1, Definitions and interpretation is amended as follows:

² Drafting of paragraph 9.3 detailed reflects the proposed change to paragraph 9.3.1

<p>Back-bill</p>	<p>means a bill or invoice for water supplied and/or services provided prior to in the 1224 Months s preceding the date of the that bill or invoice.</p>
<p>Reasonable Repayment Plan for a Back-bill</p>	<p>means a process for repayment of a Back-bill which meets the following criteria pursuant to Section 9.3.2:</p> <ul style="list-style-type: none"> (a) it does not incur interest on the amount due; (b) it offers the relevant Non-Household Customer time to pay that amount by agreed instalments, over a period nominated by the Non-Household Customer being no longer than: <ul style="list-style-type: none"> (i) the period during which the debt accrued, if it accrued over a period of less than 12 Months; or (ii) 12 Months, in any other case.

Issue of a final bill

The following modification would made to section 9.2.3 of the CPCoP:

“Any final bill to be issued to a ~~Micro-business~~ **Non-Household Customer** shall be issued within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply.”

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