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## Wholesale Retail Code Change Proposal – Ref CPW055

<b>Modification proposal</b>	Wholesale Retail Code Change Proposal – CPW055 – Wholesale Retail Code Inconsistency
<b>Decision</b>	The Authority has decided to approve this change proposal
<b>Publication date</b>	18 February 2019
<b>Implementation date</b>	28 February 2019

### Background

An inconsistency between the Market Terms and the Business Terms of the Wholesale Retail Code (WRC) was highlighted in the Final Report for Change Proposal CPW039, which was submitted to the Authority on 19 July 2018. This Final Report recommended that the Authority defer Final Settlement Runs for a period of 12 Months, until September 2019, to allow time for data correction and thereby, reduce the amount of inaccurate consumption data being crystallised when the first Final Settlement Run is completed following market opening.

The Authority [approved the proposal, subject to prescribed modifications](#). We did not consider that the rationale and supporting evidence provided by the Panel for the deferral of the Final Settlement Runs for a period of up to 12 Months to be conclusive. However, we did consider that the rectification of the identified inconsistency in the WRC was of sufficient importance to warrant a deferral of the Final Settlement Runs. We therefore approved the proposal but amended the deferral period, allowing the deferral (subject to our discretion) until 31 December 2018 or, at the latest 28 February 2019. Consistent with the terms of the WRC, we formally notified the Market Operator and advised the Panel, by letter dated 23 October 2018 that the deferral would be until 28 February 2019, meaning Final Settlement Runs will commence in March 2019.

## The issue

There is an inconsistency in the Market Terms and the Business Terms of the WRC regarding billing and invoicing after a Final Settlement Report has been issued.

Section 4.14.8 of the Market Terms imposes a restriction on Wholesalers back-billing Retailers. It provides that:

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

This restriction prevents Wholesalers from updating invoices and bills, for both positive 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, stating that:

“Subject to Section 9.5.3, the Contracting Wholesaler shall invoice the Contracting Retailer the Balances in conjunction with the statements referred to in Sections 9.3.1 to 9.3.5 (inclusive) and in accordance with its published invoicing calendar, but in any event within ten (10) Business Days of receiving each Settlement Report (whether for a Planned Settlement Run or an Unplanned Settlement Run) from the Market Operator and the Balance shown on such invoice shall be paid within fifteen (15) days after the date that the statement from the Contracting Wholesaler is received by the Contracting Retailer in accordance with Section 9.6”.

This means that Wholesalers are able to recalculate Primary Charges 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) after a Final Settlement Report has been issued.

## **The Customer Protection Code of Practice (CPCoP)**

This decision document relates to proposed changes to the WRC. However, it is important to note that Section 9.3.1 of the CPCoP imposes a similar restriction to that in the Market Terms 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 to prevent Retailers from being exposed to charges incurred by a Non-Household Customer which they would then be unable to recover from that Non-Household Customer.

## **The modification proposal<sup>1</sup>**

The Authority is proposing modifications to the WRC. Our proposal is that it will be possible for a Wholesaler to bill or invoice a Retailer for a positive sum based on a Post RF Settlement Report or a Settlement Report issued after a Dispute, for a maximum period of eight Months after the Final Settlement Report has been issued. This means that the timeframe for billing or invoicing for a positive sum based on a Post RF Settlement Report or a Settlement Report issued following a Dispute only, would be limited to a maximum of 24 months from the end of the relevant Invoice Period.

If a Dispute remains ongoing when the eight Months has elapsed after provision of the Final Settlement Report, any Settlement Report issued by the Market Operator following a Dispute shall not be used for the purpose of billing or invoicing. Trading Parties will not be prevented from resolving a Dispute via the existing mechanisms set out in the Business Terms of the WRC and the Market Arrangements Code (MAC), and undertaking data rectification to reflect the outcome of the Dispute

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<sup>1</sup> The proposal and accompanying documentation is available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

(including seeking a Dispute Settlement Run), once the eight Months elapsed. However, it will not be permissible to issue an invoice or bill based on any such amendments after this time except where the bill or invoice is for a negative sum. This restriction on billing and invoicing will not prevent any bill or invoice for a negative sum i.e. refunds or account credits.

Similarly, if a Wholesaler and Retailer agreed to request a Post RF Settlement Run, or are provided with a Post RF Settlement Report where the eight Months has elapsed following the issue of the Final Settlement Report, this could not be used for the purposes of billing or invoicing for a positive sum.

## **Industry consultation and assessment**

### **DCP010 and Request for Information**

Our draft change proposal and Request for Information was published on 24 October 2018 (see Appendix 1), this closed to responses on 8 November 2018. We considered the responses received (see Appendix 2) and updated our proposals in some instances. A summary of the responses and the changes made to our proposal following consideration of the responses can be viewed in our [‘Modifications to the Wholesale Retail Code and the Customer Protection Code of Practice – a consultation’](#) document.

One key change made following consideration of the Request for Information responses was to ensure that the proposed change did not limit billing or invoicing for negative sums (i.e. refunds or credits) which are due from the Wholesaler to the Retailer. We reflected this amendment in our proposed change to the CPCoP to ensure alignment of the two codes.

### **[Modifications to the Wholesale Retail Code and the Customer Protection Code of Practice – a consultation \(the consultation\)](#)**

We issued the consultation on 14 November 2018, to seek views on our proposed changes to both the WRC and the CPCoP. Further detail regarding the proposed modifications to the WRC can be viewed in the consultation document (See Appendix 3). We received 19 responses, from eight Wholesalers, ten Retailers and the Consumer Council for Water. We have considered the responses to the consultation which were relevant to the proposed changes to the WRC and have detailed our responses to key comments in Appendix 4.

The majority (17 out of 19 respondents) were in favour of the proposed changes to the WRC. 17 out of 19 respondents also considered that the proposed change to the

WRC to rectify the inconsistency strikes a fair balance between maintaining a restriction on back-billing for Non-Household Customers whilst allowing for the recalculation of Primary Charges, in some limited circumstances.

Two respondents (one Retailer and the Consumer Council for Water) did not agree with the proposal to enable invoicing following the Final Settlement Report. It was stated that this erodes customer protection and is unfair for Non-Household Customers. The proposed changes to the WRC have no impact on Non-Household Customers. It is the proposed consequential changes to the CPCoP which will impact Non-Household Customers. The proposal to enable back-billing for an eight Month period following the Final Settlement Report will only be available in limited circumstances and in instances where the Materiality Threshold for a Dispute or Post RF settlement Run has also been met and a fee is paid by Trading Parties. Only a limited number of Non-Household Customers will be impacted by the proposed change and as such we consider that it is proportionate to address the inconsistency in the WRC. Although the question was not specifically asked, two respondents highlighted that they did not consider the proposed change would impact a large number of customers.

Trading Parties should adhere to their obligations within the WRC regarding maintaining accurate, up to date and complete data. We urge Trading Parties to take all practicable steps to ensure accurate data is entered into the Central Market Operating System (CMOS) prior to a Final Settlement Run, thus reducing the number of Unplanned Settlement Runs that will be requested. Trading Parties are currently working on data improvement plans which we expect to assist in improvement in the quality of data in CMOS.

A respondent considered that extending the back-billing period creates a culture of 'final' not being 'final'. Under the proposed changes, eight Months after the issue of the Final Settlement Report is the final opportunity to bill or invoice based on recalculated Primary Charges.

One respondent argued that Trading Parties have had time to rectify data and should focus on replacing estimated reads with actual reads. We agree with this statement. Our proposal is to enable recalculation of Primary Charges in limited circumstances following the Final Settlement Run at 16 Months. We consider that there should be a mechanism by which previously unidentified or erroneous errors, which meet the Materiality Threshold, can be corrected and the relevant Primary Charges be recalculated following the issue of the Final Settlement Report. It is also important to note that Trading Parties must meet Materiality Thresholds and pay a fee if they request an Unplanned Settlement Run.

Three Retailers out of 19 respondents considered that system impacts would be medium to high. The majority considered that there would be minimal or no system impacts. Three Retailers indicated that they anticipate medium to high financial cost to implement the proposed systems changes. Two retailers highlighted that they were considering a more time consuming manual process. Unplanned Settlement Runs should only be used by exception, in accordance with the WRC, and Trading Parties should undertake data correction prior to the Final Settlement Run, where possible. Unplanned Settlement Runs can then be used to correct the erroneous data and unexpected errors. We expect that use of Post RF and Dispute Settlement Runs will only be used to recalculate charges for a limited number of Supply Points. Given that use of Post-RF and Dispute Settlement Runs will be by exception, a manual process may arguably be sufficient.

Of the 17 respondents answering our question regarding whether they consider the proposed change better facilitates the Principles and Objectives of the WRC, 15 considered that it does.

No responses to the consultation raised significant concerns which we considered made it necessary for us to make further amendments to the WRC Change Proposal.

The consultation also sought views on proposed changes to the CPCoP. We have now published our decision to accept proposed changes to the CPCoP to address the inconsistency in respect of billing and invoicing following the issue of a Final Settlement Report.

## **Panel recommendation**

The Panel considered this Change Proposal at an ad-hoc meeting on 16 January 2019 and recommended to the Authority that it approves CPW055. Eleven Panel members voted in favour of the proposed solution and one Panel Member abstained from the vote. The Panel decided that subject to minor amendments to the legal drafting being considered by the proposer for review, they agreed to recommend the proposed solution of CPW055 to the Authority for approval.

The Panel considered that the proposed change improves upon the principles of efficiency, proportionality, transparency and barriers to entry. The recommended date of implementation is 28 February 2019.

## **Our decision**

We have considered the issues raised by the modification proposal and the supporting documentation provided in the Panel's Final Report. We have concluded that the implementation of CPW055 will better align the market codes, and therefore facilitate the principles and objectives of the Wholesale Retail Code detailed in Schedule 1 Part 1 Objectives, Principles and Definitions and is consistent with our statutory duties. We undertook a review of the legal drafting based upon comments raised by Panel Members at the meeting on 16 January 2019. We did not make any amendments to the legal drafting following this review, reasons for this were provided to the Panel prior to it submitting its Final Report.

The legal text can be viewed in appendix 1 of this document.

We have also published our decision to accept the proposed change to align the CPCoP with the WRC, in respect of billing and invoicing following the issue of a Final Settlement Report. The CPCoP Change Proposal decision document can be found [HERE](#).

## **Reasons for our decision**

We set out below our views on which of the applicable code principles are better facilitated by the modification proposal.

### **Efficiency**

The resolution of the inconsistency regarding invoicing on a Settlement Report provided following a Dispute or a Post RF Settlement Report should incentivise Trading Parties to identify and address errors in Settlement Reports at the earliest opportunity. This in turn should assist in reducing the number of Unplanned Settlement Runs requested.

### **Proportionality**

The proposed change is proportionate to address the identified inconsistency whilst maintaining the mechanisms to allow for invoicing for a limited time period following the issue of a Settlement Report following a Dispute or a Post RF Settlement Report.

## **Transparency**

Addressing the inconsistency in the WRC and aligning the CPCoP with the proposed modifications will assist in providing transparency on the circumstances in which invoices can be presented after the issue of a Settlement Report following a Dispute or a Post RF Settlement Report. By more effectively defining the settlement and invoicing windows, more certainty will be provided to Wholesalers and Retailers relating to how they are expected to undertake their duties as set out in the WRC.

## **Barriers to entry**

The proposed change will reduce barriers to entry as potential market participants will have clarity on when and under what circumstances they would be able to invoice. It also ensures that new entrants would not be exposed to charges that they would be unable to recover from Non-Household Customers.

## **Business Terms Objectives**

Ensuring that there are clear and consistent provisions within the WRC relating to billing and invoicing will further the objectives of the Business Terms 1.2.1(i) and (ii). It will assist in establishing the rights and obligations of the parties to a Wholesale Contract for the payment of Wholesale Charges. In particular, the proposal makes provision for any related transitional, supplemental and ancillary matters.

## **Market Terms Objectives**

The proposed change furthers the Market Terms Objective 1.4.1(iii) as it enables the correction of Primary Charges.

## **Decision notice**

In accordance with paragraph 6.3.7 of the Market Arrangements Code, Ofwat approves this change proposal.

**Emma Kelso**  
**Senior Director, Customers and Casework**



## Appendix 1 – Legal drafting

### The Market Terms

Delete section 4.14.8

### The Business Terms

Insert cross reference to new section 9.3.10 into section 9.3.9 to read:

“Subject to **Section 9.3.10 and** Section 9.5.3, the Contracting Wholesaler shall invoice the Contracting Retailer the Balances in conjunction with the statements referred to in Sections 9.3.1 and 9.3.5 (inclusive) and in accordance with its published invoicing calendar, but in any event within ten (10) Business Days of receiving each Settlement Report (whether for a Planned Settlement Run or an Unplanned Settlement Run) from the Market Operator and the Balance shown on such invoice shall be paid within fifteen (15) days after the date that the statement from the Contracting Wholesaler is received by the Contracting Retailer in accordance with Section 9.6”.

Insert new section 9.3.10 as follows:

The Contracting Wholesaler shall not bill or invoice the Contracting Retailer for, or recover charges in respect of, water supplied or sewerage services provided to that Contracting Retailer’s 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 a Settlement Report carried out following a Dispute or a Post RF Settlement Report;
  - ii. the bill or invoice is in accordance with the Settlement Report carried out following a Dispute or a Post RF Settlement Report; and
  - iii. the bill or invoice is issued within the eight (8) Month period following the issuing of the Final Settlement Report.