

March 2020

Customer Protection Code of Practice – consultation on proposed Authority amendment – CP-0006

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Contents

1. About this document	3
2. Code governance arrangements and modification	5
3. Responding to this consultation	7
4. The Change Proposal	8
5. Consultation Questions	Error! Bookmark not defined.

1. About this document

The Customer Protection Code of Practice (“**CPCoP**”) 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, and compliance with it is a requirement of Retailers’ licences.

The outbreak of Covid-19 and its spread within the UK has had a profound impact on the daily lives of millions of people. In March 2020, the UK government issued guidance and imposed legislative measures to help reduce the spread of Covid-19 by requiring that, unless exceptions apply, businesses and premises should be closed and people should stay at home.

This is expected to have a significant effect on water consumption so Ofwat has put in place interim measures aimed at ensuring charges more accurately reflect (reduced) levels of consumption.¹ It is also expected to result in business customers struggling to pay their water bills on time so Ofwat has also put in place interim measures to temporarily defer the payment by retailers of some wholesale charges.² Where customers are able to pay on time we expect retailers to continue to collect charges and to use these to fund the payment of wholesale charges. Where it is clear that customers cannot pay on time for reasons relating to Covid-19, we do not expect retailers to chase payment, charge interest or disconnect³ customers. This document sets out proposed amendments to the CPCoP, for consultation, that Ofwat thinks are appropriate to ensure that:

- a. Premises are not disconnected for the non-payment of charges due to the outbreak of Covid-19. Ofwat will also be putting forward changes to the Wholesale Retail Code (the “**WRC**”) which will address similar issues for self-supply licensees;
- b. Retailers do not seek to recover any default interest for non-payment of invoices during a specified period which covers the outbreak of Covid-19; and
- c. Retailers do not seek to enforce non-payment of invoices against Non-Household Customers until Ofwat permits this.

¹ <https://www.ofwat.gov.uk/wp-content/uploads/2020/03/CPW091-decision-document.pdf>

² <https://www.ofwat.gov.uk/wp-content/uploads/2020/03/CPW093-decision-document.pdf>

³ Schedule 4A of the Water Industry Act 1991 specifies which premises may not be disconnected for non-payment of charges.

This document is structured as follows:

Section 2 outlines the governance arrangements for change proposals, discusses why we think this change proposal is urgent and sets out the timetable for this change proposal.

Section 3 details how to respond to this consultation.

Section 4 provides information regarding this Change Proposal, including the proposed legal drafting and corresponding change proposal to the WRC, and why Ofwat considers that this is required.

Section 5 lists the consultation questions which we would welcome responses to.

Unless otherwise specified, words and expressions used in this consultation have the same meaning as in the CPCoP.

2. Code governance arrangements and modification

2.1 Code Governance

Ofwat may propose a change to the CPCoP at any time by consulting with each affected Retailer and any other person it considers appropriate. Ofwat is required to set out the following information:

- (a) the name of the person or person proposing the change;
- (b) a description (in reasonable but not excessive detail) of the enhancement, issue or defect which it seeks to address;
- (c) a description (in reasonable but not excessive detail) of the change proposal, its nature and purpose and the likely impact of the change on Retailers and Non-Household Customers, including confirmation of how it is consistent with the Code Principles;
- (d) whether the Customer Protection Code Change Proposal is considered urgent and, if so, why; and
- (e) a description of any consultation carried out or supporting evidence gathered in advance of submitting the Customer Protection Change Proposal.

2.2 Urgency of this Change Proposal

Ofwat considers that this Change Proposal is urgent because of the profound and widespread effect that Covid-19 is having on the UK and the immediate impact that this is likely to have on Non-Household Customers of Retailers operating in the business retail market. The systematic closure of businesses resulting in the imposition of legislation on 26 March 2020 making restrictions on opening enforceable by law means that businesses may struggle to pay their water bills on time. Those businesses that are permitted to remain open may have to operate with reduced staffing due to illness affecting output and cash flow. Ofwat considers that due to the extraordinary measures taken by the UK government to address the spread of the coronavirus, and the speed at which these measures have been imposed, it now needs to take action to ensure that businesses are not under threat from disconnection for the non-payment of charges and enforcement or the collection of interest on non-payment. It will therefore be consulting for a period of 3 days.

2.3 Timetable

Consultation issued: Monday 30 March 2020

Consultation closes: 12 noon Thursday 2 April 2020

Ofwat decision: Friday 3 April 2020

Implementation Date: 8 April 2020

3. Responding to this consultation

We welcome stakeholder views on the questions detailed in section 5 of this document by **12 noon on Thursday 2 April 2020**.

Please submit email responses to CPCOPcodechange@ofwat.gsi.gov.uk, with the subject **“CPCoP consultation – CP-0006”**

Due to the closure of the Ofwat’s offices we are currently unable to accept responses by post.

Responses to this consultation may be published 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.

4. The Change Proposal

4.1 Description of the enhancement, issue or defect which the Change Proposal seeks to address, its nature and purpose and the likely impact of the Change on Retailers and Non-Household Customers.

In March 2020, the UK government issued guidance and imposed legislative measures to help reduce the spread of Covid-19 by requiring that, unless exceptions apply, businesses and premises should be closed and people should stay at home. This has had a profound effect on water consumption. Ofwat has put in place interim measures to address this sudden reduction in consumption and to temporarily defer the payment by retailers of some wholesale charges. Where customers are able to pay on time we expect retailers to continue to collect charges and to use these to fund the payment of wholesale charges. Where it is clear that customers cannot pay on time for reasons relating to Covid-19, we do not expect retailers to chase payment, charge interest or disconnect customers.

Disconnection

Sections 61(1ZB) of the 1991 Act enables a Retailer to request that a Wholesaler disconnects a service pipe or otherwise cut off the supply of water to premises. Section 61(1ZC) of the 1991 Act imposes restrictions on when the Retailer may request this, being that a Non-Household Customer is liable to pay charges, the Retailer has served notice requiring payment and payment has not been made.

This Change Proposal proposes to put in place, for a limited period, a requirement on Retailers to include in their Terms and Conditions of Supply that amounts owed by Non-Household Customers shall not be considered 'due' or treated as 'due' by the Retailer for the purposes of a disconnection under section 61(1ZC)(b) of the 1991 Act. This means that Retailers will be required to update their Terms and Conditions of Supply and, for the period set out in the CPCoP, Retailers will not be able to request disconnections by Wholesalers for the non-payment of charges. This restriction will not affect the requirement on Non-Household Customers to pay amounts owed to Retailers in accordance with their Terms and Conditions of Supply, but should alleviate an additional pressure on Non-Household Customers from the threat of disconnection.

Charging Interest and enforcement

Ofwat has amended the WRC and Market Arrangements Code (the "MAC") to give Retailers cash-flow relief without them having to incur interest for late payment. Ofwat considers that it would be wrong for Retailers to be able to charge their own Non-Household Customers interest and take enforcement action in these

circumstances. We are therefore proposing an amendment to the CPCoP which suspends the application of interest and the taking of enforcement action by Retailers for non-payment of invoices. This suspension will remain in place until Ofwat lifts it.

4.2 Consistency with Code Principles

Ofwat considers that, having put in place interim measures to assist Retailers during this period by amending the WRC and the MAC, there should be measures put in place to ensure Non-Household Customers are protected where possible. Ofwat considers that this Change Proposal is consistent with the code principles, specifically:

- 4.1.1: Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business. This Change Proposal puts the customers to the forefront by ensuring that their premises are not disconnected, interest is not charged, and enforcement action is not taken for the non-payment of charges during these extraordinary times. Retailers are receiving assistance through measures set out in the WRC and MAC, and it is therefore fair that their Non-Household Customers also receive enhanced protections during this period.
- 4.1.2: Communication with Non-Household Customers shall be in plain and clear language. Drafted in plain English, the Change Proposal explicitly states what changes should be made to the Terms and Conditions of Supply in relation to disconnections.

4.3 Urgency

For the reasons detailed in section 2 above, Ofwat considers that this Change Proposal is urgent.

4.4 Description of any consultation carried out or supporting evidence gathered

On the 20 March Ofwat issued Call for Inputs which focussed on two issues relating to the Business Retail Market and the impact of Covid-19. These CFIs covered:

- Reduced demand for water; and
- Late payments.

Although there were some differences in views, the majority of respondents to the reduced demand for water CFI agreed that a vacancy flag would be the most effective way to indicate where a business premise is closed - and therefore not using water - as a result of the coronavirus pandemic.

Responses to our late payment CFI confirmed that some (but not all) customers are struggling to pay their bills on time as a result of the pandemic.

Ofwat has since approved amendments to the WRC which seeks to address these concerns. The evidence gathered highlights the immediate change in customer habits on payment that the pandemic is having.

4.5 Legal Drafting of Change Proposal

Insertion of new section 7.1.6

From until 31 May 2020, or such later date as the Authority may notify in writing, all Retailers' Terms and Conditions of Supply must include the following provision:

For the period from [implementation date] until 31 May 2020 or such other date as the Authority may notify in writing, no amounts owed by the Non-Household Customer to the Retailer are "due" or shall be treated as "due" by the Retailer for the purposes of a disconnection notice under section 61(1ZC)(b) of the 1991 Act, and for these purposes only. All other rights and obligations under these Terms and Conditions of Supply are unaffected by this clause [Retailer to insert relevant clause number].

Insertion of new section 9.4 Covid-19 Interest Suspension

Notwithstanding their contractual right to do so, Retailers may not seek to recover any default interest for non-payment of any invoices issued from [1 March 2020], and may not charge default interest for any non-payment of invoices from [implementation date], until such date as the Authority may notify in writing.

Insertion of new section 9.5 Covid-19 Non-Payment Enforcement Suspension

Notwithstanding their contractual rights to do so, Retailers may not seek to enforce non-payment of invoices against Non-Household Customers until such date as the Authority may notify in writing.

4.6 Corresponding change to the WRC

The CPCoP does not apply to self-supply licensees. The impacts of Covid-19 on Non-Household Customers will equally apply to self-supply licensees, and Ofwat therefore considers that it is necessary to make corresponding changes to the Operational Terms of the WRC. Ofwat will be putting forward a change proposal in due course which it intends to include the legal drafting set out below.

Part I13, Operational Terms, WRC

Include a restriction in this part, at the beginning of 'step 1', as follows:

For the period from [implementation date] until 31 May 2020, or such other date as the Authority may notify in writing, no amounts owed by a Self-Supply Retailer to a Wholesaler are “due” or shall be treated as “due” by the Retailer for the purposes of a disconnection notice under section 61(1ZA)(b) of the 1991 Act, and for these purposes only. All other rights and obligations under this code remain unaffected by this restriction.

5. Consultation Questions

The questions we would welcome responses on in relation to this consultation are detailed below. Where appropriate, answers should be supported with evidence.

1. What is your view of the Change Proposal?
2. What are your views on whether the Change Proposal promotes and facilitates the Code Principles (section 4 of the CPCoP)?
3. What is your view of the legal drafting of the Change Proposal (see section 4.5 above)?
4. Do you have any comments on the corresponding changes to the WRC and the legal drafting (see section 4.6 above)?
5. What is your view on the proposed implementation date of the Change Proposal being 8 April 2020?

Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
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