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By email  
2<sup>nd</sup> April 2020  
Ofwat and MOSL joint letter

To Retailers

**Wholesale Retail Code Changes CPW091 and CPW093 - Temporary change to vacancy and Interim deferral of wholesale charges**

Code changes CPW091 and CPW093 came into force on Monday 30th March<sup>1</sup>. This letter provides further clarity on our expectations of Retailers in respect of these changes.

CPW091 Temporary change to vacant

The CPW091 Code change allows Retailers to temporarily apply the vacant flag in the Central Market Operating System (CMOS) so that charges are not accrued for those premises that have closed down due to the Covid-19 pandemic.

The Retailer's responsibilities in applying the vacant flag, where a customer has closed due to the Covid-19 outbreak, are clearly set out in MOSL's guidance document.<sup>2</sup> This guidance includes that where a Retailer identifies a premises to be a Vacant Premises under CSD 0104 section 3.1.6, the Retailer should obtain proof of vacancy, and that the Retailer may be subject to penalty charges under the Wholesaler Retailer Code if evidence of proof is insufficient. We would expect Retailers to adhere closely to the guidance document.

In addition, we also want to clarify that the purpose of this change is to ensure that future primary charges more accurately reflect actual levels of (reduced) consumption across many business premises as a result of Covid-19.

The change has the effect of temporarily waiving charges (aside from where a wholesaler applies charges for vacant premises). However, and as set out in Ofwat's decision document, if on the business returning to operation, it transpires that water was consumed at that premises, then the Retailer will be billed for it and be liable for charges associated with that consumption. Where Ofwat sees evidence that the vacant flag has been used illegitimately, then the Retailer could also face penalties.

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<sup>1</sup> See: [Authority Decision CPW091](#), [Authority Decision CPW093](#)

<sup>2</sup> Available at: <https://www.mosl.co.uk/market-codes/guidance-documents>

### CPW093 Interim deferral of wholesale charges

The CPW093 Code change is intended to provide an interim solution to the immediate cash flow challenges that Retailers may face as a result of the 2020 Covid-19 pandemic.

There are three aspects to the Code change. It:

- i) defers payment by Retailers to Wholesalers of a percentage of payments invoiced but not yet due in March 2020, and from Settlement in April and May 2020. Retailers are required to pay at least 50% (or a percentage otherwise to be determined by the Authority) of the charges that are due in these months, ensuring that liquidity and cash flow remain in the market, while reducing the burden on Retailers in the immediate term;
- ii) obliges Retailers, to the extent that they are in receipt of payment from their own customers, and can finance their own costs, to pay as much of the deferred charge as they are able, notwithstanding the amount actually invoiced; and
- iii) includes provisions specifying that provided a Retailer has paid at least half of amounts due to a Wholesaler in March by the due date, it will be deemed to have paid everything by that date for the purposes of Alternative Eligible Credit Support arrangements.

The change is intended as an interim solution; Ofwat's intention is that by the May 2020 settlement runs at the latest, a more enduring solution to address the issue of late payment (for the period of Covid-19 pandemic) will be in place.

On this basis, Retailers are reminded that the Code change retains obligations and expectations as follows:

- concerning Retailer payments made to Wholesalers by the March due date, no refunds to Retailers are required or due as a result of the Code change; including where a Retailer has already paid sums in excess of 50% due;
- as set out under (ii) above, to the extent that a Retailer's cash flow enables it, Retailers must pay as much of the deferred charge as they are able to and so this should not be restricted to the 50% portion which has been invoiced;
- concerning Settlement for May, Ofwat's intention is that this arrangement will only be activated should an enduring solution not be in place by then. Retailers should not therefore assume that a 50% deferral (on the same terms as above) will necessarily be available for the May Settlement.

We can also clarify that where an element of the March 2020 payment is deferred, interest will not begin to accrue on any unpaid amount until the end of May 2020.

It is Ofwat's intention to monitor and assess Retailer actions in meeting the obligations and expectations set out above in respect of Code changes CPW091 and CPW093. Ofwat will be collecting regular data from Retailers and Wholesalers to establish the amount of revenues received by Retailers that are subsequently passed onto Wholesalers. Where Ofwat sees evidence that Retailers are not meeting its expectations in respect of these Code changes, Ofwat will consider use of the full range of tools at its disposal, including where relevant penalties via enforcement action. Ofwat will be writing to Trading Parties to set out its intentions here in due course.

Yours sincerely

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