



The voice for water consumers
Y corff sy'n rhoi llais i ddefnyddwyr dŵr

**CCW response to the Water Services
Regulation Authority (Ofwat)
consultation - COVID-19 and the
business retail market: Proposal to
amend a Customer Protection Code
of Practice - CP0009**

1. Introduction

- 1.1 The Consumer Council for Water (CCW) is the statutory body representing the interests of household and business customers of water and sewerage companies and licensed retailers in England and Wales. We operate through four Committees in England and a Committee for Wales.
- 1.2 We welcome the opportunity to respond to this consultation, which follows the request from us to strengthen protections in the Customer Protection Code of Practice (CPCoP) for business customers adversely impacted by the current pandemic.

2. General comments

- 2.1 While we support Ofwat's proposed changes to the CPCoP set out in this consultation, the protections do not go far enough. Our change request focuses on increasing protections for closed businesses due to COVID-19 government guidance. It is important to have these in place for two reasons.
- 2.2 Firstly, as a result of the temporary vacancy flags applied to business premises expiring on 31 July 2020, there is a need to urgently 'reinstate' the level of protection that closed businesses had previously benefited from. We consider this change to be urgent given the introduction of the government's tiered system of restrictions and recent lockdown.
- 2.3 Secondly, we acknowledge that the CPCoP's requirement for a COVID-19 Repayment Scheme to be offered to those customers affected by the pandemic already provided a level of support for those customers who remained open, but did not address the additional needs of closed businesses.
- 2.4 In addition to the protections we want for closed businesses, based on our own evidence and Ofwat's assessment of the request for information (RFI) responses, we agree with Ofwat's proposals to enhance the CPCoP. These changes are needed to ensure that all customers adversely affected by COVID-19 have access to the support and protection currently on offer. However, we strongly urge Ofwat to include the protections outlined in our proposal when changing the CPCoP.
- 2.5 Alongside addressing whether or not we feel the amended proposal will achieve the stated policy aims, we outline how we consider our original proposal will also meet these aims. Our proposed change led to Ofwat's subsequent review of the COVID-19 related protections under the CPCoP, so it is appropriate that our motivations for proposing change is restated in response to this consultation.

3. Response to specific questions

Q1) Do you think the amended change Proposal will achieve the following policy aims (and if not what changes would you suggest making to ensure that it does):

(a) That those customers adversely affected by Covid-19 are provided with appropriate levels of support and protection.

- 3.1 We agree that all customers adversely affected by COVID-19 should continue to receive support. It is important the current requirement in the CPCoP for payment plans to be offered to all those that meet this criteria is maintained. However, extra protection is needed for those businesses that have been required to close under the current tiered restrictions and any future government guidelines, including regional and national lockdowns. What is deemed to be an appropriate level of support for these customers is likely to be different for those that remain open.
- 3.2 An appropriate level of support for closed businesses should include, not only access to a repayment plan, but also protection against:
- disconnection for non-payment,
 - debt recovery action, and
 - the application of interest on late and unpaid invoices.
- 3.3 Business customers in this position are less likely to be able to maintain a repayment plan in their current circumstances, thereby leaving them at risk of the aforementioned actions. Enhanced protections should be re-introduced for the most seriously affected customers. We supported such measures in April in response to the first lockdown, and consider the current situation warrants a continuation of these protections.
- 3.4 We accept that our proposal relies on proactive engagement from and with customers in order for closed businesses to be identified. Retailers could identify affected customers using effective means of communication established under the previous lockdown. In addition, customers may be more incentivised to make proactive contact if they are aware of the higher level of protections we propose. This awareness would be achieved through retailers promoting the measures on their website, direct contact with customers and through CCW.
- 3.5 We agree with Ofwat that retailers should be increasing their efforts to engage with those struggling customers not already on the COVID-19 Repayment Schemes. However, while this may result in greater take-up among struggling open businesses, it may be harder to have this meaningful engagement with those who have closed. These customers may feel it is illogical to agree to a repayment plan given the likelihood that they will not be in a position to pay during the closure period. Therefore, there is a risk that the most vulnerable customers may continue to miss out on an appropriate level of support, unless our proposed change is implemented alongside the Ofwat proposals.
- 3.6 We expect retailers to take reasonable steps to engage with customers before commencing debt recovery actions. Therefore, we welcome the Ofwat proposal in this regard. For this to work effectively, an increased level of customer engagement is going to be necessary, which will not always be possible in the case of closed businesses. However, as mentioned above, there is still a real risk that those most in need of protection may be still subject to debt enforcement activities in the event they do not

respond to a retailer's contact. A suggested amendment to this particular part of the legal drafting could require retailers to forego debt recovery action if it is likely that the customer is closed, and therefore not in a position to negotiate a revised payment plan.

- 3.7 In addition, some retailers have reported that a number of COVID-19 affected customers may be on other repayment schemes. While we cannot comment on the level of protection against debt enforcement activity that these plans may offer, the Ofwat amended proposals only focus on COVID-19 Repayment Schemes. If the proposal was implemented in its current form, retailers would not have to take the required steps in respect of customers on other repayment plans. We want the relevant sections to be amended to rectify this. It is important that all customers are protected where they are on a repayment scheme.
- 3.8 We support the requirement on retailers to publish information relating to the numbers of customers on repayment plans, along with the numbers subject to debt enforcement action. This will provide CCW and Ofwat with a greater level of oversight in this area, and allow challenges to be made to individual retailers where there appears to be a cause for concern. It also ensures transparency within the industry so customers can be aware of the service delivery of each retailer.
- 3.9 We believe it should be an expectation on retailers to provide evidence concerning any debt enforcement taken against COVID-19 affected customers, where requested. This will allow enhanced scrutiny to take place, and ensure that non-compliance with the codes is identified quickly.

b) Customers who are able to pay should be incentivised to pay in a timely manner.

- 3.10 We agree that those who are able to pay should continue to do so. However, we want assurance that incentives to pay do not result in customers facing enforcement action in the event of non-payment where they are struggling financially due to the pandemic. We do not believe that our proposal compromises this aspiration, as it is designed to protect those who are unable to maintain their payments as a result of being required to temporarily cease trading. We do not believe that restrictions on a retailer's ability to recover debt from a limited group of customers would create a disincentive to pay where a customer is able to. There is nothing to stop a customer continuing payment if they are in a position to maintain this. Our proposal is about protecting those who are struggling to pay due to business closure.
- 3.11 We also feel that where customers are unable to make payment, the incentives to pay (maintained through the possible use of disconnection, debt recovery, and interest

charges) become largely redundant given the unrealistic prospect of retailers being able to recover the charges. Any undertaking of these actions would result in a very poor experience for a customer who is already financially struggling.

3.12 As advised above, we do not believe that the type of support and protection measures being explored could create a disincentive for customers to pay where they are able to do so. We agree that the wider promotion of Repayment Schemes, would not create such a disincentive as it is only intended to benefit those who are struggling to make their payments. Therefore, anyone who does not meet the criteria will be subject to normal payment expectations.

3.13 However, while we agree that the amended proposal will not affect a customer's incentive to pay where they can, we remain concerned that the proposal does not go far enough to protect those unable to pay.

<p>b) Retailers should take the necessary steps to differentiate between those customers who genuinely need support and those who should be expected to pay.</p>

3.14 In our proposal, we acknowledged that retailers would need to take steps to identify those customers who were closed due to COVID-19 restrictions, thereby differentiating between those who need enhanced support and those who do not. We, therefore, feel our proposal meets this objective. As previously stated, how much support and protection is needed for each customer should be determined by their circumstances. Our proposal would ensure that those in most need of support receive the greatest protection, while those who are able to pay continue to do so.

3.15 We agree that Ofwat's proposals would require retailers to take the steps to make the differentiation stated. If engagement with customers increases, then this may result in more support being obtained by those who are struggling. Similarly, retailers taking the steps to understand a customer's circumstances in the event they default on a repayment plan may also increase support for those who need it most.

3.16 However, if there are difficulties establishing a dialogue with any closed businesses that may have defaulted on a repayment plan, then this could still result in debt enforcement action being taken. While we agree with the policy objective behind this, the enhanced protections outlined in our proposal for those unable to pay are still needed.

2. In addition, we would welcome the views of respondents on:

a) The costs and associated risks of implementing the amended change proposal within the proposed timeframe.

3.17 It is difficult for us to comment on how quickly retailers will be in a position to undertake the changes in the proposal on the scale desired. However, as repayment plans for customers impacted by COVID-19 have been required since 1 June 2020 we would expect the enhanced protections to be introduced swiftly. We would not want the implementation of the proposed changes to the CPCoP to be further delayed.

b) The scope and operational impact of the amended change proposal.

3.18 We support time and resources being devoted to increasing engagement with customers, as they need quicker enhanced protections introduced given the urgency of the situation.

c) Whether the respondents consider that the proposal is in line with the principles of the code and our statutory duties.

3.19 We agree that the amended proposal is in line with the principles of the code. The emphasis on increasing communication with customers with a view to offering support where needed means that retailers will be placing the customer at the heart of their business. However, while we agree that the Ofwat proposal meets this principle, it does not go far enough to protect those customers who need the most support following business closures.

3.20 We also agree that our proposal meets the code principles. Giving closed businesses protection from debt enforcement action places them at the heart of the customer's business. In addition, the requirement to clearly communicate with customers would be met by retailers having to clearly explain the protections available on their website and during customer contact.

3. Do you have any comments on our proposed implementation date?

3.21 We agree that the change should be implemented on the proposed date, but would urge Ofwat to implement both ours and its proposed changes.

3.22 Given the length of time that has elapsed between now and the date of our change request (22 October 2020), we are concerned that a decision has not been made sooner. The urgency that drove our change proposal has since increased, so there should be no further delays in a decision to strengthen the CPCoP.

4. Do you have any other comments on our proposed change to the CPCoP as set out in Appendix 1?

- 3.23 Currently, the protections only apply to those customers on COVID-19 Repayment Schemes. An amendment should be made to the legal drafting so the proposed measures apply to all repayment plans, in line with the points we have made in section 3.7 above. This will mean retailers publishing data on the number of customers on all repayment plans and any enforcement action carried out.
- 3.24 We would urge an amendment to be made which would require retailers to forego debt recovery activity in the event that, “their interactions, or attempted interactions, lead them to conclude it is likely the customer has been subject to Covid-19 related closure, and therefore is not in a position to negotiate a revised payment plan”.
- 3.25 Retailers required to publish monthly information on the numbers of customers on repayment plans, and those subject to debt enforcement action, is positive, but needs to be further strengthened. Retailers need to be prepared to justify their use of enforcement action for those on repayment schemes. Not only should they provide evidence of reasonable efforts to contact customers, but should also be taking steps to ascertain whether in fact a non-respondent is at a closed business. In the case of the latter, we do not want to see debt activity take place.
- 3.26 There should also be a requirement to make it more explicit that the charging of interest payments/late payment fees should be considered alongside debt recovery action, in terms of what retailers should be aiming to avoid applying.

Enquiries

Enquiries about this consultation should be addressed to:

Adam Boyns
Policy Manager, CCW

Email: [REDACTED]

Telephone: [REDACTED]

December 2020