

## Covid-19 and the business retail market: Proposal to amend a Customer

### Protection Code Change Proposal – CP0009 – a consultation

#### Response of Castle Water Limited

##### Introduction

Castle Water Limited (“**Castle**”) believes that its existing policies and practices are compliant with the Customer Protection Code of Practice (“**CPCoP**”), and in some important respects already go beyond them; and notes that the consultation document does not suggest otherwise. As such, Castle does not foresee material difficulties with complying with the additional requirements of the proposed amendments and has already taken the steps necessary to ensure this is the case.

The focus on Covid-19 Repayment Schemes and the associated statistics, to the exclusion of other factors is, however, a narrow and one-sided one. Ofwat posits a contrast in some retailers having smaller numbers of customers on such plans proportionate to their customer base, although it also notes Castle’s experience that customers having difficulty paying at all see little benefit in merely spreading payments or repayments. For those that do see benefit in spreading payments or repayments, many (including a number who were candidates for a Covid-19 Repayment Scheme) moved either to a standard repayment scheme or to a Direct Debit (“**DD**”) arrangement instead. In the period 1 April to 31 October 2020 many (9,489) additional customers signed up for a DD arrangement with Castle. Castle believes that the level of preference for payment via Castle’s normal DD arrangements reflects both that these endure beyond the initial period, and the flexible payment options that Castle presents to customers. Ofwat should take these factors into account in its assessments.

Ofwat’s observation of a ‘potential’ correlation between retailers with a high number of customers on a Covid-19 Repayment Scheme and the lower number of customer complaints about that retailer is similarly superficial and speculative.

More generally, Ofwat’s repeated references to how ‘some’ cases ‘might’ be indicative of a conclusion do not meet the evidential standards required of the regulated community, or those incumbent on Ofwat in a matter as important as a Code change.

##### Process

It is unsatisfactory that the RFI was issued and the amendment considered without the CCWater proposed code change being made available to consultees. It is unclear why it should have been shrouded in mystery. That omission, in itself unusual in terms of proper process, would have enabled consultees’ responses to the relevant Request for Information (“**RFI**”) to have been more informed.

Further, Castle notes that CCWater’s proposed code change, submitted on 28 October 2020, was accorded ‘urgent’ status, with both an RFI and a short consultation being conducted and a decision to be made by the week of 14 December for implementation within three working days.

The 12 November RFI contained a footnote that “We have also received a proposed amendment to the CPCoP from Castle Water, which we are still considering.” That proposal was made on 6 October, yet it is not mentioned in the current consultation despite repeated attempts to learn of its fate, which met with no substantive response. We learned only on 4 December that an update of

the information Castle provided is needed (on the basis that it is now out of date given the lapse of time!) and that a call for wider inputs will be issued shortly, for reply in the New Year and subsequent decision. Since that proposal sought to address a serious and urgent issue for the accurate and timely billing of customers with internal meters that cannot be read because of Covid-19 restrictions, the contrast between the treatment of these two proposed code changes remains as inexplicable as it is inexcusable.

Ofwat notes that 'several retailers suggested that Ofwat should consider reintroducing some form of the temporary vacancy flag' but does not comment further. We note in turn that this suggestion is not made merely at the instance of retailers, but in Castle's case (and quite probably that of other retailers) reflects experience of many customers asking Castle why Ofwat has chosen not to adopt some such measure. Ofwat should gather direct customer evidence on this point.

### **Response to Questions**

**1. 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.**

The Proposal falls short in two respects. First, measures to alleviate customer debts must be balanced by recognition of the retailers' being squeezed between, on one hand, the specific constraints and pressures that retailers are under in relation to their treatment of customers, in addition to customers' reduced or non-ability to pay; and on the other of continuing to face full wholesale charges. It is ultimately not productive to continue to ramp up obligations on retailers whilst failing to take, on a timely basis, measures that address rising customer debt and associated bad debt, meter reading issues and the challenge of frequent and regular contact with much of a large customer base.

For their part, customers cannot understand why forced closure of businesses brought relief from water bills earlier this year but that something similar has been rejected now, when the fundamentals are broadly the same, and the uncertainties are as great or greater, given month on month changes in Covid-19 restrictions.

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

Castle agrees with this aim, but also considers that retailers have a moral duty to ensure so far as practicable that customers are not overcharged and that bills are as accurate as possible. If customers both recognise that they are being treated fairly *and* are subject to appropriate levels of enforcement, these together constitute the best incentive on them to pay. The current regulatory arrangements do not achieve either of these ends, despite retailers' efforts to explain them to customers. A public campaign would assist in this.

**c) Retailers should take the necessary steps to differentiate between those customers who genuinely need support and those who should be expected to pay.**

The payment options available to customers, and the information imparted to them, are the bedrock of this aim. Ofwat seems to accept CCWater's view that the onus should to some extent be on customers to seek these out, but at the same time expects a level of engagement from retailers which goes beyond both what CCW seeks and what is practicable. Whilst Castle embraces its obligations on customer engagement, it is an ivory tower fallacy to suppose that in current

circumstances retailers are able to contact every customer affected by Covid-19 restrictions every time restrictions on their businesses change – or, in many cases, at all.

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;

The incremental costs are not very large. However, meeting ever greater obligations in monitoring the position of the relatively few customers on the Covid-19 Repayment Scheme, and compiling documentation and statistics, will divert some resource that might more usefully have been deployed in helping customers generally to find the best solution for them, whether that be a Covid-19 Repayment Scheme plan or another repayment plan.

Likewise, some billing and collections activity that would have been deployed in securing timely payment from customers generally would be diverted.

The risk attaching to the Proposal is therefore that (a) it will slow the process of collecting from customers who can pay, whether or not via a Covid-19 Repayment Scheme; and (b) customers could use the vague requirement to take ‘all reasonable steps’ on a number of additional aspects of the scheme to delay payment and to resist legitimate enforcement activity. In that context, and as we have had cause to point out in response to a previous consultation, we note that the imposition of Late Payment Charges and Late Payment Interest is a statutory right conferred by the Late Payment of Commercial Debt (Interest) Act 1998. The Code does not override this right.

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

No comment other than as expressed above.

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

Castle considers that in prioritising the placing of additional obligations on retailers, and further hampering their already constrained ability to collect payments legitimately due, over their duty to foster confidence in the market Ofwat risks erring by placing insufficient weight on that duty. The statement that “We have considered the potential impact on Retailers’ existing systems and processes. Subject to the responses to this consultation, we consider that the impact should be relatively low” neither indicates what constitutes that assessment nor what is the impact taken together with other measures and other factors that hamper retailers commercially. This will further damage already low market confidence, deter entry and expansion, and increase systemic market risk.

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

Given the rapidity of passage afforded to the change it would be sensible to allow a slightly longer period to full implementation following the intended early decision, given in particular that customers might overlook it in pre-Christmas activity and retailers may have difficulty in attracting their attention in order to fulfil the requirements.

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

The references to ‘any type of debt recovery action’ are imprecise. They could on their face include contacting the customer to discuss payment, as retailers would normally do and as they are enjoined

to do by the CPCoP. This should be clarified. In particular, the proposed requirement to take all reasonable steps to engage with relevant customers before deploying the statutory incentives for payment (Late Payment Charges / Interest) should not cut across retailers' ability to deploy them. In addition to their statutory nature, noted above, these are necessary to help achieve the objective that those who can pay should do so, and to help retailers fund the increased working capital needed to pay wholesale charges. They are therefore in the interests of the wider universe of customers.

**Castle Water Limited**

**8 December 2020**