

November 2020

**Covid-19 and the business retail market:
Proposal to amend a Customer Protection
Code Change Proposal – CP0009 –
a consultation**

Contents

1. About this document	2
2. Code governance arrangements and modification	3
3. Responding to this consultation	4
4. Background to the proposal	5
5. The proposal	8
6. Reasons for the proposed change	9
7. Evidence considered	11
8. Proposed decision	24
9. Proposed decision on the date of implementation	26
10. Consultation questions	27
11. Conclusion and next steps	28
Appendix 1 – Legal drafting	29

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 is a requirement of Retailers’ licences which is ultimately enforceable by Ofwat.

This document sets out, for consultation, our proposed decision on a change to the CPCoP. A Customer Protection Code Change Proposal was raised by the Consumer Council for Water (“the Proposer”). It has proposed amendments to the CPCoP that are intended to deliver greater protections for those Non-Household Customers that have been required to close due to the second lockdown in England imposed by the Government on 5 November 2020, or the tiered system that was in place prior to that and which is expected to continue in some form from 3 December 2020 (“the Change Proposal”).

We are proposing to amend the Change Proposal and we are seeking views on our proposed decision.

The amended change Proposal is intended to achieve the following policy aims:

- a) That those customers adversely affected by Covid-19 are provided with appropriate levels of support and protection.
- b) Customers who are able to pay should be incentivised to pay in a timely manner.
- c) Retailers should take the necessary steps to differentiate between those customers who genuinely need support and those who should be expected to pay.

In this document, we use the terms ‘Ofwat’ and ‘the Authority’ interchangeably.

2. Code governance arrangements and modification

Where a Customer Protection Code Change Proposal has been received by the Authority, the Authority will consider responses to any relevant consultation carried out.

The Authority will consider and evaluate each Customer Protection Code Change Proposal to decide whether it agrees with the proposal, whether it wishes to propose amendments or whether it is required to seek further information before making a decision. In each case, it must have regard to whether or not its decision is consistent with its wider statutory duties.

This consultation on the proposed decision to amend the Change Proposal has been issued in accordance with section 5.2.2 of the CPCoP. After this consultation has concluded, responses will be considered and a final decision will be made as soon as reasonably practicable.

In accordance with section 5.2.4 of the CPCoP, our final decision shall include:

- The reasons for the proposed change;
- The scope and impact of the potential change, including consideration of potential risks;
- An evaluation against our statutory duties and the Code Principles;
- Any relevant evidence considered (including consultation responses received);
- Implementation timescales, which will take into account the likely impact on Retailer's exiting systems and processes; and
- The date from which the change will take effect.

Urgency of the proposal

Section 5.2.2 of the CPCoP provides that consultations under this section should generally be for a minimum of 28 calendar days, except in the case of urgency.

The Proposer has stated that there are closed businesses that are currently not protected from debt enforcement action and has argued that the Change Proposal is urgent. We recognise the Proposer's arguments for urgency, and in this instance we agree that the Change Proposal is urgent. This is because the evidence we have received suggests that in some cases Retailers might be initiating debt enforcement action without adequately engaging with their customers to fully understand how Covid-19 has had an impact on their trading arrangements.

Given the urgency of this Change Proposal we shall be consulting on our proposed decision for 10 calendar days.

3. Responding to this consultation

We welcome your views on the questions detailed in section 7 of this document by **5pm on 9 December 2020**.

Please submit email responses to CPCOPcodechange@ofwat.gov.uk, with the subject '**CPCoP consultation – CP0009**'. Due to the pandemic, we are currently unable to accept responses by post.

We may publish responses to this consultation 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 data, 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, 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. Background to the proposal

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 in England should be closed and people should stay at home where possible (“the first lockdown”). Over the summer, the Government announced its intention that all non-essential shops should reopen from 15 June 2020, provided they follow Government guidelines and rules on social distancing. However, the Government also announced that schools, workplaces and businesses could face ‘local lockdowns’ in future to control the spread of Covid-19 in particular areas.

The lockdown announced in March created immediate challenges to the ongoing operation of the business retail market – for example, it created a sudden reduction in demand amongst some Non-Household customers and meant some customers could face difficulties in paying their bills on time, potentially creating consequential cash flow issues for Retailers. To protect and provide continuity for Non-Household customers at a time of uncertainty, we worked closely with MOSL and the sector to implement a number of measures. For example:

- We consulted on, and made changes to, the CPCoP on 8 April 2020 ([CP0006](#)) and then again on 1 June 2020 ([CP0007](#)) to ensure that Non-Household customers seriously affected by Covid-19 were provided with relief and additional support where appropriate. We worked closely with the Proposer during the summer to ensure that Retailers were complying with the requirements of the CPCoP.
- We introduced a Wholesaler Retail Code (WRC) change (CPW091) in March 2020 that allowed Retailers to mark a premises as temporarily vacant (making it exempt from fixed and in some cases volumetric charges), if a premises was completely shut or activities at the premises had fallen by at least 95% due to the first lockdown. The intention of this Code change was to ensure that customer bills more accurately reflected reduced levels of consumption where businesses were temporarily closed, due to Covid-19, by providing Retailers with a workable proxy to identify reductions in consumption of 95% or more when there were significant challenges to obtaining accurate meter reads.
- We took action to implement temporary sector-specific liquidity support, the aim of which was to provide Retailers with time to establish what other support – including Government support – they could gain access to.
- The invoicing and payment of market performance charges were also suspended until the autumn ¹.

¹ On 20 November wrote to MOSL confirming that the suspension of market performance framework charges would be extended to end December 2020

We [confirmed in July](#) that Retailers could continue to use the temporary vacant flag until 31 July 2020. While the ability for Retailers to apply temporary vacant flags has now expired, customers affected by Covid-19 continue to be protected by the requirement on Retailers to offer repayment plans under a Covid-19 Repayment Scheme, tailored to the needs of affected customers.

On 28 October 2020, the Proposer submitted the Change Proposal to the Authority. The Proposer raised concerns that under the “tier” restrictions that had been introduced by the Government at a local level, some businesses have been required to close but they do not have the same level of protection from enforcement (such as disconnection) that was afforded under the CPCoP while the temporary vacancy flag was in place. Under the Government’s previous tiered lockdown approach certain businesses were required to close based upon the tier in place for that region, but tier restrictions could also vary from region to region (for example, under the local restrictions that were introduced following the first national lockdown, gyms in some tier 3 regions were required to close but this restriction was not in place in other regions).

The Proposer notes that the temporary vacancy flag is linked to the definition of “Covid-19 Affected Customers” under the CPCoP.

Under the CPCoP “Covid-19 Affected Customers” is defined as:

“a Non-Household Customer for whom all of its premises have been designated as [Temporary] Vacant Premises by the Retailer in accordance with section 3.1.6 of CSD 0104 of the Wholesale Retail Code, unless the exception applies. The exception is where a Retailer can provide robust evidence that the Non-Household Customers’ ability to pay is unaffected by Covid-19. Where a Non-Household Customer has multiple premises but only some of which have been designated Vacant Premises, this definition does not apply.”

The Proposer considers that Non-Household customers who had been previously marked as temporarily vacant were protected from disconnection for non-payment, debt recovery action, and the application of interest on unpaid invoices. The Proposer notes that from 1 August 2020, businesses were no longer permitted to be marked as temporarily vacant, with Retailers required to revert premises to ‘occupied’ in the event that they did not meet the standard definition of vacant². The Proposer argues that this means that from 1 August 2020, no business premises will be able to meet the current CPCoP definition of “Covid-19 Affected Customers,” and therefore will not benefit from the protections that were in place until the 31 July 2020.

² Set out in section 3.1.4 of [CSD 0104](#)

The Proposer suggests that the CPCoP definition of “Covid-19 Affected Customers” needs to be changed to allow business premises closed due to Covid-19 restrictions in place after 31 July 2020 to receive the same level of protections as those who were marked temporarily vacant between March and July 2020. The Proposer considers that these protections should apply exclusively to Non-Household customers that have been required to close by law and who are shut completely (i.e. not operating in a reduced capacity – e.g. as a takeaway / delivery or refurbishing their premises).

Following receipt of this change proposal, on 5 November 2020 a second lockdown in England was imposed by the Government, in an attempt to stem the further spread of Covid-19. In light of this, Ofwat and MOSL published a [joint statement](#) on 4 November setting out our planned approach in response to the second national lockdown.

On 12 November 2020 Ofwat and CCW published a [joint statement](#) noting that CCW had proposed an amendment to the CPCoP and that Ofwat would be seeking further information from Retailers to inform its thinking on this proposed amendment before issuing a consultation. Notwithstanding CCW’s proposed amendment, the statement also set out Ofwat and CCW’s joint expectations of Retailers in their approach to ensuring customers are treated fairly, including in relation to pursuing disconnection or legal action against customers affected by Covid-19.

Following recent announcements it is now expected that - from 3 December - the Government will reintroduce a tiered system in England that is similar to (but not exactly the same) as the tiered system previously in place.

5. The proposal

The proposal is to update the current definition of ‘Covid-19 Affected Customers’ in the CPCoP to the following:

“Non-Household Customers that are seriously affected (i.e. Covid-19 Affected Customers) by Covid-19 because all of its premises are not open or available to workers, the public or visitors. These are premises that are required to be closed under relevant government Covid-19 legislation.”³

As a result of the above change, the Proposer considers that the provisions under the following sections of the CPCoP should automatically apply to customers that meet the revised definition:

7.1.7 (Disconnection)
9.4 (Covid-19 Interest Suspension)
9.5 (Enforcement)

The Proposer noted that if this proposal is accepted, Retailers will need to update the definition of ‘Covid-19 Affected Customers’ on their websites. They note that Section 7.1.8 of the CPCoP will also need to be amended to replace ‘1 June 2020’ with the date of the proposal’s implementation.

The Proposer acknowledges that Retailers may encounter difficulties in identifying eligible customers. Therefore the Proposer considers that the onus should be on those affected customers to make contact with Retailers and provide evidence that their premises is the type required to close under current government guidelines. The Proposer notes that they would also expect Retailers to try and engage proactively with any businesses that they are aware may, or definitely, meet the revised definition.

The Proposer considers that the proposed update to the CPCoP should also include a requirement to display the new definition of ‘Covid-19 Affected Customers’ in a prominent position on Retailers websites. They consider that this should help provide ‘Covid-19 Affected Customers’ with the necessary prompt to make contact.

³ Following our receipt of the change proposal, the proposer contacted us to make a minor update to its drafting of this definition, which we have reflected in the published version

6. Reasons for the proposed change

The Proposer considers that the main rationale behind this change is to ensure that there is enduring enhanced protection for Non-Household customers who have been forced to close as a result of Covid-19 restrictions. The Proposer notes that given the number of businesses that are, and will, be required to close, this change is needed to ensure protection is in place, similar to that enjoyed by customers who fell within the previous definition for ‘Covid-19 Affected Customers.’

The Proposer notes that over the course of the previous three months, it has received a number of complaints suggesting that debt recovery activity has increased, with some of these complaints indicating that Retailers may not be following their processes correctly, or fairly. The Proposer considers that there is a risk that the most financially vulnerable customers may be subjected to debt recovery action at a time when they can least afford to pay their charges.

The Proposer acknowledges that protection under the CPCoP already exists for customers affected by Covid-19, in the form of the Covid-19 Repayment Scheme, which Retailers must have in place until 31 March 2021 or such other date as the Authority may notify in writing to Retailers. For clarity, this is not the date that all repayments must be made by, but instead is the date by which customers may be placed onto a Covid-19 Repayment Scheme. While the Proposer continues to support this measure, it considers that closed businesses need to receive enhanced protection due to their adverse circumstances. If a customer has a repayment plan under a Retailer’s Covid-19 Repayment Scheme in place, Retailers still have the option of disconnecting customers for non-payment, or commencing debt recovery action, if they fail to meet the terms of their repayment plan. Given the increased risk of closed businesses being unable to keep up with payments, the Proposer considers that the enhanced protections being sought are necessary to prevent customer harm.

The Proposer considers that the update to the ‘Covid-19 Affected Customers’ definition is also necessary to ensure that the intentions behind Ofwat’s amendment to the CPCoP made on 1 June 2020 remain in place (to ensure that businesses experiencing the greatest financial impact should not face debt recovery measures in the event of non-payment). The Proposer considers that this principle should continue to apply to those customers who are now in exactly the same situation, and facing the same financial hardship.

As the Covid-19 pandemic continues, the Proposer considers that protections are required that can respond to changing circumstances. The Proposer considers that the change to the ‘Covid-19 Affected Customers’ definition will ensure that there is no need to make further revisions to the CPCoP in this area.

Impact on Customers & Retailers

The Proposer considers that this change proposal will have a positive impact on Non-Household customers who are struggling financially as a result of their businesses being subject to closure. The Proposer notes that the types of businesses currently affected will be the same that were closed during the first lockdown. Although most were permitted to re-open over the course of the previous three months, many will remain in a poor financial position. The Proposer suggests that it is only right that customers should not have this situation compounded by the possibility of debt recovery action, or disconnection, in the event of being unable to pay their charges.

The Proposer recognises that Retailers may be financially impacted if they are unable to enforce debts owed by 'Covid-19 Affected Customers.' However, they believe that this protection is necessary for the reasons stated above. Despite the financial implications, the Proposer hopes that Retailers would already consider it inappropriate to enforce debts owed by closed businesses. The Proposer argues that its proposal is intended to be a 'safeguard' to ensure that this cannot happen, and considered it is entirely consistent with Ofwat's previous CPCoP amendments.

Code Principles

The Proposer considers that this change proposal is consistent with the following code principles:

4.1.1 – 'Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business.'

If a customer in a perilous financial position is not subject to debt enforcement action, they are being placed at the heart of the Retailer's business. Consideration of a customer's circumstances will be the Retailer's primary concern as a result of this change.

4.1.2 – 'Communication with Non-Household Customers shall be in plain and clear language'.

The change will continue the requirement for Retailers to provide an explanation of what constitutes a 'Covid-19 Affected Customer,' and for the Terms and Conditions of Supply to be clear on the protection against disconnections.

7. Evidence considered

Along with its change proposal the Proposer shared some complaint evidence relating to debt recovery activity during the period July–September 2020. The evidence suggested in some cases that some Retailers may not be following their own processes correctly or fairly. In addition, on 12 November 2020, Ofwat separately [wrote to all Retailers](#) seeking further information to inform its thinking on the proposed amendment to the CPCoP, or any further amendments that Ofwat may consider necessary, to ensure customers receive appropriate protections.

The request for information was intended to inform our thinking in the following areas:

- Understanding each Retailer’s overall approach and the internal processes they follow for customers on repayment plans under a Covid-19 Repayment Scheme.
- How Retailers have taken and continue to take account of the potential changing circumstances of their customers in the light of current and future Covid-19 restrictions and guidance.
- Data relating to each Retailers Covid-19 Repayment Schemes and any enforcement action taken from the period from 1 June 2020 onwards.
- Each Retailer’s CCW complaint data return, covering the period from April 2020 onwards.

The closing date for responses was 19 November 2020. A summary of our analysis of responses is set out below.

Understanding each Retailer’s overall approach and the internal processes they follow for customers on repayment plans under a Covid-19 Repayment Scheme

The submissions suggest that in cases where customers have approached their Retailer asking to be placed on a Covid-19 repayment scheme, Retailers are complying with this request where customers are eligible. We noted that several smaller Retailers appear to have been especially proactive in engaging with customers and were able to tailor payment plans to their customer’s needs. For example, The Water Retail Company noted that it engages with its customers on a one-to-one basis regularly. They state that if customers need assistance, they will tailor payments schemes to meet their needs. Welsh Water notes that only a small number of its Non-Household customers are eligible to participate in the competitive retail market, due to the threshold for eligibility in its area. However, Welsh Water notes that it has reached out to its customers offering the opportunity to discuss payment support and where

this has been requested they have carried out bespoke arrangements to support customers based on individual needs.

In its response Wave Utilities (“Wave”) noted that its Covid-19 Repayment Scheme is available to any customers in debt who engage with them and confirm that they have been financially impacted by Covid-19.

Water 2 Business Limited (“Water 2 Business”) noted that if it receives contact from a customer struggling to pay its bill due to the impact of Covid-19 on its business, a Covid-19 repayment plan will be offered to enable the customer to spread its balance over a period of up to 12 months.

When considering the term of repayment plans, the majority of companies appear to offer repayment plans that allow customers to clear their backdated charges over a 12 month period.

Water 2 Business noted that if a customer’s monthly direct debit payment is not made, it will send a letter to the customer advising that, if no contact is made, a double payment will be requested the following month. If the second consecutive monthly direct debit payment is not made, Water 2 Business will cancel the monthly direct debit payment plan, send a letter to the customer and return to payment in full when bills are issued. We understand that this is standard practice for all Water 2 Business customers on a direct debit payment plan.

Castle Water states that a link to its Covid-19 Repayment Scheme is included in the first, second and third reminder letters sent to customers when a payment becomes overdue. Castle Water notes that all of its customer service advisors are aware of the Scheme and have been instructed to refer customer requests for a payment plan received by telephone, email, webchat, or letter to the Collections Team who will discuss and arrange a payment plans tailored to the specific needs of the customer. Information about Castle Water’s Covid-19 Repayment Scheme is available to all customers on its website, sign-posted from the website homepage via a link entitled “Covid-19 Help and Support”.

How Retailers have taken and continue to take account of the potential changing circumstances of their customers in the light of current and future Covid-19 restrictions and guidance.

The evidence we received suggests that most Retailers continue to offer repayment plans to any of their customers which have been impacted by Covid-19, regardless of the second lockdown or locally imposed restrictions. Everflow Limited (“Everflow”) noted that Government restrictions have changed frequently so it has a policy that applies to customers across the board. The company notes that this is a simpler approach, especially for multi-site

customers. Everflow is among a number of Retailers who confirmed that when administering repayment plans they will consider the circumstances of each customer on a case by case basis.

Business Stream set out an explanation on how it had engaged with its customers in light of changing national restrictions. Business Stream discussed how they previously proactively engaged with customers while the temporary vacancy scheme was in place, while also advising Non-Household customers how to change the categorisation of their premises if their assessment was incorrect. Business Stream also set out how it engaged with customers to confirm how they could request for the temporary vacant flag to be applied in cases where this wasn't done automatically. Finally, Business Stream highlighted how it had managed its "Exit information", which provided customers with necessary information upon the expiration of the temporary vacant flag.

Castle Water provided an overview of how it has taken steps to take account of the potential changing circumstances of its customers in relation to meter reading activities, invoicing activities, collections activities, customer communication and service delivery. Castle Water states that since late March 2020 it has communicated regularly with customers via blog posts, social media posts, and a bulk mailing exercise. We note that these communications were intended to ensure that customers are aware of the ways that they could minimise their water bills. Castle Water noted that when businesses began reopening after the first lockdown, the focus of these communications shifted to encouraging customers to submit regular meter readings via its website. We note that from September 2020 Castle Water ran a campaign targeting all its metered customers using social media, its website, and email communications. Castle Water also noted that it has also provided briefings on meter readings to a number of trade associations.

Castle Water states that all its customer advisors receive regular training on what the company can do and what customers can do to ensure their bills are minimised if they have been affected by Covid-19. Castle Water adds that internal monitoring on customer service is also undertaken. The company notes that the FAQ section on its website is regularly updated and promoted from its homepage.

We understand that Castle Water changed its collections process immediately after the announcement of the second lockdown in November 2020. Field and disconnection visits for customers who it expected to close were stopped, and in November these have been arranged only for a small number of late paying customers who remain open, for example takeaway restaurants. Castle Water noted that regional variations in tier-based restrictions have also been considered prior to the second lockdown. Castle Water confirmed that it has not made any attempts to disconnect supplies to businesses which were closed.

Pennon Water Services limited ("Pennon Water") explained how it differentiates its approach towards customers, in terms of repayment plans and potential enforcement, based on whether they are identified as a Non, Partially or Fully Covid-19 impacted customer. Pennon

Water notes that where there is any doubt as to a customer's categorisation evidence is requested. This may consist of bank statements or proof of Government based COVID-19 assistance receipts.

Wave said that it varies its approach to customers depending on whether they are trading yet struggling to pay or not trading at all. We note that customers who are trading yet struggling to pay are directed to financial advice organisation such as Business Debt Line. Whilst the customer is seeking advice, Wave said that it will put on hold any collections activity for a period of seven days. If a customer does not re-engage with Wave after seeking advice to agree a repayment plan, collections activity resumes following the seven day hold period.

Wave noted that where a customer isn't trading a repayment plan would be agreed to enable the customer to repay existing debt only over an affordable repayment period. If a customer defaults on their repayment plan, or has an outstanding debt and no repayment plan in place, then it will receive a number of contacts before any enforcement action is instigated (two reminder letters, two text messages and outbound calls).

We understand that while the temporary vacant flag was being used (April to July 2020) Wave halted all enforcement activity. While Wave notes that from August onwards it will consider disconnection as part of its enforcement options, it also confirmed that should the customer engage with the company at any point throughout the debt recovery process to advise of financial difficulty due to Covid-19, the customer will be offered a repayment plan under Wave's Covid-19 Repayment Scheme. If agreed, any further recovery action would be stopped.

Data relating to each Retailer's Covid-19 Repayment Scheme and any enforcement action taken.

Tables 1 and 2 below summarise the data we received from Retailers in relation to Covid-19 Repayment Schemes and any enforcement action taken against customers. It is worth noting the data provided should be considered in the context of how many customers each Retailer has (i.e. some Retailers are much larger than others). We set out our observations in more detail below.

Table 1. Illustrates the volumes of COVID-19 Repayment Schemes from 1 June 2020 for each Retailer.

Retailer	Relating to Covid-19 Repayment Schemes from the period of 1 June 2020		
	a. The number of customers who have requested a Covid-19 repayment scheme.	b. The number of customers you have offered the Covid-19 Repayment Scheme to.	c. The number of customers currently on a Covid-19 Repayment Scheme.
Advanced Demand Side Management	0	0	0
Business Stream	4,100	8,315	3,620
Castle Water	124	144,516 customer accounts issued with at least one letter with information on the Scheme.	25 accounts on Covid-19 Repayment Scheme. 538 accounts on other repayment schemes.
Clear Business Water	302	302	72
ConservAqua	0	0	0
Everflow	Figure not provided	424	235
First Business Water	11	575 (since 20 March 2020)	7
Hafren Dyfrdwy Retail	0	0	0
Pennon Water Services	Figure not provided	Figure not provided	41 customers
Smarta Water	0	0	0
The Water Retail Company	0	1	1
Water 2 Business	10,747	10,747	11,772
Water Plus	4,943 These numbers include all repayment plans as do not differentiate between Covid-19 and other repayment plans.	4,943 These numbers include all repayment plans as do not differentiate between Covid-19 and other repayment plans.	45,068 These numbers include all repayment plans as do not differentiate between Covid-19 and other repayment plans.
Wave	13,859	13,859	9,000

Welsh Water	3	3	0
-------------	---	---	---

Table 2. Illustrates the volumes of enforcement action taken by Retailers between April 2020 and the end of October 2020.

Retailer	Relating to the period from April 2020 to the end of October 2020			
	d. The number of times contact was made with a customer advising them of potential enforcement action (e.g. late interest payment, debt recovery, disconnections) Covid-19 Repayment Plan in place	e. The number of times contact was made with a customer advising them of potential enforcement action (e.g. late interest payment, debt recovery, disconnections) No Covid-19 Repayment Plan in place	f. Number of times enforcement action has been taken (e.g. late interest payment, debt recovery, disconnections) Covid-19 Repayment Plan in place	g. Number of times enforcement action has been taken (e.g. late interest payment, debt recovery, disconnections) No Covid-19 Repayment Plan in place
Advanced Demand Side Management	0	0	0	0
Business Stream	0	578 customers	0	578 customers

Castle Water	Figure not provided.	144,516 accounts were sent at least one letter advising of potential enforcement action.	Where customers are paying in line with agreed payment plan terms, do not take enforcement action. In error, one account was sent a reminder letter, and 7 days later applied a late payment charge and interest. The charges were removed, and the issue was rectified.	69,266 accounts late payment charge applied. 1,028 field visits, 6,048 disconnection visits, and 117 disconnections (July to October 2020). 1,291 Letters Before Action (LBA) were issued (April to October 2020). 241 LBAs issued in April - June 2020 were sent to customers who were not affected by Covid-19.
Clear Business Water	43 contacts by phone. 161 contacts by letter or email.	4,380 contacts by phone. 2360 contacts by letter or email.	89 interest/and or late payment charges to 48 customers on Covid-19 Repayment Plans.	4,968 interest/and or late payment charges to 1,588 customers that were not on Covid-19 repayment plans.
ConservAqua	0	0	0	0
Everflow	Figure not provided	Figure not provided	0	1500 customers passed onto debt partners for enforcement action to be initiated. Two disconnections.
First Business Water	0	2 customers	0	2 customers sent late interest payment invoices.
Hafren Dyfrdwy Retail	0	0	0	0

Pennon Water Services	0	<p>From March 23rd – 12th November 2020:</p> <ul style="list-style-type: none"> • 65,497 first stage reminder letters • 3,545 Key Account Reminders • 22,580 outbound calls • 61 Enforcement action notices. 	0	0
Smarta Water	0	0	0	0
The Water Retail Company	0	0	0	0
Water 2 Business	0	5,644 reminder letters advising of potential court action or disconnection if payment not received or contact not made.	0	0
Water Plus	<p>Figure not provided</p> <p>Do not carry out enforcement activities against customers while they have an active payment plan in place.</p>	Figure not provided	<p>Total enforcement actions: 1069</p> <ul style="list-style-type: none"> • Debt collection agency fee: 239 • Late payment fee: 830 	<p>Total enforcement actions: 65,724</p> <p>a) Customers who still do not have a repayment plan (64,212 enforcement actions):</p> <ul style="list-style-type: none"> • DCA fee: 19,598 • Late payment fee: 44,603 • Disconnection: 11 <p>b) Customers who agreed a payment plan following enforcement action (1,512</p>

				enforcement actions): <ul style="list-style-type: none"> • DCA fee: 281 • Late payment fee: 1229 • Disconnection: 2
Wave	0	12,894, consisting of 2 x reminder letters and 2 x SMS (where Wave holds a mobile contact number) per customer with an outstanding debt that has not engaged with Wave to agree a Repayment Scheme (August - October 2020).	0	83 disconnections took place after the end of the Covid-19 Vacant Scheme, between September-October 2020.
Welsh Water	0	0	0	0

From the evidence provided by Retailers we noted varying levels of repayment plans under a Covid-19 Repayment Scheme provided to customers. As illustrated in Table 1, Wave, Water 2 Business and Business Stream had the highest number of customers on Covid-19 Repayment Schemes. In contrast, Retailers such as Castle Water, WaterPlus and Pennon Water had some of the lowest number of customers on repayment plans under a Covid-19 Repayment Scheme, relative to the number of customers they have, although Water Plus did not differentiate customers on repayment plans under a scheme compared with other repayment plans they offer.

Castle Water note that customer uptake of repayment plans under its Covid-19 Repayment Scheme is generally low as some customers have advised them that there is no benefit in spreading out payments. Castle Water suggests that this is because bills for most of its customers are a very small proportion of their outgoings. Castle Water notes that the uptake of its Covid-19 Repayment Scheme in England mirrors its experience with its customers in Scotland.

We also observed a potential correlation between Retailers with a higher number of customers on repayment plans under a Covid-19 Repayment Scheme and a lower number of customer complaints received. This observation aligns with the data we received from the Proposer, where some Retailers experienced a high number of customer complaints over the summer relating to their billing systems and how they chose to deal with customers who were struggling to pay their water bills. We do however note in one example, Castle Water identified an issue with its system which resulted in the application and notification of late payment charges and interest to approximately 4,800 accounts where customers pay by direct debit. We understand that this issue arose after the Covid-19 temporary vacancy scheme ended. This issue resulted in an increase in complaints in August and September. Castle Water advises us that since then, affected customers were contacted and all late payment charges and interest removed.

Some Retailers advised us that they have adopted an approach where they will not pursue late payment interest, threaten disconnections or initiate enforcement proceedings to any customers on a repayment plan under their Covid-19 Repayment Scheme.

We note that under the terms of Business Stream's Covid-19 Repayment Scheme, if a customer fails to make two scheduled payments then the scheme would be terminated and the company may consider enforcement as a last resort. Though Business Stream suggests that this action will not include a disconnection, late payment charges or interest charges. Business Stream's response also suggests that it has regular and proactive engagement with customers before any enforcement action is considered. This includes the use of SMS, Auto Voice, email, outbound phone calls and letters, as appropriate. Business Stream suggest that

it attempts to contact the customer twice a week through both outbound calls and Auto Voice.

Clear Business Water Limited (“Clear Business Water”) noted that it does not disconnect any customers for non-payment, but it may apply interest and/or late payment charges if customers which are not affected by Covid-19 fail to meet the terms of their repayment schemes. We understand that Clear Business Water will look to amend repayment plans if they are no longer affordable. However, the data submitted by Clear Business Water also suggests that the Retailer has engaged in high level of debt recovery activities relating to customers on Covid-19 repayment plans. It states it has 72 customers on a repayment plan under its Covid-19 Repayment Scheme at present. Since April 2020, the company has applied 89 interest/and or late payment charges to 48 customers on Covid-19 repayment plans.

Pennon Water highlighted that to ensure that it is acting both within the rules and spirit of the CPCoP, it took the decision to cease issuing automated disconnection warning letters to all indebted customers at the start of the Covid-19 pandemic and this approach remains in place. Pennon Water notes that it does not automatically apply late interest payments to customers in arrears. Any interest decisions are applied on a case by case basis. Pennon Water adds that litigation and any subsequent enforcement action is only undertaken as a last resort when all other recovery avenues have failed. Pennon Water adds that any litigation action it would initiate would relate to pre-Covid-19 debt only.

Disconnection was referenced as being used as an enforcement tool by a few Retailers. WaterPlus appear to have taken a high level of enforcement action against customers, with the bulk of this action taken against those who are not on repayment schemes. We note that most of these actions relate to the application of debt collection agent costs or late payment fees, though WaterPlus reports that it has used disconnection on 13 occasions during this period. Everflow reported that it has carried out two disconnections since April 2020, after the temporary protections from disconnection were relaxed.

Castle Water reports to have used disconnection as an enforcement tool on 117 occasions between July and October 2020. Castle Water notes that before proceeding to disconnection, all accounts go through a manual review for suitability and senior management approval is sought to ensure that inappropriate disconnection is not carried out, for example, on accounts relating to sensitive sites, infrastructure, vulnerable customers, and charities. Castle Water notes that these manual checks also enable the identification of customers which may be affected by Covid-19.

Generally there is a variance of approach across Retailers in terms of the steps that they will take in order to engage with customers, and the timeframe that will elapse, prior to any enforcement action being taken.

Everflow's policy suggests that it will consider instructing its debt recovery partners to act in cases where debt is older than 28 days. There is also the suggestion that late payment fees will be applied in cases where a customer has failed to make a payment against a plan within five days of it being due.

WaterPlus's policy suggests that if a customer fails to make payment of an instalment due under its agreed payment plan, it will issue a letter (on day seven) requesting that the customer gets in contact to either pay the missing instalment and reinstate the plan, or agree a new more suitable plan if the customer's circumstances have changed. If the customer fails to respond to this letter within seven days (i.e. by day 14), the plan is cancelled, and a cancellation notice is sent.

Castle Water notes that before any enforcement is taken three letters are issued to warn late-paying customers of potential action. Castle Water also notes that if a customer on a Covid-19 Repayment Scheme defaults in paying any payment plan instalment on the relevant instalment date, it makes the customer aware that the whole of the payment plan amount is immediately due and payable. We understand that this is communicated to the customer by letter, and in some cases by phone call from a third-party debt collection agency. The letter informs the customer that if the debt is not paid in full within the next seven days, Castle Water will apply interest and a late payment charge to the account. Castle Water notes that it advises the customer of other potential enforcement action, includes a link to the Covid-19 Repayment Scheme information on its website, and encourages the customer to call them immediately if they are having difficulty paying.

Other points that we noted in responses

Some Retailers also highlighted issues relating to their financial resilience (and of customers) in the light of the ongoing Covid-19 restrictions. One Retailer noted that their cash receipt trends show collection rates returning to the levels of April and May which they report as being the lowest this year. Some noted that any further protections introduced by Ofwat should go beyond amendments to the CPCoP and have encouraged Ofwat to consider if more support could be provided to Non-Household Customers and Retailers beyond the current payment deferral arrangements. For example, several Retailers suggested that Ofwat should consider reintroducing some form of the temporary vacancy flag, which was previously applied in the market from March until the end of July 2020.

We were concerned to note that some Retailers' websites present information that could be misleading or out of date. For example, one Retailers website notes that it may apply interest and/or late payment charges and take enforcement action if the customer fails to make the agreed payments, save for where the customer is a "Covid-19 Affected Customer." This

category of customer no longer exists under the CPCoP as it was linked to the application of the temporary vacancy flag, which expired on 31 July 2020.

We noted that another Retailer framed customer information specifically in the context of what Ofwat had permitted it to do: “During the lockdown in the summer some of our customers benefited from Ofwat’s Temporary Vacancy scheme. This allowed us to suspend wholesale charges where a business had temporarily closed and we were proactive in using this scheme to support our customers through that difficult time. Ofwat has not approved that scheme for use during this lockdown and we are not able to use this mechanism again.”

8. Proposed decision

We have given consideration to the evidence presented, including the evidence provided by the Proposer and information provided by Retailers in response to our request for information on 12 November 2020.

The information and evidence provided suggests that some Retailers are prepared to take enforcement action against customers who do not adhere to their agreed repayment plans, including those on repayment plans under a Covid-19 Repayment Scheme. Whilst this will be inappropriate in certain circumstances there might be other circumstances in which some enforcement action may be a reasonable and appropriate course of action. We want to encourage customers who can pay their bills to pay them on time, which means Retailers will need to take the necessary steps to differentiate between those customers who genuinely need support and those who should be expected to pay. We also note that, longer term, customers should benefit from lower overall bad debt costs as this should help to keep future bills lower than would otherwise be the case⁴.

The evidence also suggests that the level of customer uptake of Covid-19 repayment plans varies significantly across the market, as does the way each Retailer engages with customers in relation to non-adherence with repayment plans.

We therefore agree with the Proposer that there is scope to strengthen customer protections within the CPCoP to ensure that those customers adversely affected by Covid-19 are provided with appropriate levels of support. We consider, however, that the evidence submitted by companies suggests that changes to the CPCoP should be specifically focussed on:

- Clarifying the expectations of Retailers in terms of promoting and signing up customers to Covid-19 repayment schemes where appropriate;
- Ensuring that Retailers take reasonable steps to maintain contact with customers on Covid-19 repayment schemes to understand their circumstances and tailor their plans before any kind of debt collection action (including the use of debt collection agents, interest, late payment fees, disconnection) is pursued; and
- Ensuring that Retailers are able to demonstrate that they have taken reasonable steps to engage with their customers before taking any debt recovery action.
- Ensuring Retailers publish on a monthly basis on their websites data relating to the number of Non-Household customers that are on repayment plans (Covid-19 and any other) and the level of enforcement action being carried out. Should this Change

⁴ Note that we are publishing “Call for Inputs: Covid-19 and the business retail market – Customer bad debt costs” on 30 November 2020. This is available on the Ofwat website.

Proposal be accepted, we plan to work closely with CCW to monitor compliance with the requirements for the above information to be clearly included on Retailers' websites.

We are therefore proposing to amend the Change Proposal to address the above points and have set out our proposed changes to the CPCoP in [Appendix 1](#). The aim is that these changes strengthen protections for all customers adversely affected by Covid-19, including those that have been forced to close.

9. Proposed decision on the date of implementation

It is our proposed decision that the implementation date for this change will be 3 working days after the date of our decision, which we expect to be made during the week commencing 14 December. We propose publishing an updated version of the CPCoP on the same day as our decision document, with the updated version of the CPCoP coming into effect on the same day as our decision document.

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.

10. Consultation questions

The questions we would welcome responses on in relation to our proposed decision to amend this Change Proposal are detailed below. Where appropriate, answers should be supported with evidence.

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.
- b) Customers who are able to pay should be incentivised to pay in a timely manner.
- c) Retailers should take the necessary steps to differentiate between those customers who genuinely need support and those who should be expected to pay.

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;
- b) The scope and operational impact of the amended change proposal;
- c) Whether the respondents consider that the proposal is in line with the principles of the code and our statutory duties.

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

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

11. Conclusion and next steps

The consultation on the Change Proposal will close at **5pm on 9 December 2020**.

Following the closure of this consultation, we will consider responses prior to issuing our final decision. See section 3 of this document for details about how to respond to this consultation.

We will endeavour to make the decision on the Change Proposal as soon as practicable following closure of this consultation.

Appendix 1 – Legal drafting

7.1.6 Covid-19 Repayment Scheme

Until 31 March 2021, or such other date as the Authority may notify in writing to Retailers, Retailers must have in place a Covid-19 Repayment Scheme.

This scheme must set out:

- (a) the steps a Retailer will take to consider a Non-Household Customer's circumstances, particularly the Non-Household Customer's reasonable ability to pay outstanding amounts, including interest on those amounts and / or late payment charges, as a result of Covid-19;
- (b) the specific terms and conditions of the different repayment plan offerings it will make to take account of those different circumstances; and
- (c) contact details that a Non-Household Customer should use to contact its Retailer where it disagrees with the Retailer's assessment of its circumstances, and the type of evidence it may provide to assist the Retailer in any re-assessment.

No repayment plan under a Covid-19 Repayment Scheme may be less generous to Non-Household Customers than those offered by the Retailer from 1 January 2020 onwards in accordance with a Reasonable Repayment Plan for an Outstanding Debt.

Retailers must take all reasonable steps to engage with:

- (a) Non-Household Customers which may be eligible for a repayment plan under their Covid-19 Repayment Scheme and, where appropriate, offer those Non-Household Customers a repayment plan under this scheme.
- (b) Non-Household Customers which are already on a repayment plan under their Covid-19 Repayment Scheme, to ensure the terms and conditions of the repayment plan remain appropriate on an on-going basis and as circumstances change.

Prior to removing a Non-Household Customer from a repayment plan under a Covid-19 Repayment Scheme, Retailers must be able to demonstrate that they have taken reasonable steps to engage with the Non-Household Customer.

Prior to pursuing, and at each stage of escalating, any debt recovery action against a Non-Household Customer which has defaulted on its repayment plan under a Covid-19 Repayment Scheme, Retailers must be able to demonstrate that they have:

- (a) taken reasonable steps to engage with the Non-Household Customer to ascertain the circumstances that led to the default; and

- (b) considered whether, taking the Non-Household Customer's circumstances and best interests into account, it would be more appropriate to amend the terms and conditions of the repayment plan than pursue any debt recovery action.

Until 31 March 2021, or such other date as the Authority may notify to Retailers in writing, Retailers must publish the following information relating to their repayment plans on their websites, updated on a monthly basis:

- (a) the number of Non-Household Customers who are on repayment plans under the Retailer's Covid-19 Repayment Scheme;
- (b) the number of Non-Household Customers who are on any other repayment plan that the Retailer offers;
- (c) the number of Non-Household Customers that are, or have previously been, on a repayment plan under the Retailer's Covid-19 Repayment Scheme that the Retailer has taken any type of debt recovery action against, and the type of action taken; and
- (d) Since 1 June 2020, the number of Non-Household Customers on other repayment plans that the Retailer has taken any type of debt recovery action against, and the type of debt recovery action taken.

**Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
We regulate the water sector in England and Wales.**

Ofwat
Centre City Tower
7 Hill Street
Birmingham B5 4UA

Phone: 0121 644 7500
Fax: 0121 644 7533

© Crown copyright 2020

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at www.ofwat.gov.uk.

Any enquiries regarding this publication should be sent to mailbox@ofwat.gov.uk.

OGL