

Customer Protection Code of Practice Change Proposal – Ref CP0009

Modification proposal	Customer Protection Code of Practice Change Proposal – CP0009 – Proposal to amend a Customer Protection Code Change Proposal
Decision	The Authority has decided to approve this amended Change Proposal
Publication date	16 December 2020
Implementation date	21 December 2020

1. Background

On 28 October 2020, the Consumer Council for Water (“the Proposer”) submitted a Change Proposal to the Authority to introduce enhanced protections for Non-Household Customers affected by Covid-19 in the Consumer Protection Code of Practice (“CPCoP”). The Proposer made reference to the “tier” restrictions that the Government introduced in England at a local level in an attempt to stem the further spread of Covid-19. The Proposer raised concerns that under the tier restrictions, some Non-Household Customers were required to close their businesses without access to the same level of protection from debt recovery action (such as disconnection) that was afforded to Non-Household Customers under the CPCoP while the temporary vacancy flag¹ was in place between March and July 2020.

The Proposer noted that the temporary vacancy flag is linked to the definition of “Covid-19 Affected Customers” under the CPCoP. The Proposer suggested that the CPCoP definition of “Covid-19 Affected Customers” needed 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 2020². The Proposer considered that these protections should apply exclusively to Non-Household Customers required to close by law and whose premises are shut completely (i.e. not operating in a reduced capacity – e.g. as a takeaway / delivery or refurbishing their premises).

¹ Retailers were able to apply the temporary vacancy flag up to – but not beyond – 31 July 2020. Retailers were required to remove all of these flags from the Central Market Operating System (CMOS) by the end of September 2020.

² Full details of CCW’s original proposal can be found in our [consultation document – CP0009](#)

The Proposer considered that Non-Household Customers whose premises 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 noted that from 1 August 2020, premises 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 vacant³. The Proposer argued that this meant that from 1 August 2020, no Non-Household premises could meet the current CPCoP definition of “Covid-19 Affected Customers,” and therefore Non-Household Customers would not be able to access the protections that were in place until 31 July 2020.

Along with its Change Proposal the Proposer shared some evidence relating to complaints it had received from Non-Household Customers about debt recovery activity taken by Retailers 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. On 12 November 2020 Ofwat and CCW published a [joint statement](#) setting 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 Non-Household customers affected by Covid-19 measures. In addition, we separately [wrote to all Retailers](#) seeking further information to inform our thinking on the proposed amendment to the CPCoP, or any further amendments that we may consider necessary, to ensure customers receive appropriate protections.

After considering the evidence submitted by the Proposer and the information provided by Retailers in response to our request for information on 12 November 2020, we agreed 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. However we also considered it is important that customers who can pay are encouraged pay their bills to pay them on time and 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 case.

For this reason, we did not agree that updating the definition of Covid-19 Affected Customers is the best approach, as this would result in the suspension of disconnections and all other debt enforcement activity for all closed customers and some of these customers may still be in a position to pay their water and wastewater bills. We therefore consulted on a [proposal to amend the Customer Protection Code of](#)

³ Set out in section 3.1.4 of [CSD 0104](#)

Practice (“CP0009”) to include new provisions clarifying how we expect Retailers to engage with their customers in relation to repayment plans and prior to any debt recovery action being carried out. The proposal also included new provisions requiring Retailers to regularly publish information relating to repayment plans and debt recovery action that has been carried out (the “Change Proposal”).

We published our consultation on the Change Proposal on 30 November 2020. Because the Change Proposal related to protecting customers against adverse impacts of the measures taken by the Government to address the spread of the coronavirus, we considered it was urgent and, in accordance with section 5.2.2 of the CPCoP, we consulted for a period of 10 calendar days⁴. The consultation closed on 9 December 2020. This document sets out our decision on the Change Proposal and reasons, including the changes that we have made following consideration of the views provided in consultation responses.

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

2. The Change Proposal and reasons for the proposed changes

The proposed amendments to the CPCoP that Ofwat consulted on were 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 is pursued (and can demonstrate that they have done so); and
- Ensuring that Retailers publish on a monthly basis on their websites data relating to the number of Non-Household Customers that are on repayment plans (both under a Covid-19 Repayment Scheme and any other type of repayment plan) and the level of debt recovery action being carried out.

⁴ The rationale for this proposal being considered to be urgent can be viewed in our consultation document.

To be clear, we did not propose to change the definition of Covid-19 Affected Customers in the CPCoP.

We noted in our consultation that if this Change Proposal is accepted, we plan to work closely with CCW to monitor compliance with the requirement for the above information to be clearly included on Retailers' websites.

We also set out in our consultation that the 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.

2.1 Expectations of Retailers in terms of promoting and signing up customers to Covid-19 Repayment Schemes

The Change Proposal seeks to further clarify our expectations of Retailers when communicating the availability of their Covid-19 Repayment Scheme to potentially eligible customers. We note from responses to our [Request for Information \(RFI\)](#) that a number of Retailers are more proactive than others in this regard. The Change Proposal is intended to ensure there is an appropriate level of engagement with Non-Household Customers regarding their eligibility for a repayment plan under a Covid-19 Repayment Scheme consistent across all Retailers.

2.2 Retailers should 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 is pursued.

The Change Proposal further clarifies our expectations of Retailers in terms of maintaining contact with customers who are on a repayment plan under a Covid-19 Repayment Scheme. The intention of the Change Proposal is to ensure that Retailers are considering whether the terms and conditions of customer's repayment plans remain appropriate, on an on-going basis and as circumstances change. The Change Proposal seeks to ensure that Retailers are undertaking this review before removing customers from such repayment plans.

The Change Proposal further clarifies our expectations of Retailers in terms of ensuring that they are able to demonstrate that they have taken reasonable steps to engage with customers before considering any debt recovery action. The evidence we received in

response to our request for information suggests that the way each Retailer engages with its customers in relation to non-adherence with repayment plans varies significantly across the market. We noted that several Retailers seem to be taking a customer focussed approach and provided a convincing explanation of the process / steps that they would follow in ensuring that they contact their customers before considering any action for non-payment. However, some of the responses we received suggest that some Retailers could improve their processes in this area. The Change Proposal, therefore, is intended to ensure that all Retailers are taking appropriate steps to engage with their customers before any debt recovery action is initiated.

2.3 Publication of data relating to repayment plans and the level of debt recovery action being carried out

This Change Proposal proposes to require Retailers to publish, on an ongoing basis, data relating to the number of customers they have on repayment plans (under the Covid-19 Repayment Scheme and any other plans they offer). It also proposes to require Retailers to publish data relating to their debt recovery activity against customers who are, or have previously been on, a repayment plan. As noted above, the evidence we have received in response to our request for information suggests that there is some variance in approach in terms of how Retailers are communicating their schemes to customers and also taking debt recovery action when the terms of repayment plans are not being met. The intention of this proposal is to ensure that Ofwat and CCW, on an ongoing basis, have appropriate oversight of customer uptake of repayment plans across the market and the levels of debt recovery action being carried out. This information, considered in combination with complaints and enquiries data that CCW collates, will assist us in monitoring the market and understanding if there are any areas of concern that require further action, either on a specific Retailer basis or at a market wide level.

3. Evidence considered

Our [consultation](#) was published on 30 November 2020 and closed on 9 December 2020. There were 13 respondents (7 Retailers, 3 Wholesalers, CCW, the Major Energy Users Council and the National Farmers Union). We set out at [Appendix 1](#) of this document the consultation questions, a summary of the responses we received and our reply to these responses. We discuss below key comments and themes from the responses, including those that have resulted in a change to the drafting amendments to the CPCoP set out in the Change Proposal.

4. Our decision and reasons for our decision

The Authority has decided to accept this Change Proposal to ensure that customers that have been adversely affected by Covid-19 continue to be protected against the threat of disconnection, enforcement of debt, interest and late payment fees as a result of non-payment of bills due to the impact of the Covid-19 pandemic.

The legal drafting can be viewed in **Appendix 2** of this document, with changes made following consideration of the consultation responses marked up.

Further information about how we consider that the Change Proposal is consistent with our statutory duties and the General Principles of the CPCoP can be viewed in **Appendix 3** of this document.

4.1 Strengthening the requirements under the CPCoP relating to repayment plans and debt recovery activity

This decision specifically strengthens the measures relating to the requirement on Retailers to have in place a Covid-19 Repayment Scheme. That requirement was introduced into the CPCoP following implementation of CP0007. We have decided that it is appropriate for these new measures to be introduced to provide additional protection for all customers that have been adversely impacted by Covid-19 restrictions. The provisions that have been introduced are temporary measures and scheduled to remain in place until 31 March 2021, or such other date as the Authority may notify to Retailers in writing.

4.2 The CCW Change Proposal

We noted that several respondents expressed support for the Proposer's original proposal for the definition of Covid-19 Affected Customers to be updated. Some respondents misunderstood the amended Change Proposal, and thought that Ofwat was proposing to update this definition. For clarity, the amended Change Proposal did not intend to update this definition but instead was focussed upon strengthening the protections provided to customers who were on repayment plans, primarily through enhanced Retailer engagement.

While CCW was generally supportive of Ofwat's amended Change Proposal, it did not consider that the changes proposed went far enough. In response to the consultation CCW requested that its original proposal to update the definition of "Covid-19 Affected Customers" should be implemented alongside Ofwat's proposed changes to ensure that those customers who have genuinely closed due to Covid-19 restrictions are not exposed to debt recovery action. It considered that Ofwat's proposed changes would ensure that protection is increased for customers who are in position to respond to

increased levels of Retailer engagement but considered that those customers who are genuinely closed may not be in a position to do so.

We acknowledge the concerns raised by CCW and share its intention to ensure customers who have been required to close as a result of Covid-19 restrictions are adequately protected. However, we still consider that suspending disconnections and all other debt recovery activity for all closed customers would not be the best approach. We are concerned that implementing the original proposal in full may ultimately result in uncollected revenue from customers who have been required to close yet still may be in a position to pay their water and wastewater bills. For example, some customers whose premises are closed could still be trading online. We note that CCW has argued that it does not consider its proposal - to restrict 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. However, we consider that applying the proposed approach may result in some customers, who haven't agreed a clear payment plan with their retailer, facing a commercial incentive to classify themselves as a "Covid-19 Affected Customer" to delay or avoid the payment of water and waste water charges without incurring interest or late payment fees. This could lead to increased costs for Retailers and insofar as these can be recovered from customers, it could lead to customers cross-subsidising businesses whose premises are closed but can still pay their bills.

We therefore consider that our decision to implement the proposed change without an update to the Covid-19 Affected Customer definition will 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.

We consider that our decision will benefit all customers that are adversely impacted by Covid-19, not just those customers that have been forced to close.

4.3 Clarifying the expectations of Retailers in terms of promoting, signing up and remaining engaged with customers with regard to Covid-19 Repayment Schemes

We noted from responses to the consultation and our previous RFI that some companies might not distinguish between customers on repayment plans under their Covid-19 Repayment Scheme and other repayment plans. In response to this observation CCW stated that the protections proposed by Ofwat would only apply to those customers on Covid-19 Repayment Schemes. CCW suggested an amendment to

the legal drafting should be made so the proposed measures apply to all repayment plans. We can see the merit behind this suggestion and have made a change to the proposed legal drafting to ensure that all Retailers are appropriately engaging with any customers that have been adversely affected by Covid-19 prior to pursuing any debt recovery action, which we consider best fulfils our policy aims behind the Change Proposal.

The provisions we have introduced to the CPCoP as part of this decision are intended to encourage Retailers to carefully consider whether their customers should be classified as being on repayment plans under their Covid-19 Repayment Schemes, and offer such plans to eligible customers. For clarity, we consider that all Retailers should have processes in place to enable them to clearly distinguish between customers who have been adversely affected by Covid-19 and those who have not. Non-Household customers who have been adversely affected by Covid-19 should be offered repayment plans under a Covid-19 Repayment Scheme and afforded the associated protections provided to them under the CPCoP.

Several respondents did note that it may be challenging for some Retailers to identify all customers that are able to pay and that there will always be customers who will fail to respond to any Retailer's attempts to engage with them. We acknowledge this, and that customers who have been financially impacted by Covid-19 and are struggling to pay their bills do have a role to play in engaging with their Retailers. We do, however, think that there is an opportunity for some Retailers to take a more proactive approach, including encouraging those that need support to actually seek assistance.

When reviewing responses to our request for information, we noted that a number of Retailer's websites were presenting information that could be misleading or out of date. For example, this included poorly framed references to temporary vacancy schemes and the Covid-19 Affected Customer definition, both of which are no longer in operation. We do not consider it helpful to customers for Retailer websites to be providing such information. We expect all Retailers to regularly review their websites to ensure that they are highlighting relevant, up to date information on what support is currently available to customers. For example, we noted that the Business Stream [website](#) provides clear and user friendly information that is provided in an accurate context. The CPCoP already places a requirement on Retailers to include clear and accessible information on their website to ensure that Non-Household Customers are informed about the measures that are in place if they are affected by Covid-19. As highlighted in previous decisions, we will continue to work with CCW to monitor Retailer compliance with these requirements.

4.4 Ensuring that Retailers are able to demonstrate that they have taken reasonable steps to engage with their customers before taking any debt recovery action

We consider that this decision will ensure that Retailers have taken reasonable steps to engage with their customers prior to taking debt recovery action for non-payment. We note the concerns raised by CCW that some customers, that have genuinely closed their business premises as a result of Covid-19 restrictions, might not be in position to respond to attempts by Retailers to engage with them and might not be on a repayment plan under a Covid-19 Repayment Scheme, therefore falling outside the scope of the requirements set out in the Change Proposal. CCW fear that these customers could subsequently be exposed to debt recovery activity. As noted above, we have made a change to the proposed legal drafting that is intended to mitigate this risk and ensure that Retailers are undertaking appropriate checks of whether debt recovery action against a customer adversely affected by Covid-19 is appropriate, regardless of whether the customer is on a repayment plan under a Covid-19 Repayment Scheme.

In response to our RFI several Retailers suggested that where a customer has failed to make payment on time they will automatically consider if that customer should be offered a repayment plan. Other Retailers noted that before any debt recovery action is considered each case will go through an internal review process to ensure action is appropriate. The intention of this decision is to ensure that all Retailers are meeting similar standards of good practice.

4.5 Ongoing monitoring of uptake of repayment plans and debt recovery activity

We note that a number of respondents queried the benefit of requesting Retailers to publish information relating to the customer uptake of repayment plans and debt recovery action. Some respondents noted that publishing this type of information was not standard practice in other markets. Others noted the potential operational costs associated with hosting this information on websites. We note that one Retailer suggested that they would prefer to report this type of information to Ofwat and CCW on a monthly basis and believe this would achieve the desired outcomes without doing reputational harm to the market. We have considered the concerns raised and have decided to remove the requirement for Retailers to publish this information on their websites. Instead, the CPCoP will require Retailers to submit reports on their repayment plans and debt recovery action directly to Ofwat and CCW on a monthly basis. From time to time and as appropriate, we expect to share this information with the Market Operator (MOSL) and also with other Trading Parties for the purpose of facilitating our functions. We may also use this information to engage directly with Trading Parties should we note any specific concerns with what we are seeing.

As noted earlier in our decision, when submitting these reports we want Retailers to carefully consider where customers are deemed to be on repayment plans under its Covid-19 Repayment Scheme. We welcome Retailers providing a narrative with their reports if they consider additional context to the data will be helpful.

4.6 Debt Recovery Action – definition

We note that some parties have asked for more detail around our definition of debt recovery action. For the sake of clarity, where we refer to debt recovery action for the purpose of the Change Proposal, we are referring to where Retailers may be:

- Applying late payment interest / charges;
- Instructing debt recovery agents; and
- Disconnecting customers.

4.7 Concerns raised relating to Retailer financial resilience

We note that several Retailers highlighted that the Covid-19 restrictions are putting major financial pressures on them and raised concern that the Change Proposal increases their operational costs, restricts their ability to recover charges and may lead to increased bad debt. With this in mind some Retailers suggested that the Change Proposal did not align with our statutory duties. We note that several Retailers argued that wider support should to be provided to both Retailers and Customers and suggested that Ofwat should further consider introducing a measure similar to the temporary vacancy flag.

We noted that in response to our consultation (and the RFI that was issued previously) several Retailers indicated that they are already operating in line with the proposed provisions. In response to the consultation one respondent noted that it should be good business practice for Retailers to manage those customers who can't pay, noting that good service in this regard can ultimately help Retailers to retain their business.

We have determined that the proposed provisions are focussed on enhanced engagement with specific customers and are intended to ensure that all Retailers are aligned with existing good practice in the market. As noted earlier, our decision deliberately does not remove the ability for Retailers to use debt recovery action as a means for recovering outstanding charges, where this is reasonable and appropriate. As such, we do not consider that the new CPCoP provisions should drive unnecessary increased costs or act against our statutory duties.

In our 4 November [joint statement with MOSL](#) we have indicated that we do not intend to extend or reintroduce the sector-specific support measures put in place earlier this year, including the temporary vacancy flags. We do not consider that reintroducing such a measure would support our policy aim that customers who are able to pay should be incentivised to pay in a timely manner.

4.8 Implementation date

Several Retailers raised concerns about the proposed implementation date of three working days from the decision date, specifically noting the requirement to publish reports on websites. It was suggested that this could mean that Retailers with fewer resources may not be able to implement the necessary changes in time.

As noted above, we have decided to ask Retailers to submit reports on their repayment plans and debt recovery action directly to Ofwat and CCW on a monthly basis. We consider that removing the obligation for Retailers to publish this data on websites should ensure that all Retailers are able to implement this decision in a timely manner. In light of the above, we have decided that the implementation date of this decision should be **21 December 2020**. We intend to publish an updated version of the CPCoP ahead of this date.

We request that Retailers submit their first report on repayment plans and debt recovery action no later than the **20 January 2021**. The data should relate to the customer uptake of repayment plans and initiated debt recovery action from the period of 1 June 2020 onwards. Retailers are then required to submit updated reports no later than the 20th of every month until this provision expires.

To assist with the reporting of data, Ofwat will circulate a template for Retailers to complete in early January 2021. At that time we will provide the relevant email addresses for where these reports should be sent.

Decision notice

In accordance with paragraph 5.2.4 of the CPCoP, the Authority accepts this Change Proposal.

Georgina Mills
Director, Business Retail Market

Appendix 1 – Summary of consultation responses

- 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.**

Most respondents were supportive of the amended Change Proposal as it delivered the three policy aims highlighted in the question (1a-c). It was noted that the Change Proposal should ensure Retailers take customers' individual circumstances into account before considering any enforcement action. It was also noted that customers adversely affected by Covid-19 should be provided with a consistent level of protection across the market. Respondents were generally supportive of the mutual responsibility of customers and Retailers to contact one another to discuss the impact of Covid-19 on the customer.

Several Retailers stated that they were operating in line with the proposed provisions already and Ofwat needed to clarify what was meant by Retailers demonstrating that they had taken all 'reasonable steps' to engage with a customer. A Retailer noted that they did not think it was feasible or reasonable to expect Retailers to make proactive contact through dedicated outbound campaigns with customers already on a Covid-19 Repayment Scheme to ensure that the terms remain appropriate. They suggested that Retailers should be expected to provide clear information to customers on their websites, encourage customers to make contact and signpost assistance where appropriate. This view was shared by two other Retailers, with suggestions being made that customers also needed to be proactive in engaging with their Retailer to discuss their circumstances. We don't consider it would be helpful or necessary to set out specific guidance on how retailers should engage with their customers, as we recognise that an appropriate approach can vary across different customer's dependant of their circumstances.

A Wholesaler stated that they recognised that the proposed amendments to the CPCoP may impact Retailers' ability to recover charges, as liquidity measures introduced at the start of the original lockdown were no longer available to them. It noted that whilst it was aware of Retailer concerns in the market, it did not believe that the proposal

would drive costs and should be good business practice for Retailers to manage customers who cannot pay as it may result in them retaining their business. Further, it noted that from the previous RFI responses that the number of customers on Covid-19 Repayments Plans varied across different Retailers. It was suggested that this showed that some schemes may be more successful than others or may be due to how easy customers can access the support on offer.

A number of Retailers stated that there was a risk the amended Change Proposal may lead to increased bad debt amongst Retailers. A Retailer stated that the proposal fell short of the relief that was provided for those customers most affected by Covid-19 during the first national lockdown, which may result in increased levels of bad debt associated with businesses who cannot afford to pay. We discuss the concerns raised relating to Retailer financial resilience in section 4.7 of our decision.

A different Retailer suggested that it would be helpful for Ofwat to publish guidance to customers stating that while Retailers should engage with them to agree an appropriate repayment plan if it is needed, where the customer can pay, they should and Retailers may carry out enforcement activity in this situation. Given Retailers, not customers, have a licence obligation to comply with the CPCoP, we do not consider it appropriate to introduce guidance for customers in the CPCoP.

A number of Retailers raised concerns with the publishing of Covid-19 Repayment Plan information of their websites. Reasons cited included, that this would not provide context to customers as they would not have an appreciation of how many customers a Retailer serves or what money is owed by customers, it was not appropriate that competing Retailers publish sensitive commercial information on their websites as it provides competitors with insight not normally shared and some Retailers were not easily able to differentiate between Covid-19 Repayment Plans and other Repayment Plans. Several Retailers highlighted that an alternative approach would be to share this information with CCW and Ofwat on a monthly basis. In addition, one Retailer stated that this information could be presented per 10,000 customers, similar to the way that CCW reports on complaint figures. As set out above, in light of the responses we received we have decided to remove the requirement for Retailers to publish certain information on their websites, instead requiring them to submit the information to Ofwat and CCW.

CCW were generally supportive of the amended Change Proposal, but suggested a number of areas where they believed the drafting could be strengthened. The response from the Major Energy Users' Council was supportive of the principle behind the Change Proposal but thought that it did not go far enough, instead supporting the re-introduction of temporary vacancy flags or CCW's original proposed update to the definition for Covid-19 Affected Customer. We set out our reasons for deciding not to go with either of these suggestions above.

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.**

Most respondents stated that the implementation costs of the amended Change Proposal would be low. Several Retailers stated that the costs and risks of implementing this change will depend on the interpretation of the requirement to take 'reasonable steps' to engage with customers. One of these Retailers also stated that because they currently do not distinguish between 'Covid-19' and 'Other' repayment plans in their system, it would be costly, and not beneficial to go back and identify which plans in their system are as a result of Covid-19. As such, the Retailer suggested that to meet the requirements in the amended CPCoP, they would assume that all repayment plans put in place from a certain date (say April 2020) are Covid-19 repayment plans, and any put in place before that date would be classed as 'Other.'

A Retailer stated that they did not have concerns about immediate costs or the practicality of implementing the changes proposed, but were concerned about the longer term costs, such as increased bad debt, that the proposals may generate.

A different Retailer shared a similar view in its response to question 1 and highlighted the risks with publishing sensitive commercial information on their website. They noted that it provides competitors with insight, creates a commercial risk if suppliers or partners decide not to work with Retailers because they think Retailers are struggling to recover income, and might influence customer switching behaviour through switching to Retailers who appear to offer greater protection than others. It was suggested that this might lead to some Retailers experiencing higher levels of bad debt than otherwise.

Several Retailers suggested that the definition for "debt recovery action" should be defined in the CPCoP so that the scope and operational impact is not different for Retailers depending upon their interpretation. We set out what we mean by debt recovery action in our decision above.

The majority of respondents believed the amended Change Proposal was in line with the principles of the CPCoP and Ofwat's statutory duties. However, three Retailers raised concerns. A Retailer stated that there is currently financial strain within the non-household retail market and the proposal will add additional financial burden to Retailers who are already facing the threat of systemic Retailer failure. The Retailers

further noted that unless further protections and support for Retailers are made available in the industry, they consider that the amended Change Proposal is not in line with Ofwat's statutory duties. We discuss the concerns raised relating to Retailer financial resilience in section 4.7 of our decision.

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

Most of the respondents supported the implementation date of three working days following the publications of the Ofwat decision. However, several Retailers noted concerns with the timescales in relation to the requirement to publishing Covid-19 Repayment Scheme information on their websites. One Retailer raised significant reservations and highlighted that they are undertaking an internal review of processes to identify whether there is anything more they can add into their processes to increase confidence that all customers are aware of the support available and how to contact them regarding taking up that support. If they decide to implement changes, it was unlikely to be implemented this month. In addition, they noted that as they currently did not distinguish between 'Covid-19' and 'Other' repayment plans in their system, they would need to be able to use reasonable assumptions in order to be ready to implement changes this month. Two other Retailers suggested a period of 10 working days would allow them to update information on their websites.

CCW agreed that change should be implemented on the proposed date, but urged Ofwat to implement both the amended Change Proposal and its proposed changes to the definition of 'Covid-19 Affected Customers'. CCW noted that the urgency that drove their Change Proposal had since increased, and considered that there should be no further delays in a decision to strengthen the CPCoP.

We have removed the requirement for Retailers to publish data on their websites and instead provide reports directly to CCW and Ofwat. In the light of this decision we decided that the implementation date will be 21 December 2020.

3. Do you have any other comments on our proposed change to the CPCoP?

Several Retailers highlighted that the financial impacts of Covid-19 put major financial pressures on Retailers. One Retailer noted that reduced collection on customer bills meant that it faced an unprecedented draw on working capital and cash flow uncertainty. They argued that, as a result, customer debt was increasing and they were concerned that bad debt will reach unsustainable levels in the coming months. The Retailer further noted that Ofwat does not envisage any bad debt recovery mechanism to start until 2022, and by the time it is collected, Retailers could have up to three years' worth of debt for a significant proportion of their customer base. Another Retailer reiterated its response to the RFI that its cash receipt trends show collection rates

returning to the levels of April and May, which were the lowest this year. We discuss concerns relating to the financial resilience of Retailers in our decision above.

Several respondents appeared to believe that the amended proposal was updating the definition of 'Covid-19 Affected Customers' in the CPCoP, which was not the case. This suggestion was made by CCW in their original proposal, but was not included as part of Ofwat's Change Proposal to amend the CPCoP. The CPCoP changes that are being implemented are set out in full in [Appendix 2](#).

A Retailer noted that the legal drafting was not clear on whether Retailers will be required to backdate the protections for customers whose premises were closed during the second national restrictions, or if these will apply from the implementation date. The Retailer requested Ofwat clarity this in its final decision. We understand that this query was raised with the belief that the CPCoP definition of "Covid-19 Affected Customers" was to be updated. We can confirm the requirements being implemented are not intended to be applied retrospectively.

A different Retailer noted that in the RFI, Ofwat had observed that a number of Retailers suggested the reintroduction of a measure like the temporary vacancy flag. They suggested that more explanation was needed for customers and Retailers why this was not being reintroduced. We discuss the reasoning behind this in our decision above.

The NFU asked Ofwat to ensure that Retailers actively engage with Non-Household Customers to establish whether they might have been affected by Covid-19 restrictions and to promote the availability of business support. They also asked Retailers to take reasonable steps to maintain contact with Non-Household Customers to ensure that they are aware of the availability of Covid-19 Repayment Schemes and to tailor their plans based on their circumstances, before debt collection action is pursued. We consider the new requirements broadly address these concerns.

Appendix 2 – Legal drafting

Insert new section to 7.1.6

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 been adversely affected by ~~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.

From 20 January 2021 and on a monthly basis thereafter, Retailers must submit to the Authority and the Consumer Council for Water a report including the following information:

~~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.

Appendix 3 – Reasons for our decision

We set out below our views on how the proposed change is in line with our statutory duties and which of the CPCoP General Principles are better facilitated by it.

Statutory duties

Under section 2 of the Water Industry Act 1991, we must carry out our prescribed powers and functions including:

- the granting of water supply and sewerage licenses (under sections 17A and 17BA of the WIA91); and
- the enforcement of a licence (under section 18 of the WIA91)

imposed on us as an economic regulator in the way we consider will best:

- further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition;
- secure that water companies (meaning water and sewerage undertakers) properly carry out their statutory functions;
- secure that water companies can (in particular through securing reasonable returns on their capital) finance the proper carrying out of their statutory functions;
- secure that water supply licensees and sewerage licensees properly carry out their licensed activities and statutory functions;
- further the resilience objective to secure the long-term resilience of water companies' water supply and wastewater systems as regards environmental pressures, population growth and changes in consumer behaviour; and to secure that they take steps to enable them, in the long term, to meet the need for water supplies and wastewater services to consumers.

Subject to our main duties above, we must also regulate in the way we consider will best:

- promote economy and efficiency by water companies in their work;
- secure that no undue preference or discrimination is shown by water companies in fixing charges;
- secure that no undue preference or discrimination is shown by water companies in relation to the provision of services by themselves or by water supply licensees or sewerage licensees;
- secure that consumers' interests are protected where water companies sell land
- ensure that consumers' interests are protected in relation to any unregulated activities of water companies;

- contribute to the achievement of sustainable development.

We must also have regard to the principles of best regulatory practice. These include that regulatory activities should be transparent, accountable, proportionate, consistent and targeted.

We consider that the proposed changes to the CPCoP comply with our statutory duties for the reasons detailed in the ‘decision and reasons for our decision’ section of this document.

The Authority considers that the Change Proposal is consistent with the CPCoP General Principles as detailed below.

CPCoP General Principles

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 Retailers are taking reasonable steps to ensure that customers who are struggling to make payments due to Covid-19 are aware of the Covid-19 Repayment Scheme and that they may be eligible for a repayment plan. The Change Proposal also ensures that Retailers are assessing the terms and conditions of their repayment plans on an ongoing basis to ensure that they remain appropriate to the circumstances of their customers.

The Change Proposal also aims to ensure debt recovery action against customers affected by Covid-19 is only taken where this is reasonable and appropriate, thus providing those customers with enhanced protection.

Communication with Non-Household Customers shall be in plain and clear language

The Change Proposal places an emphasis on Retailers to ensure that they have appropriately engaged with their customers at several key stages, including for example when offering a repayment plan under a Covid-19 Repayment Scheme, and prior to removing a Non-Household Customer from a repayment plan under a Covid-19 Repayment Scheme.