

January 2022

# Customer Protection Code of Practice Change Proposal – Ref CP0009

## Customer Protection Code of Practice Change Proposal – Ref CP0010

<b>Modification proposal</b>	Customer Protection Code of Practice Change Proposal – CP0010 – Proposal to make a change to the Customer Protection Code of Practice
<b>Decision</b>	The Authority has decided to approve this amended Change Proposal
<b>Publication date</b>	20 January 2022
<b>Implementation date</b>	20 April 2022

### We are agreeing these Change Proposals

We consider that the new requirements on Retailers will have a positive impact on business customers, especially those who choose to pay-in-advance. The changes being implemented will help to increase customer awareness of both the potential benefits and risks of paying in advance and that there are alternative payment terms available in the market. Customers will also benefit from being more aware of the credit balances they are building up over time. The change should also have a positive impact on business customers by ensuring that credit balances are repaid to them upon the closure of their account.

After considering the feedback received to the consultation, we have made some updates to our proposal. These updates are summarised below. Revised legal drafting can be found in Appendix 1.

- We have extended the implementation date to three months following the publication of this decision, reflecting the need for Retailers to update their systems and processes.
- We have updated the "standard text" to strike a better balance between the potential benefits and risks of customers entering into an advance payment arrangement with a Retailer.
- Retailers will be required to communicate the standard text regarding advance payment at the onboarding stage for **new** customers, and within three months of implementation for all customers who are currently **in contract**. Retailers will then

be required to communicate the standard text to all advance payment customers at a minimum of once every 12 months

- Retailers are not limited to using bills to communicate credit balances to their customers. Retailers can use other methods, but at a minimum will be required to communicate this information in writing once every three months.
- The proposed change has been updated to acknowledge that a customer's ability to change payment terms or switch to another Retailer will be subject to their terms and conditions if they are on a fixed term contract.
- Retailers will be required to make a credit refund to customers within 60 calendar days of issuing the final bill. Before doing so, Retailers are required to communicate an estimation of the credit or debit against the account and confirm what information they need in order to issue a credit refund (where applicable).
- We have included "Advance Payment" as a new defined term in the Customer Protection Code of Practice.
- In our [April 2021 call for information](#), we said we were not intending to introduce some form of "insurance" to protect customer credit in the event of a Retailer failure. After considering responses to the CFI and our consultation, this remains our position.
- We plan to assess the impact of this change in 12-18 months' time. If we conclude that this Change is not having the intended effect, then we will be open to exploring alternative options.

### Implementation timeframe

- **20 January 2022**      **Decision Published**
- **From 20 April 2022**      **Decision implemented**

Retailers are required to:

- Communicate the "standard text" to all **new** advance payment customers.
- Communicate the "information requirements" (to customers with credit against their accounts) in writing once every 3 months.
- Refund Credit to customers within 60 calendar days of issuing a final bill.

- **By 20 July 2022**      Retailers are required to have:
  - Communicated the "standard text" to all **in contract** advance payment customers.

Retailers are then required to:

- Communicate the standard text to all advance payment customers at a minimum of once every 12 months

## 1. Background

On 6 July 2021, Ofwat (“the Proposer”) [consulted](#) on its proposal to make a change to the Customer Protection Code of Practice (CPCoP). The proposed amendments to the CPCoP were intended to deliver greater protections for those business customers who have accrued credit against their accounts, for example through advance payment for services and deposits, including where the Retailer has exited the market or the customers’ account has been closed<sup>1</sup>.

Our consultation noted that in the event of an unplanned Retailer exit and insolvency, credit balances that are due to business customers may be at risk of being partially or wholly forfeited as there is currently no mechanism in place to ensure the recovery (partially or otherwise) of this money. We considered that this risks not only customers’ money, but also potentially risks lowering consumer confidence in the market.

Our consultation noted that Ofwat had undertaken research relating to customer credit balances in 2019 and 2020. The responses we received to our October 2019 request for Information (RFI) to Retailers suggested that, as of 30 September 2019, the total amount of credit held by Retailers was in excess of £100m. The data also suggested that approximately 15% of this credit was associated with Retailers’ former customers (for example, some of this credit could be attributable to customers who have changed supplier but did not claim a refund from their former Retailer prior to switching).

In April 2021, we issued a [call for information](#) (CFI) seeking views from stakeholders about the current arrangements for protecting customer money held by Retailers in the business retail market. Drawing together the findings from the 2019 RFI and the 2021 CFI we concluded that there were some gaps in customer protection that needed to be addressed. We noted that:

- Generally, Retailers do not take proactive steps in advising their customers that their credit balances may be at risk in the event of their Retailer becoming insolvent. Neither do Retailers advise customers that this risk could be mitigated by negotiating alternative terms and conditions or through switching to an alternative Retailer.

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<sup>1</sup> "Account closure" can relate to a range of different scenarios where the customer has stopped being served by a Retailer. For example, this can be where a customer has switched to another Retailer. It can also mean where a customer has ceased trading and the business premises has completely closed.

- Retailers are not required to return credit balances to their customers upon account closure.
- The potential for credit not to be returned to customers might be compounded by the lack of customer awareness of credit balances. Retailers are not required to keep their customers informed where credit has built up against their account.

## **2. The Change Proposal and reasons for the proposed changes**

The proposed amendments to the CPCoP that Ofwat consulted on were specifically focussed on providing additional protections to business customers in relation to credit – including in the event of a Retailer failure or in the event of a customer account closure.

In our consultation we stated that the Change Proposal was intended to achieve the following policy aims:

- a) Ensuring that customers have an appropriate level of awareness of the risk to their credit balances held by Retailers.
- b) Increasing customer awareness of the amount of Credit they have built up and of the alternative options available to them; and
- c) Requiring Retailers, where they can do so, to refund credit balances to customers.

In our consultation we also asked stakeholders to provide us with their views on the data that Ofwat could request to better understand the extent and scope of customer credit being held by Retailers. We are grateful for the feedback respondents provided to us. While we are not introducing a requirement for Retailers to submit data to us periodically as part of this change proposal, we do plan to assess the impact of this change in 12-18 months' time. At that point we will use the information provided by stakeholders to inform a data request to Retailers. If we conclude that this Change is not having the intended effect, then we will be open to exploring alternative options.

### **2.1 Ensuring that customers have an appropriate level of awareness of the risk to their credit balances held by Retailers**

The consultation outlined that the Change Proposal would apply to any customers who are presently on advance payment terms or customers that may enter into such arrangements in the future. The proposal noted that prior to the agreement of a new advance-payment contract, and on future bills, Retailers would be required to provide customers with "standard text" that is intended to increase their awareness of the

potential risk that any credit they built up could be lost should their Retailer become insolvent. For customers already on advance payment arrangements, it was proposed that Retailers would be required to advise them of this risk within two months of the CPCoP being updated and also on all future bills.

Throughout the remainder of this document this is referred to as the "standard text requirement".

## **2.2 Increasing customer awareness of the amount of credit they have built up and of the alternative options available to them.**

The Change Proposal noted that throughout a customers' contract, Retailers would be required to clarify on bills the amount of credit a customer has accrued against their account. When doing so, Retailers must remind the customer of the other options available to them. The consultation proposed that, as a minimum, customers should be advised that they could switch to an alternative Retailer if the terms offered are not satisfactory.

The Change Proposal also required Retailers to clarify what the credit related to. For example, it could relate to a security deposit that the customer was required to pay when the contract was agreed. Alternatively, it could relate to genuine overpayments that a customer may be able to reclaim or use to offset against future bills.

Throughout this remainder of this document this is referred to as the "information requirement"

## **2.3 Requiring Retailers, where they can do so, to refund credit balances to customers upon account closure.**

The Change Proposal proposed to require Retailers to refund credit to customers within 10 working days of issuing the final bill. The Change Proposal acknowledged that there may be circumstances where it could be difficult to make a refund to the customer and noted that Retailers are required to make refunds "where they can do so". We also proposed that Retailers would be required to retain a record of instances where the refund was made late or was unsuccessful.

We proposed that all of the above changes would be implemented one month after the date of our decision.

## **3. Evidence considered**

Our consultation closed on 9 August 2021.

There were 11 respondents (eight Retailers, one Wholesaler, CCW and the Association of Convenience Stores). We set out at [Appendix 2](#) of this document the consultation questions, a summary of the responses we received. 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:

- a) Ensure that customers have an appropriate level of awareness of the potential benefits and risks of paying in advance
- b) Increase customer awareness of the amount of credit they have built up and that alternative payment terms are available in the market; and
- c) Require Retailers, where they can do so, to refund credit balances to customers.

As noted at the beginning of this decision, we have made some updates to our original Change Proposal to take account of points raised by stakeholders in response to our consultation. The updated legal drafting can be viewed in [Appendix 1](#) of this document, with changes made following consideration of the consultation responses marked up. The areas where updates have been made are discussed further in the section below.

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 Our proposal to ensure that customers have an appropriate level of awareness of the risk to their credit balances held by Retailers.**

After considering the feedback from respondents we have decided to make some updates to this aspect of our proposed change. The relevant legal drafting changes are summarised at the end of this section.

Generally, most respondents were supportive of our proposal that customers who pay in advance are informed of the risk to their credit balances in the event that their Retailer becomes insolvent. Where concerns were raised, they were primarily focussed on not causing customers undue concern with the financial health of the market or their specific Retailer. Some Retailers suggested that the proposed text put too much emphasis on risks and did not sufficiently consider the benefits that advance payment terms can offer to some customers.

Some additional concerns were noted in relation to the requirement to communicate the standard text to all existing advance payment customers within two months of the CPCoP being updated. One Retailer noted that this would require them to send a bespoke communication to some of their customers and suggested that this would increase the operational cost of implementing this requirement.

A further concern we noted related to the frequency that Retailers would be required to communicate the standard text to their advance payment customers. Some Retailers considered that it was disproportionate to the risk faced by customers to require Retailers to communicate the standard text on every bill they issue.

In light of some of the concerns raised by respondents we have made the following updates to this element of our proposal.

### The standard text

We have made changes to the standard text. In our final update to the CPCoP, the standard text has been changed to read:

"Advance payment arrangements can provide customers with a useful way to manage their bills and customers may benefit from improved terms if they pay in advance.

However, advance payment customers should be aware that any credit accrued for services that have not yet been delivered might not be recoverable in the unlikely event that their Retailer becomes insolvent.

There are a number of payment arrangements available in the market. Customers can therefore explore what type of available payment arrangement best meets their needs"

The changes we have made are intended to better communicate the potential benefits as well as the risks of entering into advance payment terms.

We are mindful of concerns raised by Retailers that the requirement to communicate the standard text could result in some customers incorrectly concluding that their Retailer, or the market, is in a poor financial position. To reinforce the fact that this is a market wide message for all advance payment customers, we have made some updates to the FAQ section of our [Open Water website](#), where the standard text is also communicated to customers who are considering entering into advance payment terms. Retailers can decide whether it would be helpful to refer customers to this webpage when communicating the standard text. Retailers can also advise their customers that Ofwat has required all Retailers in the market to communicate this information to their advance payment customers.

### The requirement to communicate the standard text to all in contract advance payment customers within two months of the CPCoP being updated

We noted the concerns raised by some Retailers regarding their ability to communicate the standard text to all of their advance customers within two months of the CPCoP being updated and of the costs involved in meeting this requirement. We have decided therefore to require Retailers to communicate the standard text in writing to all of their in-contract advance payment customers within three months of the decision being implemented. This means that Retailers have up to six months following the date of our decision (up until 20 July 2022) to communicate the standard text to their existing in contract advance payment customers. We consider that by extending the implementation timeframe, Retailers should be in a better position to meet this requirement. The extended timeframe should also help Retailers to better manage the cost and operational impact on their organisation. It should be noted that from three months following our decision (from 20 April 2022) Retailers will still need to communicate the standard text to any potential new customers before confirming terms and conditions.

### The requirement to communicate the standard text on bills on an ongoing basis

We have listened to the concerns raised about the proportionality of requiring Retailers to communicate the standard text to their advance payment customers on every bill. Given that Retailers will also be required to regularly notify their customers if they are in credit, we do not consider that there is a strong case to require the standard text to be included on every bill. We have therefore decided to require all Retailers to communicate the standard text to their advance payment customers at a minimum of once every 12 months.

Several Retailers questioned whether the proposal was necessary. Some argued that business customers are adequately informed about the risks involved in building up credit balances and the alternative payment options available to them. As we noted in our consultation, the research we have previously undertaken in 2019 indicated that Retailers were holding customer credit in excess of £100m. Approximately 15% of this credit was associated with their former customers.

In our [2020 - 21 State of the Market review](#), we noted that the percentage of eligible business customers who are aware of the market fell to 43%, compared to 58% at the end of the third year. The drop in market awareness is primarily associated with micro customers (businesses with 0 – 9 employees). Our review also noted that these customers were some of the least active in the market. Defra recently consulted on a new [Strategic Policy Statement](#) (SPS) for Ofwat. In the draft SPS Defra notes that Ofwat should "Protect the interests of micro and small business customers that are not

engaged in the water retail market using competition and/or regulation as appropriate."

Given that customer awareness remains relatively low among customers who are less active in the market, and there is no mechanism in place to protect credit balances in the event of a Retailer failure, we consider that the requirements we are introducing are necessary and proportionate to the risk faced by customers.

CCWater was supportive of this proposed requirement but also encouraged Ofwat to include an additional requirement for separate specific communication on the risks involved with paying in advance. They noted that some Retailers have advance payment terms in their default contracts and stated that it is important for these customers to be fully aware of any alternative options if they are concerned about the level of credit they are accruing. We do not consider it is necessary to ask Retailers to issue a further communication highlighting the potential risk to their credit balances. As noted above, this requirement already obliges Retailers to communicate the standard text to new and in contract advance payment customers on an ongoing basis. In addition, we consider that the proposed "information requirements" should ensure that all customers are aware of any credit being accrued against their accounts. The information requirements will also ensure that all customers with credit against their account are advised that they can contact their Retailer to explore any alternative payment terms available to them or to discuss whether they can claim a credit refund.

CCWater also noted that in some cases customers who pay by Direct Debit (DD) were likely to accumulate credit against their account. CCWater said that some DD customers are exposed to the same risks faced by advance payment customers. CCWater urged Ofwat to amend the proposal so that the standard text was also communicated to all DD customers. After giving this proposal some consideration, we have concluded that it would not be proportionate to include all DD customers under the standard text requirement. We consider that there is a distinction in the level of risk faced by customers who gradually accrue credit against their account through DD payments when compared to customers who pay six to 12 months in advance. We are also concerned that expanding the standard text requirement to include all DD customers could result in some unintended consequences. For example, it could deter some customers from using DD and result in them using less reliable forms of payment. We consider that our proposals as drafted will increase protections for DD customers who accrue credit against their account. The information requirements will ensure that DD customers who are "overpaying" are alerted to credit building up against their account. It will also ensure that these customers are advised that they can speak to their Retailer about potentially recovering credit or if they can change payment terms.

#### **Changes to the proposed legal drafting**

## Insert new to section 7. Provision of information by a Retailer to its Non-Household Customers

### 7.1.9. "Information relating to Credit Balances"

- a) Where a customer has agreed to pay for services in advance, the Retailer is required to advise the customer ahead of agreeing the terms and conditions of supply, ~~and on all future bills~~, that they could potentially lose any credit accrued against their account should the Retailer become insolvent.

Retailers are required to include the following standard text when clearly communicating this information to their customers:

~~In the unlikely event that your Retailer goes out of business, Ofwat's Interim Supply arrangements will make sure you'll be allocated a new Retailer and continue to receive a water and sewerage supply. However, customers should be aware that any credit they have accrued for services that have not yet been delivered might not be recoverable should their Retailer become insolvent.~~

*"Advance payment arrangements can provide customers with a useful way to manage their bills and customers may benefit from improved terms if they pay in advance.*

*However, advance payment customers should be aware that any credit accrued for services that have not yet been delivered might not be recoverable in the unlikely event that their Retailer becomes insolvent.*

*There are a number of payment arrangements available in the market. Customers can therefore explore what type of available payment arrangement best meets their needs"*

- b) For customers that are already on payment in advance terms, Retailers are required to provide the above information to the customer in writing within ~~32~~ 3 months of the updates to the CPCoP being ~~updated~~ implemented.
- c) Retailers will then be required to communicate the standard text to all of their advance payment customers at a minimum of once every 12 months.

## 4.2 Our proposal to increase customer awareness of the amount of Credit they have built up and also of the alternative options available to them

After considering the feedback from respondents we have decided to make some updates to this aspect of our proposed change. The relevant legal drafting changes are summarised at the end of this section.

Most respondents expressed support for improving customer awareness of their credit balances. Though several concerns were raised in relation to aspects of the drafting and the impact this could have on customers and Retailers. Some concerns were also raised by Retailers about their ability to put in place necessary systems and process updates in time to meet the proposed requirements. These specific concerns are considered where we discuss the proposed implementation timeframe (at section 4.6).

Several respondents were concerned with the requirement to advise customers that they could switch to a different provider. Two Retailers thought that the proposed legal drafting didn't consider where customers are in a fixed term contract. It was suggested that the requirement, as drafted, could give some customers the false impression that they can switch away or change terms mid-contract without incurring a termination fee. We agree that this could be an unintended consequence of our original drafting. In reaching our final decision we have therefore amended the legal drafting to acknowledge that a customer's ability to change payment terms, or switch to another Retailer, will be subject to their terms and conditions if they are on a fixed term contract.

We noted some other concerns with regard to the information that was to be provided to customers every time a bill is issued. Some stated that they would find it difficult to integrate a credit balance update into their monthly bills and suggested that they would need to send a separate mailing to their customers containing this information. One Retailer suggested that the bills might not be the most effective way to communicate credit balances to customers. They thought this information could be presented via a webpage, where it can be set out in a helpful context for the customer.

In reaching our final decision we have concluded that bills are not the only method available to Retailers to improve customer awareness of credit balances and of the alternative payment options available to them. We consider that it would be beneficial to allow Retailers some flexibility in the way that they communicate the "information requirements" to customers and have made updates to the final legal drafting to reflect this. However, while allowing for this flexibility, we consider that there should be a minimum frequency that the information requirements are communicated to customers. We have therefore updated the legal drafting to require Retailers to communicate the information requirements in writing to customers at a minimum of once every three months.

CCWater suggested that improving customer awareness would not address the fundamental risk that customers could lose their credit in the event that their Retailer became insolvent. They considered that further protection should be provided to these customers and suggested the creation of a central fund that could cover all credit balances in the event of a Retailer failure. We are aware that similar arrangements exist

in Energy, where domestic customer credit balances are mutualised when a supplier fails. However, these arrangements do not apply to business customers.

In our [April 2021 CFI](#), we noted the possibility that customers are unknowingly placing their money at risk and consequently are not taking appropriate mitigating actions to protect it. The CFI set out a number of potential remedies and explained which remedies we were minded to implement, one of which was to improve customer awareness around the risks associated with accruing credit against their accounts and enabling them to make informed choices. This remedy is primarily being delivered through this Code Change. We also discussed the possibility of introducing some form of insurance for customers' credit balances so that customers do not bear a financial risk from their Retailer becoming insolvent<sup>2</sup>. However, we noted that the costs of such a scheme would likely fall (at least in part) on customers and concluded that this type of remedy would only be justifiable if there was significant evidence of customer detriment that could not be remedied through lighter-touch approaches. The responses that we have received to the CFI and our consultation on CP0010 did not provide any new evidence on this. For these reasons we do not plan to introduce a scheme to protect customer credit in the event a Retailer exits the market at this point in time. We plan to assess the impacts of CP0010 in 12-18 months' time. As noted earlier, if we conclude that this Change is not having the intended effect, then we will be open to exploring alternative options.

CCWater also suggested that the legal drafting should be amended to reflect that it is not just customers paying for services in advance that can accrue credit. Other payment arrangements (such as Direct Debit) can also result in this. They suggested that the information requirements need to extend to all customers that are on payment arrangements that could result in credit balances. We agree that the information requirements do apply to all customers that accrue credit against their account, not just advance payment customers. We have made updates to the legal drafting to clarify this point.

We have made an additional update to the information requirements that will require Retailers to advise customers with credit against their account that they can get in touch to discuss obtaining a credit refund. We acknowledge that customers might not be entitled to obtain a refund in all circumstances, but we consider it reasonable that customers can discuss that option with their Retailer.

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<sup>2</sup> This could be facilitated by all Retailers contributing to a fund which can be drawn on to reimburse customers upon a Retailer's insolvency. Another approach could be to require the payment by Retailers of premiums to a third party to provide cover for customers' credit balances.

## Changes to the proposed legal drafting

### Insert new to section 7. Provision of information by a Retailer to its Non-Household Customers

7.1.10 Where a customer has accrued credit against their account Retailers are required to ~~prominently~~ clearly communicate the following information to the customer in writing, ~~when issuing a bill~~ at a minimum of once every 3 months:

- a) the amount of credit that they have accrued against their account
- b) what the credit relates to (e.g., Security deposit, an allowance refund, money paid in advance of services delivered, etc.).
- c) the customer can contact the Retailer should they wish to explore alternative payment terms or if they can obtain a credit refund (if available); and
- d) subject to contractual terms and conditions, customers can switch to an alternative Retailer if they are not satisfied with the terms on offer.

The requirements under section 7.1.10 apply to all customers that have accrued credit against their account, not just those on advance payment terms.

### 4.3 Our proposal to ensure that Retailers (where they can do so) refund credit balances to customers within 10 working days of issuing the final bill.

After considering the feedback from respondents we have decided to make some updates to this aspect of our proposed change. The relevant legal drafting changes are summarised at the end of this section.

We note that when we described this requirement in our consultation, we used the term "working days". We are aware that this term is not defined in the CPCoP. When updating the final legal drafting we have changed "working days" to "calendar days".

Most respondents were supportive of refunding credit to customers that have switched away or ceased trading, though many noted factors that would limit their ability to make a refund within 10 working days of issuing the final bill. A common example cited was where a customer had not provided the Retailer with a forwarding address or bank details. These types of scenarios were accounted for in our consultation and were one of the reasons why we decided to include the "where they can do so" provision in the legal drafting.

One Retailer suggested that our proposal could be updated so that Retailers would be required to include information on their final bill which would explain how customers can request a credit refund. It was suggested that, in cases where refunds could not be

immediately processed, this would prompt a customer to update their Retailer with the information they needed to process a refund.

One Retailer highlighted that it would be highly unlikely that Retailers would be able to obtain a final meter read within 10 working days of account closure. They suggested that, in many cases, the proposed change would require Retailers to make an "estimated" credit refund within 10 working days. They noted that once a meter read had been obtained, it could subsequently show that a Retailer had in fact overpaid a credit refund to the customer. It was suggested that this could then leave Retailers exposed to bad debt, as they may struggle to recover overpayments from former customers that have ceased trading or moved to a different address.

In light of the concerns raised by respondents we have made some updates to our decision and the associated legal drafting. Retailers are now required to refund credit to their customers within 60 calendar days of issuing the final bill. We consider that extending the timeframe from 10 working days to 60 calendar days should provide Retailers with a greater opportunity to obtain meter reads ahead of issuing a credit refund to their customers.

We recognise that, at the end of their contract, customers can also play a role in assisting Retailers in administering an accurate refund. We have therefore updated the final legal drafting so that, at the end of contract, a Retailer will be required to communicate to their customers an estimation of the credit or debit against the account and confirm what information they need in order to issue a credit refund (where applicable).

One Retailer proposed that the refund requirement should apply from a "baseline date". For example, the refund requirement would only apply to credit held by a Retailer six to 12 months prior to the date when the CPCoP changes come into effect. We have not included this suggestion in our final drafting. We consider that that it could unfairly place a limit on the amount of credit that a customer can recover from its Retailer, especially in cases where a customer has gradually built-up credit over a number of years.

CCWater supported the proposal that Retailers should be required to refund credit to customers at the end of contract. They also suggested that the protections be extended so that, unless customers opt out, credit balances above £0 are refunded to them at the end of each contract year. We are aware that Ofgem has [consulted](#) on introducing a similar requirement in Energy. However, if this measure is introduced in Energy, it will only apply to domestic customers. Such a requirement wasn't considered in the scope of our original Change Proposal. Nor are we aware of this approach being applied to business customers in other markets. Responses to our consultation also suggest that Retailers could encounter challenges in updating their systems to ensure refunds are

made on annual basis, especially given that many of their customers will be on different billing cycles. For these reasons we do not think implementing such an approach would be appropriate at this time. We plan to assess the impact of this Change Proposal in 12-18 months' time and at that point we will consider whether any further remedies might be appropriate.

### Changes to the proposed legal drafting

#### Insert new to section 9. Billing

9.2.5 Any final bill to be issued to a Non-Household Customer shall be issued within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply.

9.2.6 Following the Transfer or the termination or expiry of the Terms and Conditions of supply, Retailers will be required to clearly communicate to their customers:

- an estimate of the final credit or debit against the customer's account; and
- any additional information they require from the customer in order to issue a credit refund (where applicable).

9.2.7~~6~~. Retailers, where they can do so, are required to refund credit balances within ~~10 working~~ 60 calendar days of issuing the final bill, as per the conditions under section 9.2.5.

Retailers are required to retain a log of instances where they have not been able to refund credit balances within ~~10 working~~ 60 calendar days of the final bill being issued. Each Retailer's log should clarify the reason why the refund was late or unsuccessful.

#### **4.4 Our proposals that Retailers are required to retain a record of instances where they have not been able to refund credit to a customer within 10 working days of issuing the final bill.**

In reaching our final decision we have not made any changes to this aspect of our proposed change.

We noted concerns from Retailers that the proposal to retain records of instances where refunds could not be made within 10 working days would unnecessarily increase their regulatory burden. Several Retailers suggested that they would need to implement system changes in order to maintain these records. Some Retailers also queried the rationale behind this proposed requirement and queried how it would protect customers.

We do not consider that the proposed requirement goes beyond what should be considered to be good housekeeping. As discussed previously, we anticipate that there might be circumstances where credit can't be immediately refunded due to a Retailer not having a customer's forwarding address or bank details. In such circumstances, it is reasonable to expect that a record is retained in the event that the customer reengages with the Retailer at a later date and requests a refund. As noted earlier, we have now extended the timeframe for credit refunds to be made from 10 working days to 60 calendar days. We consider that this should increase the scope for Retailers to make refunds on time and also reduce the need for records to be retained.

CCWater was supportive of requiring Retailers to maintain a record of instances where they were unable to make a credit refund. Though they noted that it was not clear what would constitute an acceptable reason for a Retailer not making a refund within the required timeframe. CCWater suggested that the use of "where they can do so" in the legal drafting could be open to wide interpretation. CCWater considered that the reasons why a Retailer would be exempt from making a refund need to be defined otherwise the retention of records would provide limited protection to customers.

We acknowledge that the drafting of the "refund requirement" does provide Retailers with some leeway in making refunds. However, it is not intended to accommodate standard administrative failings by the Retailer. As noted earlier, there are established reasons why Retailers might struggle to make a refund. Such as cases where a customer has historically made a payment by cheque, has left the business premise, and has not provided the Retailer with a forwarding address. We also anticipate that novel cases may emerge where it may be reasonable for the Retailer not to have made a repayment within 60 calendar days. On this basis, we have opted against including an exhaustive list of examples where Retailers are permitted not to have made refunds within the required timeframe. In terms of offering protection to customers, we consider that the requirement to maintain these logs should be considered alongside the option of Ofwat potentially requesting these records if concerns arise that a specific Retailer is failing to meet the terms of the CPCoP. We consider that these two elements together should deter Retailers from unnecessarily delaying credit refunds to their customers.

One Retailer expressed concern that they were being asked to retain records or report records in order to show compliance with the CPCoP. They suggested that this would indicate a new direction of travel for regulation over code compliance. As noted above, we do not consider the requirement to retain such records goes beyond what Retailers should already be doing. In addition, this is not the only occasion where Retailers have been required to retain records under the CPCoP. As part of [CP0009](#) we required Retailers to retain a record of the number of customers who were on their repayment plans and the extent of debt recovery action undertaken.

One Retailer raised concern in relation to ensuring compliance with General Data Protection Regulations (GDPR) when retaining logs. They noted that the proposal didn't state how long data should be held for or for what it would be used for. They suggested that an alternative approach could be to allow Retailers to use their billing systems to show whether a refund has been made and within what timescale, and if not, to include a note explaining why. The change proposal does not specify how Retailers should retain these records. We are happy for Retailers to approach this requirement as they see fit. Though, should Ofwat request this data, it is important Retailers can pull this information together in a clear, understandable, and shareable format. With regard to the concerns raised about GDPR, we don't anticipate any issues should arise if customer details are removed. Retailers can log where credit, relating to a specific period and SPID, was not refunded at the end of contract.

#### 4.5 Advance payment – definition

In response to our consultation some parties have asked for more detail around our definition of an advance payment customer. For the sake of clarity, where we refer to advance payments for the purpose of the Change Proposal, we are referring to where customers are making payments towards their bill before a water and/or sewerage service is actually received.

In the updated legal drafting, we have added "Advance payment" as a new defined term in the CPCoP.

#### Changes to the proposed legal drafting

##### Insert new to section 1. Definitions and interpretation

Term	Definition
Advance payment	Where customers make payments towards their bill before a water and/or sewerage service is actually received

#### 4.6 The implementation period

The majority of Retailers raised significant concerns about the proposed implementation date. Most Retailers stated that they would find it extremely challenging to be in a position to comply with the proposed requirements within one month of Ofwat publishing its decision. It was specifically noted that system updates would be needed in order to meet the requirement to increase customer awareness of credit balances and the requirement to refund credit balances at the end of contract.

Some Retailers suggested that the implementation date should be three to six months following the decision being published. Others suggested that the implementation date be pushed out to April 2022.

Several Retailers provided an estimated view on the additional costs required in order to implement the proposed requirements. One Retailer suggested that it would cost them in the region of £100k to communicate the "standard text" to in-contract advance payment customers that couldn't be contacted by email. Two Retailers suggested it would cost in the region of £30k to £60k to put in place the necessary system updates to meet the proposed requirements. One of these Retailers suggested it would then cost them £30k annually to implement the proposed requirements on an ongoing basis.

Unfortunately, the responses lacked sufficient detail for us to determine whether these forecasts presented an accurate estimate of the cost of implementing the Change Proposal. However, we acknowledge that the new requirements will come at a cost to Retailers.

Having carefully considered all the concerns raised by Retailers we have decided that there is merit in extending the implementation date from one month to three months following our decision. We consider that this additional time should allow Retailers to better manage the cost and operational impact of putting in place the necessary system updates in order to meet the updated terms of the CPCoP. As noted earlier, we have also made updates to the legal drafting which allow Retailers more flexibility in how they communicate the "information requirements" to customers, rather than being obliged to communicate this information via bills. We consider that this update to the legal drafting should also help to reduce the cost impact of implementing these requirements.

We have decided that the implementation date of this decision should be **20 April 2022**. We intend to publish an updated version of the CPCoP ahead of this date.

We acknowledge that some elements of this decision will come into effect on different dates. For ease of reference, we set out the implementation timeframe for all aspects of the change on page two of this decision.

## **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 – Legal drafting

### Insert new to section 1. Definitions and interpretation

Term	Definition
<u>Advance payment</u>	<u>Where customers make payments towards their bill before a water and/or sewerage service is actually received</u>

### Insert new to section 7. Provision of information by a Retailer to its Non-Household Customers

#### 7.1.9. "Information relating to Credit Balances"

- a) Where a customer has agreed to pay for services in advance, the Retailer is required to advise the customer ahead of agreeing the terms and conditions of supply, ~~and on all future bills,~~ that they could potentially lose any credit accrued against their account should the Retailer become insolvent.

Retailers are required to include the following standard text when clearly communicating this information to their customers:

~~In the unlikely event that your Retailer goes out of business, Ofwat's Interim Supply arrangements will make sure you'll be allocated a new Retailer and continue to receive a water and sewerage supply. However, customers should be aware that any credit they have accrued for services that have not yet been delivered might not be recoverable should their Retailer become insolvent.~~

"Advance payment arrangements can provide customers with a useful way to manage their bills and customers may benefit from improved terms if they pay in advance.

However, advance payment customers should be aware that any credit accrued for services that have not yet been delivered might not be recoverable in the unlikely event that their Retailer becomes insolvent.

There are a number of payment arrangements available in the market. Customers can therefore explore what type of available payment arrangement best meets their needs".

- b) For customers that are already on payment in advance terms, Retailers are required to provide the above information to the customer in writing within ~~32~~ 3 months of the updates to the CPCoP being updated/implemented.
- c) Retailers will then be required to communicate the standard text to all of their advance payment customers at a minimum of once every 12 months.

7.1.10 Where a customer has accrued credit against their account Retailers are required to ~~prominently~~ clearly communicate the following information to the customer in writing, when issuing a bill at a minimum of once every 3 months:

- a) the amount of credit that they have accrued against their account
- b) what the credit relates to (e.g., Security deposit, an allowance refund, money paid in advance of services delivered, etc.).
- c) the customer can contact the Retailer should they wish to explore alternative payment terms or if they can obtain a credit refund (if available); and
- d) subject to contractual terms and conditions, customers can switch to an alternative Retailer if they are not satisfied with the terms on offer.

The requirements under section 7.1.10 apply to all customers that have accrued credit against their account, not just those on advance payment terms.

### **Insert new to section 9. Billing**

9.2.5 Any final bill to be issued to a Non-Household Customer shall be issued within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply.

9.2.6 Following the Transfer or the termination or expiry of the Terms and Conditions of supply, Retailers will be required to clearly communicate to their customers:

- an estimate of the final credit or debit against the customer's account; and
- any additional information they require from the customer in order to issue a credit refund (where applicable).

9.2.76. Retailers, where they can do so, are required to refund credit balances within ~~10 working~~ 60 calendar days of issuing the final bill, as per the conditions under section 9.2.5.

Retailers are required to retain a log of instances where they have not been able to refund credit balances within ~~10 working~~ 60 calendar days of the final bill being issued. Each Retailer's log should clarify the reason why the refund was late or unsuccessful.

## Appendix 2 – 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) **Ensuring that customers have an appropriate level of awareness of the risk to their credit balances held by Retailers**
  - b) **Increasing customer awareness of the amount of Credit they have built up and also of the alternative options available to them**
  - c) **Retailers – where they can do so - are required to refund credit balances to customers upon account closure; and**
  - d) **Retailers will be required to retain a record of instances where they have not been able to refund credit to a customer within 10 working days of issuing the final bill.**

### **Ensuring that customers have an appropriate level of awareness of the risk to their credit balances held by Retailers**

The majority of respondents supported the intention of this proposed requirement. One Retailer noted that it was reasonable that customers who pay in advance for services are made aware of the risk to their credit balances should their Retailer become insolvent.

A Retailer agreed that the requirement seemed reasonable provided that the language used did not unnecessarily alarm customers. On this point, several Retailers did express concern that the proposed standard text could result in customers concluding that there was something wrong with their specific Retailer or the financial position of the market.

A respondent asked for clarity around the meaning of advance payment, querying whether customers which pay by direct debit and those on unmeasured default terms are deemed to fall within this definition.

One Retailer suggested that the proposal put undue emphasis on the "risks" of pre-payment arrangements and did not consider the benefits that such terms can provide to customers. The same Retailer thought that there was a case for new customers entering into an advance payment contract to be made aware that their credit could be lost in the event of the Retailer becoming insolvent, but only at the point of agreeing those terms. They did not consider it would be appropriate for all "in contract" prepaying customers to be advised of this potential risk.

Several Retailers expressed concerns about the proportionality of the requirement to communicate the standard text to advance payment customers on every bill issued.

Several Retailers highlighted the challenges involved in communicating the standard text to all of its in-contract advance payment customers within 2 months of the CPCoP being updated. One Retailer stated that they would need to issue a special communication to a significant number of customers in order to meet this requirement and noted that this would come at a substantial operational cost.

Several Retailers questioned whether the proposal was necessary. Some argued that business customers are adequately informed about the risks involved in building up a credit balances and of the alternative payment options available to them. One Retailer noted that an equivalent "standard text" obligation wasn't in place for business customers in the Energy market.

CCWater was supportive of this proposal but encouraged Ofwat to increase the levels of customer protection being proposed. CCWater argued for the inclusion of a further requirement whereby Retailers would be obliged to issue a specific separate communication on the risks involved with paying in advance. CCWater noted that as some Retailers have advance payment terms in their default contracts, it is especially important for these customers to be fully aware of any alternatives if they are concerned about the level of credit they are accruing. CCWater stated that if this additional requirement was implemented, they would be willing to work with Ofwat to assess how well Retailers are communicating with their customers in this area.

CCWater also noted that, as the proposal is currently drafted, the standard text requirement is limited to those on advance payment terms. CCWater urged Ofwat to amend the proposal to include Direct Debit (DD) as a payment option under the communication requirement for Retailers.

### **Increasing customer awareness of the amount of Credit they have built up and also of the alternative options available to them**

The majority of respondents expressed support for this proposed change. Though some concerns were raised in relation to aspects of the proposed legal drafting and the impact this would have on customers and Retailers.

One Retailer agreed that it would be helpful to provide additional information as to the nature of a customer's credit balance, whether any services have been paid for in advance and the alternative arrangements available to them. They considered that this would help customer understanding and alleviate concern.

One Retailer suggested that they would find it difficult to implement system changes that would enable them to confirm the different components of credit balances to customers via bills. They suggested that an alternative approach would be to allow

Retailers to write separately to affected customers every six months to confirm the current credit balance and their right to switch. Linked to this suggestion, another Retailer stated that bills might not be the most effective way to communicate credit balances to customers. They thought that this information could be presented to customers through other methods.

A Retailer asked for further consideration to be given to the scenarios where credit can be "accrued". They observed that where customers pay in advance, the account will never actually be in credit as the payment will offset the value of the debit bill raised at the outset. They noted that the amount of credit against an account will diminish with each passing month and suggested that this would require the customer to be provided with monthly updates on their credit balance. The Retailer argued that the proposed requirement was a disproportionate response to the risk customers face. As an alternative approach, they suggested that bills could direct customers to an account webpage where the required information can be set out in a helpful context for the customer.

Several Retailers were concerned with the requirement to advise customers that they could switch to a different provider. Some Retailers thought that the drafting did not consider where customers are in a fixed term contract. It was argued that the requirement in its current form could be giving some customers the false impression that they can switch away or change terms mid-contract.

CCWater stated that just ensuring that customers were better informed would not be sufficient to address the risk to their credit. They considered that the proposed changes would not result in significant numbers of customer moving away from advance payment terms. CCWater suggested that, in the event of a Retailer failure, protection should also be provided to those customers that have made a decision to continue with advance payment terms and built-up credit against their accounts.

CCWater suggested that a central fund could be created that would cover all credit balances in the event of a Retailer failure. They suggested that this could potentially be funded by a combination of market performance charges (both MPS and OPS), and credit that Retailers have been unable to return to customers with closed accounts. Though they also noted that this was potentially one of a range of regulatory options that could be explored.

### **Retailers – where they can do so - are required to refund credit balances to customers within 10 working days of issuing the final bill**

Most respondents were supportive of refunding credit to customers that have switched away or ceased trading, though several Retailers noted factors that would limit their ability to make a refund within 10 working days of issuing the final bill. For example, several Retailers noted that they would need to obtain and validate a customer's bank details before issuing a refund. It was also noted that where a customer has departed

from their business address and they have historically paid by cheque, a Retailer would need their forwarding details in order to issue a refund.

Another Retailer noted that where a customer has multiple accounts its policy is that debit balances on other accounts are paid before credits are returned.

One Retailer noted that it is highly unlikely that Retailers will be able to obtain a final meter read, either themselves or from the customer, within 10 working days of issuing the final bill. They suggested that if the CPCoP required Retailers to make a refund within 10 working days, some refunds would need to be based upon estimates. They argued that this could leave Retailers exposed to bad debt in cases where it later transpired that the Retailer made an overpayment of credit to a customer. A Retailer suggested that the proposal be amended to require Retailers to include information in the customer's final bill which explained how the customer can request a refund of their credit balance. It was suggested that, in cases where refunds could not be immediately processed, this would prompt customers to update their Retailer with the information required to process a refund.

A Retailer suggested that any new requirements under the CPCoP should apply from a "baseline date", potentially backdated six or 12 months from the time the CPCoP changes come into effect.

CCWater supported the proposal for credit on closed accounts to be reimbursed. Though it raised concern that this alone would not fundamentally address the current gap in customer protection in this area. CCWater noted that the greater risk to credit balances sits with customers who remain with their current Retailer, rather than with those who have switched. CCWater highlighted that market awareness is still low, therefore meaning the number of customers in the former category is likely to be significant. To address this concern, CCWater suggested that the proposed requirements could be enhanced to oblige Retailers to refund credit balances on an annual basis, unless the customer has specifically opted not to receive this.

### **Retailers will be required to retain a record of instances where they have not been able to refund credit to a customer within 10 working days of issuing the final bill**

Several Retailer respondents raised concern about the increased regulatory burden this requirement would impose on them. Some Retailers noted that system changes would be required for them to accurately record cases where credit wasn't refunded within the required timeframe.

Some challenges were noted in retaining an accurate record of cases where refunds were not made for multisite customers. Several Retailers stated that they were unclear of the rationale for recording this information, with one Retailer stating that it didn't understand how this requirement would protect customers.

One Retailer stated that it would be a significant undertaking to meet this requirement. They noted that they would need to track all final bills produced with a credit balance, with a check on the account balance 10 working days later to see if the credit has been cleared. The Retailer noted that this would likely to require a system update, which would take time to deliver. Another Retailer shared this concern, noting that meeting the requirement would require them to implement automated functions in their systems.

One Retailer stated that they were uncomfortable with the principle of being required to maintain specific records or report on compliance with specific elements of the CPCoP, as this would indicate a new direction of travel for regulation over code compliance. Instead, they proposed that Retailers should provide annual assurance that they are compliant with the whole code.

One Retailer raised a concern in relation to GDPR. They were not clear how the requirement would work in relation to Data Protection principles, as many of their customers will be sole traders. They noted that the proposal didn't state how long data should be held for or what it will be used for. They suggested that an alternative approach could be to allow Retailers to use their billing systems to show whether a refund has been made and within what timescale, and if not, to include a note explaining why. They suggested that these records could then be audited, and the account can be deleted in accordance with the Retailers archive and retention policy.

CCWater expressed support for introducing a requirement for Retailers to keep a record of where they have been unable to refund credit and the reasons why. CCWater noted that there needed to be further clarity on how this requirement will be monitored, and what may constitute an 'acceptable' reason for not refunding. CCWater suggested that the use of "where they can do so" could be open to wide interpretation. They were concerned that without further clarification these records may be limited in their value if Retailers are routinely failing to return credit on time.

One Retailer suggested that this proposal could be expanded to require Retailers to retain a log of occasions where they have not issued a final bill within 10 days of a customer requesting account closure / transfer to another Retailer.

## **2. We would welcome the views of respondents on:**

- a) The costs and associated risks of implementing the Change Proposal within the proposed timeframe;**
- b) The scope and operational impact of the Change Proposal;**
- c) Whether the respondents consider that the proposal is in line with the principles of the code and our statutory duties.**

In terms of the costs and impacts of implementing the Change Proposal within the proposed timeframe, many Retailers expressed significant concern about being able to meet the new requirements within one month after the date of the decision being issued. Noting the operational impact of the proposal, many Retailers suggested that system updates in addition to ongoing administrative resources would be needed to implement all of the proposed requirements. Some Retailers suggested that the implementation date should be three to six months following the decision being published. Others suggested that the implementation date be pushed out to April 2022.

One Retailer noted that they would face significant challenges and costs in order to communicate the "standard text" to all in-contract advance payment customers within 1 month of the decision being published. The Retailer suggested that the requirement be adjusted to apply to all future bills from the two-month deadline, and otherwise to be communicated to in contract advance payment customers in writing no later than 31 March 2022.

When specifically considering the costs involved in implementing the change proposal, it was noted by several Retailers that the requirement to make a refund within 10 working days could be subject to correction if the final meter read subsequently indicated that the customer was actually in debit. It was suggested that Retailers would incur additional costs chasing balances and also inconvenience customers receiving contact about an account they believed was settled. Another Retailer suggested that the limited time permitted to meet this specific requirement could expose all Retailers to an increased bad debt risk.

One Retailer noted that making changes to bills and bill messaging can take time and may be expensive to administer depending on the extent of customisation required. It agreed that customers should be informed about the risks associated with accruing credit but considered that Retailers should have flexibility about how this is best achieved.

Several Retailers provided an estimated view on the additional costs required in order to implement the proposed requirements and to continue to comply with the CPCoP on an ongoing basis. One Retailer suggested that it would cost in the region of £100k to communicate the "standard text" to in-contract advance payment customers that couldn't be contacted by email. Two Retailers suggested it would cost in the region of £30k to £60k to put in place the necessary system updates to meet the proposed requirements. Another Retailer suggested it would cost them a £30k annually to implement the proposed requirements on an ongoing basis. Unfortunately, the responses lacked sufficient detail for us to determine whether these forecasts presented an accurate estimate of the cost of implementing the Change Proposal.

Some Retailers noted that the proposed requirements could potentially result in customers changing the way that they make payments to their Retailer. It was suggested that this could then have an impact on the working capital costs of serving these customers. One Retailer noted that there was a risk that the Change Proposal could have an adverse impact on its specific business model, noting that it was consistently growing through switching SMEs in the market.

CCWater stated that there was a risk that unmeasured customers are at risk of not being covered by this change proposal. They urged Ofwat to include these customers in the CPCoP change. When consulting on our proposed change we noted that unmeasured customers were considered in scope. We consider that unmeasured customers continue to be accounted for under the proposed requirements. Therefore, no further updates have been made to the legal drafting in response to this point.

The majority of respondents considered that the Change Proposal is in line with the CPCoP and consistent with our statutory duties. One Retailer observed that the change clearly promotes the key principles of the CPCoP by ensuring a greater level of transparency in the market, including both the timely and accurate provision of information to customers as well as clarity, where circumstances prevent clear communication, through the retention of logs. They also agreed that this change is aligned to Ofwat's statutory duties. In particular the key duties of promoting customer interests and ensuring water supply licensees and sewerage licensees properly carry out their licensed activities and statutory functions.

A small number of Retailers expressed concern. One Retailer argued that the proposed requirements were not fully justified by the Code principles relating to provision of information and Ofwat's statutory duties relating to proportionate and targeted regulatory action. Another Retailer questioned whether the proposal achieved a good balance between promoting competition and protecting customers' best interests.

CCWater noted that the change proposal should result in greater transparency and enable customers to potentially make more informed choices. They stated that if the required billing information is communicated clearly, customers will benefit from information in plain and clear language. Though CCWater also encouraged Ofwat to consider taking more substantial action to protect customer credit balances.

**3. In section 5 (page 9 of our consultation), we listed some examples of data that Ofwat could request to fully understand the extent and scope of customer credit being held by Retailers. We would welcome further thoughts from stakeholders on:**

**a) The data that respondents suggested that Ofwat could request from Retailers**

- b) If there is anything missing from this list; and**
- c) How frequently should data be requested to provide Ofwat with an accurate understanding of the extent and scope of customer credit being held by Retailers.**

Several Retailers noted that they could understand why Ofwat was interested in obtaining more insight in this area and noted that they could produce the data set out in our consultation. However, other Retailers suggested that it would be very difficult to truly understand the context behind the amount of credit held by Retailers due to the range of factors effecting the amount of credit held by a Retailer at any given time. One Retailer stated that a true understanding could only be obtained by establishing the underlying reasons why the credit was held. They added that Ofwat would need to undertake granular analysis in order to do this and did not consider this to be a proportionate response to the actual risk to customers.

One Retailer noted it would be difficult to report on the credit balances for customers in England where they provide multiple services on one invoice. They suggested that any data requests of this nature would result in increased costs due to the additional reporting that would be required. This point resonated with concerns raised by other Retailers about the increased regulatory burden resulting in additional costs.

One Retailer stated that it was hard to see to what regulatory purpose these reports could serve.

Some Retailers helpfully highlighted areas where any data requests from Ofwat would need additional clarity. These areas included:

- The definition of a customer
- The definition of the segregated groups, as set out in the consultation
- How to age customer credits (e.g., by the date of overpayment or when a customer account is closed.); and
- The definition of advance payment

A Retailer noted that many different payment arrangements could lead to a credit balance accruing. For example, if a customer mistakenly overpays, or a bill is subsequently revised downward due to a meter read being obtained after a previous higher estimate. The Retailer suggested that it will be important to narrow the definition to those arrangements where it is intended or inevitable for a credit balance to accrue.

One respondent suggested that Ofwat could ask Retailers to segment credit data by customer payment method. We understand that the intention of this would be to help

Ofwat understand if a proportion of the credit balances held are due to Retailers not holding customer bank details to make refunds. Linked to this suggestion, a Retailer suggested that Ofwat could ask for Retailers to confirm the value of Credit held for customers that have switched to an alternative provider. When doing so Retailers could be asked to confirm how long the credit has been held for.

CCWater also expressed support for Ofwat gathering further data to establish a comprehensive view on the extent of customer credit being held by Retailers. They suggested that it would also be useful to know whether customers with credit balances are on deemed or negotiated contracts.

One Retailer mentioned that it would be helpful if the information gathered could be shared with other Retailers. It was suggested that this could give Retailers more confidence to opt into the interim supply arrangements.

In terms of how frequently data should be requested, several respondents urged caution about unnecessarily increasing the regulatory burden for Retailers and suggested that data be submitted on an annual basis. In terms of timing, several Retailers suggested that the data be submitted at the end of each financial year. Some Retailers suggested that the data be consolidated as part of their existing regulatory returns.

One Retailer noted that there have been discussions around developing a risk assessment model to identify those Retailers which are at most risk of a disorderly exit from the market. They suggested that Ofwat should use such risk assessments to require additional data only from those Retailers most at risk of insolvency.

#### **4. Do you have any comments on our proposed implementation date?**

Earlier in this appendix we noted that we received significant concerns from Retailers with regard to the proposed implementation date of 1 month following the date of decision. The challenges we noted were mainly focussed on the ability of Retailers to resource, fund and deliver necessary system updates to meet the new requirements within the proposed timeframe. With this in mind several Retailers suggested that the new requirements should not be implemented until the new financial year (April 2022). One Retailer suggested that a three-month implementation timeframe should be sufficient to implement these changes.

#### **5. Do you have any other comments on the draft legal text that seeks to give effect to our proposed changes to the CPCoP?**

We received several suggested updates to the proposed legal drafting, some of which have been referenced earlier in this appendix.

One Retailer suggested that the legal drafting should be updated to note that customers on a fixed term contract may not be able to switch away without incurring a termination fee.

Another Retailer considered that the legal drafting be updated so that Retailers are required to retain a log of instances where they have not been able to issue the final bill within six weeks of the account being closed.

A Retailer suggested that the legal drafting be amended so that all new advance payment customers are informed of the "standard text" within two months of the CPCoP being updated, then all in-contract customers being provided this information no later than 31 March 2022.

Another Retailer noted that they did not agree with the scope of the proposal and suggested that the legal drafting be updated to limit the change proposal to delivering the following requirements:

- A requirement to inform customers of the benefits and risks of prepayment terms at the point when a contract is agreed, or where a new customer is acquired by default.
- A requirement to regularly update customers on the level of credit on their account and the reason credit has accrued.
- A requirement to refund customers within 10 business days of obtaining a final meter reading (where the customer is metered) – following the provision of any necessary information (i.e., bank account details of customer paying by BACS).
- A requirement to ensure Retailers terms and conditions make clear how prepaying customers will be refunded credit upon account closure.
- A requirement for Retailers to provide an annual assurance statement on their compliance with the CPCoP.

CCWater suggested that the legal drafting relating to the information requirements should be amended to reflect that it is not just customers paying for services in advance that can accrue credit. They noted that other payment arrangements can also result in this.

CCWater also suggested that the legal drafting at section 9.2.6. should be tightened up as it could be subject to wide interpretation. CCWater suggested that the requirement for Retailers to refund credit balances "where they can do so" needed to be more defined so that customers are not subjected to unreasonable delays.

## 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 are aware of the potential benefits and risks associated with entering into an advance payment arrangement. The Change Proposal further supports this principle by ensuring that customers are aware of any credit that they build up against their account and that alternative payment terms are available in the market. Finally, the Change Proposal promotes fairness and honesty by requiring Retailers to make efforts to return credit balances to their customers at the end of contract.

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

The Change Proposal requires Retailers to use standard text to clearly communicate to their customers the benefits and risks of entering into an advance payment arrangement. It also clearly defines additional information that Retailers are required to communicate to customers, which should improve customer awareness around credit balances and that alternative payment options are available in the market. Finally, the change proposal ensures that Retailers make clear to customers what additional information they may need in order to facilitate a credit refund.

### **Retailers shall ensure they provide appropriate and timely information to Non-Household Customers to enable them to make informed choices;**

The Change proposal supports the above principle by ensuring that all customers entering into advance payment arrangements are advised of the potential benefits and

risks of such terms before confirming terms and conditions. Customers who build up credit against their account will receive regular notifications from their Retailer, which will advise the customer of the amount of credit against their account and that they can speak to their Retailer if they want to explore whether alternative payment terms are available to them or if they can obtain a credit refund. Finally, at the end of contract, customers will receive a communication from their Retailer to advise them if they need to submit any further information in order to obtain a credit refund.

**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

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