

**Business Retail Market: Proposals to deal with un-invoiced
Wholesaler charges in the event of an unplanned Retailer exit
Response of Castle Water Limited**

This is the response of Castle Water Limited to Ofwat's consultation on the above proposals.

1. Does our proposed approach deliver the following policy aim in a way that is consistent with our statutory duties?

"in the event of a Retailer's unplanned exit from the business retail market, a Wholesaler should be able to recover relevant un-invoiced revenues for services that the Wholesaler has provided to that Retailer - but were not due for invoicing or had not been invoiced - at the point of Retailer failure." [emphasis added by respondent]

No.

The proposed change to the Business Terms does not reflect the stated aim of enabling Wholesalers to draw on credit security to recover un-invoiced revenues only *'in the event of a Retailer's unplanned exit'*.

As drafted, it is much wider. It allows a Wholesaler to draw on credit security in respect of un-invoiced sums in all circumstances, and thus subverts the effect of the original drafting.

This may be an opposite and corresponding 'untended effect'. It is, however, in direct conflict with Ofwat's duties:

- To protect the interests of consumers (specifically, by exposing Retailers' customers to a risk that the existing drafting was designed to forestall);
- To *secure* that water supply or sewerage licensees' authorised activities are properly carried out (specifically, by exposing them to unwarranted additional financial risk);
- To *secure* that appointees show no undue discrimination to such licensees (specifically, by the overly unfettered exercise of their credit security rights); and
- To do so in a proportionate and targeted manner (specifically, by adopting measures that go beyond those necessary to achieve the objective).

The statutory term 'secure' is emphasised above to stress the strength of this obligation. We suggest below an alternative formulation that avoids these conflicts.

2. Do you agree that it is appropriate to apply company specific Totex cost sharing rates to amounts relating to un-invoiced revenue to be recovered via the RFI mechanism in the event of a Retailer failure?

We note only that there are a number of references to what Ofwat 'expects' by way of evidence that, for example, Wholesalers have used 'all reasonable endeavours' to offset any outstanding balances before the recoupment process; but that the document is somewhat light on specifics as to what evidence will be required; and what scrutiny will be applied and in what way.

3. Do you have views that alternative approaches may be more effective or straightforward to implement?

Not in relation to Totex and the RFI (Question 2). As to the proposed Code change, see below.

4. Do you agree with the proposed change to the WRC? Please explain your answer.

No. See the response to Question 1.

5. Do you agree with proposed amendments to the legal drafting? Please explain your answer.

No. It would achieve the aim if the existing drafting were left unchanged and the carve-out for amounts 'due' effected by a codicil along the lines:

'The references in [this] Section 9.14.2 to amounts due shall be disregarded in respect of a Contracting Retailer where the Authority has issued a Notice of Cessation of Supply in respect of that Contracting Retailer pursuant to the Interim Supply Code as defined in the document of that name issued by the Authority as amended from time to time.'

6. Do you agree that the proposed change to the WRC furthers the objectives and principles set out in WRC Schedule 1, as described in section 4 above?

No. Unless altered in the way proposed above, the proposal would improve the effectiveness of credit arrangements in the event of Retailer failure only at the cost of imposing additional potential burdens on existing and future customers of Retailers at all other times. It would therefore offend the primary principle of the WRC.

Similarly, it would hinder the development and sustainment of an effective market by undermining the protection afforded to existing and prospective Retailers on which the current provision was based; reduce transparency and clarity for such Retailers under normal conditions; and detract from efficiency by imposing costs on Retailers through uncertainty over its use by Wholesalers in such conditions.

These adverse effects could be avoided, and the relevant principles furthered, by adopting the amendment to the Code change that is described above.

Castle Water Limited

29 October 2021