

Customer Protection Code of Practice Change Proposal – Ref CP0011

Modification proposal	Customer Protection Code Change Proposal – CP0011 – Proposal to amend the CPCoP to protect Retailers from allegations that they are not treating customers fairly by charging them based on unmeasured (unmetered) tariffs
Decision	The Authority has decided to reject this Change Proposal
Publication date	24 March 2022
Implementation date	n/a

We are rejecting this Change Proposal

On 28 October 2021, we [consulted](#) on our proposed decision to reject a change to the Customer Protection Code of Practice (**CPCoP**) which was raised by Castle Water (“**the Proposer**”). It had proposed an amendment to the CPCoP to protect Retailers from allegations that they are not treating customers fairly by charging them based on unmeasured (unmetered) tariffs (“**the Change Proposal**”).

We received 15 responses to the consultation which closed on 25 November 2021 (six from Retailers, eight from Wholesalers and one from CCW). The vast majority of those respondents supported our decision to reject the Change Proposal and agreed with our reasons for doing so, namely that:

- by charging a customer based on an unmeasured tariff and simply passing on the wholesale charge levied by the Wholesaler, the Retailer could not be deemed to be treating a customer unfairly, or of being dishonest, under the existing market rules.
- the proposed change to the CPCoP was not necessary and would not add to the protections for customers which the CPCoP is intended to deliver.

The majority of respondents also welcomed the clarifications that Ofwat had provided on the ability of non-household (**NHH**) customers to a) access a metered supply and b) access an assessed charge rather than a charge based on Rateable Value (**RV**). Several respondents considered that this clarification would help to address the concerns

raised by the Proposer (concerns that were also shared by a number of other Retailers). Many respondents also welcomed, and supported, the work being undertaken by the Retailer Wholesaler Group (**RWG**) Wholesale Tariff Structure Simplification Sub-Group. This is seen as an important step which is being taken by the sector to drive greater standardisation and consistency of approach in relation to unmeasured charges.

Having considered the responses to our consultation, we have decided to reject the Change Proposal. We note the concerns about the use of unmeasured tariffs set out in those responses and the range of views on whether, and how, these might be addressed. We also note the view of the vast majority of respondents about the importance of more NHH customers being on metered supplies. Like those respondents, we too consider that ideally all NHH customers would be charged in this way and we expect Retailers and Wholesalers to encourage – and enable – customers to have a meter installed.

While some respondents urged Ofwat to take more direct action, including the prohibition of RV based charges under our Wholesale Charging Rules, we do not think this is necessary or appropriate, given the flexibility that the legal framework already allows and also given the work that the sector is already undertaking via the RWG Wholesale Tariff Structure Simplification Sub-Group. We will, however, continue to monitor the situation.

1. Background

On 28 October 2021, we [consulted](#) on our proposed decision to reject a change to the CPCoP which was raised by Castle Water (“**the Proposer**”). It had proposed an amendment to the CPCoP to protect Retailers from allegations that they are not treating customers fairly by charging them based on unmeasured (unmetered) tariffs (“**the Change Proposal**”).

The Proposer had noted that it was doing so to raise concerns about the use of unmeasured (unmetered) tariffs in the business retail market and the extent to which charging on this basis is compatible with the requirements of Section 4.1.1 of the CPCoP.

In submitting its Change Proposal, the Proposer explained that a growing number of its customers consider that the use of unmeasured tariffs, particularly those based on Rateable Value (**RV**), is unfair and/or dishonest as the tariffs bear no relation to actual usage. The Proposer also pointed out that this situation had been exacerbated by the Covid-19 lockdowns and other restrictions on business activity, which the use of unmeasured tariffs failed to reflect.

In submitting its proposal, the Proposer acknowledged that a change to the CPCoP may not be the most appropriate means of addressing issues arising from the use of unmeasured charges and would prefer to see direct action to address the root cause of the problem (such as the adoption of integrated meters to ensure fully accurate charging or better retail tariff options).

2. Proposed changes and reasons for the Change Proposal

Introduction

The majority of customers in the business retail market are charged for water and sewerage services on the basis of the amount of water they use¹, and the amount of wastewater and trade effluent they discharge. Ofwat considers that ideally, all customers would be charged in this way.

¹ Unmetered customers make up 9.1% (c.90,000 customers) of all customers in the market, and used c.270,000ML in the period April 2020 – March 2021 per annum equating to around 0.9% of total market consumption.

In those circumstances where a customer does not have a metered supply, the customer's bill may be determined in one of two ways, depending upon the Wholesaler's approach to setting charges²:

- a) it may be determined based on a combination of a fixed standing charge and a charge related to the rateable value (**RV**) of the customer's property; or
- b) it may be **assessed** by the Wholesaler in some other way, generally to reflect factors such as the customer's likely usage of services based on the nature of the business activity, the number of people it employs etc.

The Change Proposal

The Change Proposal was to include additional text in Section 4.1.1 of the CPCoP to the effect that Retailers should not be deemed to have breached the CPCoP where charges, which customers consider to be unfair, are a reasonable reflection of settlement charges between Wholesalers and Retailers calculated in the Central Market Operating System (**CMOS**), and which in turn are based on Wholesalers' Wholesale Tariff Documents.

The Proposer sought to amend Section 4.1.1 of the CPCoP to include the text highlighted below:

*“4.1.1 Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business; **and in respect of charges to customers the meaning of ‘fair’ includes, without limitation, that charges reasonably reflect [the charges calculated by the Central Systems based on] the Wholesale Charges levied by the relevant Water Wholesaler.**”*

In addition, the Proposer sought to insert the following additional definitions in Section 1.1:

Central Systems – has the meaning given in the Wholesale-Retail Code;
Water Wholesaler – has the meaning given in the Wholesale-Retail Code;

² Wholesalers will set their charges to enable them to recover revenue equal to the cost of providing water and wastewater services to unmetered (unmeasured) customers as a whole. This cost figure may be calculated by Wholesalers, for example, by taking account of the difference between the volume of water they put into the system compared to actual consumption by metered customers, leakage, as well as network meters. However, different Wholesalers will have different mechanisms for working out exactly how to calculate and divide these costs between the different types of unmetered customers to ensure that sufficient revenue is recovered from these customers enable them to cover their costs.

Wholesale Charges – has the meaning given in the Wholesale–Retail Code;

The Proposer claimed that the change would enable Retailers to reply to representations from customers that unmeasured charges are unenforceable. It also noted, however, that this would not resolve the inherent tension between a tariff structure that customers believe to be unfair and Ofwat’s requirement that Retailers treat customers fairly.

Proposer's reasons for the proposed change

In submitting its Change Proposal, and in highlighting issues around the use of unmeasured tariffs, the Proposer was primarily concerned about tariffs based on RV.

The Proposer noted that tariffs based on RV can often be many multiples of those for metered charges or for assessed charges for comparable customers and can bear little or no relation to a customer's actual usage.

It also pointed out that many of the customers affected are SMEs such as small shops and, in many cases, are also tenants. It claimed that, as tenants, these customers may not have the authority or means to have meters installed under their lease, and their landlords may have little or no incentive to do so³. As a result, the Proposer believes that it is the customers who are least able to pay bills who can be trapped on the highest tariffs – as they are not able to move to a metered charge and the Wholesaler rejects a move to an assessed charge because the customer has not first requested, and been refused, a metered supply.

Our provisional decision to reject – factors considered

In our consultation document we set out the factors that we had taken into account in considering whether to accept or reject the Change Proposal. In particular, we considered the relevant legal framework surrounding:

- the right of a business customer to be charged by volume (i.e. the right to have a metered supply) and, where it is not possible to have a metered supply,
- the right to be charged on the basis of an assessed charge rather than RV.

In our view, this was important as it sought to establish a common understanding of what is already possible under the existing legislation and market rules, and therefore,

³ The Proposer also noted that the issue can affect customers where a number of businesses operate from a single site (e.g. a trading estate) but where the individual premises are not separately metered.

whether a change in the CPCoP was necessary to achieve the outcomes that the Proposer had hoped to achieve.

For ease of reference, this clarification on the legal framework is set out again in Appendix 1 but the key messages are:

- There is nothing in the legal framework to prevent an owner or occupier of a NHH premises from requesting that they be charged by volume and a meter be installed (though it is recognised that the terms of a tenant's lease may impose restrictions on alterations to the property which could curtail a tenant from making that request).
- Wholesalers also have a right (under Section 162 WIA91)⁴ to install a meter at NHH premises and have discretion on whether to charge for the installation.
- Where it is not possible to move a NHH customer onto a metered charge, Ofwat's Wholesale Charging Rules do not prescribe what unmetered tariff should be used.
- This means that, contrary to the situation for household customers, there is nothing in the Rules that prevents a Wholesaler from using an assessed charge for unmetered NHH customers. It does not require a customer to have first requested, and been denied, a metered supply.
- As with other tariffs, in determining their unmeasured charges (whether assessed or by reference to RV), the Wholesaler must do so in accordance with the principle set out in the Wholesale Charging Rules (i.e. fairness and affordability; environmental protection; stability and predictability; and transparency and customer-focused service).
- Wholesalers are responsible for working out how to apply charges which best reflect all of those principles and ensure compliance with the Wholesale Charging Rules.

Given the fact that it is already possible to address the concerns raised by the Proposer under the existing market rules, we considered that it was not necessary to change the CPCoP in the way proposed.

Consultation responses

Our consultation closed on 25 November 2021.

There were 15 responses to our consultation (six from Retailers, eight from Wholesalers and one from CCW). These responses are summarised below and set out in more detail in Appendix 2.

⁴ Process B10 of the Operational Terms sets out the process that a Wholesaler must follow when it wants to install or change a meter

a) Proposed decision to reject the Change Proposal

The vast majority of respondents agreed with our proposed decision to reject the Change Proposal and also agreed with the reasons for that rejection. Most respondents shared Ofwat's view that the proposed change to the CPCoP is unnecessary as the Retailer could not be deemed to be treating a customer unfairly or of being dishonest under the existing market rules for passing on wholesale charges. The majority of respondents also agreed that the Change Proposal would not add to the protections for customers which the CPCoP is intended to deliver.

A number of Retailers did, however, support the Proposer's concerns about the use of unmeasured tariffs and also felt that while the Change Proposal would not resolve the problem that the Proposer hoped to resolve, it *"does highlight a significant problem with unmeasured charges, that the industry should seek to address"*.

Virtually all respondents therefore welcomed the clarification Ofwat had provided regarding the ability of NHH customers to access a meter or, where this is not possible, to be charged based on an assessed charge rather than a charge based on RV.

CCW noted, for example, that Ofwat's response *"provides sufficient reassurance to the Proposer that an amendment to the CPCoP is not required"* and that *"the clarification on the Charging Rules should help to ensure that customers do not suffer a disadvantage caused by a misinterpretation of what charges are permissible"*.

While welcoming the clarification provided by Ofwat, a number of Retailers pointed out that this was not the approach currently being adopted by all Wholesalers. The Proposer also noted, for example, that *"we accept that there is nothing preventing a Wholesaler from moving customers from RV to assessed charges, and that it is not necessary for a customer to have requested and been denied a meter. But it remains the case that this is not generally carried into practice"*.

The responses to our question about Wholesalers' approaches and policies confirmed that these can, and do, vary across the sector.

b) Wholesalers' policies and approaches where customers request either a metered supply or to move from an RV to an assessed charge, and any plans Wholesalers may have to amend their current approach.

Virtually all Wholesalers that responded to this question stated that, wherever possible, it is their standard practice and preferred approach to meter NHH customers. This is seen as the fairest way to charge customers based on their actual usage and is also consistent with wider objectives on water efficiency.

A number of Wholesalers told us that they have proactive or selective metering programmes which means that they will have considered whether it is possible to install a meter at a business premises – regardless of whether the customer has requested a meter or not, or regardless of whether the premises is tenanted or owner-occupied. In these cases, typically the Wholesaler will not charge for meter installation (though if further work is needed on the customer's pipework to enable the meter to be installed, that additional work is at the customer's expense). Other Wholesalers told us that their approach is to encourage Retailers and their customers to choose the option of having a meter installed if it is practicable to do so. In these cases, the Wholesaler may charge for meter installation.

Across the sector, the vast majority of NHH customers are already on a metered supply. Several Wholesalers told us, for example, that the number of unmetered premises in their area is now very small and as they have a relatively small number of customers on unmeasured charges, they seldom receive requests to move customers from RV-based charges to assessed charges.

For those customers that are on an unmetered supply, the approach adopted by the Wholesaler can vary. A number of Wholesalers told us, for example, that in the limited number of instances when they receive a request for a customer to be moved from a RV based charge to an assessed charge they will deal with these on a case-by-case basis. Another told us that it will engage with Retailers to understand why the customer is on an unmeasured tariff and, where suitable, will work with them to either move the customer to a measured tariff or review whether it would be beneficial for the customer to be on an assessed tariff (should the customer wish to move away from an RV based tariff).

While not universal, several Wholesalers are already using an assessed charge as the "default" where it is not possible for a customer to be metered – with consumption for the premises being assessed either to reflect the customer's individual circumstances or calculated based on the number of employees at the premises multiplied by an estimate of consumption per employees and a standing charge. One Wholesaler told us, for example, that the approach of using number of employees is particularly appropriate to SMEs and also for mixed-use premises where fitting a meter may not be a reasonable option⁵.

In other instances, however, the default position is to use an RV based charge for unmetered customers. One Wholesaler told us, for example, that if it receives a request

⁵ For larger customers or businesses where water is used as part of a production process, this Wholesaler also told us that it will undertake a site survey; will ask the customer for evidence of process consumption and will use this information to enable it to make an individual assessment of charges.

to review the tariff applied to a customer that is charged on an RV basis, its current approach is to advise the Retailer that it is not able to review the tariff without this being related to a change to the RV itself (though it also stresses that the customer can request for a meter to be installed). If a meter installation is not feasible then the supply point will be moved onto an assessed tariff. In the Wholesaler's view, *"this approach mirrors the process it is legally bound to apply to household customers"* and *"aligns with metering being the preferred way to charge for water services"*.

Similarly, another Wholesaler told us that it requires all NHH customers to be charged based on a meter and would apply a charge based on RV only where this is not possible. Its policy is to use an assessed charge only in circumstances where a meter installation is not reasonably practicable, and where there is no appropriate RV in place for the property. This Wholesaler noted that while it accepts that the current charging rules do not prevent a Wholesaler from applying an assessed charge for NHH customers as an alternative to a charge based on RV, in its view, there is also no requirement on Wholesalers to offer to do so and it does not think it would be appropriate to offer two competing alternative approaches to unmeasured charging.

This Wholesaler also told us that it has no plans to change its current approach but would widen its use of assessed charges if that became the primary preferred method for charging unmeasured NHH customers e.g. as a result of significant changes to business rates; Ofwat deciding that assessed charges were the preferred method of charging; or a concerted move by water companies to align on using assessed volume charges as the preferred single charging methodology.

A number of other Wholesalers who currently use RV as the "default" basis for charging unmetered customers also mentioned their willingness to adapt their approach depending on what emerges from the work of the RWG Wholesale Tariff Structure Simplification Sub-Group and moves to introduce greater standardisation across the sector.

c) **Views on any other alternative approaches that could potentially help to address the concerns raised by the Proposer**

As indicated above, the majority of respondents welcomed the clarification that Ofwat had provided in the consultation document, and many also expressed a hope that Wholesalers will adopt a pragmatic approach and facilitate customer changes from an RV charge to an assessed charge where it is not possible for customers to have a metered supply.

In addition to the clarification provided by Ofwat, respondents also welcomed, and expressed support for, the work of the RWG Wholesale Tariff Structure Simplification

Sub-Group. A number of respondents considered that at least some of the reservations raised by the Proposer will be addressed through that work.

In contrast, a number of respondents, including the Proposer, would like to see more direct action. This included Ofwat requiring Wholesalers to phase out the use of RV as the basis for unmeasured charges and replace it with simple banded assessed charges.

Several respondents also stressed the importance of metering more generally and the fact that the industry should be aiming to achieve an outcome where all NHH customers in a competitive market have a measured supply. One respondent noted for example that *"this is crucial to ensure a fair charging regime, as well as to facilitate improvements in water efficiency"*.

This respondent also considered that, in the absence of any incentive or obligation, it is unlikely to see consistent change across the market, especially if some Wholesalers choose to change their policies and others don't. It would therefore like to see an obligation on Wholesalers to install meters for business customers without charge and questioned whether Wholesalers could be funded to do this via PR24.

CCW also highlighted a wish for Ofwat to give greater emphasis on metered charging as an option. While welcoming it, it was also concerned that the clarification that NHH customers can move from a charge based on RV to assessed charges without being first deemed un-meterable might encourage Wholesalers to do this as a matter of course. This would not necessarily be a desirable outcome for customers if they were simply moved from one unmeasured charge to another, without Wholesalers first exploring metered charging as an option.

This concern was also shared by a number of Wholesalers, including those that use an RV based charge as a "default" for unmetered customers. In their view, providing customers with an alternative unmeasured charge might have the effect of undermining their incentive to choose to have a meter installed.

One Wholesaler told us, for example, that wherever it is possible to meter NHH customers, this should be the preferred option because it is the fairest way of charging customers. It thinks that Ofwat should be hesitant to create any rule which has the inadvertent effect of making assessed charges an alternative option in place of a metered charge.

Despite these reservations, a number of respondents expressed support for a more standardised approach to NHH unmeasured charging that would use an industry wide standardised calculation methodology. A number noted that any changes that makes the application of charges more transparent and improves Retailer and customer

experiences should be supported but it is also important to ensure that any changes strike the right balance between simplicity and creating overly burdensome arrangements that require complex data models and systems to calculate charges.

One respondent who felt that a move away from RV charging in its entirety to measured or assessed charging only should be explored noted that, if it is not practical to fit a meter, it should be possible to use the data held by CMOS to inform the assessment of volumes of consumption using data for similar premises. *"This would enable companies to continue to meet charging principles and be demonstrably fair for customers"*.

Our decision and reasons for our decision

We have considered the arguments put forward by the Proposer, the evidence provided in the context of the relevant legal framework and the responses to our consultation document.

We remain of the view that the proposed change to the CPCoP would not add to the protections for customers which the CPCoP is intended to deliver. We have therefore decided to reject the Change Proposal to the CPCoP.

The clarification we have provided on the legal framework surrounding the ability of NHH customers to access a metered supply and an assessed charge was welcomed by respondents to ensure that market participants understand what is already permissible under existing legislation and market rules.

In our consultation document, we set out our view that ideally all NHH customers should be charged for water and sewerage services on the basis of the amount of water they use and the amount of wastewater and trade effluent they discharge. This remains our view, and we would expect Retailers and Wholesalers to encourage – and enable – customers to have a meter installed wherever possible. We note that Wholesalers have a right under s162 (1A) (d) of the WIA 91 to carry out works in connection with metering where water is supplied by a licensee (a Retailer) using their supply system.

Where this is not possible, given the flexibility that Ofwat's Wholesale Charging Rules permit, we would also expect market participants to act in the best interests of NHH customers who remain on an unmetered supply. This may mean that wherever possible, those unmetered NHH customers who wish to do so, are able to request a move from a RV charge to an assessed charge. Wholesalers should seek to ensure that their Wholesale Charges accommodate this change.

As we explained in our consultation document, in doing so, however, it is important to recognise that there may be knock-on impacts across the sector as all changes to unmeasured tariffs are expected to be neutral in terms of revenue. This is because water companies will typically calculate their assessed charges based on the average consumption of water by unmeasured customers as a whole (taking account of, for example, the difference between the volume of water put into the system compared to consumption by metered customers and leakage as well as their network meters). Charges are then set to recover revenue equal to the costs of providing that amount of water from these unmeasured customers as a whole. While different Wholesalers will have different mechanisms for working out exactly how to calculate and divide these costs between the different types of unmetered customers, it does mean that while some unmeasured customers who use less than the average consumption may be paying more at the moment, other unmeasured customers who use more than the average consumption may be paying less. This also means that if some customers move from a charge based on RV to an assessed charge and in doing so end up with a lower bill, others may end up facing higher charges as the water company still has the same overall costs to recover given that the overall amount of water being consumed by unmeasured customers remains unchanged and the water company's revenue cap remains unchanged.

As indicated above, a number of respondents to our consultation would like Ofwat to go further and take direct action to prohibit the use of RV based charges. We do not think this is necessary or appropriate given the flexibility that the legal framework already allows and also, given the work that the sector is already undertaking via the RWG Wholesale Tariff Structure Simplification Sub-Group. We will, however, continue to monitor the situation.

In summary, therefore, we have considered the scope, impact and risks of the modification proposal by assessing the evidence we have obtained from the consultation on our proposed decision. We have concluded that the implementation of CP0011 would not offer benefits to customers or that the Change Proposal would facilitate the Code Principles of the CPCoP or would be consistent with our statutory duties.

Decision notice

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

Georgina Mills
Director, Business Retail Market

Appendix 1: Background and legal framework for the use of unmetered charges

The use of unmeasured charges has been a feature of the privatised water sector since its creation in 1989. As the majority of properties did not have a water meter at that time, and as a Rateable Value (**RV**) system was being used to raise revenue for local authorities (which also included water rates), the decision was taken to also base water charges in the post privatisation period on the RV of individual properties. This included both household and non-household (**NHH**) properties⁶.

The use of RV for determining water charges has continued since then because no alternative system was considered to deliver a significant enough benefit to justify the expense of changing. However, it was also recognised that over time more and more properties would have the option to choose to have a meter installed⁷ which would also mean that the need for a change in the approach to RV charging would continue to reduce.

The decision on using RV as a means of setting charges was taken by Government at the time of privatisation. Ofwat did not, and does not, have a role in setting a property's RV for the purposes of determining an unmeasured charge nor in resolving any complaints or disputes about the fairness of a property's RV.

If a customer is unhappy with a charge which is based on RV, the only option available to them under existing legislation is to request a switch to a water meter⁸. The water company can refuse to install a water meter at a household customer's property if it is not practical or is too expensive for it to fit one, but if this is the case, it must instead offer the customer an assessed charge as an alternative to a RV charge.

It is important to note that for household customers, the legislation is clear that the water company cannot offer the customer an assessed charge unless he/she has first applied for, and been refused, a meter.

⁶ Unmetered customers' charges are based on the rateable value of the property under the 1973 Valuation Act. The [Valuation Office Agency](#) gives all non-households in England and Wales a rateable value. The rateable value is a professional assessment of the annual rental value of a property on a specific date. The values are updated every five years.

For household customers, the Government froze RV in 1990 after introducing council tax.

⁷ In water stressed areas, Wholesalers have the legal right to insist on the installation of meters.

⁸ In the case of household customers, the customer is entitled to have a water meter installed free of charge subject to survey by the water company. Once the meter has been put in, the household customer then has 12 months in which to decide whether to stick with metered charges or go back to paying charges based on the property's rateable value.

As explained below, however, **the situation is different for NHH customers, both in terms of the right to have a meter installed and, where this is not possible, the right to be charged on the basis of an assessed charge rather than RV.**

The right to be charged by volume

Under section 144A of the Water Industry Act 1991 (**WIA91**), household customers have a statutory right to elect to be charged by volume, and the Wholesaler (who directly supplies household customers) must bear the costs of installing and connecting a meter, under section 148 WIA91. If the water company is unable to meet this request, the household customer has a right to be given an assessed charge as an alternative to a RV charge.

This statutory right does not extend to NHH customers (unless they have their home in the business premises in question), and there are no equivalent provisions conferring the right to be charged by meter on NHH customers.

There is, however, nothing in the legal framework to prevent any owner or occupier of a NHH premises from requesting that they be charged by volume and a meter installed (although it is recognised that the terms of a tenant's lease may impose restrictions on alterations to the property which could curtail a tenant from making that request). In addition, a Wholesaler also has right, under Section 162 WIA91, to install a meter at a NHH customer's premises⁹ and also has discretion on whether to charge for the installation.

Section 209A of WIA91 provides that tenancy agreements cannot restrict tenants' rights under section 144A to elect to be charged by reference to volume (i.e. the right to require a meter to be installed), where the tenancy is fixed for at least six months. It is important to note that section 209A does not create a new right to give a measured charge notice (i.e. demand to be charged by reference to volume), it simply makes explicit that the existing right at section 144A cannot be excluded by any express or implied term in any tenancy (provided that the tenancy is not for a fixed term of less than six months). However, as highlighted above, the existing right under section 144A applies only where water is supplied by a water undertaker to premises in which, or in any part of which, a person has his home (s144A(1)).

This means that there is no statutory right for NHH customers to request meters be installed to enable them to be charged by reference to volume. At the same time, however, this also means that there is nothing preventing Wholesalers from accepting

⁹ Process B10 of the Operational Terms sets out the process that a Wholesaler must follow when it wants to install or change a meter.

and considering such requests from NHH customers or running proactive metering programmes – as some Wholesalers are already doing.

The right to an assessed charge

As set out above, where a household customer has requested to be charged on the basis of volume and where the water company has determined that it is not possible to do so, the water company must offer to move that customer onto an assessed charge rather than a charge based on RV.

Some Wholesalers have assumed that the situation is the same in relation to NHH customers and, therefore, will only provide a NHH customer with an assessed charge where that customer has requested and been refused a metered supply. This assumption is incorrect.

Our Wholesale Charging Rules do not prescribe what unmetered tariff should be used or require that an assessed charge should only be available in specified circumstances.

Section 19 of our Wholesale Charging Rules¹⁰ states that

"No Unmetered Wholesale Charges may be imposed unless the basis on which those charges are fixed or determined is clear and, in the case of Rateable Value Charges, it is clear: (a) which Rating Valuation List charges are fixed or determined by reference to; and (b) if the undertaker uses a different value or other amount to that specified in such a list, the methodology or other basis on which that different value or other amount is calculated".

This means that, in contrast to the situation for household customers, there is nothing in the charging rules that prevents a Wholesaler from applying an assessed charge for NHH customers where the Wholesaler considers that this is the best way to comply with the charging principles. It does not require a customer to have requested, and been denied, a metered supply.

We note that Rule 19 requires that the basis upon which unmeasured charges are fixed or determined be made clear in companies' Wholesale Charges, and the requirement applies equally to both or multiple unmeasured charges where a company imposes different charges in respect of customers in different situations.

¹⁰ [Wholesale-Charging-Rules-issued-by-OFWAT-under-sections-66E-and-117I-of-the-Water-Industries-Act-1991.pdf](#)

It is also important to stress that the Wholesale Charging Rules provide (at Rule 13) that Wholesale Charges (including unmeasured charged, whether assessed or charging by reference to RV) must be determined in accordance with the principle that those charges should reflect

- (a) fairness and affordability;
- (b) environmental protection;
- (c) stability and predictability; and
- (d) transparency and customer-focused service.

Wholesalers are responsible for working out how to apply charges which best reflect all of those principles and ensure compliance with the Wholesale Charging Rules.

Appendix 2 – Summary of consultation responses

1. What are your views on our proposal to reject the Change Proposal?

The majority of respondents supported our proposed decision to reject the Change Proposal and also agreed with our reasons for that rejection.

Most respondents, for example, shared Ofwat's view that the proposed change to the CPCoP is unnecessary as the Retailer could not be deemed to be treating a customer unfairly or of being dishonest under the existing market rules for passing on wholesale charges¹¹. The majority of respondents also agreed that the Change Proposal would not add to the protections for customers which the CPCoP is intended to deliver.

While agreeing with our proposed decision to reject, a number of Retailers also acknowledged that the Proposer's intention in submitting the Change Proposal was to highlight its concerns with the use of unmeasured tariffs.

One Retailer noted, for example, that while the Change Proposal does not resolve the problem that it hopes to resolve, it "*does highlight a significant problem with unmeasured charges, that the industry should seek to address*".

Another told us that the Change Proposal "*does bring into sharp focus the inconsistent approach to the rollout of water meters by Wholesalers and the impact that has on the ability as an industry to deliver improved customer outcomes on water efficiency*".

A third Retailer also expressed support for measures to better protect unmetered customers' interests. In its view, some unmeasured tariffs based on RV and area size are too high, depending on the activity on NHH customer sites. However, it also pointed out that some unmeasured tariffs can also be unfairly low and are not reflective of the cost of the water being used, which in turn, does not incentivise customer behaviours around water efficiency.

A further Retailer agreed that the use of unmeasured tariffs is a significant issue for both NHH customers and Retailers. It told us that it has customers that have been placed on RV charges as a default position where either a meter cannot be fitted or a Wholesaler refuses to consider offering an assessed charge. This respondent noted that "*it is recognised across the industry that the rate of the RV charges can be significantly higher than similar premises using similar amounts of water in metered premises. As a*

¹¹ While most respondents agreed that as the Retailer is simply passing on the wholesale charge levied by the Wholesaler, the Retailer could not be deemed to be treating a customer unfairly, in the Proposer's view, customers do not assess fairness in this way.

Retailer, it is .. regularly challenged by its NHH customers [and] customers are .. frustrated by the discrimination".

While the majority of respondents agreed with our proposed decision to reject, virtually all respondents welcomed the legal clarification provided by Ofwat regarding the ability of business customers to access a meter¹² or, where this is not possible, to be charged based on an assessed charge rather than a charge based on RV.

CCW noted, for example, that if the Proposer is concerned that there might be a risk that Retailers could be in breach of the CPCoP by charging customers on the basis of unmeasured charges, Ofwat's response "*provides sufficient reassurance to the Proposer that an amendment to the CPCoP is not required*" and that "*the clarification on the Charging Rules should help to ensure that customers do not suffer a disadvantage caused by a misinterpretation of what charges are permissible*". It further noted that "*this [clarification] will allow retailers to accurately respond to any customer queries, which would allow them to meet the code principles of transparency and honesty, without the need for the proposed code amendment*".

Another respondent noted that it is reassured by the clarity put forward by Ofwat in respect of unmeasured charging for NHH customers, particularly the reminder that under the Wholesale Charging Rules both assessed and RV charges must be determined in accordance with the principles of fairness and affordability; stability and predictability; and transparency and customer-focused service.

A further respondent also welcomed the legal clarification given, because "*we are aware of Wholesalers who only offer assessed charges when it is not reasonably practical to fit a meter or to do so would involve unreasonable expense*".

The Proposer too noted that "*we accept that there is nothing preventing a Wholesaler from moving customers from RV to assessed charges, and that it is not necessary for a customer to have requested and been denied a meter. But it remains the case that this is not generally carried into practice*". (This is considered further in the next section).

Many respondents also welcomed the work that the RWG Wholesale Tariff Structure Simplification Sub-Group is undertaking to assess the scope for greater standardisation. This work was considered to be an important step in enabling the sector to address some of the concerns identified.

¹² The Proposer noted however, that because of the legal restriction on certain tenancy agreements preventing them from frustrating requests for metered supplies applies only to mixed use premises. Further, tenants generally avoid contention with their landlord. This is therefore unlikely to do more than scratch the surface of the issue for tenants

2. We would welcome views and information from Wholesalers on their current policies and approaches where customers request either a metered supply or to move from an RV to an assessed charge, and any plans Wholesalers may have to amend their current approach.

The responses to this question were primarily from Wholesalers but we also had comment from the Proposer and from CCW.

The Proposer noted, for example, that while Ofwat's clarification that Wholesalers are free to apply an assessed charge whether or not a customer has requested and been denied a metered supply is correct, in its view, in practice, *"unmeasured tariffs are too often used as the default position and Wholesalers will in practice expect a metered supply first to have been proven practically and / or economically infeasible. This leaves Retailers to take up every single case with the relevant Wholesaler in a protracted bilateral process that does not satisfy customers' concerns"*.

CCW told us that it too would welcome clarity from Wholesalers on their current policies and approaches as this would provide valuable insight into whether or not customers are being prevented from switching to an alternative basis of charging as a result of either misinterpretations of the Charging Rules, or a particular Wholesaler policy.

It noted that it would be *"particularly concerned if Wholesalers' responses showed that blanket approaches were being taken in this area which were not delivering the fairest outcome for customers. For example, switching customers from RV to an assessed charge without exploring the option of installing a meter could potentially cause disadvantages in the long term, and compromise efforts to promote water efficiency"*.

In CCW's view, keeping customers on RV charges if they are unable to proceed with a meter survey may be unreasonable depending on the circumstances. In the event that such concerns are identified, *"CCW would urge Ofwat to provide direction to Wholesalers to ensure that policies and procedures are designed with the customer's best interests in mind, while at the same time not allowing the rules to be too broad and open to interpretation"*.

The responses from Wholesalers does indicate that existing policies and approaches can and do vary.

In relation to access to a metering, however, virtually all Wholesalers stated that, wherever possible, it is their standard practice and preferred approach to meter NHH customers as this is the fairest way to charge customers based on their actual usage.

Some Wholesalers do this on a proactive basis¹³ (e.g. Severn Trent) so they will have already considered whether it is possible to install a meter at a business premises – regardless of whether the customer has requested a meter or not, or regardless of whether the premises is tenanted or owner-occupied. Others (e.g. Bristol Water, South West Water) told us that where it is possible to meter a NHH customer, they encourage Retailers and their customers to choose this option.

A number of Wholesalers (e.g. Severn Trent, United Utilities) also made the point that even if it has not been possible to install a meter in the past, they will review the situation periodically to assess whether changes in technology would now enable a meter to be installed.

Most Wholesalers also pointed out that the vast majority of NHH customers are now metered with the result that the number of unmetered premises in their area is small and so they seldom receive requests to move customers from RV-based charges to assessed charges.

While in general the preferred approach is for customers to be metered, where this is not possible, the approach adopted by Wholesalers varies. A number of Wholesalers told us, for example, that in the limited number of instances when they receive a request for a customer to be moved from a RV based charge to an assessed charge they will deal with these on a case-by-case basis (e.g. Southern Water). Another (Yorkshire Water) told us that it will engage with Retailers to understand the rationale for a NHH customer being on an unmeasured wholesale tariff. Where suitable it will work with them to either move the customer to a measured tariff, following the installation of a meter, or review whether it would be beneficial for the customer to be on an assessed unmeasured tariff (should they wish to move away from an RV based unmeasured tariff). It also noted, however, that it does not have many enquiries of this nature from Retailers at present.

Another Wholesaler (Anglian Water) told us that its policy is that *"where it is not possible to install a meter or (in rare cases) where requested to do so by the appropriate retailer, [it] undertakes an assessment to establish the likely consumption for the premises in question, and thus the end-user may therefore move to an assessed measured basis of charging"*.

While not universal, several Wholesalers already appear to be using an assessed charged as the "default" when it is not possible for a customer to be metered. One

¹³ While some companies told us that they charge for meter installation, others, including those who have a proactive meter policy do not (though if a customer's pipework needs to be changed to enable meter installation, that work would be at the customer's expense).

Wholesaler (Bristol Water) told us, for example, that in cases where water is not used by the customer as part of a production process, the charge will be determined based on the number of employees at the premises (plus a standing charge). In its view, this approach is particularly appropriate to SMEs and also for mixed-use premises where fitting a meter may not be a reasonable option. For larger customers or businesses where water is used as part of a production process, this Wholesaler will undertake a site survey; will ask the customer for evidence of process consumption and will use this information to enable it to make an individual assessment of charges.

This was also the approach adopted by another Wholesaler (Bournemouth Water) which offers an assessed charge based on the number of full-time employees working at the property multiplied by an assessed volume per type of property supplied, plus a fixed wholesale charge.

A number of other Wholesalers told us that their default position where a customer is on an unmeasured tariff is to use an RV based charge. One Wholesaler (South West Water) told us for example that there is only one scenario in which it currently offers an assessed charge¹⁴, but given discussions at industry groups, it is exploring the possibilities of introducing a NHH assessed charge methodology to allow any customer who is unable to have a meter installed to be placed on an assessed charge tariff that reflects the number of employees at the premises.

In contrast, another Wholesaler (Thames Water) told us that if it receives a request to review the tariff applied to a customer that is charged on an RV basis, its current approach is to advise the Retailer that it is not able to review the tariff without this being related to a change to the RV itself, but stresses that the customer can request for a meter to be installed. If a meter installation is not feasible, or practical, then the supply point will be moved onto an assessed tariff. *"This approach mirrors the process it is legally bound to apply to household customers"*. This Wholesaler also noted that *"this aligns with metering being the preferred way to charge for water services, as this supports fair charging and also environmental goals (including strategic goals for NHH retail market), such as providing incentives for customers to improve their water efficiency"*.

Another Wholesaler (United Utilities) appears to have adopted a similar approach. It stressed that metering is its preferred default basis for charging NHH customers, and it

¹⁴ Where a property does not have a direct supply, but has access to one (e.g. communal toilet) if that supply cannot be metered then an assessed charge will be used based on the number of full-time employees working at the property and an assumed personal and business consumption for each employee plus a fixed charge element.

requires all NHH customers to be charged based on a meter¹⁵. It would apply a charge based on RV only where this is not reasonably practicable to install a meter. Its policy is therefore to use an assessed charge only in circumstances where a meter installation is not reasonably practicable, and where there is no appropriate RV in place for the property¹⁶.

While it agrees that the current charging rules do not prevent a Wholesaler from applying an assessed charge for NHH customers as an alternative to a charge based on RV, in its view there is also no requirement on Wholesalers to offer to do so and it does not consider it to be appropriate to offer two competing alternative approaches to unmeasured charging.

Its approach is that there is one preferred method for unmeasured charging (based on RV) and that a “back-up” method is available (based on assessed volume) for circumstances when an RV is not available – and it has no plans to change its approach.

It argued that RV is a long-established economic assessment method which it considers to be a fair proxy for consumption and therefore its preferred method of charge for unmeasured NHH customers. In contrast, its use of the assessed charge is very limited.

It also considers that it would only be appropriate to widen the use of assessed charges in the event that it became the primary preferred method for charging unmeasured NHH customers – as a result, for example, of significant changes to business rates in a way that undermined their continued use in charging NHH customers; Ofwat deciding

¹⁵ As part of its approach to metering, for example, it requires all new water connections to be metered and all NHH premises – where metering is reasonably practicable – to have a meter installed. It provides support to customers at NHH premises who wish to have a meter installed and will install a water meter at any existing unmeasured NHH premises, unless it is not reasonably practicable to do so, or the cost of doing this would be unreasonably expensive. It also told us it will re-survey, on request, premises that have previously been deemed unsuitable for a meter, as it is aware that techniques improve over time. If unable to fit a meter internally, it would endeavour to fit a meter externally and will also proactively attempt to meter any gap sites when it becomes aware of them. Even in instances where pipework alterations are required to be undertaken by the customer facilitate the fitting of a meter, it offers advice on how to carry out the work and noted that in circumstances where a customer has a relatively high RV based charge, it could be reasonably expected that the cost of work required would usually be mitigated by savings brought about by moving to measured charges.

¹⁶ It also noted that for NHH premises, it is very difficult to make a reasonable estimate of water use due to the high level of variation that is seen, even across businesses of a similar size or type. Its assessed charges are based on an assumed volume, using an estimate of the meter size that would be required if the premises were metered, either 15mm or 22mm. It does not consider it appropriate to offer this type of charge to premises where the assumed meter size is larger than 22mm.

that assessed charges were the preferred method of charging; or a concerted move by water companies to align on using assessed volume charges as the preferred single charging methodology.

It also noted, however, that companies currently derive assessed charges based on what they consider most appropriate, and companies use different methods. *"If the method is to become more prescribed as being the preferred primary method for charging unmeasured NHHs, then this should be established through a change to the charging rules, with clear guidance to ensure consistency between companies"*.

3. We would welcome views on any other alternative approaches that could potentially help to address the concerns raised by the Proposer.

The responses to question 3 are summarised below.

In welcoming the clarification that Ofwat had provided in the consultation document, and recognising Ofwat's wish to avoid changes to legislation or the need to mandate a standard approach on wholesale charges, a number of respondents expressed a hope that Wholesalers will adopt a pragmatic approach and facilitate customer changes from an RV charge to an assessed charge where it is not possible for customers to have a metered supply.

A number of respondents also referred to, and expressed support for, the work of the RWG Wholesale Tariff Structure Simplification Sub-Group. This is seen as an important step in understanding the range of approaches being adopted across the sector and in identifying areas where greater standardisation and simplification may be possible.

In contrast, while the Proposer also welcomed the clarifications provided in the consultation document, it considers that this does not go far enough and, in its view, *"it ought to be possible to design relatively straightforward process that consists of mandating (or making clear a willingness on the part of Ofwat to mandate if necessary) that Wholesalers' policies and practices be amended to align with Ofwat's clarifications with effect from the issue of the next Wholesale Tariff Documents; a plan to overhaul the unmeasured tariffs framework and phase out RV tariffs in the context of preparations for the next price control, to begin to take effect as early as possible and to be effective in full no later than PR24"*.

One Retailer also suggested that if Ofwat were to phase out unmeasured supplies by a specific date then Wholesalers might be incentivised to find more suitable and perhaps more innovative solutions than the current charging arrangements. Until then, this Retailer would like to see Ofwat amend its Wholesale Charging Rules to make it a

requirement that Wholesalers make their unmeasured charges fairer and phase out the use of RV as the basis for unmeasured charges.

While acknowledging that there is no perfect system for unmeasured charges, in this Retailer's view replacing all unmeasured charges with a simple banded assessed charge based on bands of water consumption would appear to be a significantly fairer reflection of water consumption than RV because it treats similar properties the same regardless of location and would also be much more easily understandable to customers. As some Wholesalers have already adopted this approach, in its view, it cannot see any material reason why all Wholesalers cannot do the same and considered that Ofwat should require Wholesalers to phase out the use of RV as the basis for unmeasured charges and replace it with simple banded assessed charges.

Several respondents pointed to the work that the RWG Wholesale Tariff Structure Simplification Sub-Group is already undertaking and considered that some of the reservations raised by the Proposer will be addressed through that work.

One respondent also suggested that as Retailers should already be doing all they can to make sure the customer is billed fairly, it would be prudent to pre-emptively include the application for a change from unmeasured (RV based) to assessed charges rather than simply stating that the Wholesaler charges are unfair and arguing that the Retailer has already fulfilled their duty to the customer by passing these on but rather focussing on the SPIDs where the changes would have the greatest impact, as this could be calculated in house before any application is made and before the customer is approached.

Several respondents also stressed the importance of metering more generally and the fact that the industry should be aiming to achieve an outcome where all NHH customers in a competitive market have a measured supply. One respondent noted for example that *"this is crucial to ensure a fair charging regime, as well as to facilitate improvements in water efficiency"*.

While recognising that the consultation document had set out the legal framework around the ability of Wholesalers to install meters and to charge on an assessed basis, this respondent believes that in the absence of any incentive or obligation, it is unlikely to see consistent change across the market, especially if some Wholesalers choose to change their policies and others don't. It would therefore like to see an obligation on Wholesalers to install meters for business customers without charge, in the same way as exists for domestic customers – and questioned whether wholesalers could be funded to do this via PR24.

Where it is really not possible to install a meter, the respondent believes charges should be on an assessed basis as, in its view, charges based on RV are no proxy for a customer's consumption. *"Whilst moving from RV based charges to assessed charges may have consequences for some unmetered customers, it is better that the transition is managed in order to minimise the impact on customers, rather than avoid doing the right thing"*.

Another Retailer also suggested that assessed tariffs, based on number of employees, would be fairer for unmetered NHH customers. While supporting greater use of meters, it noted that for some customers the cost of meter installation may be a deterrent, especially following the impact of Covid lockdowns. It also noted that because of the way that ownership of meters and responsibility for meter reading is currently structured, Wholesalers have little incentive to invest in replacing aged assets, upgrading technology, and providing meters for unmetered NHH customers. It therefore suggested that Wholesalers be funded to roll out smart metering (at a subsidised cost) to generate more interest from NHH customers. It also welcomed MOSL's strategic review of metering – which will also consider roles and responsibilities – and await their findings with interest.

CCW told us that while it welcomed the information provided by Ofwat on the Charging Rules, it would urge Ofwat to give greater emphasis on metered charging as an option. The clarification that NHH customers can move from RV to assessed charges without being first deemed un-meterable, may encourage Wholesalers to do this as a matter of course but, in its view, it will not always be desirable for customers to move from one unmeasured charge to another, without first exploring metered charging as an option. It would be beneficial for Ofwat to promote the benefits of metering for customers, in terms of fairness of charging, better awareness of water usage and the environmental impact, and to encourage them to make this as accessible as possible.

A number of Wholesalers also stressed the importance of metering. One Wholesaler (Severn Trent), for example, told us that because it has a selective policy for NHH customers there should not be any customers who are forced to remain on a RV charge. A number of others, however, were concerned about providing an alternative unmeasured charge rather than encourage customers to choose a meter first. Some considered that a move from RV to assessed – without first considering whether metering is viable – could have this affect.

One Wholesaler told us, for example, that wherever it is possible to meter NHHs, this should be the preferred option because it is the fairest way of charging customers. It thinks that Ofwat should be hesitant to create any rule which has the inadvertent effect of making assessed charges an alternative option in place of a metered charge. If

Wholesalers have a selective metering policy for NHHs, then the Wholesaler does not think the problem of customers being “trapped” on a RV charge should arise.

While welcoming Ofwat's clarification that section 144A of the Water Industry Act 1991 does not automatically apply for NHH customers and that the application of an assessed charge is not predicated on confirmation that a meter cannot be installed, one Wholesaler (South West Water) noted that the best way of achieving the Wholesale Charging principles is through the installation of a meter wherever possible, before the application of an assessed or other tariff¹⁷.

This Wholesaler is also supportive of a standardised approach to NHH unmeasured charging that would use an industry wide standardised calculation methodology. It also welcomes the work of the RWG Wholesale Tariff Structure Simplification Sub-Group and the design of an industry wide assessed water consumption calculation methodology for NHH customers. It believes that any changes that makes the application of charges more transparent and improves Retailer and customer experiences should be supported. In its view, it is also important that any changes strike the right balance between simplicity and creating overly burdensome arrangements that require complex data models and systems to calculate charges.

Another Wholesaler (Thames Water) suggested that one approach which should be explored is to move away from RV charging in its entirety to measured or assessed charging only. In such cases, if it is not practical to fit a meter, using an assessed charge would allow for a move away from the averaged approach that RV inherently adopts, resulting in a bill more reflective of the likely water usage and the customer's specific circumstances. Rather than seeking new alternatives to RV charges, this Wholesaler would support the use of assessed charges given a more accurate outcome is achieved without further complicating the tariffs available to Retailers and end-user customers.

It also noted that five years after market opening, there is now a significant amount of information available about water consumption nationally, held within CMOS. In its view, this presents an opportunity that did not exist prior to the formation of the NHH retail market, with a single source of all relevant data to inform the assessment of volumes of consumption using data for similar premises. *"This would enable companies to continue to meet charging principles and be demonstrably fair for customers"*. It too noted the work that the RWG Wholesale Tariff Structure Simplification Sub-Group was undertaking, including the opportunities to simplify and standardise unmeasured charging, alongside measured charging.

¹⁷ This Wholesaler also highlighted the importance of consistent messaging about the benefits of metering first, as NHH customer will also be HH customers.

In contrast, another Wholesaler (United Utilities) told us that its policy of charging unmeasured customers based on RV has not been raised by either Retailers or customers as an area of concern. For this reason, it has not been actively looking to make changes to this area of charging. It does, however, note the work of the RWG Wholesale Tariff Structure Simplification Sub-Group and is keen to look for ways to improve the market and will feed its views into the current discussions in this area. It would consider any proposals for improving unmeasured charges brought forward by the RWG Wholesale Tariff Structure Simplification Sub-Group.

A number of other Wholesalers (e.g. Anglian Water) also pointed to the work of the RWG Wholesale Tariff Structure Simplification Sub-Group and believes that this will be helpful in identifying alternative approaches.