

Wholesale Retail Code Change Proposal – Ref CPW126

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| Modification proposal | Wholesale Retail Code Change Proposal ¹ – CPW126 – Settling of Post RF Primary Charges |
| Decision | The Authority has decided to approve this Change Proposal |
| Publication date | 27 July 2022 |
| Implementation date | 26 August 2022 |

The Authority approves this Change Proposal.

The issue this Change Proposal seeks to address refers to limitations in the current Wholesale Retail Code, [Schedule 1, Part 2: Business Terms](#), section 9.3.10 resulting in non-recovery of wholesale primary charges in cases where Retailers have made retrospective data amendments, after receiving correct payment from customers or rectifying data error detection, more than eight (8) months after the Final Settlement Report for an invoice period has been issued.

We recognise that retrospective amendments to data do (and need to) occur to improve the quality of market data. We also recognise that, in some cases, Wholesalers are currently unable to recover correct primary changes from Retailers due to the current constraints within the Code.

We approve this Change Proposal with the expectation that it will limit the number of cases where Wholesalers are not able to recover primary changes that they are rightly owed. We expect that this will, in turn, benefit customers indirectly from avoiding potential bill shocks. We note that the simplified process, following the consultation feedback, relies on correct Trading Party behaviour and collaboration, and seems proportionate to the scale of the issue. We encourage proactive monitoring of the

¹ The terms used in this document are those defined in the Wholesale Retail Code.

effect of this change, when implemented and, if required, refining of the guidance post-implementation.

Background

Section 9.3.10 of the Wholesale Retail Code, [Schedule 1, Part 2: Business Terms](#) concerns the invoicing and payment of primary charges. It states that Wholesalers are currently allowed to invoice or bill for positive sums to Retailers only when that invoice or bill is issued within an eight (8) month period following the issuing of the invoice period's Final Settlement Report ('RF'), or if relates to charges in a Dispute or Post RF settlement Report.

In August 2021, Northumbrian Water (the "Proposer") raised the issue that Retailers can make retrospective amendments to data items after the point at which they had received the correct payment from customers. However, where eight months have elapsed since an invoice period's RF has been issued, there is currently no mechanism for Wholesalers to recover money that they are owed as a result of these retrospective amendments, which can lead to the non-recovery of primary charges.

The Change Proposal has been developed by MOSL and the Proposer, consulting upon it with the industry in September 2021 and providing a recommendation to the Panel in November 2021.

The issue

As noted above, Wholesalers are currently not allowed to invoice or recover primary charges from Retailers where more than eight months have passed since an RF for the invoice period has been issued. This constrains Wholesalers from recouping legitimately owed primary charges, in cases where the Retailer has received the correct bill from a customer following retrospective data amendments, more than eight months after their RF runs had been completed.

The Change Proposal explains that the most common instances of this occurring are mainly due to inconsistencies between Retailers' systems and the Central Market Operating System (CMOS), with the latter containing incorrect or incomplete data. For example, a Retailer may have billed a customer for the invoice period correctly, but a data error has subsequently been detected through CMOS. If data rectification is completed for an invoice period more than eight months after the RF is issued, the

Wholesaler is unable to recover the correct wholesale charges that are legitimately owed for services rendered.

The Change Proposal²

This Change Proposal seeks to extend the period in which Wholesalers can issue an invoice or bill for positive sums after the RF has been issued, from eight (8) months to twenty-eight (28) months. The final recommendation report clarifies that the Wholesaler may continue to issue invoices up to eight months following the RF run without querying the Retailer, but it may recover primary charges for up to the twenty-eight (28) months deadline. It further clarifies that this is only in circumstances where the Retailer has billed the customer and has confirmed, via a statement of declaration, that it has received the correct retail charge. In the statement of declaration, Retailers are also required to provide rationale in the case of customer non-payment.

The [final recommendation report](#) provides analysis to demonstrate that retrospective amendments to data occur and, in some instances, they can lead to Wholesalers not being able to recover the correct primary charges from Retailers. For example:

- The report highlights 2,192 cases of premises' occupancy data changes submitted more than eight months after the RF has been issued for the invoice period from April 2017 to September 2019. The approximate total charge was estimated to be £236,038. The report provides anonymised information on the approximate loss of revenue affecting each of the 17 Wholesalers, with four Retailers accounting for over 75% of the charges that were unrecoverable.
- Further analysis shows that manual investigation of 49 meter readings submitted between July 2019 and September 2019 has revealed 19 cases where volume calculation eight months post the RF deadline were different to their respective RF runs. It is noted that read submissions have in general a more corrective nature of planned settlement runs than occupancy data amendments, as any undercharges or overcharges for the 19 identified cases were recovered in subsequent settlement reconciliations in the following invoice periods.
- In addition, analysis of unplanned settlement runs, for 2019 invoice period, submitted more than eight months following the Final Settlement Reports, indicates 33 requests made, of which 22 were submitted by Retailers.

² The proposal and accompanying documentation are available on the MOSL website at <https://www.mosl.co.uk/market-codes/change#scroll-track-a-change>

MOSL has created a guidance document on reconciliation of primary charges post-RF, as well as a template for the Retailer statement of declaration. The final recommendation report outlines details on the proposed process steps, which are set out in the box below.

1. **Initial query by Wholesaler:** if the Wholesaler seeks to issue an invoice or bill for an invoice period more than eight months after its RF run has been completed and the bill is positive, i.e., the Retailer owes the Wholesaler money, the Wholesaler must query the Retailer on whether the retail charge associated to that invoice period was paid by the customer. The format and structure of the query are not dictated within the market codes, and they are up to the Trading Parties to agree upon. Trading Parties would need to agree the date upon which the query was received by the Retailer.
2. **Response from Retailer:** within 15 Business Days (BDs) of the Retailer receiving the query, it must respond with a declaration on whether it has or has not recovered the retail charges related to that invoice period from its customer. The market codes do not dictate the format or structure of the declaration but do mandate that rationale must be provided in the case of customer non-payment. The Wholesaler must wait for the full 15 BDs to elapse. If the Retailer does not respond, the Wholesaler may escalate the issue to the Disputes Committee, in accordance with the established disputes procedure set out in the Market Arrangements Code (MAC).
3. **Wholesaler invoicing:** in any event, the Wholesaler may only issue the bill or invoice for a positive sum for an invoice period provided the Retailer has recovered the correct associated retail charge from its customer, and within 28 months of the Final Settlement Report.

The final recommendation report notes that the proposed extended period aligns with provisions in Section 4.14.2 of WRC, [Schedule 1: Part 4: Market Terms](#) on the twenty-eight (28) months period after a RF when agreed re-calculations of primary charges can be requested. It is also noted that the materiality thresholds in section 4.13.4 of the Market Terms will need to be met for the Wholesaler to request an unplanned settlement run and issue a positive invoice i.e., post RF settlement runs to be higher of:

- a) 0.1% of the sum of the primary charges due to the Wholesaler from the Retailer over all the relevant consecutive invoice periods; and
- b) £3,000 multiplied by the number of post RF runs needed.

The Change Proposal introduces changes in respect of Sections 9.3.6, 9.3.10 (b)(i) and 9.3.10 (b)(ii) of the Business Terms which incorrectly exclude Corrective Settlement Runs from the processes in which reconciliation balances could be based upon. Further housekeeping changes are introduced in respect of Schedule 2B, Schedule 4 and

Schedule 6 of the Business Terms which contained gender-based terms ('sirs'). These housekeeping points were identified by MOSL and the Proposer has agreed to incorporate them into the proposed solution for CPW126.

Industry consultation and assessment

There was an [industry consultation](#) on this Change Proposal between 3 September and 24 September 2021. There were 19 responses from 11 Wholesalers, seven Retailers and the Consumer Council for Water (CCW). Below is a summary of the key consultation response themes and the Proposer's reply. The verbatim responses can be found at [Attach 1, CPW126 Final Recommendation Report](#).

Effects on the market

The majority of respondents identified with the issue outlined in the Change Proposal and cited cases of retrospective data amendments made by Retailers which resulted in improved data accuracy but also the non-recovery of primary changes.

Agreement with the solution

Ten consultation respondents (nine Wholesalers and one Retailer) agreed with the proposed solution to extend the period in which a Wholesaler may invoice or recover primary charges to align with section 4.14.2 of the Market Terms, of period up to twenty-eight (28) months after the RF report has been issued. It was noted that the proposed change seems fair, balanced and low-cost to address an existing settlement imbalance between Trading Parties in back-billing reconciliation. Other reasons include the promotion of better and more transparent operations in customers' interests, without directly impacting the end customer. Eight of the consultation respondents (six Retailers and two Wholesalers) disagreed with the proposed solution and CCW called for more information on the scale of the issue. The main reasons include:

- **Further analysis needed:** Analysis is needed to identify the scale and impact of the issue and the Retailers' behaviour in applying retrospective amendments.
- **Administrative burden and cost for Retailers:** Significant costs, mainly to Retailers, as a result of burdensome logistics of administrating and validating information.
- **Disproportionate solution:** The scope of the proposed solution appeared disproportionate to the issue at stake. There were proposals for resolution

through other means, such as a disputes procedure or less formal and fast-track process.

Proposer's reply and evolution of the solution following the consultation

- **Further analysis needed:** Further post-consultation analysis has been undertaken to identify the potential scale of the issue as noted in section "The Change Proposal"
- **Administrative burden and cost for Retailers:** The solution has been adjusted to simplify the process by requiring Retailers to fill in a statement of declaration as to whether it has recovered the correct retail charges. The Proposer clarified that with the correct behaviour from all parties, the process could be run with little administrative burden. It also noted that following implementation this change should be monitored, and further changes made if the solution results in higher-than-expected administrative costs or other disbenefits.
- **Disproportionate solution:** A simplified process has been suggested and MOSL has issued a guidance document to clarify expectations. The Proposer noted that for a disputes process to be applicable for the resolution of this issue, the codes have to create the ground for a dispute to be raised. The Proposer noted that the disputes process is a final step if Trading Parties cannot agree.

Views on a formalised process and impacts on systems/processes

Most of the respondents who agreed with the proposed solution did not favour an elaborate formal process as it would increase administrative costs and effort. Retailers provided examples of possible impacts to their systems and processes, which were largely associated with the provision of evidence. The majority of respondents questioned how evidence requirements could be established without allowing access to customer records and exposing financial and customer records to misuse. There was a call for evidence provisions in a simple and cost-effective way. A few respondents suggested the use of a simple declaration from a Retailer where the Retailer recorded whether it had recovered the correct charges from its customer.

Proposer's reply and evolution of the solution following the consultation

As noted above, in response to the consultation feedback, MOSL has issued a guidance document and the proposed solution has been simplified, suggesting a simple Retailer statement of declaration as to whether it has recovered charges. The Proposer has included drafting to be included in the WRC, [Schedule 1, Part 2: Business Terms](#) to incorporate housekeeping changes and the following points:

- the Wholesaler querying aspect;

- the period in which the Retailer must respond with a declaration;
- clarification that the Retailer must have recovered the correct retail charge from its customer before a Wholesaler invoices a positive sum;
- clarification that the Wholesaler may escalate the issue to the Disputes Committee.

The Proposer noted that the simplified process is now proportionate to the scale of the issue and relies on correct Trading Party behaviour.

Customer impact

The majority of the respondents noted that customers should not be negatively impacted by this change, due to protections already afforded to them in the Customer Protection Code of Practice (CPCoP). Two Wholesales noted that the change could result in fewer increases in wholesale tariff prices, which should benefit the end customer. Retailers noted potential GDPR issues if evidence requirements included the provision of customer information. Some respondents also stated that customers could potentially be pursued by Retailers for outstanding charges if invoices are raised incorrectly.

In general, CCW noted that customers should not be negatively impacted if this change is correctly implemented. It suggested setting out the process clearly in formalised guidance and noted the need for sufficient safeguards to be in place to avoid inappropriate debt recovery actions.

Proposer's reply and evolution of the solution following the consultation

Noting CCW's comments, the Proposer explains that this should be mitigated by the current protections in the CPCoP which puts obligations on Retailers to afford customer protection. We reiterate this point, and our expectations around debt recovery³ and the time limits against which a bill can be retrospectively amended per the Customer Protection code of Practice⁴.

The Proposer also clarified that appropriate actions should be taken if the solution results in complaints or code breach.

³ Section 7.1 of the Customer Protection Code of Practice

⁴ Sections 9.2 and 9.3 of the Customer Protection Code of Practice.

Panel recommendation

The Panel considered this Change Proposal at its meeting on 30 November 2021. It recommended, by a majority decision (12 votes in favour and one against), that the Authority approve this Change Proposal. The recommended date of implementation was 13 May or alternatively 26 August 2022.

This recommendation has been made on the basis of improving the WRC Business Terms and Market terms, as well as the code's Primary Principle and other key principals, for example transparency and clarity simplicity, cost-effectiveness and security.

The final recommendation report notes that the majority of Panel members agreed that, on balance, the proposed change is a simple mechanism for the recovery of primary charges by Wholesalers, could foster collaboration between parties and could encourage better management of centralised data.

The report details that some Panel members questioned whether there are any existing provisions within the market codes addressing the issue. It was clarified that where a customer had been correctly charged by the Retailer but undercharged by the Wholesaler, there is currently no mechanism for the Wholesaler to invoice the Retailer once eight months after the RF Run has elapsed.

It was noted that several members still expressed concern that the change could increase administration costs, especially for Retailers. The Panel noted the proposal does not enforce a standard format for Wholesaler enquiries and Retailer declarations.

A Panel member noted the issue may have risen from Trading Parties' behaviours related to late changes to data in CMOS, and the change sought to address the effect rather than the cause. It was suggested that the Retailer required statement of declaration should be clarified within the guidance. Another Panel member suggested clear monitoring and refining of the guidance document in the change's post implementation review.

The final recommendation report states that CCW was supportive of the change and considered the guidance document useful in clarifying that a Wholesaler may not invoice the Retailer unless the Retailer had been paid the correct charges by the customer.

MOSL and the Proposer noted that existing data confidentiality obligations within the market codes would need to be adhered to when providing rationale for customer non-

payment. They also highlighted that that materiality thresholds for requesting post-RF Runs meant only cases involving material levels of charges would be expected.

The Panel member that voted against the Change Proposal expressed concerns related to the increased administration placed onto Trading Parties, as a result of the proposed change and did not consider its benefits balanced between Wholesalers and Retailers.

Our decision and reasons for our decision

We have considered the issues and the supporting documentation provided in the Panel's final recommendation report and have decided to approve this Change Proposal.

Having reviewed the Panel's Final Report we consider that the solution put forward in this Change Proposal adequately addresses a limitation in the current WRC, [Schedule 1, Part 2: Business Terms](#), section 9.3.10 that prevents Wholesalers from recovering primary charges in cases where Retailers have made retrospective data amendments and recovered the correct payment from a customer, leading to the non-recovery of correct wholesale charges.

The analysis presented in the final recommendation report and outlined in Section "The Change Proposal" above demonstrates that retrospective amendments to data do occur and, in some cases, Wholesalers are unable to recover correct primary changes from Retailers. We recognise that there is a need for retrospective amendments to market data and encourage all Trading Parties to correct data items where appropriate. We also highlight the importance of Trading Parties updating CMOS with accurate data to improve the level of data quality in the market. We also note that the current reform of the Market Performance Framework (MPF) provides an opportunity to strengthen incentives on Trading Parties to update CMOS with accurate data in a timely manner.

We approve the Change Proposal with the expectation that it will limit the number of cases where Wholesalers are not able to recover primary changes that they are owed, and expect that this will, in turn, benefit customers indirectly from avoiding potential bill shocks in the future⁵.

We welcome the amended clarification that the proposed solution is applicable only in circumstance where the Retailer has billed the customer and received the correct charge. It is crucial to ensure that no customer is impacted negatively if Retailers seek

⁵ The wholesale controls are revenue controls and if a Wholesaler under recovers revenue in a given period it can recover this in later periods. If the Retailer has already recovered the correct revenue from end customers, but not paid the Wholesaler, this could result in end customers paying more than they should.

to recover charges incorrectly or inappropriately. Therefore, we reiterate the point that Retailers cannot double charge customers for their consumption and note the time limits within the CPCoP whereby Retailers may recover charges from Customers⁶.

We acknowledge some Retailers' initial concerns that the Change Proposal will result in an increased administrative burden and welcome the amended (simplified) process proposed in the final recommendation report, where the solution is simply for Retailers to provide a statement of declaration regarding customer payment of charges and for the Trading Parties to follow the guidance document produced by MOSL. We agree that the revised process puts emphasis on correct Trading Party behaviours, especially in terms of transparency and collaboration, and fully expect Trading Parties to act in good faith in this regard.

To ensure that the implementation of this Change Proposal does not result in significant administrative burden, and to monitor any adverse impacts on customers that may arise, we expect monitoring of this change and refinement of the guidance document via a post-implementation review, and if evidence shows that changes are needed, we expect these to be considered at the appropriate time.

We think that implementation of CPW126 will further the WRC's **Primary Principle** of protecting and promoting the interests of existing and future Non-Household Customers, including by preventing unnecessary increases in wholesale tariffs due to un-recovered primary charges from some customers.

Amongst other key Principles, we consider that the Change Proposal facilitates, in particular:

Simple, cost effective and secure: We consider that the amended simplified process outlined in the guidance document and the requirements for Retailers to fill in a statement of declaration provides a simple and cost-effective process to enable more accurate recovery of wholesale charges.

Transparency and clarity: We consider that the proposed solution will improve transparency of wholesale charges recovery where discrepancies exist in CMOS due to data errors.

Proportionality: The proposed change is applicable only under certain circumstances where the Retailer has billed the customer and has already received the correct retail charge. The final recommendation report clearly states that a materiality threshold (as

⁶Section 9.3 of the Customer Protection Code of Practice

per section 4.13.4 of the Market Terms) needs to be met for the Wholesaler to issue a positive invoice for recovery of primary charges.

Finally, we think that CPW126 facilitates the WRC Business terms and Market Terms by impacting positively Wholesaler's ability to recover primary charges in specific circumstances and providing further clarity on the Trading parties obligation in the invoicing payment process.

Decision notice

In accordance with section 6.3.7 of the Wholesale Retail Code, the Authority approves this Change Proposal.

Georgina Mills
Director, Business Retail Market