

Customer Protection Code of Practice – A Call for Inputs

Response of Castle Water Limited

Introduction

1. This is the response of Castle Water Limited (“**Castle**”, “**We**”) to the Call for Inputs (“**CFI**”) issued by Ofwat on 27 April 2023 in relation to its review of the Customer Protection Code of Practice (the “**Code**”) for the Non-household (“**NHH**”) retail water market.
2. References to the Code are to Version 7.0. The responses follow the section and question numbers in the CFI.

2.1 Current requirements

Question 1: What views do you have on the adequacy of the current requirements as they stand. Do you think they could or should be strengthened, and if so do you have views on how they might be amended and any costs that may be incurred by doing so?

3. It seems to us incongruous to see so much emphasis, after more than six years of Non-Household (“**NHH**”) market operation, on the case for *strengthening* the Code provisions, especially in terms (e.g. of ‘vulnerable’ customers) that would normally apply to a household market rather than one in which all the customers are businesses. We would encourage Ofwat to consider lightening the regulatory and practical burdens that the Code imposes.
4. While the Code rightly expects retailers to be fair in their dealings with customers there are many features of the market that are not fair to customers, which customers tell us are unfair and expect us to change (and use this against us in our interactions with them). These include the iniquities of rateable value charges, use of sub-meters and shared metering arrangements. They also impact how customers construe certain provisions of the Codes, and their willingness to pay legitimate bills.
5. In summary, we consider that the following improvements to the Code need to be made in the interests both of customers and retailers.

Billing

6. Many customers deliberately construe the absolute requirement on retailers to bill annually based on a meter read as allowing them to decline to pay the bill if they dispute a read, refuse access and / or fail to supply a read. That causes disproportionate contact and cost recovery expense, which is unfair on other customers because it restricts the ability of the retailer to offer better customer service and / or products to others within the cost allowance, and is not in any case sustainable for an ‘efficient’ retailer.
7. We therefore propose that Section 9.2.2 of the Code is amended along the lines of Condition 21B.4 of Ofgem’s energy supply licence standard conditions, as below:

“9.2.2 If a Non-Household Customer provides a meter reading to the Retailer that the Retailer considers reasonably accurate, or if the meter is read by the Retailer, the Retailer must take reasonable steps to reflect the meter reading in the next bill or invoice sent to the Non-Household Customer.

9.2.3 If the Retailer considers that a meter reading provided by a Non-Household Customer is not reasonably accurate, the Retailer must take reasonable steps to contact the Non-Household Customer to obtain a new meter reading from them.

9.2.4 The Retailer must take reasonable steps to obtain a meter reading (including any meter reading transmitted electronically from a meter to the Retailer or provided by the Non-Household Customer and accepted by the Retailer) for each of its Non-Household Customers at least once every year.”

8. Similarly, many customers deliberately avoid payment by failing to inform the retailer that they have moved out of a premises, and / or to respond to contact, including by liquidation without insolvency – which often also entails the carrying on of business by creating ‘phoenix’ companies. Specific examples illustrative of the many cases we have encountered include:
- Hotel: one beneficial owner, with multiple companies used as a distraction to avoid payment in respect of different SPIDS.
 - Restaurant: multiple companies being wound up and dissolved with the same directors, one of the directors already being disqualified as a result of prior insolvency proceedings.
 - Restaurant: illegal reconnection. Customer has provided details of a “new occupier” at every disconnection attempt.
 - Restaurant: Customer asked for meter verification which was delayed by a series of false move-ins and move-outs with no account to which to link charges. Thus there are a number of accounts with balances that we cannot rebill despite the occupier being the same.
 - Restaurant: Different legal entities with the same directors, one dissolved and only notified 18 months later. There was no change to the business or premises but the second company was then also dissolved in less than a year with no details of a new occupier, although the premises remain active.
9. The Government has passed legislation to curb such abuse where the taxpayer is defrauded¹. The back-billing restrictions should include a similar narrow and specific exemption where this occurs in recognition of the principle, which we believe Ofwat espouses, that all consumption legitimately recorded or assessed should be paid for.
10. We therefore propose the following addition, reflecting the many options that now exist for customers to interact with retailers through self-serve account management to input meter reads, receive paperless bills and make payments:

¹ The Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Act 2021. See also <https://www.gov.uk/government/news/crackdown-on-directors-who-dissolve-companies-to-evade-debts>

“9.3.2 The restrictions in Section [9.2.4] and Section 9.3.1 shall not apply where:

- a) In the reasonable judgment of the Retailer the customer has by act or omission (without limitation):
 - (i) refused to allow access for, or obstructed, a meter read;
 - (ii) not divulged their identity, or their trading or occupancy status; or
 - (iii) damaged or removed a meter; and
- b) the Retailer has taken all reasonable steps:
 - (i) to ascertain the matters at (a) above;
 - (ii) to use the best available data to establish the bill or invoice; and
 - (iii) evidenced the methodology underlying the bill or invoice, which may include but is not limited to methodologies based on meter reads, type of premises, or previous or on-going contact with the relevant Non-Household Customer.

9.3.3 For each account where the Retailer has relied on the exemption at section 9.3.2, the Retailer must retain a clear record which demonstrates compliance with section 9.3.2.”

Sales and marketing

11. While we recognise the role to be played by Third-Party Intermediaries (“**TPIs**”), we have found many instances of misinformation by some TPIs and, by association, some retailers. We also recognise that Ofwat does not directly regulate TPIs. The same is true of Ofgem, but that has not prevented Ofgem from taking more proactive action. We advocate similar strengthening of Ofwat’s Code, especially in the interest of smaller customers and of competition.
12. It is clearly in retailers’ interests to inform customers of the benefits of switching. It would facilitate the development of a thriving market if Ofwat and CCW were also to focus more attention on this on this aspect. We welcome Ofwat’s intention to refresh the Open Water website. We also note the current requirements on retailers to draw attention to this (and equally to the risk of retailer insolvency). But a sustained and focused effort by Ofwat and CCW *themselves* to emphasize the positive aspects of switching, and at the same time to tighten the financial robustness requirements for new licensees and the monitoring of existing licensees would do much to foster confidence in the market.

Transfer of NHH customers

13. In parallel, Ofwat should strengthen or supplement the existing controls on switch-blocking, of which we have been seeing some egregious examples.
14. See below for more detail on these matters.

2.2 General Principles of the CPCoP

Question 2: Do you think the General Principles of the CPCoP should be modified to ensure a stronger focus on the interests of customers, and if so how?

15. It is hard to see how the current Principles (notably the requirement for retailers to be “fair, transparent and honest; while putting the customer at the heart of their business”) could be materially more ‘customer focused’ than the Primary Principle of the MAC and WRC.
16. We note, however, that the Supporting Principles in the MAC and WRC largely deal with the functioning of the market, and that this does not feature directly in the Code. We therefore see merit in the Code acknowledging - as does Ofwat in Section 1 of the CFI - that the customer experience depends to a material degree on adherence by both Retailers and Wholesalers to the MAC and WRC.
17. Therefore, while we welcome Ofwat’s intention to introduce a new Condition into incumbent wholesalers’ licences, this should require them to treat retailers and their NHH customers with as much diligence as if they were their own customers. Their role in the NHH market, and retailers’ dependency on them, could also be recognised in the Code by adding to the final Code Principle:

“Customer service arrangements and processes shall be accessible to and effective for Non-Household Customers *consistent with the Retailer’s and the relevant Wholesaler’s respective obligations under the Market Codes.*”

2.3 Should different customers receive more explicit or targeted levels of protection in the CPCoP?

- (i) Size of customer
- (ii) Vulnerable customers
- (iii) Non household customers with crucial infrastructure
- (iv) Emergency planning

Question 3: What views do you have on the CPCoP offering differing levels of protection to customers as described above?

18. We note the CFI refers to the Retail Exit Code (“**REC**”) consumption categories as differentiating customer size and hence the need for protection under the Code.
19. First, as we have stressed in our exchanges with Ofwat on the REC, we do not consider this a reliable guide to the need for protection – for example, Customer Group One includes a great many accounts that are part of a wider group (e.g. banks, public houses) whose affiliation it is not possible to discern from the account name. It is therefore wrong to assume that this Group as a whole needs more (or any) specific protection under the Code.
20. Second, following from the above, we do not accept the assumption that less switching activity is indicative of a need for *greater* protection, whilst at the same time failing to recognize (e.g. in the case of Customer Group Two) that greater switching activity might indicate a need for *less* protection.
21. Finally, it is important to avoid implicitly attributing to small business customers the characteristics of domestic customers. Pending Ofwat’s promised more methodical investigation into the

competitive dynamics exhibited by different customer types, and in the absence of any evidence that the current protections are inadequate, or that it is necessary to 'correct' particular retailer behaviour, we would caution against drawing this conclusion prematurely.

22. In that vein, we are not convinced that there remains a case for drawing a distinction between Micro-businesses, specifically, and other NHH Customers. In our view it would be sufficient for the purposes of both constituencies to require only the basic elements of the information in Section 7 to be published on retailers' websites. We are not aware of any evidence that Section 6.1 is guarding against any specific ill for Mico-businesses.
23. However, whereas consumption and 'vulnerability' are not easy to legislate for (see below), in our experience it is home-based business customers who are often not aware that they are entitled to consumer protection. We could therefore see a case for affording them particular protection.
24. In the interests of simplification, Sections 6.3 and 6.4 on third party involvement could then be incorporated into a separate general requirement applying to all dealings with third parties – see the answer to Question 7 below.

Question 4: What views do you have on extending additional protections to particular vulnerable customers, and what extra protections do you think it would be appropriate to consider adding to the CPCoP for these customers?

25. The CFI does not specify what is meant by 'vulnerable' NHH customers, but implies that personal characteristics (health, wellbeing or finances) are at play in this context. An understanding approach in these circumstances is naturally to be expected, but the appropriate response (e.g. through payment plans) will depend on the individual case. Other factors are equally demanding of an understanding approach to the needs of corporate customers – for example, we have proactively provided tanker supplies to a large industrial plant where the integrity and safety of the plant was at risk from a supply interruption. It is not possible to legislate for all eventualities: one relies on either a precise but inevitably incomplete specification or a 'motherhood and apple pie' over-generalization.

Question 5: What views do you have on whether the CPCoP should include protections for customers with critical infrastructure?

26. Similarly, any respectable retailer would take seriously its responsibilities to NHH customers with critical infrastructure. Hospitals are an obvious candidate – but many others will be a matter of judgment for the retailer in the circumstances. It is dangerous to over-specify: for some it would be moot whether special treatment is warranted for a church but not for the plant cited above.

Question 6: What views do you have on how the CPCoP could be strengthened to deal with emergency events?

27. We consider that if retail licensees comply fully with the requirements of their licences, and wholesalers with theirs, no further special provision is needed.

2.4 Improving the customer experience

Question 7: Do you have any thoughts on how the CPCoP could be strengthened to improve customer experience?

We note that Ofwat has only just embarked on its assessment of the effectiveness of the ‘service levels’ embodied in the Code via CP0010. We await the conclusion of this process. We have, however, made our views clear, including our support for specific refund periodicities in line with individual customer preferences.

The provisions on erroneous transfer should be strengthened by making it a Code obligation on an outgoing retailer to ensure that an accurate process is conducted to stated standards, and to be prepared to explain these to Ofwat. This is particularly important given the failure of MOSL’s recent report to embody any adequate analysis of retailers’ switch-blocking behaviour.

Third party intermediaries

28. The provisions on sales and marketing should be strengthened to ensure fairness and transparency and constrain the use of misleading information by some TPIs (whether condoned or simply not controlled by retailers). These purport to offer exaggerated retailer coverage and savings, including prices whose financial attractiveness is outweighed by concealed commissions or other terms such as termination penalties. We have drawn to Ofwat’s attention examples of TPIs that are ‘tied’ or otherwise commit such abuses, but Ofwat can use only persuasion to seek amendment of the offending websites – either, it appears, without success or failure to prevent recidivism.
29. It is therefore not enough to require retailers to provide adequate information to TPIs and make them aware of the Code. Retailers should be required to ensure that they neither engage, nor allow others to engage on their behalf, in inaccurate or misleading claims about their price and service offerings. The requirement to take reasonable steps to ensure that TPIs comply with Code provisions should extend to a requirement to monitor and correct any deficiencies in this regard, so that they cannot allow the major responsibility to rest on a TPI sector that Ofwat cannot effectively regulate.
30. Ofgem, too, does not regulate TPIs, but the RECCo that governs Ofgem’s Retail Energy Code has done extensive analysis and consultation on the need for better regulation in this area and is currently working towards a TPI Code of Practice for the non-domestic market to be implemented by October this year. In addition, it plans to introduce a standard template Letter of Authority (“LoA”).

<https://www.retailenergycode.co.uk/were-introducing-a-code-of-practice-to-the-tpi-market/>

Ofwat would do well to adopt a similar approach to that of Ofgem in this matter.

Question 8: Do you think the CPCoP could be strengthened to improve how Retailers provide customers with information relating to the end of their contract and terms of supply?

31. See the answer to Question 3. We consider the existing requirements to be more than adequate.

Question 9: Are there any service areas that are missing from the current CPCoP that we could consider for inclusion when updating it?

32. No.

Question 10: Is there is scope to update or standardise the existing Letter of Authority arrangements?

33. See the reply to Question 7 above.

Question 11: Should any changes to the CPCoP falling under questions 7 to 10 be differentiated by size or type of customer?

34. No.

2.5 Improving customers' awareness of the market

Question 12: Do you have any views or suggestions as to whether and how the CPCoP might be used to improve customer awareness and engagement in the market?

35. In addition to the suggestions made above, we would encourage Ofwat (and Defra, to the extent appropriate) to create and sustain an environment where customers are made aware both of the advantages of engagement and of the pitfalls. Retailers already have a number of obligations to provide information to customers about switching, and to warn customers of risk to their credit balances in the event of supplier failure. Ofwat's role in this could be to extend its work on retailer financial resilience to:

- Publishing its findings on any structural weaknesses that it detects, and on what aspects customers should satisfy themselves before switching.
- Adopting a more stringent approach to both the granting of licences and the regular monitoring of licensees' financial robustness.

2.6 Customer credit balances

Question 13: Do you have views on whether and how the implemented changes have impacted your business and delivered on the intended aims. To what extent do you consider that these changes have resulted in a noticeable difference in customer awareness in terms of credit balances or alternative payment options available?

36. We have not observed such a difference; though, as noted in our reply to Question 7 above, these are still early days to assess whether any changes are due to the fairly onerous requirements of CP0010 compared to, for example, our continuing campaigns to acquire customer details (e.g. email addresses and bank details) in terms of improving the effectiveness of our refund processes.

Question 14: Do you consider there are merits of introducing any of the options described above (further protections for smaller customers, ringfencing credit balancing, obliging Retailers to provide annual letter/notifications or obliging Retailers to refund customer credit balances on an annual basis) and why? Please provide your views of possible pros and cons on any options, including any possible implementation challenges, costs, or unintended consequences that Ofwat would need to consider.

37. See the reply to Question 7 above.

Question 15: Are there are any other options we could consider or anything we can learn from other sectors or markets on this issue? If so, please provide your views on possible pros and cons on any suggested alternative approaches, including implementation challenges, costs, or unintended consequences that Ofwat would need to consider.

38. See the answer to Question 1 above.

Question 16: Not used, as the CFI questions appear to be misnumbered.

2.7 Governance and housekeeping

Governance

Simplifying the CPCoP

Question 17: Do you agree that a similar process to the WRC/ MAC changes, should be introduced to replace the current CPCoP change process?

No. The current process reflects that Ofwat has authority over both the inspiration and approval of Code changes. While the latter is also true of Market Code changes, introducing a prior change process akin to that for the Market Codes does not promise to deliver “a more streamlined and efficient process”; an analysis of the revised MOSL process suggests otherwise. It also risks confusing the objectives of the two processes.

There is no evidence that a prior sifting of change proposals is necessary for the Code, especially given the small number of changes that have been inspired other than by Ofwat.

Question 18: Do you consider that the current CPCoP has redundant or unnecessarily complex elements? If so, do you have any suggestions to reduce complexity or redundant elements of the CPCoP?

We have suggested above some compaction and simplification of the customer information provisions. We consider that the Covid-19 interpolations could now be deleted: in the event of another disruption of that scale it is highly unlikely that the same provisions would be appropriate; even if the event were some kind of pandemic, the response is unlikely to be identical given the lessons that were learned from the Covid-19 experience.

Question 19: Do any definitions contained within the CPCoP need updating or amending?

This Question is best answered once a revised draft of the Code is available.

2.8 Monitoring and Compliance

Question 20: Do you have any views on whether we could protect customers better by taking further steps to increase our assurance that Retailers are compliant with their obligations as set out in the CPCoP and if so what in your view is the most effective way to do this?

The most significant measure that Ofwat could take would be to discover how far customers are aware of the Code provisions, and how - and for what purposes - they use them. This could be done by surveying customers directly, as well as through the lens of retailers’ experiences. That approach would identify more precisely whether and where more assurance is required.

2.9 Further Considerations

Question 21: Do you have any views on any areas that have not been considered by this CFI that you believe could improve or strengthen the CPCoP?

No further comments.

Castle Water Limited

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