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By email: [CPCOPcodechange@ofwat.gov.uk](mailto:CPCOPcodechange@ofwat.gov.uk)

Dear Colleagues

### **Customer Protection Code of Practice – Call for Inputs (April 2023)**

Thank you for the opportunity to comment on the CPCoP Call for Inputs.

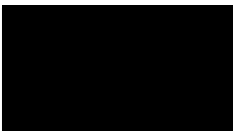
In general terms we view the ‘themes’ in the CFI to be somewhat reactive and unlikely to shift the dial for customers. On balance, we tend to agree with your conclusion (stated differently throughout the CFI) that the majority of small business customers see no tangible benefits from the establishment of the market which is disappointing given the robust economic assumptions which underpinned it.

We believe the CFI document itself would have benefitted from more examples of the behaviours against which customers would require more protection. In the absence of this detail, we’re unclear what the drivers are behind certain ‘themes’ and the scale of the problem they represent to the sector. There’s an overall feeling from the CFI that you see increases to retailer obligations and the regulatory burden as inevitable, but we would caution that we don’t see such measures as a panacea to fix broader market issues. We’d ask Ofwat to continue to take a proportionate and risk based approach to how you monitor the CPCoP. Unfortunately, we doubt that adding more complexity and cost to retailers will improve the offering to customers or stimulate switching.

We’ll be watching the impact of the introduction of a new licence condition for wholesalers which we think is interesting, but again, it remains to be seen whether it can be enforced in any constructive way.

Our responses to the consultation questions can be found in Appendix One attached. If you have any questions, please do not hesitate to contact me.

Yours sincerely



**Sally Mills**  
Chief Executive Officer  
Pennon Water Services

## APPENDIX ONE

### **Q1 - 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?**

A1 - In principle, we're unclear what is broken in terms of the CPCoP which consequently needs fixing. You've noted that the 'market frictions' are costing both retailers and customers. Yet these frictions are recognised primarily as failure caused and contributed to by the wholesale sector. Therefore, we find it disappointing that we keep coming back to this default position of increasing regulation and overly complicating the retail sector to fix the issues stemming from some wholesalers entrenched approach to retailers and their customers.

In terms on the current requirements, we'd comment only as follows:

- **Sales & Marketing** - we've previously mentioned our concerns about the practices of some retailers and their engagement with TPI's. We are confident that PWS don't consider that PWS's dealings with TPI's have a detrimental impact on our customers, although putting middle into the market (both retailers and TPI's effectively), is unlikely to offer worthwhile savings for customers.

### **Q2 - 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?**

A2 - Fundamentally, we don't believe the General Principles need to be modified and believe that they sensibly represent the interests of customers in a competitive commercial environment. If you have specific concerns about the practices and compliance of individual retailers in their application of the Principles, might it be more appropriate to take enforcement action against that retailer. Whilst the market processes are clunky at times, customers do and will continue to move if they're dissatisfied with their retailer and tweaking the CPCoP is a distraction from a grass roots change to the culture underpinning the 'market frictions'.

### **Q3 - What views do you have on the CPCoP offering differing levels of protection to customers as described above?**

A3 - We fundamentally do not agree with this, we believe the current Code is simple, accessible, and easily understood and regret the tendency to default to further complicating the Code.

You suggest the introduction of 'enhanced levels of protection' for different customer types or customers with different circumstances. Specifically, you've referred to the customers consuming less than 0.5m<sup>3</sup> per year. Whilst it's unclear precisely what new protections you're considering, [REDACTED] and communication prior to the submission of transfer applications and the provision of information about terms and conditions of supply. PWS has circa 75,000 customers in this category which are not 'micro-customers' are 'deemed customers' we inherited from wholesale at market opening with a low level of data confidence. By inference, we would have to communicate, i.e., write to these customers, who you acknowledge have 'less incentive to engage in the market' to attempt to highlight the same information we provide micro-customers when they actively engage with us. Actively 'communicating' such information with each of our smaller, deemed customers would cost PWS circa upwards of £70,000 per communication.

**Q4 - 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?**

A4 - Firstly, the concept of 'vulnerable' customers with issues with their 'health, wellbeing or finances' or whose health and wellbeing impact their ability to pay, should remain exclusively with domestic household customers and we are concerned by any suggestion otherwise. We consider any 'theme' that retailers can or should introduce similar protective schemes and measures to those provided by wholesale to households is an open acknowledgment that those customers should never have been put into the market in the first place.

There's also a concerning, underlying premiss here that retailers do not take into consideration the health, well-being and finances of their customers in dealings with them. This couldn't be further from the truth at PWS. We doubt we're the only retailer which routinely uses its discretion to simply write off sums (which adds up incrementally to the detriment of PWS and its owners) owed by those who are ill, or the tenant farmer who's caught in a crossfire with their landlords over leakage responsibility and simply has no assets to claim against for example. You'll see from our annual reports that like other incumbent retailers, our customer debt runs into the tens of millions. With this in mind, we pay exceptionally close attention to circumstances where it is appropriate and viable for us to chase customers for payment. We always offer repayment options and many of these debts are long term where we continue to supply their water and sewerage needs whilst supporting them to make some payments.

In other circumstances, it is unclear to us precisely what you think a retailer can do in an emergency weather or supply event. This can only sit with the wholesaler, and we feel this is getting very confused with wholesaler issues and SEMD and emergency planning. For example, recently, a retailer could do nothing for the dairy farmer in the Southern region who suffered business loss and interruption when his supply was cut off. Even the press reporting on it picked up that compensation and supply was solely related to the wholesaler and nothing in the CPCoP would have improved that customers experience or outcome.

In terms of the 'Beast of the East' report you've referred to, no doubt there is confusion and poor information sharing between retailers and wholesalers. However, this issue has been the recent subject of questioning by both Ofwat and a statement by Defra and for now, we understand it's covered by SEMD and Code compliance. What could go into a supplementary Code of Practice which could improve existing provisions. Retailers cannot contact business customers out of hours.

**Q5 - What views do you have on whether the CPCoP should include protections for customers with critical infrastructure?**

A5 - How would we do that? We read meters and produce a bill. We also comply with Code obligations to liaise with wholesalers for unplanned events and emergencies.

[REDACTED] access to the accurate data they failed to provide the market in the first place. [REDACTED] will to see what possible obligations should be placed on a retailer in respect of retailer customers with critical infrastructure. Our experience is that wholesalers do not want us supporting customers on the ground in any event.

**Q6 - What views do you have on how the CPCoP could be strengthened to deal with emergency events?**

A6 - See previous comments. We feel any retailer duties and obligations in these circumstances are already covered elsewhere.

**Q7 - Do you have any thoughts on how the CPCoP could be strengthened to improve customer experience?**

A7 - We don't have strong views on increasing the accessibility and accuracy of information provided to customers, save that obligations to increase the frequency and method of current communications are costly and not provided for in the recent REC price review.

Overall, we consider that we use plain English in our customer communications and are not aware of any customer complaints in this area.


In terms of improving the customer switching process, this appears to sit in the 'nice to have' category. If Ofwat/MOSL have little appetite to take action where the current, very clear switching requirements are being flagrantly ignored then where's the value in including further requirements which may be routinely ignored. You have previously been alerted to two retailers which have are in breach the Code by actively pursuing a policy not to attempt transfer reads. This gives them an enormous commercial advantage with no consequence or remedy and leaves little incentive for other retailers to do the right thing and take on the costs associated with this activity.

**Q8 - 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?**

A8 - You've asked specifically whether 30 calendar days' notice of contract terms expiring is sufficient time for customers to consider whether to renegotiate or switch. Given that many B2C customer contracts (insurances, subscription renewals being examples) give the same notice periods with some of them including auto-renewal, we consider that 30 days is quite normal in the B2B water market.

Also, these are the customers who have actually, actively engaged with the market and agreed contracts with us. So, you're asking us whether we think a standard 30-day notice period is sufficient for business customers in a commercial environment who have already engaged with retailers previously – we do.

**Q9 - Are there any service areas that are missing from the current CPCoP that we could consider for inclusion when updating it?**

 is scope to update or standardise the existing Letter of Authority arrangements.

A10 - In terms of customer protection, we have raised concerns about miss-selling with Ofwat in the past and were aware of TPI's themselves which have tried to contact Ofwat about misleading practices. In principle, no changes to the CPCoP or any other code in this regard are worthwhile without some mechanism for protecting and enforcing those rights.

In the context of protecting customers, we don't think that the Letter of Authority should be the focus assuming that there is one, signed by an appropriate company representative which sets out how the TPI can act on a company's behalf.

Given that Ofwat has no enforcement powers over TPI's, Ofwat could instead establish voluntary principles (Code of Practice for Non-domestic TPI's) showing how TPI's should operate within water retail similar to Ofgem. Certainly, there's a lot of learning in the gas and electric sector around TPI's, where they are more active.

By analogy, Ofgem imposed a new licence condition on retailers last year prohibiting them from working with TPI's that are not signed up to a customer friendly ADR scheme for disputes for instance. Protecting customers to exposure to TPI's in the market can also be done by:

- Voluntary code of practice for the TPI's
- Code of practice underpinned by a licence condition on retailers to work only with TPIs accredited to such Code and governed by an independent board
- Licensing of non-domestic TPIs.

That Code of Practice should also list key information that TPI's should provide customers before they sign up to use their TPI services including:

- Which retailers will you be approaching to get prices?
- How many price offers will you give me?
- What will you do to help me switch supplier?
- What services will you provide during the life of the contract?
- How will I be charged for these services? Will I be charged directly or indirectly?

**Q11 - Should any changes to the CPCoP falling under questions 7 to 10 be differentiated by size or type of customer?**

A11 - No. A requirement for further customer categories is effectively admitting that categories of customers are domestic not NHH. Wholesalers have to respond to a single class of customer only. But you're suggesting retailers need to have multi-levels of service offering to accommodate customers akin to domestic as well as business. Was this the intention at market opening!

**Q12 - 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?**

A12 - We welcome Ofwat's commitment to boosting consumer awareness and signposting by re-launching its Open Water website and updating materials and information provision for microbusinesses improving its Open Water website which we note is out of date. We hope that Ofwat will regularly share information with the market about the behaviours of visitors to its site, including the number of visitors. We are happy to link to the site from our own website.

In addition, Ofwat might consider Ofgem's initiative working with Citizens Advice to shape the creation of new and updated information on Citizens advice website, enabling microbusinesses to have access to up-to-date guidance and advice as well as wider communications to boost consumer awareness about the market and consumer rights. It will cover topics ranging from the importance of microbusinesses recognising the significance of entering into legally binding contracts, to the availability of alternative dispute resolution facilities.



**Q13 - 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?**

A13 - We haven't experienced a notable impact on our business and don't believe it's made any difference to our customers. Despite the additional information provided, we still have customers who move without a forwarding address, without leaving bank details to return payments and have a credit on their account.


**Q14 - 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.**

We think our views on further protections for smaller customers and new customer categories are clear. We understand the need to examine and quantify the true level of customer credits within the sector, much as Ofgem has already done. However, following Ofgem/Defra's very public U-turn this year on ringfencing customer credit after much industry and political debate, we assume this discussion in relation to the far smaller water sector is now moot for all the reasons that applied to the gas and electric retailers. Like you, we will closely follow Ofgem's next steps in this regard.

In terms of the annual refund of customer credit, we feel there's a degree of idealism here – we will fail if you oblige us to return money annually. You're assuming it's easy to refund credit balances because you think we hold bank account details for all customers, but we do not. Only 30% of our customers pay by direct debit providing us with bank details. We have no details for 70% of our customers to be able to re-pay them automatically. This is because we offer customers a choice to pay by DD unlike some retailers who say you may only pay by DD. This might be easier for a new entrant rather than an incumbent to put in place.

**Q15 - Are there 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.**

A15 - Yes, Ofgem/government have now made a very public U-turn on the suggesting of ringfencing customer credit therefore we do not anticipate seeing that debated further here for all the same reasons.

 **...agree that a similar process to the WRC/ MAC changes, should be introduced to replace the current CPCoP change process?**

A17 - No, any change must be consulted on.

**Q18 - 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?**

A18 - Yes, the Covid provisions now need updating.

**Q19 - Do any definitions contained within the CPCoP need updating or amending?**

A19 - Not considered in detail.

**Q20 - 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?**

A20 - It's concerning that you acknowledge the increase in the regulatory and assurance burden on a competitive market and we'd encourage you to discuss the implications of this openly. We assume you've already decided to ask for more compliance assurance in addition to the recent assurances around REC and financial resilience. To reduce the burden, we'd suggest that this could be rolled into other compliance assurance elsewhere and not a new, stand-alone compliance assurance requirement.

Whether or not your steps to increase regulation through assurance will protect customers may also depend on whether there's any enforcement to both the Code and CPCoP. Ultimately, there's a tangible cost to assurance and audit which must be borne either by our investors or our customers. We consider you'd get better results by continuing to address the key issues which have dogged the market since its inception.

