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26th June 2023

Dear Sir/Madam,

## Customer Protection Code of Practice – A Call for Inputs

Thank you for providing us an opportunity to share our views on the Customer Protection Code of Practice. We welcome Ofwats review of the CPCoP, and have endeavoured to provide our responses to each of the consultation questions in the appendix below.

In addition to our responses to each of the individual questions, we have identified several key principles that we believe should be considered within the review:

- **The CPCoP should encourage and not limit competition in the market;** high quality customer service should be driven by an effective and flourishing market; requirements should not be too prescriptive or reduce the potential for innovation to best enable the development of competition within the sector.
- **The CPCoP should not enable 'bad actors' to avoid the payment of due charges;** There has been several instances of customers who are aware of the restrictions within the CPCoP utilising this ruleset to minimise their own charging. This may include refusing access to read meters or failing to notify Retailers of changes in their circumstances until far beyond the back-billing restriction window. This non-payment of charges not only reduces Retail margin, further reducing the potential for innovation, but also drives increases to wholesale charges for other customers within the Wholesalers total revenue control.
- **The CPCoP should not unfairly restrict or penalise Retailers due to circumstances outside of their control;** Many of the obligations currently contained within the CPCoP represent specific restrictions or requirements on the Retailer that appear to apply in all circumstances, regardless of whether a Retailer could reasonably complete the requirement. We believe that there should be clearer exceptions for these requirements when impacted by external factors, as detailed further below.

These principles have informed our responses to the consultation questions provided below.

If you wish to discuss any aspect of our response in greater detail, do not hesitate to contact me or the Water Plus Regulation team at [REDACTED]

Thank you and regards,

[REDACTED]  
Regulation Manager  
[REDACTED]

## Appendix 1: Consultation Questions

- 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?**

In broad terms, we believe that the current requirements as they stand are adequate to ensure that customers are protected in the NHH Competitive market from a Retailer perspective. It is our view that the restrictions and protections contained within represent a robust baseline protection for customers within the market which act in support of the natural competitive pressures to drive improved customer outcomes.

We have identified however, that there is scope for protections for customers in the wider market context, as it is our view that the roles and responsibilities of Wholesalers are not currently captured effectively. We would strongly encourage Ofwat to consider whether additional, Non-Household specific, licence conditions should be included for Wholesalers to ensure all market-participants ensure the customer is at the heart of decision making. One specific example would be that there is currently no clear and codified requirement for Wholesalers to engage within, and comply with the decisions of, an alternative disputes process. As the Wholesale element of a customers bill represents a significant cost, inability to resolve such issues represents a significant gap in customer outcome resolution and drives customer dissatisfaction and cases either do not get resolved or have to go to litigation to be resolved – neither of which outcome are in the customer's best interests. We are seeing a number of historical cases that have not been resolved due to issues such as this which have been going on, in some cases, for years.

We will be responding to the Ofwat "Putting water customers first" consultation on Wholesaler Licence Conditions in due course with additional detail on our perspective.

- 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?**

It is our view that the General Principles of the Customer Protection Code of Practice clearly establish the need to put the Customer at the heart of any business decision making, and therefore do not believe any modification to these principles would be required.

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

The addition of different levels of protection will add additional complexity to compliance with the Customer Protection Code of Practice, which will drive additional cost and resource requirements to trading parties. Applying differential protections to customers based on company size may require trading parties to operate multiple processes to handle the customer journey, and ultimately drive additional cost to compliant operation within the market.

At Water Plus, we have previously elected to apply the protections afforded to microbusinesses within the CPCoP more broadly across our portfolio to reduce the cost and complexity of compliance. As a result of this decision most smaller customers (0 – 0.5Ml by volume) are already receiving this level of protection within Water Plus. Subject to the exact nature of the protections included, we believe that an extension of these existing protections to include the customers described may be more appropriate and cost effective for Retailers to embed.

#### 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?

In line with the General Principles of the Customer Protection Code of Practice, it is appropriate to require Retailers to be fair and reasonable with customers and accommodating of their circumstances. Water Plus recognises that certain customers may require additional support or consideration, however do not believe that any specific requirements would be beneficial to include within the CPCoP to drive this behaviour.

Whilst Water Plus recognises that there are some examples of truly vulnerable customers within the market, we would note that the prevalence of Vulnerable customers within the Business market is significantly lower than within the Domestic market, and as such do not believe broad protections would be appropriate for inclusion.

As we identified within our cover letter, enabling 'bad actors' within the NHH Market to further withhold or delay payment of charges without true cause will further reduce the profitability of the market, reducing the capacity for innovation and likely requiring retailers to shift their internal resources away from customer service. If further protections are to be considered, it is critical that the terms under which they apply are carefully considered and clearly defined to ensure they are only extended to truly vulnerable customers.

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

Whilst Water Plus recognises the sensitivity of customers with critical infrastructure, it is our view that many of the responsibilities in handling issues that may arise with such customers remain with the Wholesaler. As such, we believe that a process for identifying and handling such sites would be better defined within the Market Codes and therefore not included within the Customer Protection Code of Practice.

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

Many of the responsibilities for handling emergency events are currently handled by the Wholesaler, and the Retailer has limited scope to add value to this emergency events management process outside of the existing requirements within the Market Codes. These existing requirements ensure that retailers collaborate with Wholesalers in response to such events, including sharing Emergency Contact details, to best enable effective communication.

As the collaboration between Wholesalers and Retailers is defined within the Market Codes, we do not believe there is potential benefit to further granular requirements to be embedded within the Customer Protection Code of Practice. Such an approach may lead to a more prescriptive Emergency Events management process that may not align to all Wholesale area policies, with the potential to add confusion on responsibilities and messaging.

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

Water Plus believes that the current scope of the CPCoP provides a sufficient level of baseline protection for customers within the competitive market and does not view it as appropriate to consider increasing regulation beyond this level. As a competitive market, Retailers must be given sufficient scope and flexibility to enable distinct service offerings to differentiate themselves to encourage market activity. The introduction of additional "customer experience" focussed restrictions and requirements threaten to effectively enforce a prescriptive approach to customer

handling, which may further diminish the prospect for competition amongst the smallest customers.

It is our view that an effective CPCoP should provide a backstop protection to ensure customers are fairly and reasonably treated, whilst retaining sufficient flexibility in delivery to enable innovation and variation in service offerings amongst retailers.

#### **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?**

There are already established requirements within the Customer Protection Code of Practice to contact customers with an expiring contract within 30 days of the expiry of their terms of conditions. It is important to note that where a customer has received service on a specific contract, they have already engaged within the market and are able to experience the benefits of competition. As such, we believe that these existing requirements are sufficient and any additional requirements in this area may not be proportionate.

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

##### Wholesaler involvement in Redress Schemes

Under section 10.4 of the Customer Protection Code of Practice, Retailers are required to have in place or participate in a Redress Scheme that is readily accessible to and effective for its Non-Household Customers. These Redress Schemes provide a customer with Alternative Dispute Resolution, enabling third party review and mediation of customer issues to drive a satisfactory outcome for the user. Where the issue in question is solely related to factors within the Retailers control, this practice is more than sufficient however it is our experience that a significant number of issues raised are driven either solely or primarily by the Wholesale Charging applied.

As Wholesalers are not similarly required to engage with the ADR process within the NHH market, their involvement within this process is inconsistent and they are ultimately not bound by any decision or compensation requirement. This represents a detriment to the customer, as the Wholesale element usually represents the majority of their bill. Without Wholesale involvement in Redress Schemes, these processes are limited in their effectiveness and do not always reach satisfactory outcomes for the customer base.

#### **10. Is there is scope to update or standardise the existing Letter of Authority arrangements?**

The existing Letter of Authority process has proven to be a point of friction with many within our customer base. Many of our customers have identified that the process is arduous and requesting too much detail. We believe that there is scope for the existing Letter of Authority arrangements to be updated, to streamline the process and ensure that the LOA requirements are focussed and customer friendly. Our customers have identified a specific friction with the requirement to list how the

We have identified that there is potential benefit to enabling Trading Parties to request this information in a more bespoke format to best enable customers to engage, however this retains a risk of inconsistency between trading parties. As such, we do not have a clear preference on whether an LOA template must be completely standardised for all customers, however we believe there may be benefit to additional scrutiny on Trading Parties to ensure an established process is completed adequately.

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

We do not have any additional comments on this question further to the considerations raised in response to question 3.

**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?**

We do not have any specific suggestions for how the Customer Protection Code of Practice could be used to improve customer awareness and engagement within the market. It is our perspective that the level of customer awareness and engagement is currently limited by the low level of margin available, which limits the potential savings available to customers whilst also acting as a barrier to innovation and service differentiation.

We are encouraged by the work within the Strategic Panel to identify a roadmap to effective competition and believe that such activity will be required to drive a flourishing marketplace.

**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?**

It is our view that the changes implemented remain relatively new, and as such there has been limited ability to truly understand their impact on the customer base and the issues identified. We would note that where we have proactively contacted customers, including with specific mailing related to their credit position, there has been limited contact in response and as such we are concerned that this additional cost incurred has not represented a cost-effective solution. We welcome further consideration in this area but believe it may be premature to include additional requirements at this stage, as we do not believe the customer interest in this area is sufficient to drive additional cost and complexity.

**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.**

It is our view that none of the listed options represent a cost-effective and proportionate response to the situation identified. We have identified challenges and concerns with each of the potential options listed, and do not believe that any of these actions or requirements would provide proportionate value to the market.

Within our experience, there is not sufficient customer interest in the monitoring of credit to drive such activity. As a specific example, we believe that obliging Retailers to refund customer credit balances on an annual basis would in fact be detrimental to many of our customer base. It is our experience that many customers do not appreciate the 'noise' of multiple communications regarding credit and would prefer their credit to be offset against their next bill. An automatic refund process may cause complexity for many businesses, who have been hesitant to engage with a refund process that may lead to additional workload and complexity within their accounting process. An example of how strong this preference against such transactions that for some of our customers is that they have requested that any GSS payments required are instead transferred to charity on their behalf, rather than incurring the additional accounting burden. Any requirement for Retailers to annually process refunds will take the control and decision out of the

hands of the customer, which we believe to be detrimental to the market. It is our view that the existing requirements around communicating a credit position already effectively enable those in a credit position to review their options and preferences, and additional requirements would not be proportionate.

We do not currently have the functionality to refund on an annual basis via our billing system, so putting this in place would require development work. Implementing an annual refund process will come with a cost for implementation and given our concerns around whether this is the right thing for customers, we are not convinced the benefits would outweigh the costs.

As there is already an existing requirement for Retailers to notify a customer of a credit position every three months, we do not believe that an additional annual requirement would provide any further value.

We do not support the ringfencing of Customer Credit Balances, as we do not believe the potential benefit such requirement will have will justify the detrimental impact on the cash-flow of Retail entities within the NHH Market.

**15. 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.**

We are not aware of any other options or proposals at this stage.

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

We do not have any significant views on the change process within the Customer Protection Code of Practice, and do not currently believe that any such change is necessary.

**17. 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?**

As identified within the consultation documentation, we share the view that the need for provisions regarding Covid-19 may not be required in the future. As such, we support the phased removal of these sections from the CPCoP.

**18. Do any definitions contained within the CPCoP need updating or amending?**

We have not identified any issues with the definitions included within the CPCoP.

**19. 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?**

Water Plus recognises that a careful balance must be struck between ensuring compliance within the Customer Protection Code of Practice and minimising the regulatory burden on trading parties for operation within the market. The introduction of additional assurance or audit processes to review general compliance with the CPCoP will drive additional cost to trading parties and require operational time and resource to be drawn away from customer service. As such, it is our view that the provision of such information should be proportionate and in response to specific concerns or issues.



We would encourage Ofwat to limit the scope of general and wider on-going data requests of general compliance, instead focussing on specific investigations and inquiries where a concern has arisen.

## 20. 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?

An effective Customer Protection Code of Practice should be designed such that the general 'good' customer is ensured an effective baseline protection of fair and reasonable treatment without driving additional risk or undue cost to Retailers within the market. We have identified several areas of the existing CPCoP that we believe drive undue risk or burden to the Retailer, that we believe should be reviewed:

### Clear codified exceptions where Retailer not at fault

As identified in our cover letter, we are aware of several instances where a Retailer either may struggle to comply with the Customer Protection Code of Practice or be unduly impacted as a result of factors entirely outside of their control. We would encourage Ofwat to review changes to the CPCoP to assist with this principal.

### **Customer Failure to Notify or Permit Access**

The current Customer Protection Code of Practice does not make any distinction between the general customer, and those that mislead, frustrate, or delay the Retailer from undertaking their responsibilities within the market. As such, the same protections are offered to all customers including those who have wilfully acted or omitted actions so that these activities are not possible to complete and therefore the Code incentivises this behaviour as currently written. This is contrary to the principals of English contract law and tort where individuals/companies should not be able to benefit from their wrongdoing or where individuals/companies should not act in 'bad faith' to get a commercial advantage in certain situations. In particular here 'bad' customers also have a knock-on effect on good customers by making the service for all more expensive. We believe a set of standards should be established of those expected of a customer within the CPCoP, with certain failures against these leading to the loss of relevant protections contained within. Examples of such might include the failure to permit access to meter readers removing the requirement for an annual bill including a meter read (9.2.1) and the removal of the back-billing restriction where a customer has not notified the Retailer of their occupancy or any other significant change in circumstances.

We believe that such exceptions are critical to ensure that all customers receive a fair level of charging within the market, and poor behaving market participants are not subsidised by 'good' customers.

### **Awaiting Transfer Read / Delayed Transfer Read**

We have identified several frictions regarding the Final Bill requirement contained within the Customer Protection Code of Practice when the account closure is related to a transfer to another Retailer. Unlike a change of tenancy within a site, where the Retailer remains responsible for obtaining meter reads, a transfer out requires the incoming Retailer to obtain a Transfer read for billing purposes. To ensure fair and accurate billing for the customer, it is critical that this read is obtained and entered by the incoming Retailer before a final bill is produced.

We have noticed multiple instances where a Transfer Read has been significantly delayed or estimated and then subsequently amended significantly beyond the six-week window (9.2.5). In such circumstances, a Retailer will still incur any additional Wholesale charging as it remains within the RF window. We would like to ensure that in such circumstances, it remains possible for Retailers to recover this revenue. As a specific action, we believe it would be appropriate to consider including an exception to the final bill requirement when an incoming transfer read has not yet been entered until such a read is obtained.

## Alignment between the Settlement Process and Back-Billing restrictions

The restrictions on back-billing within the Customer Protection Code of practice are currently designed to be aligned with the market settlement process, enabling Retailers to back-bill their customers to the same timeframe of the Final Settlement Run. This approach appears on its face to represent a sensible approach, as it enables Retailers to amend their billing to the same timeframe as their Wholesale charging may be amended, however there is a slight misalignment in the current timeline. It is currently possible for chargeable data to be amended within CMOS up until the last day of an RF timeline to be included within the final settlement run, however this would not provide the Retailer sufficient time to include this in any bill amendment process.

As the billing of a customer is not an instantaneous process, we believe it is important for Retailers to have sufficient time to include and correct any charges to the customer that they have received from the Wholesaler. As such, we would suggest that additional time should be granted to the back-billing restriction beyond the Final Settlement Run timetable. One suggestion raised by the other Retailers and whose view we share and support is that Retailers should be granted an additional month beyond the final settlement run, which would enable sufficient time to correct customer billing in line with any potential changes whilst also remaining within the 24 month timeline for settlement re-runs.