

**Business Retail Market: Proposals to update the Customer Protection  
Code of Practice (Tranche 1 changes) – A Consultation  
Response of Castle Waer Limited**

This is the response of Castle Water Limited to the consultation issued by Ofwat on 25 September 2023. The proposals are numbered below as in the consultation document.

**(a) Allow Ofwat to make non-substantive changes to the CPCoP without a requirement to consult on the change for 28 days**

We strongly object to this proposal.

‘Non-substantive’ changes are described as those that are non-material and do not affect the underlying obligations. What is or is not material, or does or does not affect the underlying obligations is open to interpretation.

The case for making this change is not supported by any reference to past changes that would have qualified against these criteria, nor by any substantive description of how they would be applied. No other regulatory precedent (e.g. from other regulated sectors) is adduced for this approach.

What is favourable, or adverse, to the commercial interests of one industry participant *or its customers* is likely to affect others and their customers in a different, or even the opposite, way. That much is evident from the responses to past consultations on the CPCoP (and from those on the WRC / MAC, cited as an analogue).

The current arrangements rightly place on Ofwat the task of balancing these interests and of justifying its decision.

Further, the WRC / MAC analogue is misplaced and inappropriate:

- Experience of the way in which WRC changes are classified as ‘housekeeping’ or ‘clarificatory’ demonstrates that these classifications are elastic, depending on the policy alignment imputed to them by the proposer / decision-maker.<sup>1</sup> The Better Regulation principle of consistency cannot therefore be assured.
- The principles that govern Ofwat’s use of its regulatory powers are not synonymous with those that govern the WRC and MAC. Further, Ofwat’s decisions on changes to the WRC and MAC may be referred to the CMA for redetermination under s. 207A of the Water Industry Act 1991. There is no specific route for appeal on changes to the CPCoP, or on changes that might be made under the current proposal.
- The proposal merely to ‘notify’ the making of an Ofwat change proposal, and to publish correspondence only after a decision is made to reject an objection, does not provide ‘appropriate check and balances’. Nor does it meet the Better Regulation principles of transparency and accountability; indeed there is no explanation as to how those principles, or the existing (or new) Better Regulation Framework, are applied.

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<sup>1</sup> See for example CPW147, described as ‘clarificatory’ when it is in fact a substantive change to the Code to align it to differing regulatory practice.

- We note that the CCW proposal for an ‘additional step’ of consultation if objections are received is (i) only made necessary by the Ofwat proposal to curtail consultation in the first place; and (ii) is rejected on grounds of Ofwat resources when in fact it would merely replicate the current position. The text states that this “reduces the responsibility and incentive on proposers” to “provide evidence to support their Change Proposal”. This text suggests that Ofwat does not labour under the same obligation. Ofwat would no doubt claim that its public law duties have the same effect: in that case, there can be no objection to CCW’s suggestion; or for that matter to retaining the current formulation.

**(b) Require Ofwat to notify relevant stakeholders when we receive or make a CPCoP change proposal**

This is insufficient, for the reason given in the third bullet point above. It is also prejudicial: being notified if Ofwat *receives* a change proposal enables a stakeholder to make representations; being notified of Ofwat *making* a change proposal effectively occurs after the event, subject only to the inadequate process of Ofwat being able simultaneously to reject and publish objections.

**(c) Remove all requirements linked to COVID-19**

Since responding to Ofwat’s Call for Inputs some six months ago, we have continued to receive a number of complaints (and corresponding payment delays or refusals) from customers about meter reads missed in the past due to COVID-19. For that reason, it would serve a useful purpose to retain the relevant sections, labelled as for reference and no longer used, for example as an Appendix. An alternative would be to brigade them together and introduce a sunset provision.

We accept that “any risk of harm to customers as a result [*sic*] this change will be minimised [...] as Retailers will continue to be required to honour any repayment contract”. The same should be capable of being applied to customers.

**(d) Update the email address which Code Change proposals should be sent to**

No comment.

**(e) Clarify that references to "the Authority" and "the Council" in the Code refers to Ofwat and CCW respectively**

No comment, but for internal consistency “the Authority” and “the Council” should be capitalized; and “means” should be replaced by “are”.

**Castle Water Limited**

**23 October 2023**