

17 March 2017

Trust in water

Customer Protection Code of Practice for the non-household retail market

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Change History

| Version Number | Date of Issue | Reason For Change | Change Control Reference | Sections Affected |
|-----------------------|----------------------|---|---------------------------------|---|
| 1.1 | 17 March 2017 | Consistency with legal framework and minor housekeeping | | 1.1, 2.1, 2.2, 3.1, 5.1.2, 7. 9.2.3, 9.3.1, 9.3.2 |
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1. Definitions and interpretation

1.1 In this code, unless the context otherwise requires:

| Term | Definition |
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| 1991 Act | means the Water Industry Act 1991; |
| 2014 Act | means the Water Act 2014; |
| Appointment | means the instrument of appointment granted to a relevant undertaker under section 6 of the 1991 Act; |
| Back-bill | means a bill or invoice for water supplied and/or services provided prior to the 12 months preceding the date of the bill or invoice; |
| Business day | the period of 08:00 to 18:00 hours on any day other than a Saturday or Sunday, or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971; |
| Cancellation | has the meaning given in the Wholesale–Retail Code; |
| Cancellation Notice | means a notice to cancel Terms and Conditions of Supply issued by a Micro-business pursuant to Section 6.2; |
| Code Principles | means the general principles of this code set out in Section 4; |
| Complaints Handling Process | means a procedure which sets out how a complaint from a Non-Household Customer can be made to, handled and progressed by a Retailer; |
| Customer Protection Code Change Proposal | means a proposal in respect of a change to this code, made in accordance with Section 5.1; |
| Delivery hours | means 09:00 to 17:00 on a day which is not a Saturday or Sunday or Christmas Day, Good Friday or any day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971; |
| Eligibility Guidance | has the meaning given in the Wholesale–Retail Code; |
| Eligible Premises | has the meaning given in the Wholesale–Retail Code; |
| Exit Regulations | means The Water and Sewerage Undertakers (Exit from Non-Household Retail Market) Regulations 2016; |
| Final Settlement Report | has the meaning given in the Wholesale–Retail Code; |
| Incoming Retailer | has the meaning given in the Wholesale–Retail Code; |
| Minimum Information Requirements | means the following information: <ul style="list-style-type: none"> (i) the Non-Household Customer’s SPID(s); (ii) the tariff and details of how the bill has been calculated; (iii) whether the Terms and Conditions of Supply are pursuant to a Scheme of Terms and Conditions or the statutory duties of a relevant undertaker; (iv) any expiry date of the applicable Terms and Conditions of Supply; (v) ways to pay any outstanding debt; (vi) details of the relevant Retailer’s Complaints Handling Process; |

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| | (vii) contact details for the relevant Retailer; (viii) other useful third party contact details, including the Authority and the Council; |
| Licence | means a Water Supply Licence or a Sewerage Licence; |
| Licensee | means the holder of a Licence; |
| Market Operator | has the meaning given in the Wholesale-Retail Code; |
| Material Terms | means the provisions of any Terms and Conditions of Supply which meet the requirements set out in Section 6.1.1(a) to (g) inclusive; |
| Micro-business | means a Non-Household Customer where the number of employees is less than ten (10) on the earlier of the date on which a relevant Transfer Registration Application is submitted and the date on which Terms and Conditions of Supply are agreed; |
| Non-Household Customer | means a person who may be identified as the customer of a Retailer for any Eligible Premises in light of any relevant Eligibility Guidance; |
| Outgoing Retailer | has the meaning given in the Wholesale-Retail Code; |
| Outstanding Debt | has the meaning given in the Wholesale-Retail Code; |
| Reasonable Repayment Plan for a Back-bill | means a process for repayment of a Back-bill which meets the following criteria pursuant to Section 9.3.2: (a) it does not incur interest on the amount due; (b) it offers the relevant Non-Household Customer time to pay that amount by agreed instalments, over a period nominated by the Non-Household Customer being no longer than: (i) the period during which the debt accrued, if it accrued over a period of less than 12 months; or (ii) 12 months, in any other case; |
| Reasonable Repayment Plan for an Outstanding Debt | means a process for repayment of an Outstanding Debt pursuant to Section 7.1.4 which offers the relevant Non-Household Customer time to pay that amount by agreed instalments, over a period nominated by the Non-Household Customer being no longer than: (i) the period during which the debt accrued, if it accrued over a period of less than 12 months; or (ii) 12 months, in any other case; |
| Renewal Notice | means a notice to renew Terms and Conditions of Supply issued by a Retailer containing the information set out in Section 7.1.3(a) to (g) inclusive; |
| Redress Scheme | means a scheme under which a complaint from a Non-Household Customer can be made to and determined by an independent person; |
| Retailer | means either: (i) a relevant undertaker who does not hold an Appointment in relation to a retail exit area; or (ii) a Licensee; |
| Scheme of Terms and Conditions | means one or all of the following (as the context requires): (i) a scheme containing terms and conditions which, in the absence of agreed terms and conditions are to apply to a supply of water and/or provision of sewerage services and which is required to be made by a Licensee pursuant to the Exit Regulations; |

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| | <p>(ii) a scheme containing terms and conditions which, in the absence of agreed terms and conditions are to apply to a supply of water and which is required to be made by a Licensee pursuant to section 63AE of the 1991 Act; and /or</p> <p>(iii) a scheme containing terms and conditions which, in the absence of agreed terms and conditions are to apply to the provision of sewerage services and which is required to be made by a Licensee pursuant to section 110N of the 1991 Act;</p> |
| Supply Point Identifier or SPID | has the meaning given in the Wholesale–Retail Code; |
| Terms and Conditions of Supply | <p>means the terms and conditions on which a supply of water or sewerage services are provided or are to be provided by a Retailer pursuant to:</p> <p>(i) an agreement between the Retailer and a Non-Household Customer, including a special agreement;</p> <p>(ii) a Scheme of Terms and Conditions; or</p> <p>(iii) the statutory duties of a relevant undertaker;</p> |
| Transfer | has the meaning given in the Wholesale–Retail Code; |
| Transfer Registration Application | has the meaning given in the Wholesale–Retail Code; |
| Transfer Read | has the meaning given in the Wholesale–Retail Code; |
| Wholesale–Retail Code | means the code of that name issued by the Authority under sections 66DA and 117F of the 1991 Act; |

1.2 In this code, unless the context otherwise requires:

- 1.2.1 references to ‘this code’ are to this Customer Protection Code of Practice;
- 1.2.2 references to ‘Sections’ are to sections of this code unless otherwise expressly stated;
- 1.2.3 references to a Retailer will refer to all Retailers, unless otherwise specified;
- 1.2.4 words imparting a gender include every gender and references to the singular include the plural and vice versa;
- 1.2.5 words denoting persons include individuals and bodies corporate, partnerships, unincorporated associations and other bodies (in each case, wherever resident and for whatever purpose) and vice versa;
- 1.2.6 save as otherwise expressly provided references to time are to local time;

- 1.2.7 references to 'writing' or 'written' shall include email;
- 1.2.8 references to 'day' and 'calendar day' mean the same as one another;
- 1.2.9 references to the Customer Protection Code of Practice or any other document are to this Customer Protection Code of Practice or that document as in force for the time being and as amended, supplemented, varied, modified, renewed, replaced or extended from time to time in accordance with the requirements of this Customer Protection Code of Practice or that document (as the case may be);
- 1.2.10 a reference to any body is:
- (a) if that body (statutory or otherwise) is replaced by another organisation, deemed to refer to that replacement organisation; and
 - (b) if that body (statutory or otherwise) ceases to exist, deemed to refer to that organisation which most substantially serves the same purposes as the original body;
- 1.2.11 a reference to a statute or statutory provision shall, save as otherwise expressly provided, be construed as including:
- (a) a reference to any orders, regulations and subordinate legislation (as defined by section 21(1) of the Interpretation Act 1978) made from time to time under the statute or statutory provision whether before or after the effective date; and
 - (b) a reference to that statute, statutory provision or subordinate legislation as in force at the effective date and as from time to time modified or consolidated, superseded, re-enacted or replaced (whether with or without modification) after the effective date;
- 1.2.12 references to a person shall, except where the context requires otherwise, include its successors in title and permitted assignees;
- 1.2.13 a reference to a particular condition of a Licence and/or Appointment shall be construed at any particular time as including a reference to any modification of that condition in force at that time;

- 1.2.14 any words or expressions used in the 1991 Act or the 2014 Act shall, unless the contrary intention appears, have the same meaning when used in this code;
- 1.2.15 headings and the contents table in this code are for convenience only and do not affect its interpretation;
- 1.2.16 the words 'other', 'includes', 'including' and 'for example' do not limit the generality of any preceding words, and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible; and
- 1.2.17 the words 'for the time being' mean at the relevant time now or in the future.

2. Purpose of this Customer Protection Code of Practice

2.1 This is the Customer Protection Code of Practice issued by the Authority pursuant to standard condition B2 of the Licence and condition R5 of the Appointment. This code should be read in conjunction with the relevant provisions of the Wholesale–Retail Code and the Exit Regulations.

2.2 The purpose of this code is to place obligations on Retailers in relation to the following five areas of market activity in order to protect Non-Household Customers and to further the Code Principles:

2.2.1 sales and marketing;

2.2.2 the provision of information to Non-Household Customers;

2.2.3 the Transfer of Non-Household Customers;

2.2.4 billing; and

2.2.5 complaint handling and dispute resolution.

3. Effective date of this code

3.1 This code will take effect from 1 April 2017 notwithstanding its date of issue.

4. General principles

- 4.1 All Retailers shall comply with the following Code Principles when dealing with Non-Household Customers:
- 4.1.1 Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business;
 - 4.1.2 Communication with Non-Household Customers shall be in plain and clear language;
 - 4.1.3 Retailers shall ensure they provide appropriate and timely information to Non-Household Customers to enable them to make informed choices;
 - 4.1.4 Any information provided to Non-Household Customers shall be complete, accurate and not misleading;
 - 4.1.5 Retailers shall respond to Non-Household Customers in an appropriate and timely manner; and
 - 4.1.6 Customer service arrangements and processes shall be accessible to and effective for Non-Household Customers.

5. Code governance arrangements and modification

5.1 Who may make a Customer Protection Code Change Proposal?

5.1.1 The Authority may propose a change to this code at any time by consulting with each affected Retailer and any other person the Authority considers appropriate. Any such consultation shall contain the same information as a Customer Protection Code Change Proposal (see 5.1.2 below for details).

5.1.2 Where any Retailer or any other person the Authority considers appropriate wishes to propose a change to this code, such party shall submit a Customer Protection Code Change Proposal. A Customer Protection Code Change Proposal should be sent to CPCOPcodechange@ofwat.gsi.gov.uk and should contain and/or be accompanied by the following information:

- (a) the name of the person or persons proposing the change;
- (b) a description (in reasonable but not excessive detail) of the enhancement, issue or defect which it seeks to address;
- (c) a description (in reasonable but not excessive detail) of the change proposed, its nature and purpose and the likely impact of the change on Retailers and Non-Household Customers, including confirmation of how it is consistent with the Code Principles;
- (d) whether the Customer Protection Code Change Proposal is considered urgent and, if so, why; and
- (e) a description of any consultation carried out or supporting evidence gathered in advance of submitting the Customer Protection Code Change Proposal.

5.2 What happens when a Customer Protection Code Change Proposal is received by the Authority or the Authority consults on its own proposed changes?

5.2.1 The Authority will consider responses to the consultation under Section 5.1.1 or any consultation carried out under Section 5.1.2. The Authority

will consider and evaluate each Customer Protection Code Change Proposal to decide whether or not:

- (a) it agrees with the Customer Protection Code Change Proposal;
- (b) to propose amendments to the Customer Protection Code Change Proposal; or
- (c) to seek further information from Retailers, the Council, experts or other relevant persons, conduct research or commission reports before making a decision,

in each case having regard to whether or not its decision is consistent with its wider statutory duties.

5.2.2 The Authority shall consult on its proposed decision to accept, reject or amend each Customer Protection Code Change Proposal for a proportionate period of time taking due account of its complexity, importance and urgency. Except in the case of urgency, the consultation period will generally be for a minimum of 28 calendar days.

5.2.3 A consultation under Section 5.2.2 will be issued to each affected Retailer and any other person the Authority considers appropriate. Such consultations will have a clear mechanism for responding, and raising queries. In certain circumstances, in particular in relation to a decision pursuant to Section 5.2.1(d), the Authority shall support processes which enable users to discuss and develop complex modifications as well as collect and share any evidence with the Authority.

5.2.4 Following consultation responses the Authority will issue a final decision as soon as reasonably practicable including, where appropriate, the date on which the proposed change to this code shall take effect. The Authority's decision shall include the following:

- (a) the parties who raised the change proposal;
- (b) the reasons for the proposed changes;
- (c) the scope and impact of the potential change, including consideration of potential risks;

- (d) an evaluation against the Authority's statutory duties and Code Principles;
- (e) any relevant evidence considered (including consultation responses received);
- (f) implementation timescales, which will take into account the likely impact on Retailers' existing systems and processes; and
- (g) the date from which the change will take effect.

6. Obligations in relation to sales and marketing activities

6.1 Communications with Micro-businesses prior to submission of a Transfer Registration Application.

6.1.1 Before submitting a Transfer Registration Application in respect of a Micro-business or agreeing Terms and Conditions of Supply with a Micro-business (whichever is earlier), a Retailer shall provide the following information to the relevant Micro-business in writing:

- (a) details of applicable prices, charges and/or tariffs (including whether or not they are inclusive of all costs and taxes and any assumptions underlying the proposed prices, charges and/or tariffs) being offered by the Retailer to the Micro-business;
- (b) service levels that would apply in the Terms and Conditions of Supply being offered by the Retailer to the Micro-business;
- (c) the type, frequency of bills and payment methods available;
- (d) the duration of the Terms and Conditions of Supply being offered by the Retailer to the Micro-business, in particular the proposed expiry date (if any);
- (e) contact details of the Retailer (including full name, address and a non-premium rate telephone number);
- (f) any rights that the Micro-business would have to cancel the Terms and Condition of Supply without any cost to them;
- (g) any rights that the Micro-business would have to cancel or terminate the Terms and Conditions of Supply that would incur costs or fees if exercised, including details of any such costs or fees and applicable notice periods;
- (h) a comparison between the Material Terms being offered under the proposed Terms and Conditions of Supply and either:
 - (i) the Retailer's Scheme of Terms and Conditions required by the Exit Regulations (where the Retailer is a Licensee

and is required to have in place such a Scheme of Terms and Conditions); or

- (ii) the Retailer's statutory duties to supply (where the Retailer is a relevant undertaker); or
- (iii) the Retailer's "standard" terms and conditions (where the Retailer is a Licensee but is not required to have a Scheme of Terms and Conditions pursuant to the Exit Regulations, if different.

6.1.2 Before submitting a Transfer Registration Application in respect of a Micro-business, the Retailer shall ensure that it has received either:

- (a) written acknowledgement from the relevant Micro-business that it has read and understood the information provided to it pursuant to Section 6.1.1; or
- (b) a copy of the Terms and Conditions of Supply, signed by or on behalf of the relevant Micro-business.

6.2 Cooling off Period for Micro-businesses.

6.2.1 Other than where the Terms and Conditions of Supply are a Scheme of Terms and Conditions or the statutory duties of a relevant undertaker, a Micro-business shall be entitled to cancel or terminate the Terms and Conditions of Supply acknowledged or agreed pursuant to Section 6.1.2 at no cost to the Micro-business by serving a Cancellation Notice on the Retailer within seven calendar days of signature of the relevant acknowledgement or agreement.

6.2.2 A Retailer shall not submit a Transfer Registration Application in respect of a Micro-business within seven calendar days of receipt by the Retailer of the acknowledgement or agreement provided by that Micro-business pursuant to Section 6.1.2.

6.3 Third parties acting for Retailers.

6.3.1 Where Retailers use third parties to represent them in sales and marketing activities, they shall be responsible for the actions of those representatives and shall take all reasonable steps to ensure that these

third parties are aware of, understand and comply with, the provisions of this code.

6.4 Third parties acting for Non-Household Customers.

6.4.1 Where Non-Household Customers have any third party acting on their behalf, Retailers shall obtain written confirmation – known as a letter of authority – from the relevant Non-household Customers that:

- (a) the named third party is acting on their behalf;
- (b) the extent of the third party's authority; and
- (c) how the third party's fees are being paid.

6.4.2 Where the Non-Household Customer is also a Micro-business, the written confirmation shall be in the form of a template issued by the Authority from time to time.

7. Provision of information by a Retailer to its Non-Household Customers

7.1 Provision of information to Non-Household Customers about Terms and Conditions of Supply.

- 7.1.1 Retailers shall be transparent with their Non-Household Customers about the Terms and Conditions of Supply which apply to them and any proposed changes to those Terms and Conditions of Supply.
- 7.1.2 Where Terms and Conditions of Supply are in writing, Retailers shall ensure they are in plain and clear language.
- 7.1.3 If the Terms and Conditions of Supply are due to expire, Retailers must write to the relevant Non-Household Customer at least 30 calendar days prior to the expiry date advising them of the following:
- (a) the upcoming expiry of the Terms and Conditions of Supply and the expiry date;
 - (b) whether the Non-Household Customer can renew the Terms and Conditions of Supply on the same basis and, if so, how;
 - (c) other Terms and Conditions of Supply available from the same Retailer (if any), in particular the Retailer's current charges and whether the Non-Household Customer is on the Retailer's cheapest deal available for that Non-Household Customer;
 - (d) that the Non-Household Customer will be moved onto a Scheme of Terms and Conditions (if the Non-Household Customer is in a retail exit area) or the Retailer's standard, general or default Terms and Conditions of Supply (if the Non-Household Customer is not in a retail exit area) if the Non-Household Customer does not respond to the Renewal Notice;
 - (e) the Minimum Information Requirements;
 - (f) if the Non-Household Customer is in a retail exit area, that the Authority can direct a Licensee other than the Non-Household Customer's current Retailer to supply them on the terms contained in a Scheme of Terms and Conditions; and

- (g) if the Non-Household Customer is not in a retail exit area, that a relevant undertaker may provide Terms and Conditions of Supply.

7.1.4 Retailers shall inform their Non-Household Customers of their right to raise a formal dispute with them in relation to sums due under the relevant Terms and Conditions of Supply, how to do so, the deadline by which such a dispute must be raised, whether a Reasonable Repayment Plan for an Outstanding Debt is available and the consequences of failing to pay or raise such a dispute, in particular that the Retailer may submit a Cancellation Request in certain circumstances.

7.2 Provision of additional information to Micro-businesses about Terms and Conditions of Supply.

7.2.1 If the Terms and Conditions of Supply which are applicable to a Micro-business are changed, a Retailer shall ensure that the Micro-business is provided with the information listed in Section 6.1 as soon as reasonably practicable following the implementation of the change.

7.2.2 If a Micro-business requests to receive any information in writing, the Retailer shall provide this information as soon as reasonably practical.

7.2.3 If a Micro-business renews Terms and Conditions of Supply on their expiry, or the Terms and Conditions of Supply renew in accordance with Section 7.3.1, a Retailer shall ensure that the Micro-business is provided with the information listed in 6.1 as soon as reasonably practicable following the implementation of the renewal.

7.3 Terms and Conditions of Supply to Micro-businesses applicable for a fixed term only.

7.3.1 If a Retailer's Terms and Conditions of Supply to a Micro-business are for a fixed term:

- (a) the relevant Terms and Conditions of Supply may not be renewed automatically, without the written consent or request of the Micro-business served during the 30 day period of a Renewal Notice under 7.1.3 above. Any rollover agreed is required to be for a maximum period of one year from the expiry of the initial fixed term period. Moving a Micro-business to a Scheme of Terms and Conditions (where the Retailer is obliged

to have such a Scheme of Terms in Conditions in place) or the Retailer's standard, general or default Terms and Conditions of Supply (where the Retailer is obliged to have such a Scheme of Terms in Conditions in place) is not prohibited pursuant to this Section 7.3.1.

- (b) there shall be no charge or fee payable by the Micro-business for early termination of the Terms and Conditions of Supply if those Terms and Conditions of Supply have been renewed pursuant to Section 7.3.1 or the customer provided the agreed termination notice.

8. Transfers of Non-Household Customers

8.1 Prevention of Erroneous Transfers.

8.1.1 An Incoming Retailer shall take all reasonable steps to prevent an erroneous transfer by ensuring they have valid Terms and Conditions of Supply with the relevant Non-Household Customer before they submit a Transfer Registration Application.

8.2 Cancellation Requests.

8.2.1 If an Outgoing Retailer submits a Cancellation Request, the Outgoing Retailer shall write to the affected Non-Household Customer explaining the reason(s) for submitting the Cancellation Request.

9. Billing

9.1 Information to be provided on each bill.

9.1.1 Each bill issued to a Non-Household Customer by a Retailer shall contain the Minimum Information Requirements.

9.2 Billing accuracy and frequency.

9.2.1 Retailers shall issue at least one accurate bill, or invoice each year which uses a Meter Read where the supply is Metered.

9.2.2 Retailers can choose to accept Meter Reads, including any Transfer Read taken by the relevant Non-Household Customer.

9.2.3 Any final bill to be issued to a Micro-business shall be issued within six weeks of the earlier of the Transfer or the termination or expiry of the Terms and Conditions of Supply.

9.3 Restriction on Billing.

9.3.1 Retailers shall not bill or invoice a Non-Household Customer for or recover charges in respect of water supplied or sewerage services provided to that Non-Household Customer for any period for which a Final Settlement Report has been provided by the Market Operator.

9.3.2 Retailers shall offer a Micro-business a Reasonable Repayment Plan for a Back-bill.

10. Complaint handling and dispute resolution

- 10.1 Retailers must have in place at all times a readily accessible and effective Complaints Handling Process at no cost to Non-Household Customers.
- 10.2 Each Retailer must comply with its Complaints Handling Process in relation to each complaint received from a Non-Household Customer.
- 10.3 A Complaints Handling Process must:
- 10.3.1 be in plain and clear language;
 - 10.3.2 allow for complaints to be made orally and/or in writing;
 - 10.3.3 describe the steps each Retailer will take with a view to investigating and resolving a complaint and the timescales within which each step is expected to be completed;
 - 10.3.4 describe any remedies available to the Non-Household Customer on resolution of a complaint. Such remedies must include but are not required to be limited to:
 - (a) an apology;
 - (b) an explanation;
 - (c) remedial action; and
 - (d) compensation payable to the Non-Household Customer where remedial action is not possible or is insufficient to deal with the complaint; and
 - 10.3.5 describe any right to refer the complaint to a Redress Scheme.
- 10.4 All Retailers shall have in place or participate in a Redress Scheme that is readily accessible to and effective for its Non-Household Customers.

11. Notices

- 11.1 All notices to be given under this code shall be marked for the attention of the person or persons notified for that purpose from time to time.
- 11.2 All notices to be given to any party under this code shall be in writing.
- 11.3 A notice shall be treated as having been received:
- 11.3.1 if delivered by hand (including courier) within Delivery Hours, when so delivered; and if delivered by hand outside Delivery Hours, at the next start of Delivery Hours;
 - 11.3.2 if sent by first class pre-paid post, guaranteed next day delivery, post with delivery confirmation or receipt (for example, special delivery) on the later of actual receipt and 9.00 am on the Business Day after posting if posted on a Business Day, and on the later of actual receipt and 9.00 am on the second Business Day after posting if not posted on a Business Day; and
 - 11.3.3 if sent by e-mail, or any other electronic means during a Business Day it is received on that Business Day and if it is sent outside of a Business Day it is received on the following Business Day.
- 11.4 In proving that a notice has been given it shall be conclusive evidence to demonstrate that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).