



Retail Exit Code - Non-price protections - an Ofwat consultation

Introduction

1. The Consumer Council for Water (CCWater) is the statutory consumer organisation which represents water and sewerage customers, including businesses, in England and Wales. CCWater has four regional committees in England and a committee for Wales.
2. In April 2017, competition for water retail services was opened up to all businesses, charities and public sector organisations working out of business premises in England. Most incumbent water companies chose to exit the retail market at that time and, in doing so, transferred their non-household (NHH) customers to one of around 20 specific retailers.
3. We welcome the opportunity to respond to Ofwat's consultation on changes to its Retail Exit Code (REC). The REC sets out non-price protections for NHH customers who are served by retailers that have acquired an incumbent water companies' customers through retail exit.

Executive Summary

4. CCWater agrees that non-price protection arrangements, such as those set out in the REC, are needed to protect NHH customers in a competitive market. This is particularly important for those customers who have not actively chosen to switch retailer, but have only transferred as a result of their incumbent water company exiting the retail market.
5. CCWater believes that all NHH customers who do not actively engage in the market must be 'no worse off' as a result of retail exit activity. This requirement must be made clear and transparent in the REC and should act as a fundamental protection against customer detriment. Detriment in the market could erode customer confidence and reduce interest in engaging. This is not in the best interests of customers or retailers.
6. The REC was intended as a transitional arrangement to protect NHH customers until the retail market matures. However, evidence shows that there is still a long way to go before the retail market reaches the stage where there are high levels of engagement, especially for small and medium sized businesses (SMEs):
 - Our research¹ shows that customer awareness and engagement in the retail market remains low, particularly amongst SMEs. In August 2018, 41% of SMEs thought it was possible to switch retailer and 32% thought it was possible to negotiate for better price or service from their current retailer.
 - Ofwat's consultation paper states that one year on from market opening, only 4% of SMEs had actually switched or renegotiated for a better price or service. And 94% of all NHH customers in England are receiving default tariffs based on Ofwat's price protections.

7. In terms of customer protection, CCWater brought important complaint evidence to the attention of Ofwat as soon as it was apparent as an issue. This showed some retailer behaviour falling outside of the spirit of the REC and the ‘no worse off’ principle. Therefore, we are supportive of changes to the REC that make this principle explicit and offer transparent protections to all NHH customers.
8. We recognise that Ofwat’s proposed change to the REC is a change for the future, and that it will not act retrospectively. However, we believe at least one retailer may have breached the existing code and that Ofwat needs to examine this.
9. We also question Ofwat’s consideration of a transitional period for the revised code as we are concerned about the potential detriment to customers of any changes made to non-price terms in deemed contracts before the revised code is implemented.
10. Where a retailer seeks to make an innovative ‘no worse off’ change to non-price terms going forward, it is important that deemed contracts are kept under review to ensure they continue to offer the required market protections, particularly for micro-businesses and SMEs that have little or no awareness of the relatively new market.

Response to Ofwat’s request for stakeholder input

Ofwat is keen to hear from stakeholders, with supporting evidence where possible, about:

- *the nature of the harm that customers on deemed contracts may experience as a result of non-voluntary changes to their non-price terms and whether you agree that action is needed to strengthen their protection.*

11. We agree that retailers must not be able to take advantage of NHH customers by imposing non-voluntary changes to non-price terms that result in these customers being ‘worse off’ than they were before retail market exit.
12. It is important that any proposed amendments to deemed contracts are first discussed with Ofwat and CCWater. If it is agreed these changes are unlikely to cause detriment to NHH customers or groups of customers, the changes must then be clearly explained and effectively communicated to NHH customers, and a review of the impacts remain on-going.
13. Ofwat’s consultation paper sets out a billing arrangement by way of an example of a non-voluntary change to non-price terms. We agree this is a good example of how NHH customers are in fact ‘worse off’, and we raised this particular issue with Ofwat when retailer complaints spiked and business customer representatives requested meetings with us to discuss the unpopular change and its impact.
14. We have received over 100 complaints since September 2017, specifically about non-voluntary changes to NHH customer billing arrangements made by a specific retailer.

¹ <https://www.cwater.org.uk/wp-content/uploads/2018/09/CCWater-SME-Report-wave-3-final-version-converted.pdf>

This led to a knock on effect with NHH customers raising other bill-related complaints, which in turn overwhelmed the administrative capability of that retailer to handle customer contacts. Billing and charges continue to be the biggest issue of complaint to CCWater about nearly all retailers.

15. We believe the non-voluntary change example, highlighted in the consultation, has made affected customers 'worse off'. Customers who are metered rightly expect to receive a bill in arrears based on their actual consumption. Changing this billing arrangement upsets historical water industry practice and has resulted in more estimated bills. Customers have had to adjust their business accounting and many have struggled to accommodate paying in advance, particularly where their water requirements were highly variable over time e.g. farms.
16. Another example set out in the consultation is where non-payment of an advance bill has been treated as an outstanding debt and used as a reason to block a customer's transfer request. We agree that this could create a barrier to customer engagement and this type of market activity should be prevented by strengthening non-price protections.
17. We agree that the REC does not currently refer expressly to ensuring that customers are 'no worse-off', and that non-price protection requirements in the REC must be strengthened. The principle of 'no worse off' should be made clear and explicit so that it cannot be open to interpretation by retailers, causing greater risk to NHH customers.
18. Ofwat has stated in the consultation, that it does not intend to take retrospective action or to use any new rules to penalise past behaviour that has led to NHH customers being 'worse off'. We recognise that the revised code is intended to strengthen customer protection going forward. However, we consider that at least one retailer may have breached the requirements of the current version of the code as outlined below.
19. Section 4.2.5 of the Retail Exit Code effective 1 April 2017 states, '*Where an Eligible Exit Area Customer relocates within the same Area the Licensee should continue to offer the same Scheme of Terms and Conditions*'. This section of the code relates to SMEs, but has the same requirement for other non-household customers at section 5.2.5.
20. This is expanded upon in the explanatory 2016 memorandum on the regulations from Defra to water and sewerage undertakers, which says, '*The Regulations are designed to minimise disruption to transferred customers and help ensure that they are made no worse off as the result of the exit (e.g. the licensee must allow transferred customers to be billed and make payments by the same methods as they were able to do before the exit)*'.
21. We believe that at least one retailer may not have complied with these requirements by changing customers' non-price terms in the deemed contract. Ofwat should examine this closely in the context of the existing code and act accordingly.

- *the policy options set out in this document and their impact not only on customers but on individual retailers*

22. We agree that customer protection must be clear and easy to understand; and the promotion of competition should be to the benefit of customers through downward pressure on prices, greater choice, and increased quality and innovation.

23. We think that Ofwat has identified a sensible list of policy options.

24. Option 1: We agree that doing nothing is not appropriate, nor is it in the best interests of customers or the market.

25. Option 2: We agree that retailers should be open, clear, and transparent about any proposed changes to non-price terms as per this option. But this requirement would not prevent some customers from being 'worse off'. In addition, we would already expect retailers to clearly communicate with their NHH customers about non-price terms. At this stage of the market option 2 does not go far enough. NHH customers should not be expected to negotiate a different deal or switch to another retailer if they are not happy with a proposed change after being informed about it in advance. This is particularly key given the low level of market awareness, particularly amongst SMEs.

26. Option 3: Prohibiting specific banned changes to non-price terms for customers on deemed contracts might be the simplest for retailers to understand, but it would be impractical to develop an exhaustive list of all possible specific changes that would be banned. Therefore, we do not believe this option is appropriate.

27. Option 4: We support this as Ofwat's preferred option. We agree that the REC should be modified to insert a principle that consumers on deemed contracts must be 'no worse off'. The principle and definition of 'no worse off' should be made clear and explicit to ensure protection for all NHH customers.

- *whether our preferred option (option 4 - introduce an explicit 'no worse off' principle into the Retail Exit Code) strikes an appropriate balance between protecting customers who have not yet engaged in the market and also allowing retailers to innovate or improve efficiency.*

28. We agree option 4 could achieve a good balance between ensuring customer protection, whilst allowing for innovation that could be to the benefit of customers in the market.

29. However, in setting out the 4 options, the consultation does not explain how a breach would be determined. It would be reasonable to assume that Ofwat intends to identify potential problems through the escalation of CCWater complaints, and our contact from business representative groups. This should be made clear.

30. The consultation also does not explain what action would be taken if a retailer was in breach of the REC. This should be clarified in the REC so that NHH customers, trading parties and CCWater understand the process and sanctions that will be taken.

31. On addition, 'no worse off' now may not necessarily mean all NHH customers on a deemed contract remain 'no worse off' in the future due to market developments. We want the REC to require retailers to keep under review any 'no worse off' changes to non-price protections to ensure this status of protection continues.

Enquiries

Any enquiries about this consultation response should be addressed to:

Christina Blackwell

Policy Manager

Consumer Council for Water

Email: christina.blackwell@ccwater.org.uk

Tel: 0121 345 1082