Customer protection for the non-household retail market: deemed contracts
- an Ofwat consultation
1. **Introduction**

1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing the interests of customers of water and sewerage companies in England and Wales. CCWater has four regional committees in England and a committee for Wales.

1.2 We welcome the opportunity to respond to Ofwat’s consultation on *Customer protection for the non-household retail market: deemed contracts*.

1.3 Deemed contracts will set out the price and non-price terms and conditions that will apply from April 2017 to non-household customers of licensed retailers where a specific negotiated contract has not been arranged between the parties.

1.4 Non-household customers would be in a situation where they have not negotiated a contract in the following cases:

- Their supplier exits the retail market as part of a planned exit;
- an appointed water company has already exited the market and a customer registers a new non-household property in the area;
- a retailer discovers a property is receiving a water supply or sewerage service, but it is not registered (i.e. a gap site);
- the current retailer becomes insolvent and its customers are assigned by the regulator to an interim supplier; or
- a retail customer’s negotiated contract expires.

1.5 We have also responded to Ofwat’s associated consultation on *Interim supply arrangements*.

2. **Executive Summary**

2.1 We broadly support Ofwat’s proposals. We think it is right that:

- In a retail exit process, a customer’s new tariff should be based on the default tariff or the public retail tariff in place at the point of transfer, whichever is more favourable for the customer;
- deemed contract price terms are fair and not onerous for customers;
- there is no minimum term for customers on a deemed contract; but
- it is easy for customers to end their deemed contract (e.g. no termination fees);
- customers are informed within two months that they are on a negotiated contract (sooner where there is an interim supplier);
- customers receive at least two bills a year that inform them they are on a deemed contract and how to arrange a negotiated contract; and
• Ofwat has identified other important non-price terms which should be considered in deemed contracts (e.g. customers do not need to give termination notice, restrictions on back-billing, etc.).

2.2 There are areas where we have concerns about how non-household customers will be safeguarded. We would welcome Ofwat’s views on:

• What would amount to retailer revenue which “significantly” exceeded retailer costs. Ofwat cites this as the measure of whether or not price terms would be unduly onerous on customers;
• how micro businesses, which operate more like domestic customers than larger businesses, can be encouraged to participate in the market. These customers tend not to switch in the energy sector (i.e. “sticky” customers);
• whether it expects retailers to notify customers that their negotiated contracts are expiring to prevent them from falling back onto less favourable deemed contracts; and
• how non-price terms would prevent debt blocking when market operator codes already allow for customer switching to be blocked by retailers when customers are in debt. We expect to see debt blocking addressed in Ofwat’s further customer protection work.

3. Consultation Questions

Q1 Do we need provisions for deemed contracts in Supplier of First Resort situations where there has not been an exit (which will not be covered by the Retail Exit Code or the Interim Supply Code)?

We agree with Ofwat that retailers are likely to arrange contracts in a timely fashion to ensure their cash flow. But administration or other delays may necessitate that a deemed contract is put in place in the meantime. Therefore, it is possible for situations to occur where the customer and wholesaler will need to register gap site supply point information before a contract is arranged with the retailer.

We would expect retailers to make contact quickly and in writing with any new customers who are going to be put on a deemed contract. This would also be a good opportunity for a retailer to advise its customer about available choice in the market.

We understand from discussions with Citizens Advice Scotland that newly discovered gap site customers sometimes face swift debt recovery action for unbilled charges without reasonable communication or support from the retailer. We welcome Ofwat’s views on whether this could be addressed through deemed contracts.
Q2 Do you agree with the proposed approach to the setting of price terms for customers transferred during the retail exit process based on the lower of the default tariff and the published retail tariff in place at the point of transfer?

CCWater supports the principle that customers whose retailer exits the market should not be made worse off (i.e., principle of equivalence). Therefore, we agree that the new tariff should be based on the default tariff or the public retail tariff in place at the point of transfer, whichever is more favourable for the customer.

Q3 Do you agree with the proposed approach to setting price terms for other customers on deemed contracts - that is, that they must not be unduly onerous?

We agree with Ofwat’s approach to setting price terms for these customers. Price terms should not be unduly onerous on customers. However, on page 25 of the consultation document, Ofwat describes unduly onerous as meaning that derived retailer revenue significantly exceeds retailer costs. We would welcome further clarity from Ofwat on what constitutes “significant” as this would clearly be critical in determining whether or not the price terms in question were unduly onerous on customers.

Ofwat would have to monitor closely how individual retailers allocate their costs (and how retailers’ cost allocation compare to each other) to make sure customers on deemed contracts were being treated fairly.

We interpret “other customers” to mean those non-household customers that would be on a deemed contract not because of a retail exit process, but due to an interim supply situation or because they have occupied a newly registered non-household property or gap site.

Ofwat’s consultation document also suggests that a terminated/lapsed contract would lead to deemed contract situation. We are aware that in the energy sector there can be confusion amongst suppliers and customers about whether this is a deemed contract situation or an “out of contract” situation.

Q4 Do you agree that for interim supply any additional reasonable costs relating to the provision of the interim supply should be recoverable by the interim supplier?

We agree that there may be costs to interim suppliers for the provision of services to their customers. Therefore, we expect that retailers’ charges would be set to recover reasonable costs. However, retailers should seek to minimise these costs. Moreover, customers should be made aware that they may not be on the most favourable contracts while being served by an interim supplier.

Our research\(^1\) has shown that customers whose retail companies exit the market will expect that their price and non-price terms are protected and carried over to the interim supplier (i.e., principle of equivalence).

\(^1\) CCWater’s Uncharted Waters research is [here](#), and Exit Strategies research is [here](#)
Ofwat cites bad debt risk as a possible reason for higher costs for supplying interim customers. However, the insolvency of a retailer which leads to it shedding its customers may not be related to customer bad debt at all. We therefore caution against making this assumption as it could lead to customers being unfairly penalised.

Q5 Do you agree with our proposal to exclude the costs of promotional, marketing and advertising activities in the charges being levied under the deemed contracts?

We understand the rationale behind excluding these costs as customers would be on deemed contracts as a backstop rather than by choice due to any marketing influence.

Nevertheless, we would expect retailers to devote resources to encouraging customers on deemed contracts to participate in the market and have the opportunity to ensure they are on the most favourable contract.

Q6 Do you agree with our proposals for ways in which the deemed contract could be terminated?

We agree that the scenarios that Ofwat cites could result in the termination of a deemed contract if:

- The customer decides to negotiate a contract with the same or different retailer;
- the retailer notifies the customer that it is terminating the contract; or
- the retailer fails (which we take to mean either insolvency or suspension of its licence).

We also question whether termination of a deemed contract would be appropriate if one retailer merged with another.

Q7 Do you agree with our proposal that there should be no minimum term for customers on deemed contracts? Do you agree that a review point should be built into the arrangements so that customers have to make an active decision after a certain period on the deemed contract?

Some customers may not want to negotiate a contract. For this reason, we agree that there should be no minimum term if these customers are satisfied to remain on a deemed contract.

However, we welcome a mechanism that invites, but does not force, customers to make an active decision about whether they want to continue on a deemed contract or try to find a more favourable contract either by switching or negotiating with their existing retailer. Therefore, we believe 12 months is a reasonable review point. Retailers should also make regular efforts to notify customers they are on deemed contracts.
Q8 Do you agree that the customer should not be required to give notice for the termination of a deemed contract? Do you agree that three months is adequate notice if retailer wishes to terminate the deemed contract?

We agree that customers who want to terminate their deemed contract should not have to give notice. We also agree that three months is adequate notice for the retailer to terminate a deemed contract. During this time, we would expect retailers to take reasonable steps to take closing meter readings and tell customers what their next steps should be. Ofwat says in section 3.2.3 that it is not proposing a minimum duration for deemed contracts. Therefore, we would like clarity as to whether Ofwat is envisaging another scenario where a retailer may have to give notice of termination other than for an interim supply.

Q9 Do you agree retailers should not be allowed to impose termination fees for deemed contracts?

We agree. If retailers impose termination fees for deemed contracts, it is likely to discourage customers, especially small businesses, from seeking to negotiate contracts.

Q10 Do you agree that retailers should notify customers that they are on a deemed contract as soon as is reasonably practicable, and no later than two months from the start of the contract? Do you agree that retailers should be required to do so more quickly in an interim supply situation?

We agree that notification should not take any longer than two months. Customers in an interim supply arrangement, particularly if they are paying higher charges due to higher costs to the retailer, should be notified within one month.

We would expect a retailer to engage in a good level of communication with its customer from the outset that would allow for this notification to happen even sooner (i.e. within weeks).

Q11 Are there certain information items that the customer would require to better understand what contractual options are available? Do you agree that it would be appropriate include information to inform customers that they are on a deemed contract, and how to switch, on the invoice?

Through our research\(^2\) and discussions with customers and their representatives, we know that customers want clarity on how to switch. Therefore, we agree that information about switching should be part of the invoice.

It could also be beneficial to non-household customers if the wording indicating a deemed contract and how to switch was consistent between retailers. More detailed and retailer-specific information could be put online.

\(^2\) CCWater’s Uncharted Waters research is [here](#), and Exit Strategies research is [here](#)
Additional information to non-household customers like their annual consumption levels for instance, could put them in a clearer position to negotiate contracts.

It should be quick, easy and free for customers to request a copy of their deemed contracts.

**Q12 Do you agree that customers on deemed contracts should receive bills at least twice a year?**

We agree that deemed contracts should require that customers receive at least two bills a year. Customers are used to receiving bills at this frequency.

If customers receive regular and accurate bills, this will help to prevent debts from accruing and reduce the need for back billing which could block customers’ ability to switch.

Also, any larger business customers that require more frequent billing can request this service in a negotiated contract.

**Q13 Do you agree that customers on a deemed contract, including customers transferred as part of the retail exit process, should not be back-billed for any period before the contract began?**

We agree with Ofwat that there should be a clear incentive for billing related issues to be resolved prior to the point of transfer. This would facilitate a customer transfer process that is quick and easy. However, the onus should be on the retailer to help their customer avoid getting into debt in the first place.

Therefore, we understand why Ofwat is proposing that customers on deemed contract should not be back billed for any period before the contract began.

Nevertheless, if there are to be backdated charges, this should be communicated clearly to the customer and the charges should be based upon actual metered usage, not estimates of usage.

In general, if Ofwat intends to prevent debt-blocking as a barrier to switching, it should consider situations where non-household customers may want or need to switch while in debt. Retailers who want to take on these customers would be discouraged from doing so if they are not permitted to back bill them.

If it is the actual mechanism of switching customers in debt that must be overcome, we propose that the new retailer could make a payment equivalent to the outstanding debt upon transfer and recover it from their customer following transfer, as a one-off payment or through a phased debt recovery plan. Alternatively, the new retailer could pass on the customers’ phased repayment to the previous supplier as and when it was made.

In Defra’s recent retail exit consultation, it proposed that outstanding complaints would transfer to the acquiring retailer rather than remain with the departing supplier. Therefore, it could be argued that there is already scope for liabilities to transfer along with non-household customers.
Q14 Do you agree that no additional non-price terms are required for smaller customers including micro-businesses?

Citizens Advice commissioned research that showed that consumption levels and likelihood to negotiate energy contracts amongst micro businesses more closely matched the profile of domestic customers than large businesses.

In the energy sector for example, Ofgem requires that suppliers tell the smallest businesses how much energy they use per year. This kind of information about annual water consumption could help encourage smaller non-household customers to make informed choices when they negotiate a contract. Otherwise, there is a risk of creating small business customers who “stick” to their deemed contracts as they do in the energy sector.

Other comments on the consultation document

Section 2.2.2

Ofwat noted the need for a deemed contract to protect customers where a contract expires. We would expect that retailers make reasonable efforts to notify customers that their contract will soon expire or has already lapsed. This would be particularly important where customers end up paying more on a deemed contract than they were on their lapsed negotiated contract. For example, Ofgem says that in the energy sector prices on deemed contracts were on average 80 per cent higher than negotiated prices. Customers could be disadvantaged without a suitable mechanism that encourages them to get onto the lowest cost contract.

Section 3.2

We agree that the non-price terms that Ofwat has identified should apply to all types of deemed contracts. Examples of these non-price terms include:

- Transparent terms;
- requirement on retailer to inform the customer they are on a deemed contract;
- contract termination notice period and fees;
- duration of the contract;
- billing frequency;
- back-billing; and
- debt-blocking.

However, we are also concerned that customers could face barriers to getting new contracts agreed due to unduly lengthy credit checks, lock-in periods, contract rollovers or retailer demands for security deposits. We look forward to seeing these issues addressed in Ofwat’s further customer protection work.

3 Citizens Advice research is here.
4 Ofgem’s website here.
5 Ofgem’s website here.
Section 3.2.10

Market operator codes have already been developed that would allow retailers to reject customer transfers on the basis of bad debt. The codes also do not specify a “grace” amount of debt that customers can carry to new suppliers or provide a customer mechanism to appeal against the transfer block. In contrast, the energy sector has a debt assignment protocol that allows pre-payment customers to switch with debts up to £500.

As we point out in answer to Q13, there could be mechanisms that allow an indebted customer to transfer to a new retailer. It would then be up to the new retailer to determine whether to accept liability for that debt, and to set up a payment plan with the customer for recovery of the outstanding debt. Therefore, we look forward to clarity from Ofwat on how debt blocking will be managed.

4. Enquiries

4.1 If you have any questions about CCWater’s response to this consultation, please contact:

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