

## Customer Protection Code of Practice Change Proposal – Ref CP0002

<b>Modification proposal</b>	Customer Protection Code of Practice Change Proposal – CP0002 – Enabling Micro-business Customers to orally conclude contracts
<b>Proposer</b>	Clear Business Water Limited
<b>Decision</b>	The Authority has decided to accept this change proposal
<b>Publication date</b>	6 June 2019
<b>Implementation date</b>	13 June 2019

### Background

Clear Business Water Limited (**the Proposer**) submitted this Customer Protection Code Change Proposal (**Change Proposal**) to the Authority on 28 September 2018. It proposed amendments to the Customer Protection Code of Practice (**CPCoP**) to enable Micro-business customers to orally conclude contracts with Retailers.

We reviewed the Change Proposal and returned this to the Proposer on 23 November 2018, requesting additional information. We requested information about the views of other Trading Parties regarding the requirement to obtain written confirmation or acknowledgement of the Terms of Conditions of Supply from a Micro-business before initiating a switch. In addition, we sought evidence as to the impact that the current requirements of the CPCoP have had on Micro-business customers and the impact on the Proposer's business.

The Proposer resubmitted the Change Proposal on 4 December 2018, along with further evidence. We reviewed the additional evidence and considered that this was sufficient to enable us to form a view as to our proposed decision.

The Change Proposal relates to section 6 of the CPCoP. Section 6.1.1 places a requirement on Retailers to provide Micro-businesses with specified information in writing before either 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). The requirement to provide Micro-businesses with certain

basic information was originally included in the CPCoP to enable Micro-business customers to compare like with like and make an informed choice before agreeing a contract.

Section 6.1.2 of the CPCoP provides that:

“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.”

Section 6.1.3 provides Micro-businesses with a cooling off period of seven calendar days following it signing or acknowledging the Terms and Conditions of Supply. The Micro-business is able to cancel the contract during the cooling off period, should it wish to do so.

## **Proposed changes**

The Proposer has put forward changes to section 6 of the CPCoP to enable Micro-businesses and Retailers to orally conclude contracts. The Change Proposal seeks to maintain the existing protections for Micro-business customers, but to provide them with the option of agreeing an alternative method of concluding contracts for water supply and/or sewerage services. It has been proposed that:

- Where the Micro-business agrees, the Retailer can provide the information pursuant to section 6.1.1 orally;
- The Retailer must ensure it has a clear audio record of the oral acknowledgement from the Micro-business that it has understood the Section 6.1.1 information, for example by retaining a call recording;
- The Retailer has a clear audio record of the Micro-business’s oral acknowledgement of the Terms and Conditions of Supply; and
- The Retailer must send the Micro-business the Section 6.1.1 information in writing along with a copy of the Terms and Conditions of Supply. The 7 day cooling-off period will commence when the Micro-business is deemed to have received the relevant written information. The proposed legal drafting makes the provision of this information a ‘notice’, for the purposes of Section 11 of the CPCoP. Section 11 includes that:

1. all notices shall be marked for the attention of the person or persons notified for that purpose from time to time;
2. shall be in writing;
3. shall be treated as having been received:
  - 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;
  - 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
  - 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.
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).

## **Reasons for the Change Proposal**

The Proposer contends that the requirement for a Retailer to obtain written acknowledgement and/or a signed copy of the Terms and Conditions of Supply from a Micro-business customer before a switch can be initiated has a negative impact on this sub-set of customers and reduces the likelihood that they will engage in the market and consider switching their supplier. It has argued that this requirement increases the “hassle factor” meaning that a Micro-business is less likely to switch.

Further, the Proposer has indicated that the requirement to obtain written acknowledgement/signed Terms and Conditions of Supply from these customers increases the time it takes for a switch to be completed. This is because the Retailer is required to wait until the Micro-business customer returns the written consent before it is able to proceed with the switch.

The Proposer has argued that the Retailer’s costs of acquisition of Micro-business customers are therefore higher due to the requirement to obtain the relevant written

acknowledgement before the switch is initiated. It has suggested that this in turn limits the number of Retailers that want to compete to supply services to Micro-businesses. The Proposer has indicated that this ultimately has a negative impact for Micro-business customers as they have less choice and it is likely that price and service offerings will be less competitive.

## **Evidence considered**

### **Evidence submitted by the Proposer**

The Proposer submitted information and evidence which was analysed in advance of consulting on our proposed decision to accept this Change Proposal.

#### **Legal precedent**

The Proposer stated that under English law, an oral contract is equally as valid as a written contract as long as there is an offer, acceptance of that offer, intention to create legal relations and certainty of terms. It acknowledged that a difficulty in relation to oral contracts is evidencing them. Whilst there is a legal requirement for some contracts to be in writing, the Proposer noted that most types of contract can be concluded orally. It provided examples of contracts that can be concluded orally in other sectors, it presented to us that Ofcom, The Water Industry Commission for Scotland and Ofgem all recognise the validity of oral contracts. It also highlighted that even domestic customers in these sectors are able conclude these contracts orally.

#### **Impact on Micro-business Customers**

The Proposer stated that both Ofwat and CCWater<sup>1</sup> have highlighted that customers consider that the ability to consolidate different utility services to the same Retailer is an important factor when considering switching. It noted that in other utility services where switching is permitted to take place orally, the time taken to switch is reduced. The Proposer has argued that Retailers selling services across multiple utilities cannot, if the customer is switching water or sewerage services in England, switch all the customer's utility services at the same time. Evidence provided by the Proposer in support of this is that it takes an average of 50 calendar days for customers to switch to it where it is awaiting a written acknowledgement or signed copy of the Terms and Conditions of Supply. The Proposer estimates that it would take

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<sup>1</sup> Ofwat's report ([Open for Business: Reviewing the first year of the water retail market](#)) and the report published by the Consumer Council for Water ([Non-Household customers experiences of the retail water market in England](#))

customers approximately 28 calendar days to switch providers if contracts with Micro-businesses for water and/or sewerage services can be concluded orally. This 28 calendar day timeframe is inclusive of the seven day cooling off period and the time taken to send written information required by section 6.1.1 of the CPCoP.

The Proposer provided information in support of its assertion that the requirement for written acknowledgement/signed Terms and Conditions of Supply adds an additional “hassle factor” for Micro-business customers. It highlighted that where Micro-businesses cannot or do not access/return the written acknowledgement or the signed Terms and Conditions of Supply on the day the contract is provisionally agreed, the Proposer receives the written acknowledgement or signed Terms and Conditions of Supply on average 22 calendar days later. Only approximately 51% of the Proposer’s customers that are required to provide the written acknowledgement or signed Terms and Conditions of Supply subsequently end up switching their service. The Proposer considers that this is, at least in part, due to the additional effort required to provide the written acknowledgement or signed Terms and Conditions of Supply, particularly when Micro-businesses may consider that there are relatively low savings to be gained from switching.

The Proposer argued that this change would have no negative impact on customers, because:

- Where the Micro-business agrees, all of the required information would be read out to the Micro-business customer;
- Proof of the Micro-business customer’s oral acknowledgement would be retained in case of subsequent queries; and
- The Micro-business customer would be sent the required information in writing following the oral agreement and, it could still cancel the contract during the seven day cooling off period.

### **Impact on Retailers**

The Proposer monitored, over the period of around a week, the number of customers with whom it entered into oral contracts but that customer subsequently failed to return the written acknowledgement or signed Terms and Conditions of Supply. During the monitoring period, the Proposer reported that several of its customers raised concerns about the requirement for written acknowledgement or signed Terms and Conditions of Supply. The Proposer stated that most of these concerns related to the customer not having access to emails or not having time to complete the additional step of providing written acknowledgement or a signed copy of the Terms and Conditions of Supply. The Proposer argued that this resulted in a failure to switch or the switch being delayed. Case studies were submitted by the Proposer as supporting evidence of this issue, these have been detailed below:

“In one case the customer signed up to receive both their electricity and water services from us. The electricity contract was concluded verbally. However, the customer cannot access their emails at work due to lack of mobile signal. As such, we have been unable to place orders to switch their water services.”

“In another case, the customer did not have access to emails and could not understand why they were required to provide written acknowledgement. The customer queried why written acknowledgement was required when we would be reading the key terms of the contract over the phone. Due to the difficulties the customer experienced in providing the written acknowledgement, it took six weeks from agreeing the verbal contract to us concluding the contract.”

The Proposer indicated that acceptance of the Change Proposal would result in positive impacts for Retailers. It contended that ability for Retailers to conclude oral contracts with Micro-business Customers would reduce the time it takes for a switch to be completed whilst also reducing the Retailer cost of acquisition. It also contended that this change would have positive impacts on competition in the market as Retailers would be able to compete to provide services to Micro-business customers in a more efficient way.

## **Consultation responses**

We consulted on our proposed decision to accept this Change Proposal from 11 March 2019 to 8 April 2019. There were 14 respondents, two Wholesalers, eight Retailers, the Consumer Council for Water (**CCWater**), the Federation of Small Businesses (**FSB**), the Utilities Intermediaries Association (**UIA**) and a water specialist consultant.

### **Views on our proposed decision**

Eight respondents (seven Retailers of which three are Retailers, and one Wholesaler) supported the proposed decision to accept this Change Proposal.

Of the Retailers that responded, the majority expressly stated that they considered the change would increase Micro-business engagement with the market and increase levels of switching from this sub-set of customers. A Wholesaler respondent highlighted that it will not be impacted by the proposed change however, considered that this should increase customer engagement, reduce customer effort in the switching process and align practice with other retail sectors.

A Retailer commented that it considers the proposed change will improve customer outcomes and increase the likelihood that Micro-business customers will complete the switching process. A Retailer felt that if the time to switch is reduced this could reduce the costs to administer the process.

Another Retailer highlighted that research has consistently shown that customers are put off switching due to perceived 'hassle'. It argued that reducing barriers will encourage more engagement in the market and result in greater levels of switching.

One Retailer also stated following the conclusion of the cooling-off period, Micro-businesses may believe that there will be an automatic transfer, however, this may not be the case as its existing Retailer may legitimately block the switch. It highlighted the importance of providing this information to the Micro-business at the start of the cooling-off period so that they can understand what happens next. We agree that customers should be provided with relevant information about the switching process at the earliest opportunity. However, implementation of this Change Proposal will not in itself be the cause of this issue. Failing to provide relevant information about the switching process to customers is an example of poor communication by a Retailer which arguably could result in misunderstanding even with written information/Terms and Conditions of Supply being sent to the customer.

One Retailer, one Wholesaler, the water specialist consultant respondent, CCW and FSB did not agree with the proposed change. Reasons for this included experiences in the Scottish water retail market and other utility sectors, such as energy and telecommunications. CCWater commissioned a report from PwC to identify issues experienced in comparator industries. CCWater has indicated that the report highlighted potential customer detriment from mis-selling, which generated high levels of complaints in the UK energy and telecoms markets.

We note the concerns which have been raised about potential mis-selling. It should be noted that the Change Proposal will only permit certain information to be provided orally to Micro-business customers and only where they have agreed for this method of communication to be used. It remains an option for Micro-business customers to request that information is provided in writing in advance of concluding a contract. In addition, the requirement for audio recordings to be retained, the obligation for written information to be provided following oral conclusion of the contract and the subsequent cooling-off period, all offer mitigation of the risk of mis-selling. The cooling-off period for Micro-business customers is not available in other retail markets in which oral contracts can be concluded. Its availability for Micro-business customers in the water retail market ensures additional protection for these customers by providing time for them to reflect upon written information. It also provides the opportunity to cancel the contract without any associated cost within the

requisite timeframe. Ofwat has enforcement tools available to take action against Retailers in the event that we obtain evidence of mis-selling.

CCWater suggested that mis-selling could become a greater problem in the water and sewerage market due to low levels of awareness about the market amongst Micro-businesses. It stated that SME and Micro-business customer awareness of the market has remained static over the last two years. It should be noted that this Change Proposal will have no impact on the methods for conclusion of contracts that are currently available to SMEs. Removal of what could be perceived as a potential barrier to engagement with the market for Micro-businesses could help to increase switching activity and engagement in the market by this sub-set of customers. This in turn could also assist in improving the levels of awareness amongst these customers of the water retail market.

CCWater stated that it has not seen any evidence that there is a problem with the current requirements in the CPCoP for written acknowledgement/signed Terms and Conditions of Supply to be obtained before the switch can be initiated. It also highlighted that it has not received any complaints from Micro-businesses regarding the current requirements. The Proposer submitted information with its Change Proposal regarding the increased time it takes for Micro-businesses to switch due to the requirement for signed documentation to be returned. In reaching our decision, we also considered the Proposer's argument regarding 'hassle' or 'perceived hassle' impacting the number of customers that are switching and the evidence it had provided in respect of this. Other responses to the consultation on this Change Proposal have also provided support for the Proposer's argument in this regard. The Change Proposal is to introduce an additional method by which Micro-business customers can choose conclude contracts, rather than replace the existing requirements. A Micro-business must agree before the section 6.1.1 CPCoP information can be provided to it orally, otherwise this must be provided to it in writing. The Change Proposal does not prevent a Micro-business from requiring that the relevant information is provided to it in writing or from concluding contracts in the way that the CPCoP originally provided.

FSB expressed concerns that oral contracts could cause issues such as provision of misleading information by the Retailer, the Retailer withholding of terms or agreement of contracts by Micro-business employees that do not have the required authority. We note the concerns which have been raised although consider that the requirement for audio records to be retained coupled with the obligation for written information to be provided following conclusion of the oral contract offers mitigation of this risk. Whilst the FSB welcomed the cooling-off period it does not consider that this is not long enough. This timeframe for the cooling-off period has been in place since the CPCoP first came into effect and its duration is not being reviewed as part of this Change Proposal.



One Wholesaler argued that Micro-business customers should be offered extra protections which should not be diminished. It also did not consider that the lack of availability of oral contracts was hindering the market. It suggested that other reasons could impact a customer's decision not to switch, for example, satisfaction with service provision and costs. Whilst we note that there are a number of factors which could influence a Micro-businesses decision not to switch, addition of an alternative method for concluding contracts and decreasing the time taken to switch could have positive impacts for this sub-set of customers.

One Wholesaler and the water specialist consultant respondent suggested using electronic methods to conclude contracts as an alternative option to the Change Proposal. However, the drafting of the CPCoP would not exclude electronic methods such as email from being used to conclude contracts. Whilst the Retailer must be in receipt of written acknowledgement or signed documentation before the switch is initiated, the CPCoP is not prescriptive about the method of transmission of this data. Therefore, the issue the proposal is seeking to address would not be resolved by the option recommended by these respondents.

The UIA recommended an amendment to the legal drafting to strengthen the proposal. It suggested the drafting should be explicit in that the call in which the oral agreement is given by the Micro-business should be recorded in its entirety. This will assist, for example, if evidence is required where there are accusations of mis-selling. We considered that this suggestion provides further protections to a Micro-business concluding its contract orally, and have therefore amended the legal drafting to include this suggestion (highlighted in yellow in Appendix 1). It also considered that, should a dispute arise, it would be beneficial to include a provision that Retailers should be cooperative with requests from Micro-businesses to access the relevant audio records. We note this recommendation however we consider that this falls outside of the scope of this Change Proposal, which is seeking to provide an alternative option for the conclusion of contracts. This proposal does not review the complaint handling and dispute resolution provisions of CPCoP. We would, however, consider a Change Proposal relating to this should one be submitted to us.

Three respondents (two Retailer's and CCWater) highlighted that they did not agree with the Proposers arguments that the current CPCoP is anti-competitive by allowing Retailers acquiring customers through retail exit to conclude contracts without written acknowledgement. These customers would be afforded price and non-price protections under the Retail Exit Code on transfer to ensure that they are 'no worse off', whereas a customer agreeing an oral contract will not be protected by these provisions. One respondent stated that it was pleased that the Authority had not considered the Proposers argument in this regard in reaching its proposed decision.

## **The General Principles**

Of the 12 respondents that provided comment in response to our question about whether the Change Proposal facilitates and promotes the General Principles of the CPCoP, nine (Seven Retailers and two Wholesalers) considered that it does. Reasons provided included that the requirement to make and retain a clear audio record of acknowledgement of understanding of the information will encourage Retailers to be fair and honest. It was also noted that under the Change Proposal, the Retailer is still required to send written info and copy of Terms and Conditions of Supply and Micro-business Customers concluding contracts orally will have the same seven day cooling off period.

Two respondents (one Retailer and CCWater) did not agree that the change facilitates and promotes the General Principles. CCWater argued that the proposal increases risk for Micro-businesses and that there is no clear evidence that this set of customers is calling for change. As discussed above, this Change Proposal introduces an alternative option for Micro-businesses where they consent to information to be provided orally; there is no obligation on them to select this option. In addition, the Change Proposal includes further protections, such as the obligation to keep audio records, where this option is used.

The Retailer respondent who did not agree suggested that the proposal removes the requirement for Retailers to communicate transparently with customers. In addition, this Retailer felt that the Proposal removes a specific requirement for Retailers to provide information to Micro-business customers. It commented that the change removes the requirement for communication of key Terms and Conditions of Supply in a timely manner, at the time of entering into the contract.

It should be noted that the information in section 6.1.1 of the CPCoP must still be provided to Micro-business customers in advance of a contract being concluded. However, the Change Proposal provides that they are able to agree to this information being provided orally instead of in writing at the time of agreeing the contract. After agreeing an oral contract, the information required by section 6.1.1 of the CPCoP must then be sent to that customer in writing. The cooling off period commences only once the written information is deemed to have been received, therefore providing time for the customer to reflect upon the written information and cancel the contract should it wish to do so.

## **Legal drafting**

Of the 11 responses received to this question, eight were in agreement with the proposed legal drafting. One Retailer and one Wholesaler highlighted typographical errors which have been addressed.

The UIA and a Wholesaler recommended inclusion of a retention period for audio records within the drafting. The amendment to the CPCoP imposes a requirement on licensees to provide a written copy of the information provided orally under section 6.1.1 and the Terms and Conditions of Supply in accordance with 6.1.2. Further, the 7 calendar day cooling off period will not commence until the micro-business is deemed to have received the information under clause 6.1.2, and the Transfer Registration Application cannot be submitted until this time is up. The level of protection given by reference to the provision of written terms alongside the oral terms should be sufficient – we will keep this under review if we begin to receive complaints about the accuracy of audio files, and company retention periods relating to these.

Amongst other suggestions, the UIA proposed amendments to the legal drafting including:

- that calls should be recorded in their entirety and retained for the duration of the contract, and
- a requirement that Retailers should provide access to the audio records upon request, by either the customer or its appointed agent, in a cooperative and timely way.

We have made amendments to the legal drafting to include a requirement that the audio recording should be of the full conversation with the relevant Micro-business (see Appendix 1). With regard to the recommendation about access to audio recordings, as detailed in the ‘views of the proposed decision section’ above, this falls outside of the scope of this Change Proposal.

CCWater considered that the legal drafting did not provide an appropriate level of customer protection. It argued that there are increased risks although its view is that the proposal will not deliver the benefits that customers are expecting.

Changes have been made to the legal drafting to amend the typographical errors which were highlighted by two respondents, these changes can be seen highlighted in yellow in Appendix 1 of this document.

### **Proposed implementation date**

Eight respondents agreed with the proposed implementation date, three (two Retailers and CCWater) did not agree.

One Retailer that did not agree suggested an implementation date of three months following the date of the decision. It commented that this would provide sufficient time for Retailers to put systems in place which will enable a level playing field from

the date of implementation. This change introduces an alternative option for Retailers to offer the service of the oral conclusion of contracts to Micro-business customers. There is no requirement for Retailers to offer all available service offerings. Therefore, we do not agree that the short implementation timeframe for introduction of an additional option does not promote a level playing field.

A Retailer that did not agree indicated that there should be a period to explore the impact in the Scottish Water market of oral agreements before the proposal is implemented. Consideration has been given to the consultation responses received which have raised concerns about experiences in other markets. We are aware of the concerns and consider that although the change introduces an alternative option for Micro-business customers, there remain a number of protections in place which are not available in other markets for example, the cooling-off period. We will keep under review the impacts of this change following implementation in light of complaints and information received.

The UIA suggested that the proposed date of implementation does not provide time for further consultation should the consultation responses received by the Authority present varying viewpoints. We considered the responses to our consultation on this Change Proposal and following our analysis of these, we did not identify substantive concerns. Had substantive concerns been raised, we could have consulted further which would have delayed the date of the decision document and therefore, the date of implementation.

Three respondents did not provide comments in response to the question about the date of implementation.

## **Our decision**

We have considered the scope, impact and risks of the modification proposal by assessing the evidence we have obtained from the consultation on our proposed decision. We have concluded that the implementation of CP0002 will offer benefits to Micro-business Customers and Retailers engaging with these customers. We therefore consider that the changes will facilitate the Code Principles of the CPCoP. Further, the changes are consistent with our statutory duties. We will publish a revised version of the CPCoP on our website.

We have given consideration to the implementation timeframe and have decided that the implementation date will be 13 June 2019. In making this decision, we reviewed the responses to the consultation on our proposed decision which demonstrated that the majority of Trading Parties considered that an implementation date of one week after the date of the decision is acceptable. The change in this instance provides a

further option under the CPCoP. There is no obligation to use the addition option for concluding contracts as such, we do not consider that a short implementation date will have a negative impact for Micro-business Customers or Retailers.

When deciding the date for implementation, consideration has also been given to the urgency of the proposed change. Whilst the changes are not considered to be urgent, there are potential benefits which can be realised for Micro-business customers from implementation at the earliest possible date.

The legal drafting can be found in Appendix 1 of this document, we will publish an updated version of the CPCoP on our website.

## **Reasons for our decision**

We set out below our views on how the proposed change is in line with our statutory duties and which of the applicable Code Principles are better facilitated by the modification proposal.

### **Statutory duties**

Under section 2 of WIA91, as amended, we must carry out our prescribed powers and duties including:

- the granting of water supply and sewerage licenses (under sections 17A and 17BA of the WIA91); and
- the enforcement of a licence (under section 18 of the WIA91)

imposed on us as an economic regulator in the way we consider will best:

- further the consumer objective to protect the interests of consumers, wherever appropriate by promoting effective competition
- secure that water companies (meaning water and sewerage undertakers) properly carry out their statutory functions
- secure that water companies can (in particular through securing reasonable returns on their capital) finance the proper carrying out of their statutory functions
- secure that water supply licensees and sewerage licensees properly carry out their licensed activities and statutory functions
- further the resilience objective to secure the long-term resilience of water companies' water supply and wastewater systems as regards environmental pressures, population growth and changes in consumer behaviour; and to

secure that they take steps to enable them, in the long term, to meet the need for water supplies and wastewater services to consumers.

Subject to our main duties above, we must also regulate in the way we consider will best:

- promote economy and efficiency by water companies in their work
- secure that no undue preference or discrimination is shown by water companies in fixing charges
- secure that no undue preference or discrimination is shown by water companies in relation to the provision of services by themselves or by water supply licensees or sewerage licensees
- secure that consumers' interests are protected where water companies sell land
- ensure that consumers' interests are protected in relation to any unregulated activities of water companies
- contribute to the achievement of sustainable development

We must also have regard to the principles of best regulatory practice. These include that regulatory activities should be transparent, accountable, proportionate, consistent and targeted.

We consider that the proposed changes to the CPCoP comply with our statutory duties.

Providing Micro-businesses with the option to conclude contracts in the same way as other Non-Household Customers, whilst maintaining the additional protection of a cooling-off period furthers the consumer objective by promoting effective competition as these customers may be more likely to engage with the market if switching is easier. It is also possible that this Change Proposal may help to reduce the cost of acquisition of Micro-business customers which has potential to increase competition for their custom.

Further to the above, enabling the conclusion of oral contracts with Micro-business customers will promote efficiency in the market. Where the option to conclude the contract orally is selected it will reduce the time that it takes for the switch to be completed. This is because there will not be an onus on the Micro-business customer to return written confirmation/signed documentation before the switch can be initiated. Micro-businesses will still be provided with time to reflect upon the written information received from the Retailer and retain the protection that they are able to cancel the contract within the cooling-off period at no cost. The requirement for the Retailer to retain an audio record provides an additional level of protection.

## **CPCoP General Principles**

### **Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business**

The obligation for Retailers to retain an audio record and provide written information following oral conclusion of a contract assists in ensuring that Retailers are acting in a fair, transparent and honest way.

### **Communication with Non-Household Customers shall be in plain and clear language**

Where the Micro-business agrees to receive orally in the first instance the information that is required to be provided to it under section 6.1.1 of the CPCoP, it is provided with the opportunity to ask questions and seek clarification immediately.

### **Retailers shall ensure they provide appropriate and timely information to Non-Household Customers to enable them to make informed choices**

Micro-businesses must agree before the information required to be provided by section 6.1.1 of the CPCoP can be provided orally. However, where consent is provided this ensures that customers will receive communication about key terms in a timely manner. Provision of written information ahead of commencement of the cooling off period will ensure that the Micro-business has had time to consider the documentation and make an informed choice as to whether it would like to cancel the contract during that time.

Retailers will be incentivised to provide the requisite written information in a timely manner. This is because the cooling-off period will only commence once the written information is deemed to have been received by the Micro-business and the Retailer it is not able to initiate the Transfer Registration Application until the cooling-off period has expired. New section 6.1.2 of the CPCoP also requires that the written information is provided as soon as reasonably practicable.

### **Any information provided to Non-Household Customers shall be complete, accurate and not misleading**

The requirement for a Retailer to provide written information to Micro-business customers following agreement of an oral contract provides an extra level of protection. This helps to ensure that the information which has been provided during the initial conversation was complete, accurate and not misleading. The Micro-business customer retains the option to terminate the contract during the seven day cooling-off period in which it is able to cancel the contract if it disagrees with any of the terms.

### **Retailers shall respond to Non-Household Customers in an appropriate and timely manner**

The requirement to send written information as soon as reasonably practicable following the conclusion of an oral contract facilitates this principle. There is an incentive for Retailers to send the written information to the Micro-business as soon as possible as it will reduce the time that it will take for the switch to be completed. The reduction in the time that it will take for the switch to be completed will also be beneficial for the Micro-business customer.

### **Customer service arrangements and processes shall be accessible to and effective for Non-Household Customers**

Providing Micro-business with the option to conclude oral contracts with Retailers will speed up the switching process. The switching process will also be more accessible to Micro-businesses customers as they will have the same options as other Non-Household Customers for the conclusion of contracts but will retain additional protections.

## **Decision notice**

In accordance with paragraph 5.2.4 of the CPCoP, the Authority accepts this change proposal.

**Emma Kelso**  
**Senior Director**  
**Markets and Enforcement**



## Appendix 1 – Legal drafting

### 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 or, where the Micro-business agrees, orally:

- (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 Where the Retailer has provided the information pursuant to Section 6.1.1 orally to the Micro-business, it shall, as soon as reasonably practicable, also provide this to the relevant Micro-business in writing along with a copy of the Terms and Conditions of Supply. The provision in writing of the information and the Terms and Conditions of Supply under this sub-section shall be considered to be the provision of a notice for the purposes of Section 11.

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

(a) ~~(a) written~~ Either has:

(i) a clear audio recording of the full conversation with the relevant Micro-business's including its oral acknowledgement that it has heard and understood the information provided to it pursuant to Section 6.1.1; or

~~(i)~~(ii) 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~~and

(b) ~~(a)~~ Either has:

(i) a clear audio recording of the full conversation with the relevant Micro-business's including its oral acknowledgment that it accepts the Terms and Conditions of Supply; or

(ii) written acknowledgement from the relevant Micro-business that it accepts the Terms and Conditions of Supply; or

~~(i)~~(iii) 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~~section 6.1.23 at no cost to the Micro-business by serving a Cancellation Notice on the Retailer ~~within seven calendar days of signature of.~~ Where the ~~relevant acknowledgement or agreement.~~Section 6.1.1 information has:

(a) been provided orally, the Micro-business must serve the Cancellation Notice within seven calendar days of the date on which the Micro-business is deemed to have received the relevant information and a copy of the Terms and Conditions of Supply provided to it pursuant to Section 6.1.2; or

(b) initially been provided in writing rather than orally, the Micro-business must serve the Cancellation Notice within seven calendar days of the date on which the Micro-business provided written acknowledgement that it accepted the Terms and Conditions of Supply or signed a copy of the Terms and Conditions of Supply (whichever is the earlier).

6.2.2 A-Where the Retailer has provided the Section 6.1.1 information to the Micro-business orally, the Retailer shall not submit a Transfer Registration Application in respect of ~~a~~that Micro-business within seven calendar days of ~~deemed~~ receipt by the ~~Retailer of the acknowledgement or agreement provided~~ Micro-business of the Section 6.1.1 information and the Terms and Conditions of Supply.

6.2.3 Where the Retailer initially provided the Section 6.1.1 information to the Micro-business in writing, a Retailer shall not submit a Transfer Registration Application in respect of a Micro-business within seven calendar days of receipt by ~~that Micro-business pursuant to Section 6.1.2.~~ the Retailer of the written acknowledgement of the Section 6.1.1 information and either written acknowledgement that they have accepted the Terms and Conditions of Supply or a copy of the Terms and Conditions of Supply signed by or on behalf of the relevant Micro-business.

## 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.