July 2021

CP0004 – Ease of access to audio records: proposal to reject a Customer Protection Code Change Proposal – a consultation

Ofwat

Contents

1. About this document

The Customer Protection Code of Practice ("CPCoP")[1] sets out the minimum standards that all Retailers must comply with in their dealings with Non-Household Customers. It also sets out the minimum standards of behaviour that we expect from Retailers, and its compliance is a requirement of Retailers' licences.

This document sets out, for consultation, our proposed decision on a change to the CPCoP. A Customer Protection Code Change Proposal was raised by the Utilities Intermediaries Association ("the Proposer"). It has proposed amendments to the CPCoP to ensure ease of access to audio records where a Micro-business customer has orally agreed to a contract ("the Change Proposal"). We are proposing to reject the Change Proposal and we are seeking views on our proposed decision.

This document is structured as follows:

Section 2 sets out the background to the Change Proposal.

Section 3 details the issue that the Change Proposal is seeking to address and the proposed solution.

Section 4 outlines the evidence we have considered during assessment of the Change Proposal (including the responses to our Call for Inputs and the Proposer's reply).

Section 5 provides our proposed decision and the reasons for our proposed decision.

Section 6 lists the consultation questions which we would welcome responses to.

Section 7 outlines our conclusion and next steps in relation to the Change Proposal.

Appendix 1 of this document sets out the governance arrangements for Customer Protection Code Change Proposals and discusses our assessment of the urgency of the proposed change.

Appendix 2 details the case studies that have been provided by the Proposer to evidence the issue that the Change Proposal is seeking to address.

Responding to this consultation

[1] Unless otherwise specified, the terms used in this document are those defined in the CPCoP.

We would welcome your views on the questions detailed in section 6 of this document by **5pm on 9 August 2021**. Please email them to CPCOPcodechange@ofwat.gsi.gov.uk. We are currently unable to accept consultation responses by post.

We may publish responses to this consultation on our website at www.ofwat.gov.uk. Subject to the following, by providing a response to this consultation you are deemed to consent to its publication.

If you think that any of the information in your response should not be disclosed (for example, because you consider it to be commercially sensitive), an automatic or generalised confidentiality disclaimer will not, of itself, be regarded as sufficient. You should identify specific information and explain in each case why it should not be disclosed, which we will consider when deciding what information to publish. At a minimum, we would expect to publish the name of all organisations that provide a written response, even where there are legitimate reasons why the contents of those written responses remain confidential.

In relation to personal data, you have the right to object to our publication of the personal information that you disclose to us in submitting your response (for example, your name or contact details). If you do not want us to publish specific personal information that would enable you to be identified, our Privacy Policy explains the basis on which you can object to its processing and provides further information on how we process personal data.

In addition to our ability to disclose information pursuant to the Water Industry Act 1991, information provided in response to this consultation, including personal data, may be published or disclosed in accordance with legislation on access to information – primarily the Freedom of Information Act 2000 (FoIA), the Environmental Information Regulations 2004 (EIR) and applicable data protection laws. Please be aware that, under the FoIA and the EIR, there are statutory Codes of Practice' which deal, among other things, with obligations of confidence. If we receive a request for disclosure of information which you have asked us not to disclose, we will take full account of your explanation, but we cannot give an assurance that we can maintain confidentiality in all circumstances.

2. Background to the Change Proposal

In June 2019, following consultation, we approved a Customer Protection Code of Practice Change Proposal (CP0002) which enabled Micro-business customers to orally conclude contracts.

Where a Micro-business chooses to orally conclude a contract, there is a requirement for Retailers to ensure that they have an audio recording of the conversation. Section 6.1.3 of the CPCoP requires that before submitting a Transfer Registration Application (requesting a switch), a Retailer must ensure that it:

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

(b) Either has
- (i) a clear audio recording of the full conversation with the relevant Micro-business 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
- (iii) a copy of the Terms and Conditions of Supply, signed by or on behalf of the relevant Micro-business.

The Proposer responded to our consultation on CP0002, and included recommendations that it considered strengthened the proposed change. Some of the proposals fell outside of the scope of CP0002 and therefore we invited the Proposer to submit a separate Customer Protection Code Change Proposal if they considered the changes were necessary. Subsequent to this, on 3 September 2019, the Proposer submitted this Change Proposal which is seeking to ensure ease of access to audio records where a contract has been orally concluded by a Micro-business.

In March 2020, we published a Call for Inputs to seek information and evidence to understand the impacts of the Change Proposal. Shortly after publication, the UK entered national lockdown measures in response to Covid-19, and it was necessary to put this Change Proposal on hold whilst we co-ordinated a response to further protect the interests of business customers in the water sector. Following our assessment of the responses to our Call for Inputs, we are now consulting on our proposed decision to reject this Change Proposal.

3. The issue and the proposed solution

The Proposer has indicated that some customers in the energy retail market, where the ability to agree contracts orally is also permitted, have difficulties in obtaining access to audio records in the event of a dispute or complaint. It has stated that responses by energy suppliers to requests for access to audio records are inconsistent. The Proposer has suggested that customers are being forced to wait for over 28 working days before the relevant information is provided. Where audio records are provided, the process to access the data can be 'convoluted' and can make it difficult for customers to share or pass to another party, for example if they are seeking support or legal advice.

The Proposer considers that providing timely and easy access to recordings in the business retail market would enable any potential issues or disputes to be investigated and remedied promptly, minimising the risks of potential customer harm of the kind it has reported in the gas and electricity markets.

The Proposer has recommended that the complaint handling and dispute resolution provisions of section 10 of the CPCoP are modified to:

- include a requirement for Retailers to co-operate with requests from Micro-businesses or their appointed representative to access all relevant audio records in a timely manner and in a format that is easily readable and transferable; and
- where a request has been made by a Micro-business for audio records to be provided, the Proposer has recommended that these should be made available within a timeframe of five Business days.

The Proposer contends that this proposal would further strengthen protections under CP0002.

4. Evidence considered

Call for inputs

The Change Proposal, when submitted in September 2019, did not include sufficient information to enable us to decide whether to consult on approving, rejecting or modifying the proposal. In particular, we did not have evidence about the potential impacts of the proposal and whether it is the most appropriate means of achieving the desired outcome. We therefore published a Call for Inputs in March 2020 to gather further information..

There were seven responses to the Call for Inputs – four Retailers, two Wholesalers and CCW. We have summarised the key responses to our Call for Inputs below.

Question 1: Do you consider that the Change Proposal addresses the identified issue; that in the event of a complaint or dispute some customers have difficulty obtaining audio recordings in a timely way and obtaining them in a format that is easy to share/transfer?

Two Retailers suggested that the issue is not evidenced and considered that there is no evidence that the proposal would address the issue. One of these Retailers thought that customers requiring audio copies of their personal data are already sufficiently protected by the General Data Protection Regulation (GDPR)[2], the Guaranteed Standards Scheme (GSS) and the General Principles of the CPCoP. The other Retailer thought that where there is an issue between two parties relating to obtaining audio recordings, this should in the first instance be dealt with between the two parties, its view was that a change to the CPCoP would be disproportionate.

A Retailer considered that a request for an audio record is a request for personal information under GDPR which should be treated as a Subject Access Request (SAR). A Wholesaler also considered that the recordings should be provided in line with SARs, it suggested a timeframe of 30 days.

One Retailer said that it is not aware of any issues relating to access to audio records, but this Retailer confirmed that it only uses written contracts.

A Wholesaler agreed that the proposed change could facilitate ease of access to audio recordings and should enable any potential issues or disputes to be investigated and

[2] Responses to the CFI were received prior to the end of the Brexit transition period and therefore references have been made to the GDPR, rather than the UK GDPR which came into force on 1 January 2021 and, for these purposes, provides equivalent provisions.

remedied promptly. It shared that from its experience, listening to calls can help to make sure that the customers concerns are addressed.

CCW supported the proposal, suggesting that the amendments would provide an additional layer of protection for Micro-businesses where they orally agree contracts. Further, CCW said that as Retailers are required by the CPCoP to have a clear audio recording when they agree an oral contract with a Micro-business it should not be problematic for this to be provided within five Business days. To further the principle that communication with customers should be in plain and clear language, CCW considered that it would be beneficial to set out clearly which format is considered easily readable and transferrable so that this is not subject to interpretation.

Question 2: What is your view of how the Change Proposal promotes and facilitates the General Principles of the Customer Protection Code of Practice (section 4 of the CPCoP)?

Two Retailers, whilst agreeing that the proposal furthers the principles, did not consider that the Change Proposal is necessary. The reasons given were that requests for audio records should be treated as SARs, and Retailers are required to comply with the General Principles of the CPCoP and no issue has been highlighted which requires intervention. In addition, it said that five Business days for provision of audio recordings is too short; it would be more reasonable for these to be provided within 20 Business days because before the recording can be provided, this would need to be located, listened to, saved in the relevant format and sent to the customer. If the customer required this to be sent by post then the recording would also need to be burned to a CD before posting.

Another Retailer suggested that the proposal cast doubt on the transparency, honesty and customer centric principles. It also thought that the proposal offends the principle of plain and clear language by providing for subjective interpretation of a conversation 'which by definition will not be comparable with a written contract'. In addition, this Retailer said that it will be impossible for an oral contract to be as complete and accurate as a written one.

One Retailer, CCW and two Wholesalers considered that the proposal will promote and facilitate the General Principles of the CPCoP. Respondents referred to sections 4.1.2, 4.1.4, 4.1.5 and 4.1.6.

Question 3: What is your view of the proposal that in the event of a complaint or dispute, Retailers should be required to:

(a) cooperate with requests for audio records;
(b) Provide audio records in an easily readable and transferrable format; and

(c) provide audio records in a timely manner (the Proposer has suggested five Business days).

One Retailer thought that the requirements seem reasonable.

CCW supported introduction of the proposed requirements highlighting that CCW has received some complaints from Non-Household Customers about the process of agreeing new contracts.

Another Retailer considered that all requests for audio records should be treated as a SAR under the GDPR and thought that any Non-Household Customer should already be able to easily get a copy of their audio records regardless of the reason for that request. This Retailer also expressed concerns about the proposal that audio recordings should be provided in an 'easily transferrable format'. This Retailer considers that that this requirement could result in personal data being disclosed in an unsecure manner which is contrary to the GDPR. It also thought that the timeframe for provision of audio recordings should be in line with the GDPR (one calendar month) to provide sufficient time for the GDPR requirements to be met.

A Retailer said that given 'the present unnecessary and undesirable provisions, and the vague nature of the proposal as described above, we cannot answer this question without any analysis of the data protection implications'.

One Wholesaler thought that making the information available can only enhance the customer experience. Although, this Wholesaler said that we should be mindful of costs to implement the necessary technology. It said that Retailers have narrow margins and it could impact on their cost to serve. However, it should be noted that concluding oral contracts under the CPCoP is optional and Retailers are able to instead use written contracts.

Another Wholesaler agreed with the principle of the proposal but also highlighted that not every Retailer may have the ability or function to enable audio call recording and enquired as to what would happen in this scenario.

Question 4: Do you consider that the Change Proposal would have any impacts on business processes, systems or have costs implications for Retailers? If so, please provide evidence to support your response.

One Retailer thought that the Change Proposal would have impacts on its business processes, which are based on GDPR requirements.

Another Retailer said that in current circumstances there is no case for imposing any obligations on Retailers which might complicate their customer relationship processes in undefined ways.

One Wholesaler thought that there would be a cost to Retailers and that the associated costs would be dependent on their telecoms supplier. This Wholesaler thought that the change would only improve the process as more accurate information would be available should the customer have a query/complaint. This change would allow the Retailer to listen to the call and understand the conversation which had occurred at the time. Another Wholesaler said that there could be cost implications for some Retailers in procuring and installing call recording facilities at their offices. In addition, in its experience this would cause a change in the daily operations and result in additional training requirements.

A Retailer advised that it only uses written contracts and therefore did not know what the cost implications for a Retailer might be. However, it asked 'whilst it is reasonable that Retailers will hold audio records for existing customers will this also apply to previous customers and if so for what period?'.

CCW said that it recognises that this requirement may create an additional administrative task for Retailers. As Retailers are already obliged to have evidence of a contract agreed orally under Section 6.1 of the CPCoP, CCW does not expect Retailers to impose a charge on customers for provision of this information. It said that providing this information without charges would also be in line with the principles in Section 4 of the CPCoP, especially if it is being provided in response to a complaint. Further, CCW suggested that in the event that the request for audio records is included within a wider data SAR, Retailers would be required to separate out the various elements of the request to ensure that they respond within the requisite time frames. It noted that this would necessitate a change in process.

Question 5: What is your view of whether the Change Proposal should apply to all records rather than just audio records?

One Retailer said that no evidence is adduced in support of this unspecific suggestion. Another Retailer highlighted that it considered that all requests for records are covered by the GDPR, regardless of the format of the information held or the reason for the request. This Retailer highlighted that it is necessary for Retailers to comply with GDPR requirements when dealing with requests for all record types.

Another Retailer did not think that the Change Proposal should apply to all records. It did not consider that the Proposer had provided evidence which demonstrates that there is an issue with the provision of audio records and as such it sees no justification for all records to be included in the Change Proposal.

One Retailer thought that it should apply to all records in any format pertaining to a contract, but considered that there should be a time limit for any such obligations where customers have switched away. CCW considered that all records that are personal to customers' water and sewerage services should be made available to them in an easily readable and transferrable format, and a timely manner, at their request.

One Wholesaler thought that the proposed amendments should be applicable to all records rather than just audio recordings as this is more transparent for the customer. It said that Retailers should have nothing to hide if they are acting open and honestly with their customers.

The Proposer's reply

Prior to consulting on our proposed decision to reject this Change Proposal, we contacted the Proposer to share a summary of the responses to the Call for Inputs and provide an opportunity for it to respond to the comments that had been provided by respondents. In particular, we asked the Proposer to consider the challenges that had been made to the evidence base for the Change Proposal.

Evidencing the issue

In response to the challenges to the evidence base for the proposal, the Proposer advised that its views are based on 15 years' experience in handling consumer complaints in the retail energy sector and that its motivation is to try to prevent similar actions occurring in the water retail market. It said that poor consumer outcomes lead to mistrust and disengagement in the market, which once established are difficult to alter.

The Proposer stated that the contractual element of audio recordings is legally binding and as such 'must be as complete and as accurate as any written agreement'. The Proposer suggested that this is the reason that energy suppliers require a verbatim script to be read where contracts are being agreed orally.

In the Proposer's experience, a customer is only likely to ask for a copy of all verbal recordings relating to a contract agreement if they are suspicious about how acceptance of the contract had occurred and where they were seeking verification of this. The Proposer suggested that the longer, or more difficult, the Retailer makes it for the customer to obtain this information (for example by citing GDPR as justification), the more suspicious the customer will become and will likely conclude that the Retailer is being deliberately obstructive.

Further, the Proposer highlighted that if a customer has been mis-sold a contract, then the Retailer has an obligation to put that right as soon as possible to minimise consumer harm

and address the cause at source (be that internal or external). Equally, if there is no evidence of any wrongdoing, the Proposer stated that it is important from a reputational viewpoint that any misconceptions are corrected quickly, and for lessons to be learned by the Retailer.

The Proposer stressed the need for all conversations relating to the procurement of a contract to be recorded. The Proposer's reply noted that Citizens Advice highlight it as an area of consumer harm with their case studies as part of their response to Ofgem's Microbusiness Strategic Review. The Proposer also provided three case studies to demonstrate the difficulties that customers have faced in obtaining audio recordings in the energy market. The case studies referred to are detailed in Appendix 2 of this document.

In addition to the above, the Proposer has stated that they have discussed the issue with CCW and it shares the concerns that the Proposer has raised. We contacted CCW to discuss these concerns further, and CCW advised that it has seen evidence of some complaints from Non-Household Customers relating to agreement of oral contracts and some complaints about switching following the agreement of an oral contract. At the time of the discussion, CCW was however unable to confirm whether the complaints that it had seen were specifically from Micro-business customers or from other customer sub-groups.

UK GDPR and SARs

In reply to respondents to the Call for Inputs who suggested that requests for audio recordings should be dealt with as SARs, the Proposer highlighted that this would mean that Retailers would be 'delivering no more than is required under GDPR'. The Proposer thought that Retailers will not consider the customer's position and whether such a timeframe would be detrimental to them in responding to the request. The Proposer provided an example of where a customer might have been erroneously switched to another Retailer and subsequently found they were being charged 'out of contract rates' or were signed to a contract which they dispute. The Proposer suggests that resolution would be costly and time consuming and may involve multiple parties.

The Proposer thought that one respondent had suggested that provision of a full audio recording could contravene GDPR. The Proposer considered this to be an 'empty argument' stating that one of the six lawful grounds for data processing is where the processing of data becomes "[n]ecessary for the purposes of legitimate interests pursued by the controller or a third party, except where such interests are overridden by the interests, rights or freedoms of the data subject". The Proposer said that 'where a Retailer is accepting business through a third party intermediary (TPI) engaging in a verbally scripted contract and the customer's decision to enter into such a contract will certainly be informed by the back conversation(s), a request from that customer to have access to such conversation in the case of dispute is not a breach of GDPR'.

GSS

In reply to comments regarding the GSS, the Proposer said that its understanding is that the GSS requires the Retailer to make a specified payment of £20.00 to the customer if they fail to meet a standard. The Proposer does not consider that £20.00 is commensurate with the potential harm a customer may incur, nor a large enough penalty to incentivise better responses by the Retailer.

Retention and retrieval of audio recordings

Concerning retention of audio recordings, the Proposer states that within the energy retail market, copies of audio recordings can be kept for up to six years. Although, the Proposer highlighted that many believe retaining them for the duration of the contract agreement would be sufficient, the Proposer shares this view.

The Proposer states that Retailers should be able to readily retrieve data relating to customer contracts as standard practice. It considered that if some are unable to, this is a poor reflection of their capabilities to fulfil their obligations to consumers, suggesting a lack of investment in improving internal systems and processes, or disinclination to do so.

5. Proposed decision

We have given careful consideration to the evidence presented, inclusive of the Change Proposal and the responses to the Call for Inputs.

Having considered the available evidence of the issue alongside the existing protections in place for Micro-business customers, we are proposing to reject the Change Proposal.

Proportionality

Evidence in response to this consultation suggests that not all Retailers in the business retail market currently use the option to orally conclude contracts. In addition, we note that the evidence of the issue which has been provided by the Proposer relates specifically to the energy retail market and it is unclear whether this evidence relates specifically to Micro-business customers. We have received limited evidence that suggests that Micro-business customers are currently finding it difficult to obtain audio recordings in the business retail market, and that this in turn is causing a detrimental effect on them.

Overall, we consider that the existing and additional layers of protection that are currently available for Micro-business customers (as set out below), indicate that there is not an immediate issue that needs to be addressed, meaning that changes that Retailers may need to make to their systems and/or processes could be disproportionate to any benefits that Micro-business customers might receive from it. We will however keep this under review, including by considering any further evidence that is provided in response to this consultation, and take appropriate action should evidence of an issue begin to emerge.

Existing protections

CPCoP

The CPCoP already provides a number of layers of protection for Micro-business customers that conclude oral contracts.

Where a Retailer agrees an oral contract with a Micro-business customer they are required by section 6.1.1 of the CPCoP to provide specified information. For example, details of applicable prices, charges and/or tariffs being offered to the customer and the duration of the Terms and Conditions of Supply, in particular the expiry date. The CPCoP also requires[3] Retailers to provide, in writing, the information that it provided orally under section 6.1.1

[3] In section 6.1.2

along with a copy the Terms and Conditions of Supply as soon as reasonably practicable following the oral provision of that information.

Following an agreement to switch, the CPCoP provides a cooling-off period of seven calendar days for Micro-business customers[4]. The cooling off period does not commence until the written information referred to above is received or deemed to have been received and provides Micro-business customers with time to reflect on, and further consider, the written information which has been provided relating to the oral agreement. If the customer has concerns that the written information does not align with what has been discussed and agreed, they are able to use the cooling-off period to attempt to resolve this with the Retailer and may elect to submit a Cancellation Notice to cancel the switch. Should the Micro-business customer decide not to proceed with the switch during the cooling-off period, they will not incur costs as a result of this[5].

The existing CPCoP protections outlined above limit the impact that any delay in providing an audio recording to a Micro-business could have in the event of a dispute concerning an oral agreement.

The evidence provided to support this Change Proposal originates predominantly from the energy retail market. Ofgem published its statutory consultation on 1 June 2021 in relation to its strategic micro-business review. This consultation proposes to introduce a number of reforms designed to improve micro-businesses' experience of the energy retail market, including measures which, if implemented, should contribute to improving the experience of micro-business customers that verbally conclude contracts. In addition to other measures which form part of the proposals it is consulting on, Ofgem has proposed to introduce:

- a cooling-off period for micro-businesses; and
- a requirement for principle terms (which will include information about cancellation rights) to be provided to the micro-business in writing "no later than one working day after the contract has been entered into".

The energy retail market has been operational for longer than the water business retail market. We can therefore consider learnings from the experiences of customers in the energy market and, where appropriate, adapt and develop customer protections for the water business retail market. We note that Ofgem has proposed the above package of reforms following an initial consultation, and in response to its understanding of the issues that face micro-business customers that orally conclude contracts. These measures proposed broadly align with the existing protections offered by the CPCoP, with the exception that the proposed cooling-off period is longer. Ofgem's statutory consultation does not include any

[4] Section 6.2 of the CPCoP
[5] Section 6.2.1 of the CPCoP

proposals relating to the provision of audio recordings to micro-business customers that orally conclude contracts.

GSS

We note the comments from one Retailer respondent to the Call for Inputs who highlighted that the GSS requires that written complaints must be investigated and a substantive response provided within 10 days. Failing to do so will result in the Retailer being required to make an automatic payment of £20 to the customer. This requirement would include written complaints about oral contracts.

We acknowledge the Proposer's reply to this comment and its concerns that a £20 payment does not sufficiently account for the costs that the customer may incur. However, we consider that the GSS standard provides an incentive for Retailers to avoid failing to meet a standard and as a result provides an additional layer of protection to Non-Household customers and should assist them with receiving a timely response to complaints, inclusive of complaints regarding oral agreements.

UK GDPR

We agree with the arguments put forward by respondents to the Call for Inputs who highlighted that customers are already able to request call recordings under the UK GDPR, which all Retailers are required to comply with. Personal data must be processed in accordance with the UK GDPR. We note that the Change Proposal is seeking to accelerate the timeframes for the provision of audio recordings to Micro-business customers. However, the UK GDPR already requires that information that has been requested by the data subject (i.e. the identified or identifiable living individual to whom personal data relates) shall be provided without **'undue delay'** and in any event within one month of receipt of the request. While this timeframe can be extended in some circumstances taking into account the complexity and number of requests, we fully expect Retailers to respond to information requests as promptly as possible.

We consider that the timeframes for provision of personal data within the UK GDPR provide adequate protection for Non-Household Customers from the potential for undue delays. The information and evidence that we have assessed, in conjunction with the existing layers of protection provided by the CPCoP for Micro-businesses that elect to orally conclude contracts, does not at present support a necessity to reduce the relevant timeframes. We are however interested to see any evidence to the contrary and would welcome views and supporting evidence to be submitted in response to this consultation.

It should be noted that if we do proceed with our proposed decision to reject this Change Proposal following consideration of the consultation responses, we intend to keep this matter under review and take appropriate action if necessary.

6. Consultation questions

The questions we would welcome responses on in relation to this consultation on our proposed decision to reject this Change Proposal are detailed below. Where appropriate, answers should be supported with evidence.

1. What are your views on our proposed decision to reject this Change Proposal?
2. What is your view of the conclusions that we have detailed in section 5 of this document? Where you do not agree with the conclusions that we have reached, please provide evidence / data which demonstrates why you do not agree.
3. If you are a Retailer respondent, please advise how many requests for audio recordings from Micro-business customers your organisation has received since CP0002 was implemented 13 June 2019? Where such requests have been received, please advise of the timescales in which a response was provided along with any explanation you consider appropriate to support your answer.

7. Conclusion and next steps

The consultation on the Change Proposal will close at 5pm on 9 August 2021.

Following the closure of this consultation, we will consider responses prior to issuing our final decision. See sections 1 and 6 of this document for details about how to respond to this consultation.

We will endeavour to make the decision on the Change Proposal as soon as practicable following closure of this consultation.

Appendix 1 – Code governance arrangements and modification

Where a Customer Protection Code Change Proposal has been received by the Authority, the Authority will consider responses to any relevant consultation carried out.

The Authority will consider and evaluate each Customer Protection Code Change Proposal to decide whether it agrees with the proposal, whether it wishes to propose amendments or whether it is required to seek further information before making a decision. In each case, it must have regard to whether or not its decision is consistent with its wider statutory duties.

This consultation on the proposed decision to reject the Change Proposal has been issued in accordance with section 5.2.2 of the CPCoP. After this consultation has concluded, responses will be considered and a final decision will be made as soon as reasonably practicable.

In accordance with section 5.2.4 of the CPCoP, our final decision shall include:

- The reasons for the proposed change;
- The scope and impact of the potential change, including consideration of potential risks;
- An evaluation against our statutory duties and the Code Principles;
- Any relevant evidence considered (including consultation responses received);
- Implementation timescales, which will take into account the likely impact on Retailer's exiting systems and processes; and
- The date from which the change will take effect.

Urgency of the proposal

Section 5.2.2 of the CPCoP provides that consultations under this section should generally be for a minimum of 28 calendar days, except in the case of urgency.

The Proposer argued that the Change Proposal is urgent because it would further strengthen protections following implementation of CP0002 by minimising the risk of consumer harm.

We acknowledge the Proposers argument however, we have not been persuaded that that the Change Proposal is urgent. Whilst it seeks to improve protections for customers, we have not been provided with sufficient evidence that to demonstrate that the issue is one within the business retail market that requires addressing urgently. This is particularly so given the existing protections for Mirco-business customers provided by the CPCoP (detailed section

5). We therefore consider that there are not sufficient grounds to argue that consultation for less than 28 calendar days is necessary and appropriate.

As such, in line with the requirements in section 5.2.2 of the CPCoP, we shall be consulting on our proposed decision for 28 calendar days.

Appendix 2 – Case studies provided by the Proposer

The Proposer has referenced the following case studies (which have been taken from Citizens Advice's response to Ofgem's Microbusiness Strategic Review) to evidence the issue that the Proposal is seeking to address:

> "Case Study - EHU - Brokers and issues with verbal contracts April 2019
>
> Sally received a cold call from a broker who claimed there would be charges of £800 in emergency rates because she hadn't registered the new business with a supplier, and that she could get a cheaper rate. She felt pressured into agreeing a contract and the broker then went through a very fast verbal contract. On the recording, parts of the call were missing including where the broker told her about the emergency rates. Sally found out that her current supplier rates were cheaper and wanted to cancel the contract. The supplier refused because they did not have a recording of the presale conversation. The EHU challenged this and her supplier released her from the contract, waiving a penalty fee of over £1,600. They also held her current rate for a month allowing time to arrange a transfer."

> "Case study - consumer service - Brokers and issues with verbal contracts June 2020
>
> Tariq took over a shop 2 years ago and received lots of calls from brokers. One claimed he had agreed to a contract. The supplier played Tariq a copy of the call, which Tariq did not think included him agreeing, but he did not have time to dispute it, so he stayed in the contract and agreed to the electricity supply. One year later he received a letter from his supplier telling him he had agreed to a gas contract as well, but Tariq disputed this. He sent the supplier a copy of his signature which the supplier agreed was totally different and agreed to cancel the contract. The supplier then decided to not end the contract after hearing a copy of a phone call, which Tariq has not been able to get access to."

> "Case studies - consumer service - Broker sales tactics March 2020
>
> Pete claims he was mis-sold an energy contract by a broker and asked for the recording. However, the recording was only for the contract part of the conversation. This does not include the presale conversation where he was told this was the "best deal going". Pete disputes the prices and believes this was misrepresented."

In addition to the above, the Proposer has provided redacted emails to demonstrate the difficulties that some customers have experienced in being able to access information from suppliers in the energy market, a summary of the issues experience by the customers are detailed below:

Example 1 - supplier fails to provide customer or their appointed TPI with a verbal recording or transcript of contract that was in dispute

An employee at a company was cold called by a TPI. The outcome of the conversation was that the employee entered into a verbal agreement with an energy company (Energy Company X) on 16 February 2018. This employee was unaware that her Managing Director had already entered into a supply contract with a different energy supplier (Energy Company Y), via their appointed broker.

This came to light when the customer received a welcome letter from Energy Company X dated 23 February confirming a new contract placed via the TPI.

The redacted email correspondence provided demonstrates that on 27 February the customer confirmed that they had requested a copy of the verbal recording from the Company X to verify what had been said. However, the customer indicated that the Company X advised they were unable to send a recording, but could play it down the phone, and send a transcript. The new supplier was not able to play the recording immediately and had advised the customer that they would email available times for them to listen to the recording.

On 17 April, the customer confirmed that they had given up trying to resolve the issue, and accepted a direct offer from the Company X. This meant reneging on the contract signed with Energy Company Y. The Proposer does not know what the consequences of reneging on this contract were for the customer or if the transcript/opportunity to listen to the call recording was ever provided to the customer.

Example 2 - call recording can only be opened by a customer via a link to a secure portal. The customer cannot forward the link, making it 'impossible' for them to obtain a second opinion

The Proposer provided a redacted email which demonstrates that a customer experienced difficulties when they tried to forward an audio recording to the Proposer. The customer had been provided with a link to access documents via a secure portal.

However, it is unclear from the correspondence which has been provided why the customer had experienced difficulties forwarding the audio recording by email.

Example 3 – repeated calls by the customer to supplier requesting copy of recordings ignored

The Proposer has provided redacted email correspondence as an example of an occasion where a customer who was disputing a contract with an energy supplier and had repeatedly asked for a copy of the call recording which the Proposer has indicated that they never received. The Proposer has stated that at the time of providing the example, the supplier is under investigation by Trading Standards and has previously been subject to enforcement action by Ofgem (it is not stated what these actions were regarding).

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales.

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