

Customer Protection Code of Practice Change Proposal – Ref CP0004

Modification proposal	Customer Protection Code of Practice Change Proposal ¹ – CP0004 – Ease of access to audio records
Proposer	Utilities Intermediaries Association
Decision	The Authority has decided to reject this proposal
Publication date	9 February 2022

We are rejecting this Customer Protection Code Change Proposal.

We are rejecting this proposal as there is insufficient evidence to support that it would be proportionate to implement the proposed solution. This is particularly so as there are existing layers of protection in place for customers that conclude oral contracts.

To improve awareness and understanding of the existing protections available to Micro-businesses and other business Customers we have also updated the information available on the [Open Water website](#).

As highlighted in our consultation document, we will however keep this under review, and take appropriate action should evidence of an issue begin to emerge. In any event, we fully expect Retailers to respond to information requests as promptly as possible and encourage them to act in the best interests of their customers at all times.

1. Background

In June 2019, following [consultation](#), we approved a Customer Protection Code of Practice (CPCoP) 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

¹ The terms used in this document are those defined in the Customer Protection Code of Practice

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 recommendations fell outside of the scope of CP0002 and therefore we invited the Proposer to submit a separate CPCoP Change Proposal if it considered the changes were necessary. Subsequent to this, on 3 September 2019, the Proposer submitted this proposal (the '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 further 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. This Change Proposal has subsequently remained on hold whilst we considered higher priority code change proposals. In July 2021, we [consulted](#) on our proposed decision to reject this Change Proposal.

2. The issue and the proposed solution

The Proposer 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 stated that responses by energy suppliers to requests for access to audio records are inconsistent. The Proposer 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 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 contended that this Change Proposal would further strengthen protections under CP0002.

3. Industry consultation and assessment

3.1 Call for inputs

The Change Proposal, when submitted in September 2019, did not include sufficient information to enable us to decide at that time 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 the Consumer Council for Water (CCW). CCW expressed support for the Change Proposal and one of the Wholesaler respondents suggested that the Change Proposal could enable any potential issues or disputes to be investigated and remedied promptly. The other consultation respondents highlighted that there are existing protections for customers that orally conclude contracts (including GDPR and the [GSS Regulations](#)) and therefore did not consider amendments were necessary. It was also stated that there was no evidence that the Change Proposal would address the issue and that the proposal was disproportionate. Additionally, the call for inputs did not provide further evidence that there was an issue relating to Micro-business Customers accessing audio records.

A more detailed summary of the responses received can be found in our [consultation document](#).

3.2 Consultation

Following the call for inputs, we issued a [consultation](#) in relation to our proposed decision, as required by section 5.2.2 of the CPCoP. We consulted on a proposal to reject the Change Proposal.

There were five respondents to the consultation, three Retailers, one Wholesaler and CCW.

Views on our proposed decision to reject the Change Proposal

The Retailer and Wholesaler respondents all expressed support for the proposed decision to reject the Change Proposal. The reasons provided by respondents for supporting the proposed decision included that:

- The evidence provided in support of the Change Proposal was predominantly based on failings in the energy market. There is no evidence this is happening in the water business retail market. Respondents said that learnings from the energy market have already been addressed in the CPCoP which protect customers as do other protections.
- There was not sufficient evidence to support the need for such an amendment.
- Suitable measures are already available to ensure customers are protected, including the existing layers of protection provided by the CPCoP, the GSS and GDPR.
- The system amendments, process development and costs that could potentially be required to implement the Change Proposal would not deliver the greatest value for existing and future Non-Household Customers. In addition, any system development which may be required, or costs incurred to purchase, build, and maintain a system

that has audio recording and storage capability – could introduce an unnecessary barrier to efficient market entry for new Retailers.

The Wholesaler respondent, whilst supporting the proposed decision to reject the Change Proposal, welcomed that Ofwat would keep the issue under review.

CCW did not agree with the proposed decision to reject the Change Proposal. It considered that the Proposer had presented a reasonable case for change and had made valid points in response to the previous call for inputs. CCW highlighted the importance of there being a clear and accurate record of oral agreements that can be easily accessible by customers in the event of a query or dispute. CCW stated that its complaints data includes examples of disputes following conclusion of telephone contracts.

CCW agreed with the Proposer that orally agreed contracts need to be as robust as written ones, which is potentially undermined if a copy cannot be provided. CCW noted there is currently no requirement for Retailers to keep a copy of audio recordings and urged Ofwat to improve upon the existing requirements by requiring Retailers to keep audio recordings of oral contracts.

Views of Ofwat's conclusions relating to the Change Proposal

All of the Retailer and Wholesaler respondents agreed with Ofwat's conclusions as set out in the consultation document. One Retailer highlighted that it had no evidence to suggest that Micro-business customers are currently finding it difficult to obtain audio recordings which is having a detrimental effect on them. The same Retailer said that Micro-businesses are typically loss-making, therefore it considered that additional costs which may arise from additional protections are likely to exacerbate this and may cause Micro-business customers further harm, rather than offer benefits. The other Retailer respondent said that Ofwat's conclusions appear balanced and demonstrate that the customers' interests remain at the forefront of the issue, but that suitable measures are already available to ensure customers are protected.

CCW did not agree with Ofwat's conclusions, it noted the low response rate to the call for inputs and questioned whether there is enough evidence to suggest that this is not an option being widely utilised. CCW suggested that the number of complaints received by Retailers in relation to the provision of oral contracts is not apparent given the low response rate.

CCW agreed that there are existing protections for Micro-business customers. However, noted that over the previous two year period, it had received 18 complaints where 'some contract terms were not honoured after the conclusion of an oral contract'. CCW further said that whilst an audio recording could be requested under GDPR, it did not

believe that this automatically removes the need for this Change Proposal. CCW thought that there was a case for applying a higher standard than GDPR to responding to requests for audio recordings to ensure that Micro-business customers have confidence in concluding oral contracts. CCW did not consider that this would be too difficult for Retailers as they should already be maintaining such information in an easily transferrable format.

CCW did not think that the GSS Regulations provide sufficient incentive for Retailers to respond to requests for audio recordings in a timely manner. Whilst a substantive response may be provided, CCW thought the audio recording might not be provided until much later. In addition, it suggested that some requests might be treated as enquiries if the customer does not express dissatisfaction at the point of contact and would therefore fall outside the scope of the GSS Regulations.

Number of requests for audio records received and response timeframes

The respondents did not have any additional evidence to support that customers were having difficulties obtaining access to audio records. Both Retailers that responded to the question regarding how many requests for audio records they had received since implementation of CP0002 in June 2019 confirmed that they had received no requests since this date.

CCW urged Ofwat to accept the Change Proposal if consultation responses indicated that Micro-businesses are facing difficulties obtaining copies of audio recordings.

4. Our decision and reasons for our decision

We have considered the scope, impact and risks of the Change Proposal by assessing the evidence we have obtained from the Proposer, the call for inputs and the consultation on our proposed decision. We have decided to reject CP0004.

In making this decision, consideration has been given to our statutory duties and the General Principles of the CPCoP. We acknowledge that there was a relatively low response rate to both the call for inputs and the consultation. Although the response rate was low, the evidence and information presented within the responses has not been sufficient to persuade us to amend our proposed decision. We are therefore rejecting this Change Proposal.

For the reasons detailed below, we do not consider that implementation of the Change Proposal would best further our statutory duties or the Code Principles.

4.1 Existing protections

CPCoP

The CPCoP already provides some 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 Retailers to provide, in writing, the information that it gave orally under section 6.1.1 along with a copy the Terms and Conditions of Supply as soon as reasonably practicable following the oral provision of that information².

Following an agreement to switch, the CPCoP provides a cooling-off period of seven calendar days for Micro-business customers³. 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 this⁴.

This is a key protection for Micro-business customers to mitigate the risk of mis-selling. The Micro-business customer is afforded a period of time to reflect upon the agreement by reviewing this in a written format following the oral conclusion of the contract. The delayed commencement of the cooling off period to the point of receipt (or deemed receipt) of the written information was specifically introduced to ensure that the cooling off period was not eroded due to a delay in issuing the written information. The provision of the written information should mitigate the necessity to request a copy of the relevant audio record in most cases because the Micro-business would already hold a written copy of what had been agreed.

² Section 6.1.2 of the CPCoP

³ Section 6.2 of the CPCoP

⁴ Section 6.2.1 of the CPCoP

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 certain circumstances, taking into account the complexity and number of requests 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.

We note that in response to the consultation CCW said that it thought that there was a case for applying a higher standard than GDPR when responding to requests for audio recordings. However, following consultation, in view of the existing protections set out above and based on the information and evidence that we have assessed we do not consider that it would be proportionate to implement this Change Proposal at this time. Furthermore, it has not been demonstrated that customers are experiencing any actual harm within the existing framework.

We will however take appropriate action, if necessary, should it be identified that Micro-business customers are experiencing difficulties accessing audio records following conclusion of an oral contract. In any event, we fully expect Retailers to respond to information requests as promptly as possible and encourage them to act in the best interests of their customers at all times.

Guaranteed Standards Scheme Regulations (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 working 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. Additionally, we note the concern raised by CCW in response to the consultation that the GSS Regulations may not apply if a customer raises a query instead of a complaint. However, the GSS Regulations provide an incentive for Retailers to meet the standards therein and therefore provide additional protections to Non-Household Customers which should

assist them with receiving a timely response to complaints, inclusive of complaints regarding oral agreements.

4.2 Statutory duties

In carrying out our regulatory activities we must have regard to the principles of best regulatory practice.⁵ Evidence in response to the call for inputs suggested that not all Retailers in the business retail market used the option to orally conclude contracts. In addition, the evidence provided by the Proposer related specifically to the energy retail market and it is unclear whether this evidence relates specifically to Micro-business customers. We sought further evidence in respect of the issue the Proposer was seeking to address in the consultation on our proposed decision on this Change Proposal. The two Retailer respondents to the consultation highlighted that they had received no requests for audio recordings following conclusion of oral contracts since the approval of CP0002 in July 2019.

CCW stated that it had received 18 complaints relating to terms not being honoured following conclusion of an oral contract. However, no evidence has been provided to suggest that the customers that raised those complaints had both requested and experienced difficulties accessing audio records. Additionally, it is not evident whether these complaints relate to Micro-business customers and therefore if the information provided by CCW is relevant to this Change Proposal.

Whilst acknowledging the relatively low response rate, the responses to both the call for inputs and the consultation provided 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 protections that are currently available for Micro-business customers (as set out above), combined with the limited evidence provided in response to the call for inputs and consultation to suggest that Micro-business customers may be experiencing difficulties accessing audio records, support that there is not an immediate issue that needs to be addressed. Given the existing protections and limited evidence of the issue, 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.

For these reasons it is not considered that the regulatory principle of proportionality is met. As highlighted in our consultation document, we will however keep this under review, and take appropriate action should evidence of an issue begin to emerge. We have also updated the [Open Water website](#) to include more information to support

⁵ Water Industry Act 1991, Section 2

Micro-businesses and other Non-Household Customers in raising awareness and understanding of the existing protections that are available to them.

Code Principles

Section 4.1 of the CPCoP requires all Retailers to comply with the Code Principles when dealing with their customers. This includes when receiving and responding to requests for audio recordings. Relevant Code Principles include:

- Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business;
- Retailers shall respond to Non-Household Customers in an appropriate and timely manner; and
- Customer service arrangements and processes shall be accessible to and effective for Non-Household Customers.

The requirement to comply with the Code Principles, combined with the other existing protections discussed above, support our conclusions that it would not be proportionate to implement this Change Proposal at this time.

4.3 Decision notice

In accordance with paragraph 5.2.4 of the CPCoP, the Authority rejects this Change Proposal.

Georgina Mills
Director, Business Retail Market