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Switching Programme and Retail Code Consolidation: Proposed licence modifications

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Dear Rachel,

Citizens Advice welcomes the opportunity to respond to the latest consultation on licence modifications that will give effect to the changes necessary to facilitate Retail Code Consolidation.

The measures as a whole continue to contribute to the progression of a programme which will bring substantial benefits for consumers both in terms of ease and reliability of switching. However, we have some strong concerns regarding the current cooling off proposals, which far from being easy for a consumer could add significant complexity, with the ultimate risk of leaving them on expensive deemed rates. Our key concerns are:

- Without a clear rationale for doing so, Ofgem has proposed a reduction in the 'grace period' in which customers who cool off can make a new choice compared to the decision previously made in the outline business case. We think Ofgem

should reconsider this proposal to ensure consumers have sufficient time to make a decision on next steps and receive effective prompts to engage in the process.

- The current timelines for being able to return to the previous supplier on equivalent terms are too short, resulting in different outcomes depending on when a customer exercises their cooling off rights and making the customer journey overly complex. Ofgem should extend the equivalent terms period so that all customers who cool off have the full grace period to exercise this choice.
- Ofgem should clarify some aspects of the definition of 'equivalent terms' so that customers exercising this option have exit fees refunded and are guaranteed not to lose important features like Warm Home Discount. Where any key differences to the old terms exist, they should be clearly explained so consumers can make informed choices.
- The proposed drafting allows customers to be charged deemed rates for a short period, even if they make a choice to move to a new supplier within the grace period. We think this is unfair and not aligned with other areas of the licence where consumers are protected from rolling onto deemed rates.

We recognise there is an inherent risk in the cooling off process that some customers end up on deemed rates. We think this risk can be mitigated and the customer journey simplified with good information and advice, and by Ofgem ensuring the process is based around consumer behaviour. For example, we expect consumers on contracts without exit fees to simply switch away or to contact their old supplier to request a return, without contacting the supplier they wish to cancel with. Where consumers are on contracts that do include exit fees, we think that Ofgem should clarify that any switches requested by the customer during the cooling off period should be treated as if the customer has cooled off, rather than requiring them to make direct contact to do so. This should limit the use of the full cooling off process only to instances where customers are keen to cancel their new contract but need more time to decide on next steps.

Kind regards,

Tom Crisp

Senior Policy Researcher

Question 1.1.: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 3 for the Gas Supply Licence? And **Question 1.2.: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 2 for the Electricity Supply Licence?**

We are in broad agreement with the detailed proposed changes, recognising that the majority relate to house-keeping changes and clarifications. Specific changes where we would seek further clarity include:

- Whether the ability as drafted under SLC11.3 to relieve an electricity supplier of its obligation to be a party and comply with the Retail Energy Code under the Licence Lite regime may have broader implications given the expanded scope of REC governance. Given this broader scope of the Retail Energy Code, we'd expect there would be fewer instances this would be needed
- In terms of the Smart Meter Installation Code of Practice (SMICOP) changes. under Electricity SLC41/42, and Gas SLC35/36, we welcome the acknowledgement in the consultation document that "as BEIS and Citizens Advice are members of the SMICOP Governance Group, we think that they should be members of this technical group." We'd welcome further detail in time from RECCo on the development of how the technical group will operate and provide input, in consultation with members and parties, given the change from how SMICOP operated as a decision-making body.

The specifics of the provisions relating to the start of the start of the 5-working day count and length of grace periods are discussed in our answers to questions 1.3, 1.4 and 1.5.

Question 1.3.: Do you agree with our proposal to modify the five working day switching regulatory backstop by introducing a 5pm cut off on a working day, after which, if a consumer signs up, the start of the five working day period will be counted as the next working day?

In previous responses on what is considered a working day we have emphasised the need for simplicity for both supplier and consumer.[1]

We agree with the logic put forward in the consultation that a switch request late on in the day (after 5pm) would reduce the time that a supplier had to process the

[1] Citizens Advice (2018) Supplier Guaranteed Standards of Performance for Switching response

switch and therefore the time that a supplier had under licence obligations to switch the consumer.

We also acknowledge that the likely detriment to a consumer from a switch lasting an additional day if signed up after 5pm is low. Given the clear expectation from the outset that consumers should be switched more quickly than the regulatory backstop, and that switching will be moved to next-day for domestic consumers as soon as practicable after the bedding in period, this alteration would also not be expected to have a significant enduring impact.

However, we would emphasise the importance of outlining switch timeframes to consumers through clear communications. This will act as a form of expectation management on exactly when a consumer can reasonably be expected to be switched. This is particularly important where the supplier is operating later than the regulatory definition of working hours.

For example, some outbound or inbound supplier sales lines are open beyond 5pm, and 10% of switches involve a face-to-face interaction with a salesperson either in public, such as a shopping centre or door-to-door, which can be completed in the evening.[2] In these cases a consumer would have a reasonable expectation of that still being considered within the "working day" and clear information will need to be given if that is not the case.

The importance of fast communication between third-party intermediaries and suppliers will also be imperative to ensure switching occurs within the requisite timeframes. In the current arrangements there can sometimes be confusion over the start date of a switch where price comparison sites send switch requests to suppliers in batches the day after they are made by consumers. Given the central role of TPIs to the consumer experience of switching, we would welcome renewed efforts to facilitate engagement between TPIs and suppliers as part of the Switching programme, potentially under the remit of RECCo.

In summary, while the 5pm cut-off is proportionate in our view from a regulatory perspective, in practical terms it will require clear consumer communication to manage expectations and thus the overall experience of the new switching arrangements.

Question 1.4.: Do you agree with our proposals to measure the start of the grace period, from which Supplier B must continue to supply the customer on

[2] Ofgem (2020) Consumer Perceptions of the Energy Market – Q3 2020

the same tariff after the consumer has switched and cancelled, from the point that Supplier B sends notice to the consumer of their options and that the grace period should be 15 working days?

We strongly oppose the reduction from 30 days for the grace period in the outline business case[3] in which the consumer will remain on their contracted tariff to 15 working days as now proposed. We note that this is significantly shorter than the period of time consumers are given to make switching decisions elsewhere in the licence.[4] We think Ofgem should publish a clearer articulation as to why it is proposing this change, including any evidence of downside risks from a longer grace period.

The evidence currently cited in the consultation document of high switching levels after engagement trial prompts and then reversion to a low level of switching after that, while valuable, was within a controlled environment of defined messages, rather than natural consumer behaviour. The switching trial findings themselves[5] recognise evidence gaps. The gaps identified include that it is uncertain whether these interventions work with customers who were not included in these trials, or whether they had any lasting impact on customers' likelihood of switching tariff.

An alternative conclusion could be drawn from the findings of these studies - the need for greater engagement within the grace period. For example, an initial notice of options, and then a requirement to send a reminder at an appropriate point towards the end of the period. This would help ensure that customers are engaged and avoid reverting to a more expensive default tariff. In order to achieve this outcome, Ofgem could require notifications under SLC 14A.15 to be made at a frequency designed to enable informed choices (similar to existing drafting in SLC 31F).

The trigger point of the beginning of the grace period being set when the consumer has been informed of their options makes sense as it is easily measurable. It also aligns with FCA[6] and Ofcom provisions for financial services and broadband that the cooling off period begins on the day on which the banking customer receives the contractual terms and conditions.

[3] Ofgem (2018) Switching Programme: Outline Business Case
[4] For example, SLC 24.17 prescribed a 49 day period when customers are alerted to the end of their fixed term contract and able to make a new choice without incurring exit fees
[5] Ofgem (2019) Insights from Ofgem's consumer engagement trials
[6] FCA (2021) FCA Handbook

We would welcome views from Ofgem on cases where treating customers fairly under SLC 0 will mean extending the grace period. For example, fair treatment of a consumer in vulnerable circumstances where they are unable to cancel their switch in the timeframe through - for example - being ill and unable to take the action required. Similarly, there may be cases where consumers are delayed in the process due to difficulties getting in touch with the gaining supplier to cool off, or with the old supplier to revert to another supplier to switch to. We have seen cases in the current arrangements where customers struggle to exercise their rights for this reason[7]:

Faruk says they were with a supplier for dual fuel. They were called by another supplier who promised cheaper rates. Faruk agreed to switch supply. They said they had emailed the new supplier to state they have changed their mind and want to remain with their old supplier. Faruk says they never heard from the gaining supplier again, but then received a letter from them for outstanding charges. Faruk says they have tried to call regarding this many times, but can't get through.

Other issues that may arise that we have identified include:

Microbusinesses

While it is awaiting a decision, Ofgem's Microbusiness Strategic Review[8] proposed introducing a 14-day cooling off period for microbusiness contracts. The current proposed switching licence drafting regarding grace periods applies exclusively to domestic customers. It would be useful to understand - if introduced - if Ofgem intends that the microbusiness 14-day cooling off period would similarly benefit from the grace period and equivalent terms proposals.

Our research[9] has previously demonstrated that domestic and microbusiness consumers often behave in similar ways and can benefit from the same protections.

Preventing use of erroneous transfers to return some customers

The current drafting of SLC 14A.14 suggests suppliers *must* take the same action whether the customer cancels after supply commences or if the supplier fails to action a request to cancel made before this point. In the latter case there would be no valid contract for the switch, and in such circumstances the supplier can currently use the Erroneous Transfer (ET) process to return the customer (without having to

[7] Anonymised consumer service case note
[8] Ofgem (2021) Microbusiness Strategic Review: Policy Consultation
[9] Citizens Advice (2019) Closing the Protection Gap

wait the standstill period). However, the current drafting that requires suppliers to use the cooling off rights process seems to close that possibility off. This could impact affected customers, as returning via an ET should guarantee the exact same terms, rather than equivalent terms, and enable them to access erroneous transfer compensation through the Guaranteed Standards.

Deemed rates

The current drafting of SLC 14A.14 requires that to avoid being moved to deemed rates a consumer must agree a new contract and the supply must have started. This seems to apply even if they have made a decision about a supplier during the grace period and are simply waiting for the switch to take place.

We would argue that suppliers should not charge deemed rates while a consumer waits for the new switch to complete. This would align with the approach taken in SLC 24.10, where customers are not charged default rates after the end of a fixed term contract if they switch up to 20 working days after the contract ends. While the financial impact of being on deemed rates for a period of days may be comparably small, it is counterintuitive that consumers are charged more, when they and the gaining supplier are both acting within the regulatory timelines for choosing a new supplier and switching.

Making cooling off more consumer focused

Given the risks of moving on to a deemed contract arising from cooling off using this process, we expect that consumers should avoid using it where possible. Customers in contracts without exit fees should be advised that they can simply switch away again once the standstill period is over instead.

Even where exit fees are part of the terms and conditions, we think that suppliers should be required to treat switch requests received during the 14 day cool off period as a customer request to cancel the contract, triggering contact about their cool off rights. This would enable a consumer-led, one step approach for customers who don't know about or wish to follow the more complicated cool off process. This would also enable customers to contact only their old supplier during the equivalent terms period and ask to return, without first informing their new supplier that they intend to cool off. This could be beneficial where the consumer is cancelling the contract because of poor customer service with the new supplier.

If these steps are taken, the formal cooling off process should only be required for customers who sign up to a new contract with exit fees and decide they don't wish to proceed, but don't yet know which alternative they'd prefer. This will ensure they

then get information about their options and a reasonable time window to make that decision.

Question 1.5.: Do you agree with our proposals to measure the start of the period over which Supplier A must offer to take a customer back on equivalent terms from the switch date? Do you agree that the period that Supplier A must maintain this offer is 16 working days from the switch date?

We agree that as a measurable date, the trigger for counting the period of time that Supplier A is required to offer to take the consumer back on equivalent terms should be the switch date.

On the 16 working days window, we have concerns based on our current understanding that the length of time is too short and could reduce the time for a customer to exercise their rights in fairly routine scenarios.

Action	Timeframe (without bank holidays)
Customer switches	Day 0
Customer cools off	Up to Day 14 (10 working days)
Supplier B informs them of their rights during the grace period the next day	Up to Day 15 (11 working days)
Supplier A closes window for equivalent terms	up to Day 22 (16 working days)
Grace period ends	up to Day 36 (26 working days)

A consumer cooling off on the final day of the cooling off period will have only a week in which they have the full range of options (including switching back to Supplier A on equivalent terms), with another 2 weeks in which they are only able to switch away to a new supplier. A week may not be sufficient time for a customer to take action for a range of relatively common reasons (e.g. going away on holiday, being temporarily unwell).

Any delays in Supplier B in informing them about their options would erode this period further (and in extreme cases remove it entirely). We think it is fundamentally unfair that customers cooling off early in the cool off period will have a longer period

to make a full range of choices than those who do so earlier, despite both using the same consumer rights.

Given this, we think the equivalent terms period should be sufficiently longer than the grace period that a customer cooling off on day 14 can generally expect to be able to access the equivalent terms option for the full grace period. The equivalent terms period should also be set to take account of short delays by Supplier B in letting the customer know about the grace period.

As well as giving consumers more choices, it would also enable a simpler customer journey and more straightforward communications. Supplier B would be able to give the customer a single date (the end of the grace period) to focus on, rather than explaining that the equivalent terms option will be open to them for a shorter period within that timeframe.

Defining 'equivalent terms'

We have previously argued that consumers need to be able to make an informed choice as to the terms and conditions on which they return to their previous supplier, including any difference between their old terms and the new 'equivalent terms'.[10]

We welcome the definition in Ofgem's Cooling Off Policy Considerations[11] document that an "Equivalent Terms Contract" means a Contract available from the licensee that has terms and conditions that are similar in nature to the Contract or Deemed Contract that would have been in place had the Domestic Customer not undergone a Supplier Transfer or taken any other action to amend the terms of that Contract or Deemed Contract with that licensee.

However, we think that the definition of Equivalent Terms Contract in the current drafting could be broadened to ensure that consumers do not experience detriment as a consequence of choosing to move back to their previous supplier.

For example, there isn't a clear prescribed requirement for the previous Supplier to refund any exit fees if the customer has already had their account closed and had their final bill sent. There could also be a question of whether a returning customer would retain their Warm Home Discount eligibility. Ofgem's current guidance for the

[10] Citizens Advice (2017) Response to consultation on Faster and More Reliable Switching
[11] Ofgem (2020) Regulatory Clarity on Cooling Off and Standstill

scheme states that if a customer approved for the rebate has switched supplier since applying, the supplier can choose whether or not to pay the rebate.[12]

As a minor amendment to the proposed drafting of SLC 14A.20, we think this should refer explicitly to the Estimated Annual Cost being the same or lower than the previous tariff. This would align with the approach taken to defining the Relevant Cheapest Tariff (and other terms) in SLC 1.

Where possible, we'd advocate that suppliers maintain as much as possible of the broader consumer experience for returning customer, including, for example, access to old data on readings and any loyalty rewards built up. Where any of these is not possible and a consumer would experience different outcomes by returning on equivalent terms, this should be explained to the consumer so they can make an informed choice about whether to return.

Question 2.1: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 4 for the Gas Shipper Licence?

Not answered.

Question 3.1: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 5 for the Electricity Distribution Licence?

Question 3.2: Do you agree with the proposed standard licence condition modifications as drafted in Appendix 6 (a-d) for the Gas Transporter Licence?

We support Ofgem in 3.25 encouraging the REC to consider a fit for purpose accessible consumer enquiry service. We do not think it is good enough that there isn't a centralised consumer enquiry service for electricity. To know who your supplier is currently requires a phone call to the DNO. This is a poor start to a consumer journey in the energy market.

If you move into a new property and you want to know who the energy supplier is then for gas you can check online via a centralised and simple checker to which Citizens Advice can direct consumers or support them in using. For electricity, this is not possible. This makes the journey more difficult as consumers are asked to identify with their region. In boundary cases this can involve multiple calls - as can a consumer not being able to get through to their DNO. When consumers do not know who their supplier is and do not receive communications they build up debt. Easier

[12] Ofgem (2018) Guidance for Suppliers (Version 6.1)

access in the supplier and meter information consumers need will improve their user journey and reduce the risk of debts and back billing.

Being able to better understand more about a property's energy characteristics will also help facilitate net zero. This will be supported by giving consumers access to information about their MPAN, supplier and meter type. Tools like the interoperability checker that Citizens Advice is developing with the DCC rely on consumers knowing what their MPAN is for example.

Question 3.3: Do you think the change to the definition of Metering Point to remove direct reference to the codes is suitable, and do you consider there to be any risks or unintended consequences that we should take into account for our decision?

We think there needs to be good reassurance from industry on the progress being made to ensure that related metering customers are not adversely impacted by the introduction of CCS when related metering points in the electricity market will be formally linked. Often these consumers have the most complex metering and the risk of detriment to consumers is high if a supply switch is only partially switched. There also needs to be clarity and what happens to consumers that are part-switched.

Question 4.1: Do you agree with the proposed licence modifications as drafted in Appendix 7 for the Smart Communication Licence?

Not answered.