

SUMMARY POLICY ISSUE PAPER – FOR DA DISCUSSION

Title of Paper	Cooling Off		
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Summary and recommendation

1. This paper is being resubmitted to DA following discussion at the DA meeting on 11 August and at Programme Board on 30 August. This version reflects the position agreed between the Programme Director, SRO and Senior Partner C&C¹.
2. The Customer Contracts Regulations 2013 establish the right of domestic customers² to cancel a service contract at any time up to 14 days after entering the contract. Charges may be raised for services used prior to cancellation³ but the customer has no further liabilities to the service provider. In most industries cancellation under cooling off would lead to cessation of the service: this is not the case with energy where the supply of electricity and gas will continue.
3. This paper addresses the question of what should happen when a customer cools off: in short, who should the customer be contracted to and under what terms?
4. This issue does not often arise under the existing switching arrangements. Currently it usually takes longer than 14 days to complete a switch so if a customer invokes their cooling off rights the supplier withdraws the registration request: there is no change of supplier and no change to the billing arrangements. This will still be the case in future if the customer chooses a switch date more than 14 days in advance.
5. A key objective of the switching programme is to encourage more customers to engage with the market, especially those 'sticky' customers who are put off by fears of leaving their trusted supplier. In assessing cooling off options an important consideration was whether an 'easy return to your trusted supplier' would prompt 'sticky' customers to dip their toes into the competitive market.

¹ See emails from Rachel Clark to Rachel Fletcher dated 15/9/16 and from Rachel Clark to Jenny Booth also on 15/9/16 (both in Sharepoint).

² Non-domestic customers do not have cooling off rights.

³ Provided that the supplier has advised the customer of their cancellation rights and sought express consent to raise charges during the cooling off period.

6. DA is invited to agree that the following revised proposals are appropriate to be included in Baseline 1:
 - a. When a customer cools off, their supplier (Supplier B) would advise them that they must re-assess the market and initiate a switch to another supplier, which may be the supplier they were with formerly (Supplier A)
 - b. Supplier B will bill the customer for the period they were with them (although in the case of prepayment customers, payment will already have been made)
 - c. From the date of cancellation the customer will be on a deemed contract with Supplier B. For a 'period of grace' of a minimum of 30 days the customer will enjoy the same tariff they were on prior to cancellation⁴ (thereafter they may be moved onto an alternative tariff)
7. It is worth noting that unless Supplier B's contract includes exit fees it is quite likely that the customer will go back onto a switching site and initiate a switch to Supplier C. The cooling off process would not be invoked in these cases and Supplier B will be unaware of the customer's reasons for switching.

Analysis

8. TOMv2 proposed that at cooling off a customer would be returned to Supplier A on the terms they would have been on had they not switched to Supplier B, with one option being that the customer would enjoy continuous billing from Supplier A. However we have identified a number of cases where returning to Supplier A with continuous billing would be impractical (e.g. prepayment and complex tariffs on smart meters). Although these issues will have to be resolved when handling erroneous transfers (ETs) they require significant manual intervention. While this may be manageable for ETs – where the volume is currently less than 1% of switches – this could present a significant challenge for cooling off. Estimates by suppliers for the volume of cooling off transactions range from 1.5% to 7%.
9. We commissioned a small-scale consumer survey to explore customers' attitudes towards cooling off. The survey was too small to be statistically significant but the findings included:
 - a. Some customers welcomed the security offered by an option to return to Supplier A on their previous terms
 - b. Others observed that if they had good reason to switch away from Supplier A the last thing they would want would be a return to Supplier A
 - c. There was a preference for having a choice between returning to Supplier A or surveying the market and switching to Supplier C
10. One advantage of an automatic 'return to Supplier A' option would be that the customer would only need to contact Supplier B. Supplier B would notify CRS that cooling off had occurred and CRS would instruct Supplier A to raise a registration request to execute the return. Under other options the customer would need to

⁴ No cancellation or exit fee will be due to Supplier B as such fees cannot be raised against deemed contracts.

contact Supplier B to cancel the contract and then either contact Supplier A to confirm a return or - if the customer wished to re-assess the market - to contact other suppliers or a price comparison website.

11. Given the unique circumstances of the energy market, customers are unlikely to be aware of their options at cooling off and what would happen until they exercise one of those options. To address this we have concluded that at cooling off Supplier B should be required to advise the customer of the options available (i.e. returning to A or switching to C) and the arrangements that will be applied between the date of cancellation and the customer exercising one of those options (i.e. a deemed contract). This might be communicated by phone or may require a letter to be sent if the supplier is unable to speak directly to the customer.
12. Under our recommended approach, when a customer cools off they will be placed on a deemed contract. To avoid the risk of customers being moved to a potentially more expensive tariff (e.g. SVT), we are proposing that Supplier B should continue to apply the tariff the customer had signed up to for a 'period of grace' of at least 30 days from the date of cooling off. A deemed contract tariff might be applied following the 'period of grace' but the supplier would be required to advise the customer of this change at the point of cooling off.

Summary of key points from stakeholders

Business Process Design User Group

13. Members of the User Group acknowledged the attraction of being able to offer customers a return to their previous supplier on the terms that would have applied had they not switched to Supplier B (i.e. 'equivalent terms').
14. However suppliers also pointed out that:
 - a. If the previous tariff had been withdrawn it would not be accessible on the supplier's website or those of PCWs. The customer would need to speak to Supplier A to determine whether that tariff was more attractive than the supplier's current offerings or those of other suppliers in the market
 - b. They would need to modify their systems to accept returning customers and it would be difficult to develop e-processes which would allow such customers to sign up online
 - c. As a consequence of the above issues, suppliers may need to establish specialist 're-onboarding' teams to handle returning customers. This would represent additional training and systems costs to handle a potentially small volume of customers
15. In the light of these factors, suppliers concluded that Option 2 (always require the customer to switch to Supplier C) would be the easiest and cheapest to implement. However the programme recognises that there is a trade-off between customer benefit (i.e. attractiveness of returning on 'equivalent terms') and potential costs to suppliers and developed Option 5 as a way of delivering the customer benefit. Furthermore we note that for Erroneous Transfers, suppliers will need to accept

returning customers so in assessing the costs and benefits of cooling off options it will be important to focus on incremental costs.

PwC Feedback

16. PwC broadly support the recommended option – Option5. However they made observations in three areas.
17. **Exit Fees:** PwC observed that customers may not be aware of the procedures in relation to cooling off and may simply switch to Supplier C, assuming that if they switch within 14 days no exit fees will be raised by Supplier B. Under the Customer Contracts Regulations, Supplier B is entitled to raise an exit fee if the customer has not contacted them to invoke cooling off. PwC suggested that Ofgem should place a regulatory obligation on Supplier B to waive any exit fees if the customer switches to Supplier C within 14 days of having switched from Supplier A to B. The same outcome could be achieved by obliging suppliers to recognise a loss notice received from CRS within 14 days of a switch as being “the customer’s clear statement ... to cancel the contract”⁵.
18. We note that PwC’s proposal goes much further than the Regulations require and that – in the event of an advance registration (which can be up to 28 days ahead of switch date) – the cooling off period could be extended to 42 days. Furthermore if the customer had switched within the 14 day cooling off period they would have had to give explicit consent that they understood the cooling off arrangements and accepted that charges would be due from the date of switching. Therefore they should not be unaware of the requirements of cooling off. On balance we are not minded to adopt PwC’s proposal on this point.
19. **Equivalent Terms:** PwC supported the proposal in principle but suggest that further definition is required around what constitutes ‘equivalent terms’. We recognise that this work is required but consider that it is not essential for Design Baseline 1. The further work will be planned for the Detail Level Specification phase.
20. **Period of Grace:** PwC supported the proposal to have a period of grace post cooling off and reinforced the need for effective communication to ensure the customer understands when the period of grace expires and what will happen at that point (e.g. the tariff may change). This need for this communication is already recognised in the detail paper at paragraph 63 and will need further definition as the programme proceeds.

EDAG

21. One EDAG member (an I&C Supplier) argued strongly for customers to be returned to Supplier A with continuous billing from Supplier A. Other suppliers noted that Option 5 could require customer service staff to engage in a lengthy dialogue to explain the options to customers, and this may not be understood by them. EDAG agreed that complex scenarios (e.g. time of use tariffs on smart meters) and

⁵ Condition 32.3.(b) of the Customer Contract Regulations 2013

prepayment could not easily be addressed with continuous billing. Furthermore EDAG agreed that there should be equal treatment of credit and prepayment customers.

22. Overall EDAG concurred that: it was important that customers are presented with clear information at the time of sale and at cooling off; that automatic return to Supplier A would be unwelcome to customers that had deliberately switched away from A: and that the option of returning to A on 'equivalent terms' might encourage sticky customers into the market. A number commented that Option 5 was probably the best compromise to deliver these goals.

23. DA and Programme Board

24. Both DA and Programme Board expressed instinctive reservations about leaving a customer on a deemed contract with Supplier B after cooling off. They asked for further consideration of Option1, returning the customer to Supplier A, and for a legal view on whether Supplier A could be required to re-activate the customer's contract. Legal has confirmed that a re-activation obligation could be introduced as a licence modification.

25. However, while this option avoids the customer being placed on a deemed contract with Supplier B it raises a number of issues:

- a. New occupiers would not have had a relationship with Supplier A which could be re-activated
- b. Holding contracts open as a contingency for a 'cooling off returnee' would significantly delay the preparation of closing bills for all customers that switch
- c. Automatic return to Supplier A would frustrate customers that had moved away for negative reasons (e.g. a poor customer service experience)

DA Decision Log

Date of DA Meeting	11 August 2016
Decisions (from Ofgem website)	<p>The Design Authority concluded that the core elements of option 5 were appropriate: -</p> <ul style="list-style-type: none"> • Customer has choice on whether to switch to Supplier A (their previous supplier) or a Supplier C (a new supplier) if they cancel within the cooling off period • Customer can be billed by Supplier B for the time they are with them • Supplier A should offer to take the customer back on "equivalent terms" to the contract that they would have been on had they not left. • Supplier B will provide a grace period to the customer after they have cancelled where the same tariff would be offered for a set period of time. <p>The DA agreed that further assessment was needed on the extent to which explicit rules on the face of the licence were needed to give effect to the proposal for a period of grace to be offered by Supplier B and</p>

	'equivalent terms' to be offered by Supplier A. In particular, this should be assessed against the policy of principle based regulation.
Notes	•

Programme Board

26. The Programme Board requested the Programme to review the issue of 'equivalent terms' with the Future Retail Regulation (FRR) team and then to discuss the matter further with the SRO.
27. The view of the FRR team was that a combination of the regulatory principle of treating customers fairly and competitive pressure should be sufficient to prompt Supplier A to offer terms which would maximise their chances of winning back the customer. For example, if an exit fee was payable to Supplier A when the customer switched to Supplier B, the exit fee might be refunded when the customer re-signs with Supplier A.
28. Follow-up discussions with Programme Board members led to agreement that the RFI should collect evidence on the costs and impacts of two of the options presented in the detailed Issue Paper:
 - a. Option 2: customer switches to Supplier C or A, but A is not obliged to offer 'equivalent terms'
 - b. Option 5: which is the same as Option 2 but if the customer wishes to return to Supplier A, that supplier is obliged to offer 'equivalent terms'.