

CoS Options Analysis – cooling-off period

1. High level objective

- 1.01 Our high level objective is to facilitate a fast, reliable and cost effective change of supplier (CoS) process. To help meet this objective, this paper explores the implications for customers who wish to switch to a new supplier during the cooling-off period and seeks to highlight any concerns that they may have about choosing this option in practice.

2. Description of the issue

- 2.01 In general, statutory cooling-off periods will provide consumers with a period of time during which they can terminate a contract they have entered without penalty. The cooling off period should, as far as possible, have the effect of putting the parties in the same position as if the contract being cancelled was never made.
- 2.02 In respect of the change in energy supplier, the current cooling off period rules, which only apply to domestic consumers, allow customers to waive their cooling-off rights. The ability to waive the cooling-off period may mean the customer is able to achieve a faster transfer. Were the customer to waive their cooling-off rights then any penalties associated with any subsequent termination of that contract would apply thereafter.
- 2.03 The industry rules for the electricity industry¹ require that a registration only takes place once the cooling-off period has ended. While we are not aware of similar provisions for the gas market, we understand that current practice in both markets is to wait until the cooling-off period has expired or is waived by the customer before the new supplier submits a request to transfer the customer.
- 2.04 The new EU Consumer Rights Directive (CRD) provides for new rules relating to cooling off periods. Specifically, the CRD provides the customer with a 14 day cooling-off period that the customer will not be able to waive. Where the customer provides express agreement, the new supplier can supply energy during the cooling off period (“an express transfer”). The customer will still be able to terminate their contract without termination penalties during that period however, it will be possible to charge the customer for the gas/electricity supplied before the contract is terminated.
- 2.05 The CRD is to be incorporated into GB law by the end of 2013 and be effective from mid 2014. Under the operation of new CRD rules, which do not allow for a waiver of the cooling-off period, continuing with the current practice of waiting until the cooling-off period has ended could be detrimental to those customers who want to get the benefits of a faster switch.²
- 2.06 We would welcome the opportunity to discuss with COSEG some scenarios for switching supplier during the cooling-off period under the new CRD rules. In particular, we would like you to consider where a customer agrees to an express transfer but subsequently cancels the contract with their new supplier prior to the expiry of the cooling-off period.

¹ As set out in the Master Registration Agreement (MRA) clause 15.2. *“Where a Supplier has entered into a contract to supply electricity, the Supplier shall not apply for Registration in respect of that Metering Point until the expiry of any initial period during which the Customer has the right (whether contractual or statutory) to terminate the contract.”*

² High level findings from the research undertaken by MORI on domestic customers indicate that some customers would be happy to waive the cooling-off period to speed up the CoS process. Among those willing to waive, some suggested a transfer of around 7 days would be appropriate while others felt that the transfer should happen on the same or next day.

3. Scenarios for discussion

3.01 The following briefly identifies the initial scenarios that we have identified for how the customer could be treated if they agree to an express transfer being initiated and potentially completed during the cooling-off period but subsequently cancels the contract before the cooling-off period expires.

3.02 Note, in all scenarios the customer has cancelled their contract within the cooling-off period and will therefore not incur a termination penalty.

3.1.2 Scenario 1: New contract is cancelled and transfer request already made but can be stopped before it is processed

3.03 Under this scenario, the new supplier is able to prevent the transfer from taking place. The new supplier may be able to do this by withdrawing their registration request or requesting the losing supplier to raise an objection.

3.04 In this situation we would expect the customer to remain with their previous supplier on the same contract terms. We would welcome confirmation from COSEG that a loss notification from central systems would not be sufficient to terminate a consumer contract if that did not directly lead to the customer switching.

3.1.3 Scenario 2: New contract is cancelled but transfer is unable to be stopped

3.05 In this scenario the customer has cancelled their contract during the cooling-off period but the supplier is unable to prevent the transfer from taking place. We see that this scenario could give rise to three potential outcomes.

Option 2(a): Customer continues with new supplier under a deemed contract

3.06 The customer could be supplied by the new supplier under a deemed contract until the customer decided to move to a different supplier.

3.07 If the customer wanted to return to their previous supplier, they would be required to approach them and request a transfer. It would be the previous supplier's decision on whether to take the customer back on the same terms or to offer them new terms.

3.08 Under both the CRD and the deemed contract provisions, there would be no ability to charge the customer a penalty for moving to a new supplier.

Option 2(b): Customer returns to previous supplier as if the transfer had never taken place

3.09 The customer could be returned to their previous supplier and put in a position as if the transfer had never taken place.

3.10 The return of the customer to their previous supplier could be done in a manner similar to the existing Customer Service Returners process. Under this process a customer will be returned to their previous supplier if they change their mind about a transfer (and both suppliers agree to the return). The customer will retain their contracted terms with the previous supplier and will only be billed by the old supplier. The suppliers will use the same change of supplier meter read for the return as was used for the original switch so the customer will be billed by the previous supplier for all of their energy consumed.

Option 2(c): Customer returns to previous supplier under a deemed contract

3.11 The customer could be returned to their previous supplier but not be offered their previous contractual terms. In effect, the customer would return under a deemed contract. The customer would remain on a deemed contract until they decided to move to a different supplier or enter into a new contract with their previous supplier.

3.12 Similar to the Customer Service Returners process, the customer will only be billed by the old supplier. The suppliers will use the same change of supplier meter read for the return as was used for the original switch so the customer will not receive free energy over this period.

4. Next steps

- 4.01 We would like you to consider the above scenarios which look at a customer's position if they were to agree to a express transfer but subsequently change their mind during the cooling-off period and cancel the contract with their new supplier prior to the expiry of the cooling off period. We would particular value any insight into how a customer could be returned to their previous supplier and be put back in the position 'as if they had never left'.
- 4.02 We intend to discuss these scenarios at the next COSEG meeting on 1 July 2013 and would therefore be grateful if you can consider the issues and options raised in this paper prior to that meeting.
- 4.03 To assist us with the work we will be carrying out on cooling off periods, prior to the next meeting we would also appreciate if suppliers could provide us with data on the number of customers who terminate their new supplier contracts within the cooling off periods. Where this data can be disaggregated into timeframes (e.g., cancellation 1-2 days into cooling off period, 3-5 days etc) that information would also be extremely helpful. At this stage, data for the last two years will be appreciated.