

Energy market inquiry: Remedies

CMA response to Ofgem's Confidence
Code Review 2016

Contents

	<i>Page</i>
Introduction	3
CMA's remedies package	4
Whole of the market proposals.....	6
Personal Projection proposals.....	14
Tariff Information Label proposals.....	19

Introduction

1. We welcome the opportunity to respond to Ofgem's [consultation](#) on its proposed changes to the Confidence Code. We recognise that Ofgem is proposing these changes in response to our findings and certain of the recommendations that we made in our Energy Market Investigation Final Report ('Final Report'). Therefore, in this response, we start by providing a brief overview of the reasoning underlying our remedies package before setting out our views on each of the changes proposed by Ofgem in its consultation in turn. Our response draws heavily on the evidence that we collected as part of our Energy Market Investigation and on the analysis that we undertook in coming to a view on remedies.¹
2. As set out in our Final Report, we consider that Price Comparison Websites (PCWs) and other Third Party Intermediaries (TPIs) are an important means by which effective competition can develop in the domestic retail markets. TPIs have a strong commercial incentive to engage with domestic customers, both online and by telephone, and encourage them to search and switch. In order for customers to realise the full benefits offered by TPIs, however, it is important both that TPIs have strong commercial incentives to invest in the energy sector, and that customers understand and have confidence in using these tools.
3. In this context, we welcome the changes that Ofgem is proposing to make to the Confidence Code in relation to the whole of the market requirement. We consider that these changes will improve PCWs' incentives to invest in engaging domestic customers in the energy markets and their ability to negotiate lower prices for customers. Without them, we believe there is a significant risk that PCWs will seek to focus their efforts on other sectors to the detriment of energy consumers. However, we believe that the full removal of the whole of the market requirement would be more effective in increasing PCWs' incentives to invest in engaging domestic energy customers, ensuring vigorous competition among PCWs and, thereby achieving the best outcomes for consumers in the long run. Therefore, while we support Ofgem's proposed changes, we consider that they should represent an intermediate step to the full removal of the 'whole of the market' requirement on PCWs, rather than a final position for the regulation of PCWs in the energy market.
4. In contrast, we have some concerns with Ofgem's proposal to replace the Personal Projection methodology with a number of pre-2015 Code

¹ Energy Market Investigation [Final Report](#), 2016.

requirements and its related proposal² to remove the Estimated Annual Cost formula underlying the Personal Projections provided by energy suppliers. While we understand that the removal of various elements of the ‘simpler tariff choices’ rules increases the complexity of specifying a Personal Projection methodology and creates risks around the accuracy of that methodology for any given tariff, we observe that price comparisons in energy are more complex than in other markets since the actual cost a customer incurs will depend on consumption, and estimating savings requires the identification of an appropriate counterfactual tariff(s) and suitable quantification of its likely cost.³ The removal of the Personal Projection methodology may result in customers receiving different Personal Projections from different sources (PCWs and energy suppliers) and / or may result in PCWs overstating the potential savings available. As a result, this could undermine customers’ trust in PCWs and their confidence in using them to search and switch. Therefore, there may be a stronger case for a prescriptive approach to price comparisons in energy than for other aspects of energy regulation and than for price comparisons in other markets. It is for this reason that we did not recommend in our Final Report that these rules be removed.

5. As a result, we encourage Ofgem to consider carefully the potential costs and benefits of this change and we suggest that a cautious approach, ie retaining the Personal Projection methodology at the current time but seeking to adapt it to reflect a greater range of tariff structures, discounts etc. would be preferable to moving straight to the full removal of existing rules. To the extent that Ofgem does decide to retain a more prescriptive approach, we recommend that they have a programme to review the reasonableness of the formula on a regular basis and update it to improve accuracy as appropriate.

CMA’s remedies package

6. In our Final Report, we set out a package of remedies for domestic retail energy markets comprising three strategic components:
 - (i) Creating a framework for effective competition;
 - (ii) Helping customers to engage to exploit the benefits of competition; and
 - (iii) Protecting customers who are less able to engage to exploit the benefits of competition.

² As set out in Ofgem’s consultation on clearer information: [Ofgem clearer information consultation](#).

³ For example, ex ante it may not be clear what the total cost is likely to be for a tariff which offers discounts that are contingent on customer behaviour, eg prompt payment, since it may not be known how the customer will behave.

7. In terms of creating a framework for effective competition, we recommended that Ofgem remove a number of standard licence conditions relating to the simpler choices component of the RMR rules, including the ban on complex tariff structures, the four-tariff rule and restrictions on the offer of discounts and bundled products. The aim of this remedy was to promote competition and innovation between retail energy suppliers by allowing them to offer a wider range of tariffs, to increase the scope for PCWs to exert competitive pressure on suppliers, and to facilitate competition between PCWs by allowing them to negotiate exclusive tariffs with domestic energy suppliers. In order to mitigate any potential unintended consequences arising from a potentially significant increase in the number of tariffs on offer, we also recommended the introduction of an additional standard of conduct that would require suppliers to have regard in the design of tariffs to the ease with which customers can compare 'value-for-money' with other tariffs they offer.⁴
8. In order to help customers to engage to exploit the benefits of competition, we recommended that Ofgem introduce a requirement in the Confidence Code for accredited PCWs to be transparent over the market coverage they provide to energy customers. We took into account the concerns around trust customers have in PWCs that led to the Whole of the Market requirement but concluded that such concerns could be addressed by a combination of:
 - (i) PCWs providing greater clarity over their role in the market; effectively acting as brokers offering their customers good deals and facilitating switches rather than as repositories of all available tariffs; and
 - (ii) Citizens Advice now operates a non-transactional PCW that lists all tariffs through a web-based service, which we believe will meet the needs of those customers who wish to see the whole of the market.⁵
9. In designing this package of remedies, we sought to achieve two important aims: first, to ensure that PCWs and other TPIs would have strong commercial incentives to invest in the energy sector, since these firms are well-placed to engage customers in the market through their marketing activities, and, thereby address the overarching feature we identified of weak customer response; and second to ensure that customers understand and have confidence in using these PCWs and other TPIs, as customer understanding and trust is key to improving engagement. The remedies set out above provide a means of achieving these two aims.

⁴ Final Report, paragraphs 11.48 to 11.50.

⁵ Final Report, paragraphs 11.67 to 11.70.

10. The business model of PCWs is to provide domestic customers with a free price comparison service and a stream-lined switching service (for at least some energy suppliers), and to charge energy suppliers a commission on each customer that the energy supplier acquires via the PCW. In order to attract customers, PCWs must invest in advertising their services. As set out in Appendix 9.3 of our Final Report, we found that different PCWs active in the energy sector employ quite different advertising strategies. For example, Compare the Market invests heavily in television advertising of its brand. In contrast, uSwitch spends a much higher proportion of advertising expenditure on Google's keyword auctions, which are a form of product-specific advertising.⁶ PCWs that have attracted customers to their sites via their advertising are then able to negotiate good deals with energy suppliers using their purchasing power, since the lowest priced tariffs on the site will tend to attract large numbers of switchers. Competition between PCWs then drives down the prices that are paid by customers.⁷ The whole of the market requirement reduces the ability of PCWs to negotiate these favourable discounts with energy suppliers, as it removes their ability to threaten to de-list energy suppliers. As a result, the whole of the market requirement reduces PCWs' ability to pass on discounts to consumers.

Whole of the market proposals

11. In the following section, we set out our views on each of the specific questions asked by Ofgem in relation to the whole of the market requirement in its consultation and the evidence that we gathered during our investigation which supports these views.

Question 1: Removal of some of the changes made to strengthen the WoM requirement

12. We agree that Ofgem should remove some of the changes that it made to strengthen the whole of the market requirement in the 2015 Code review. As we set out in response to questions 2 to 5 below, we consider that these changes are necessary to ensure that PCWs have both an incentive to participate actively in the energy market and the ability to use their purchasing power to negotiate better prices for customers, and that customers clearly understand the comparisons that they are shown. Both of these features are

⁶ Final Report, Appendix 9.3, paragraph 31.

⁷ As set out in paragraphs 27 to 33, PCWs will generally compete to offer the lowest price tariffs in order to attract customers to their sites and facilitate their switches (and thereby earn commission).

important to support the longer-term development of effective competition in domestic energy markets.

Questions 2 and 3: Rationale and proposed policy changes around the partial default view and filter choice

13. The first element of Ofgem’s proposal is to allow accredited sites to show a partial view as a default or pre-tick the filter to display a partial market view to consumers. Partial view has been defined as ‘a view of only those tariffs the consumer can apply to, switch to or enter into contracts for, via the Service Provider’s Price Comparison Service’.
14. Ofgem’s rationale for these proposed changes are as follows:⁸
 - (i) They give sites more flexibility to innovate and differentiate themselves from their peers, hence promoting competition between PCWs.
 - (ii) In the absence of the four-tariff rule, these changes should help avoid the potential gaming of suppliers in top 10s shown on results pages by removing the need for sites to display the whole of the market as a default view.
 - (iii) Allowing sites to automatically filter results should reduce the incentive of suppliers to free-ride on the commission they pay sites, and therefore increase the incentive on suppliers to work with accredited sites. This should promote competition between sites.
15. In addition, Ofgem is proposing to update the Code to clarify that exclusive deals do not need to be displayed as part of the whole of the market requirement. Ofgem considers that this change will meet the CMA’s aim of enhancing competition between PCWs by facilitating the negotiation of exclusive deals by accredited PCWs.
16. We agree with both Ofgem’s proposals to allow a partial view as a default, or a pre-ticked filter, and to allow exclusively-negotiated deals to be excluded from the whole of the market requirement. We also broadly agree with the rationale put forward by Ofgem for these changes.
17. First, we support Ofgem’s proposal to allow PCWs to exclude exclusive deals from the whole of the market requirement. As we set out in our Final Report, allowing PCWs to negotiate exclusive tariffs with retail energy suppliers, should put downward pressure on the prices charged by energy suppliers. For

⁸ Ofgem Confidence Code Review 2016 Consultation, Table 2: WoM filter requirements – our proposal.

both suppliers and PCWs, the attraction of such deals (which may be partly funded lower commission rates) would be achieving a higher volume of sales with favourably priced tariffs that might be promoted in joint advertising campaigns (see paragraph 10).⁹ The evidence that we gathered on collective switches, which have functioned as a form of 'exclusive deal' in recent years, highlights how this competitive dynamic benefits energy consumers via lower prices. We compared the annual bill of tariffs offered in a number of collective switches with the supplier's standard variable tariff annual bill. In the majority of the collective switch schemes the tariff offered was cheaper than the supplier's standard variable tariff, once the credit, gift card or cashback was taken into account. The highest saving compared to a supplier's standard variable tariff offered by a collective switch was 24%.¹⁰

18. In our Final Report¹¹, we highlighted that the inability of PCWs to display exclusively those tariffs which they are paid commission for risked undermining their incentive to invest in the domestic retail energy market and their ability to exert competitive pressure on energy suppliers' prices. We considered that the requirement to list all tariffs in the market could significantly weaken the bargaining position of PCWs vis-à-vis energy suppliers since the latter are guaranteed to be listed whether or not they pay commission. We considered that this would have two detrimental effects for energy customers. First, PCWs would be unable to use their purchasing power to exert downward pressure on the prices of energy suppliers (as set out in paragraph 10). Second, energy suppliers may choose not to pay commissions, knowing that their tariffs would still be shown on PCWs, undermining the income streams of PCWs and, thereby their incentives to invest in advertising energy switching to customers. As a result, fewer energy customers will be made aware of their ability to shop around and switch energy suppliers, and fewer will benefit from the lower prices they can achieve by doing so.
19. In order to assess the extent of any such effect, we collected evidence on the impact of the 2015 changes to the Confidence Code¹² in terms of the proportion of the cheapest tariffs listed on PCWs that were fulfillable.¹³ This evidence showed that there had been a reduction in the number of tariffs in the top 10 (cheapest tariffs) that were fulfillable since the introduction of the

⁹ Final Report, paragraphs 12.415 to 12.417.

¹⁰ Final Report, Appendix 9.3, Table 5 and paragraph 103.

¹¹ Energy Market Investigation Final Report 2016, paragraphs 13.269 and 13.270.

¹² These changes required accredited PCWs to show the whole of the market as a default, or require customers to make an active choice over the type of results seen.

¹³ Suppliers determine which of their tariffs are 'fulfillable' via PCWs. A fulfillable tariff is one for which a PCW can facilitate the switch and is paid a commission for doing so. A PCW will receive no commission for displaying results for non-fulfillable tariffs.

changes to the Confidence Code. We noted that this could be evidence of a damaging impact on the business model of PCWs for two reasons. First, it would be consistent with suppliers using PCWs to advertise tariffs while avoiding paying commissions, which could dampen PCWs' incentives to invest in the domestic retail energy markets. Second we considered, it could be damaging to customer engagement by adding additional steps in the switching process and excluding PCWs from facilitating the switching process.

20. The evidence that we collected was set out in Table 13.1 of our Final Report (reproduced below). This shows information on the number of dual fuel direct debit tariffs in 'Top 10' displays on PCWs that were fulfillable on the uSwitch, MoneySuperMarket and Energyhelpline websites in March 2015 (before the change to the Confidence Code), as well as in September and December 2015 (after the change).

Table 13.1: Number of top 10 dual fuel direct debit tariffs that were fulfillable by the PCW

	<i>Total fulfillable out of top 10 dual fuel tariffs</i>		
	<i>March 2015</i>	<i>September 2015</i>	<i>December 2015</i>
uSwitch	6	4	4
MoneySuperMarket	9	6	5
Energyhelpline	10	7	6

21. These results show that, for tariffs available to customers who pay by direct debit (which represent the cheapest deals of all and the most popular form of acquisition tariffs), uSwitch, MoneySuperMarket and Energyhelpline were remunerated for fewer tariffs in the top ten in December 2015 compared with March 2015.
22. We also found some evidence that the proportion of acquisitions via PCWs is substantially lower for some suppliers in the period July to December 2015 compared with January to June 2015. We noted that if this trend were to continue it could undermine the incentives of PCWs to participate in the retail energy markets.
23. For those PCWs active in multiple markets, we collected data on the proportion of their advertising expenditure that was incurred in relation to energy as compared with other products, such as car insurance. We observed that PCWs present in multiple markets spend a relatively small proportion of their advertising expenditure on their energy comparison and switching service: less than 15% of their total advertising spend in 2014.¹⁴ Furthermore, research suggests that PCW use in the energy sector is currently lower than that in other sectors. For example, according to a 2013 survey by RS

¹⁴ Final Report, Appendix 9.3, paragraph 32.

Consulting,¹⁵ 81% of customers who used a PCW in the last two years searched for motor insurance, 50% for home insurance and 44% for energy products. This evidence indicates that PCW use and engagement in the energy sector is lower than in other sectors.

24. On this basis, we believe that Ofgem's proposals, which reverse the changes made in 2015, are likely to have beneficial effects in terms of rebalancing the bargaining power of PCWs and energy suppliers, thereby improving the incentives of PCWs to invest in encouraging energy customers to search and switch. However, in light of the relatively under-developed role of PCWs in the energy market, as compared with other markets, such as car insurance, we consider that Ofgem should take the further step of removing the whole of the market requirement altogether. This change would allow PCWs to ensure that all energy suppliers that benefit from PCWs' efforts to engage customers and to encourage them to switch, share the costs of attracting customers via advertising. We consider that this change is important to allow PCWs to use their purchasing power to achieve lower prices for customers and to avoid undermining PCWs' incentives to invest in engaging customers who are currently disengaged (thereby helping them benefit from competition in the energy supply market in the form of lower prices, better customer service and/or improved innovation).

Concerns regarding role of PCWs in the domestic energy market

25. In response to our recommendation to remove the whole of the market requirement, several parties have raised concerns regarding the potential future role of PCWs in the market and the extent to which our remedy will serve the interests of domestic energy customers. We share these parties' desire to ensure that PCWs work in the best interests of domestic energy customers and have considered carefully the potential risks of removing the whole of the market requirement and how these could be addressed.
26. The case for a whole of the market requirement is greater if consumers clearly have an expectation that PCWs do indeed compare all products on the market. If this were the case, then consumers would not shop around between PCWs, and would, albeit implicitly, be wrongly trusting PCWs to provide a service that they do not offer. The evidence that we set out in the following paragraphs, however, shows that customers do not generally expect PCWs to list all the products of all suppliers in the market.

¹⁵ RS Consulting (2013) *Price Comparison Websites: Consumer Perceptions and Experiences. A Report by RS Consulting for Consumer Futures.*

27. First, we considered the risk that, in the absence of the whole of the market requirement, customers may lose out by no longer having access to a selection of the cheapest tariffs available in the market. This could occur if customers only used a single PCW, which may not show the cheapest tariffs in the market, or where smaller suppliers (with cheaper tariffs) were unable to obtain listings on PCWs.
28. During our inquiry, we collected a range of evidence on how customers use PCWs. The results of our survey indicate that 34% of customers who used a PCW to search energy suppliers used only one PCW, 39% used two and 20% used three or more (ie 59% of PCW users relied on more than one PCW). According to a 2013 survey by RS Consulting¹⁶ the majority of customers (83%) who used a PCW in the past two years were multi-homing. For the majority (61%) this was to make sure that they got the best deal, followed by 42% who did so to compare or verify results.¹⁷
29. This evidence suggests that, even in the absence of the whole of the market requirement, customers are likely to continue to have access to tariffs that are among the cheapest in the market. This is because multi-homing by the majority of customers in the market provides strong incentives to PCWs to ensure that the range of tariffs that they offer is competitive with the cheapest tariffs in the market. Any PCW which did not offer competitive tariffs could not expect multi-homing customers – around 6 in every 10 customers – to use them to switch. This would directly undermine their ability to earn revenues from providing switching services. As a result, we would expect PCWs to seek to agree contracts with energy suppliers who offer the most competitive tariffs in the market, regardless of the size of the supplier, in order to ensure that their offering to customers was attractive. Moreover, as PCWs cannot distinguish between single-homing and multi-homing customers, these competitive tariffs would be made available to all customers, including those that use a single PCW.
30. In addition, we observed that there are a number of routes to market (customer acquisition channels) that do not require energy suppliers to pay commissions. For example, ‘concierge’ style services, such as Flipper, have an alternative business model under which customers pay a fixed fee and the TPI searches the market on behalf of the customers and switches him/her to the best value deal. Alternatively, Citizens’ Advice offers a price comparison service that covers all tariffs in the market but does not facilitate switching. Both of these types of service provide a means by which energy suppliers can

¹⁶ RS Consulting (2013) *Price Comparison Websites: Consumer Perceptions and Experiences. A Report by RS Consulting for Consumer Futures.*

¹⁷ Final Report, Appendix 9.3, paragraph 72.

attract customers without incurring the commission costs associated with traditional PCWs. We consider that the combination of customer multi-homing and the existence of these alternatives to PCWs should ensure continued competitive pressure on commission levels.¹⁸

31. As noted above, for those customers for whom a whole of the market comparison is particularly important, we note that Citizens Advice offers such a price comparison service.¹⁹ Ofgem may wish to explore means by which this service could be brought to the attention of customers to a greater extent than currently. For example Ofgem could include details of this service in its communications with customers whose details have been included on the database, or require that these details are included in suppliers' communications with their customers. Alternatively, Ofgem could require accredited PCWs to indicate to customers that a whole of the market comparison was available on the Citizens Advice price comparison service, rather than requiring all accredited PCWs to provide whole of the market coverage.
32. Finally, we considered the risk that, in the absence of the whole of the market requirement, customers would lack confidence or trust in PCWs since they may be concerned that they might not see the cheapest tariff available to them on any given website.
33. The evidence set out in paragraph 28 shows that the majority of customers who use PCWs, both in energy and other sectors, already look at more than one PCW. This suggests that these customers do not expect all PCWs to show the same (full) range of tariffs and that, in spite of this, they continue to use PCWs in order to help them search and switch. Similarly, Consumer Focus Price comparison website accreditation research and FCA insurance qualitative research both report a good level of understanding that some key suppliers are not featured within PCWs. On this basis, we think it is unlikely that removing the whole of the market requirement would undermine trust in PCWs provided that they were clear with customers over the coverage offered.

¹⁸ In our Final Report, Appendix 9.3, paragraph 73, we observed that neither individual PCWs nor energy suppliers are in a particularly strong position in their commercial dealings with each other.

¹⁹ We note that this makes it more comprehensive than other PCWs even taking into account the current whole of the market requirement due to the various exemptions from the latter (see paragraphs 34 to 36).

Questions 4 and 5: Rationale and proposed policy changes around the WoM filter wording / testing clarity and intelligibility of messaging

34. The CMA strongly supports the requirement for PCWs to be clear with customers over the nature of the comparisons they are providing and, in particular which suppliers' tariffs are included or excluded from search results. Furthermore we agree that PCWs should test the prominence, clarity and intelligibility of their messaging with consumers and that Ofgem should monitor this messaging.
35. In our Final Report, we observed that the 'whole of the market requirement', even prior to Ofgem's proposed changes, did not include:
- (i) social tariffs (ie tariffs where consumer eligibility is based upon social or financial circumstances, eg receipt of benefits);
 - (ii) tariffs which the supplier has requested the Service Provider to remove from its Price Comparison Service;
 - (iii) tariffs which are available only to consumers in a specified region, to consumers that are not within that specified region; or
 - (iv) certain collective switching schemes.²⁰
36. As set out above, we support Ofgem's proposal to allow PCWs to negotiate exclusive deals with energy suppliers, which will be exempt from the whole of the market requirement. However, this further reduces the coverage of the 'whole of the market' requirement. In this context, we note that the use of the term 'whole of the market' to describe the range of tariffs that are currently shown by PCWs has the potential to be misleading. Therefore, we suggest that Ofgem considers carefully how PCWs describe this to ensure that customers are provided with clear and accurate information on the tariffs they are being shown.

Question 6: Proposed Code wording

37. Ofgem proposes to make amendments to sections 2A, 5F, 5(Gi) and 5(Gii), 5(Giii), 5(Hi) and 5(Hii), and 5(I) of the Confidence Code.
38. As regards the proposed changes to section 2A, we agree that these should be made in order to facilitate the negotiation of exclusive deals by accredited

²⁰ Final Report, paragraphs 13.267 and 13.271.

sites and allow the exclusion of such deals from the whole of the market requirement.

39. As regards the proposed changes to section 5F, we agree that these should be made in order to allow accredited sites to show a partial view as a default or a pre-ticked filter set out in paragraphs.
40. As regards the proposed changes to sections 5(Gi) and 5(Gii), we agree that the requirements contained in these sections will no longer be required if Ofgem allows a partial view as a default or a pre-ticked filter and, therefore, should be removed.
41. As regards the proposed changes to sections 5(Giii), 5(Hi), 5(Hii), and 5(I), as explained in paragraph 34 above, we agree with the requirement on PCWs to ensure that messaging is prominent, clear and intelligible (and to test the prominence, clarity and intelligibility of the messaging) so that customers are aware of the nature of the comparisons they are providing.

Personal Projection proposals

42. In the following section, we set out our views on each of the specific questions asked by Ofgem in relation to the Personal Projection requirement in its consultation. In responding to these questions, we also discuss and give views on certain of the changes that Ofgem proposes in its 'Helping customers make informed choices – proposed changes to rules around tariff comparability and marketing' consultation.²¹ We do not propose to submit a separate response to that consultation but request that Ofgem takes the views set out here into account when coming to a conclusion on the issues set out in that consultation.

Questions 7 and 8: Removal of the Personal Projection and introduction of pre-2015 code content

43. Under current RMR rules and the Confidence Code, energy suppliers and accredited PCWs must provide customers with an estimate of the projected cost of any given tariff for the next year (Personal Projection, PP) based on the customer's actual or estimated consumption. In calculating this PP, suppliers and accredited PCWs must use a standardised methodology, which is defined in the supply licence as the 'Estimated Annual Costs'.

²¹ There is significant overlap between these issues.

Ofgem's proposals

44. In its policy consultation *'Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing'*, Ofgem sets out its view that the removal of most of the RMR 'Simpler Tariff Choices' rules will have an impact on the detailed rules already in place to help customers compare tariffs. For example, in the absence of the Simpler Tariff Choices rules, suppliers will be free to introduce a range of tariffs, including multi-tier tariffs, bundled tariffs and reward point offers. Ofgem highlights that the Clearer Information tools introduced to complement the Simpler Tariff Choices rules were not designed to work with this additional level of complexity. As a result, Ofgem proposes to give suppliers freedom to develop their own methodology for PPs in order to allow them flexibility to reflect more innovative tariff structures, while ensuring that the PPs provided by suppliers are as meaningful and accurate as possible by requiring that:
- (i) Any such calculations are internally consistent, ie calculated in the same way by a supplier for all its tariffs and for all its consumers;
 - (ii) The calculation must be personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data; and
 - (iii) Where a supplier does not have actual historic consumption data, any estimate of annual costs should take into account relevant customer characteristics, such as the age and size of the premises etc.
45. Where such changes are made, Ofgem recognises that there would no longer be cross-market consistency in how PPs are calculated. Ofgem states that TPIs would have a crucial role in helping customers obtain personalised quotes on a comparable basis from a range of suppliers. In order to facilitate this, Ofgem is proposing to remove the PP requirements within the Confidence Code and replace them with relevant content from the pre-2015 Code which outlined the factors that an accredited PCW should consider when deriving a consumer's estimated annual costs. By doing this, Ofgem's intention is to give accredited PCWs a consistent approach to minimise the risk of consumers being misled or confused by differences between individual sites.
46. Prior to 2015, the Confidence Code stated that:
- '...The factors that a Service Provider uses to base its [estimated annual costs] calculations on should not include:*
- i. introductory sign up offers, one-time discounts/special offers or other promotion discounts that last for less than the duration for the tariff;*

- ii. *discounts that depend on the consumer behaving in a certain way, ie those discounts which are not paid automatically;*
- iii. *discounts that apply to other services (eg telephony) that a supplier may add to a product offering;*
- iv. *non-price offers;*
- v. *discounts that may be offered by the Service Provider for new applications; and,*
- vi. *for a comparison period of 12 months: any discount paid after the first 12 months of a customer's supply start date or after any subsequent 12 month period.*

...the factors that a Service Provider uses to base its calculations on should include:

- i. *recurring discounts that are paid automatically: for paying by a certain method (eg monthly Direct Debit); dual fuel discounts; online discount; compulsory paperless billing discounts; fixed charges (e.g. a fixed monthly membership fee).'*

Our views

47. There are two broad questions that we believe are relevant to consider in the context of these proposals. The first is whether it is appropriate to replace the prescriptive rules governing Estimated Annual Costs and PPs, with principles governing how these should be calculated. The second is, if so, what those principles should be and to whom they should apply.
48. With respect to the first question, we observe that price comparisons in energy are generally more complex than in other markets since the actual cost a customer will incur depends on his/her consumption over the year,²² while estimating the potential savings a customer could make by switching tariff and/or supplier requires the identification of an appropriate counterfactual tariff or tariffs and quantification of all relevant tariff characteristics. This situation creates scope for confusion on the part of consumers regarding the basis of price quotations / PPs and how these should be interpreted when deciding which energy tariff to purchase. By removing the prescribed formula for 'Estimated Annual Costs' which underpins the PPs provided by both suppliers and PCWs, and seeking to

²² A customer's energy consumption will tend to vary from one year to the next due to changes in weather conditions, as well as, potentially, due to changes in patterns of use.

ensure the integrity of PPs via principles, it is likely that customers will receive different PPs from different sources.²³ To the extent that these differences are material, this may increase customer confusion and thereby undermine customer trust in energy suppliers and/or PCWs in the market.

49. Furthermore, allowing PCWs to design their own methodologies for calculating PPs may result in them using calculation methodologies that overstate the potential savings to customers. While the enforcement of the principles set out by Ofgem (see paragraph 44) may limit the extent to which this happens, such an approach, with customers failing to realise the expected savings, could undermine customers trust in PCWs and the wider energy market.
50. Therefore, while we understand that the removal of various elements of the 'simpler tariff choices' rules increases the complexity of specifying a Personal Projection methodology and creates risks around the accuracy of that methodology for any given tariff, we consider that there may be a stronger case for a prescriptive approach in setting how price comparisons are made than for other aspects of energy regulation (where we support Ofgem's move towards principles-based regulation). It is for this reason that we did not recommend that the prescriptive approach to estimating PPs be changed.
51. Given these concerns, therefore, we suggest that Ofgem should retain the 'Estimated Annual Cost' formula, in the first instance, but seek to adapt it to reflect a wider range of tariff structures and discounts. As Ofgem observes in its consultation document, this is a complex task and there are risks that tariff innovation may undermine the accuracy of some of these comparisons. However, we note that there are a number of relatively simple changes that could be made to the 'Estimated Annual Cost' formula initially, for example to reflect one-off discounts, and that, over time, Ofgem could refine the formula to allow for a greater range of tariffs structures and discounts. Such changes could be made in response to suppliers' requests for amendments to reflect tariff innovations. Ofgem would then be able to review the extent to which the formula kept pace with innovations in the market and, on the basis of this evidence, could consider whether the 'Estimated Annual Costs' formula should be removed in due course.
52. Second, to the extent that Ofgem does remove the prescriptive rules governing the calculation of PPs and introduce principles, we consider that these principles should be the same for all market participants in order to avoid a situation in which the regulatory framework leads directly to

²³ Under the principles set out by Ofgem in paragraph 44, energy suppliers and/or PCWs could reasonably take a different approach to quantifying PPs.

differences between the PPs provided by energy suppliers and those provided by PCWs. Ofgem's proposals, as they stand, appear to give more freedom to energy suppliers than to PCWs in terms of the calculation of PPs.

53. For example, by allowing suppliers to take into account a wider range of tariff characteristics than accredited PCWs when calculating PPs, this may result in the prices quoted on PCWs systematically appearing to be less favourable than those given to customers on their bills and other communications. For example, it may be reasonable for suppliers to include one-off discounts, prompt-payment discounts, or reductions arising from a bundled package in the PPs they provide. A customer that received such a PP from his/her supplier and then searched on a PCW would be likely to see a higher PP on the PCW under the conditions that Ofgem is proposing to re-introduce (as set out in paragraph 46). This could undermine confidence in the PCW and/or the switching process more generally, and/or it could dissuade a customer from switching when it would be beneficial to do so.
54. Therefore, if Ofgem does decide to remove the 'Estimated Annual Cost' formula underpinning the PPs provided by energy suppliers and introduce principles governing how the PPs should be calculated instead, we believe that the same approach should be taken for sites accredited under the Confidence Code; ie rather than re-introducing the pre-2015 Code content set out in paragraph 46, Ofgem should put the principles set out in paragraph 44 into the Confidence Code since this is likely to minimise the differences between the PPs provided by different market participants. In this context, we consider that the principles put forward by Ofgem (in paragraph 44) are reasonable.²⁴ In contrast, we do not agree that the rules set out in paragraph 46 should be reinstated since these would prevent PCWs from taking into account tariff characteristics that are clearly relevant to customers. For example, we consider that introductory offers and/or one-off discounts (paragraph 46i) are relevant to customers who are considering switching tariff and/or supplier, such that it would be reasonable for a PCW to include these in the prices quoted to customers. Similarly, where a customer indicates that he/she does behave in certain way (for example, always pays on time), then it may be reasonable for the PCW to include a prompt payment discount in any prices quoted.

²⁴ In its consultation 'Helping consumers make informed choices – proposed changes to rules around tariff comparability and marketing', Ofgem requests views on the principles set out in paragraph 44. While we believe that Ofgem should retain prescriptive rules for PPs at the current time, we consider that these principles provide a reasonable basis for regulating such calculations if Ofgem decides to adopt a principles-based approach in this respect.

Question 9: Code wording

55. Ofgem proposes to make amendments to sections 7(E)(F)(G) & (J), 7(Hi), 7(Hii), and 7(Hiii), and 7(I) & (K). Most of these changes mirror the proposed removal of the prescriptive methodology underpinning the Personal Projections.
56. As regards the proposed amendment to section 7(E)(F)(G) & (J) and 7(Hi), and section 7(Hii), and 7(Hiii), we refer to our concerns regarding the removal of the Personal Projections methodology set out above.
57. As regards the proposed amendment to section 7(I) & (K), we agree that if Ofgem decides to proceed with removing the Personal Projections methodology, section 7(I) & (K) will still be valid.

Tariff Information Label proposals

58. Ofgem notes that under the RMR remedy, it is proposing to retain the Tariff Information Label (TIL), as it is a key source of information for customers about a tariff, but amend its format to remove the Tariff Comparison Rate (TCR), the TIL Estimated Annual Cost, and the average consumption figures. Ofgem does not believe that these changes to the format of the TIL require it to make changes to the Confidence Code as the Code does not make reference to the details of the TIL.

Question 10: no changes required to the TIL

59. We agree that no changes are required to the TIL references within the Confidence Code.
60. However, see paragraphs 47 to 54 for our views on Ofgem's proposal to remove the Estimated Annual Cost formula underpinning PPs.