

# Submission: Ofgem Confidence Code Review 2016

## 1. Introduction

1.1. This submission has been authored by five independent retail energy suppliers: GB Energy Supply, So Energy, Go Effortless Energy, Zog Energy and The Cooperative Energy.

1.2. We are part of a new generation of smaller, challenger energy providers seeking to break the dominance of the Big Six in the retail market. And we have helped hundreds of thousands of households save hundreds of thousands of pounds a year on their energy bills. We have set out information about our respective businesses below:

- [GB Energy Supply](#) is one of the fastest growing suppliers in the UK. Launched in 2014, the company is set to exceed 300,000 customers by the end of this year. This has been achieved by running a highly efficient business focused on competitive tariffs and good customer service in the most streamlined way. GB Energy Supply prides itself on being one of the best value suppliers in the market.
- [So Energy](#) is a domestic gas and electricity supplier based in London. The company is committed to offering customers great value by providing competitive pricing, full online account control and the best customer service. Since its launch in 2015, So Energy is proud to have scored 9 out of 10 from customers that have reviewed it on Trustpilot.
- [Zog Energy](#) is a domestic energy supply company started by two double Queen's Award-winning entrepreneurs. It offers a transparent tariff that is easy to understand and which appeals to domestic consumers. The sole purpose of Zog is to provide its customers with the best possible value energy; to achieve this the company keeps its running costs as low as possible. Using their specialist knowledge of the software industry, the founders have invested in the best value technology available to keep costs down.
- [Go Effortless Energy](#) is a family-owned company aiming to provide an honest, simple and fair service. The business has been set up from a customer's perspective in order to provide the best possible service. It does not have any confusing or misleading loyalty bonuses or cash back schemes. By keeping things simple, Go Effortless Energy can keep overheads low and pass on the savings to their customers.
- [The Cooperative Energy](#) is part of The Midcounties Co-operative, which is the largest independent co-operative in the UK. In 2013/2014. The Midcounties Co-operative achieved sales of £1.1 billion and £30 million profit, across their Groups; Food, Energy, Travel, Pharmacy, Flexible Benefits, Funeral, Childcare and Post Offices. Midcounties set up Co-operative Energy in 2010 and has achieved sales of £159 million with over 200,000 members in just 4 years. Although founded by a regional Co-operative, it is very much a national business, covering the whole of England, Wales and Scotland.

## 2. Executive summary

- A robust and strengthened 2016 Confidence Code negates the need for Ofgem to pursue recommendations for full removal of the Whole of the Market Requirement in the future.
- A Partial View framework would be extremely damaging for the retail energy market, reducing competition and increasing household bills.
- If Ofgem does proceed with a Partial View, wholesale changes are needed on signposting and information provided to consumers to ensure transparency.
- A principles-based approach is inadequate. Ofgem needs to introduce mandatory requirements for sites to reduce risks of consumer detriment. In the longer term, we would argue that the existing accreditation model will need to be replaced by formal regulation for all sites operating in retail energy.

## 3. About this submission

- 3.1. We welcome this consultation on the Ofgem Confidence Code Review 2016.
- 3.2. The Code is fundamental in ensuring that Price Comparison Websites (PCWs) are not misleading customers for their own commercial interests. This is particularly important as government and industry seek to improve customer engagement and trust in the retail energy market over the long term, at a time when there is an absence of any specific regulation governing how PCWs operate in the retail energy market.
- 3.3. This submission focuses on proposed changes to the Whole of the Market (WoM) obligations for PCWs. We are deeply concerned with the recommendation by the Competition & Markets Authority (CMA) to remove the WoM requirement for PCWs, as set out in its final report on 24<sup>th</sup> June 2016.
- 3.4. We agree with the context set out by the CMA (and Ofgem), that PCWs have an important role in increasing switching, reducing costs and driving competition. But there is no clear evidence that this will be achieved by the introduction of new rules allowing PCWs to only market products from suppliers paying them the most commission.
- 3.5. Together, we have raised these concerns directly with the Secretary of State for Energy & Climate Change and more recently with the newly-appointed Consumer Minister in the Department for Business, Energy & Industrial Strategy (BEIS), Margot James MP.
- 3.6. Since the publication of the CMA's final report, we have been encouraged by wide support for the view that removing the WoM requirement within the Code would be damaging. This includes, amongst others, chairman of the Energy & Climate Change Select Committee, Angus MacNeil MP who said "*Price comparison websites must do what they say on the tin. Consumers expect price comparison sites to shine a light on the whole market, not keep them in the dark and push them into commission earning deals.*"<sup>1</sup>.
- 3.7. In light of this, we applaud the decision by Ofgem not to move straight into a consultation on this recommendation, but instead to seek to improve the 2016 Code so that it is both consistent with the wider package of CMA remedies while delivering its intended goal of increasing competition for the benefit of domestic customers.

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<sup>1</sup> <http://www.parliament.uk/business/committees/committees-a-z/commons-select/energy-and-climate-change-committee/news-parliament-2015/cma-chairs-statement-16-17/>

- 3.8. In the future, if PCWs are genuinely going to innovate in the interests of consumers, Ofgem will need to be more robust in its scrutiny of PCWs so that people using the services have clear and prominent information about which deals are being shown to them.
- 3.9. We strongly believe that the 2016 Confidence Code has the potential to deliver this framework. Doing so would make any decision to carry forward the CMA's recommendation for total removal of the WoM requirement not only illogical, but unnecessary.
- 3.10. But the rules need to be strengthened in relation to WoM, not weakened, and it is alarming that Ofgem is seemingly handing greater responsibility for "fixing" core issues in the retail energy market to commercial organisations that sit outside their field of influence.

**4. Do you agree that we should implement the proposed removal of some of the changes we made to strengthen the WoM requirement in the 2015 Code review?**

- 4.1. No, we do not agree with this proposal.
- 4.2. The decision to strengthen the WoM requirement in 2015 was based on a principle that customers should be confident that PCWs act in an unbiased way and are not misleading. We would argue that this principle is just as relevant today as it was then. Indeed, given the high levels of distrust amongst consumers in the retail energy market which still exist today, we would argue that the need for transparency is now more urgent.
- 4.3. It is concerning that Ofgem's rationale for change seemingly stems from complaints by PCWs that the 2015 Code provisions are damaging their business models (Para 2.5 of the consultation). We remain unconvinced by the assertion that the existing framework risks seeing sites exit the retail energy market. Moreover, it is the responsibility of Ofgem to protect the interests of gas and electricity customers, not PCWs, and introducing rules which will increase prices and reduce transparency are counterintuitive.
- 4.4. It is wrong to assume that PCWs always act in the interests of consumers. Yes, they have a positive impact on switching, but they are commercial, profit-seeking businesses with little incentive to ensure that customers switch to the best deal available.
- 4.5. It is worth reflecting that prior to 2015, Ofgem found evidence that PCWs were often misleading customers into switching to tariffs on which they made a commission. Equally, in February 2015, the House of Commons Energy & Climate Change Committee published an inquiry which concluded that the Ofgem Code was not providing adequate consumer protection and that the regulator should look into the possibility of introducing a licence-based system for PCWs or alternatively a licence requirement on energy suppliers to use only Ofgem accredited website.
- 4.6. Less than two years later, it is perplexing that Ofgem is seemingly pursuing reforms that not only ignore these concerns, but actually weaken the rules.
- 4.7. Moreover, we are aware of plans by the CMA to launch a review of "Digital Comparison Tools", addressing concerns about whether PCWs are actually restricting competition and hiding best prices<sup>1</sup>. That the left hand of the CMA is calling for greater powers for PCWs while the right hand is calling for an investigation into the sector is absurd and potentially hugely damaging.

**5. We have answered the following two questions together:**

**With reference to Table 2, do you agree with our rationale, and proposed policy changes around the partial default view?**

**With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter choice?**

- 5.1. No, we do not agree with these proposals, both of which result in a Partial View of the market.
- 5.2. According to independent research by the Centre for Economic and Business Research, commissioned by GB Energy Supply, deals from suppliers not paying commission to comparison sites were on average £86 cheaper in March 2016 than those that were. Under these proposals, customers will be unaware that these deals are available until the very end of the application process, and after opting in.
- 5.3. We fail to understand how this can deliver a positive outcome for bill payers, particularly in a market with low levels of customer engagement and historic concerns around transparency. Statistics from an independent poll by "OnePoll", commissioned by GB Energy Supply, found that 60% of customers do not understand the PCWs were receiving commission on certain deals. The same poll showed that 70% of customers thought it was unfair that PCWs will only show deals from providers who pay them, as opposed to the cheapest deal currently available.
- 5.4. Partial View, either by default or filter, is therefore completely at odds with the mandate to increase transparency.
- 5.5. The policy rationale that removing both restrictions will lead to greater innovation and competition between PCWs is misguided. The CMA and Ofgem should be more concerned with increasing innovation and competition between suppliers, not PCWs.
- 5.6. Competition between suppliers has been a major factor in bringing down the cost of energy and weakening the stranglehold of the Big 6 on the market. There is a real danger of this progress being eroded.
- 5.7. The inevitable outcome of Partial View is that smaller suppliers will be forced to pay commission to comparison sites to retain their presence in the market, with increased costs being passed onto bill payers. In reality, smaller suppliers will find it increasingly difficult to compete with the Big 6 as it is unfeasible for them to pay the level of commission the Big 6 do (the Big 6 suppliers paid £24m in commission to comparison sites in 2014)<sup>2</sup>.
- 5.8. We do not agree with the assertion that a default WoM framework has to be restricted to incorporate likely changes to the 4-tariff rule, governed under the Retail Market Review. The two can co-exist if coordinated by simple additions to the Ofgem Code. This could include, for example, a requirement for PCWs to show data that includes a comprehensive number of providers to reflect the level of choice available to consumers in the market.

**5. With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter wording/testing?**

- 5.1 Clear messaging is not an adequate substitute for a WoM view. The best outcome for domestic customers is for PCWs to show the best deals available as a default. However, if Ofgem does proceed with Partial View, we would urge the introduction of new Code requirements for PCWs, firstly to strengthen signposting and secondly to ensure adequate information is being provided to alert customers as to what they are seeing (or not seeing).

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<sup>2</sup> <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf> p786, point 12.421

- 5.2 Dealing with the first of these: signposting. It is vital that customers are alerted to the fact that they are not seeing the best deals available at the very beginning of the customer journey.
- 5.3 With that in mind, our recommendation is for an alert box to appear on the landing page of a PCW where the commission-only tariffs are displayed. At the very least, the alert must appear when a customer clicks to choose a tariff.
- 5.4 Customers should be offered the choice to view the WoM without re-entering their details or going back to the previous page or link. This framework will not hinder the stated ambition of Ofgem, to allow for product innovation amongst PCWs, but will go some way to delivering a semblance of transparency for customers.
- 5.5 The language used in the customer alert must be unambiguous and, crucially, uniform across all sites. We would expect thorough consultation with suppliers to determine phrasing, but it should read along the lines of *"this deal is not the cheapest on the market. Please click "here" to view all available tariffs"*.
- 5.6 Moving on to the nature of information being shown to customers. We believe that, under a Partial View, customers should clearly see the amount that PCWs are charging them (via their new energy companies) to switch. In the absence of WoM, the pretence that the switching process is cost-free is even more important to counter.
- 5.7 Under existing rules, commission arrangements between suppliers and PCWs are hidden. By ensuring that fees are visible, Ofgem will both increase transparency for customers and deliver greater competition between sites, thus reducing bills.
- 5.8 We are aware that sites will be unwilling to make commission arrangements publicly available, citing confidentiality agreements with individual suppliers as a barrier. However, we would be willing to waive this confidentiality, and believe that the majority of other suppliers outside the Big 6 would too, in the interests of transparency. We would therefore urge Ofgem to consider the matter fully.
- 5.9 The most transparent and powerful way to communicate commission arrangements to customers is to break it down on a per tariff basis. In this way, when a customer chooses a deal, a breakdown is provided of how much of the total cost for the tariff is being paid to the site.
- 5.10 Ofgem has already suggested that breaking down commission arrangements on a per customer basis is not possible. But we would strongly contest this. In their negotiations with GB Energy Supply, for example, a number of PCWs have quoted fees on a per acquisition basis. We would be happy to provide evidence of this.
- 5.11 An alternative but less impactful option would be to ensure that sites have to list commission arrangements on a supplier basis somewhere visible on the website.
- 6. Do you agree that sites should test the prominence, clarity and intelligibility of their messaging with consumers and that Ofgem should monitor this?**
- 6.1 Yes, we agree with this policy but believe it should go further.
- 6.2 Prominent, clear and intelligible messaging is crucial and we are supportive of any additional rules that improve the 2016 Code.

6.3 However, we do not agree with the passive, principles-based approach set out in this consultation, whereby Ofgem only monitors messaging. As this response has already stated, PCWs do not have a good track record when it comes to prominent, clear and intelligible messaging.

6.4 Even under 2015 Code rules, there are clear examples of sites “gaming” language for their benefit. The below screen shot is of the uSwitch website. In this instance, a customer seeking to choose a GB Energy Supply tariff is presented with the following explanation on why the product is not available directly through that site.

#### Plan not available

Possible reasons include:

- The supplier doesn't have the capacity to service the amount of new customers that sites like uSwitch can provide.

It is disingenuous to suggest that the reason the customer cannot switch directly is because GB Energy Supply “doesn't have the capacity”. And it is quite clear that the motivation is to sow doubt in the customer's mind and encourage him/her to choose a commission-paying tariff.

6.5 Under a Partial View scenario, the risk and consequences of suppliers “gaming” rules on language are even greater. Therefore, for the sake of transparency, we would urge Ofgem to introduce mandatory and uniform language. This would be developed by Ofgem, in consultation with stakeholders. Under the Code, Ofgem will be responsible for ensuring sites comply with the rules of language.

6.6 In addition to this, we would urge Ofgem to consider changing the rules around price equivalence. If Partial View is established, it is illogical to continue a framework whereby suppliers and PCWs need to mirror.

6.7 In the long term, we believe consideration should be given to introducing formal regulation for PCWs. Given the growth in popularity of these sites and the ongoing concerns about transparency and behaviour, there are question marks around whether an accreditation scheme gives sufficient protection for consumers.

6.8 Moreover, it is concerning that Ofgem (and the CMA) have entrusted so much responsibility to commercial organisations that sit outside their sphere of control. As we have set out already in this submission, PCWs have a hugely important role in terms of customer engagement, trust and switching. A principles-led accreditation scheme is likely to prove inadequate.

**7.0. For more information, please contact Luke Watson, Managing Director of GB Energy Supply on [luke.watson@gbenergysupply.co.uk](mailto:luke.watson@gbenergysupply.co.uk)**

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<sup>i</sup> Andrea Coscelli: staying ahead in the digital marketplace  
<https://www.gov.uk/government/speeches/andrea-coscelli-staying-ahead-in-a-digital-marketplace>