

Caroline Ainslie  
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Ofgem  
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London  
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28 September 2016

Dear Caroline,

### **CONFIDENCE CODE REVIEW 2016**

Thank you for the opportunity to respond to the above consultation, which seeks views on Ofgem's proposals to implement the CMA's recommendations in relation to the Confidence Code.

Our responses to the specific consultation questions are in the annex to this letter. We would highlight the following points:

#### Whole of Market Requirement (WoM)

We are disappointed that Ofgem is not committing to implement the CMA's recommendation to remove the WoM requirement in full and is merely proposing an 'initial step' of removing the requirement to show WoM view as the default.

The CMA's economic rationale for removing the requirement is strong, and as the CMA's investigation has shown, policies which receive enthusiastic political support (SLC25A, RMR tariff rules) are not always in the best interests of consumers. The CMA concluded that the WoM rule removes the incentive for suppliers to pay commission and allows suppliers to free ride on the PCW's advertising platform. Without commission, PCWs will see (and are already seeing) revenue from energy sales fall. Other things being equal they will be likely to shift their investment in marketing and product development away from energy and towards more profitable products and services. The largest problem identified by CMA in retail markets was the 'weak customer response' from the 50% or so of disengaged customers. PCWs are potentially better placed than any other actor to address this disengagement and if Ofgem weakens the incentive for them to invest in marketing their services, disengaged consumers will be the losers. We therefore urge Ofgem to respect the CMA's recommendation and commit to a timetable for implementing the recommendation in full.

#### Personal Projection

We agree with Ofgem's assessment within that consultation that the removal of prescription around the Personal Projection methodology will likely lead to different approaches being taken by different suppliers, PCWs and TPIs. We note that this could give rise to the risk that the customer could receive non-comparable messages around

potential savings from different parties for the same tariff. It is therefore very important that customers are provided with a clear explanation of how their estimated costs have been calculated to ensure they can understand any differences in costs or calculated savings presented to them across different sales routes. Current requirements within both the licence conditions and the Confidence Code should be sufficient to mitigate this risk, and as such we do not believe that Ofgem should prescribe how this is done, but should be alive to the risk and take action to monitor the impacts on consumers.

Ofgem's proposals for amending the Confidence Code take a more prescriptive approach to the estimated annual costs methodology, and we agree with this as we believe this greater level of prescription will act to mitigate the risk of significant variances in quotes and savings being provided to customers for the same tariff. We think that consideration should be taken of adding in further factors or principles similar to those being proposed for suppliers around accuracy and available information. Inclusion of these principles within the Confidence Code would provide some protection to suppliers if accredited sites were to in any way mislead the customer through the methodology chosen for providing the estimated annual costs.

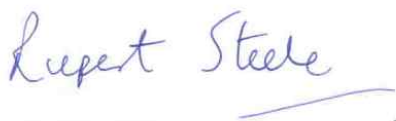
#### Interaction with the Future of Retail Regulation Work Programme

We are supportive of Ofgem's aims to take a more principles based approach to the regulatory framework as we believe this will deliver a better customer experience in many areas. However we believe that this will increase the need for an alternative more flexible framework to be used where third party intermediaries (TPIs) work with multiple suppliers. We have previously shared with Ofgem our proposal for a "safe harbour" exemption being created in the context of SLC 25, such that a supplier would be exempt from enforcement action in respect of any contravention by the TPI provided that the TPI was accredited under the appropriate Code of Conduct (eg an expanded Confidence Code to cover domestic TPIs) and the contravention was not as a result of any act or omission by the supplier.

An additional consideration to support this would be the consideration of extending the Confidence Code to cover face-to-face and telesales activity. We expressed our support for this in response to Ofgem's 2014 review of the Confidence Code, noting that face-to-face and telesales activity by third parties has a higher risk of information being incorrectly transcribed and communicated to the customer compared to online activity where the customer is more in control of the information. We believe that the Confidence Code should cover both these activities, and take account of the greater level of controls required, as this would provide a greater level of consistency in service for consumers across the different types of TPIs.

We would be pleased to discuss our response further with you, if that would be helpful. If you would like to do this or have any questions, please contact me or Rhona Peat ([rhona.peat@scottishpower.com](mailto:rhona.peat@scottishpower.com)).

Yours sincerely,



**Rupert Steele**  
Director of Regulation

**CONFIDENCE CODE REVIEW 2016  
SCOTTISHPOWER RESPONSE**

**Whole of market proposals on changes to the Confidence Code**

**Question 1: 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? If not, please:**

- **explain why**
- **suggest and explain any alternative proposals**

We are supportive of Ofgem's proposed initial steps to implement the CMA's recommendation to remove the Whole of Market (WoM) requirement within the Confidence Code, however we are keen to understand Ofgem's timescales to fully implement the CMA's recommendation to completely remove the WoM requirement.

We are disappointed that Ofgem is not committing to implement the CMA's recommendation to remove the WoM requirement in full and is merely proposing an 'initial step' of removing the requirement to show WoM view as the default. Ofgem says this is due to the complexity of removing the WoM requirement and in particular the impact on Ofgem's accreditation and audit process. In the absence of further detail, it is not clear to us that full removal of the WoM requirement should introduce sufficient complexity to the process that supports significant delay of full implementation of the CMA's recommendations. Removing the requirement to show a full list of tariffs could be argued to simplify the process to some extent and therefore we would like to understand further the impact to Ofgem's processes in this regard.

The CMA's economic rationale for removing the requirement is strong, and as the CMA's investigation has shown, policies which receive enthusiastic political support (SLC25A, RMR tariff rules) are not always in the best interests of consumers. The CMA concluded that the WoM rule removes the incentive for suppliers to pay commission and allows suppliers to free ride on the PCW's advertising platform. Without commission, PCWs will see (and are already seeing) revenue from energy sales fall. Other things being equal they will be likely to shift their investment in marketing and product development away from energy and towards more profitable products and services. (No other product, telecoms, house insurance, car insurance or financial products has a WoM requirement and yet consumers can still find a wide range of competitive offers on display.) The largest problem identified by the CMA in retail markets was the 'weak customer response' from the 50% or so of disengaged customers. PCWs are potentially better placed than any other actor to address this disengagement and if Ofgem weakens the incentive for them to invest in marketing their services, disengaged consumers will be the losers. We therefore urge Ofgem to respect the CMA's recommendation and commit to a timetable for implementing the recommendation in full.

We also note that the recommendation to remove the WoM rules complements other CMA recommendations aimed at increasing competition between PCWs, for example the removal of the tariff simplification rules, which Ofgem is consulting on separately, will act to expose Price Comparison Websites (PCWs) to greater competitive pressure which will be increasingly important as PCWs' role in the energy retail market grows.

If Ofgem is to proceed with the proposed partial implementation of the CMA's recommendations, we believe that any significant delay to moving to full implementation

could have unintended consequences. In particular, there is a risk that PCWs may choose not to become accredited under the Confidence Code in order to avoid loss of commission revenue through ‘free-riding’. Such an unintended consequence could result in a reduction in the effectiveness of the Confidence Code as fewer PCWs choose to become accredited and we are therefore keen to understand better Ofgem’s plans to fully implement the CMA’s recommendation to completely remove the WoM requirement.

Finally, we believe it is very important that customers understand the criteria under which any partial view of the market is being displayed to them, and therefore we are supportive of Ofgem’s proposal to retain the current Confidence Code requirements around messaging of partial views. We set out more detail of our views in our responses to Questions 2 to 5.

**Question 2: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the partial default view? If not, please:**

- **explain why**
- **suggest and explain any alternative proposals**

We generally agree with Ofgem’s rationale and proposed policy changes around the partial view as set out in Table 2. However as noted above in our response to Question 1, we believe that Ofgem should implement the CMA’s recommendations to remove the full WoM requirement as quickly as possible, rather than taking a phased approach and only removing the requirement for WoM to be the default at this point

We would highlight the previous challenges experienced in communicating a partial view of the market to customers. It is critical that the messaging to customers is clear and not misleading and we are supportive of Ofgem’s plan to retain the current requirements within the Confidence Code on messaging. We set out our thoughts on this in response to Questions 4 and 5.

**Question 3: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter choice? If not, please:**

- **explain why**
- **suggest and explain any alternative proposals**

Yes, we agree with Ofgem’s proposal to remove the restriction on pre-selecting a partial view of the market where both a partial and WoM view is provided to the customer. The CMA has recommended removing the WoM requirement in its entirety therefore we do not believe there is any reason to continue to require a customer to actively choose a partial view if, in the longer term, the partial view will be the only view available to the customer.

**Question 4: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter wording/testing? If not, please:**

- **explain why**
- **suggest and explain any alternative proposals**

Where a partial view is displayed to customers then we believe the messaging displayed to explain on what criteria the partial view has been generated becomes even more important. We are therefore supportive of Ofgem’s rationale to not change the current Confidence Code requirements around WoM filter wording/testing that requires that such messaging is clear, prominent and intelligible, and tested with consumers with the testing provided to Ofgem.

**Question 5: Do you agree that sites should test the prominence, clarity and intelligibility of their messaging with consumers and that Ofgem should monitor this? If not, please:**

- explain why
- suggest and explain any alternative proposals

Yes, we agree that sites should test the prominence, clarity and intelligibility of their messaging with consumers and that Ofgem should monitor this. As we have noted in response to previous questions, where a partial market view is being displayed as default, the messaging displayed to customers to explain the basis of the partial view becomes even more important.

This requirement was introduced in 2015 to address a concern that PCWs' messaging to explain partial views of the market was misleading customers, and we believe it is important to continue to ensure that the messaging is clear and not misleading. Under Ofgem's proposal, this messaging will be viewed by a much larger proportion of customers than in the current market where only PCWs that have a filter option are required to display this wording, therefore we believe that it is important that Ofgem continue to monitor the messaging that is displayed to customers in this regard.

**Question 6: With reference to Table 3, do you agree that the proposed Code wording reflects our proposals? If not, please:**

- explain why
- suggest and explain any alternative proposals

Our comments relate to only the partial removal of the WoM at this point. If Ofgem were to move to full removal of the requirement, further changes to the drafting would be required.

We are generally comfortable with the proposed wording set out in Table 3, but would suggest the following amendment.

| Current Code Requirement | Suggested Amendment  | Rationale  |
|--------------------------|--|--|
| 2(A)                     | Amend as follows:<br><i>“tariffs which are exclusive deals between a supplier and <del>another one or more</del> other Service Provider”</i> | There may be occasions where a supplier offers a tariff that is exclusive to more than one third party. Our proposed amendment would cover this situation. |

## **Personal Projection: our proposal**

**Question 7: Do you agree with our rationale, and proposed policy changes around the removal of Personal Projection? If not, please:**

- **explain why**
- **suggest and explain any alternative proposals**

Ofgem is currently consulting on significant changes to the Personal Projection methodology in its consultation on Helping Customers make Informed Choices and are generally supportive of Ofgem's approach to providing more flexibility in providing estimated costs to customers and set our detailed comments to Ofgem in response to that consultation. If, through that process, Ofgem decides to proceed with the changes set out, we agree that changes are required to the drafting of the Confidence Code which currently directly references the detailed calculation for the Personal Projection set out in SLC 1.

We agree with Ofgem's assessment within that consultation that the removal of prescription around the Personal Projection methodology will likely lead to different approaches being taken by different suppliers, PCWs and TPIs. We note that this could give rise to the risk that the customer could receive incomparable messages around potential savings from different parties for the same tariff. It is therefore very important that customers are provided with a clear explanation of how their estimated costs have been calculated to ensure they can understand any differences in costs or calculated savings presented to them across different sales routes. Current requirements within both the licence conditions and the Confidence Code should be sufficient to mitigate this risk, and as such we do not believe that Ofgem should prescribe how this is done, but should be alive to the risk and take action to monitor the impacts on consumers.

Ofgem's proposals for amending the Confidence Code take a more prescriptive approach to the estimated annual costs methodology, and we agree with this, as it will provide comfort to suppliers working with accredited sites in relation to the quote and savings displayed to customers. We set out more detail on this point in our response to Question 12.

**Question 8: Do you agree with our rationale, and proposed policy changes about including the pre-2015 code content on factors an accredited price comparison website should and should not include when deriving a consumer's estimated annual costs? If not, please:**

- **explain why**
- **suggest and explain any alternative proposals**

We note that the factors proposed to be included in the Confidence Code are more prescriptive than the principles proposed by Ofgem for suppliers for the Personal Projection. We are supportive of this approach as we believe this greater level of prescription will act to mitigate the risk of significant variances in quotes and savings being provided to customers for the same tariff.

The factors proposed by Ofgem focus very much on how PCWs should treat discounts within the projected costs and we think that consideration should be taken of adding in further factors or principles similar to those being proposed for suppliers around accuracy and available information. In particular, ensuring projected costs are *"personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data"* and taking a reasonable approach where actual historic consumption is not made available to the third party. Inclusion of these principles within the Confidence Code

would provide some protection to suppliers if accredited sites were to in any way mislead the customer through the methodology chosen for providing the estimated annual costs.

**Question 9: With reference to Table 4, do you agree that the proposed Code wording reflects our proposals? If not, please:**

- explain why
- suggest and explain any alternative proposals

As noted in our response to Question 8, we believe that additional principles should be included within the Confidence Code to align the requirements of the PCWs' methodology with those placed on suppliers.

We would propose the following amendments to the Confidence Code

| Current Code Requirement | Suggested Amendment   | Rationale  |
|--------------------------|---|--|
| 7(E)(F)(G)&(H)           | <p>Amend as follows:</p> <p><i>“Unless otherwise specified by Ofgem, where a Service Provider provides a comparison for a time period, the estimated costs of all tariffs must be personalised, transparent, fair and as accurate as possible, based on reasonable assumptions and all available data and take into consideration the factors in requirements [X] and [Y] below.”</i></p> | <p>The factors proposed by Ofgem focus very much on how PCWs should treat discounts within the projected costs and we think that consideration should be taken of adding in further factors or principles similar to those being proposed for suppliers around accuracy and available information.</p> |

**Question 10: Do you agree with our assessment that no changes are required to the TIL references within the Code?**

Yes, we agree that no changes are required to the TIL references in the Confidence Code. We believe that the TIL provides a consistent approach to providing information to customers on their tariff and that it is important that PCWs continue to provide customers with this information in a consistent manner to how the customer will see the information from their supplier.

## Other Initiatives

**Question 11: Do you agree that these initiatives are out of scope for this review and that we should monitor their progress to be aware of potential impacts in the future of these initiatives?**

We agree that the initiatives noted by Ofgem in the consultation document may have an impact on PCWs and their engagement with customers and that it is important that consideration is taken on any changes required within the Confidence Code at the appropriate point.

There may not be any need to amend the Confidence Code as a result of the CMA remedies in relation to ECOES, DES and midata, however this should become clear as implementation of the remedies progresses, and appropriate action can be taken at that point. Tariff offerings to customers are likely to become much more sophisticated under half-hourly settlement and for customer with smart meters, and it is important that all parties communicate these tariffs to customers in an effective manner, therefore we believe that changes will be required to the Confidence Code to support these initiatives.

All of these initiatives are at an early stage in development at this point, and therefore we agree with Ofgem's assessment that the initiatives should be out of scope of this review and that it is reasonable for Ofgem to continue to monitor these to assess the appropriate point to consider the impact on the Confidence Code.

**Question 12: Do you believe there are any other initiatives we should be keeping abreast of to ensure a joined-up approach to our policy development work?**

We believe there are some additional initiatives that Ofgem should monitor to ensure any impact to the Confidence Code is assessed, and any required changes made.

### Future of Retail Regulation Work Programme

We believe Ofgem should assess the potential for its move to a more principles based regulatory framework to impact on the Confidence Code. In particular, at this point we would highlight that this activity will likely lead to some divergence in supplier practices where prescriptive rules are removed and suppliers take differing but compliant approaches to meeting the same consumer outcome. In particular, Ofgem's currently open consultation on Helping Consumers make Informed Choices is proposing taking a more principles based approach to sales and marketing activities, with suppliers required to ensure that their representatives (in many cases PCWs accredited under the Confidence Code) are meeting the revised principles set out in the licence conditions.

While we are supportive of Ofgem's aims to take a more principles based approach to the regulatory framework as we believe this will deliver a better customer experience in many areas, we think that in this case, there is a significant risk that an existing challenge within the market will be magnified through a more principles based approach. This current challenge is where TPIs represent multiple suppliers and each supplier is asking the TPI to meet the supplier's own robust processes for ensuring compliance meaning that a multi-party TPI may have to employ different processes to satisfy each supplier – which we believe can be very challenging for TPIs – or individual suppliers may have to deviate from their normal standards of compliance in order that the TPI can act on their behalf.

The Confidence Code itself mitigates this risk to some extent with the obligations it requires of PCWs, we believe that the move to a more principles based regulatory framework makes the need for an alternative more flexible framework much more acute. We have previously



shared with Ofgem our proposal for a “safe harbour” exemption being created from SLC 25 for suppliers who deal with accredited multi-party TPIs. Under this, a supplier would be exempt from enforcement action in respect of any contravention by the TPI provided that the TPI was accredited under the appropriate Code of Conduct (eg an expanded Confidence Code to cover domestic TPIs) and the contravention was not as a result of any act or omission by the supplier.

An additional consideration to support this would be the consideration of extending the Confidence Code to cover face-to-face and telesales activity. We noted our support for this in response to Ofgem’s 2014 review of the Confidence Code, noting that face-to-face and telesales activity by third parties has a higher risk of information being incorrectly transcribed and communicated to the customer compared to online activity where the customer is more in control of the information. We believe that the Confidence Code should cover both these activities, and take account of the greater level of controls required, as this would provide a greater level of consistency in service for consumers across the different types of TPIs.

#### Vulnerability and the Priority Services Register

With a greater focus on customer vulnerability over recent years and actions suppliers are required to take to identify additional needs of customers we would welcome further consideration of the role that TPIs can play in supporting suppliers to identify customers with additional needs.

#### Faster and More Reliable Switching

We believe Ofgem should monitor the potential for changes being required to the Confidence Code as a result of its Faster and More Reliable Switching work programme.

**ScottishPower**  
**September 2016**