



# uSwitch response to Ofgem's 2016 Confidence Code review consultation

*Non-confidential version*

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## 2 The CMA's recommendation

### 2.1 About uSwitch

uSwitch is an online and telephone price comparison and switching service, helping consumers get a better deal on gas, electricity, home phone, broadband, digital television, mobile phones and personal finance products including mortgages, credit cards, current accounts and insurance.

uSwitch is part of Zoopla Property Group plc, a digital media business that owns and operates some of the UK's most widely recognised and trusted online brands including Zoopla, uSwitch and PrimeLocation.

### 2.2 CMA's package of remedies

We have welcomed the CMA's analysis and conclusions on the energy market and believe its package of remedies will lead to greater competition and better consumer outcomes, with more customers accessing lower prices and better service. We see the future of the Confidence Code as a vital and integral component of this package. We agree with the CMA that the removal of the whole of market (WoM) requirement from the Confidence Code and an introduction of a transparency requirement will lead to long term consumer benefits by enhancing competition between price comparison websites (PCWs) and energy suppliers. We also believe that the major changes following the amendments to the supplier licence conditions (SLCs) makes the removal of the WoM requirement imminently necessary on a practicality basis.

We do not agree with Ofgem that an interim amendment to the Code is necessary or desirable. We believe that consumer expectations on the role of PCWs need to be aligned as soon as possible with the retail market that the CMA envisages. Continuing with WoM expectations for PCWs whilst removing the four tariff cap and encouraging exclusive tariffs risks creating consumer confusion and mistrust in the market.

In order to significantly increase engagement in the domestic retail energy market, it's vital that Ofgem and the industry focus on helping the unengaged consumer majority get better deals. We feel this is best achieved by leveraging and extending the competitive dynamics operating in the supplier and PCW sector to incentivise marketing investment. Removal of the WoM requirement is a pragmatic and necessary step to exploit these dynamics. In conjunction with the wider package of CMA remedies it will increase the resources invested across the industry to engage the disengaged.

These benefits will only be fully realised if the package is implemented in its entirety, including its proposals relating to the WoM requirement.

## **2.3 Consumer and market benefits of removing the WoM requirement**

### **2.3.1 Increase in aggregate supplier investment to engage consumers**

The WoM requirement provides some energy suppliers with an artificial, zero-cost marketing platform that removes any incentive for them to develop innovative marketing campaigns and products that would engage disengaged customers. Were these suppliers not able to rely on the free promotion they currently receive through Code-accredited PCWs they would be incentivised to either work commercially with PCWs (supporting the positive customer engagement investment they make) or develop marketing initiatives or products that appeal directly to different customer groups, again helping to engage disengaged customers.

### **2.3.2 Increasing competition in the energy PCW market**

We surmise that the existing WoM requirement acts as a barrier to new independent PCWs entering the energy market due to its unique requirement to provide promotion to all energy suppliers without remuneration.

At an industry level investment in engaging customers is much lower in energy than in other markets such as car insurance where PCWs spend heavily on TV advertising throughout the year.<sup>1</sup> In 2015 the three major PCWs who compete primarily for insurance comparison customers spent over £90m on above the line advertising. In the car insurance market PCWs have much more control over the panel of products they show to consumers than the Confidence Code allows and there is a consumer expectation that different PCWs will offer them a different range of products and prices. Competition between TPAs and insurers in this space is clearly increased by the presence of multiple well funded PCWs who have control over the panel of suppliers they offer to their customers, switching levels in the car insurance markets is currently at 35% per year, compared to just 11% in the electricity market.<sup>2</sup>

Currently PCWs in the energy sector compete primarily on their ability to market to engaged customers and on the quality of service they offer both online and offline. The remedies proposed by the CMA will drive further benefits for consumers by encouraging PCWs to compete with each other to secure low

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<sup>1</sup> Combined estimated ATL advertising spend of ComparetheMarket, Confused.com and Go Compare, source: Nielsen AdDynamix.

<sup>2</sup> Ofcom Switching Tracker 2015, excludes home mover switches; [http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015oct/switching\\_tracker\\_2015\\_charts.pdf](http://stakeholders.ofcom.org.uk/binaries/research/statistics/2015oct/switching_tracker_2015_charts.pdf)

priced exclusive tariffs for their customers, in addition to competing to provide the best service and reach the most customers. Over the last two years some of the most competitive tariffs on the market have been those offered through collective switch schemes (by both small and large suppliers, through small and large collective switch operators). We expect the package of CMA remedies to drive many more competitive exclusive tariffs, driving down the cost of energy for consumers. We also expect the increased prevalence of exclusives, combined with the removal of WoM which currently acts as a barrier to other PCWs entering the market, to significantly increase competition amongst PCWs.

## **2.4 Routes to market for smaller suppliers**

Following the removal of the WoM requirement we would expect engagement between PCWs and smaller suppliers to increase. There would be benefits for both parties in establishing these relationships. Small suppliers would benefit from cost-effective customer acquisition and PCWs want to offer their customers a wide range of suppliers to switch to and the lowest priced tariffs possible, to ensure consumers continue to switch through their service. There will be intense competitive forces driving the largest PCWs to offer the best deals to their customers as 59%<sup>3</sup> of customers will compare deals on multiple PCWs and that changes to the Simpler Tariff Choices rules will enable PCWs to negotiate directly with suppliers for cheaper exclusive deals.

This incentive is further increased as PCWs are only remunerated when a consumer switches directly through their service and they are reliant on consumers having a positive experience to drive future business.

Some customers show a strong preference for suppliers outside the big six which will further compel PCWs to work with small suppliers and offer a wide range of deals from across the market.

Following the removal of the WoM requirement from the Code suppliers will have a wide range of routes to market available to them, including:

1. Being listed on Citizen Advice's energy comparison information service and the PCWs that decide to continue to offer a wide market comparison
2. Work with any selection of the 12 Code-accredited PCWs or large number of other TPIs, such as collective switch operators and NGIs, each competing in their offer to suppliers and offering a range of potential customer volumes and customer-types

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<sup>3</sup> CMA Energy Market Investigation - Price Comparison Websites, paragraph 75.

3. Negotiate one-off exclusive deals with PCWs and other TPIs, designed to target niches of customers and desired customer volumes
4. All traditional marketing options used by any other company looking to grow a brand, including traditional advertising, social media activity, face to face interaction, local promotions, paid and organic search.

It should be recognised that a PCW's brand is strongly linked to the quality of the switching service provided by the suppliers they switch customers to and this experience affects a customer's perception of the PCW's brand. There will be some cases where it is in neither a PCW's or supplier's benefit to establish a switching relationship. This could be because a supplier's systems are not capable of handling the volume of customers a large PCW may drive, the supplier may wish to take a more measured approach to customer growth or a PCW may have concerns around a supplier's customer service facilities.

## **2.5 Whole of Market terminology**

As exclusive tariffs become more prevalent along with the continued success of collective switch schemes and, in future, time of use (ToU) tariffs, a "whole of market" view will practically become much less feasible.

The wider changes to the Simpler Tariff Choices rules will soon mean that perpetuating the concept of WoM in the Confidence Code, and promoting that this requirement remains a core element of the Code, will build a customer expectation of the market view they will receive from a PCW. Given this is not actually the case, or a practical possibility as a result of the broader market changes, we fear that maintaining this artificial objective of the Code will start to erode trust in PCWs and switching.

In order to maintain consumer trust, consumer expectations must be aligned with the competitive realities of the market following the removal of the Simpler Tariff Choices rules. We believe Ofgem should provide PCWs with more flexibility over the tariffs they display while, at the same time, being transparent to customers about what they are being shown.

## **2.6 Full implementation of the CMA's recommendation**

We believe that the changes to the Confidence Code must be aligned, in terms of substance and timeline, with the wider changes to the SLCs resulting from the CMA's broader package of remedies. In order to maintain some alignment in the timing of implementation of the remedies, we therefore accept Ofgem proceeding with the proposed changes to the Code at the same time as implementing the changes to the SLCs, providing that Ofgem commits to a timetable for the full implementation of the CMA's recommendation.

The CMA's recommendations are designed to drive greater innovation from suppliers and TPIs. These new services will target different customer groups and should engage a broader range of customers, many of whom may not use traditional PCWs. In order to better promote innovation and competition in the TPI space, whilst maintaining consumer confidence in switching services, the Code should operate at a higher principles-based level and allow PCWs to act as more than data information providers. The Code should also apply to all domestic TPIs, not just a narrow definition of PCWs. We believe this would be consistent with unlocking the benefits of removing the WoM requirement.

In order to ensure appropriate industry and consumer expectations on the future development of the market, we urge Ofgem to confirm a concrete timetable for a consultation on a wider Code review, including the full removal of the WoM requirement in line with the CMA's recommendation.

## 3 Responses to Chapter 2

### 3.1 Approach to WoM

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?

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

Question 3: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter choice?

In the circumstances we believe Ofgem should proceed with its proposals to remove the 2015 Code review changes to the WoM requirement as an interim measure. However we urge Ofgem to confirm a date by which it will consult on the full removal of the WoM requirement, in line with the CMA's final remedy.

As outlined above, we support the CMA recommendation to fully remove the WoM requirement and replace it with a transparency requirement. We believe this is a practical step that is necessary to enable PCWs to play the fundamental market role the CMA envisaged following the removal of the Simpler Tariff Choices rules.

The energy market has changed significantly since the 2015 Code changes, with over 15 new suppliers launching and a larger number of TPIs offering a wider range of services outside the Code.

The risks and benefits of the removal of the WoM requirement from the Code have been fully considered and accepted by the CMA and, being a remedy which appears straightforward to enact, we would expect Ofgem to move forward swiftly with its implementation.

We do not accept concerns regarding the Code audit to be a valid reason for delaying implementation of the remedy. The comparative approach to the Code audit will quickly become unfit for purpose as the number of exclusive tariffs on the market increase. The current infrequency of the audit suggest that it is not core to the successful overall running of the Code and the audit process could be easily adapted to still ensure the core principles of the Code are met. Data accuracy, for example, can be much more easily monitored by a PCW through feedback from customers who will quickly raise concerns if the rates quoted by a



PCW do not match those listed by a supplier.

The TPI industry is quickly evolving and making changes to ensure the Code remains relevant should not be held back by operational concerns of how to administer an annual audit.

### 3.2 Site wording

Question 4: With reference to Table 2, do you agree with our rationale, and proposed policy changes around the WoM filter wording/testing?

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?

The filter wording/testing requirements need to be proportionate and Ofgem's approach to reviewing research should be fully transparent and objective. Ofgem suggests it will be providing PCWs with more guidance on the testing requirement and in the absence of this information it is difficult to provide a view on the proposed testing requirement. Ofgem should provide this additional detail to PCWs for comment during the next stage of the Code consultation process.

We consider that it would be very difficult for Ofgem itself to independently and properly test customers' understanding of a question on a PCW. Without the data to understand how customers interact with a filter question in situ on the PCW or an understanding of the demographic of customers that visits a particular PCW (which may be substantially skewed from the general population and differ significantly between different PCWs), Ofgem is less well placed than a PCW to determine actual understanding of the messaging. If a situation arose where Ofgem felt concerned about the clarity of messaging on a PCW or the results of their research, we would expect Ofgem to raise their concerns with the PCW and work with it to validate their findings.

### 3.3 Code wording

Question 6: With reference to Table 3, do you agree that the proposed Code wording reflects our proposals?

We broadly agree that the proposed wording reflects Ofgem's proposals. In requirement 2(A) however, the list of tariffs PCWs are not required to show needs to be wider to cover all exclusive deals. By restricting the definition to 'another Service Provider' the exclusion would not cover an exclusive deal or an

open collective switch scheme run between a supplier and a non-accredited PCW or another TPI (such as collective switch operators or cashback websites). The wording should be changed to:

*Additional bullet to existing 2(A) '...The Service Provider is not required to show: ...tariffs which are exclusively fulfilled through another TPI.*

## 4 Responses to Chapter 3

### 4.1 Personal Projection

Question 7: Do you agree with our rationale, and proposed policy changes around the removal of Personal Projection?

We accept that Personal Projection will no longer be fit for purpose following the removal of the Simpler Tariff Choices rules. We are, however, very concerned that Ofgem is proposing a vastly different approach for suppliers to derive estimated annual costs compared to the detailed rules outlined in the Code. The Personal Projection has ensured that customers received the same estimated annual cost for a tariff - irrespective of whether they were on a PCW or on a supplier website. This would no longer be the case under Ofgem's current proposals. Customers who see different estimated bill sizes on PCWs and supplier websites will either assume that one party has got their calculations wrong or that someone is trying to deceive them - eroding trust, engagement and consumer confidence. Therefore, enabling suppliers and PCWs to take different approaches to estimated annual costs is a major risk.

Ofgem is proposing in its parallel Informed Choices consultation that suppliers will be required to be internally consistent in calculating estimated annual costs. As currently drafted we cannot see how suppliers will be able to practically ensure that PCWs, who act as supplier Representatives, are consistent with their methodology. PCWs that follow the requirements of the Code as proposed by Ofgem, may be placing certain suppliers in breach of the proposed internal consistency principle should suppliers develop differing methodologies. It is likely that most PCWs are contractually bound to ensure that they do not put suppliers in breach of Ofgem requirements. An inconsistent approach between SLCs and the Code combined, with a requirement for internal consistency, potentially represents a significant financial and legal risk to PCWs as well as a regulatory risk to suppliers.

This issue is further exacerbated as suppliers could present a lower estimated annual cost than a PCW for exactly the same tariff by including discounts that the Code explicitly prohibits. Under the proposed supplier flexibility, for example, a supplier could incorporate introductory cashback or discounts based on customer behaviour in their estimated annual cost. This discrepancy could be significant depending on tariff structure, meaning there is a serious risk to PCWs that consumers could mistakenly perceive the difference in an estimated annual cost quote to be a genuine difference in the price they will pay for their energy, when in fact it is an artificial difference created by different calculation

methodologies.

Suppliers and TPIs should be driven to compete on the actual price they can offer consumers, not on how artificially low they can make their estimated bill quotations appear by developing different calculation methodologies.

There is also a significant risk that the proposed changes to license conditions will make it much more difficult for PCWs to accurately assist consumers looking to re-engage with the market at the end of their fixed plan. Ofgem's preferred option "is to require suppliers to identify the RCET based on the supplier's calculation of estimated annual cost". This makes it difficult for PCWs to know which tariff the customer will be rolled onto if they do not know a supplier's exact methodology for calculating estimated annual costs. The end of a fixed plan is a key time for customers to run a wider market comparison and switch to the right supplier or tariff for them. If PCWs do not know which tariff a customer will roll onto, they cannot provide them with an accurate comparison of their future costs and consequently re-engagement for customers reaching the end of a tariff will almost certainly fall.

Finally, it will be difficult to use comparison of estimated annual costs to widely communicate the benefits of switching if there is no commonly accepted methodology to compare the competitiveness of tariffs. In addition, it would be unhelpful and detrimental to trust in the industry for journalists to receive a best buy table from a PCW and a supplier that contains different bill sizes for the same tariff.

We understand that it is difficult to future-proof the personal projection algorithm against all possible tariff designs and we agree that the current formula has to be amended. It is, however, possible and necessary for Ofgem to define broader rules regarding estimated annual costs which will provide a consistency in approach across the market and protect consumers from being misled as to the competitiveness of a tariff or confused about the different bill estimates they are receiving. These rules would be similar in format to those outlined by Ofgem for inclusion in the Code but with some adjustments. This should be defined in the SLCs and crucially must apply consistently across the industry. The Code should then refer to the relevant license condition to avoid any market incoherence or inconsistency in the future.

We believe that choosing to implement the proposals for estimated annual costs as set out in Ofgem's Informed Choices consultation would cause significant consumer harm. However, if they were to be implemented, the Code would need to reflect the same position, providing PCWs with flexibility over how they calculate estimated annual costs. Allowing suppliers flexibility in how they calculate estimated annual costs while PCWs are bound by prescriptive requirements will likely give the false appearance that products on PCWs are

more expensive than on suppliers' own websites, representing risk to PCWs in addition to the likely consumer harm.

We strongly urge Ofgem to implement consistent rules across the Confidence Code and license conditions that ensure estimated annual costs are calculated consistently across the industry. There is potential for substantial consumer harm from customers receiving estimated annual costs based on a wide range of differing methodology from suppliers and PCWs. It is likely to lead to customers making poor decisions, in some situations becoming financially worse off and leading to a reduction in trust with PCWs and the industry in general.

## 4.2 Estimated annual costs

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?

Question 9: With reference to Table 4, do you agree that the proposed Code wording reflects our proposals?

We agree that rather than replacing the current Personal Projection definition with another tightly defined mathematical formula, the EAC methodology should be a broad definition of the pricing elements which should and should not be taken into account when calculating an annual bill estimate. This should include all elements that directly impact the actual price a customer will pay for their energy through the billing process and would include all charging elements and any monetary discounts which are paid automatically (i.e. without the customer having to take any other action or behave in a certain way).

We do not consider that the specific exclusions stated in the proposed Code wording are correct and are likely to limit the development of innovative new tariffs in the market, constraining competition. However, Ofgem need to decide how to define any explicit rules within that wider context. Ofgem will need to decide whether annual estimates should include one-off costs/discounts (installation costs, initial joining incentives etc.) and define an approach to non-monetary and behaviour-dependent discounts (for example supermarket reward points or discounts that are only paid if a customer regularly submits meter readings). These rules should be stated in the broad pricing criteria in the SLCs and the same criteria should apply to the Confidence Code.

The tariff market is likely to change quickly over the next two years and Ofgem needs to develop a swift, effective process for issuing guidance to PCWs on calculating estimated annual costs for new types of tariff when necessary.

A consistent approach across the market is the best way to ensure a smooth transition into a market with a wider variety of innovative tariffs. This broad approach should enable the market to develop in innovative ways without creating the significant consumer and competition issues that we believe would result from the current lack of consistency between individual suppliers as well as between suppliers and Code accredited PCWs.

### 4.3 TIL

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

We are supportive of the principle of the Tariff Information Label (TIL) and are comfortable with the related requirements remaining within the Confidence Code.

More generally, we see the TIL as an important tool to help customers enter the information needed to compare energy prices on our website and it also helps our customer service agents assist customers in finding the correct information when running a comparison over the phone.

However, whilst we believe that the TIL has been a successful product of the RMR, with this information generally being displayed on the second page of the bill or later, we still receive a large volume of calls from customers struggling to find the information required to make a comparison. Therefore, we believe that the TIL, including tariff name, payment method, end date, exit fee and annual consumption information (split by day and night usage if economy 7), should be included on page one of a bill, to make it more easily accessible to consumers.

## 5 Responses to Chapter 4

### 5.1 Other initiatives

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?

#### 5.1.1 Principles-based approach

In the past few years there have been a large number of changes to the TPI market and the way in which they are engaging with consumers, both mainstream (mobile apps, alerting services, informed recommendation services through MSE and collective switching) and more niche start-ups (Flipper, Labrador, MyWave, face to face). Whilst the market and consumer expectations of ecommerce sites are quickly changing, there have been very few meaningful changes to the Code. Different initiatives will target different consumer groups and should help to engage a broader range of consumers. In its current form the Code cannot apply to any of these new models or support consumers in their engagement with these companies.

In order for the Code to support innovation and be relevant to rapidly evolving TPIs Ofgem needs to take the same principles-based approach with PCWs that it is taking with suppliers.

#### 5.1.2 Obligation on suppliers to provide tariff data

With the rapid increase in the number of energy suppliers in the market, and an increasing proportion choosing not to engage with PCWs, it is becoming more difficult for PCWs to ensure they receive all the information they need to comply with requirements 2(B) (requirement to include information on historic tariffs) and 2(F) (requirement to obtain, update and ensure the accuracy of all data it displays). Further, with an expected increase in the number of exclusive and collective switch tariffs it will become even harder for PCWs to monitor all tariffs in the market and gain tariff details to include in historical tariff listings so that customers on these plans can run an accurate comparison in the future.

Some suppliers may even consider whether it is in their interests to provide data on historic tariffs which will be used to provide price comparisons for their customers, and suppliers have previously questioned whether they are obliged to provide this data to us.

It is therefore necessary for there to be an obligation on suppliers to provide tariff data to Code-accredited PCWs for both currently available and historic



tariffs. Suppliers need to be required to provide such data proactively and in a timely manner, without the need for the PCW to request each individual rate card.