

Impact Assessment Form

<p>Title: Impact assessment for decision on Whole of Market removal.</p> <p>Division: Consumers and Markets</p> <p>Associated documents: Decision on implementing the CMA's recommendation to remove the Whole of Market requirement.</p> <p>Coverage: This IA covers all policy decisions in the associated document.</p>	Impact Assessment (IA)
	Type of measure: Retail Competition measures
	Type of IA: Not Qualified under Section 5A UA 2000.
	Consumers.Directorate@ofgem.gov.uk

Summary: Intervention and Options

Rationale for intervention, objectives and options

What is the problem under consideration? Why is Ofgem intervention necessary?

The problem under consideration is the negative impacts on domestic energy price comparison websites (PCWs) of the "Whole of Market" (WoM) requirement within Ofgem's Confidence Code. The Code is a voluntary code of practice for these websites. Making changes to the Code is therefore a direct way of addressing the problem.

The Code rules known as the WoM requirement, mean accredited PCWs have to display non-fulfillable deals that they receive no commission from and for which they cannot switch consumers to. This undermines the incentive for suppliers to work with PCWs to make deals switchable through PCWs (i.e. fulfillable deals). PCWs' revenues are thus lower than they would be if these rules were not in place. This undermines the incentives for PCWs to invest and innovate in their energy market offering, preventing them from playing a more active role in supporting consumer engagement and driving greater supply-side competition.

In response to a recommendation from the Competition and Markets Authority (CMA) to remove the WoM requirement, Ofgem consulted on a staged approach to removing the requirement. This consisted of firstly consulting on a 'Partial Remedy'¹, which enabled PCWs to display a Partial View (the display of fulfillable deals only) as their default results page provided consumers could easily access a Wide View, which would also show non-fulfillable deals. In September 2017, the Partial Remedy went live, and in May 2018, Ofgem consulted on the next step of removing the WoM requirement. This Impact Assessment outlines the benefits and risks of taking forward our minded-to option for removing the WoM requirement.

¹ [Decision on the partial implementation of the CMA's Whole of Market remedy and consulting on new Code requirements](#)

What are the policy objectives and intended effects including the effect on Ofgem's Strategic Outcomes

We want to allow PCWs to play a more active role in supporting consumer engagement and driving greater supply-side competition, by increasing their incentives to invest and innovate. At the same time, we want to ensure that the Code provides consumers with accredited PCWs they can trust.

This policy is primarily linked to the strategic outcome of lower bills – it seeks to deliver this through greater engagement and competition. The precise outcomes resulting from this policy are uncertain, as outcomes will depend on consumer behaviour and external factors affecting retail market competition.

This policy is aligned with Ofgem's regulatory stance on promoting effective competition to deliver for consumers. It also fits with our stance of supporting innovation in technologies, systems and business models.

What are the policy options that have been considered, including any alternatives to regulation? Please justify the minded-to option (further details in Evidence Base)

Our minded-to option is to give accredited PCWs the option of exclusively showing deals that consumers can switch to directly through their website (i.e. a Partial View), provided they display a link to the Citizens Advice Comparison Tool (CACT)². The CACT will give consumers the option of seeing a wider range of deals on the market than would be shown on an accredited PCW's Partial View. Under our minded-to option, we will also remove testing obligations on accredited PCWs that choose to display a Wide Results page to increase incentives for them to invest in their energy offering.

This approach can balance the risks and benefits of removing the WoM requirement. It will increase incentives for PCW investment, and for suppliers and PCWs to make more deals switchable through PCWs than the current Code rules. It can also help ensure consumers do not miss deals that they might have chosen if the WoM requirement were in place. Four other options were considered. These include retaining the Partial Remedy, and three other variations of removing the WoM requirement:

Option 1 – Do nothing, i.e. maintain the Partial Remedy.

Option 2 – Remove rules requiring Code members to display Wide Results, and place new testing obligations on accredited PCWs in lieu of the testing obligations that applied to PCWs showing Wide Results.

² <https://energycompare.citizensadvice.org.uk/>

Option 3 - Remove rules requiring Code members to display Wide Results with no testing obligations on accredited PCWs.

Option 4 – Give accredited PCWs the option of maintaining a Wide Results page or displaying a link to the Citizens Advice Comparison Tool, and keep current testing obligations that apply to PCWs showing Wide Results.

Option 5/Minded-to option - Give accredited PCWs the option of maintaining a Wide Results or displaying a link to the Citizens Advice Comparison Tool, and remove all testing obligations on accredited PCWs.

Minded-to option - Monetised Impacts (£m)

Business Impact Target Qualifying Provision	N/A
Business Impact Target (EANDCB)	N/A
Net Benefit to Ofgem Consumer	N/A
Wider Benefits/Costs for Society	N/A
Explain how was the Net Benefit monetised, NPV or other	
N/A	

Minded-to option - Hard to Monetise Impacts

Describe any hard to monetise impacts, including mid-term strategic and long-term sustainability factors following Ofgem IA guidance

We have not sought to quantify the impact of our minded-to option. Its impact will depend on a wide range of factors that can contribute to the same outcomes in various degrees. Identifying the unique impact of this policy would be subject to considerable uncertainty. Some of the key analytical challenges are:

- There is a crowded policy landscape. Consumers, PCWs and suppliers will also respond to other CMA remedies and the introduction of the price cap.
- Assessing the contribution of WoM to consumers’ bills and supplier cost/revenues would require extensive research that would add a disproportionate burden on suppliers.

We have addressed these challenges by considering the key principles underpinning the full removal of the WoM against the early evaluation of the Partial Remedy’s outcomes.

Key Assumptions/sensitivities/risks*Key risks:*Negative effects on competition

Removing the obligation to display non-fulfillable deals will increase incentives for suppliers to make their deals fulfillable. This could increase PCWs bargaining power over suppliers, resulting in overall higher PCW commission rates and PCWs pushing for restrictive conditions on suppliers during commercial negotiations³. This could cause a barrier to entry for suppliers and increase costs for consumers if suppliers reflect higher marketing costs onto energy bills.

A competitive PCW market and viable alternative routes to market for suppliers would address this risk. In the face of uncompetitive conditions set by a PCW, a supplier could use a different PCW or an alternative route to market.

Based on evidence reviewed there is little indication that commission charges have increased since the Partial Remedy or that suppliers are unable to use other routes to market beyond PCWs.

Monitoring will be carried out post implementation of our Code change to understand whether this risk is materialising.

Consumer missing deals and impact on consumer trust

Without access to non-fulfillable deals on an accredited PCW, consumers may miss deals that they are interested in if they do not shop around. If consumers view the removal of a Wide Results page as PCWs attempting to hide the best deals, consumers' trust in PCWs could also be affected because of this policy. This could have an impact on engagement.

These risks can be addressed through appropriate mitigations – for example by requiring accredited PCWs to explain the market coverage of their results in prominent, clear and intelligible terms and to display a similarly clear link to the Citizens Advice Comparison Tool.

Monitoring will be carried out post implementation of our Code change to understand whether these risks are materialising.

*Key assumptions/sensitivities:*Limitations in analysis

We have not sought to quantify the impact of our minded-to option. Its impact will depend on a wider context of changes in the market. We therefore do not consider that it is proportionate to develop a quantitative estimate of this particular policy in isolation. Instead, this IA provides a qualitative analysis of the impacts of the policy.

³ Such as requiring suppliers to not offer better prices on other PCWs. See [Digital comparison tools market study. Final report](#). Paragraph 1.16 (p8)

As part of evidence gathering, Ofgem collected RFI data on the impact of the Partial Remedy and the impact of the 2015 Code rules. Data submissions were from PCWs that account for the majority of PCW acquisitions based on the CMA's estimate⁴. However, submissions were not consistent in their format, with some questions partly answered. This has constrained Ofgem's ability to use the impact of the 2015 Code rules (which strengthened the WoM requirement) and the Partial Remedy (which partially removed the WoM requirement) as a proxy measure to assess the impact of removing the WoM requirement. To compensate for this, where needed Ofgem has used results derived from trials⁵ on the impact of the Partial Remedy and removal of the WoM requirement.

Will the policy be reviewed? Yes	If applicable, set review date: month/Year N/A
Is this proposal in scope of the Public Sector Equality Duty?	No

Summary Table for all options.

In line with the May 2018 consultation on removing the WoM requirement, this Impact Assessment has considered five options:

1. 'do nothing', i.e. maintain the Partial Remedy and testing obligations (option 1)
2. removal of WoM requirement with new testing obligations so consumers are aware of the market coverage of PCWs (option 2)
3. removal of WoM requirement with no testing obligations (option 3)
4. removal of WoM requirement with obligations on linking to the CACT and current testing obligations (option 4)
5. removal of WoM requirement with obligations on linking to the CACT and no testing obligations (option 5/minded-to option).

⁴ [CMA Energy Market Investigation Final Report](#), appendix 9.3, paragraph 27.

⁵ Participating PCWs in the WoM removal trial collectively accounted for the majority of PCW acquisitions based on the CMA's estimate. Ibid

Summary of options		Benefits	Risks	Key considerations
<p>Option 1 – Retain the Partial Remedy – accredited PCWs are obligated to display a Wide Results page and undertake consumer testing to assess whether consumers can access this page.</p>	Partial Remedy	<p>Can help ensure that consumers who do not use multiple PCWs when switching get the deal they want.</p>	<p>Can dampen incentives for fulfillable deals, which are easier for consumers to switch to, and dampen incentives for accredited PCWs to invest in getting consumers to use their service.</p>	<p>Retaining Partial Remedy would mean that the potential benefits of WoM removal would not come into fruition.</p>
<p>Option 2 – Remove obligations for accredited PCWs to show a Wide Results and apply new testing obligations on accredited PCWs.</p>	WoM removal	<p>Can lead to an increase in the number of fulfillable and exclusive deals on offer, making it easier for consumers to switch.</p> <p>Can increase PCW switching rates and subsequently incentives to invest and innovate in their energy offering so more consumers switch.</p> <p>Can increase differentiation of what each accredited PCW offers on the market, driving energy retail competition and exerting downward pressure on prices.</p>	<p>Reduced trust in PCWs, with a potential impact on engagement.</p> <p>Could increase bargaining power of PCWs, causing an increase in commission rates and/or PCWs placing restrictive conditions on suppliers. This could cause a barrier to entry for suppliers, and increase bills if commission increases are passed onto consumer bills.</p> <p>Consumers that do not use more than one PCW could miss non-fulfillable deals that they would otherwise have chosen if the WoM requirement were in place.</p>	<p>Accredited PCWs will need to use resources to comply with new testing obligations rather than investing and innovating in their energy service. As such, these new testing obligations would diminish the benefits of removing WoM requirement.</p> <p>Would not directly address the risk that without the display of a Wide Results page, consumers using accredited PCWs may not see the deal they want if they do not use multiple PCWs before switching.</p>

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<p>Option 3 – Remove obligations for accredited PCWs to show a Wide Results page and testing obligations that apply to sites who display a Wide Results page.</p>	<p>WoM removal</p>	<p>As per Option 2 with greater affect.</p>	<p>As per Option 2 with greater affect.</p>	<p>No testing obligations would allow sites to choose to prioritise more resources on investment.</p> <p>Would not address the risk that without the display of a Wide Results page, consumers using accredited PCWs may not see the deal they might want if they do not shop around before switching.</p>
<p>Option 4 – Give accredited PCWs the option of maintaining a Wide Results or omitting one if a link to the Citizens Advice Comparison Tool is displayed. Current testing obligations put on accredited PCWs that display a Wide Results page would remain.</p>	<p>WoM removal</p>	<p>As per Option 2 with less affect due to obligation to link to Citizens Advice Comparison Tool which reduces incentives for fulfillable deals.</p>	<p>As per Option 2 with less affect due to obligation to link to Citizens Advice Comparison Tool which directs consumers to a view of non-fulfillable tariffs.</p>	<p>Link to Citizens Advice Comparison Tool can help consumers wanting to see a wider range of tariffs get the deal they want and better ensure consumer trust in PCWs.</p> <p>However, testing obligations on accredited PCWs would pull resources from investment into improving and advertising their energy service.</p>
<p>Option 5/Minded-to option – Give accredited PCWs the option of maintaining a Wide Results or omitting one if a link to the Citizens Advice Comparison Tool is displayed. Remove all testing obligations on accredited PCWs.</p>	<p>WoM removal</p>	<p>As per Option 4 with greater affect due to removal of testing obligations that would enable PCWs to focus resources on improving and advertising their energy service.</p>	<p>As per Option 4.</p>	<p>Link to Citizens Advice Comparison Tool can help consumers wanting to see a wider range of tariffs get the deal they want and better ensure consumer trust in PCWs.</p> <p>Removing testing obligations from the Code can enable PCWs to focus more resources on improving and advertising their energy service.</p>

Evidence Base

Problem under consideration and rationale for intervention

- 1.1. The Confidence Code is a voluntary code in relation to online price comparison services for domestic consumers. Ofgem has managed this Code since 2013. Rules in the Code referred as the 'Whole of Market' (WoM) requirement limit the ability of PCWs to exclusively show consumers the deals that earn them revenues (through the payment of commission by suppliers). Through the WoM requirement suppliers are able to 'free ride' by being displayed on PCWs without paying commission – if a consumer searches on a PCW and then switches to a non-fulfillable deal, the PCW would not receive any revenue from this switch. This means that PCWs' revenues may be higher if these rules were not in place. These rules therefore limit the incentives on PCWs to invest in advertising, or in innovative ways of making their energy comparison service easier for consumers to use.
- 1.2. Under the WoM requirement, investment by PCWs is a positive externality. A PCW is only able to capture part of the benefit of its investment (as it does not receive revenue when consumers visiting its site switch to suppliers who do not pay commission). It would therefore be expected to under-invest, for example in comparison to other sectors where these requirements are not present.
- 1.3. However, the WoM requirement could have some benefits for suppliers who are displayed on PCWs without paying commission, as they can advertise themselves using PCWs without incurring marketing costs.
- 1.4. The Competition and Markets Authority (CMA) considered the Code requirements as part of its Energy Market Investigation. It found that the Whole of Market requirements contributed to an Adverse Effect on Competition, and put forward a recommendation to address this.⁶ In order to strengthen PCWs' incentives to engage consumers, the CMA recommended to Ofgem: 'that it removes the Whole of the Market Requirement in the Confidence Code and introduces a requirement for PCWs accredited under the Confidence Code to be transparent over the market coverage they provide to energy customers.'⁷
- 1.5. The CMA's rationale for its recommendation was:
 - (a) *it will promote the incentive accredited PCWs have to invest in services in the domestic retail energy markets and to promote the use of these services, helping to increase domestic customer engagement;*
 - (b) *it will enhance the effectiveness of the remedy to remove certain aspects of the simpler choices component of the RMR rules as it will facilitate the negotiation of exclusive deals by accredited PCWs; and*

⁶ [CMA \(2016\) Energy Market Investigation, Final Report](#), paragraph 13.264.

⁷ [CMA \(2016\) Energy Market Investigation, Summary of Final Report](#), paragraph 239.

(c) it will allow PCWs to manage any attempts by suppliers to game to their advantage the removal of the relevant aspects of the simpler choices component of the RMR rules (in particular, the constraints on the number of tariffs a supplier can offer) by releasing many similar priced tariffs in order to crowd out competitors on PCW results pages'.⁸

- 1.6. Ofgem went some way to addressing these issues by implementing the Partial Remedy in September 2017. The Partial Remedy was put in place to gain some of the benefits of removing the WoM Requirement whilst considering impacts for full removal. The continued obligation to display non-fulfillable deals on accredited PCWs means that the benefits of removing the WoM requirement are yet to be fully realised.
- 1.7. Since introducing the Partial Remedy, Ofgem have collected RFI data to evaluate the initial impacts of the Partial Remedy. We have also undertaken a trial that tests the impacts of removing the WoM requirement. This evidence gathering has shown little evidence that removing the WoM requirement under our minded-to option will cause significant risks.

Policy objective

- 1.8. We want to allow PCWs to play a more active role in supporting consumer engagement and driving greater supply-side competition, by increasing their incentives to invest and innovate. At the same time, we want to ensure that the Code provides consumers with accredited PCWs they can trust.
- 1.9. This policy is linked to the strategic outcome of lower bills – it seeks to deliver this through greater engagement and competition. This policy can also help PCWs to provide a better quality of service.
- 1.10. This policy is aligned with Ofgem’s regulatory stance on promoting effective competition to deliver for consumers. It also fits with our stance of supporting innovation in technologies, systems and business models.

Options considered

- 1.11. This impact assessment considers the baseline as the Partial Remedy in comparison to removing the WoM requirement. It then considers four options for removing the WoM requirement that aim to address the potential risks of this change in the Confidence Code.
1. 'do nothing', i.e. maintain the Partial Remedy and testing obligations (option 1)
 2. removal of WoM requirement with new testing obligations so consumers are aware of the market coverage of PCWs (option 2)
 3. removal of WoM requirement with no testing obligations (option 3)
 4. removal of WoM requirement with obligations on linking to the CACT and current testing obligations (option 4)

⁸ [CMA \(2016\), Energy Market Investigation](#), Final Report, paragraph 13.279.

5. removal of WoM requirement with obligations on linking to the CACT and no testing obligations (option 5/minded-to option).
- 1.12. These options were developed with consideration of previous concerns related to removal of the WoM requirement. These include the potential for it to increase bargaining power of accredited PCWs and negatively affect competition, reduce consumer trust of PCWs, and cause consumers to miss deals that they might otherwise have chosen if the WoM requirement remained in place.
- 1.13. Testing obligations were included due to previous consultation responses to our August 2016 Confidence Code review⁹ noting the value of testing obligations on accredited PCWs to support consumer engagement and trust. The obligation to display a link to the CACT was suggested because this would enable consumers to access non-fulfillable deals without putting a direct cost on accredited PCWs to maintain a Wide Results page. This approach could thus address the risks of removing the WoM requirement whilst capturing the benefits by increasing flexibility for accredited PCWs.

Level of analysis

- 1.14. We have considered the following factors, among others, when deciding the level of analysis that is proportionate.
- The fact that PCWs are a significant means for consumers to engage with the energy market. Our 2017 consumer engagement survey showed that 49% of those who had engaged with the energy market found out about deals using a PCW¹⁰.
 - The previous public interest in the WoM requirement – for example from the Energy and Climate Change Select Committee¹¹.
 - The analysis already carried out by the CMA in relation to PCWs as part of its Energy Market Investigation and DCT Study¹².
 - That this policy is in relation to a voluntary¹³ Code, rather than mandatory regulation.
 - The existing analysis that has been done through the Impact Assessment on benefits of the Partial Remedy over previous Code wording¹⁴ which can be applied to the impact of removing the WoM requirement.

⁹ [Confidence Code review 2016 consultation](#)

¹⁰ [Ofgem Consumer Engagement Survey Report](#), September 2017 Ofgem. Paragraph 1.5, p 5.

¹¹ [Letter from Chair of the Energy and Climate Change Select Committee](#), 19 July 2016

¹² [CMA Energy Market Investigation Final Report / Digital comparison tools market study. Final report.](#)

¹³ The CMA has noted that: 'it appears that the most DCTs [Digital Comparison Tools] have signed up to Ofgem's 'Confidence Code' as a result of the largest energy companies making accreditation a requirement if DCTs are to list them', paragraph 8.7 (b). CMA (2017), [Digital Comparison Tools market study update paper.](#)

¹⁴ [Confidence Code Review 2016: Impact Assessment for decision on partial remedy.](#)

Evaluation of the Partial Remedy

- 1.15. This section sets out Ofgem’s evaluation of the Partial Remedy, i.e. Option 1. This evaluation has given Ofgem insights into the key impacts of removing the WoM requirement.
- 1.16. The CMA indicated that removing the WoM requirement would increase the incentives for accredited PCWs to invest in their energy offering and increase consumer engagement in the energy market¹⁵. The Partial Remedy was put in place in September 2017 to gain some of the benefits of removing the WoM Requirement whilst Ofgem considered impacts for full removal.
- 1.17. Below sets out the evidence we have gathered since introducing the Partial Remedy, and previous evidence that has informed our evaluation of the Partial Remedy’s impacts.

Benefits

- 1.18. Higher engagement
- 1.19. A number of accredited PCWs have indicated that their profits and expectations of conversions (the number of consumers switching through the PCW) affects their investment strategy¹⁶. This would suggest that if the Partial Remedy increases conversions, which increases profits, it would increase incentives for PCW investment. PCWs investing in advertising and innovating their energy services, can mean more consumers engage with their services to switch.
- 1.20. Confidence Code rules introduced in January 2015¹⁷ meant accredited PCWs could no longer default to a Partial View as they could do previously and as they do in the Partial Remedy. In December 2016, Ofgem sent Code-accredited PCWs an RFI that included questions on their investment and conversion rates. We considered this alongside a previous trial on the impact of the Partial Remedy, and new data gathered since introducing the Partial Remedy. This informed our evaluation of the Partial Remedy’s impacts on consumer engagement.
- 1.21. Responses from the December 2016 RFI indicated that the median percentage change in the average monthly conversion rate after the introduction of the 2015 Code rules was -36%. Responses also indicated that several accredited PCWs reduced their investment after the introduction of the 2015 Code changes¹⁸. A trial with one PCW in February 2017 also showed that moving from the 2015 Code rules to the Partial Remedy resulted in a significant increase in conversions¹⁹.

¹⁵ [Digital comparison tools market study. Final report](#). Paragraph 4.124 (p67) & CMA, [Energy Market Investigation, Final Report](#). Paragraph 13.273 (p875-876).

¹⁶ Responses to Q4, PCW RFI, December 2017 / [Confidence Code Review 2016: Impact Assessment for decision on partial remedy](#). Paragraph 1.26 – 1.36

¹⁷ [Confidence Code review - January 2015 policy decision](#), 30th January 2015

¹⁸ [Confidence Code Review 2016: Impact Assessment for decision on partial remedy](#). Paragraph 1.31

¹⁹ *Ibid.* Paragraph 1.38

- 1.22. In addition to responses from this 2016 RFI, responses to a December 2017 RFI showed that three accredited PCWs (out of four that responded) had small increases in conversions four months after the Partial Remedy was introduced. Three accredited PCWs also had small increases in investment into advertising and website improvements after introducing the Partial Remedy. One site directly attributed this to the Partial Remedy. Two attributed the increase to their commercial strategy, and the one PCW that reduced its investment, noted that this was due to commercial reasons and that the Partial Remedy had encouraged them to invest.
- 1.23. Making switching easier and supporting competition.
- 1.24. A consumer cannot switch to a non-fulfillable deal through a PCW. They need to approach the supplier offering the deal directly. When switching using a fulfillable deal, consumers avoid this and can switch directly through the PCW's results page.
- 1.25. Research shows that around half of consumers consider the hassle of switching to be something that they do not have time for²⁰. Making switching to cheap deals easier by increasing the number of fulfillable and exclusive deals²¹ on offer could thus help increase switching rates.
- 1.26. A greater amount of exclusive deals would also mean more low cost deals on the market. An increase in exclusive and fulfillable deals can also increase differentiation of what each accredited PCW offers. This can enable greater competition amongst energy PCWs that can drive energy retail competition by exerting downward pressure on prices.
- 1.27. Responses to a December 2017 RFI showed that two accredited PCWs (out of four that responded to the RFI) had increases in either fulfillable or exclusive deals in the first four months of the Partial Remedy. One PCW had a 27% increase in commercial relationships with suppliers²². Another PCW noted one increase in the exclusive deals they offer²³.

Conclusion on benefits

- 1.28. In summary, the benefits of the Partial Remedy are that it can increase consumer engagement, make switching easier and support competition. Increased conversions because of the Partial Remedy will increase the incentives for PCWs to invest in advertising and improving their service. This can attract more consumers to PCWs to switch and save.
- 1.29. Increased fulfillable and exclusive deals can make switching to previously non-fulfillable deals easier for consumers and more low cost deals on the market. Collectively this can increase competition amongst energy PCWs, putting downward pressure on prices.

²⁰ [Consumer Engagement Survey 2017 Report](#), September 2017 Ofgem. Paragraph 5.4, p50

²¹ A tariff that is only available through a particular PCW.

²² Responses to Q6A & Q6B, PCW RFI, December 2017

²³ Responses to Q5, PCW RFI, December 2017

1.30. Previous RFI analysis and trial results indicate that the Partial Remedy can increase conversions (and by extension PCW investment) and fulfillable deals in comparison to previous Code rules. RFI results of the impact of the Partial Remedy post implementation has shown some indication of increasing investment, and more fulfillable and exclusive deals. However, we would note that as the Partial Remedy continues to give suppliers' access to accredited PCWs without paying commission, increased PCW investment, fulfillable and exclusive deals will be more likely if the WoM requirement is removed.

1.31. **Risks**

1.32. Negative effects on competition.

1.33. We noted when moving to the Partial Remedy that greater incentives for exclusive and fulfillable deals could mean an increase in the bargaining power of accredited PCWs over suppliers. This could mean PCWs attempt to place restrictions on suppliers²⁴ and/or increase PCW commission rates. This could cause a barrier to entry for suppliers and higher costs for consumers if increased PCW commission rates are passed onto energy bills.

1.34. In a competitive market, if faced with uncompetitive conditions set by a PCW, a supplier could use a different PCW or an alternative route to market. The number of viable routes to market for suppliers to take will thus affect whether an increase in accredited PCWs' commission rates or PCWs putting restrictive conditions on suppliers negatively affects competition.

1.35. Responses to an RFI sent to PCWs in December 2017 and an RFI sent to suppliers in January 2018 showed an increase in commission rates by one accredited PCW four months after the Partial Remedy was introduced. There was also little difference in commission rates based on size of supplier. For example, taking the data from a large PCW and a small PCW, the average for small suppliers was only £0.24 per fuel switched higher than for large suppliers²⁵. This is similar to Ofgem's previous conclusion on commission rates applied to size of supplier that informed our move to the Partial Remedy²⁶.

1.36. To compare and contrast with input from our PCW RFI, our RFI to suppliers asked the following question:

- *Between 03 July 2017 and 31 December 2017, have there been any changes to the commission rates that you pay to PCWs that had not been pre-agreed before these dates as part of initial negotiations? Please provide details, specifying the PCWs and including relevant dates.*

1.37. Results were consistent with our PCW RFI, with one PCW increasing its commission rates. In addition, 1 out of 31 suppliers (6 large, 5 medium, and 20 small suppliers) that responded raised this increase in commission rates as an issue. This shows little evidence that the Partial Remedy's initial impact has led

²⁴ Such as requiring suppliers to not offer better prices on one DCT than on another. See [Digital comparison tools market study. Final report](#). Paragraph 1.16 (p8)

²⁵ PCW responses to Q6A & Q6B

²⁶ This found that the average for small suppliers was only £0.17 per fuel switched higher than for large suppliers. [Confidence Code Review 2016: Impact Assessment for decision on partial remedy](#). Paragraph 1.118

to an increase in PCW commission rates. This suggests that there is currently a low risk in moving from the Partial Remedy to removing the WoM requirement subject to mitigations to reduce increases in commission rates in the future.

1.38. Suppliers were also asked in the January RFI the following question:

- *Since 01 November 2016, have you attempted to use alternative routes to market other than PCWs but found difficulty and not pursued these further?*

1.39. 21 out of the 31 suppliers who responded to our RFI did not highlight any difficulties in alternative routes to market or working with PCWs. 5 out of 31 reported difficulties with PCWs but noted other routes to market. 3 out of 31 reported difficulties in using other routes to market but did not have difficulties working with PCWs. Lastly, 2 out of 31 reported difficulty with both working with PCWs and using alternative routes. Findings from Ofgem's last Consumer Engagement Survey also found that 49% of consumers who had switched in the past 12 months used an online price comparison service²⁷.

1.40. This indicates that although PCWs are an important route to market, a large proportion of suppliers can and do, use other routes to acquire consumers with little difficulty. We note that although the RFI covers a large proportion of suppliers, it does not cover all of them. Although some small suppliers may be reliant on indirect referrals from the Wide Results page, we would expect reasonable marketing costs to be part of the cost base of an efficient supplier in a well-functioning market.

1.41. Consumer trust

1.42. When the Partial Remedy was proposed in August 2016 concerns were raised by the Energy and Climate Change Select Committee²⁸. The committee said that consumer confidence and trust in the energy sector and suppliers had been low for a number of years and that it was alarmed by previous reports that deals were being hidden by price comparison websites. This related to the practice of PCWs showing the deals that they make commission out of as a default, and allowing consumers to opt to see a wider view of the market.

1.43. When moving to the Partial Remedy, Ofgem stated that PCWs have some commercial incentives to build trust and confidence in their brands, so as to encourage consumers to return to their sites (whether for energy or other products). We also noted that PCWs also have incentives to raise their conversion rates, which could be done by not being clear with consumers on how to view non-fulfillable deals.

1.44. We also noted a range of information indicating that consumers may value access to the Wide Results page²⁹ as well as information indicating that access to the Wide Results page was not a risk to consumer engagement³⁰. We concluded that we did not have clear-cut evidence that reducing the prominence of the

²⁷ [Consumer Engagement Survey 2017](#). Ofgem. Page 61

²⁸ [Letter from Chair of the Energy and Climate Change Select Committee](#). 19 July 2016

²⁹ [Confidence Code Review 2016: Impact Assessment for decision on partial remedy](#). Paragraphs 1.85 – 1.90

³⁰ [Confidence Code Review 2016: Impact Assessment for decision on partial remedy](#). Paragraphs 1.91 – 1.95

Wide Results page through the Partial Remedy would negatively affect trust of PCWs and reduce consumer engagement.

- 1.45. Since the introduction of the Partial Remedy, Ofgem has reviewed consumer survey data on trust of PCWs. We noted in 2017 survey responses that the proportion of all consumers (not just PCW users) who do not trust PCWs is similar in energy to other sectors. 16% of consumers surveyed disagreed with the statement 'I trust such websites & services' in relation to energy PCWs³¹. This was similar to the overall figure across sectors (13%).³² The same question has been asked of consumers in a 2018 version of the same survey. 18.2% disagreed with the statement when referring to energy websites³³ and 18.5% disagreed with the statement when referencing websites generally³⁴.
- 1.46. These results indicate no discernible difference in trust levels between energy PCWs and other PCWs in 2018, and no discernible difference in trust levels of energy PCWs between 2017 and 2018. This suggests that the risk of the Partial Remedy reducing consumer trust in energy PCWs is not materialising.

Conclusion on risks

- 1.47. In summary there has been little to no indication of the Partial Remedy causing an increase in commission rates or evidence of suppliers lacking viable alternative routes to market. In addition, latest evidence on consumer trust levels in energy PCWs remain similar to the levels of previous years and are similar to trust levels of PCWs in general.
- 1.48. This suggests that the risks of the Partial Remedy are not materialising. This provides a case to remove the WoM requirement subject to mitigations to reduce risks in the future.

Conclusion on impact of Partial Remedy

- 1.49. In summary Ofgem's evaluation of the initial impacts of the Partial Remedy suggests:
- That conversion rates are beginning to increase under the Partial Remedy, increasing the incentives for PCWs to invest in their energy offering so more consumers use their services to switch energy supplier.
 - There is a limited indication of the Partial Remedy increasing fulfillable and exclusive deals. This is potentially due to the continued existence of the Wide Results page giving consumers access to non-fulfillable deals.
 - There has been little to no indication that the Partial Remedy has caused an increased in commission rates or evidence of suppliers lacking viable alternative routes to market.
 - Consumer trust levels in energy PCWs remain similar to the levels of previous years and are similar to trust levels of PCWs in general.

³¹ Firebrand (2017), Customers in Britain 2017, Q21b.

³² Firebrand (2017), Customers in Britain 2017, Q21.

³³ Firebrand (2018), Customers in Britain 2018, Q117. [Unpublished]

³⁴ Firebrand (2018), Customers in Britain 2018, Q110. [Unpublished]

- 1.50. This suggests that firstly, the benefits of the Partial Remedy may be heightened by the removal of the WoM requirement. Secondly, that as the risks of the Partial Remedy are not materialising, there is a case to move to the removal of the WoM requirement subject to mitigations to reduce risks in the future.

Appraisal of moving from the Partial Remedy to removing the WoM requirement

- 1.51. This section sets out Ofgem's evaluation of moving from the Partial Remedy (Option 1) to removing the WoM requirement (Options 2, 3, 4 and 5). This has been informed by the WoM removal trials that were undertaken by two accredited PCWs³⁵.
- 1.52. During these trials, the Partial Remedy was used as a control group and two test groups were used to understand the impact of removing the WoM requirement. One of the test groups was shown the Partial View without access to a Wide Results page but a link to the Citizens Advice Comparison Tool, and the other group was only shown the Partial View.
- 1.53. The results of the trial showed that one of the two PCWs had a statistically significant increase in conversion rates in both test groups compared to the Control Group. These results have been reviewed to assess the benefits and risks of moving from the Partial Remedy to removing the WoM requirement with and without a link to the CACT. We have not gone into detail on number of visitors and the percentage of conversion rates in the trials due to the ability of participating accredited PCWs to identify each other results and the commercially sensitive nature of this information. We would also note that the trial did not collect information on the number of consumers that switched to non-fulfillable deals³⁶.
- 1.54. Increase incentives for PCWs to engage consumers in switching.
- 1.55. The trial results demonstrate that all four of our proposed options for removing the WoM requirement can increase PCWs' incentives to engage consumers in switching more so than the Partial Remedy (Option 1). This also suggests that suppliers would be more likely to increase exclusive and fulfillable deals if the WoM requirement was removed.
- 1.56. This is on assumption that PCWs with greater conversions will mean suppliers are more likely to make their deals fulfillable or exclusive through PCWs as to gain more customers. More revenue for PCWs through increased conversions would also mean increased incentives for accredited PCWs to invest in their energy service so more consumers use their service to switch.
- 1.57. Negative effects on competition.

³⁵ Participating PCWs in the WoM removal trial collectively accounted for the majority of PCW acquisitions based on the CMA's estimate. [CMA Energy Market Investigation Final Report](#), appendix 9.3, paragraph 27

³⁶ Getting this information would require PCWs to be able to track consumers' activities outside of their website.

- 1.58. Responses from the two PCWs participating in the WoM trial, and suppliers to the December 2017 RFIs have suggested that the risks of removing the WoM requirement causing increases in commission rates or restrictive clauses did not occur during the WoM removal trial³⁷. As indicated in paragraphs 1.38 – 1.40, there is little evidence of suppliers having difficulty in using alternative routes to market. This suggests that in the event that PCWs increase commission rates after the WoM requirement is removed alternative routes to market can be used. As indicated in paragraphs 1.32 – 1.37 there continues to be little evidence of commission rate increases or that small suppliers are being charged more commission than large suppliers.
- 1.59. We note however that this does not give a comprehensive view of all accredited PCWs and it does not rule out increases in commission rates and/or restrictive clauses being placed on suppliers in the future. For this reason, our minded-to option for removing the WoM requirement has mitigations that can reduce the likelihood of increased commission rates and/or restrictive deals being placed on PCWs.
- 1.60. The WoM requirement may mean consumers miss out if they do not shop around multiple sites
- 1.61. By removing the WoM requirement, PCW users will not be able to directly access non-fulfillable deals from an accredited PCW. This means that if consumers do not shop around PCWs, they may miss deals that they otherwise would have chosen if the WoM requirement were in place.
- 1.62. Research from the CMA indicates that 59% of energy PCW users go to more than one PCW when researching energy³⁸. This suggests that the risk of consumers missing energy deals is not high for PCW users provided they can access a wider view of the market from other PCWs.
- 1.63. However, it is possible that higher conversion increases occurring when the WoM requirement is removed is partly because consumers are switching to fulfillable deals who would have switched to non-fulfillable deals. It is also possible that higher conversion increases when the WoM requirement is removed can be partly explained by consumers switching to fulfillable deals who would have otherwise not switched. Research has shown that around half of respondents to a survey agreed with the statement, “switching is a hassle that I’ve not got time for”³⁹. Given the additional steps needed to switch to a non-fulfillable deal compared with a fulfillable deal, this give some support that removing non-fulfillable deals and the hassle of switching to them could cause consumers to switch to fulfillable deals who would have otherwise not switched.
- 1.64. Our minded-to option has mitigations that can reduce the likelihood of consumers missing non-fulfillable deals would otherwise have chosen them.
- 1.65. Conclusion on removing the WoM requirement

³⁷ As the trial occurred between September – October 2017, and suppliers and PCWs reported on commission rate increases and difficulties in working together between July – December 2017.

³⁸ [CMA \(2016\) Energy Market Investigation Final Report](#), Appendix 9.3, paragraph 73.

³⁹ [Consumer Engagement Survey 2017 Report](#), September 2017 Ofgem. Paragraph 5.4, p50

- 1.66. Both the risks and benefits of the Partial Remedy can increase by removing the WoM requirement. For example, in the absence of non-fulfillable deals on accredited PCWs, removal of the WoM requirement will further increase incentives for suppliers to make their deals fulfillable and to offer exclusive deals with PCWs. More fulfillable and exclusive deals can increase conversions for accredited PCWs, which can increase incentives for PCWs to invest in getting consumers to use their service to switch.
- 1.67. However, removing the WoM requirement may mean consumers miss non-fulfillable deals that they might otherwise have chosen if the Partial Remedy were in place. It could also increase the risk of increased PCW bargaining power causing negative impacts on competition. Without commission free access to non-fulfillable deals, an increase in PCW commission rates and/or restrictive conditions being placed on suppliers may occur.
- 1.68. Our current evidence base does not suggest that these risks to competition are high given views expressed by a large proportion of suppliers on the routes to market available outside of PCWs, and a lack of data on commission rate increases occurring. Our proposal for removing the WoM requirement includes mitigations that will address this risk, as well as the risk of consumers missing non-fulfillable deals.

Appraisal of our minded to option for removing the WoM requirement

- 1.69. This section looks at the different ways we considered minimising the risks of removing the WoM. We considered four versions of WoM removal, including our minded-to option. These options are outlined below (to note, Option 1 is maintaining the Partial Remedy so has not been listed below):
- Option 2 - removal of WoM requirement with new testing obligations so consumers are aware of the market coverage of PCWs
 - Option 3 - removal of WoM requirement with no testing obligations
 - Option 4 - removal of WoM requirement with obligations on linking to the CACT and current testing obligations
 - Option 5/Minded-to option - removal of WoM requirement with obligations on linking to the CACT and no testing obligations.
- 1.70. These options provide mitigations to the risks of removing the WoM requirement in different ways. As each option affects accredited PCWs differently, it is important to consider how these different options could impact consumers. For example, Option 3 relies on Code rules specifying accredited PCWs must be clear about their market coverage. This can prompt consumers to search elsewhere for other deals in the absence of the Wide Results page. This can increase the chances of consumers shopping around different sources to switch, mitigating potential increases in bargaining power for PCWs. This can also ensure that consumers do not miss non-fulfillable deals that they might have otherwise chosen if the WoM requirement were in place. Option 2 would add to this by placing testing obligations on accredited PCWs so they can demonstrate to Ofgem that their consumers are aware of their market coverage.

- 1.71. Option 5 (our minded-to option) would supplement the existing rules in the Code on market coverage by requiring accredited PCWs that do not show a Wide Results to display a link to the CACT. This can help ensure that any increase in conversions that occur when the WoM requirement is removed is not due to consumers missing non-fulfillable deals, as these deals will still be accessible via the CACT. Option 4 would replicate Option 5 but also keep the current testing obligations on accredited PCWs that choose to display a Wide Results page. This can increase the chances of consumers using the Wide Results page and accessing non-fulfillable deals.
- 1.72. Although these options can help mitigate the risks of removing the WoM requirement, they can also diminish incentives for fulfillable deals and investment by better ensuring suppliers can continue to have an indirect route to market through accredited PCWs
- 1.73. Ofgem took forward our minded-to option (Option 5) as a way to strike the right balance of these trade-offs. We considered evidence indicating that market coverage messages (Option 3) has a mixed impact on consumers. This derived from qualitative interviews Ofgem commissioned with consumers that showed mixed results on consumers' interpretation of market coverage messages shown on PCWs. The research also found a tension between informing consumers and ensuring that messages were not off-putting, particularly when taking into account consumers' understanding of PCWs⁴⁰.
- 1.74. Option 2 could address this by requiring accredited PCWs to run tests on their customers to ensure that they develop messages that help consumers understand the market coverage of their site whilst not putting them off switching. Feedback from accredited PCWs on these proposals questioned whether placing testing obligations on accredited PCWs was proportionate to the role of a voluntary accreditation scheme⁴¹. We also considered increased costs for accredited PCWs if they were obligated to carry out consumer testing to develop market coverage messages that inform and engage their customers. Consumer testing and iterative development of messages would likely divert resources from PCW's investing in getting more consumers to use their service to switch.
- 1.75. In comparison, a link to the CACT in absence of a Wide Results page without testing obligations (Option 5) could ensure consumers are able to access non-fulfillable deals in the absence of the WoM requirement. This would reduce the risk of removing the WoM requirement causing consumers to miss deals and PCWs having greater bargaining power causing them to place uncompetitive conditions on suppliers. This would also reduce the need for accredited PCWs to carry out consumer tests on their understanding of market coverage (Option 2 and 4) which can allow them to focus their resources on investing in their service.

⁴⁰ Community Research (2017), Ofgem Price Comparison Website (PCW) Research - Testing message options. (Unpublished). This involved interviewing 20 energy consumers who had previously used PCWs.

⁴¹ Meeting between Ofgem and Confidence Code members, November 2017.

- 1.76. In the absence of testing obligations, Ofgem will rely on its existing ad hoc checks and annual audit of accredited PCWs to ensure that they are adhering to the Code's rules on market coverage messaging. As outlined in our decision document released alongside this Impact Assessment, we think it is important for PCWs to clearly explain their services and how they make money, as suggested by CMA's DCT Study⁴². We agree with the CMA that consumers need sufficient trust and confidence to use DCTs in the first place, and enough understanding to choose and use them effectively. Ofgem consider it proportionate to leave it to PCWs to decide how best to display messages on their service based on the insights they have on the typical profiles of their website visitors

Cost considerations for minded-to option

- 1.77. This section considers how implementing the minded-to option will impact costs for four key groups: code accredited PCWs, suppliers, consumers and Ofgem.

Code-accredited PCWs

- 1.78. The intention of the minded-to option is to provide PCWs with greater flexibility so they can invest and innovate in their service to get more consumers to switch.
- 1.79. Accredited PCWs will continue to incur some costs to search the market to collect Historic Tariffs⁴³, and consumers' current tariffs. Our obligation to require accredited PCWs to display a link to the CACT in absence of the Wide Results page may require resources to understand how best to present this link in a way that is compliant with the Confidence Code.
- 1.80. However, there will be comparatively less resource required for accredited PCWs to update previously listed non-fulfillable tariffs if they choose to omit a Wide Results page and display a link to the CACT. In addition, removal of testing obligations on accredited PCWs will reduce administrative costs for accredited PCWs.

Suppliers

- 1.81. Suppliers are not Code members, and therefore the Code's requirements do not affect them directly. Any impacts are the result of the commercial agreements that suppliers choose to enter into with PCWs. Suppliers remain free to explore alternative routes to market instead of PCWs.
- 1.82. Some suppliers already have commercial agreements with PCWs and therefore already incur any associated costs like commission. As outlined in the body of this IA, there is a possibility that commission rates will increase if our minded-to option increases PCWs' bargaining power.
- 1.83. Some suppliers do not currently have commercial agreements in place with PCWs. Some of these may choose to enter into commercial agreements with PCWs as a result of our minded-to option. If they do, there could be one-off

⁴² [Digital comparison tools market study. Final report](#), Page 9

⁴³ means those tariffs that have legacy customers on them but are no longer available to new customers.

costs of negotiating agreements, and then the ongoing costs of paying commission. Suppliers only have to pay commission when a consumer switches through a PCW, and so the commission payment should be accompanied by a benefit in terms of a new customer acquisition.

- 1.84. While not paying commission may make it easier for suppliers to enter the market and make themselves known, we would expect reasonable marketing costs to be part of the cost base of an efficient supplier in a well-functioning market.
- 1.85. Any additional commission payments would be a cost to suppliers, but would also be a source of revenue to PCWs. These payments therefore represent a transfer between types of business, rather than a cost to businesses as a whole.

Consumers

- 1.86. While we expect the overall impact of our minded-to option to be positive for consumers, some may be worse off. This could occur in two ways.
- 1.87. First, once the minded-to option is implemented, some suppliers who do not currently pay commission may start to do so. They may then increase their prices to reflect some or all of this commission cost, given that commission is a marginal cost to suppliers. However, suppliers may not increase prices if they are able to redirect marketing costs from other sources, or if they choose to absorb the commission cost. The effect on an individual supplier's prices will depend on factors like the expected proportion of acquisitions through PCWs for a particular tariff, and the length of time over which a supplier seeks to recover customer acquisition costs.
- 1.88. Second, some individual consumers may get less good deals, if they were prepared to navigate to the website of a supplier who they could not switch to from a PCW, but did not realise what the Partial View shows, or find it too difficult to go to the CACT to view a wide range of deals. If the consumer would have preferred to switch to the cheapest tariff in the market⁴⁴, then the consumer would be paying more than they could have. However, the consumer may still make a saving through switching through a PCW compared to their current tariff.

Ofgem

- 1.89. We will need to monitor compliance with the new requirements. This forms part of our existing role as Code manager. At the same time, we will no longer have to assess compliance with requirements that are removed. We do not have a specific assessment of the administrative cost of minded-to option, but we expect the net effect to be small.

Conclusion on minded-to option

⁴⁴ This assumes that the cheapest tariff is on the CACT, and that the consumer was prepared to re-enter their details on the CACT and the supplier's website

- 1.90. With consideration of the above evidence, Ofgem concluded that our minded-to option is the best way of achieving the benefits of removing the WoM requirement whilst mitigating the risks. The majority of respondents to the May 2018 consultation agreed with this approach. A review of evidence has indicated that:
- Conversion rates and PCW investment are likely to increase if the WoM requirement is removed under our minded-to option more so than it would do with the Partial Remedy.
 - Exclusive deals and/or fulfillable deals are likely to increase under our minded-to option more so than it would do with the Partial Remedy.
 - There is limited evidence indicating that this policy change will adversely affect competition via an increase in commission rates and restrictive clauses being placed on suppliers.
 - Our minded-to option can reduce risks of removing the WoM requirement by giving consumers direct access to the Citizens Advice Comparison Tool which will show them non-fulfillable deals.
- 1.91. We acknowledge that there are some evidence gaps and the importance of reviewing the potential risks and benefits of our policy change post implementation to inform future policy.
- 1.92. Potential risks include an increase in commission rates and restrictive clauses being placed on suppliers, negatively affecting competition, and consumers missing out on the cheapest deals if they do not shop around. The potential risks and benefits of our policy change will be reviewed after at least a year of implementation. This will inform any future policy development on the Confidence Code.

Monitoring and evaluation

- 1.93. To assess whether the benefits or risks of removing the WoM requirement from the Confidence Code have materialised, Ofgem will undertake monitoring of this policy after at least a year of implementation. By analysing data over an approximate one-year period, we will be able to make stronger conclusions on the impacts of the policy.
- 1.94. Information will be gathered through an RFI to accredited PCWs, and a mandatory RFI to suppliers to account for any inconsistencies in the PCW RFI. This will measure levels of PCW investment and whether there has been an increase in fulfillable deals on accredited PCWs. We will also look at PCW commission rates and routes to market for suppliers to understand whether suppliers have viable routes to market.
- 1.95. As noted in the Default Tariff Cap: Initial View on Impact Assessment, the incoming price cap on default tariffs planned for Winter 2018 could reduce

savings available to consumers from switching tariff and/or suppliers, which could lead to fewer switches through PCWs and decreased revenue for PCWs⁴⁵.

- 1.96. Our analysis will thus need to consider whether our policy change has increased investment and fulfillable deals more so than would be the case if the WoM requirement stayed in place, rather than a year-by-year comparison.

⁴⁵ Ofgem 2018, [Default Tariff Cap: Policy Consultation Appendix 14 – Initial View on Impact Assessment](#), p.38. / [Default Tariff Cap: Policy Consultation Appendix 11 – Headroom](#), Table A11.1, p. 29.