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By email: Confidencecode@ofgem.gov.uk

Dear Caroline

Confidence Code Review 2016

Thank you for the opportunity to comment on Ofgem's proposals to amend the Confidence Code for Price Comparison Websites (PCWs). This non-confidential response is submitted by Centrica on behalf of British Gas.

We support Ofgem's swift action to implement the CMA remedy to improve competition between PCWs. We recognise the role that PCWs can play in facilitating competition between suppliers and enhancing consumer engagement in the market. We believe PCWs can help consumers make informed choices about which tariff and supplier best serves their preferences.

This response focuses on the two main changes proposed by Ofgem, namely implementing the CMA's recommendation to remove the Whole of Market (WoM) requirement and reforming the Personal Projection methodology.

Removing the WoM requirement

The CMA recommended that Ofgem should amend the Confidence Code to remove the requirement that PCWs must provide a WoM view to consumers¹. We support full implementation of the CMA's proposed remedy in principle. However, we agree with Ofgem that changes to the WoM requirements are complex and have implications for how Ofgem audits PCWs against the Confidence Code. We recognise that all parties need time to think through the implications of this remedy for the future of the Confidence Code. We therefore support Ofgem's proposals to revert to the pre-2015 version of the Code as an interim step.

We believe that Ofgem's proposed interim steps will allow suppliers to reach exclusive deals with PCWs, facilitating competition between PCWs for the benefit of consumers. A number of suppliers, including British Gas, have already negotiated such deals with PCWs. We agree with Ofgem that PCWs should not be required to present an exclusive deal negotiated by a rival site as this could distort incentives and it would not make sense to consumers. We believe that the Citizens Advice Comparison Tool has an important role to play in ensuring that consumers can see and choose between all available tariffs.

¹ CMA Energy Market Investigation Final Report
<https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

Reforming the Personal Projection

We do not agree with Ofgem's proposal to revert to the pre-2015 Code rules setting out how PCWs should calculate the Personal Projection. We believe that Ofgem should go further than proposed and provide PCWs with the same flexibility as proposed for suppliers to determine how the Personal Projection is calculated. The removal of prescription will enable PCWs to determine how best to calculate and present cost information for consumers on their sites. A prescriptive methodology may not cater for future tariffs or consumer preferences, so could either inhibit innovation or need to be constantly changed over time, creating inconsistency for consumers and regulatory uncertainty for suppliers. For instance, it is not obvious whether contingent discounts should be included or excluded from the Personal Projection or what affect this will have on consumer behaviour.

Ofgem should accept that each PCW may calculate the cost and associated savings differently for the same tariff. To facilitate comparison, each PCW should provide Projections that are "internally consistent"². Ofgem should also accept that PCWs may provide a different Projection to suppliers for the same tariff. In our response to Ofgem's "Helping Consumers Make Informed Choices" consultation, we agree with Ofgem that Personal Projections calculated by suppliers should be:

- Personalised
- Transparent
- Based on reasonable assumptions

We believe such principles could work with the direct application of the Standards of Conduct to ensure PCWs provide comparisons that are complete, accurate and not misleading.

Ofgem should ensure that the supplier faces no compliance risk if the PCW provides a different Projection to the Projection provided by the supplier. As we highlighted in our response to Ofgem's Future of Retail Market Regulation consultation, we believe Ofgem should separate compliance for:

- a) product design, which should remain with the supplier
- b) distribution, which could sit with either the supplier or the PCW depending on which entity presents the product to the customer³

Provided the methodology used by the PCW is clear and any differences between the PCW and the supplier are understood by the consumer, there should not be a problem. We are not aware of any evidence from other markets, e.g. the telecommunications market, suggesting that quotation methodologies should be identical across all market players or require the regulator to determine a single market-wide methodology. However, should evidence emerge that inconsistency is creating a significant problem for consumers, then Ofgem should review the Confidence Code requirements.

If Ofgem retains prescription for members of the Confidence Code, then it should be clear that the methodology is not in any way binding on suppliers and will not undermine the adoption of the comparability principles proposed in Ofgem's "Helping Consumers Make Informed Choices" consultation.

² Pg.10 Helping Consumers to Make Informed Choices consultation
https://www.ofgem.gov.uk/system/files/docs/2016/08/proposed_changes_to_rmr_clearer_and_sales_and_marketing_licence_conditions_august_2016.pdf

³ Pg. 24 British Gas response to Future of Retail Market Regulation consultation
https://www.ofgem.gov.uk/system/files/docs/2016/06/british_gas_response.pdf

Transition to principles-based regulation

We support the move to principles-based regulation for domestic energy suppliers and believe Ofgem's approach should incorporate PCWs. We believe that principles for comparability and sales and marketing – which are separately being consulted on by Ofgem – should cover PCWs through the Confidence Code. We set out our views on the drafting of those principles in our response to Ofgem's "Helping Consumers Make Informed Choices" consultation.

Future regulation of PCWs

There may be merit in Ofgem reviewing the purpose of the Confidence Code in light of the CMA's Final Report. We believe that consumers should have confidence that the information provided by PCWs is complete, accurate and not misleading. However, Ofgem regulation should not prevent PCWs from innovating, including offering bundled products across different sectors. As Ofgem acknowledges, new business models continue to develop and some PCWs may wish to order products according to characteristics other than price. Ofgem's current approach may not strike the right balance between giving confidence to consumers and facilitating innovation.

We provide answers to Ofgem's consultation questions in Appendix 1. If you have any questions about this consultation response, please contact me by calling 07769 548 906 or emailing Thomas.Lowe@centrica.com.

Yours sincerely

Thomas Lowe

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Appendix 1 – Centrica response to consultation questions

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**

While we support full implementation of the CMA's proposed remedy in principle, we agree with Ofgem that changes to the WoM requirements are complex and have implications for how Ofgem audit PCWs. We recognise that all parties need time to think through the implications of this remedy for the future of the Confidence Code and therefore support Ofgem's proposals to revert to the pre-2015 version of the Code as an interim step.

We agree with Ofgem that PCWs should prominently inform consumers whether the tariffs presented in the default review form a partial or WoM view of the tariffs available. We believe PCWs can help consumers make informed choices about which tariff and supplier best serves their characteristics and preferences.

Alongside the changes proposed to the WoM requirement, we believe that Ofgem should extend its work on principles-based regulation to cover PCWs. The principles for comparability and sales and marketing – which are separately being consulted on by Ofgem – should apply directly to PCWs. We also support any broad principles, including the Standards of Conduct, being extended to PCWs. Using principles-based regulation to regulate PCWs would facilitate innovation and support competition, enabling PCWs to find different ways to engage with consumers.

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**

Yes, we agree with the rationale and proposed policy changes. Please see our answer to Question 1.

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**

While we agree with the rationale for the changes to the WoM filter choice, enabling PCWs to pre-tick boxes is inconsistent with good industry practice. Pre-ticked boxes are not considered to demonstrate express consumer consent and do not support consumers to make informed choices. Ofgem should require PCWs to show either a WoM or partial list of tariffs and then prominently inform the consumer about the breadth of tariffs being shown. The consumer could then make an informed choice whether to see the alternative partial or WoM view.

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**

Yes, we agree with the rationale and the proposed policy changes. We agree that messaging used by PCWs to inform consumers about what tariffs are being shown should

be prominent, clear and intelligible. We support the Standards of Conduct applying directly to PCWs. Extending the Standards of Conduct to PCWs would mean that PCWs should provide consumers with information which:

- (i) "is complete, accurate and not misleading (in terms of the information provided or omitted);
- (ii) is communicated (and, if provided in Writing, drafted) in plain and intelligible language;
- (iii) relates to products or services which are appropriate to the Domestic Customer to whom it is directed; and
- (iv) is otherwise Fair both in terms of its content and in terms of how it is presented (with more important information being given appropriate prominence)"⁴

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, as long as PCWs are regulated via the Confidence Code, PCWs should be required to test the prominence, clarity and intelligibility of their messaging and Ofgem should monitor the testing.

If PCWs were regulated directly by Ofgem, rather than via the Confidence Code, we would question whether it is proportionate for Ofgem to require consumer testing. Under a direct regulation model, PCWs would face binding and enforceable licence conditions that could require PCWs to provide information that is clear, accurate and not misleading. PCWs may provide the information in different ways and adopt a range of ways to assure themselves that the messaging was appropriate, with testing as only one option among many.

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**

We agree with the changes to the Confidence Code proposed by Ofgem, with the exception of the change proposed to 5(Gi) and 5(Gii). As we set out in our response to Question 3, we believe that enabling PCWs to pre-tick boxes is inconsistent with good industry practice. Pre-ticked boxes are not considered to demonstrate express consumer consent and do not support consumers to make informed choices. Ofgem should instead require PCWs to show either a WoM or partial list of tariffs and then prominently inform the consumer about the breadth of tariffs being shown. The consumer could then make an informed choice whether to see the alternative partial or WoM view.

We agree with Ofgem that the proposed Code wording will allow suppliers to reach exclusive deals with PCWs, facilitating competition between PCWs for the benefit of consumers. We agree that these changes should not require PCWs to include an exclusive deal negotiated by a rival site as this could dampen competition. We believe that the Citizens Advice Comparison Tool has an important role to play in ensuring that consumers can see and choose between all available tariffs. The Citizens Advice Comparison Tool is not a commercial PCW and so should present consumers with all tariffs, including exclusive deals negotiated by commercial PCWs.

⁴ SLC 25C.4

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**

We do not agree with Ofgem’s proposal to revert to the pre-2015 Code rules setting out how PCWs should calculate the Personal Projection. We believe that PCWs should have the same flexibility to determine the Personal Projection as Ofgem proposes for suppliers in the “Helping Consumers Make Informed Choices” consultation. The removal of prescription will enable PCWs to determine how best to calculate annual cost information for consumers using their sites. If Ofgem retains prescription for members of the Confidence Code, then it should be clear that the methodology is not in any way binding on suppliers and will not undermine the adoption of the comparability principles proposed in Ofgem’s parallel consultation.

We are not aware of any evidence that prescription is necessary in this area for effective market functioning. While Ofgem refers to a risk of consumers being “misled or confused by differences between individual sites⁵”, we are not aware of any evidence that quotation methodologies should be identical across all market players or require the regulator to determine a single market-wide methodology. Ofgem should accept that different PCWs may calculate the cost and associated savings differently for the same tariff. To facilitate comparison, each PCW should provide Projections that are “internally consistent”⁶. Provided the methodology used is clear and any differences are understood by the consumer, there should not be a problem. However, should evidence emerge that inconsistency is creating a significant problem for consumers, then Ofgem should review the Confidence Code requirements.

Ofgem should also accept that PCWs may provide a different Projection to suppliers for the same tariff. Ofgem should ensure that the supplier faces no compliance risk if the PCW provides a different Projection to the Projection provided by the supplier. As we highlighted in our response to Ofgem’s Future of Retail Market Regulation consultation, we believe Ofgem should separate compliance for:

- a) product design, which should remain with the supplier
- b) distribution, which could sit with either the supplier or the PCW depending on which entity presents the product to the customer⁷

Ofgem should consider whether the Personal Projection rules could be made more flexible for suppliers and PCWs in other ways, responding to consumer preferences.

1. Duration. Ofgem should consider allowing for the provision of a monthly, quarterly or weekly figure, rather than just an annual figure. Ofgem does not appear to have considered the possibility of introducing greater flexibility over what duration is covered by the Personal Projection.
2. Dual fuel. Suppliers and PCWs should have the flexibility to provide a combined view of gas and electricity costs in a single projection. Many consumers purchase dual fuel products and then pay for both fuels through a single Direct Debit. These consumers may prefer the provision of one dual fuel projection which is consistent with their payment experience, rather than two single fuel projections.

⁵ 3.7, Pg. 23 Confidence Code Review 2016

https://www.ofgem.gov.uk/system/files/docs/2016/08/whole_of_market_consultation.pdf

⁶ Pg. 10 Helping Consumers to Make Informed Choices consultation

⁷ Pg. 24 British Gas response to Future of Retail Market Regulation consultation
https://www.ofgem.gov.uk/system/files/docs/2016/06/british_gas_response.pdf

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 do not support Ofgem’s proposed changes to the Confidence Code drafting. The pre-2015 Confidence Code content for providing a comparison is not appropriate for the dynamic and competitive market that the CMA envisages. It is also inconsistent with Ofgem’s move to principles-based regulation for domestic energy suppliers.

We do not support Ofgem reinstating rules that prevent PCWs from including introductory sign up offers, one-time discounts or discounts that depend on the consumer behaving in a certain way. It is not obvious whether such discounts should be included or excluded from the Personal Projection or what affect this will have on consumer behaviour. We believe it should be up to PCWs to determine whether such discounts are included in the Personal Projection. Removing prescription enables suppliers and PCWs to test the effectiveness and accuracy of different approaches. The overriding focus of the PCW should be providing information about expected costs that allows the consumer to make an informed choice.

In our response to Ofgem’s “Helping Consumer Make Informed Choices” consultation, we agree with Ofgem that Personal Projections calculated by suppliers should be:

- Personalised
- Transparent
- Based on reasonable assumptions

We believe such principles could work with the direct application of SLC 25C to ensure PCWs provide comparisons that are complete, accurate and not misleading. We support Ofgem retaining “Estimated Annual Costs” as defined term for PCWs if Ofgem intends to “set out...expectations around how suppliers should calculate internally consistent estimated annual costs”⁸.

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**

While the revised Confidence Code wording reflects Ofgem’s proposals, we do not believe that the proposals are appropriate for the dynamic and competitive market that the CMA envisages. It is also inconsistent with Ofgem’s move to principles-based regulation for domestic energy suppliers.

Please see our answer to Question 8 for an alternative proposal.

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

We agree there no changes are required to the TIL references within the Code. However, we believe that it is unnecessary for Ofgem to retain prescription around the content and layout

⁸ Pg.43 Helping Consumers to Make Informed Choices consultation
https://www.ofgem.gov.uk/system/files/docs/2016/08/proposed_changes_to_rmr_clearer_and_sales_and_marketing_licence_conditions_august_2016.pdf

of the TIL. As highlighted in our response to Question 1, we support Ofgem extending the proposed comparability and sales and marketing principles for domestic suppliers to cover PCWs as well. Extending Principle 3 would require PCWs to develop “information, services and/or tools” to help consumers make informed choices. It seems inconsistent for Ofgem to propose a principle to provide tools to aid comparability but then to prescribe in detail one of those tools for both suppliers and PCWs. Such prescription inhibits the ability of suppliers and PCWs to compete and innovate by preventing them from adapting the TIL for innovative products or to improve the customer journey. Suppliers and PCWs should determine, with reference to consumer legislation and customer research, what information is important to present to customers and in what format.

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 with Ofgem that the following changes are currently out of scope of this review of the Confidence Code:

- PCW access to ECOES and DES
- Smart metering
- Half-hourly settlement

We encourage Ofgem to periodically review whether developments in these areas should involve consequential amendments to the Confidence Code.

Ofgem should consider whether changes brought about by the second phase of Midata should be incorporated within the Confidence Code. We note that the second phase of Midata will allow PCWs to access consumers’ Midata files directly and will include additional data items. We also expect to see an increase in the volume of data produced in the energy sector because of the roll-out of smart metering and the development of the smart home. As more data is produced and data access becomes easier, consumers will increasingly want to feel confident that their data is being handled appropriately.

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?

There may be merit in Ofgem reviewing the purpose of the Confidence Code in light of the CMA’s final report. We believe that consumers should have confidence that the information provided by PCWs is complete, accurate and not misleading. However, Ofgem regulation should not prevent PCWs from innovating, including offering bundled products across different sectors. As Ofgem acknowledges, new business models continue to develop and some PCWs may wish to order products according to characteristics other than price. Ofgem’s current approach of auditing of PCWs via the Confidence Code may not strike the right balance between giving confidence to consumers and facilitating innovation.