

03 October 2016

Caroline Ainslie
Senior Manager
Consumers and Competition
Ofgem
9 Millbank
London SW1P 3GE

Email: alisonrussell@utilita.co.uk

By email only

Dear Caroline,

Re: Confidence Code Review 2016

Thank you for the opportunity to comment on the above document.

Although we have reservations, Utilita generally supports the proposed changes to the Confidence Code (the Code), to reflect other changes resulting from the CMA remedies. However, we believe some minor adjustments to the proposals would be beneficial to customers.

While we have not commented on all questions, we have referenced the questions and grouped our comments with each set of questions for convenience.

Our primary concern relates to the removal of the Whole of Market (WoM) comparison. In conjunction with the removal of the constraint on tariff numbers, we believe this has the potential for significant customer confusion and disbenefit if not carefully managed and communicated.

We also agree with the concerns on oversight set out by Ofgem and hence welcome the approach of an intermediate step as proposed.

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

As above, we do not disagree with the proposed changes, but we believe that for customer clarity it will be essential to address potential customer confusion.

While the PCWs may be signed up to the Confidence Code, they are not supply licensees and hence will not be bound by the principles that are (or will be) set out in the licence conditions on treating customers fairly. On this basis any requirements and principles must be incorporated into the Code.

We suggest strengthening the Code to ensure inclusion of similar overarching principles as are present in the licence to require simplicity and clarity, we believe that this will assist Ofgem in assessing and auditing the signatories. This approach would make provision for a fall back if the Code is not explicit pending any future updates as the industry develops and innovates.

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

See Question 1. In addition, we suggest that PCWs must be required to include a message to remind customers in partial default view that other offers may be available which are not visible or may not be available through that particular comparison website.

It must also be clear to the customer that they are in a default partial view, we suggest this should always be present on screen where the customer is on a partial view.

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

Please see above. In addition, while we support the general approach, we are concerned this may lead to limited choice being evident to consumers, this risk is also related to the removal of the restrictions on numbers of tariffs and acquisition tariffs.

Where sites default to a filtered view, as well as a requirement to show no fewer than 10 of the cheapest tariffs available, we suggest the following should be considered:

- a) Restricting the number of times a supplier (and any related company or affiliate) can be shown on that top ten screen
- b) Include a requirement that there must be offerings shown from a range of suppliers (this will also encourage PCWs to negotiate with suppliers on reasonable terms)
- c) Mark any tariffs which are restricted access – either by tariff requirements, number of contracts available or because they are acquisition only tariffs.

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

We support the requirement to test wording for clarity and customer understanding.

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, as above.

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

As above, we suggest wording should be included to provide an overarching principle of clarity and fairness. We also believe the Code should include wording to incorporate the suggestions made above. In particular, the reminders to consumers that other offers may be available not just in other views, but from other suppliers or websites.

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 believe that some adjustment will be required to the drafting with the removal of the personal projection. We agree with the reintroduction of the pre-2015 drafting, however PCWs should be required to include more information on consumption and estimation processes used.

For example, while the consumer may enter data relating to their consumption, where the tariffs being offered involve non single rate tariffs, and the PCW has needed to allocate consumption to bandings, the kWh allocated to each band must be stated on the face of the comparison as well as the total kWh used. The split quoted should also recognise any seasonal variations used.

If consumers wish to use more than one site, and this information is not provided up front, the consumer will not be able to have confidence in their choice as different sites may use different estimation routines. For consumption dependent tariffs this would be crucial.

This is an addition to the pre-2015 drafting, however it reflects that the industry is moving on, and such tariffs can be expected to increase in number with the removal of tariff restrictions and the roll out of smart metering. It is important to do some future proofing of the arrangements to ensure some stability after this set of changes to the industry framework.

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

Please see question 7.

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

Please see question 7.

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

We agree no specific changes are required. However, in line with comments above, it would be helpful to ensure that the Code requires PCWs to remain in compliance with the terms used in the licence where relevant.

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

We agree that the initiatives are currently out of scope, and that progress should be monitored for future impacts. In particular, the area of consumer consent.

The CMA remedies suggest that PCWs may have access to information not traditionally available such as ECOES/DES and smart meter data. While we understand the logic to this, provisions must be in place to ensure that PCWs do not have access other than on the terms available to suppliers – for example around the requirement to obtain proper consent from the consumer and keep this status up to date.

Concerns have been raised on data protection with respect to some aspects of the CMA remedies. PCWs cannot be exempt from such data protection requirements, and where compliance cannot be evidenced, access to data must not be granted.

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?

No additional points.

To conclude, while we agree that changes are needed to the Code to reflect changes being made elsewhere as a result of the CMA remedies, care is needed. PCWs are not licensed in the same way as suppliers and do not have the same obligations to consumers.

Consumers has acquired increasing confidence in using such sites not least as a result of the Code. In making it easier for PCWs to provide limited and filtered views, if consumers are not clear what is happening, these changes have the power to damage that fragile confidence.

We believe that this can be mitigated by requiring PCWs using partial and filtered views by default to remind consumers that other options are available. This approach is similar to the cheapest tariff messaging and switching reminders required of suppliers, and will remind consumers to consider options without restricting choice.

We hope these comments have been useful and would be happy to discuss any points in more detail.

Kind regards,

Yours sincerely,

By email

Alison Russell
Head of Regulatory Affairs