

Protecting consumers in collective switching schemes

Consultation

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Overview

Collective switching is a relatively new activity in Great Britain's (GB's) energy markets. It involves consumers grouping together to secure a deal for their energy supply. This is typically developed by an organiser (eg a local authority) and run by an expert service provider, which negotiates with multiple suppliers.

This consultation outlines proposals for interim regulatory measures to build consumer trust, promote transparency and create positive opportunities for consumers. This project is part of our Third Party Intermediaries (TPI) programme which has the long term objective of developing the enduring regulatory framework for TPIs. We are also addressing more immediate TPI issues such as collective switching which is becoming an important part of energy markets.

We seek views on two areas of our proposals:

- **Expanding the Confidence Code** to encompass accreditation of collective switching service providers, and include specific requirements for collective switching
- **Requiring suppliers to use an accredited collective switching service** when using the Retail Market Review tariff cap exemption, by amending SLC 22B.38.

Context

Collective switching has grown quickly since Which? and 38 Degrees carried out the first GB collective switch in May 2012. It has been promoted by the government¹ and by consumer groups² as a way in which consumers can engage with the market³ and save money on their energy bills. We have welcomed collective switching as an innovation that could benefit consumers.

As our principal objective is to protect the interests of existing and future energy consumers, we have considered the benefits and risks of collective switching. We have developed a regulatory response that will protect consumers while helping them benefit from these schemes.

This work is part of our Third Party Intermediaries (TPIs) programme which has the long-term objective of developing the enduring regulatory framework for TPIs, with bespoke projects addressing more immediate issues such as collective switching. There are also close links with the Retail Market Review (RMR). This is partly because collective switching could raise levels of engagement for vulnerable and disengaged consumers in a way that is consistent with the aims of the RMR. We have also moved to encourage innovation and collective switching initiatives in our RMR Domestic final proposals by allowing an exemption from the cap on tariff numbers for fixed-term contracts where schemes meet certain criteria.

¹ Better Choices: Better Deals – BIS 2011
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/60540/better-choices-better-deals.pdf

² Get it, together – The case for collective switching in the age of connected consumers
Consumer Focus 2012
<http://www.consumerfocus.org.uk/files/2012/04/Consumer-Focus-Get-it-together.pdf>

³ Any reference to a market or markets in this document is without prejudice to any definition of market which may be established for other purposes, such as competition law

Associated documents

All documents are available at www.ofgem.gov.uk

- The Retail Market Review – Statutory consultation on the RMR domestic proposals, June 2013 Reference: 95a/13.
- IPSOS MORI, Consumer Engagement with the Energy Market – Tracking survey, 2013, June 2013.
- The Retail Market Review – Final domestic proposals, March 2013, Reference: 40/13.
- The Retail Market Review – Final non domestic proposals, March 2013, Reference: 38/13.
- Confidence Code – Code Of Practice for online domestic price comparison services, March 2013, The Retail Market Review – Updated domestic proposals, Reference: 135/12, October 2012.
- Promoting Smarter Energy Markets, December 2011, Reference: 174/11.
- The Retail Market Review – Non Domestic Proposals, November 2011, Reference: 157/11.
- Energy Supply Probe – Initial Findings Report, October 2008, Reference: 140/08.
- The Third Party Intermediaries: exploration of issues and options, June 2013, Reference 103/13
- Open letter on Third Party Intermediaries (TPI) Programme, October 2013, <https://www.ofgem.gov.uk/publications-and-updates/open-letter-third-party-intermediaries-tpi-programme>
- Open letter on the Marketing of energy supply to domestic customers by Third Party Intermediaries (SLC 25), October 2012, <https://www.ofgem.gov.uk/ofgem-publications/38441/20121009marketing-energy-supply-domestic-customers-third-party-intermediaries.pdf>

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Executive summary

There has been rapid growth in collective switching since the “Big Switch”⁴ run by Which? and 38 Degrees in May 2012, with many subsequent schemes being run by local authorities. Thirty-one schemes received funding through DECC’s Cheaper Energy Together competition⁵. Although these schemes have been smaller than the Big Switch, there has been sustained participation by consumers, and further interest from potential organisers. The most recent scheme, the Big Community Switch, saw 50,000 consumers register their interest⁶.

Many schemes have been aimed at vulnerable and disengaged consumers. Schemes are typically developed by a non-expert scheme organiser (eg a local authority) which partners with an expert collective switching service provider (eg uSwitch, Which?).

Why an intervention is needed

Collective switching can benefit consumers, for example by enabling consumers to save money, empowering vulnerable and disengaged consumers to help them participate in the market, and increasing competitive pressure in the market.

However, our research and evaluation of schemes has identified that there are some risks for consumers. These relate to transparency of process and clarity of offers, the handling of Warm Homes Discount and exit fees, and the provision of relevant information to inform decision making. We think further protection is required as domestic collective switching is not regulated beyond the provisions of consumer protection law⁷ and the requirements in Standard Licence Conditions (SLCs) about suppliers’ representatives. Collective switching must remain compatible with the aims of our Retail Market Review (RMR), so that consumers trust the market and are appropriately protected.

What we want to change

We have developed proposals for regulatory measures to help protect domestic consumers who engage with collective switching schemes. Collective switching has not yet developed in the non-domestic market so these proposals just relate to the domestic market. We think accreditation of collective switching service providers can protect consumers and provide assurance that it is safe to engage with collective switching schemes. We are proposing action in three areas:

⁴ <http://www.which.co.uk/switch/about-which-switch/about-the-big-switch>

⁵ <https://www.gov.uk/government/news/46million-boost-for-132-local-energy-schemes>

⁶ <http://bigcommunityswitch.ichoosr.com/product/customizableinfo.rails?actionId=329>

⁷ We monitor companies to ensure that they comply with European and UK consumer protection law. Where a breach has occurred, we can apply to court for an enforcement order requiring a trader to comply. We can also accept undertakings from the trader that the trader will not continue or repeat the conduct. In addition, collective switching could also be regulated by other bodies such as the OFT.

Expand the Confidence Code

We propose to expand the voluntary Confidence Code, which currently accredits price comparison websites, to encompass collective switching service providers. This addresses the emerging issues we have identified using a proportionate approach, enabling a quickly-established accreditation process which we anticipate will be supported by suppliers. This is intended to create benefits for consumers by adopting a similar approach to existing protections for price comparison services, and through consistency of branding of the Code.

At present accreditation would only cover online or paper interactions. However we are examining whether an expanded Code might eventually cover the elements of schemes where there are some face-to-face or telephone interactions. We know these interactions can be effective, in particular in connecting with vulnerable and disengaged consumers.

Amend SLC 22B.38

Under RMR rules, suppliers will be able to use any fixed-term tariffs (in addition to their four core tariffs) in collective switching processes, as long as the scheme meets our criteria.

We propose to amend the SLC which sets criteria for the RMR tariff cap exemption, so that suppliers can only use an accredited collective switching service provider. The proposal to extend SLC 22B.38 is intended to add further consumer protection to the provisions in the RMR licence condition.

This licence condition extension is supported by additional evidence that has become available since our final RMR decision in Summer 2013:

- **evaluations⁸ of DECC-funded schemes**
- **responses to our TPI issues and options paper** which indicated that Ofgem should have a role in accrediting collective switching schemes
- our **extensive engagement** with collective switching scheme organisers, service providers and suppliers which has indicated the benefits of accreditation.

⁸ <https://www.gov.uk/government/publications/helping-customers-switch-collective-switching-and-beyond>

1. Market developments

Chapter Summary

This chapter provides information about the growth of collective switching, Ofgem's role and linkages to other areas of work.

Question box

- 1: Do you agree that the growth of collective switching, and the potential opportunities and detriment resulting from this, merit short-term action to ensure consumer protection while Ofgem works on a longer-term approach?
- 2: Do you agree that some form of accreditation is the best approach? If not, what other approach would be best?
- 3: If an accreditation approach is used, do you agree that building on the Confidence Code is the most proportionate and effective solution?
- 4: Do you agree that the exemption for collective switch tariffs under Ofgem's rules on the number of tariffs offered by each supplier should be available only where the collective switch is accredited under the Confidence Code?

1.1. Ofgem's principal objective is to protect the interests of both existing and future energy consumers. Collective switching has the potential to deliver competitive tariffs to consumers and increase engagement in the market, particularly amongst vulnerable and disengaged consumers. Trusted intermediaries can play an important role in energy because of the low levels of trust in the industry.

1.2. We want to help facilitate the growth of collective switching in a way that benefits consumers, by supporting greater engagement in the market and encouraging innovation.

1.3. For collective switching to succeed for consumers, people have to have confidence in these services. This same issue for price comparison services led to the system of Confidence Code accreditation being established.

1.4. In this consultation we set out our proposals to:

- expand the Confidence Code to encompass accreditation of collective switching service providers, and include specific requirements for collective switching
- require suppliers to use an accredited collective switching service when using the Retail Market Review tariff cap exemption, by amending SLC 22B.38.

1.5. We have identified some potential issues in the GB market, which our proposals are intended to head off. In summary these are:

- Areas of potential detriment to consumers (eg marketing claims, transparency of the process and clarity of the offers made). We have outlined these in Chapter 2, and our proposals in Chapters 3-5 are intended to increase protections for consumers.
- Areas where development of the collective switching market might be being held back. We think our proposals in Chapters 3-5 will facilitate market developments in this area by providing more certainty and assurance to scheme organisers, service providers and suppliers.

Consultation Question 1

Do you agree that the growth of collective switching, and the potential opportunities and detriment resulting from this, merit short-term action to ensure consumer protection while Ofgem works on a longer-term approach?

Consultation Question 2

Do you agree that some form of accreditation is the best approach? If not, what other approach would be best?

Consultation Question 3

If an accreditation approach is used, do you agree that building on the Confidence Code is the most proportionate and effective solution?

Consultation Question 4

Do you agree that the exemption for collective switch tariffs under Ofgem's rules on the number of tariffs offered by each supplier should be available only where the collective switch is accredited under the Confidence Code?

Growth of Collective switching

1.6. Collective switching involves consumers grouping together to secure a deal for their energy supply. In the standard scheme model that has been adopted by many GB collective switching schemes, consumers register their interest with a scheme organiser. This organiser is often a trusted intermediary familiar to consumers (eg a local authority, housing association or charity), but it may not be an expert in energy matters.

1.7. Often energy sector expertise and administrative service support are brought into the scheme by a collective switching service provider (eg iChoosr, Energyhelpline, Energylinx, Which?, uSwitch). The provider or organiser then works on behalf of the group using their combined demand to secure a better deal on their energy.

1.8. Suppliers are invited to take part in a reverse auction where the lowest bidder wins the custom of the group. The consumer has no obligation at the point of registration. They decide whether or not to proceed with the switch only once they receive a personalised offer via the scheme organiser or service provider.

1.9. There has been rapid growth in collective switching since Which?'s "Big Switch"⁹ in May 2012. Price comparison sites, local authorities, community energy and third sector organisations have subsequently run switches across GB, and we are aware of more organisations that may organise schemes in the future. Although these schemes have been smaller, there has been sustained interest from consumers (see Table 1). The most recent GB scheme, the Big Community Switch was organised by over 70 local authorities and saw over 50,000 consumers register their interest¹⁰.

Table 1 – Average savings in selected GB collective switching schemes

Scheme	No. of consumers registered	Conversion rate	Average reported savings
Big Switch ¹¹ - April 2012	287,365	13%	£233
Bristol Switch and Save ¹² - April 2013	5,378	23%	£104
Cornwall Together 2 ¹³ - April 2013	8,366	14%	£112
London Big Community Energy Switch - April 2013	26,000	8%	£122

1.10. 31 schemes were supported by funding from DECC's recent 'Cheaper Energy Together' competition¹⁴ and published a process evaluation of all the schemes funded

⁹ <http://www.which.co.uk/switch/about-which-switch/about-the-big-switch>

¹⁰ Of these 4800 of consumers signed up on paper, 67.8% of registrations had not switched in the last 3 years; and 9.8% of registrations were for Economy 7 meters (source iChoosr).

¹¹ <http://www.which.co.uk/switch/about-which-switch/about-the-big-switch>

¹² <http://www.cse.org.uk/projects/view/1205>

¹³ www.edenproject.com/sites/default/files/ct2-research-report.pdf

¹⁴ The Cheaper Energy Together fund was a competition which offered a share of £5 million to local authority and third sector organisations to support collective purchasing of energy schemes and collective switches across Great Britain. The fund was launched on 19 October

under DECC's Local Authority Funding Competition 2012/13 including Cheaper Energy Together¹⁵.

1.11. Many schemes have been aimed at vulnerable and disengaged consumers¹⁶. They have typically attempted to recruit consumers using offline sign-up methods (eg face-to-face interaction, community meetings, and leaflets). The degree of success these methods has varied between schemes but evidence indicates that they can be effective. For example the Big London Energy Switch¹⁷ found that of those that registered:

- 19 per cent of registrants indicated that they were in receipt of at least one benefit; 39 per cent were in a household that includes someone over 60;
- 20 per cent were in a household that includes someone with a long term illness or disability;
- 11 per cent are were a household that includes a child under 5;
- 19 per cent had a household income below £13,308.

1.12. Evidence points to higher levels of engagement as a result of the involvement of a trusted third party. Participants also appear to value easier switching, reduced hassle, and the idea that someone else is doing the hard work on your behalf¹⁸.

1.13. GB collective switching schemes have mostly been aimed at domestic consumers. Some schemes have attempted non-domestic collective switches, but none have yet managed to advance beyond a price comparison or brokerage model.

Developments in the EU

1.14. Collective switching in energy has been established for over four years in Belgium and the Netherlands. Schemes there have also been successful at engaging disengaged consumers¹⁹, have seen consumers make significant savings and have mostly occurred in favour of new market entrants. The proportion of consumers switching as a result of the scheme has been higher than in GB, in some cases as

2012. Money was awarded to 31 successful projects, covering over 94 local councils and eight third sector organisations.

¹⁵ Collective Switching and Beyond, DECC (2013)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253862/Helping_Customers_Switch_Collective_Switching_and_Beyond_final_2_.pdf

¹⁶ Collective switching is also considered as part of our Consumer Vulnerability Strategy and associated work plan

<https://www.ofgem.gov.uk/ofgem-publications/75550/consumer-vulnerability-strategy.pdf>

¹⁷ [http://www.londoncouncils.gov.uk/London%20Councils/BLSEvaluationreportPhase1FINAL.p](http://www.londoncouncils.gov.uk/London%20Councils/BLSEvaluationreportPhase1FINAL.pdf)
[df](http://www.londoncouncils.gov.uk/London%20Councils/BLSEvaluationreportPhase1FINAL.pdf)

¹⁸ Collective Switching and Beyond, DECC (2013)

¹⁹ Get it Together, Consumer Futures (2012)

high as 30-50%²⁰. Many schemes have focused on offering consumers renewable energy tariffs.

Related policy developments

Retail Market Review (RMR)

1.15. In 2013 we introduced new rules as part of the RMR that will deliver a simpler, clearer and fairer energy market. With regard to collective switching, we aim to promote a consistent approach among suppliers, to ensure that consumer protection safeguards are in place²¹, and to facilitate collective switching schemes that meet consumer interests and the aims of the RMR. These rules allow for the number of fixed-term tariffs to expand outside the RMR cap of four core tariffs and for segmentation of the market to occur through collective switching, where schemes meet our criteria (see Appendix 1 for details)²².

1.16. Stakeholders have generally welcomed our proposals on collective switching²³. Many respondents, including consumer bodies, welcomed the additional detail and the requirements for the tariff cap exemption.

Third Party Intermediaries (TPI) programme

1.17. Generally, TPIs are parties that help domestic and non-domestic consumers in making energy decisions across a range of functions including energy procurement, efficiency and management. TPIs operate under a variety of business models including switching websites, energy brokers, consultants and collective switching facilitators.

1.18. The evolution of the energy market, including technological advancements such as smart meters, provides TPIs with opportunities to offer innovative products and services potentially improving market engagement.

1.19. The TPI programme was launched to closely examine the TPI market and to consider an enduring regulatory framework for TPIs in the retail energy market. The programme includes projects that focus on specific segments of the energy retail market covering households and business consumers²⁴.

²⁰ Get it Together, Consumer Futures (2012)

²¹ Ofgem Statutory consultation on the RMR domestic proposals, June 2013.

²² This does prohibit any scheme that do not meet our criteria, but means that any tariff offered into collective switching schemes that do not meet these criteria must be one of a supplier's four core tariffs.

²³ Ofgem Statutory consultation on the RMR domestic proposals, June 2013.

²⁴ <https://www.ofgem.gov.uk/publications-and-updates/open-letter-third-party-intermediaries-tpi-programme>

Links to other initiatives

1.20. Experience from the schemes funded by DECC indicates that collective switching can be an effective way of getting consumers or communities interested in other energy initiatives (eg Energy Companies Obligation (ECO), the Green Deal and general energy efficiency advice). Suppliers have indicated that it may enable better targeting of ECO at a community level.

1.21. Most collective switching models have followed a similar model in the UK, although over time we anticipate some further innovation. Some other types of group purchasing schemes are often linked to collective switching initiatives because they involve engaging groups of consumers in one way or another. These may include:

- wholesale models, where an intermediary may seek to purchase energy directly from the wholesale market and sell directly to the consumer
- schemes linked to local generation (eg a renewable source or CHP plant)
- community energy models, for example where there is shared ownership of generation.

2. Emerging issues

Chapter Summary

This chapter outlines the emerging issues we have identified concerning the development of collective switching and potential consumer detriment.

Question box

5: We will consider the Personal Projection as part of our Confidence Code review. Are there any key differences between collective switching and price comparison which require separate consideration for the Personal Projection? If so, please explain why.

6: Can an expanded Confidence Code influence marketing claims?

7: Should an expanded Confidence Code cover telephone and face-to-face interactions specifically for collective switching?

8: What further guidance/code requirements are required in the Code for schemes involving face-to-face engagement and telephone interactions?

9: Do you have any views about what could support improved pre-payment meter (PPM) engagement?

10: What areas of data collection or handling, specific to collective switching, should be covered by the Code? Are there gaps that need to be covered which are not already covered by existing data protection legislation?

2.1. In order to understand the emerging issues that have developed so far, and which issues should be considered in order to facilitate collective switching whilst protecting consumers, we engaged widely with:

- suppliers
- consumer groups
- scheme organisers
- service providers
- other parties involved with collective switching.

Presentation of offers and savings messages

2.2. Important factors in aiding good quality switching decisions are the way that potential savings are communicated within the offer presented to consumers. As

representatives of suppliers²⁵, intermediaries (including collective switching service providers) will need to follow the RMR rules for presenting information including those for the Personal Projection²⁶. We designed these to make comparisons between tariffs simpler, clearer and fairer.

2.3. Exit fees and the Warm Homes Discount (WHD) (which is not offered by all suppliers²⁷) are particularly important. Where these apply they can often make the difference between offers representing a saving or not, and so failure to consider this information could lead to poor switching decisions. This is especially relevant for consumers on lower incomes, who are more likely to be eligible for WHD support, and also when consumers are moving from a Big 6 supplier to a smaller supplier as the latter are not required to participate in the WHD scheme.

2.4. We think that in line with RMR information remedies and the Standards of Conduct, the offer should also signpost independent advice, Confidence Code accredited price comparison sites and energy savings advice.

Consultation Question 5

We will consider the Personal Projection as part of our Confidence Code review. Are there any key differences between collective switching and price comparison which require separate consideration for the Personal Projection? If so, please explain why.

Whole-of-market vs single offer models

2.5. There are two prevalent models of collective switching. These offer either a single offer, which is compared to the consumer's current tariff, or an offer situated within the whole of the energy market (a whole-of-market offer). Single-offer models have been effective at engaging consumers in many schemes, but there is a risk that consumers may think the offer presented is the best available in the market. Where consumers are not provided with a comparison of the whole market, we think that the offer must include an accompanying statement to highlight that the presented offer may not represent the best deal possible.

²⁵ A representative is defined as 'any person directly or indirectly authorised to represent the [licensed supplier] in its dealing with Customers'. Without prejudice to other licence conditions that use the term (for example the marketing licence condition SLC 25), as a matter of policy we would intend to focus our oversight of the RMR Standards of Conduct (SOC) on more direct and express relationships between a supplier and another person.

²⁶ The Personal Projection is an estimated cost of energy to a consumer over a 12 month period. This is based on a specified methodology and the best available information about that consumer's consumption. See SLC 1 definitions for standard conditions 'Estimated Annual Cost' for the methodology to calculate the Personal Projection.

²⁷ <https://www.gov.uk/the-warm-home-discount-scheme/eligibility>

2.6. Evidence so far does not indicate significant consumer preference for one model over the other. Consumer Futures research found that consumers are content with single offer models in the context of collective switching²⁸.

2.7. Suppliers we have engaged with have indicated support for the single offer model because they may face greater hedging costs when bidding into whole-of-market schemes. This is because there is less certainty of the conversion rates to their winning tariffs in whole-of-market models. This may reduce benefits to consumers if these hedging costs are passed through.

2.8. Some stakeholders have expressed concerns that some collective switching schemes do not necessarily provide cheaper deals than those already available in the market. Whilst this may be true in some cases, it is important to note that the outcomes of collective switching activities are not always about securing a new best deal, but can be about securing a better deal which already exists in the market.

2.9. We have concluded we should not exclude single market models as these have been effective at engaging many consumers and finding them a better deal, and may play an important role in the continued development of collective switching. However, we think it is necessary to ensure that offers to consumers clearly state that they are single offers, and that better offers may be available via engagement with the market.

Transparency

2.10. Consumers do not understand how collective switching schemes operate and generate revenue²⁹. This can lead to distrust in the switching process and can lead to questions as to the impartiality of the switching provider and reliability of the winning provider.

2.11. Commission fees are often used in part by collective switching schemes to cover administration costs. Typically these fees are split between the scheme organiser and service provider. A proportion of the fee may be channelled back to consumers for example by contributing to fuel poverty funds or as a cash-back discount. Concern around levels of commission fees has prompted of low commission fee, not for profit, models to be established³⁰.

2.12. Lack of transparency around commission fees risks creating suspicion. Consumer Futures' research found that although securing a better deal is the main motivation for all consumers, many consumers want reassurance that the

²⁸ Collective switching: Exploring opportunities for low income energy consumers in Wales, 2013

<http://www.consumerfutures.org.uk/reports/collective-switching-exploring-opportunities-for-low-income-energy-consumers-in-wales-2>

²⁹ *ibid*

³⁰ <https://www.cheaperenergytogether.org/about/>

intermediary is not driven by commercial motives³¹. More transparent commission arrangements would help to improve trust in the market.

2.13. Consumers have also raised concerns around auctions with unclear outcomes. Consumers have voiced concern in auctions where a supplier has won by bidding in with a standard tariff, but information about the auction process and about the outcome have been unclear. In these situations we think that improved transparency about the process may provide assurance to consumers.

2.14. We do not think commercially sensitive information should be disclosed, but transparency of some general information about the auction process and outcome would help to assure consumers. It is important that consumers understand the process of collective switching and are aware of what will happen at the various stages.

2.15. Some suppliers have also mentioned that they find it difficult to assess the potential volumes through a scheme, as there is some uncertainty how many people registered for a scheme will eventually switch to the winning tariff(s). They feel that some scheme providers could provide more information on the scheme to consumers this will help to increase their eventual engagement and trust in the schemes. This would also allow suppliers to assess the risks and probability of consumers switching.

2.16. Ranking results from collective switching auctions is important where several tariffs are provided for a whole-of-market comparison. Consumers need to trust that results are ranked objectively and are not influenced by commission or any other relationship. Again the Confidence Code requirements set a precedent for how this is approached in price comparison.

2.17. Some stakeholders have been concerned that terms and conditions are unclear or absent from some collective switching schemes. We agree, and think consumers will benefit from clear and concise terms and conditions that are communicated to consumers prior to any commitment and are available throughout the scheme.

Marketing claims

2.18. Several stakeholders have expressed concern that estimated savings levels communicated by schemes in their marketing have been unrealistic, or that some schemes have promised benefits to consumers up front that they have found hard to deliver, for example promising to get the best deal in the market or providing savings figures at the upper extremity of the spread of values. High levels of savings can be very attractive, but may be unrealistic for many consumers. This can disengage consumers who may lose faith in the market, and also damage the reputation of collective switching. More suitable messaging for setting expectations

³¹ Consumer Futures, Consumer Sentiment Towards Collective Switching, December 2013

has been given around securing a “better deal”, or simply “could save you money”, and has provided figures of average savings from previous schemes.

2.19. We have not proposed that Code accreditation should cover marketing claims. This is because these claims are usually made by the scheme organiser to encourage consumers to sign up to scheme, often before partnering with a service provider. We therefore think that this can be influenced more effectively by guidance than by accreditation.

Consultation Question 6

Can an expanded Confidence Code influence marketing claims?

Telephone and face-to-face interactions

2.20. Many schemes have found that face-to-face engagement is an effective way of engaging with customers. Most schemes will use a range of channels to communicate with customers before they sign up to a scheme, and also after an offer letter has been provided. These engagement channels include, but are not limited to, face-to-face, telephone, post and online.

2.21. However risks are present when TPIs engage in interactions with consumers which are not easily controlled and monitored by suppliers, such as face-to-face engagement. As a result suppliers can be hesitant to engage in collective switching schemes as they have less control over these activities and the risks associated with them. Telephone engagement is also an effective engagement channel for TPIs, but telephone interactions in price comparison are not covered by the Confidence Code accreditation.

2.22. In response to our Statutory Consultation on the RMR³² one supplier requested that Ofgem make it clear that representatives will have to comply with our RMR rules, Standards of Conduct and with SLC 25³³ during a sales process, as well as suppliers. In our Decision Document, August 2013, we reiterated that representatives will need to comply with our rules and that suppliers have a responsibility to ensure that their representatives are compliant.

³² <https://www.ofgem.gov.uk/ofgem-publications/74753/theretailmarketreview-statutoryconsultationonrmrdomesticproposals.pdf>

³³ SLC 25 is the sales and marketing licence condition for domestic suppliers. There have been concerns on the potential limits that SLC 25 places on face to face selling. We published a letter in October 2012 clarifying the operation of SLC 25: <https://www.ofgem.gov.uk/ofgem-publications/38441/20121009marketing-energy-supply-domestic-customers-third-party-intermediaries.pdf>

2.23. Our intention is that an expanded Code would, in the first instance, cover activities in schemes that take place electronically (eg on websites, email) or on paper. We think accreditation could eventually expand to include those elements of schemes where some face-to-face or telephone interaction takes place. Due to this we are examining whether and how the Code could also cover these.

2.24. We have recognised that these issues, whilst important to collective switching, have much wider implications and will develop our collective switching specific response to these (see questions in Chapter 4). We also intend to look at this as part of our work around Domestic TPIs³⁴.

Consultation Question 7

Should an expanded Confidence Code cover telephone and face-to-face interactions specifically for collective switching??

Consultation Question 8

What further guidance/code requirements are required in the Code for schemes involving face to face engagement and telephone interactions?

Pre-Payment Meters (PPM)

2.25. Collective switching is an opportunity to engage PPM customers and get them a better deal than they are currently on. Many of the collective switching schemes in GB have tried to engage vulnerable consumers. This has been difficult in practice³⁵ and in collective switching so far, switching levels for consumers on PPM have been lower than for other payment methods.

2.26. We are interested in what could be done to support engagement of PPM consumers through collective switching schemes. Through our RMR reforms we have simplified the market, which will benefit all consumers including PPM consumers. One way in which we have simplified the market is by removing upfront cash discounts except for dual fuel and online account management. We are reviewing some details in this area which may have a bearing on collective switching schemes³⁶. Tariff innovation can also engage PPM consumers. However, we are aware of barriers (including technical and practical barriers) which have acted as constraints to the development of new PPM tariffs for collective switching. For example:

³⁴ This is part of our TPI programme.

³⁵ Around 12% of meters are PPM but participation levels can be lower in schemes (3% in the Cheaper Energy together Schemes sponsored by DECC). DECC, Collective Switching and Beyond 2013

³⁶ <https://www.ofgem.gov.uk/ofgem-publications/85343/cashbackandbundledproducts-openletter.pdf>

Protecting consumers in collective switching schemes

- Suppliers have indicated that in some cases there are technical limits to the number of additional tariffs that can be added to PPMs (mostly legacy PPMs). There are additional costs associated with new tariffs for PPM which include the cost of sending out key cards which are required for the meter.
- The design of schemes can also produce some barriers to the participation of small suppliers, which may in turn limit the number of PPM offers in those schemes. A barrier can occur where commission fees requested by scheme organisers are higher than some suppliers (typically smaller suppliers) are prepared to pay. Another barrier we are aware of is where schemes require suppliers to supply to multiple parts of GB, whereas some smaller suppliers may only supply PPMs to particular regions.

Consultation Question 9

Do you have any views about what could support improved PPM engagement?

Data collection and use

2.27. Collection of data during the registration period of a scheme presents the opportunity to gather key data that can indicate if consumers may be eligible for the Warm Homes Discount or Priority Services Register (or indicate if they are already signed up to either one). Collection of demographic data may also enable better evaluation of schemes and is important in assessing the vulnerability of consumers who participate³⁷. However, much of this data can be sensitive and therefore how it is managed and protected are important issues for consumers. At times this is not clearly communicated and the consumer may not be aware that they have given consent for this to happen.³⁸

2.28. Service providers and scheme organisers will need to be aware of their duties under the Data Protection Act. However we are also interested in relevant areas where accreditation could improve protections for consumers.

³⁷ <http://www.consumerfutures.org.uk/reports/collective-switching-exploring-opportunities-for-low-income-energy-consumers-in-wales-2>

³⁸ In the UK, the collection and use of personal data is primarily governed by the Data Protection Act 1998 and associated legislation. The Information Commissioner's Office (ICO) is the UK's independent authority set up to uphold information rights in the public interest and promote data privacy for individuals. The ICO is responsible for taking action to enforce compliance with the data protection regime, where appropriate. Further information is available at: <http://www.ico.org.uk>

2.29. Ofgem is not responsible for enforcing the data protection regime³⁹. However, we would be interested in the views of consultees in relation to the collection and use of data by collective switch service providers or scheme organisers and related data privacy issues. This may be the subject of further research in the future to determine whether additional Code requirements or guidance are needed to enhance protections for gas and electricity consumers.

Consultation Question 10

What areas of data collection or handling, specific to collective switching, should be covered by the code? Are there gaps that need to be covered which are not already covered by existing data protection legislation?

³⁹ The data protection regime applies to organisations that process personal data, including businesses operating online. Particular issues for online businesses and their users can include the collection and use of personal details through online application forms, the availability of the organisation's privacy policy and the use of cookies or IP addresses to target content at a particular individual.

3. Expanding the Confidence Code

Chapter Summary

This chapter outlines our proposal to expand the Confidence Code.

Question box

11: Do you agree with our proposal to expand the Confidence Code to cover scheme providers but not scheme organisers?

Options considered

3.1. A key aim of the collective switching project is to consider whether any form of short-term regulatory intervention is appropriate to address the risks and opportunities associated with this activity. This chapter analyses the possible options for intervention, and recommends our preferred option.

3.2. We have identified several possible interventions that we could implement in the short-term in order to facilitate the development of collective switching in GB. In considering the most appropriate regulatory fit we have looked at the following criteria for an intervention which:

- a. offers an acceptable level of consumer protection and assurance
- b. provides benefits to consumers
- c. commands widespread industry and consumer group support
- d. minimises barriers to competition
- e. can be implemented quickly.

Preferred Option: Expanding the Confidence Code for collective switching

3.3. In considering options for protecting consumers, our preferred option is **expanding the Confidence Code**⁴⁰ to cover service providers **and to amend SLC 22B.38 to require suppliers to use an accredited service provider** (covered in detail in Chapter 4)⁴¹. Along with addressing the emerging issues we identified

⁴⁰ The Confidence Code was transferred to us from Consumer Focus currently only accredits domestic online price comparison websites. There have been a number of demands for accreditation to extend to telephone price comparison, mobile/tablet apps, next generation services (eg Cheap Energy Club) and Collective Switching.

⁴¹ Whereas a mandatory code would require all switching to be accredited, this option only means that suppliers will have to use an accredited service provider to use the RMR tariff cap exemption.

around collective switching (see Chapter 2), it also provides benefits to consumers. These benefits are conveyed to consumers via:

- consistency of approach with price comparison
- consistency of brand
- quick establishment of the accreditation process
- anticipated increased supplier engagement with schemes.

3.4. A central question in developing these proposals has been whether accreditation should cover just the switch service provider (back of house operator, eg Energyhelpline, Energylinx, iChoosr, uSwitch, Which?) or also cover the scheme organiser (ie to the trusted third party/front of house). The key consideration is that many of the scheme organisers who can drive consumer trust and engagement (eg local councils, housing associations and charities) are small and not specialised in energy. Our engagement with schemes suggests that although accreditation would be an effective step for collective switching service providers (who are involved with switching on a regular basis), it is not suitable for smaller scheme organisers (some of whom may only run one-off exercises) at present as this may prove to be a significant barrier to delivering innovation and the intended consumer benefits.

3.5. We want to facilitate the development of collective switching in the GB energy market in a way that maximises the delivery of potential benefits to consumers and protects them from harm. As such we do not propose that the collective switching code expands to cover the scheme organisers, and that the widened scope of the Confidence Code accreditation would only apply to the service provider.

Consultation Question 11

Do you agree with our proposal to expand the Confidence Code to service providers but not scheme organisers?

Benefits of accreditation

3.6. The benefits of accreditation are twofold. The accreditation process and monitoring performance against the requirements sets an acceptable standard of performance. This can in turn be communicated to consumers, which provides them with a level of assurance. There are likely to be benefits for consumers if accredited collective switching schemes can use the same established accreditation logo as price comparison sites.

Assessment of expanding the Code

3.7. An expanded Code would share many of the key parts of the existing Confidence Code. There are a number of similarities between the activities of price comparison service providers and collective switching providers (indeed some providers operate in both areas) that make this option attractive, for example, where whole-of-market comparisons are made.

3.8. This option may enable faster implementation due to the fact that Ofgem already manages the Confidence Code and as such has established processes in place. Currently there are five active collective switching service providers in the energy retail market (Energylinx, Energyhelpline, uSwitch, Which? and iChoosr), four of whom are already Confidence Code accredited for their price comparison services and therefore familiar with the process of accreditation and existing Code requirements. Stakeholders have already indicated support for this option.

3.9. It is important that this activity is aligned with the principles of the RMR, and is consistent with existing TPI provisions in the Confidence Code. There are some points of divergence from the existing Code. For example, collective switching does not always involve a whole-of-market comparison at the point the offer is made to the consumer. As such we have proposed additional collective switching specific Code requirements in Chapter 4.

Alternative options considered

3.10. In developing of our proposals we have considered alternative options for an interim intervention. These are outlined briefly below.

Publish advice on collective switching

3.11. One option would be for Ofgem to publish detailed advice/guidance on collective switching activities, for example in the form of distinct guidance documents for consumers, suppliers, and collective switching providers and organisers. DECC have recently published updated guidance for scheme organisers. We think this light-touch approach may be useful for scheme organisers who are not experts in the energy sector, but less effective at ensuring that information provision and consumer protection are delivered by scheme providers, especially at the stage where offers are presented to consumers.

Encourage industry to develop a self-regulatory voluntary Code

3.12. Under this option we would invite industry to develop a self-regulatory voluntary Code setting out best-practice principles for collective switching providers to follow. This has the benefit of being a relatively light-touch approach and it would carry a reputational incentive for providers. However an obvious sponsor for this role is not clear as there is no single industry body to lead it. It would probably also take too long, and therefore it seems an unlikely route in practice.

Ofgem establishes a standalone voluntary code of conduct for collective switching

3.13. Ofgem could establish a standalone voluntary code of conduct for collective switching providers. The Code could require providers to voluntarily apply to become accredited by Ofgem. The Code could be consistent with the approach to key consumer protection issues with the requirements of the Confidence Code but would be a separate entity.

3.14. Providers that become accredited would benefit from the use of a logo that acts as a stamp of approval to industry and consumers. We would develop a system to monitor the activities of accredited collective switching service providers in order to ensure that they are meeting the requirements of the new Code and remain eligible for accredited status.

3.15. This is similar to our proposal but would involve establishing new branding and accreditation and management processes, which are unnecessary given the overlap with the existing Confidence Code.

Mandatory code of practice via Standard Licence Condition (SLC)

3.16. An option for a stronger regulatory intervention which incorporates the code of practice approach is to introduce or amend the relevant Standard Licence Condition (SLC) in each of the gas and electricity supply licences. This would stipulate that suppliers only participate in any collective switching through schemes operated by accredited collective switching providers (as opposed to our preferred approach which only requires this for the tariff cap exemption). This effectively makes accreditation under the Code of practice mandatory for all collective switching providers, and increases the sanctions on service providers as they risk losing accreditation and therefore the ability to operate.

3.17. There are some significant risks to this approach, amongst these the risk of limiting innovation at an early stage, when the market is developing. As it operates entirely through amendments to the SLCs, this option cannot be implemented quickly in comparison to other options.

License collective switching schemes

3.18. The Energy Act clarifies existing legislation to make it absolutely clear that our existing powers could be used to apply for TPI activities to be licensed. Under other existing legislation we already have the power to apply for activities relating to energy supply and other regulated activities to be licensed. This would enable much greater control and protection to consumers, although it is likely to be burdensome, costly as well as take time to set up. This option cannot be regarded as a short term measure, and it is therefore more appropriate that it should be considered as part of the long-term interventions explored in the wider domestic TPI project.

4. Linking the RMR tariff cap exemption to Code accreditation

Chapter Summary

We propose additional criteria requiring collective switching schemes to use an accredited collective switching service provider in order for a supplier to benefit from the RMR tariff cap exemption.

Question box

12: To what extent will the additional criteria affect:

- (a) suppliers: will the amendment increase or decrease involvement in collective switching, and why?
- (b) consumers: will the amendment increase or decrease involvement in collective switching, and why?

Policy proposal for licence modification

Proposal

To modify the criteria as set out in the licence condition of RMR Definitions condition 22B.38 'Collective Switching Scheme' (see Appendix 2 for full text).

This modification will involve including in the criteria that the scheme must use an accredited collective switching provider for a supplier to be exempt from the tariff cap and introduce a fixed term tariff outside of their four core tariffs.

Rationale for intervention

4.1. Through the RMR we have introduced an exemption to the tariff cap (in SLC 22B.38) whereby suppliers can introduce a fixed-term tariff outside of their four core tariffs provided that they are satisfied that the collective switching scheme meets our criteria⁴². We have done this to promote a consistent approach among suppliers and ensure that consumer protection safeguards are in place. Under our new rules suppliers will be able to use any fixed-term tariffs, in addition to their four core tariffs, in collective switching processes provided the scheme meets our criteria.

4.2. We propose to make clear that this exemption can apply only when the collective switch is accredited under the Confidence Code. We anticipate that this will

⁴² Ofgem Statutory consultation on the RMR domestic proposals, June 2013.

not only provide consumers with assurance but also clarify to suppliers that schemes are compliant. This should increase participation in schemes and the number and range of offers available through them.

4.3. We are proposing this licence condition change now because, since issuing our decisions on RMR, there is new evidence on collective switching:

- evaluation of DECC-funded schemes which has provided evidence of the benefits to vulnerable and disengaged consumers.
- responses to our TPI issues and options paper indicated that Ofgem should have a role in accrediting collective switching schemes, and some respondents to our RMR consultation indicated that additional requirements should be added to the RMR criteria (eg a mandatory registration process at the start)
- we have carried out extensive engagement with collective switching scheme organisers, service providers and suppliers which has indicated the benefits of accreditation.

4.4. Through engagement with stakeholders and considering responses to the RMR and TPI consultation we have identified the following potential benefits of amending the SLC 22B.38:

- This additional requirement adds further consumer protection to the provisions already in RMR.
- We expect that this will benefit consumers by increasing supplier engagement with collective switching and likelihood of supplier innovation on tariffs due to their increased confidence that schemes are compliant. Innovation on tariffs is likely to deliver more predictable volumes of consumers, which reduces uncertainty for suppliers.
- We think this may increase competition in the intermediary market. Accreditation may increase suppliers' confidence in schemes' compliance with SLCs. Greater consumer assurance may increase the viability of new entrants into the intermediary market.

5. Proposals for collective switching specific Code content

Chapter Summary

This chapter contains a summary of how we intend to expand the Code to cover collective switching providers. Detailed proposals can be found in Appendix 3.

Question box

13: Are there areas in an expanded Confidence Code:

- that we have not indicated that you think should be additionally covered for collective switching, or
- that we have indicated for inclusion in the Code that you think should not be covered for collective switching?

14. What areas of data collection or handling, specific to collective switching, should be covered by the Code? Are there gaps that need to be covered which are not already covered by existing data protection legislation?

15. What further guidance/code requirements are required in the code to protect consumers and help to facilitate collective switching schemes which involve face-to-face engagement and telephone interactions?

Accreditation

5.1. We are proposing to expand the Confidence Code to cover collective switching service providers. As outlined in the diagram below we suggest a new section of the Confidence Code which is specific to collective switching. This would share some requirements with those for price comparison sites. It would also contain requirements that are specific to collective switching.

5.2. We think these proposals address the key concerns around transparency, clarity and information. They offer levels of protection to consumers consistent with those offered by the Confidence Code. These are in line with the spirit of the RMR, while allowing fast implementation to accredit new services.

5.3. These proposals are covered at high level in this chapter and summarised on the tables on pages 31-32. Details of the proposals can be found in Appendix 3.

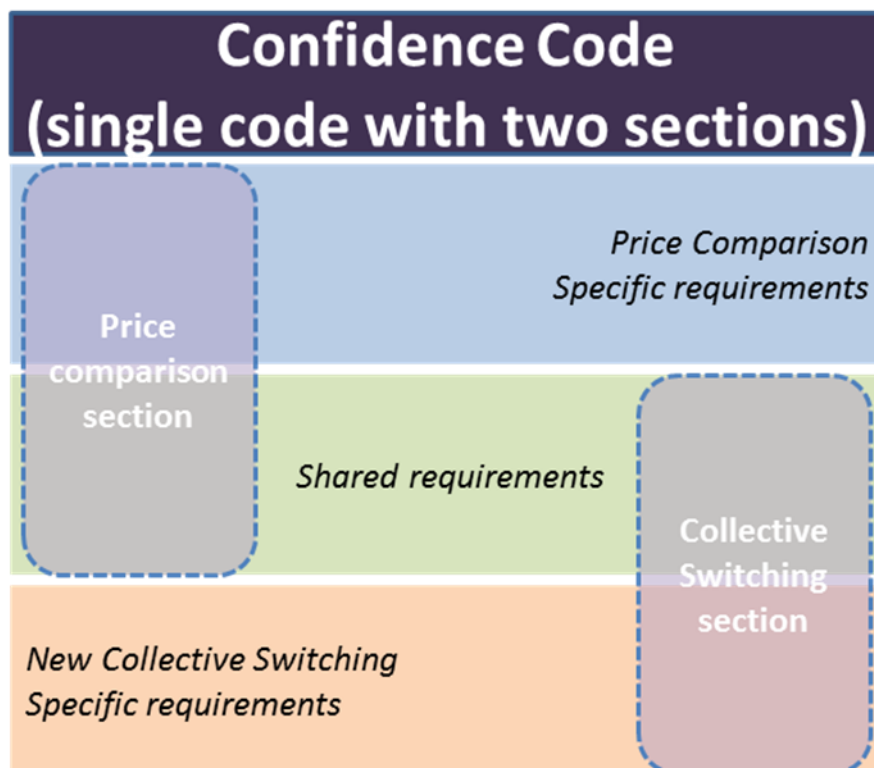
Overall principles of collective switching requirements

5.4. The Code proposals are intended to work for all models of collective switching, to reflect the fact that the two established approaches (single offer and whole-of-

market) though different do still both offer consumer benefits and provide flexibility to accommodate future innovation.

5.5. We have used existing Confidence Code provisions⁴³ where relevant and applicable. We have indicated areas where clauses specific to collective switching could be added to the existing clauses.

5.6. Where we have not been able to develop detailed proposals we have outlined why the area is important to collective switching, and indicated how the Code will be developed later on.



5.7. The changes proposed here only relate to fundamental policy requirements. We will look to establish how the mechanics of the proposed changes will work in practice (eg in code documents) during the next stage of consultation.

Specific requirements for collective switching accreditation

5.8. There are some important areas which we believe should be covered by new collective switching specific Code content. In these areas we are seeking

⁴³ <https://www.ofgem.gov.uk/ofgem-publications/74615/confidence-code.pdf>

stakeholders' views about what the key issues are for accreditation of collective switching with respect to:

- transparency of the auction process
- transparency of the offer and signposting to impartial advice
- terms and conditions.

Areas for further development

5.9. There are some areas of new collective switching specific code content which we are proposing but we are not yet in a position to make detailed recommendations. We recognise these are important, so in these areas we are seeking views about the key issues for accreditation of collective switching. We are interested in:

- data collection and handling
- telephone and face-to-face interactions
- audit arrangements.

5.10. Our intention is that an expanded Code would cover activities that take place on websites or on paper. This could include schemes where some face-to-face interaction takes place, but accreditation would only cover online or paper interactions (and offers from suppliers). Face-to-face interactions may be more effective than online with vulnerable and disengaged consumers, and because of this we are examining whether, and how, the Code could also cover telephone and face-to-face interactions.

Consultation Question 13

Are there areas in an expanded Confidence Code:

- *that we have not indicated that you think should be additionally covered for collective switching, or*
- *that we have indicated for inclusion in the Code that you think should not be covered for collective switching?*

Consultation Question 14

What areas of data collection or handling, specific to collective switching, should be covered by the Code? Are there gaps that need to be covered which are not already covered by existing data protection legislation?

Consultation Question 15

What further guidance/code requirements are required in the code to protect consumers and help to facilitate collective switching schemes which involve face to face engagement and telephone interactions?

Areas not retained

5.11. We do not propose to retain the “Control and Management” requirement (requirement three) as this does not fit the arrangements typically in place for collective switching.

Next Steps

5.12. We will be engaging stakeholders during the course of the consultation on the detail of our Code proposals. After the consultation we intend to hold a workshop with stakeholders to further develop proposals. We will look to issue final decisions, if appropriate, later in 2014.

5.13. Separately, the Confidence Code is currently undergoing a robust review and we are aiming to consult on the potential changes to the Code later in Spring 2014. Once this consultative process has taken place, we hope to implement changes to the Code during Summer 2014.

Amended Code requirements to apply to Collective Switching only

This table contains a summary of amendments to existing Confidence Code requirements which we are proposing would apply to collective switching only. Full details of these proposals can be found in Appendix 2.

Tariff and price comparison	<ul style="list-style-type: none">• Must use Personal Projection methodology• Where additional bundles cannot be included in the personal projections, clear text must explain extra cost• Savings message additional to personal projection must include clear consideration of Warm Homes Discount and Exit fees
Independence and impartiality	<ul style="list-style-type: none">• Extra requirement to include details of who provider has commission agreement with during registration
Audit	<ul style="list-style-type: none">• Seek to audit collective switch service provider, not individual schemes• Audit twice per year for first two years• We will develop detailed proposals to include at the next consultation phase
Complaint handling	<ul style="list-style-type: none">• Must be clear to consumers who to contact with a complaint
Use of the logo	<ul style="list-style-type: none">• Restrict logo use to registration forms, website, offer email/letter and complaints and other correspondence

New Collective Switching specific code requirements

This table contains a summary of proposals for new Confidence Code requirements which would apply to collective switching only. Full details of these proposals can be found in Appendix 2.

Transparency of auction process	<ul style="list-style-type: none">• Process must be clearly set out (in online and offline communications)• After conclusion of the auction, general information about the auction should be made available (number of suppliers participating; criteria for selecting/excluding tariffs)
Transparency of offer & signposting to impartial advice	<ul style="list-style-type: none">• Whole of market models must follow Code rules for price comparison• Where not whole of market – must clearly state that better tariffs may be available on the market• All offer letters should signpost to impartial advice for switching and energy saving
Terms and conditions	<ul style="list-style-type: none">• Requires clear Terms and Conditions to be made available where consumers register and to remain easily accessible throughout the scheme
Data handling	<ul style="list-style-type: none">• Key area but no firm proposal• Largely covered by DPA, but we are asking there are any gaps that need to be covered, or made specific in the Code
Telephone and face-to-face	<ul style="list-style-type: none">• Key area for collective switching, no proposal at this point but intention is to look at this in the TPI Programme• Asking what key issues are for stakeholders• Will be covered in part by guidance – telephone and face-to-face interactions will not be covered by accreditation until a firm proposal is developed

Appendix 1 - Consultation Response and Questions

1.1. We would like to hear your views on the issues set out in this document. In particular, we would like to hear from collective switching scheme organisers and service providers.

1.2. Responses should be received by 7 April 2014 and should be sent to:

Stew Horne
Consumer Policy
Ofgem
9 Millbank, London SW1P 3GE
020 7901 3876
Stew.Horne@ofgem.gov.uk

1.3. Unless marked confidential, all responses will be published in our library and on our website, www.ofgem.gov.uk. You may ask for your response to be kept confidential. We will respect this request, subject to any obligations to disclose information, for example under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

1.4. If you want your response to be confidential, mark this clearly on the document and include your reasons. It would be helpful if responses could be submitted both electronically and in writing. Please put any confidential material in an appendix to your response.

- Next steps: We will be engaging stakeholders on the detail of our Code proposals during the course of the consultation.
- After the consultation we intend to hold a workshop with stakeholders to further develop proposals. We will look to issue final decisions, if appropriate, later in 2014.
- Separately, the Confidence Code is currently undergoing a robust review and we are aiming to consult on the potential changes to the Code in spring 2014. Once this consultative process has taken place, we hope to implement changes to the Code during summer 2014.

1.5. Direct any initial questions to Stew Horne at the contact details above.

Summary of Questions asked in this consultation

Chapter One

- 1: Do you agree that the growth of collective switching, and the potential opportunities and detriment resulting from this, merit short-term action to ensure consumer protection while Ofgem works on a longer-term approach?
- 2: Do you agree that some form of accreditation is the best approach? If not, what other approach would be best?
- 3: If an accreditation approach is used, do you agree that building on the Confidence Code is the most proportionate and effective solution?
- 4: Do you agree that the exemption for collective switch tariffs under Ofgem's rules on the number of tariffs offered by each supplier should be available only where the collective switch is accredited under the Confidence Code?

Chapter Two

- 5: We will consider the Personal Projection as part of our Confidence Code review. Are there any key differences between collective switching and price comparison which require separate consideration for the Personal Projection? If so, please explain why.
- 6: Can an expanded Confidence Code influence marketing claims?
- 7: Should an expanded Confidence Code cover telephone and face-to-face interactions specifically for collective switching?
- 8: What further guidance/code requirements are required in the Code to protect consumers and help to facilitate collective switching schemes which involve face-to-face engagement and telephone interactions?
- 9: What views do you have about what could support improved PPM engagement?
- 10: What areas of data collection or handling, specific to collective switching, should be covered by the code? Are there gaps that need to be covered which are not already covered by the existing data protection legislation?

Chapter Three

11. Do you agree with our proposal to expand the Confidence Code to service providers but not scheme organisers?

Chapter Four

- 12: To what extent will the additional criteria affect:
 - (a) suppliers: will the amendment increase or decrease involvement in collective switching, and why?
 - (b) consumers: will the amendment increase or decrease involvement in collective switching, and why?

Chapter Five

13: Are there areas in an expanded Confidence Code:

- that we have not indicated that you think should be additionally covered for collective switching, or
- that we have indicated for inclusion in the Code that you think should not be covered for collective switching?

14. What areas of data collection or handling, specific to collective switching, should be covered by the Code? Are there gaps that need to be covered which are not already covered by existing data protection legislation?

15. What further guidance/code requirements are required in the code to protect consumers and help to facilitate collective switching schemes which involve face-to-face engagement and telephone interactions?

Appendix 2 – RMR collective switching criteria

5.14. Under our RMR rules suppliers will be able to use any fixed-term tariffs, in addition to their four core tariffs, provided suppliers are satisfied, on the basis of the available evidence, that the collective switching process:

- Is organised and operated from time to time by a party that is not a licensed supplier or affiliate.
- Is a competitive and transparent process, where:
 - The rules are clearly set out and available to any interested party in the beginning of the process.
 - The exercise is open to any licensed supplier.
 - The participation criteria for customers are (i) well publicised at a reasonable period of time before the process begins and (ii) is clear and easy to understand.
 - The outcome is clear and the decision making process leading to a tariff being offered is transparent and published.
- Is one-off in nature, and does not result in additional tariffs being open to anyone other than the original subscribing consumers.
- Has a primary purpose of securing an electricity or gas offer for the collective transfer of consumers.
- Has well defined start and end dates, where:
 - The target population is identified and communicated at the beginning of the process (this may be through a registration process, but doesn't have to be).
 - The process ends with the collective transfer of customers.
 - The process takes no longer than six months.

Appendix 3 – Collective switching specific Code proposals

Additions to existing Confidence Code requirements

1) Tariff and price comparisons (Confidence Code requirement #2)

Proposal

To add the following clauses:

For collective switching only where whole market comparison is provided:

i) these must follow Code requirement 5 for displaying results and follow Confidence Code requirement 2 (A-G).

And to apply to all collective switching schemes:

ii) In providing a tariff comparison the scheme provider must use the calculation set out in the RMR Personal Projection⁴⁴. The Personal Projection is the cost a consumer is likely to face over the next 12 months and uses a calculation methodology which is standardised across all suppliers to ensure consistency. The personalised calculation is based on a consumer's actual consumption over the previous 12 months, where this is available to the supplier. Where actual consumption is not available the supplier will be required to use their best estimate of the consumer's usage. The calculation will include all unit rates, standing charges, and discounts that apply to the consumer. It will also include the costs of bundles that apply to a given tariff where these are capable of being expressed in £/year or p/kWh.

iii) The service provider must use all reasonable endeavours to include the Warm Home Discount and exit fees. These fees and discounts must be made clear to the customer and taken into account when communicating the savings.

1.6. Why is this important? Scheme providers should communicate accurate savings messages to customers so they can make an informed choice. This will increase the consumer's chance of selecting a tariff which best meets their needs.

1.7. In previous schemes issues have arisen where saving calculations did not include consideration of exit fees. Issues have also arisen where the full impact on

⁴⁴ The RMR Personal Projection is the Estimated Annual Costs set out in SLC 1 of the Gas and Electricity Supply Licences.

the customer's existing Warm Home Discount of choosing the new tariff were not clearly communicated. In both cases, where consumers have not factored in the impact of an exit fee or the loss of the Warm Homes Discount, this can lead to an overestimation of the savings the customer can make. This in turn can lead to dissatisfaction with the process and mistrust, and further may result in customers disengaging from the market.

2) Independence and Impartiality (Confidence Code requirement #1)

Proposal

To add a clause to apply only to collective switching:

- *i) The service provider must clearly communicate to consumers during the registration process who it has a commission agreement with and who it receives any payment from, either directly or indirectly.*

1.8. **Why is this important?** Transparency matters to consumers and creates trust. Transparency of commission fees has been an issue raised as some consumers are concerned that they will be made offers on the basis of unknown commission arrangements. In the Confidence Code we require that service providers must show who they have commission arrangements with.

1.9. For consistency we are proposing to retain this provision for collective switching, with an additional requirement that the information relating to commission or payments must communicated to consumers when they register with the scheme (as per the current code). We think this is important for consumers who do not sign up online (eg on paper).

Audit arrangements

Proposal

To retain the need to audit service providers. However, collective switching will need different audit arrangements to price comparison.

We intend to work with stakeholders to further develop proposals for auditing. At this stage we have developed only outline requirements.

1.10. **Why is this important?** The audit process will need to be different to the existing arrangements for price comparison services because the mode of operation is different. This is because whereas price comparison sites operate constantly and can be monitored at any time, collective switching schemes are time bound with results produced at a specific point and so it is not possible to monitor the way results are generated in the same way.

Outline Audit requirements

- i. The audit should cover each provider, rather than employing a proportionate sampling exercise.*
- ii. As collective switching is relatively new, to begin with the most comprehensive audit possible should be carried out, acknowledging that this will be subject to review.*
- iii. To ensure that the numbers being audited and the focus of the audits continue to be proportionate to the uptake of collective switching, we suggest a six-monthly review of service providers at first.*
- iv. We suggest that the audit might employ one auditor, and would test all aspects of the Code at least once a year, testing exactly the same elements and reporting in a uniform format. This would ensure that there is a benchmark for comparing audit findings and ratings across the providers. The findings of this yearly audit will define the form and structure of subsequent yearly audits.*
- v. There should also be an explicit provision for targeted interim audits. These would test specific elements of the Code for all or some of the service providers.*
- vi. We suggest defining a uniform audit rating methodology. This might include the application of two functions to each finding: pervasiveness and severity, eg:*

Pervasiveness Rating X Severity Rating = Assurance Rating Score
- vii. The assurance rating score might be converted to an overall assurance rating. These broad ratings (but not individual scores) might be published on our website to encourage service providers to participate and provide a good service.*
- viii. The audit should have clearly defined and transparent governance arrangements.*

3) Use of the logo

Proposal

We intend use of the logo for collective switching to be different to that allowed in price comparison in these ways:

The service provider must display the Code logo but may only use the Confidence Code logo only on the following materials:

- registration forms

- scheme website and service provider’s website
- scheme offer email or letter
- scheme-related complaints and other correspondence.

1.11. **Why is this important?** The Code logo must be used only where prescribed so it can be a clear sign that consumers can have confidence in the collective switching process. However, use of the logo should be restricted to certain types of material and transaction rather than the whole scheme, as accreditation will not cover the scheme in its entirety.

1.12. The existing Confidence Code does not have provisions that control the use of the logo: these are instead controlled by contract. We are seeking to establish the policy around use of the logo. We are not looking to establish the mechanism for controlling use of the logo at this stage.

4) Complaint handling (Confidence Code requirement #9)

Proposal

To keep Code requirement 9, with an additional clause relating to signposting:

- The service provider must clearly identify on its website, and offer letters/emails, which party to contact when making a complaint. The service provider must respond to all complaints about issues covered by Code accreditation.

1.13. **Why is this important?** It is not always clear in collective switching schemes who consumers should complain to, especially where different parties (typically scheme organiser, service provider and suppliers, although there may be others in some cases) are responsible for separate parts of the process. It is also important for consumers who do not engage online that this information is available in paper communications.

New Collective-switching-specific code requirements

5) Transparency of auction process

Proposal

An additional code requirement to include, for collective switching:

- The scheme provider must clearly set out on its website, paper sign-up forms and marketing materials, the process for the auction.
- After the auction, the service provider must provide details about the process on its website, setting out clearly:
 - the number of suppliers who bid in the auction
 - the grounds on which any winning tariff was selected
 - if any suppliers' tariffs were excluded, and why.

1.14. **Why is this important?** The process of the scheme must be clear and set out in advance to increase transparency for all parties. Suppliers have said lack of transparency and certainty of the process, and therefore outcomes, will often deter them from bidding, as the risks increase and are difficult to assess.

1.15. Customers should be clear about the process of the scheme and the criteria on which the winning bid was chosen. This will help them make well-informed choices. If a supplier's tariff was excluded (not considered in the auction at all, as opposed to being eliminated during the bidding process) it is important that this is made clear. From our stakeholder engagement we know that this can occur. In one case, for example, the most competitive offer was excluded as the supplier had poor customer service. This was decided by the scheme provider. We feel that it is important that the customer is made aware of the choices the scheme provider makes.

6) Transparency of offer and direction to impartial advice

Proposal

(i) Where the comparison does not cover the whole market, the service provider should clearly indicate that the tariffs displayed are restricted to the winning tariffs or the tariffs which bid into that particular auction process.

(ii) If a whole-of-market comparison is not provided, the service provider should clearly state that the consumer may be able to find a better tariff elsewhere in the market.

(iii) All offer letters should point the reader towards impartial advice for switching and for energy saving (CAB advice guide, the Confidence Code page on our website, and the Energy Savings Advice Service).

1.16. **Why is this important?** Where consumers are made an offer that does not include a whole-of-market comparison, this should be made clear to consumers so they are not misled. In addition, clear directions to accredited price comparison services should be provided to prompt consumers to engage with the market, should they wish to. Independent advice should also be offered. Energy savings advice should also be pointed out as another way consumers can reduce their bills. This is required on websites by the Code. However, this should also be provided in a way that will benefit offline consumers.

7) Terms and conditions

Proposal

The service provider must provide a written statement of terms and conditions where consumers are registering for the service (eg on the website and on paper registration forms). These must remain easily accessible throughout the collective switching scheme.

1.17. **Why is this important?** Terms and conditions for use are not always apparent in the sign-up process for collective switching. It is important that these are transparent and accessible.

1.18. Stakeholders have raised concerns about the visibility of terms and conditions in some collective switching schemes.

New requirements which require further development

8) Data collection and handling

Proposal

No firm proposal at this stage

1.19. **Why is this important?** Data collection at the registration stage is an important part of collective switching. Schemes can collect specific information on whether the consumer is currently receiving or eligible for additional support such as the WHD or their current energy supplier's Priority Services Register (PSR).

1.20. How this data is collected and handled is a concern for consumers. There is an existing data protection regime under the Data Protection Act 1998 and other existing data protection legislation. However it is not clear if some collective switching specific activities are covered completely by the Act. Therefore we are seeking views on any gaps and the extent to which further provisions would be required in the Confidence Code.

9) Telephone and face-to-face interactions

Proposal

No firm proposal at this stage

We see these interactions as important areas for collective switching. The Code may eventually cover them, but they are complex issues which will be looked at by the domestic TPI project.

5.15. **Why is this important?** Many schemes have found that face-to-face engagement is an effective way to engage with customers. Most schemes will use a range of channels to communicate with customers before they sign up to a scheme and after an offer letter has been provided. These engagement channels include, but are not limited to, face-to-face, telephone, post and online.

5.16. Risks are present when TPIs engage in interactions with consumers which cannot be easily controlled and monitored by suppliers. These include face-to-face engagement and, to a lesser extent, telephone sales. Many suppliers are hesitant to engage in collective switching as they have less control over these activities and therefore face risks.

5.17. When a TPI is communicating the winning offer of the scheme to a consumer they are acting as a representative of the supplier. This means the supplier is responsible for ensuring that the TPI is behaving in an acceptable way. The supplier risks enforcement action if the TPI's conduct is unacceptable.

5.18. We have already provided two guidance letters that are relevant to TPI activities in collective switching with domestic customers:

- Ofgem letter on TPIs and the Marketing Licence Condition:
http://www.ofgem.gov.uk/Markets/RetMkts/Compet/Documents1/2012_10_09_Marketing%20of%20energy%20supply%20to%20domestic%20customers%20by%20Third%20Party%20Intermediaries.pdf
- Ofgem letter on collective purchase/switching schemes (note that the section on undue discrimination is now defunct):
<http://www.ofgem.gov.uk/Markets/RetMkts/Compet/Documents1/collective%20switching%20open%20letter.pdf>

5.19. In response to our Statutory Consultation on the RMR⁴⁵ one supplier requested that we make it clear that representatives, as well as suppliers, will have to comply with our RMR rules during a sale. In our decision document of August 2013, we reiterated that representatives will need to comply with our RMR rules and that suppliers have a responsibility to ensure their representatives are compliant.

⁴⁵ <https://www.ofgem.gov.uk/ofgem-publications/74753/theretailmarketreview-statutoryconsultationonrmrdomesticproposals.pdf>

Appendix 4 - Glossary

A

Authority

The Gas and Electricity Markets Authority.

B

Barrier to entry

A factor or circumstances that limit a firm's ability to enter a market.

Business Protection from Misleading Marketing Regulations (BPMMRs) 2008

The Business Protection from Misleading Marketing Regulations 2008 (BPMMRs) prohibit businesses from advertising products in a way that misleads traders and set out conditions under which comparative advertising, to consumers and business, is permitted.

C

Collective switching

Where consumers group together in a process typically facilitated by an independent organisation, which negotiates with multiple suppliers to secure a deal on the consumers' energy supply.

Community Energy

Community energy covers aspects of collective action to reduce, purchase, manage and generate energy.

Consumer Protection from Unfair Trading Regulations (CPRs) 2008

The Consumer Protection from Unfair Trading Regulations 2008 introduced a general duty not to trade unfairly and to seek to ensure that traders act honestly and fairly towards their consumers. They apply primarily to business to consumer practices (but elements of business to business practices are also covered where they affect, or are likely to affect, consumers).

D

Department for Energy and Climate Change (DECC)

The UK government department responsible for policy in the fields of energy and climate change.

Direct debit (DD)

A method of payment where a fixed or variable amount is taken from a bank account each month, quarter or year.

Domestic consumer

A consumer that uses energy for non-commercial purposes.

Domestic energy market

Market which primarily services domestic household consumers.

Domestic energy suppliers

Companies who sell energy to and bill domestic customers in Great Britain.

E

Energy Companies Obligation

The Energy Companies Obligation (ECO) is a government energy efficiency scheme for Great Britain which has replaced the CERT and CESP programmes, both of which came to a close at the end of 2012. It operates alongside the Green Deal and places obligations on larger domestic energy suppliers to domestic householders, with a focus on vulnerable consumer groups and hard-to-treat homes.

Energy Efficiency

A system for reducing energy use for a household or business.

G

Green Deal

A scheme that allows householders to improve the energy efficiency of their homes and repay the cost through energy bills.

I

Intermediary

An organisation that intermediates between an organisations and a consumer.

N

New entrant

A retail energy supplier that does not have an incumbent consumer base from before market opening.

Non domestic retail energy market

Market which serves non domestic business consumers.

S

Self regulation

Industry regulation without Ofgem's binding licence conditions or rules contained in legislation.

Standards of Conduct (SOC)

A written policy and procedure that outlines broad standards of integrity and business ethics.

Standard Licence Conditions (SLCs)

The legally binding conditions that licensed gas and electricity suppliers must meet to supply to domestic and non domestic consumers, in accordance with the Gas Act (1986) and Electricity Act (1989).

Switching site

An online comparison and switching service that helps consumers to compare prices on a range of products and services.



T

Tariff

The charges for supply of electricity/gas combined with all other terms and conditions that apply, or are in any way linked, to a particular type of contract for the supply of electricity/gas to a customer.

Telesales

A method of direct marketing in which a salesperson solicits prospective customers to buy products or services over the phone.

Third Party Intermediaries

Third Party Intermediaries (TPIs) are parties who engage in direct or indirect activities between a domestic or non domestic consumer and an energy supplier to assist consumers with their energy supply needs.⁴⁶

⁴⁶ This is our working definition and may be subject to change.

Appendix 5 - Feedback Questionnaire

1.1. Consultation is at the heart of good policy development. We are keen to consider any comments or complaints about how this consultation has been conducted. In any case we would like to get your answers to these questions:

1. Do you have any comments about the overall process which was adopted for this consultation?
2. Do you have any comments about the overall tone and content of the report?
3. Was the report easy to read and understand? Could it have been better written?
4. To what extent did the report's conclusions provide a balanced view?
5. To what extent did the report make reasoned recommendations for improvement?

Please add any further comments and send your responses to:

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