

# Third Party Intermediaries: exploration of market issues and options

## Consultation

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### Overview:

Third Party Intermediaries (TPIs) include switching websites, energy brokers and energy efficiency advice providers who interact with energy consumers, but are not energy suppliers. They play an important role in both the domestic and non domestic markets. TPIs offer consumers alternative routes to engage with energy markets and can empower consumers to make better choices. The importance of TPIs as an interface between consumers and energy suppliers in retail energy markets in Great Britain is likely to grow with the introduction of smart meters and grids, and an increased focus on energy efficiency.

Consumer research and feedback from stakeholders have shown that many interactions with TPIs are positive. However, concerns have also been raised about the practices of some TPIs. When dealing with TPIs, consumers in both the domestic and non domestic retail energy markets may experience practices that are not fair and transparent. This can lead to consumer detriment, and to reputational damage to TPIs as a group. This in turn can hinder competitive activity in the energy market overall.

We seek views on our assessment of the current TPI market, possible developments and stakeholders' preferred option for an enduring regulatory framework. The deadline for responses is 23 August 2013.

## Context

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Our priority is to protect and make a positive difference for all energy consumers through promotion of value for money, security of supply and sustainability, for present and future generations. Third Party Intermediaries (TPIs) are entities that engage in direct or indirect activities between a domestic or non domestic consumer and an energy supplier in order to assist consumers with their energy supply needs.

We are undertaking a range of work considering how TPIs interact with energy consumers and the market. Taking the current regulatory landscape into account, we are considering short term and long term measures that will address issues impacting consumers and facilitate robust practices among TPIs.

This consultation has links with our work on the Retail Market Review (RMR), our Consumer Vulnerability Strategy<sup>1</sup> and Smarter Markets Strategy.<sup>2</sup> We also note links with a range of other work we and others are engaged in, many of which are outlined in this consultation. It is important that any proposals for a regulatory framework take account of, and are consistent with, these initiatives and the wider TPI landscape.

## Associated documents

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All documents are available at [www.ofgem.gov.uk](http://www.ofgem.gov.uk)

- 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.

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<sup>1</sup> <http://www.ofgem.gov.uk/Sustainability/SocAction/Pages/SocAction.aspx>

<sup>2</sup> <http://www.ofgem.gov.uk/Markets/sm/strategy/Pages/Strategy.aspx>

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## Executive Summary

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Third Party Intermediaries (TPIs) are parties who are not an energy supplier, but engage with a domestic or non domestic consumer to assist consumers with their energy supply needs. TPIs can offer advice and products to assist with a range of functions including energy procurement, efficiency and management.

Currently there are a large number of well established TPIs who play a valuable role within the energy market, such as domestic price comparison sites and consultants who help non domestic consumers navigate the complex choices in the market. However, consumers experience of TPIs in the market is not universally positive. This consultation seeks views on broad 'regulatory' frameworks that may address issues identified.

TPIs who operate within the energy market<sup>3</sup> operate under a wide spectrum of business models and serve a range of consumers from household consumers to large Industrial and Commercial (I & C) organisations. Although the vast majority of TPIs are currently engaged in the activities covered by the above definition, we note a range of TPIs offer other services, such as provision of energy efficiency products and services.

Over time the importance of TPIs within Great Britain's gas and electricity retail markets has increased. We expect this trend to continue given changing technologies and market developments, and anticipate TPI services will evolve and become more prevalent.

For example, smart metering will be an important catalyst for change in the energy sector. It provides a platform for transforming how energy markets operate, benefitting consumers through innovative products, better service, lower costs and more effective competition. There is a potentially significant role for TPIs in realising these benefits and the full potential of smart meters. Similarly, developments like the rise of Collective Switching and the Energy Companies Obligation are creating increased opportunities for TPIs to further evolve.

Many consumers have positive interactions with TPIs. However, there have been a number of concerns raised about the practices of some TPIs operating in the market. These have come to light from our own research as well as input from consumers, suppliers and TPIs themselves.

The regulatory framework that currently applies to TPIs and their interactions with consumers is different to that of energy suppliers. TPIs are subject to regulation under general consumer protection rules, and in some cases have signed up to voluntary agreements governing their business practices and interactions with consumers. However, TPIs are not subject to direct sectoral regulation in the same way as energy suppliers.

We are currently progressing a number of projects that consider how best to improve practices among TPIs. As part of this work we are considering their role in the market and identifying areas for improvement. Many of these projects involve working closely with TPIs and other stakeholders, and focus on discrete areas of TPI activity such as the review of the Confidence Code for domestic energy switching websites.

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<sup>3</sup> In this consultation document and associated documentation we use the terms 'market' and 'markets' as shorthand for referring to different segments of the energy sector. For the avoidance of doubt these terms are not intended to describe or otherwise suggest the approach that may be taken by Ofgem for the purposes of market definition in competition law investigations.

It is also important to think more broadly about how to ensure consumers interacting with TPIs are being treated fairly and appropriately, in both the near and long term. This consultation document outlines a spectrum of 'regulatory' measures that may achieve this outcome, and asks for views on what overarching framework may be most appropriate.

At this stage, we have identified a wide spectrum of possible options for an overarching TPI 'regulatory' framework that we hope will achieve our objective of ensuring consumers are effectively protected. These options include:

- maintain the status quo;
- issue non-binding guidance outlining our expectations for TPI interactions with consumers;
- voluntary code of practice for all TPIs, that either:
  - a. sets out the objectives but has no (or minimal) oversight arrangements;  
or
  - b. has a strict accreditation, audit and sanctions process;
- governance via suppliers – require suppliers (via Standard Licence Conditions) to only work with TPIs accredited to a robust code of practice; and
- direct regulation of TPIs in the energy sector.

The range of TPIs and TPI activities we have considered is deliberately broad. Given potential developments within the market, the nature of TPIs may change and we are seeking a framework that is flexible to such changes. However, our minded to view is that the definition of TPIs should not include charitable organisations, advice agencies and not for profit organisations such as Citizens Advice Consumer Service, Consumer Futures and the Home Heat Helpline where these organisations are simply providing generic advice.

We note the differences between the domestic and non domestic TPI markets and that TPIs can play different roles within these market segments. We will consider the overall package of issues across both markets as a number of similar issues arise. However, this does not preclude us pursuing different approaches in different segments, where appropriate.

A 'regulatory' framework may ultimately involve voluntary or self regulatory options, or could involve a more direct form of regulatory oversight. In this consultation we note some of the benefits and risks associated with different options; however, we do not yet make recommendations. Instead, we seek stakeholder views regarding both our characterisation of the market and issues identified as well as preferred approach to tackle concerns raised.

Responses to this consultation are due on 23 August 2013 and should be sent to Third Party [Intermediaries@ofgem.gov.uk](mailto:Intermediaries@ofgem.gov.uk).

# 1. Introduction

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## Chapter Summary

Explains the purpose and structure of this document. It also notes the consultation process and proposed next steps to develop an appropriate regulatory framework for TPIs.

1.1. Third Party Intermediaries (TPIs) are organisations that operate between a consumer and an energy supplier to help consumers procure energy, manage energy related needs or provide energy related advice.<sup>4</sup> There are a wide range of other organisations operating in this market and their services can cover a range of sectors including telecoms and insurance. In the domestic retail energy market (i.e. the market for household consumers) we are aware that most TPIs operate as online price comparison sites. Within the non domestic market (i.e. the market serving business energy consumers) there are a significantly higher number of intermediaries competing to provide energy services to consumers and these organisations operate under a range of business models.

1.2. A competitive retail energy market is key to ensuring business and household consumers in Great Britain receive value for money. TPIs can play an important role and promote competition by empowering consumers to navigate the market more effectively. In some cases they also provide wider services such as energy advice and play a role in providing initiatives such as Community Energy, Smart Metering, Demand Side Response (DSR), and Collective Switching. TPIs have been prevalent in the market and their presence and impact has grown over time.

1.3. The energy market is approaching a period of significant change, with new rules proposed under the Retail Market Review (RMR)<sup>5</sup>, the roll out of Smart Meters to all consumers and other technological developments driving innovation. Beyond this, a number of programmes and initiatives from Government are designed to promote consumer engagement, reduce carbon emissions and provide consumer protection.

1.4. These changes are likely to increase the role of TPIs in the market, providing opportunities for new TPI business models and scope for greater interaction with consumers. Therefore, this document considers the role of TPIs in the market, how this may change over time and what measures may ensure consumers interacting with TPIs are treated fairly and benefit from appropriate protections.

1.5. TPIs are currently regulated by consumer protection rules, such as the Consumer Protection from Unfair Trading Regulations (CPRs)<sup>6</sup> and the Business Protection from Misleading Marketing (BPMRs).<sup>7</sup> The OFT<sup>8</sup> and local authority trading

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<sup>4</sup> This is our working definition, this may be subject to change.

<sup>5</sup> Retail Market Review changes for domestic and non domestic consumers  
<http://www.ofgem.gov.uk/MARKETS/RETMKTS/RMR/Pages/rmr.aspx>

<sup>6</sup> Consumer Protection from Unfair Trading Regulations (CPRs)  
<http://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>

<sup>7</sup> The Business Protection from Misleading Marketing Regulations 2008  
<http://www.legislation.gov.uk/ukdsi/2008/1276/contents/made>

standards departments currently have enforcement powers in respect of all relevant consumer protection rules covering business to business and business to consumer interactions. Further, TPIs such as Green Deal Advisors, who undertake a Green Deal assessment and make recommendations for energy saving improvements, are governed by the Green Deal Advisor Association (GDAA)<sup>9</sup>. In addition, there are voluntary or self regulatory measures introduced by organisations within the industry for TPIs, including consumer bodies.<sup>10</sup>

1.6. We currently have enforcement powers under consumer protection rules in respect of business to consumer interactions. Further, we have powers<sup>11</sup> to apply for activities connected to the supply of energy (such as TPI activities) to be licensed. Additionally, we may be granted certain powers under the Business Protections from Misleading Marketing Regulations (BPMRs). The intention of this is for us to gain powers to help protect businesses from unfair or misleading marketing, similar to powers we already have in domestic energy markets.

### This document

1.7. This consultation reviews the current TPI landscape and considers a spectrum of options that may facilitate better practice among all TPIs. We outline our understanding of the current market structure, potential developments as well as regulations that apply to TPIs and how good practice is shared and promoted. Further, we note a range of regulatory options – including voluntary and self regulatory measures as well as more direct forms of regulation. An initial assessment of benefits and risks associated with each approach is provided, but we do not propose a preferred approach at this time.

1.8. We have undertaken a range of stakeholder engagement to better understand TPI market issues and address some concerns in the near term. This work is outlined in Chapter 5.

#### Document Structure

- **Chapter 1: Introduction:** sets out the purpose and structure of this document, while noting the consultation process and next steps for work.
- **Chapter 2: TPIs and the energy market:** sets out our understanding of current TPI practice for both domestic and non domestic markets, recognising these markets display significant differences.
- **Chapter 3: Consumer experience of TPIs:** sets out the energy consumer's experience of TPIs and highlights the key issues and benefits that consumers face when working with TPIs.

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<sup>8</sup> Office of Fair Trading <http://oft.gov.uk/>

<sup>9</sup> Green Deal Advisor Association <http://gdaa.org.uk/>

<sup>10</sup> In respect of business to consumer interactions the provisions of these codes may be enforceable under the Consumer Protection from Unfair Trading Regulations 2008.

<sup>11</sup> Under the Gas Act 1986 and Electricity Act 1989.

- **Chapter 4: Current regulatory framework:** notes the current regulatory framework and voluntary Codes of Practice that currently apply to TPIs.
- **Chapter 5: Facilitating better practice among TPIs:** sets out details of the interrelated schemes and initiatives that aim to help promote better TPI practices in the near term.
- **Chapter 6: Market developments:** sets out energy market developments and how emerging trends may impact the TPI market in future.
- **Chapter 7: Spectrum of regulatory options:** provides a range of possible regulatory options for consideration. We welcome stakeholder views as to whether these options will promote good practices among TPIs and energy suppliers.
- **Chapter 8: Next steps:** notes the consultation process and next steps.

1.9. This consultation is a call for evidence noting current TPI practices in the energy market and how TPI behaviour affects consumers and organisations participating in this market. We set out how we expect different options may help achieve our aim to increase consumer trust and to promote fair treatment of consumers through their interactions with TPIs.

1.10. We invite views on our understanding of the overall structure and status of the TPI market as well as current and emerging consumer issues. This is an opportunity for stakeholders to comment on how they think these issues are affecting the market and what steps may be taken to alleviate any concerns.

## Next steps

1.11. Responses to this consultation are due on 23 August and should be sent to the following e-mail address: [ThirdPartyIntermediaries@Ofgem.gov.uk](mailto:ThirdPartyIntermediaries@Ofgem.gov.uk).

1.12. Following the close of this consultation we will assess stakeholder feedback and further develop policy options. We then plan to consult on such options, providing views and recommendations where appropriate. As with the content of this work, timelines and deliverables will be determined following the close of this consultation. We will also note next steps for specific projects relating to our work on TPIs.

1.13. While we continue to closely engage with stakeholders to ensure this process remains open and transparent, we will monitor any significant changes made by industry bodies in an effort to improve consumer interactions with TPIs.

1.14. We will be convening further stakeholders events throughout the consultation process. This will provide interested stakeholders visibility of our work and help inform our thinking on options for a future TPI framework. If you would like to take part please contact us at the e-mail address noted in paragraph 1.11 to express your interest.



## 2. TPIs and the energy market

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### Chapter Summary

This chapter provides an overview of key activities that take place in the TPI market and notes the range of TPI business models in place.

**Question 1:** Do you agree with the scope and range of TPIs operating in the energy market, from the information provided? Do you have any further views on this?

2.1. This chapter provides a high level overview of the key products and services TPIs offer consumers in the domestic and non domestic GB retail energy markets. The energy markets have been fully open to retail supply competition since 2002. TPIs, in one form or another, have been a predominant feature of the energy market for a number of years, and their presence has become more prevalent over time.

2.2. There are a significant range of services captured within the TPI market. The bulk of this activity is centred around price comparison and energy procurement service, particularly in the domestic energy market. However, there is a growing set of TPIs that offer other energy-related services to consumers, including energy efficiency advice. As we have begun to see in the non domestic market, it is likely that TPI services will evolve and merge over time.

2.3. TPIs also operate using a broad spectrum of business models. Some are sole traders, others are large cooperate entities. Similarly, TPIs receive payment for their services in a variety of different ways. Some business models mean TPIs are paid directly by consumers while others TPIs may receive payment from suppliers.

2.4. We are keen to capture a wide spectrum of TPI services as part of this work, but welcome views regarding how far reaching any TPI regulatory framework should be. For example, should it focus more specifically on activities involving energy procurement, or should the scope also capture third parties providing other products or services to energy consumers.

### Overview of GB retail gas and electricity markets

2.5. GB retail gas and electricity markets have been open to competition for over ten years. The domestic and non domestic markets<sup>12</sup> share some similar features, but there are also notable differences between them. There are a larger number of suppliers in the non domestic market, with 18 domestic and 24 active non domestic electricity suppliers, and 30 non domestic and 16 domestic active gas suppliers.

2.6. Consumers in the non domestic market have higher rates of active consumer engagement with energy procurement, and switching rates, above their domestic counterparts. Larger companies generally have in-house procurement managers and or relationships with TPIs who help them identify their best energy options and negotiate energy contracts. Switching rates for non domestic consumers are around 22 percent, at the smaller end of the business market, compared with 12 per cent for domestic consumers.<sup>13</sup>

2.7. The vast majority of consumers still do not switch their energy tariff or consider their options within the market. Almost all consumers tell us they switch supplier in order to save money; however, there are other factors that may be important, including the impact of sales activity, brand or customer service. They may also switch on the basis of incomplete information. Facilitating and promoting consumer engagement has been a key priority for us, and a number of regulatory policy proposals and government initiatives have been working to these ends.

2.8. Under the Retail Market Review (RMR) we have developed policy solutions to improve consumer engagement. In the domestic market we identified three key barriers to effective consumer engagement; complex tariffs, inadequate information and lack of trust/poor supplier conduct. However, in the non domestic market key concerns relate to the lack of clear terms and conditions of contracts (particularly around renewals), objections to supply transfer and interactions with TPIs that are not always fair and transparent. Our RMR proposals are aimed at addressing these issues and delivering a simpler, clearer, fairer energy market.

2.9. Market developments such as the RMR, Smart Metering, the Smarter Markets Programme and Energy Efficiency programmes, mean TPIs are likely to play an increasingly prominent role, which will affect the consumer experience when interacting with the energy market.

## Range of TPI activities

2.10. TPIs within the energy market operate under a range of business models and serve a wide range of consumers, within the domestic and non domestic markets. TPI services can range from providing independent energy advice to actively helping a consumer negotiate a new energy contract. Additionally, TPIs can provide energy efficiency advice as well as advice about products, services or government schemes such as collective switching, community energy and collective switching initiatives - all of which support consumer engagement. We will outline further information on these schemes in Chapter 5.

2.11. Non domestic TPIs vary significantly in size, ranging from sole traders to large diverse organisations that can often have a notable presence in Great Britain's energy market as well as internationally.

2.12. The TPI market is complex and evolving which means it is not possible to state its precise size or scope of coverage. There may be as many as 100 intermediaries

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<sup>13</sup> Retail market review impact assessment May 2013, pg 13  
[http://www.ofgem.gov.uk/MARKETS/RETMKTS/RMR/Documents1/RMR\\_ImpactAssessment\\_Non-Domestic\\_22032013.pdf](http://www.ofgem.gov.uk/MARKETS/RETMKTS/RMR/Documents1/RMR_ImpactAssessment_Non-Domestic_22032013.pdf)

operating as switching sites in the domestic market, this includes sites that are affiliated in some way to other larger TPI organisations. We are currently aware of over 450 TPI organisations<sup>14</sup> operating in the non domestic energy market, and we suspect there are significantly more companies such as aggregators and affiliate companies, which should also be taken into account.

2.13. To date the majority of our analysis has been focused on TPIS that support energy procurement. However, as noted above, there are a range of other ways TPIS engage with consumers. These are currently centred around energy efficiency, but can be expected to include a range of new roles as Smart Metering and Demand Side Response.<sup>15</sup>

### Energy procurement advice and services

2.14. In general, there are three common types of TPIS providing price comparison and energy procurement-related services.

- **Sales agents:** can be employed directly with a principal interest to represent the supplier to the energy consumer. Some agents will operate on behalf of a single supplier, and are sometimes known as primary agents. Other agents may represent multiple suppliers and are sometimes known as secondary agents. Some sales agents operate across multiple sectors, including energy, telecoms and insurance.
- **Brokers:** review and present offers from a range of suppliers to the energy consumer, for example an internet price comparison site.
- **Consultants:** similar to a broker service, they review and present offers from a range of suppliers to the consumer, sometimes taking a fee from the consumer for providing the service.

2.15. This list is not exhaustive, but offers a snapshot of common business models. Often the boundaries between different types of TPIS providing procurement services may be somewhat fluid, and individual companies can operate under more than one model depending on the range of consumers they work with.

2.16. Affiliate companies or Franchises can also be included under this broad group. They may operate under an 'umbrella' type business model, which will have an organisational brand name but many smaller entities may operate within it. It may ultimately be more cost efficient for companies to operate this way.<sup>16</sup> Similarly, more companies are emerging that manage the relationship with individual agents brokers to procure contracts, as such they are managing third parties while acting as a TPI themselves. These companies are sometimes referred to as 'aggregators' or 'pricing broker specialists'.

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<sup>14</sup> Review of TPI organisations and structures while preparing for the TPI non domestic working group, following a large number of notes of interest, Nov 2012-Feb 2013.

<sup>15</sup> Creating the right environment for Demand Side Response  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=Markets/sm/strategy/dsr>

## Other third party services

2.17. The majority of our focus on TPI activity to date has been on third parties that act as 'intermediaries' between a supplier and consumer, helping the consumer find a better energy deal.

2.18. However, looking more broadly across the energy landscape there are an increasing number of areas where third parties are engaging with consumers and providing energy related services. Given the strong synergies between these different offerings it is likely that many TPis will offer these wider services alongside support on switching supplier. Understanding this wider landscape is therefore important context. We outline some examples below.

2.19. Green Deal assessors provide consumers with advice on Green Deal measures (such as insulation) that could be used to improve the energy efficiency of their home or business. While suppliers can be Green Providers other companies are also entering this market. ECO is the Government's new domestic energy efficiency programme which has replaced the existing CERT and CESP programmes<sup>17</sup>, both of which came to close at the end of 2012. ECO works alongside the Green Deal to provide additional support for packages of energy efficiency measures. ECO also provides insulation and heating packages to low income and vulnerable households and insulation measures to low income communities.

2.20. In the non domestic market there are a wide range of companies providing consumers with advice on their energy management. These services typically use data from advanced metering systems to help consumers understand how they are using energy - for example comparing across sites - and the potential for energy saving. These services are also becoming more prevalent in the domestic market as smart technologies become more widespread.

2.21. There is growing interest in the potential for Demand Side Response to be used to help manage pressures on the energy system (both in terms of network investment and also generation). In the non domestic market aggregators already play a role supporting consumers who are able to reduce load or use back-up generation to negotiate contracts with the system operator or network provider. In our recent consultation on Demand Side Response we highlighted the important role that intermediaries can be expected to play in helping consumers navigate what is a complex landscape and avoid the need for consumers to contract directly with parties across the value chain (e.g. suppliers, network, operators, etc.).

2.22. Consumers do not always use TPI services to search and compare energy deals in the market. Other types of TPI organisations, such as not for profit organisations, local authorities and charities<sup>18</sup> can provide independent advice to consumers, and be involved in collective switching activities. However, their primary function may not necessarily relate to energy or energy procurement. Consumer organisations such as

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<sup>17</sup> Carbon Emissions Reduction Target (CESP) and Community Energy Savings Programme (CERT) were replaced by the Energy Company Obligation that is Governments new energy efficiency programme.

<sup>18</sup> These organisations may also include financial and utilities management websites.

the Citizens Advice Consumer Service, Home Heat Helpline<sup>19</sup> and National Energy Action all provide consumer advice services.

2.23. A number of energy suppliers partner with third party charities to provide independent advice to their customers who are in debt. Some suppliers refer customers to organisations such as National Debt Line and Step Change. Debt is a complex issue that can impact many areas of a consumer's life, not just their energy bills, therefore we support suppliers forming such partnerships. These types of third party advisors are out of the scope of this review.

2.24. Some TPIs facilitate schemes such as The Feed in Tariff scheme<sup>20</sup>, which was introduced to promote the uptake of small scale renewable energy. TPIs may also engage in Power of Attorney services, which supply the consumer with information on how to nominate someone to look after their procurement needs.

2.25. Collective switching is a group energy procurement activity that is typically managed by an independent organisation who will negotiate with the multiple suppliers on the consumers' behalf. It can offer consumers a way of interacting with a supplier that may increase their level of trust and engagement for switching. Government has provided funding to support the development of Collective Switching<sup>21</sup> and our Community Energy initiative is in line with the development of DECC's Community Energy Strategy.

### **Funding sources and transparency**

2.26. There are different types of funding structures within the domestic and non domestic TPI market; however, there is also a considerable amount of overlap in general practices. How TPIs are remunerated may depend on their business model and the services being provided to consumers.

2.27. Some TPIs operate as consultants and charge consumers directly for their services via a flat fee based on the value of their energy portfolio or based on how much the TPI is able to save them.

2.28. However, the most common funding arrangement in both the domestic and non domestic market is for a TPI to be paid directly by a supplier. The precise terms and fees may differ depending on the agreement between the supplier and TPI. An example of this may be a 'one off' fee from suppliers or a fee based on energy consumption reflecting the consumers quoted price. We are aware of common approaches such as consumers being subject to an 'uplift' on the prices they are offered and any monetary compensation for 'services' to the consumer being paid directly to the switching site, for each customer they 'introduce' to the supplier.

2.29. That being said, there are some differences between the domestic and non domestic markets. For example, the fees that are encountered by Industrial and Commercial (I & C) consumers tend to be more bespoke, for example fixed fees and per cent savings from clients. In the domestic market advice services will primarily be

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<sup>19</sup> Home Heat Helpline <http://www.homeheathelpline.org.uk/>

<sup>20</sup> FITs scheme <http://www.ofgem.gov.uk/Sustainability/Environment/fits/Pages/fits.aspx>

<sup>21</sup> <https://www.gov.uk/collective-switching-and-purchasing>

free of charge for the consumer; however, the TPI may receive their funding from other sources – although the consumer may not be aware of this. Most switch schemes, run by both commercial and not for profit organisations, will take a fee. However, where a scheme uses a separate provider to facilitate the switch, the fee can be split between the TPI and the provider, again this may not always be transparent for the consumer.

### **TPIs in the domestic retail energy market**

2.30. Although there are some well established organisations, many domestic TPIs are not typically large in size. In addition, there are an increasing numbers of 'white label' comparison sites. They can often be fronted by familiar consumer brands like newspapers and insurance services, but are supported by more established switching sites. Domestic consumers' requirements are often more related to price.

2.31. Price comparison services can also be offered to consumers via alternative routes, such as telesales and other offline forms of communication. It is less common for domestic switching sites to engage with consumers in person; however, we know that some are interested in scaling up such efforts and may see it linking into other face to face contacts associated with energy efficiency services. Such activity can also link into services that compare products in a range of sectors (e.g. insurance, telecoms, energy, etc.).

### **TPIs in the non domestic retail energy market**

2.32. There are significantly more TPIs operating in the non domestic energy market than in the domestic market, this includes smaller TPIs (some of whom are sole traders) and large corporate enterprises. TPIs can often help business consumers navigate the energy market. Non Domestic consumer needs tend to be more bespoke and their contracts are often designed specifically around these requirements, which are typically of a fixed term nature.

2.33. The reasons for using intermediaries can vary between business consumers, and individual TPIs may provide services across different segments of the market, or focus solely on specific types of business customer.<sup>22</sup> The market is evolving and there is an emerging group of TPIs who are seeking to cater for all non domestic consumers.

2.34. TPIs are the primary route to market for almost all of the independent suppliers in the non domestic market and many new entrant suppliers use TPIs almost exclusively to reach new consumers. Around two-thirds of major energy users and just under 14% of smaller businesses use TPIs.<sup>23</sup>

2.35. Public Buying Organisations (PBOs) is another form of TPI and serves a significant part of the public sector, the largest of these is the Government Procurement Service (GPS).<sup>24</sup> The GPS provides procurement savings for government and the UK public sector, including Health, Local Government and not for profit organisations. They are committed to helping small organisations and businesses to

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<sup>22</sup> For example, there are TPIs that only accommodate businesses with a very large energy spend, and others mainly target smaller businesses and operate in a telesales environment.

<sup>23</sup> Data from Datamonitor's 2011 B2B Energy Consumer Survey, for electricity and gas combined.

<sup>24</sup> Government Procurement Service <http://gps.cabinetoffice.gov.uk/i-am-supplier>

compete fairly with large organisations for their contracts. TPIs who look to secure Government business can maximise their options by registering their interest on the GPS 'e-sourcing' platform. This allows them to compete for tenders while being kept abreast of future opportunities. However, Government tenders are subject to EU public procurement guidelines<sup>25</sup> and this can limit the number of TPIs who participate in this part of the market.

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<sup>25</sup> Public procurement in the EU: Rules and Guidelines [http://europa.eu/business/public-contracts/index\\_en.htm](http://europa.eu/business/public-contracts/index_en.htm)

## 3. Consumers' experience of TPis

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### Chapter Summary

Sets out some of the examples of consumer experiences in relation to their interactions with TPis in retail energy markets in Great Britain.

**Question 2:** Do you consider our understanding of consumers' experience of TPis in the retail energy market is accurate?

**Question 3:** Do you have further evidence to share regarding consumers' experience of TPis in the retail energy markets?

3.1. As previously noted, TPis have an important role to play facilitating consumer engagement. Many TPis provide consumers with a useful and independent service that can help them find the best energy deal or manage their energy consumption. However, evidence from primary research and stakeholder feedback suggests this is not universally the case. This chapter focuses on common issues consumers face when interacting with TPis in the energy market.

3.2. A significant proportion of consumers interacting with TPis are subject to instances of misselling, pressurised conversations to secure energy contracts, nuisance calls and a lack of transparency around energy offers and how TPI costs are recovered. This can lead to consumer harm and a lack of trust in TPis and the energy industry among consumers. Further, this may negatively impact competition within the retail energy markets as such behaviour may discourage consumers from engaging with the market, or result in consumers making poor choices.

3.3. Consumer research about when consumers engage with the energy market via TPis is not as widely available as research concerning consumers' interaction with energy suppliers. However, we have commissioned research, as have other industry bodies to gain a useful insight into consumer behaviour, some of which has included views on TPis. This section will highlight issues and concerns that have been raised.

### Domestic consumers

3.4. Switching sites are now the main source of information for consumers to compare tariffs across the market so it is vital that consumers are assured the services they receive are unbiased, and the information given is accurate. Whilst price comparison and switching sites give consumers the benefits of quick and independent advice, they are not accessible to, or used by, all domestic consumers.<sup>26</sup> Consumers in vulnerable situations are less likely to have internet access and, therefore, cannot access online comparison sites, generally they found print-offs from price comparison

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<sup>26</sup> Ipsos MORI, Customer Engagement with the Energy Market - Tracking Survey June 2013. The availability of internet access continues to be a major factor in the switching of both fuels; those with internet are significantly more likely to have switched. The survey shows that 85% of energy customers have internet access, which is up two points compared to last year.



websites to be less helpful, with the wide range of suppliers and tariffs listed thought to be confusing.

3.5. Internet access is a key facilitator for switching; the rate among those with no access is very low (4% for gas; 5% for electricity)<sup>27</sup>. Among consumers that have switched supplier, an average of 24 per cent of consumers used the internet<sup>28</sup> to make their last switch.<sup>29 30</sup> Where consumers who were not considered vulnerable regularly checked price comparison, very few of them actually used these sites to switch supplier as many were wary of the information being provided or feared complications with the switching process if they went through a TPI.

3.6. In line with BIS' Consumer Empowerment Strategy<sup>31</sup> and its emphasis on new technologies, the OFT's 2012-13 Annual Plan commits to improving trust in online markets. The OFT estimate that if more consumers used comparison websites as effectively as they could they would stand to save significant amounts, with the potential savings being £150-240m per annum.<sup>32</sup>

3.7. The majority of research in the domestic arena has centred around domestic price comparison sites as this is where TPI activity is most visible to domestic consumers. However, we note there are other types of third parties operating in the domestic market and welcome evidence about consumers' experience of those interactions.

### Non Domestic Consumers

3.8. Consumers in the domestic and smaller business sectors<sup>33</sup> share many of the same characteristics and attitudes toward energy procurement. Consumers generally perceived TPIS to have the capacity to play a beneficial role in the micro-business energy markets by providing a channel through which competitive supply markets can be accessed.<sup>34</sup> All suppliers make significant use of TPIS, some make virtually all of their sales through them. In the Harris research commissioned<sup>35</sup> by us, it was found that where a TPI is used the relationship between consumers and TPIS is generally good. Responses cited the key benefits of using TPIS were:

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<sup>27</sup> Ipsos MORI, Customer Engagement with the Energy Market - Tracking Survey 2013, June 2013.

<sup>28</sup> Around 5 million homes in GB do not have internet access For more information <http://www.ons.gov.uk/ons/rel/rdit2/internet-access---households-and-individuals/2012/stb-internet-access--households-and-individuals--2012.html>

<sup>29</sup> In this context a 'switch' could mean a change of tariff or payment type.

<sup>30</sup> Ipsos MORI, Customer Engagement with the Energy Market - Tracking Survey 2013, June 2013.

<sup>31</sup> BIS Consumer empowerment strategy: The government has launched its Consumer Empowerment Strategy which sets out what the government and others can do to help increase consumer power.

<sup>32</sup> 3 Internet shopping – an OFT market study, June 2007, OFT 921 [www.of.gov.uk/OFTwork/markets-work/internet](http://www.of.gov.uk/OFTwork/markets-work/internet)

<sup>33</sup> The probe 2008 found that smaller businesses were not fully aware of their contract terms, especially those looking to switch. As a result Standard License Condition 7A was introduced in 2010 to identify and protect the interests of smaller businesses.

<sup>34</sup> Consumer Focus, 'Watching the middlemen: Brokerage services for micro-business energy consumers', 2011, pg 4.

<sup>35</sup> Small and Medium Business Consumers' Experience of the Energy Market and their Use of Energy, Harris Interactive, June 2011.

- TPIs allowed for a better understanding of the market and potential supplier problems;
- TPIs saved their business time and hassle, and get the best deals available; and
- TPIs keep on top of key contract dates, providing a reminder to the business when the contract renewal is due.

3.9. Research carried out by Insight Exchange found that many consumers had excellent experiences with trusted consultants or brokers with whom they had worked for years<sup>36</sup>, but it was widely felt that a small number of operators were damaging the reputation of TPIs. This factor suggests that consumer experiences with TPIs are not always positive, and responses to our RMR consultations to date have concluded that further work is required to ensure TPIs operate in a way that maximises benefit and minimises harm to consumers.

3.10. Respondents to our March 2011 RMR consultation<sup>37</sup> noted that poor behaviour included consumers being given misleading information when they signed up to a new contract, and sometimes very little information about who the TPI represented and how they were being paid. SME consumers are often unable to find useful price comparison data in the market and doubt whether advice from a TPI is unbiased, complete and relevant to their particular needs and consumption profile.

3.11. Further, concerns about TPIs and their conduct appear to be borne out by experiences reported to Consumer Direct and in the press. We are also aware of consumer issues with TPIs that have been recorded through contacts we have received from consumers and those received by Consumer Futures (previously Consumer Focus). Key issues are:

- TPIs misrepresent their roles, offers from suppliers and their fees;
- poor quality service provision from TPIs and sub-optimal advice; and
- a lack of transparency from TPIs, especially on commission levels and supplier coverage.

3.12. Similarly Consumer Direct provided evidence of cases where TPIs led consumers to believe they would be signing up to lower prices, only to find they had committed to a higher cost arrangement. In some cases this has been as a result of charges associated with commission not being properly disclosed.<sup>38</sup> Citizens Advice Consumer Service (CACS)<sup>39</sup> reported that from November 2011 to October 2012, just over 40 percent of contacts from businesses regarding alleged misselling contained references

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<sup>36</sup> Insight Exchange, Research into the proposed Standards of Conduct: Non-Domestic Consumers – Final Report, December 2012, pg 14.

<sup>37</sup> The Retail Market Review - Findings and initial proposals (Ref: 34/11), March 2011.

<sup>38</sup> Ofgem, Consultation: GEMA gaining enforcement powers under The Business Protection from Misleading Marketing Regulations 2008 (SI 2008/1276), 2013, pg 3.

<sup>39</sup> Citizens Advice Consumer Service covers both domestic and non domestic consumers [http://www.citizensadvice.org.uk/index/getadvice/consumer\\_service.htm](http://www.citizensadvice.org.uk/index/getadvice/consumer_service.htm)

to TPI behaviour.<sup>40</sup> These cases generally cover micro-business consumers. During the same period 11 percent of the micro-business cases referred to Consumer Focus' Extra Help Unit (EHU) related to TPI activities.

3.13. During interviews and discussions with businesses, Opinion Leader<sup>41</sup> found that only a few participants knew that energy brokers were not subject to sector-specific regulation. Many assumed they were regulated in line with brokers of other services, such as Independent Financial Advisors. Many participants thought there should be further regulation of brokers and felt that a Code Of Practice for energy brokers was a good idea.

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<sup>40</sup> [http://www.legislation.gov.uk/uksi/2008/1898/pdfs/uksi\\_20081898\\_en.pdf](http://www.legislation.gov.uk/uksi/2008/1898/pdfs/uksi_20081898_en.pdf)

<sup>41</sup> Opinion Leader on behalf of Ofgem, Research Findings on Experiences of Non-Domestic Customers, December 2012, pg 25.

## 4. Current regulatory framework

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### Chapter Summary

Provides the consumer protections rules, and self regulatory arrangements, that currently apply to TPIs operating in the GB retail energy markets.

**Question 4:** What are your views on the existing regulatory measures applying to TPIs?

**Question 5:** Do you consider the current formulation of SLC 25 may be acting as a barrier to the development of more face-to-face multi-party TPI activity?

4.1. Before considering proposals for a regulatory framework for domestic and non domestic TPIs, it is important to understand the current regulatory context in which TPIs in the energy markets operate.

4.2. Currently, there is no sector specific regulatory requirements that apply to the TPI market. However, TPIs are subject to general consumer protection rules<sup>42</sup>, which govern household and business consumer transactions.<sup>43</sup> In addition, there is some indirect regulation of TPI activity through suppliers, who have responsibility under their standard licence conditions for TPIs who act as representatives. TPIs are also subject to voluntary and self-regulatory measures, such as codes of practice.<sup>44</sup>

### Binding regulatory framework

4.3. There are a broad range of consumer protection law provisions that are likely to apply to TPI activities, particularly in respect to interactions with consumers. Whilst discussion on the full range of provisions is outside the scope of the paper, a particularly relevant example is the Consumer Protection from Unfair Trading Regulations (CPRs)<sup>45</sup>, which, amongst other things, captures misleading actions and omissions. The OFT and Local Authority Trading Standards (TS) department have both criminal and civil powers to enforce the CPR's. In addition we have civil enforcement powers under the Enterprise Act 2002.

4.4. The roles of the OFT and TS department changed in April 2013. There is now a greater role for the local authority TS Services in the enforcement of consumer protection law at national level. The OFT will retain all its current consumer enforcement powers, but will tend to use them where breaches of consumer protection

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<sup>42</sup> Ofgem, the OFT and Local Authority Trading Standards departments have enforcement powers in respect of rules covering business to consumer interactions. The OFT and Local Authority Trading Standards departments have enforcement powers in respect of rules covering business to business interactions.

<sup>43</sup> This covers an alternative markets, this is not energy specific.

<sup>44</sup> In respect of business to consumer interactions the requirements of voluntary codes of practice are enforceable under the Consumer Protection from Unfair Trading Regulations 2008.

<sup>45</sup> Consumer Protection from Unfair Trading Regulations 2008  
<http://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>

law point to systemic failures in a market. This means relevant OFT cases will more often be taken against a number of firms in a market, rather than against individual firms - unless changing the behaviour of one firm would set a precedent or have other market-wide implications.

4.5. As noted, as part of our non domestic RMR measures, we intend to seek certain powers under the Business Protection from Misleading Marketing Regulations 2008 (BPMRs) to address misselling by TPIs in the non domestic market. In Great Britain, the BPMRs are currently enforced by the OFT and Local Authority Trading Standards departments. With the support of Government we are pursuing the case for obtaining powers to enforce the BPMRs.

### *Licence conditions for suppliers*

4.6. In addition to consumer protection laws some TPIs are subject to regulatory oversight via energy suppliers.

4.7. Energy suppliers that deal with domestic consumers are currently subject to standard licence conditions (SLCs), which hold them responsible for the actions of Representatives<sup>46</sup> in respect of sales and marketing practices.<sup>47</sup> This is particularly relevant to the potential regulatory considerations for the TPI market.

4.8. Energy suppliers are currently subject to standard licence conditions – in particular SLC25 – which hold them responsible for the actions of ‘representatives’ in respect of sales and marketing practices. This is particularly relevant to the potential regulatory considerations for the TPI market. A ‘representative’ is defined as a person directly or indirectly authorised to represent the supplier in its dealing with customers. We have previously issued guidance as to how we interpret that obligation and as a part of that we made clear that it will interpret the definition of ‘representative’ very broadly. For the avoidance of doubt, RMR obligations that give suppliers responsibilities for ‘representatives’ and other third parties will not be reviewed as part of the TPI work but will be considered during the 2017 RMR review.

4.9. However, we recognise that if suppliers are concerned about compliance risks in relation to SLC 25, and feel unable to exert adequate control over TPIs operating on behalf of a number of suppliers, there is a risk they will decline to work with TPIs in providing face to face activities that can be of particular value in helping certain groups of consumers navigate the market. Given that risk and given the desire to support TPI involvement in actively promoting switching we issued guidance to set out our expectations for the involvement of participants in Big Energy Saving Week 2.<sup>48</sup> We would welcome views on the extent to which the current formulation of SLC25 could be acting as a barrier to the development of more face-to-face multi-party TPI activity

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<sup>46</sup> Within the supply licence conditions a Representative is defined as: ‘a person directly or indirectly authorised to represent [the supplier] in its dealing with Customers’.

<sup>47</sup> Electronic Public Register, Supply Licence Conditions <https://epr.ofgem.gov.uk/Document>

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[http://www.ofgem.gov.uk/Markets/RetMkts/Compet/Documents1/2012\\_10\\_09\\_Marketing%20of%20Energy%20supply%20to%20domestic%20customers%20by%20Third%20Party%20Intermediaries.pdf](http://www.ofgem.gov.uk/Markets/RetMkts/Compet/Documents1/2012_10_09_Marketing%20of%20Energy%20supply%20to%20domestic%20customers%20by%20Third%20Party%20Intermediaries.pdf)

4.10. We recognise that relying primarily on suppliers to control the behaviour of TPIs may not always be the most effective way of ensuring consumer protection. We have, therefore, set out in Chapter 7 a range of options for strengthening the incentives directly on TPIs to behave in an appropriate manner. As a part of considering the regulatory options for TPIs we will also review the responsibilities of suppliers under existing SLC 25 in relation to TPIs which engage in sales and marketing activities as 'representatives' for a number of suppliers. In the interim we would be willing to consider specific requests for clarification of supplier obligations if there are concerns that current obligations preclude them participating in particular initiatives to support Market Cheapest Deal or collective switching.

#### *Competition law*

4.11. For completeness, we highlight that we have concurrent powers with the OFT to enforce the Competition Act 1998 in respect of infringements competition law and to make market investigation references to the Competition Commission in respect of market features which may be harming competition. Further information on these powers are outside the scope of this paper, but can be found on the OFT's website.

### **Voluntary regulatory steps**

4.12. In addition to the binding regulatory framework that applies to TPIs in the energy market, there are a number of voluntary industry agreements that some TPIs are party to.

4.13. Within the non domestic market there are a number of voluntary Codes of Practice designed to improve consumer trust and give guidance on acceptable TPI practices. These mainly originate from TPIs, suppliers or independent associations. Although these codes may have made some improvements to TPI behaviour, we have received feedback from RMR respondents that these Codes of Practice have not had the desired effect for consumers.

4.14. Similarly, for domestic consumers there is a voluntary code of practice entitled the Confidence Code<sup>49</sup>, which we govern. The Confidence Code covers domestic price comparison websites and sets out the minimum requirements that TPIs must meet in order to be, and remain, accredited.<sup>50</sup>

4.15. Beyond measures covering interactions between TPIs and consumers, there are further examples of tools developed for and by industry bodies to promote good practice and address areas of concern for consumers. One example of this is the Billing Code which covers the treatment of back-billing by suppliers for domestic customers and micro-businesses.

### **Industry Consumer protection initiatives**

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<sup>49</sup> The Confidence Code has been in operation since 2000. It was administered by Energywatch and then Consumer Focus before transferring to Ofgem.

<sup>50</sup> In respect of business to consumer interactions the requirements of this voluntary codes of practice are enforceable under the Consumer Protection from Unfair Trading Regulations 2008.

4.16. There are currently some measures in place that may capture the activities of TPIs acting in a certain capacity within the market. These include the Smart Metering Installation Code of Practice and the Green Deal Advisor Accreditation (GDAA).<sup>51</sup>

### **Smart Metering Installation Code of Practice**

4.17. As part of the Smart Meter rollout, industry has developed the Smart Metering Installation Code of Practice (SMICOP). The SMICOP adds detail to underpinning Supply Licence Conditions (SLCs) that set out rules and Standards of Conduct for suppliers to follow when installing smart meters in domestic and micro-business premises. The SMICOP took effect on 1 June 2013.

### **Green Deal accreditation**

4.18. The Green Deal is a Government initiative to improve Energy Efficiency (EE) in UK households. Various works are offered to residents for no upfront cost, they will eventually be paid back through small payments taken out of energy bills. As part of the 2011 Energy Act<sup>52</sup>, the initiative aimed to make millions of homes and businesses across Britain more energy efficient from January 2013.

4.19. If a TPI would like to be involved in the Green Deal scheme as a service provider, they must become Green Deal accredited and they must abide by the scheme's Code of Practice. The Green Deal has already seen a significant interest from energy brokers who see opportunities to offer consumers a new range of energy-related services, alongside trying to source the best energy deals or prices.

## **The Energy Bill**

4.20. The Energy Bill<sup>53</sup> will establish a legislative framework for delivering secure, affordable and low carbon energy and includes provisions such as decarbonisation, the Electricity Market Reform (EMR), nuclear regulation and consumer protection.

4.21. The Energy Bill will clarify existing legislation<sup>54</sup> to make it absolutely clear that our existing powers could be used to apply for TPI activities to be licensed. Under existing legislation we already have the power to apply for activities relating to energy supply and other regulated activities to be licensed.

4.22. If we decided it was appropriate to exercise such powers in respect of TPI activities, there are a number of procedural steps which would need to be taken and the matter would need to be taken forward by DECC and ultimately approved by both Houses of Parliament.

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<sup>51</sup> Green deal and Green deal accreditation  
<http://www.legislation.gov.uk/ukpga/2011/16/contents/enacted>

<sup>52</sup> Green deal and Green deal accreditation  
<http://www.legislation.gov.uk/ukpga/2011/16/contents/enacted>

<sup>53</sup> The Energy Bill 2012 <https://www.gov.uk/government/organisations/department-of-energy-climate-change/series/energy-bill>

<sup>54</sup> Gas Act and Electricity Act.

## 5. Facilitating better practice among TPIs

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### Chapter Summary

Provides details on relevant measures we are progressing in the TPI market that aim to support consumer engagement and trust when using TPI services. These programmes are interrelated and will enhance the opportunities for TPIs to offer increased services to consumers.

**Question 6:** What are your views concerning our near term work to mitigate consumer harm and promote trust in the TPI market?

**Question 7:** Are there any further areas we should consider in the near term?

5.1. Under the TPI programme of work we have a number of projects to facilitate better practices among TPIs and reduce consumer harm. These encompass both shorter and longer term time horizons. It is envisaged that the shorter term work will inform and/or feed into the longer term consideration, and development, of an overarching framework for TPI regulation.

5.2. Under this work we will continue to identify issues consumers face when interacting with TPIs, and facilitate measures necessary to protect consumers from harm and to promote trust in TPIs. Key examples of such work are highlighted below.

### Review of the domestic Confidence Code

5.3. In March 2013, we assumed responsibility for the Confidence Code<sup>55</sup> which exists as a voluntary Code of Practice for domestic online switching sites, and was previously administered by Consumer Focus (now Consumer Futures). When we assumed responsibility for the Code, there were 13 accredited service providers who follow the principles of the Code. We are now conducting a review of the Confidence Code that has the following objectives:

- assess the current functioning of the code – given the different regulatory remit Ofgem has from Consumer Focus, and given the shift in governance philosophy away from that of a business facilitator as provided by Consumer Focus;
- align with the RMR – consider RMR proposals and how the Code can support and accommodate specific policy changes as well as general aims of the RMR (i.e. to increase and improve consumer engagement in the energy market);
- expand the reach of the Code – explore with stakeholders how to best achieve an increased accredited member base; and

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<sup>55</sup> Confidence code

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=domestic-consumers/compare-with-confidence>



- increase consumer awareness of the Code – consider and publicise how best to raise consumer awareness of the Code’s existence and the reassurance it can provide when comparing energy deals.

5.4. These objectives will allow us to review how the Code currently functions as a voluntary arrangement and how price comparison sites function for consumers. Furthermore, it will provide us with a vision of what a fully successful Code might look like and whether the current services available to consumers are meeting their energy needs. We aim to complete the Confidence Code review by the end of 2013.

### Development of non domestic TPI code of practice

5.5. We have been aware of increasing issues in the non domestic market over the last 5 years and in our RMR we considered a number of options including accrediting a TPI Code. Similarly we had strong calls from stakeholders that we needed to progress work in this area as soon as possible.

5.6. Having received unanimous support for a single code of practice, we set up and convened a non domestic TPI working group early in 2013. There was extensive interest from stakeholders to be part of this working group. However, to maintain a workable group size<sup>56</sup>, stakeholders were selected to ensure there was broad coverage within the relevant criteria. The final working group consists of 33 key industry stakeholders<sup>57</sup>, including a range of organisations. There have been 5 working group sessions so far, and the members were supplied with a proposed draft Code of Practice for initial comment in May 2013. The scope of the Code of Practice will cover all non domestic TPIS.

5.7. The objective of the TPI Code of Practice is to<sup>58</sup>: *“protect the interests of non domestic consumers and, in particular, their interests in having the confidence that when using a Third Party Intermediary (TPI), the TPI will act in a fair, honest, appropriate and transparent manner and effectively assist them with their energy supply needs.”*

5.8. The cost implications of this approach for TPIS and suppliers would depend on who would be the code administrator, which has not yet been decided. Relative cost implications may be more significant for smaller TPIS. If this caused some TPIS to exit the market this has potential to negatively impact levels of competition among TPIS. However, any such move would need to be considered as part of the wider TPI regulatory framework and be weighed against potential benefits to consumers and the market.

5.9. Unlike in the domestic sector, there is not a sales and marketing SLC for non domestic suppliers.<sup>59</sup> The possibility of introducing a new licence condition to regulate

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<sup>56</sup> The group has representation from Small, Medium and Large organisations.

<sup>57</sup> All working documents from the working groups are available from the Ofgem website <http://www.ofgem.gov.uk/Markets/RetMkts/rmr/stakeholder-engagement/Pages/index.aspx>

<sup>58</sup> This was created by discussing a suitable objective with group members, research regarding TPI issues and extensive stakeholder discussions.

<sup>59</sup> SLC 7A does require that suppliers give clear information about contracts to micro business customers, for example the Principal Terms of a contract must be made clear up-front and must be sent to the customer within 10 days. However, this does not cover the breadth of sales and

the relationship between suppliers and TPIs was made clear in the March 2011 RMR and subsequent RMR consultations. This is being considered as part of the regulatory options. We will be consulting on all of the proposals for non domestic TPI regulatory options.

## Collective switching

5.10. Collective switching is a relatively new activity in Great Britain energy markets where consumers group together, typically facilitated by an independent organisation which negotiates with multiple suppliers, to secure a deal on their energy supply. Government have provided funding to a range of collective switching initiatives<sup>60</sup> since the Big Switch<sup>61</sup> in May 2012, a growing number of collective switching initiatives have taken place across Great Britain, often run by local authorities and not for profit organisations.

5.11. Collective switching will create opportunities for TPIs and we recognise this as a potentially effective alternative mode of engagement, particularly amongst vulnerable and disengaged consumers. This supports our RMR objectives for a simpler, clearer and fairer energy market. However, due to the nascent nature of collective switching in GB, there is currently a lack of understanding as to the extent to which collective switching processes are genuinely delivering benefits to consumers.

5.12. In our RMR Domestic final proposals collective switching was carved out of the cap on tariff numbers.<sup>62</sup> We are reviewing the emerging risks and opportunities associated with this growing activity and considering the need for regulatory interventions. In particular, we think that an interim regulatory mechanism may be required to build consumer trust, increase transparency and facilitate positive opportunities, where appropriate, prior to the conclusion of the overall TPI programme.

5.13. Our one option for a potential short-term measure, is a voluntary code of practice for collective switching, similar to the Confidence Code.<sup>63</sup> This has already been suggested by some stakeholders in response to RMR and in other engagement and there are a number of ways in which this could be implemented, including an independent code or by expanding the current Confidence Code to cover Collective Switching activities. Another option may be for another organisation to set up a voluntary code. However, our current understanding is that there is little appetite from any organisation to do this.

5.14. We are aiming to produce a consultation setting out our analysis of collective switching and our proposed short-term remedial measures later this year.

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marketing activities and only applies to micro business customers (at present).

<sup>60</sup> <https://www.gov.uk/collective-switching-and-purchasing>

<sup>61</sup> Which? Big Switch : <http://www.which.co.uk/news/2012/02/join-the-big-switch-to-cut-your-energy-bills-278444/>

<sup>62</sup> Our proposals allow energy suppliers to offer any number of fixed term tariffs into each collective switching process, in addition to any of their open core tariffs, if the collection switching process meets a set of criteria.

<sup>63</sup> Confidence Code <http://www.ofgem.gov.uk/domestic-consumers/compare-with-confidence/Pages/index.aspx>

## Community energy schemes

5.15. During 2013, we intend to undertake a programme of work in the area of Community Energy (CE). We define this as energy schemes, initiatives, projects and installations with the following common characteristics:

- generation capacity of up to 50 MW, Solar PV is the most common form of generation technology;
- the community has a high degree of ownership and control of the project and benefits from the outcomes, e.g. revenue stream and/or energy supply;
- the focus is on communities of place; those CE schemes whereby the generation asset is located within a community or is used to supply a community's energy requirements; and
- result in local social and economic benefits, such as enabling communities to play a role in combating climate change thereby changing attitudes and behaviours<sup>64</sup> tackling fuel poverty, and creating local jobs.

5.16. Our work programme will align with the development of DECC's Community Energy Strategy, and our focus will be on clarifying the current market and regulatory arrangements to establish if there are any barriers and/or enablers within Ofgem's remit affecting the emergence and operation of CE schemes, alongside more traditional forms of energy generation. As part of this we will be considering the role of TPis in the development of CE schemes.

5.17. Ofgem will be contributing to a DECC call for evidence in July 2013, convening a stakeholder workshop in the summer and producing a Community Energy factsheet which will provide clarity on how organisations can navigate the regulatory system when putting in place initiatives, for publication in Autumn 2013.

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<sup>64</sup> For example, on the Scottish Island of Eigg residents have agreed to limit their consumption to match the generating capacity of their community-owned wind turbines and hydropower.

## 6. Market developments

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### Chapter Summary

This chapter sets out possible developments in the energy market and notes how they may affect TPIs and consumers. We also discuss possible developments in TPI services that may result.

**Question 8:** What are your views on the potential wider scope of third party opportunities as a result of Energy market developments?

6.1. Within the retail energy markets there are a number of developments that are likely to impact on consumers and TPIs in the coming years. In particular the emphasis on energy services, including energy efficiency advice, and tools that take advantage of smart technologies will create new opportunities for TPIs.

### GB retail energy market developments

6.2. Consumers in Great Britain gas and electricity markets have a wide choice of suppliers. However, a large proportion of consumers do not actively engage with the energy market. This appears to contribute to the market not working well; however, recent developments with the RMR<sup>65</sup> are set to improve the scene for many consumers and remove barriers to engagement with the market. These reforms are currently at statutory consultation stage for some domestic proposals and a final decision has been made in relation to the RMR proposals covering the Standards of Conduct and the non domestic market. Some measures will come into force by the end of August 2013, and pending the outcome of our remaining statutory consultation, full implementation of the RMR package is expected by spring 2014. Further information on the Standards of Conduct and suppliers' responsibilities for representatives under those obligations can be found in Chapter 8 of our RMR Updated Proposals consultation.<sup>66</sup>

6.3. We expect the importance of TPIs as an interface between consumers and energy suppliers will grow significantly within the next 5 years, and beyond. The introduction of Smart and Advanced Meters (which will be rolled out by 2020) and an increased focus on energy efficiency measures prompted by government initiatives, including the Green Deal, is likely to increase the service opportunities for TPIs and potentially their value and interactions with consumers. Similarly, market initiatives such as collective switching and new types of TPI emerging may further impact the TPI market structure overall.<sup>67</sup>

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<sup>65</sup> Retail Market Review 2009-2013

<http://www.ofgem.gov.uk/MARKETS/RETMKTS/RMR/Pages/rmr.aspx>

<sup>66</sup>The Retail Market Review – Updated domestic proposals, 26 October 2012, pg 105

<http://www.ofgem.gov.uk/MARKETS/RETMKTS/RMR/Documents1/The%20Retail%20Market%20Review%20-%20Updated%20domestic%20proposals.pdf>

<sup>67</sup> <http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10068910/Redemption->

## Evolution of intermediaries

6.4. A number of new types of intermediary designed to empower consumers are emerging through new technologies. Facilitated roundtable discussion<sup>68</sup> we hosted highlighted the key trends in these new emerging services, in particular:

- price comparison;
- collective switching;
- impartial advice;
- the organised consumer;
- personal data empowerment;
- consumers as producers;
- smart consumers (Smart Meter rollout);
- home and asset management;
- behaviour change as a product; and
- convergence of multiples engagement trends.

6.5. This may lead to a vast array of TPI firms offering specialised services in different niches of the TPI market. However, we can also expect that over time TPI services may converge, with some TPIS offering a full range of services from procurement to energy efficiency advice to active management of consumption or generation capacity. There is also evidence that some TPI activity may increasingly cover a range of industry sectors.

6.6. An example of this trend was highlighted by the Citizens Advice Service<sup>69</sup>, who suggested banks may serve consumers as a new type of intermediary. New regulations which make it easier for consumers to switch banks come in this year. This will force banks to increase their competitive focus and explore new services that may benefit their consumers. Banks hold an important level of data about a consumer's activities, including their regular spending habits and it has been suggested that by using this information they could 'highlight' potential savings to consumers, one of which could be energy spend.

## Smart Technology

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[awaits-Britains-battered-banks.html](#)

<sup>68</sup> [http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Consumer%20Empowerment%20Roundtable\\_26\\_3\\_2013.pdf](http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Consumer%20Empowerment%20Roundtable_26_3_2013.pdf)

<sup>69</sup> Banks should be considered as intermediaries

<http://www.telegraph.co.uk/finance/newsbysector/banksandfinance/10068910/Redemption-awaits-Britains-battered-banks.html>

6.7. The introduction of Smart Meters will result in a set of new opportunities for third parties but also associated risks in terms of consumer protection. Within the Smarter Markets Programme we are looking more widely at the opportunities for how the market might evolve to exploit the potential of smart metering.

6.8. With the rollout of smart metering there is an expectation that new third parties will emerge, offering services that increasingly utilise the detailed consumption data that smart metering provides. These services could range from analysis of energy usage to provide energy saving advice to services that monitor vulnerable consumers' usage and alert a relative if there is a problem. More traditional TPI procurement services may also wish to access such data to enable them to advise consumers on time of use tariffs.

6.9. The DECC smart metering programme has placed a strong emphasis on ensuring that third parties can access the Smart Metering data (with the customer's consent) to facilitate innovation in this space. In particular there is provision for third parties to sign up to the Smart Energy Code and access half-hourly data via the central Data and Communications Company that is being established. The Smart Energy Code will include requirements for third parties to comply with privacy and security requirements. However, for third parties the primary sanction that would be available for breach of the Code would be expulsion from the Code (or action by the Information Commissioner's Office if the breach involved a breach of data protection legislation).

6.10. Third parties will also be able to access the much more granular consumption data that is available over the home area network (HAN) if the consumer acquires a consumer access device (CAD). The CAD is not part of the standard smart metering installation but may be provided by third parties as part of a service offering. Again the data that is collected can be used to provide energy efficiency advice but may also be linked to provision of home energy management systems (where for example the customer can control their heating when away from home).

6.11. The rollout of Smart Meters presents an opportunity to make retail energy markets work better for consumers. However, this will require complimentary changes to the arrangements that govern how industry participants, including third parties, interact with each other and consumers. We are helping to drive necessary reforms through the Smarter Markets Programme.

6.12. Following consultation with stakeholders, last July we published a work programme setting out four priority areas of reform.<sup>70</sup> These areas are:

- **change of supplier** – the development of a fast, reliable and cost-effective change of supplier process, which will facilitate competition and build consumer confidence;
- **electricity settlement** – settlement arrangements that use Smart Metering data to allocate energy in an accurate, timely and cost-effective way;
- **Demand Side Response** – a market environment that supports the efficient, system-wide use of demand-side response; and

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<sup>70</sup> Promoting smarter energy markets: a work programme – Ofgem, 31 July 2012  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=52&refer=Markets/sm/strategy>

- **consumer empowerment and protection** – regulatory arrangements that empower and protect consumers to participate effectively in smarter retail energy markets.

6.13. Of these four areas the strongest links with the TPI work are in relation to Demand Side Response. In April we published a consultation seeking stakeholder views on whether current regulatory and commercial arrangements are fit for purpose or may in some way constrain the development of demand-side response.<sup>71</sup>

6.14. In that document we noted that some consumers, particularly in the larger non domestic sector, already provide Demand Side Response services to a range of market participants, either directly or through aggregators acting as intermediaries. The document noted that intermediaries could help to address some of the challenges facing market development around Demand Side Response:

- building consumers' awareness and appetite for Demand Side Response;
- enabling consumers to assess and access the value of shifting their consumption; and
- enabling the consumer to act to take up a particular option, i.e. contracting directly for Demand Side Response.

6.15. This consultation has now closed and we intend to publish our response in autumn 2013. On the basis of the responses to this consultation we will set out a way forward for further work in this area. If this future work leads to specific policy proposals, we would subsequently consult on any proposed reforms as well as when and how best to implement them.

6.16. Looking more broadly, there are potential interactions with a number of other areas of the Smarter Markets Programme including change of supplier (where radically faster switching could create new opportunities for TPIs) and consumer empowerment and protection (where questions might arise about the protection needed with a wider range of participants interfacing with the smart meter). We are currently in the process of scoping our work across the Smarter Markets Programme and will consider such interactions as a part of that work.

### **Ofgem's Consumer Vulnerability Strategy**

6.17. We are about to publish our new Consumer Vulnerability Strategy. This Strategy will set out our approach to understanding and tackling consumer vulnerability across its work. The Strategy aims to avoid a 'tick box' approach to considering consumer vulnerability and instead strives to identify which consumers might be vulnerable in different situations, and for what reasons. The Strategy recognises that vulnerability is about the situations in which consumers are in, rather than about the individual per se. Risk factors can stem from personal circumstances as well as from the behaviour and

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<sup>71</sup> Creating the right environment for demand-side response – Ofgem, 30 April 2013  
<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=1&refer=Markets/sm/strategy/dsr>



actions of the market itself. The Strategy puts in place a programme of work to identify and tackle vulnerability in the energy market.

6.18. As part of our Consumer Vulnerability Strategy we recognise the important role that trusted, independent advisors can play. Tailored, face-to-face advice can be particularly useful for consumers in vulnerable situations. As part of the Strategy we want to consider the role of TPIs in supporting consumers in vulnerable situations, to ensure they are accessible for consumers in vulnerable situations.

### **mIdata**

6.19. The government's mIdata<sup>72</sup> programme is a voluntary initiative introduced in November 2011 by the Government in conjunction with industry to give consumers increasing access to their personal data in a portable, electronic format. Individuals will then be able to use this data to gain insights into their own behaviour, make more informed choices about products and services, facilitated in large part by new products and services developed by TPIs. The energy sector currently leads delivery of mIdata.

### **Energy advice for consumers**

6.20. There is a range of organisations who provide advice to energy consumers. Advice can be about energy saving, managing bills and debt and tariffs. For example, the Energy Best Deal campaign is run by Citizen's Advice to train advisors to provide a range of energy information and advice to consumers. DECC has recently established a 'Big Energy Saving Network' with the aim of providing further advice and hand holding about ECO and tariffs to consumers in vulnerable situations.

### **Other energy efficiency schemes**

6.21. In delivering energy efficiency measures to domestic energy users, to meet their obligations under the ECO scheme, obligated parties are able to work with a range of TPIs. The current phase of the scheme runs until March 2015. Suppliers may interact with TPIs at various points in the delivery of measures under the scheme and in various ways such as ECO Brokerage<sup>73</sup> or ESAS (EST)<sup>74</sup>. There are some other forms of interaction with Green Deal assessors, social housing providers and local councils.

6.22. Going forward, there may be developments in the ability of Councils and similar parties to deliver measures under ECO brokerage without being fully Green Deal accredited; and there may be a quota obligated parties are obliged to purchase via this mechanism.

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<sup>72</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/34747/12-983-midata-company-briefing-pack.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34747/12-983-midata-company-briefing-pack.pdf)

<sup>73</sup> This is a blind brokerage mechanism allowing suppliers to bid for ECO work to be delivered by third parties. This can be any third party that meets the Standard Contract conditions.

<sup>74</sup> DECC have contracted for an energy savings advice service (helpline) with EST. This advice line provides information on energy saving generally, but also provides a referrals mechanism for domestic energy consumers on certain types of benefit (as specified in the ECO Order) to be referred to an obligated party in order to receive a measure under the ECO scheme.



## 7. Spectrum of regulatory options

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### Chapter Summary

Sets out our views and provides a balanced selection of options for the future regulatory (or non regulatory) frameworks in the short and longer term. It also discusses implications for consumers as a result of regulatory change in the market.

**Question 9:** Have we captured the full range of 'regulatory' options available?

**Question 10:** Do you agree with the implications of regulatory change into the TPI market?

7.1. This chapter explores a range of regulatory options that may be employed to address the underlying concerns over TPI practices within the energy market and ensure the right consumer protection framework is in place going forward.

### Options for TPI framework

7.2. Overall we will be considering a wide range of regulatory and non regulatory options for the TPI market at this stage. Throughout our extensive stakeholder engagement we are open to additional views on this; however, we have set out below examples of potential regulatory intervention, from the lightest approach to the most interventionist measure. The examples cover both the domestic and non domestic markets. However, ultimately different approaches may be appropriate for different segments.

7.3. Given the size of the TPI market and the large number of organisations operating within it, choosing the most appropriate form of intervention will be critical. Chapter 3 outlines a range of consumer concerns we are looking to address. The options below are not an exhaustive list, but represent a broad range of regulatory models. We welcome stakeholder feedback about these options as well as suggestions for alternative approaches.

#### Option 1 – Maintain the status quo

7.4. As previously noted, the TPI market is currently governed only by consumer protection measures. The information relating to TPIS in this consultation will help stakeholders to provide comments on the options which they deem to be the most relevant in terms of regulatory or non regulatory measures. We have not ruled out doing nothing as an option.

#### Option 1 – Issue guidance

7.5. This option would be the least interventionist approach and may take the form of issuing 'guidance' to the market, expressing what we have concluded throughout their

work in this area and providing a guide to what would be 'reasonable' behaviours for TPIs in their dealings with consumers. Alternatively we could collaborate with stakeholders to create clear information for consumers so they can better protect themselves. For example, this may include factsheets for consumers to help inform them of the benefits and risks involved when working with a TPI.

### **Option 2 - Code of Practice – Light approach to sanction**

7.6. This option would be a light form of intervention in the TPI market and would have similarities to some of the existing voluntary Codes Of Practice which currently operate in the TPI market. TPIs can sign up to become a member of these Codes, usually through an accreditation process and minimal cost or change to their organisation.

7.7. If this 'light' approach were adopted, there would not be a significant cost associated, and the accreditation process would be quick and simple to register as a member. Given this would be a voluntary approach, there would be more limited sanctions to tackle poor behaviour. The broad scope of this option would ensure it would be suitable in scope to cover all TPIs that operate in the market and would be quick and easy to implement.

7.8. Currently consumers are experiencing poor behaviour in some of their interactions with TPIs. A light approach such as this would be cheap and quick to implement. However, it may not promote increased consumer engagement or address poor behaviour due to the lack of sanctions and easier accreditation method. This approach would also be very reliant on all TPIs adopting and adhering to the Code and would require strong consumer branding.

### **Option 3 – Voluntary Code of Practice – Strict accreditation**

7.9. This option is similar to option 2, but would require a strict accreditation process for TPIs before becoming they could become a member. This may be more suitable for a long term regulatory approach and it would create a low/medium level of market intervention. Similarly, it would be quick and relatively easy to implement. However, the strict accreditation would increase the administration costs to members. An analogy is the MAMCoP is the Meter Asset Manager's Code of Practice that specifies the requirements for all stages of the gas meter installation's life. As with the MAMCoP accreditation scheme<sup>75</sup>, there may be a need to complete regular audits of the member's processes to ensure they still remain operationally compliant.

### **Option 4 – Code of Practice with a Standard Licence Condition**

7.10. Implementing a Code of Practice for all TPIs as described in options 2 and 3, would offer a moderate level of regulatory intervention. Ofgem's Supply Licence Conditions could require suppliers to work with TPIs accredited to a Code of Practice. This approach may give consumers more confidence that both suppliers and TPIs are responsible for the overall transactions undertaken with a TPI. This effectively makes the Code of Practice mandatory, as it would determine which TPIs could work with suppliers. However, this may mean that suppliers will have an additional burden to

ensure they are abreast of TPI accreditation developments and add to their responsibilities in relation to TPI activity.

7.11. Alternatively, some TPIS may choose to alter their business models so they operate as consultants and recover fees directly from consumers, which could also lead to increased transparency around costs and accountability for services. However, it is also possible that this option would result in a proportion of the TPI sector being forced out of the energy market if they chose not to sign up to the Code and it could limit new market entrants.

7.12. This method of a Code of Practice would have stronger sanctions for TPIS who do not follow the behaviours of the Code. Potentially they could be removed from the accreditation list of approved TPIS and therefore would not be able to trade.

### **Option 5 – Direct regulation of TPIS in the energy sector**

7.13. Under existing legislation we have the power to apply for activities relating to energy supply and other regulated activities to be licensed.<sup>76</sup> If we decided it was appropriate to exercise such powers in respect of TPI activities, there are a number of procedural steps which would need to be taken and the matter would need to be taken forward by DECC and ultimately approved by both Houses of Parliament.

7.14. This option will have the benefit of providing clear protections to consumers interacting with TPIS in the energy market. TPIS would be subject to a binding set of requirements backed by enforcement powers, which would give confidence to consumers. However, regulatory action may have costs and unintended consequences. Therefore, we would need to carefully consider potential impacts on both the retail energy supply and TPI markets.

## **Market Monitoring**

7.15. An additional area of consideration is how oversight and monitoring of TPI activity may be handled in the future. The appropriate solution for this may be dependent on the type of framework developed. We welcome initial views on this point, but we will be looking to develop monitoring solutions alongside the options outlined in this chapter.

## **Initial views**

7.16. We have already considered some stakeholders' views in relation to the options above. Among this feedback we note supplier and TPI responses to DECC's 'Ensuring a Better Deal for Consumers' suggest that a move towards regulating TPIS could benefit the sector as whole by providing clarity on their respective roles and responsibilities towards each other and consumers.<sup>77</sup>

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<sup>76</sup> However, it should be noted that there are provisions contained in the Energy Bill which seek to make it absolutely clear that our powers could be used to apply for TPI activities to be licensed.

<sup>77</sup> Ensuring a Better Deal for Consumers: Government Response to consultation on DECC's Discussion Document, 2013, pg 18.

7.17. The presence of the issues mentioned for both the domestic and non domestic consumers highlights the need for further review into the TPI market. There is the potential for unintended consequences when initiating significant change in an area of the market currently subject to more limited regulation. We are aware of the need to strike a balance between options to ensure we achieve consumer protection and avoid limiting innovation and competition in this space.

7.18. Based on a range of existing feedback from stakeholders, there is some concern a regulatory framework that relies on codes of practice backed by relatively light forms of sanction would be very similar to measures currently in place. As such, there is concern that they are not likely address issues identified in the TPI market.

7.19. Similarly, at our non domestic working group in May 2013, a spectrum of high-level regulatory options were discussed. Initial feedback from that session indicates that, on the whole, the group felt a voluntary option would be less helpful than a mandatory approach. However, many attendees stopped short of suggesting binding licence conditions for TPIs were the answer. Instead there was a preference for TPIs to be subject to a code of practice if they wished to interact with energy suppliers. However, a number attendees supported a model where an independent body oversaw accreditation and compliance. They felt this would more effectively promote consistency, and ensure all parties have appropriate incentives to comply with the code. In addition, it would place less responsibility on individual suppliers to actively govern TPIs they have a relationship with.

7.20. Along with existing input, feedback to this consultation will help inform the development of our proposals. We remain open minded at this stage and seek views from all interested parties regarding the spectrum of options available.

7.21. We will use our current knowledge in this area and stakeholder input to develop options for a regulatory framework. We invite stakeholders and interested parties to provide information and views on the subjects discussed in this paper and to use this opportunity to contribute suggestions.

## 8. Next steps

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### Chapter Summary

Sets out our next steps following this consultation. We will continue to seek stakeholder views and use these views to help inform our discussions on a suitable TPI regulatory framework. We will be focusing on increased stakeholder engagement during this consultation, which will include stakeholder events.

### Consultation – Next steps

8.1. We have provided some high level analysis of various aspects of the TPI market and the participants who are active in it. This consultation is a valuable opportunity for stakeholder to contribute their views on the issues and the best way to build the consumer trust and confidence that are essential for the TPI market to flourish.

8.2. In parallel with considering responses to this consultation we will continue to explore avenues of improvement for the market and drive forward the implementation of our RMR proposals. Work on the non domestic TPI Code of Practice and the domestic Confidence Code will continue throughout this consultation period. However, there is a possibility that we will utilise suggestions and views from this consultation to shape further options for this work.

8.3. We aim to focus on the TPI programme over the next 18 months. However, precise timelines will depend do not have an exact timeline for completion. Timelines will depend on what actions are deemed appropriate for each individual project. Each project has different aims and objective, although some of the actions will complement each other.

8.4. We recognise the potential for unintended consequences associated with any change to the regulatory framework. We are mindful of the need to find solutions that will offer the appropriate levels of consumer protection, but not impact the market in a way that will be detrimental to consumers.

## Appendix 1 – Summary of Questions Raised

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The following table provides a summary of the questions raised in this document:

Chapter	Question
2	<b>Question 1:</b> Do you agree with the scope and range of TPIS operating in the energy market, from the information provided? Do you have any further views on this?
3	<b>Question 2:</b> Do you consider our understanding of consumers' experience of TPIS in the retail energy market is accurate?
3	<b>Question 3:</b> Do you have further evidence to share regarding consumers' experience of TPIS in the retail energy markets?
4	<b>Question 4:</b> What are your views on the existing regulatory measures applying to TPIS?
4	<b>Question 5:</b> Do you consider the current formulation of SLC 25 may be acting as a barrier to the development of more face-to-face multi-party TPI activity?
5	<b>Question 6:</b> What are your views concerning our near term work to mitigate consumer harm and promote trust in the TPI market?
5	<b>Question 7:</b> Are there any further areas we should consider in the near term?
6	<b>Question 8:</b> What are your views on the potential wider scope of third party opportunities as a result of Energy market developments?
7	<b>Question 9:</b> Have we captured the full range of 'regulatory' options available?
7	<b>Question 10:</b> Do you agree with the implications of regulatory change into the TPI market?

## Appendix 2 - Glossary

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### A

#### Aggregators

Companies who manage or work with a number of third parties to arranging energy contracts for a volume of consumers. They may also interact with consumers as a TPI.

#### Authority

The Gas and Electricity Markets Authority.

### B

#### Barrier to entry

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

#### Broker

Reviews and present offers from a range of suppliers for the energy consumer

#### Business Protection from Misleading Marketing Regulations (BPMRs) 2008

The Business Protection from Misleading Marketing Regulations 2008 (BPMRs) 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.

#### Consultant

Review and presents offers from a range of suppliers for the consumer, sometimes taking a fee from the consumer for providing the service

#### Consumer Protection from Unfair Trading Regulations (CPRs) 2008

The Consumer Protection from Unfair Trading Regulations 2008 introduce a general duty not to trade unfairly and 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.

### Green Deal Advisor Accreditation (GDAA)

Scheme which accredits companies who want to become Green Deal Assessors (See Green Deal)

## I

### Intermediary

An organisation that intermediates between an organisations and a consumer

## L

### Large Incumbent Supplier

This term is used to describe the six companies that hold supply licences and supply most of the energy to domestic households in the GB market. They are: Centrica plc (three retail brands, British Gas, Scottish Gas and Nwy Prydain in England, Scotland and Wales respectively), E.ON UK, Scottish and Southern Energy (SSE), RWE npower, EDF Energy and ScottishPower.

## M

### Market Segmentation

The process of splitting customers, or potential customers, in a market into different groups, or segments.

### Market Share

The proportion of total customers (usually as proxied by the number of meter points) within a market that are registered to a particular supply group.

## N

### New entrant

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

### Non Domestic consumer

A consumer that uses energy for commercial purposes.

### Non domestic retail energy market

Market which serves non domestic business consumers

## O

### Office of Fair Trading (OFT)

The body established by the Enterprise Act 2002 (which replaced the Office of Director General of Fair Trading) with functions that include enforcing consumer protection law and competition law, reviewing mergers and conducting market studies.

### Ombudsman Services: Energy (the Ombudsman)

Ombudsman Services: Energy means the Ombudsman Services provided to Energy Suppliers and Energy Network Operators. The Ombudsman's principal aim is to receive complaints made by complainants in accordance with the Ombudsman's Terms of Reference and to consider and, where appropriate, investigate such complaints in order to encourage and/or facilitate the terms of their resolution, settlement and/or withdrawal.

## P

### Power of Attorney

When a person appoints another person or organisation to manage/have power over their affairs and act on their behalf.

## S

### Sales Agent

Can be employed directly with a principal interest to represent the supplier to the energy consumer. Directly employed agents will typically operate solely on behalf of a supplier

### Self regulation

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

### Smart meter

A meter that provides measured gas or electricity consumption data for multiple time periods, and is able to provide the relevant supplier with remote access to such data.

### Smart Metering Installation Code of Practice (SMICOP)

Code of Practice governing the installation of smart meters

### 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 domestic 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.<sup>78</sup>

### Trading Standards

Trading Standards enforce consumer related legislation, legislation which is vast and constantly evolving and changing

## W

### White label site

These are online price comparison services that use the tariff database, pricing calculator and or website functionality of another company or price comparison site. They often have their own branding on pages visible to consumers. This enables the site to provide a branded service for consumers without needing to invest directly in creating an and supporting back end data and IT functions.

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<sup>78</sup> This is our working definition and may be subject to change.

## Appendix 3 – Feedback Questionnaire

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Ofgem considers that consultation is at the heart of good policy development. We are keen to consider any comments or complaints about the manner in which this statutory consultation has been conducted. In any case we would be keen to get your answers to the following questions:

1. Do you have any comments about the overall process, which was adopted for this statutory 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?
6. Please add any further comments?

Please send your comments to:

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