

Energy suppliers, third party
intermediaries, consumer groups
and other interested parties

Date: 19 December 2013

Open letter – Retail Market Review: application of rules in the TPI sector

On 27 August 2013, we published the Gas and Electricity Markets Authority's decision to proceed with licence modifications to give effect to the Retail Market Review (RMR) proposals to deliver a simpler, clearer, fairer energy market.

This letter seeks to clarify aspects of the RMR tariff rules due to come into effect at the end of this month, considers the implications for third party intermediaries (TPIs) and invites views on potential changes to those rules.

How we are addressing tariff complexity

During the RMR project, consumers indicated that they find the retail energy market confusing and difficult to engage with effectively. Cash discounts and bundled products were among the key issues identified. Our consumer surveys indicated that consumers were confused by the range of discounts and the way bundled products were offered with gas and electricity supply tariffs. This made it harder for consumers to compare tariffs and choose the right one for their energy needs. We have tackled this by introducing rules on discounts and bundled products to reduce tariff complexity, which will come into effect on 31 December 2013.

We have prohibited cash discounts in all but two cases – for dual fuel and online account management. We consider cashback to be a cash discount and therefore suppliers will not be allowed to offer cashback. Furthermore, we have required bundled products (including non-cash discounts) to be available to new and existing customers.

In addition to ensuring their own compliance, suppliers must take all reasonable steps to ensure that their representatives also comply with the discounts and bundled products rules. We have previously issued guidance as to the definition of a representative, which would also apply in this case.¹ The implications of these rules are as follows:

- **On cash discounts:** We consider cashback to be a cash discount and therefore supplier representatives will not be allowed to offer cashback. This applies to any supplier representative, such as a TPI, who offers cashback to consumers who use their services to purchase or switch gas and electricity tariffs. Suppliers will, however, be able to offer non-cash discounts, such as vouchers and reward points, subject to certain restrictions including those on bundled products.

¹ [Marketing of energy supply to domestic customers by Third Party Intermediaries1 \(TPIs\) – clarification of Standard Licence Condition \(SLC\) 25 of the gas and electricity supply licences, 8 October 2012](#)

- **On bundled products:** Our requirement that bundled products be available to new and existing customers has the effect of mandating that these products must be offered through all the marketing channels that a supplier chooses to use (including price comparison/switching sites). As a supplier is required to take all reasonable steps to ensure that its representatives abide by the rules on bundled products, a switching site, for example, cannot offer a bundled product independently of other marketing channels used by that particular supplier. In effect, consumers must be able to obtain that bundled product irrespective of the medium through which they engage.

How we intend to address concerns raised by suppliers and TPIs

Some TPIs have raised concerns that our rules on cash discounts and bundled products might constrain their ability to engage consumers and could hamper competition in the intermediary market. If this were to happen, it would be an undesirable consequence of our new rules in this specific area.

Our desired policy outcome is not to stop TPIs from offering cashback or bundled products where these act as a genuine inducement for consumers to engage and do not materially distort consumer choices between different tariffs. Our initial view, subject to consultation, is that we would be comfortable, for example, where an intermediary offers the same inducement irrespective of the tariff chosen, and offers a broad range of tariffs. As such, we are minded to allow cashback and bundled products to be offered in this way. To achieve this outcome, we will need to resolve some detailed issues and go through a formal process to change suppliers' licence conditions. We will work swiftly to consider how to achieve our desired outcome in this area and will consider potential linkages with the Confidence Code review.

More broadly, we recognise the growing importance of the TPI sector, and its innovative and developing nature. We consider that good quality intermediation plays an important role in helping consumers engage effectively with the market and make well-informed decisions about their energy supply.

In recognition of the importance of TPIs, we launched our TPI programme² earlier this year. The programme's objective is to develop an enduring regulatory framework for TPIs as well as developing bespoke regulatory measures to address more immediate issues concerning TPIs in the domestic and non-domestic energy markets. One of the projects within the TPI programme is focused on reviewing the Confidence Code³ to bring the Code's requirements in line with the new RMR rules. We intend to consult on our proposals in spring 2014, and to include, as a part of this, actions to address concerns raised regarding cashback and bundled products.

In the meantime, to help us resolve this issue as quickly as possible, we would welcome views on how best to achieve our policy intention. In particular, we welcome views on which practices relating to cashback and bundled products do not materially distort consumer choices and what role the Confidence Code might play in providing consumer safeguards. We will look to engage interested parties early in the New Year.

If you would like to discuss any of the issues raised in this letter, please contact us on 0207 901 7000 or jibirila.leinyuy@ofgem.gov.uk.

Yours faithfully,

Neil Barnes
Associate Partner, Retail Markets

² TPI programme webpage: <https://www.ofgem.gov.uk/electricity/retail-market/market-review-and-reform/third-party-intermediaries-tpi-programme>

³ The Confidence Code is a voluntary code of practice for switching websites. Ofgem took over the governance of this code from Consumer Futures in 2013.