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## Ofgem decision to reject R0137/A: Introducing Third Party Intermediary (Energy Broker) Assurance and Accreditation (Alternate)

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**Decision:** The Authority<sup>1</sup> has decided to reject<sup>2</sup> these change proposals<sup>3</sup>

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**Target audience:** REC Board, REC Parties and other interested parties

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**Date of publication:** 16 May 2025

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### Background

Third party intermediaries (TPIs) are organisations or individuals that give energy-related advice aimed at helping customers to secure energy contracts with a gas or electricity supplier and/or manage customers' energy needs. They include switching sites, energy brokers and any company that offers support with energy procurement. There is currently no complete list of TPIs in the energy market, but we estimate there are around 3000. There is also not an official minimum standard that they must adhere to as they are not regulated. However, the government launched a consultation on whether TPIs should be regulated on 20 September 2024. The government considered that there was a gap in energy customer regulation, and we agree. While many TPIs offer customer benefits, there are also reports of some TPIs misleading customers, securing contracts that benefit the TPI and not the customer, and/or undertaking fraudulent activity. The government's consultation asked whether TPIs in both the domestic and non-domestic sectors should be regulated. At the time of writing this decision, government have not yet announced their response to this consultation.<sup>4</sup>

Ofgem does not have the power to regulate TPIs directly. However, specific standard licence conditions (SLCs) of gas and electricity supply obligate energy suppliers to ensure the TPIs they work with, when the contract relates to a Small Business Consumer, are members of a

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<sup>1</sup> References to the "Authority", "Ofgem", "we" and "our" are used interchangeably in this document. The Authority refers to GEMA, the Gas and Electricity Markets Authority. The Office of Gas and Electricity Markets (Ofgem) supports GEMA in its day to day work. This decision is made by or on behalf of GEMA.

<sup>2</sup> This document is notice of the reasons for this decision as required by section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986.

<sup>3</sup> 'Change' and 'modification' are used interchangeably in this document.

<sup>4</sup> Regulating Third-Party Intermediaries (TPIs) in the retail energy market, DESNZ consultation, 20 September 2024, [Regulating Third-Party Intermediaries \(TPIs\) in the retail energy market - GOV.UK](https://gov.uk/government/consultations/regulating-third-party-intermediaries-tpis-in-the-retail-energy-market)

Qualifying Dispute Settlement Scheme (QDSS).<sup>5</sup> These rules were brought in to ensure that Small Business Consumers are able to seek redress for unresolved issues regardless of whether their energy issue is with a supplier or a TPI. Suppliers must ensure that they comply with their SLCs and as part of this, they need to satisfy themselves that any QDSS a relevant TPI is member of, meets the qualifying criteria. There is also an SLC for suppliers that requires transparency of Third Party Fees that are part of an energy supply contract, that applies for all non-domestic consumers.<sup>6</sup> This is to improve transparency for customers on the fees they pay for TPI services that form part of the energy cost they pay suppliers.

## The change proposal

In October 2023, the Retail Energy Code Company (RECCo) published a voluntary TPI Code of Practice (CoP) that energy brokers and aggregators could sign up to. As of 12 May 2025, there were 44 TPIS signed up to the voluntary CoP.<sup>7</sup> On 21 May 2024, the RECCo raised the proposal R0137 to change their CoP from voluntary to mandatory. This change seeks to introduce a new Retail Energy Code (REC) Schedule to mandate energy suppliers to only work with TPIS who are accredited under the REC TPI Code of Practice in circumstances when the supplier collects the payment of the TPI services from the customer as part of their non-domestic customer's energy bills. In October 2024, code modification R0137A was raised by the RECCo as an alternative to R0137. R0137A was raised to remove the option of multiple accreditation bodies and introduced the ability for RECCo to appoint a singular accreditation body. R0137A would introduce a new REC Schedule to create a REC Services Accreditation Scheme which would ensure that TPIS meet the principles in the TPI CoP. The RECCo consider that this accredited list of TPIS would remove the need for suppliers to audit every TPI they work with, to ensure that they are meeting their SLCs. RECCo also stated that the changes would mean that TPIS would not have to provide as much information to suppliers.

The definition of a TPI in RECCo's proposals is as follows:

- *a Third Party Intermediary (TPI) is an organisation or individual that, either on its own or through arrangements with other organisations or individuals, provides information*

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<sup>5</sup> SLC 20.6 in the Gas Supply Licence, SLC 20.5 in the Electricity Supply Licence, and the Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.

<sup>6</sup> SLC 20.7 in the Gas Supply Licence and SLC 20.6 in the Electricity Supply Licence.

<sup>7</sup> [Third-Party Intermediaries - REC Portal](#)

*and/or advice to a Non-Domestic Consumer about an Energy Supplier's charges and/or other terms and conditions and whose payment or other consideration for doing so is made or processed by that Energy Supplier.*

This definition means that only TPIs whose fees form part of the energy cost customers pay suppliers, will be covered by the changes. TPIs who charge customers directly for their services would not be covered.

### **REC Change Panel<sup>8</sup> recommendation**

At the REC Change Panel meeting on 3 December 2024, the REC Change Panel unanimously considered that R0137 would not better facilitate the REC Objectives and the REC Change Panel therefore did not recommend its approval. However, the REC Change Panel unanimously considered that R0137A would better facilitate the REC Objectives and the REC Change Panel therefore recommended its approval. The REC change panel consider that R0137A will have a positive impact on the following objectives:

- To ensure the REC operates and evolves in a manner that facilitates the achievement of its mission statement, objective a).<sup>9</sup>
- To ensure customers interests and data is protected in the operation of the REC, objective b).

The REC Change Panel consider that there would only be a neutral impact on the following objective:

- To drive continuous improvements and efficiencies in the operation of the REC and the central systems and communication infrastructures it governs, objective c).

### **Our decision**

We have considered the issues raised by the change proposal and the Final Change Report (FCR) dated 18 December 2024. We have considered and taken into account the responses to the industry consultations which are attached to the FCR.<sup>10</sup> We have concluded that:

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<sup>8</sup> The REC Change Panel is established and constituted pursuant to and in accordance with [Standard Condition 11B.8\(a\) of the Electricity Supply Licence](#) and [Standard Condition 11.8\(a\) of the Gas Supply Licence](#).

<sup>9</sup> [REC Mission Statement](#)

<sup>10</sup> REC change proposals, change reports and representations can be viewed on the [REC Portal](#).

- implementation of R0137 or R0137A will better facilitate the achievement of the REC objective b);<sup>11</sup>
- implementation of R0137 or R0137A will not better facilitate the achievement of the REC objectives a) and c) and that,<sup>12</sup>
- approving the changes would not be consistent with our principal objective and statutory duties.<sup>13</sup>

### Reasons for our decision

We consider that R0137 and R0137A will better facilitate REC objective b), to ensure customers interests and data is protected in the operation of the REC but will not facilitate REC objectives a) and c).

#### ***(a) to ensure the REC operates and evolves in a manner that facilitates the achievement of its mission statement***

RECCo consider that both R0137 and R0137A would ensure that objective a) is met as it will allow a portion of non-domestic TPIs to continue to operate but will create a minimum standard that will lead to increased consumer and supplier trust. RECCo also considered that the change would create increased trust for suppliers and therefore suppliers would no longer need to audit the TPIs that they work with.

We cannot agree that these changes will “facilitate the efficient and effective running of the retail energy market, including its systems and processes, through promoting innovation, competition, and delivering positive consumer outcomes”, for the following reasons:

1. Suppliers who responded to the consultations said that they would not feel comfortable trusting the accreditation of RECCo in the proposed changes and therefore would most likely continue to carry out audits on TPIs. Therefore, Ofgem consider that the change would not provide the benefit to suppliers that RECCo has stated. We further note that

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<sup>11</sup> As set out in [Standard Condition 11B.6 of the Electricity Supply Licence](#) and [Standard Condition 11.6 of the Gas Supply Licence](#)

<sup>12</sup> As per above.

<sup>13</sup> The Authority’s statutory duties are wider than matters which the Panel must take into consideration and are detailed mainly in the Electricity Act 1989 and the Gas Act 1986.

several respondents felt that formal regulation of TPIs would have a stronger cost benefit case instead of these code modifications and requested that no decision is made until government has announced whether they will bring in TPI regulation.

2. These changes only cover a sub-section of the TPI market. The modifications will only affect those TPIs who are paid via customer payments to the supplier as part of their energy bill. TPIs who are paid directly by a customer will not be covered. This creates a two-tiered market and leads to inconsistencies in expectations for consumers. This can create more opportunities for harm if customers think they are protected when they are not.
3. The Code of Practice that is integral to these changes was not in scope for modification as part of the change requests. We are supportive of the steps already taken to set up the voluntary code and applaud the efforts being made in the TPI community to proactively comply with the voluntary code, to the benefit of their customers. We note that some areas in the CoP have been identified as needing updating, as is good practice with the passage of time. Whilst the Final Change Report did note that RECCo intended to do a review of the CoP, it did not state a date for when this was scheduled for. We welcome the review of the CoP that was announced by RECCo on 10 April 2025. However, Ofgem are only able to make a decision based upon information provided as part of the process. We agree with many respondents to the consultations who felt that changes to the CoP were required for it to be most effective in the market. For example, Ofgem is concerned that Principle 1 is not clear enough on how a customer may enter a contract with a TPI and therefore, it will be difficult to ensure this principle is being met.<sup>14</sup> Also, Principle 4 is now outdated as it does not accurately reflect the current SLCs and providers of Qualifying Dispute Settlement Schemes (QDSS).<sup>15</sup> We also note that although the original development of the CoP did involve both suppliers and TPIs, there were only a small number of TPIs involved which could limit its robustness, particularly given the diversity of TPIs. If the CoP had been included in the scope of these changes, or updates consulted upon and made to it

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<sup>14</sup> Transparency and accuracy, specifically the requirements around when a 'consumer enters into an energy supply contract'.

<sup>15</sup> Clear route for dispute resolution, specifically 'the TPI must clearly signpost the consumer to the services of the Energy Ombudsman'.

before the modification was proposed, it would have given the market greater opportunity to comment and identify any issues; this is particularly important given its intention to be mandatory, which would directly impact TPI businesses. Not all TPIS operate in the same way and therefore the effectiveness of the CoP could be reduced, or it could have negative unintended consequences. We still believe there is a need for improved standards, but we consider that if a code is to be mandatory, it requires a set of rules that has been fully consulted upon with wider input. Further, customer trust would more likely grow with full coverage of the market.

4. Ofgem is concerned that the consultations of the code modifications did not have sufficient exposure to TPIS, who will be most affected by the changes. The two consultations received 20 and 21 responses respectively, this included 13 TPIS across both. However, Ofgem estimate that there are around 3000 TPIS in the energy market. This raises concern that there was low awareness of the consultation among parties who will be significantly impacted by the changes. We note that some respondents to the consultation raised concerns about the limited consideration of costs to TPIS. Without this, it is unclear what impact this would have on TPIS. Ofgem consider that the lack of awareness and limited cost information for TPIS mean these changes may not deliver on the RECCo mission statement to promote competition and deliver positive consumer outcomes.
5. Finally, we note that R0137 allowed for multiple CoPs and accreditation bodies. Currently there are existing CoPs in the market, from trade bodies and certain suppliers. Ofgem understand that the consultation responses for R0137 did not agree with the multiple accreditations and CoPs proposal. TPIS were concerned that suppliers could become an accreditation body, and this would create a conflict of interest. Suppliers considered it would add additional complications and make it difficult to have consistency in the market. However, R0137A would create a mandatory accreditation body where relevant TPIS must adhere to the RECCo CoP or they will not be able to conduct business. This raises potential Competition Act 1998 concerns, see also section on Ofgem statutory duties. It may make existing CoPs redundant; particularly if the TPIS face charges to join a CoP as they may not wish to pay to join multiple codes. If Ofgem was to approve R0137A, it could also effectively lead to the appointment of this accreditation body being a monopoly provider for the portion of the market it covers.

This may be RECCo or could be another body that is appointed by RECCo. In addition to potential Competition Act 1998 concerns, it is unclear whether having a monopoly provider for a mandatory CoP that has not been updated, or fully consulted on, would achieve better outcomes than other codes of practice and their providers.

Given all of these points, Ofgem therefore consider that the changes proposed would not facilitate the REC mission statement.

***(b) to ensure customers interests and data is protected in the operation of the REC***

RECCo consider that these changes will aide customers who use energy brokers and will provide a minimum standard that can be expected by all non-domestic customers. Principle 5 of the CoP sets out the appropriate data protection arrangements required. These include adhering to the Data Protection Act 2018 and registering with the Information Commissioner's Office (ICO). Therefore, the changes will improve standards with regards to how TPIs, captured by the code, manage customer data. However, we note that it will not provide additional security to those customers who pay their TPIs directly and who therefore would be out of scope of these changes. Ofgem consider that the changes proposed would facilitate objective b) for the customers using TPIs in scope of the changes.

***(c) to drive continuous improvements and efficiencies in the operation of the REC and the central systems and communication infrastructure it governs***

The RECCo have stated that the implementation of R0137 or R0137A would neither add nor detract efficiencies within the REC. We agree that we do not see how these changes could add to efficiencies in the operation of the REC. However, Ofgem is concerned that R0137's multiple accreditation bodies will create additional requirements on the REC, due to the approval and monitoring of these additional bodies and therefore could reduce efficiency. We also note that, for R0137A, a RECCo accreditation body will need to be created and an audit partner appointed. In R0137A, the RECCo has included an option for both the accreditation body and the auditor to be appointed by RECCo. However, if the accreditation body and auditor are outsourced by the RECCo, there will be an additional burden on the RECCo to choose and monitor the bodies. Ofgem consider that the changes proposed would not better facilitate objective c).

### ***Ofgem's principal objective and statutory duties***

Ofgem is responsible for the enforcement of the Competition Act 1998 in the gas and electricity markets. It should be noted that there may be, on the face of it, a breach of the Chapter I Prohibition in the Competition Act 1998, if the changes were to be approved. This is because, when competitors in the market pre-determine who they will do business with, it can amount to what is called a "horizontal boycott" (where competitors at the same level in the market agree to refuse to deal with a third party), which is prohibited by the Competition Act.

Furthermore in 2023/2024, during Ofgem's Non-Domestic Market Review,<sup>16</sup> Ofgem looked at the interactions between suppliers and TPIs and issues reported from the market. The result of this review was several of the new SLCs that are referenced in the background section of this decision. We also said in our consultation that "...wider issues [were] raised about some TPI behaviour. At present, Ofgem does not regulate TPIs, meaning we are not able to intervene when TPIs do not meet the standards the non-domestic sector has the right to expect." In other words, this means we do not have the powers to directly require TPIs to follow specific standards or other rules, nor do we have the legal vires to directly decide which TPI can or cannot operate in the market. But given the concerns identified, we said that "we have therefore requested that government consider implementing regulation of the TPI market," and we continue to consider there is a need for regulation in this area and welcome government's consideration on TPI regulation. In the meantime, while the intent of RECCo raising these code modifications to better protect customers is admirable, we similarly consider that RECCo does not have any vires or regulatory powers over TPIs, which would effectively be the result of implementing a mandatory code. Ofgem concluded that the government was the correct body to decide whether TPIs should be regulated. Therefore, Ofgem consider that these modifications do not align with previous decisions and, as this is not within Ofgem's vires, it follows that it is not within the vires that RECCo have been given by Ofgem.

As we have set out in this notice, we cannot approve these code modifications as they do not meet the criteria to approve them. For the avoidance of doubt, we remain committed to

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<sup>16</sup> [Non-domestic market review: decision | Ofgem](#)



working with government and stakeholders from across the market to continue to improve standards, customer trust and protections in this area. In the meantime, and before there is a long-term, sustainable solution for all parties, we encourage participation in voluntary codes of practice that help TPIs build businesses that not only follow all legal requirements but also implement best practice to improve outcomes for their customers.

### **Decision notice**

In accordance with Standard Condition 11B of the Electricity Supply Licence and Standard Condition 11 of the Gas Supply Licence, the Authority has decided not to approve both REC Change Proposal R0137: Introducing Third Party Intermediary (Energy Broker) Assurance and Accreditation and R0137A: Introducing Third Party Intermediary (Energy Broker) Assurance and Accreditation (Alternate).

**Jemma Baker**

**Deputy Director of Future Retail Markets**

Signed on behalf of the Authority and authorised for that purpose