

The TPI Code of Practice
London

18 December 2012

Ms Louise van Rensburg
Senior Economist, Retail Markets & Research
Ofgem
Millbank, London

Dear Louise

Retail Market Review : Updated Proposals for Businesses Section 6 Third Party Intermediaries “TPIs”

I refer to your proposals concerning the above mentioned published on 26 October 2012. As you are aware I am the Code Manager responsible for the operation of the Independent TPI Code of Practice “the Code”. I have set down below the views of myself and the newly established Code Panel. These are not necessarily the views of any other party including E.ON.

The Code was launched in April 2012 and became fully operational on 1st August 2012. At present there is one supplier E.ON although it is our desire to have all suppliers who work with TPIs in the business energy sector as members. In addition membership will also be available to TPIs in this sector. To this end, we continue to engage with and promote our work to other suppliers and TPIs whilst continuing to attempt to engage with the Utilities Intermediaries Association “UIA”.

During the last few months as the Code has developed we have

- appointed a Code Panel with two independent non-executive members
- promoted the Code through the development of the website www.tpicodeofpractice.co.uk
- appointed KPMG as the independent Code Auditor and required them to develop an initial audit methodology to ensure the robustness of suppliers’ systems to monitor compliance
- studied the practices of many of the TPIs
- worked closely with E.ON to ensure their own audits are to the required standards thus we believe enabling E.ON to make improvements to their processes for managing TPIs
- flagged up breaches of the Code ensuring that corrective action has been taken in each case
- expelled one TPI whom we believe was responsible for a serious breach.

It is a cause for concern that, in the absence of wider action the TPI we have expelled can continue to operate in this sector with non-Code suppliers.

We consider that this record shows what can be achieved relatively quickly through the right combination of member commitment and independent delivery. However we must flag up that the gains could be that much greater with full regulatory endorsement for the Code model we have established.

Turning specifically to the questions you have asked:-

Question 19 : Do stakeholders agree with the proposal for Ofgem to develop options for a single Code of Practice (the Code) for non-domestic TPIs?

We believe that for too long a considerable number of non-domestic customers have experienced poor selling practices from a small number of TPIs. These practices have brought the entire industry into disrepute despite the fact that the vast majority of suppliers and TPIs have performed to a high standard. It is no longer acceptable that these poor practices should continue. We strongly believe that in order to protect customers, to ensure consistency of sales and service and to safeguard the reputation of reputable businesses, it is crucial for there to be a single industry Code in place.

We are in complete agreement with the proposal for Ofgem to develop options for a single Code of Practice for non-domestic TPIs. We believe that to be effective there has to be both ownership and buy-in to this Code from all suppliers and TPIs that operate in this space. We believe that Ofgem does not need to develop a new Code as its substantive provisions can be developed from our Code and that of the UIA. These existing codes have a great deal in common in the obligations they impose directly on the sales process.

However to ensure effective enforcement and thus ensure credibility with Government, regulators, consumer groups and customers it is essential that any Code should be clear on the need for independent governance and day-to-day management. The operation of the Code should be free from undue influence of suppliers or TPIs and there needs to be effective and independent external audit and compliance to ensure that reliance can be placed on the stated commitments.

Question 20 : Do stakeholders consider the Code should apply to all non-domestic TPIs (including those serving small business and large businesses)?

TPIs have a vital role to play in a fully functioning and competitive non-domestic energy market. It is wrong to expect them to operate to a higher set of standards than the direct sales force that may be used by any supplier. Ofgem must ensure this is not the case by requiring suitable standards of compliance and audit from suppliers who use a direct sales force.

We believe that to be totally effective the Code should apply to all non-domestic TPIs who serve what is defined as micro or SME businesses. We believe that those businesses termed Industrial & Commercial have adequate protection elsewhere and given their size and bargaining power do not need the protection that a Code would be able to offer them.

Question 21 : What do stakeholders consider should be the status of the Code, the framework in which it should sit, and who should be responsible for monitoring and enforcing the Code?

We believe that the Code should be regarded in the same way as the Energy Ombudsman scheme such that it is run and funded by the industry following a requirement by Ofgem. Membership of the scheme should be required of all suppliers and TPIs who operate in the sector and together they should finance the Code in its entirety. Suppliers and TPIs alike should be required to put in place robust monitoring processes to ensure compliance with the laid down minimum standards. There should be independent management supported by an independent Board of Directors or Code Panel who would be responsible for the development and operation of the Code. There should be a Members Group who can express views to the Board but who cannot tell the Board or Code

Manager what to do. There should be an external and highly experienced independent Code Auditor appointed.

We consider that the role of Ofgem should be to

- review operation of the Code from time to time and to ensure there is proper compliance with Code decisions
- facilitate resolution in cases where there are perceptions that the Code is operating beyond its remit or where members are perceived to be improperly impeding its operation

We consider that this would be a properly proportionate role which would give credibility and confidence to the Code. It would avoid creating either “regulatory creep” or the danger that due regulatory process meant the Code could not be developed at appropriate speed to respond to emerging market issues.

Question 22 : Would you like to register your interest in attending the TPI working group?

We have developed considerable skill and expertise in this area and believe it will be important for this to be utilised when considering the way forward. Therefore we would wish to attend the TPI working group and will participate enthusiastically in a constructive manner in the best interests of the customer, all TPIs and suppliers either large or small. As mentioned earlier we believe our Code and that of the UIA should be considered as a good starting point for considering what should be included in any single industry Code going forward.

Question 23 : What issues should Ofgem consider in the wider review of the TPI market? What are the benefits and downsides to looking across both the domestic and non-domestic market?

We do not believe that any wider review of TPIs is an issue upon which we should comment given our current remit. However we would reiterate that any wider review should not impede early action on the challenges we know exist in the areas we have outlined.

In conclusion, whilst we welcome the engagement of Ofgem with this issue we consider there is a danger of delay whilst policy discussions progress during which time both customers and reputable businesses could suffer. We therefore urge Ofgem to

- progress its deliberations as quickly as possible
- give a very clear message that, in the intervening period, industry-led action to address the acknowledged issues should not be put on hold in order to protect the overall public interest and to show that the potential for self and co-regulatory solutions have been properly tested

Please do not hesitate to contact me if you wish to discuss any of these issues in more detail.

Yours sincerely

Duncan Sedgwick
Independent TPI Code Manager
duncan_sedgwick@yahoo.co.uk 07850 702559