

Phil Sumner
Consumer policy
Ofgem
9 Millbank
London
SW1P 3GE

4 April 2013

Dear Phil,

GEMA GAINING ENFORCEMENT POWERS UNDER THE BUSINESS PROTECTION FROM MISLEADING MARKETING REGULATIONS 2008 – CONSULTATION

Thank you for the opportunity to respond to the above consultation on the possible impact of Ofgem gaining certain enforcement powers under the Business Protection from Misleading Marketing Regulations 2008 ('the Regulations').

In our response to the RMR non-domestic proposals in early 2012, we gave our support to Ofgem seeking certain powers to enforce the Regulations, and we re-iterate that support now. We believe that obtaining these powers would help Ofgem address the issues they have identified within the Third Party Intermediary (TPI) market.

We consider that the impact from Ofgem gaining these powers will be positive, especially given the key role that TPIs play in the existing market. It would be likely to lead to more focussed and timely enforcement of the existing Regulations, rather than any new burden on business.

It is our view that gaining powers under these Regulations also compliments the development of the accredited TPI Code of Practice which will ultimately ensure that strong protections are in place for Non-Domestic consumers when engaging with a TPI.

During 2012 we engaged with 53 brokers to sell our Electricity and Gas products to the Micro Business sector. We consider that the majority of TPIs are professional in their dealings with customers. However, where TPIs do not behave in such an appropriate manner, it can have a negative impact on that customer and their relationship with their supplier. We take such issues very seriously and will actively monitor and take action upon any complaint that we receive in relation to TPI activity.

I would be pleased to discuss further any of the points raised above or within the Annex and provide further information that may be required.

Yours sincerely,



Rupert Steele
Director of Regulation

SCOTTISHPOWER RESPONSE TO QUESTIONS

Question 1: Do stakeholders have further evidence of the impacts of mis-selling by brokers on business consumers?

We have no specific evidence on the overall impact that mis-selling by brokers can have on non-domestic customers. However, we consider that harm can arise both in terms of detriment (financial or otherwise) to individual customers and through the overall erosion of consumer trust in the market.

We seek to manage TPIs robustly, with a process including sanctions on the broker where appropriate. Typically, we receive relatively low levels of complaints from customers regarding TPIs; our root cause analysis indicates that the main reasons for complaints from our customers about brokers are information provided by the broker and disagreement about prices quoted.

While the majority of TPIs provide a reliable switching service, the negative impact on consumer confidence in cases where a TPI fails to provide such a service can be considerable. One particular issue is that consumers will not always understand how TPIs are remunerated and how this might influence the service provided. We therefore consider that it is appropriate to consider whether or not there is a need to take a more formal approach to managing TPIs in the market.

Question 2: Do you agree with the identified gap in Ofgem's powers?

Yes. Currently there appears to be little consistency in the controls that bear on TPIs in the current market, particularly in relation to the scale of TPI business in the market. Further, there are a number of practical issues for suppliers arising from the relationships between suppliers, TPIs and customers which make it difficult to effectively manage TPI activity and for suppliers to be comfortable in managing their own regulatory obligations.

For example, different TPIs operate in different ways – some will act directly for a supplier (making it easier for that supplier to manage their behaviour through contractual sanctions) while others will engage with a number of suppliers on behalf of particular customers. Some TPIs may also act for more than one supplier at a time. This means that there is no single measure of control around the behaviour of TPIs as a whole, further emphasising a gap in Ofgem's powers to manage TPI behaviour.

We agree that, whilst the Regulations have been in place for some time, there are reasons why they have not been utilised in the energy market to date. Given Ofgem's focus and expertise in this area, the giving of the proposed powers to Ofgem would allow for a more complete set of protections for Non-Domestic consumers, consistent with the approach used for Domestic customers.

We agree that Ofgem is seeking the appropriate powers under the Regulations – neither too many nor too few.

Question 3: Do you agree the exercise of the powers we are seeking will help address the issues we have identified with TPI's?

Yes, to an extent. The Regulations will go a way towards addressing many of the issues experienced by customers in their interaction with TPIs, although some issues will still remain, such as the transparency and clarity of commission structures levied by different TPIs. We believe that in conjunction with the accredited TPI Code of Practice, Ofgem will be in a position to extend their powers to protect Non-Domestic consumers from the majority of misleading behaviour within the TPI market.

In addition, through our response to DECC's recent discussion paper "A better deal for energy consumers," we suggested that there was merit in considering direct licensing of TPIs in order to operate in the market. It was our view that the increasing influence of TPIs in this market sector, the wide variances in operation and the potential harm that could be caused to consumers meant that there was value in a more formal approach to managing TPIs.

We note that Clause 125 of the Energy Bill, as amended in Committee, contains powers which would allow for TPIs to be separately licensed, and we would encourage Ofgem to consider applying for these powers to be implemented.

Question 4: Do stakeholders have further evidence on the impact of Ofgem gaining BPR powers on TPI's, including details of the number of TPI firms operating in this market, and their size and revenues?

ScottishPower has agreements with 53 brokers to sell our electricity and gas products to the Micro Business sector in the UK. We are not privy to the arrangements that each of these brokers has in place with other energy suppliers including commercial agreements.

We commissioned a 3rd party (Cornwall Energy) to provide market intelligence relating to SME brokers in the UK recently, and some of the main headlines from this research are summarised below. We hope that the information will be helpful to you. Please note that this information relates to TPIs operating in the small to medium end of the market, so is not necessarily representative of the market as a whole:

SME answers UK wide - sourced from Cornwall

- **How many brokers are there in the UK (SME) –**

In our report we have profiled 35 SME brokers who are companies who we think account for the majority of activity. Most are brokers, some of those are aggregators like Online Direct and GET Solutions. Through aggregators there are probably another 300 or so brokers, many of whom are individuals.

- **How many services do they sell in a year –**

We think SME brokers sell about 250k contracts a year, split 3:1 elec: gas. 3 times as many are acquisition as renewal contracts. Total SME contracts about 2.6mn according to our market share survey. The larger brokers (Utilitywise, MIC, Online Direct and a few others) do 10-15k each a year, so the market is very fragmented

- **How much do each of them earn £ per sale (CTC per service) –**

We have a rule of thumb of 0.8p/kWh for an elec acquisition and 0.4p/kWh for gas acquisition.

- **How much do each of them earn £ per renewal (CTC per service) –**

Renewal commissions are very variable with some suppliers (including SP from time to time) refusing to pay them. Our renewal rule of thumb is $\frac{3}{4}$ of the acquisition rate.

- **When did brokers enter the market and how have they evolved (slow steady or exponentially)**

Brokers have been around for a number of years (pre 1990 first opening), they saturated the I&C market a decade or so ago. In SME the rollovers and multi-year contracts restrict them to about 10-15% of total contracts in the market in a year

Question 5: Do stakeholders have further views on our assessment of the regulatory impacts of Ofgem gaining these powers in terms of cost to TPI firms of Ofgem taking action under powers requested?

We are unable to comment conclusively on this point. However, the Regulations are an existing obligation and TPIs are already expected to comply with them. We therefore consider that giving enforcement powers to Ofgem under these Regulations is unlikely to increase the regulatory burden to TPIs.

Question 6: Do stakeholders have further information on the expected impact on the Court of Ofgem gaining these powers?

In most cases, we imagine that issues will be resolved by the TPI concerned giving undertakings to Ofgem, and that this should help avoid an excessive burden on the Court. However, we have no particular information that would allow us to comment further on this area.

ScottishPower
April 2013