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Dear Heather,

Third Party Intermediaries: exploration of market issues and options

1. Third Party Intermediaries (TPIs) play an important, and growing, role in the domestic and non-domestic energy sectors. We welcome Ofgem's focus on this area and support the development of a regulatory framework which recognises the best practice of those TPIs working in the interests of consumers, and protects consumers from harm which may be caused by TPIs.
2. Specific answers to the questions raised in the consultation are attached to this response as Appendix A. In summary however, we believe there are issues with aspects of the TPI market which create consumer harm, and think that a mandatory Code of Practice should be introduced which sets out minimum standards of consumer protection.
3. Specifically, we believe that:
 - More needs to be done to ensure transparency on how TPIs operate, allowing customers to make informed decisions about who to deal with. Recent research from Cornwall Energy suggests that as many as 79% of non-domestic customers do not know how much commission their broker charges them, or think they are being provided with a free service¹. This underlines the fact that transparency is a key issue which needs to be addressed through regulation. Specifically, steps need to be taken to ensure that all customers have the information they need in order to make an informed decision about which TPI to engage with.
 - The proposed definition of a TPI is too wide. The proposed definition of a TPI² appears to capture many organisations we would not expect to be impacted by regulation in this area, for example some landlords. We recognise the difficulty in finding a suitable definition, and suggest that Ofgem address this as part of their review, perhaps by focussing instead on the specific areas of TPI activity where consumer harm, or the risk of consumer harm, is most apparent.
 - Where regulation is appropriate, customers dealing with TPIs should receive the same level of protection they would receive if they dealt with a supplier. Customers dealing directly with energy suppliers are protected by a large number of regulatory controls which protect their interests. These controls will be further enhanced by the forthcoming introduction of the Standards of Conduct which will, amongst other things, obligate energy

¹ Business and broker interaction in the energy market, Cornwall Energy. Link: <http://www.cornwallenergy.com/Business-and-broker-interaction-in-the-energy-market>

² "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", Third Party Intermediaries – exploration of market issues and options, paragraph 1.1.

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suppliers to treat their customers fairly. Where appropriate, customers dealing through a TPI should expect the same minimum level of regulatory protection. In effect, consumers should not be exposed to more risk simply by choosing to interact through a TPI.

- A mandatory Code of Practice is the most appropriate solution. Once an appropriate definition has been agreed, it will be important to ensure all impacted TPIs adhere to the levels of consumer protection required. We do not believe that any voluntary regime could provide a workable solution, given the lower costs of compliance would provide a competitive advantage to those opting out of the rules.. It would also fail to guarantee minimum levels of protection for all customers. Ofgem should instead seek to develop, and administer, a mandatory CoP.
- This review should not be allowed to delay progress on developing a non-domestic TPI Code of Practice. We welcome this wider focus to Ofgem's work on TPIs, however we would be concerned if progress on developing a specific TPI Code of Practice (TPI CoP) in the non-domestic market was now delayed. We urge Ofgem to continue with the development of this TPI CoP as soon as possible.

4. These concerns are set out in more detail below. We have also included in Appendix A our more detailed comments on the specific questions posed by the consultation..
5. This response is submitted on behalf of the Centrica Group of companies (excluding Centrica Storage), is not confidential, and may be placed on the Ofgem website.

More needs to be done to ensure transparency on how TPIs operate, allowing customers to make informed decisions about who to deal with

6. Recent research by Cornwall Energy found that 37% of customers surveyed believed their TPI was providing a free service, and 42% did not know how much they were being charged. This supports our view that in many cases insufficient information is provided to customers for them to make an informed decision about which TPI to deal with. This also mirrors our own experience, having heard from a number of customers in the non-domestic market who believe that their TPI has provided them with a free service, when in fact they are being charged a fee through their energy bill.
7. We are concerned that customers will be unable to make an informed decision about how best to proceed if they do not have access to key information such as who a TPI represents, how much their services cost and how that fee is recovered. We also believe that those TPIs who are open and honest with their customers about their fees will be commercially disadvantaged, incorrectly being regarded as poor value for money against those offering a "free" service..
8. Although these concerns have emanated from the practices of some non-domestic TPIs, we believe there is a case to require all TPIs captured by this review to proactively provide information on who they represent, how much they cost and how that cost is recovered - before any agreement is made. This basic level of transparency will protect those TPIs who already represent best practice in the industry, and ensure customers can make informed decision on how to proceed.

The proposed definition of a TPI is too wide

9. We are concerned that the proposed definition of a TPI³ is too wide, and would extend the scope of any regulation wider than perhaps was intended. For example, our interpretation of the proposed definition is that it would include organisations and individuals such as landlords, finance companies and those who sell or distribute energy related products. It is unclear whether this is Ofgem's intention, but we have concerns that the proposed definition would be disproportionate in its effect and, in practice, difficult to police.

³ "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", Third Party Intermediaries – exploration of market issues and options, paragraph 1.1.

10. We believe that Ofgem should identify, through this review process, the areas where consumers are experiencing the most harm, or risk of harm, and seek to apply a definition which targets protection in those areas.

Where appropriate, customers dealing with TPIs should receive the same level of protection they would receive if they dealt with a supplier

11. When a customer deals directly through an energy supplier, a number of regulatory controls govern how their interests are protected. For example, in addition to the existing consumer protection legislation, suppliers are also bound by the terms of their licence (including the forthcoming Standards of Conduct) and related industry codes such as the Energysure Code of Practice. If an energy supplier does not meet the standards set out, this regulatory framework also provide for a variety of redress mechanisms.
12. We believe this framework helps ensure that consumers receive an appropriate level of protection and argue that – where regulation of TPIs is found to be appropriate (as is the case in the non-domestic sector) – Ofgem should ensure that the same standards apply to suppliers and TPIs. This will ensure that consumers receive a standard level of protection, regardless of who they deal with.
13. Ofgem should also ensure that in creating any new regulations, they take in to account the adequacy of the existing (non-voluntary) frameworks a TPI may already be operating under. For example, Green Deal Advisors operate under an existing framework, providing a minimum level of consumer protection. Further regulation should only be considered where it is considered that the protection currently afforded is inadequate. Care should also be taken to ensure that existing rules are not duplicated or contradicted.

A mandatory Code of Practice is the most appropriate solution.

14. It is important that any regulatory solution requires all impacted TPIs to adhere to the rules. We believe that any voluntary solution will enable some TPIs to pick and choose the standards to which they are held accountable, with those TPIs creating issues today likely to “opt out”. This would then place the onus on customers to seek out and find accredited TPIs, with no guarantee that they would be successful.
15. It would also place those TPIs who provide a valuable service to customers at a competitive disadvantage. TPIs choosing to operate outside of a regulatory framework are likely to have a lower cost of compliance, and therefore able to undercut those who choose to opt in to the regulatory framework. They may also have the ability to continue making misleading claims (for example, that they provide “free advice”) distorting competition with those TPIs who operate within the regulatory framework.
16. As we have said in response to the proposals on the non-domestic TPI Code of Practice (TPI CoP), we believe these potential issues are best resolved by creating a mandatory CoP for impacted TPIs. Given both the wide variety of TPIs and the different nature of the markets, we do not believe that a CoP necessarily need have the same content for the domestic and non-domestic markets. Any differences must be evidence based however, and designed to reflect differences in the issues customers face in each market.

This review should not be allowed to delay progress on developing a non-domestic TPI Code of Practice

17. We are firm supporters of Ofgem’s work to establish a non-domestic TPI CoP, and believe this has the potential to deliver important benefits to non-domestic customers. It is not clear from the current consultation whether the development of this TPI CoP will be impacted by this wider process. We would however be concerned if this work was now delayed whilst a wider solution was developed.
18. Whilst the scope of this consultation covers TPIs in the non-domestic sector, we hope that the material gathered through this exercise can feed in to and help facilitate the existing non-domestic TPI CoP workstream. It may be preferable for Ofgem to establish separate domestic and non-domestic

TPI workstreams to ensure momentum is not lost elsewhere. This does not necessarily create problems. For instance, if the same issues were ultimately identified in the domestic TPI market for example, the non-domestic TPI CoP regulatory framework could simply be 'adopted' into the domestic sector. We would therefore appreciate confirmation from Ofgem that this wider review will not delay the important non-domestic reforms they have already commenced.

Conclusion

19. Given the growing role of TPIs in both the domestic and non-domestic sectors, we believe Ofgem's review is timely. We are aware of a number of issues in the TPI market and are believe that proportionate and targeted regulation may help address them. In particular, we think that much benefit can be gained by requiring all TPIs to adopt best practice in terms of transparency, and where necessary, be required to sign up to a mandatory CoP providing minimum levels of customer protection equivalent to those provided by suppliers today.
20. Please do not hesitate to contact me if you should wish to discuss any of the issues raised in this response.

Yours sincerely

David Watson

Head of Market Design & New Energy

British Gas

Appendix A: Answers to the direct questions being consulted upon

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?

We agree with Ofgem that the range and scope of TPIs operating in the energy market today is very wide, and agree that it is likely to grow in the coming years. We continue to believe that there is a need to introduce regulatory controls over the operation of TPIs involved in energy procurement, specifically in the non-domestic market, and we also believe there may also be a case for some control in other areas, for example the provision of some energy related services.

In particular we believe that TPIs should proactively provide transparency over who they represent, how much their services cost, and how that cost is recovered before any agreement is made. This level of transparency should apply for TPIs operating in both the energy procurement and energy services sectors.

We do have some concerns that the proposed definition of a TPI captures some classes of individual or organisations where regulation may not necessarily be appropriate. For example, we believe that landlords may be captured by the proposed definition, as would finance companies and the producers and distributors of energy related products (e.g. thermostats). We believe that this may be disproportionate in its effect, and consider that a more refined definition is required, targeting regulation where issues have been identified. It would, for example, appear unworkable to police the advice or products provided by hardware stores regarding energy related products.

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

Yes. We are aware of a growing body of evidence which shows that a number of TPIs are not transparent about who they represent, how much their services cost, and how that cost is recovered. Many customers do not know how much the services they receive cost, or believe they are receiving them for free. This lack of transparency not only negatively impacts those TPIs who do provide full transparency, but also prevents customers from making informed decisions about which TPI to use. This view is supported by a growing body of evidence⁴.

We have no firm evidence to suggest that the quality of advice provided by TPIs is poor, however we understand the minimum standard of protection a customer receives when they approach an energy supplier for advice, and can see no argument to suggest that these controls should not apply equally to TPIs. A requirement not to mislead customers for example is likely to be generally beneficial for consumers if universally applied.

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

We receive anecdotal evidence – specifically in the non-domestic market - from customers that they have been told they are receiving “a free service” from TPIs, when in fact we know they may be paying a fee for those services, for example through their energy bill. We are also aware of customer surveys⁵ which support this view.

We are also aware of a small number of TPIs who have in the past attempted to break a customer's contract with us by pretending to be that customer during a telephone call to us, serving us with termination notice, and then using that break in the contract to sell the customer another energy deal. This issue leaves suppliers exposed for potentially material amounts of energy, and therefore increases costs for the wider customer population. We have controls in place to try and prevent such

⁴ For example, see Business and broker interaction in the energy market, Cornwall Energy. Link: <http://www.cornwallenergy.com/Business-and-broker-interaction-in-the-energy-market>

⁵ Ibid

activity, but given the low burden of proof suppliers rightly require before accepting a contract termination, it is not possible to prevent all such instances.

Finally, we are aware of issues created by the varying quality and accuracy of Letters of Authority (LOAs) presented by some TPIs. Often these are little more than a signed piece of paper, and purport to give the TPI full control over a customers' entire energy account – i.e. more than simply control over contracting processes. Poor quality LOAs can lead to disputes and customer dissatisfaction. Ofgem should consider how this process can be standardised as part of this review.

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

The quality of existing regulatory measures applicable to TPIs varies depending on the product or service that a TPI provides. An energy broker for example will be subject to a different standard of controls than a Green Deal Assessor, for example.

We also recognise that suppliers will 'police' the activities of those TPIs they contract with. We have invested a considerable amount of resource in our control frameworks, and are confident that the TPIs we deal with provide an excellent service to customers. We are however conscious that the current voluntary framework creates the potential for suppliers to trade regulatory risk for commercial advantage. Any future framework should seek to mitigate this risk.

We are also aware of a number of voluntary CoPs governing the activities of TPIs. Whilst there are certainly examples of best practice here, there are also examples where the CoP provides little consumer protection in practice. In the worst cases, the existence of a CoP may provide consumers with a false sense of security regarding the level of protection they will receive. As we say in the covering letter to this response, we believe this disadvantages those TPIs that have invested in processes and procedures which ensure the customer is properly protected. We would therefore prefer to see such TPIs operating under an Ofgem led mandatory CoP.

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?

British Gas fully accepts responsibility for its compliance under SLC25, and has invested considerable resource in ensuring that both we and the TPIs we work with (as our representatives) provide a good service for our customers. Face to face sales activity naturally represents a considerable compliance risk with respect to SLC25 however, and regardless of whether this is done directly or through a TPI, suppliers are more cautious about engaging in face to face sales activities and will want to ensure that there are rigorous controls in place before commencing such activity.

We believe however that the protection afforded by SLC25 is both reasonable and proportionate, and would be concerned if Ofgem's reforms allowed some TPIs (those for example who are not acting in a capacity as representatives of suppliers) to operate to a lower standard.

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

British Gas support Ofgem's work in strengthening the Confidence Code, establishing a non-domestic CoP, regulating the operation of collective switching schemes and reviewing protection around community energy schemes. We look forward to helping Ofgem develop their policy in these areas.

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

We believe that the work on the non-domestic TPI CoP needs to be prioritised, and would be concerned if this wider review delayed progress there.

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

We believe Ofgem have captured the key third party opportunities in the medium term.

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

Yes. British Gas believes that where action is justified, a mandatory CoP (i.e. backed with a Licence Condition) is the most appropriate solution. This will guarantee a minimum level of protection for customers in a way that voluntary measures would not, without resorting to a full licensing regime.

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

Yes.