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4 April 2013

**Consultation on Ofgem gaining enforcement powers under the Business Protection from Misleading Marketing Regulations (BPMRs)**

Dear Philip,

British Gas welcomes the opportunity to respond to this consultation on Ofgem gaining enforcement powers against Third Party Intermediaries (TPIs) under the BPMRs.

While the majority of TPIs operating in the non-domestic energy sector act in the interest of customers, British Gas shares Ofgem's concerns about the behaviour of a minority of TPIs. In recent years, we have seen examples of a small number of TPIs act in ways which are contrary to the consumer interest, with consequential impacts on other suppliers and TPIs. We would be happy to share examples with Ofgem if this would be helpful.

British Gas welcomes Ofgem's involvement in the TPI sector of the market and supports Ofgem gaining these enforcement powers, which we believe will act as a deterrent to behaviour that brings the retail energy market into disrepute. Acquiring and enforcing these powers will also improve customer trust in the non-domestic energy sector. We agree that these powers will complement other actions taken by Ofgem and are reasonable for the regulator to obtain.

Our detailed views on each of the questions in this consultation are set out below. However, our key views are as follows:

- The definition of a TPI has not been agreed and needs to be fully defined to make clear to industry participants whether they are impacted or not. While the consultation does not suggest that Ofgem plan to use the powers against other regulated entities, the consultation does not explicitly limit the scope either.
- Robust enforcement action is required. Costs will be borne by TPIs seeking to comply, or demonstrate compliance. Strong enforcement action may be required to ensure any less reputable TPIs recognise the importance of compliance. The Code of Practice should set out how Ofgem (or any other body) will take enforcement action against TPIs.
- Transparency has an important role to play in building consumer trust. Consumers are more likely to trust contracts agreed through TPIs if there is transparency about the relationship that TPI has with the energy supplier. Such transparency would include clarity as to whether a TPI has sought the best price across all suppliers, as well as being fully transparent about the amount of commission the TPI has been paid by the supplier so that there is no risk of consumers being misled about the value of the deal they are getting.

We are proactively working with Ofgem, TPIs, energy suppliers and consumer groups to create the appropriate regulatory framework to give consumers confidence in the TPI market and will continue to do so. We believe that Ofgem acquiring powers under the BPMMRs will complement the Code of Practice being developed through Ofgem's TPI workshops. We also welcome the investigative work already carried out by organisations such as Consumer Focus and would encourage a more detailed follow up to their "Watching the Middlemen"<sup>1</sup> report.

Please do not hesitate to contact me if you would like to discuss any aspect of this response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tim Dewhurst', written in a cursive style.

**Tim Dewhurst**  
Director - Regulatory Affairs  
British Gas

Cc Phil Sumner, Ofgem

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<sup>1</sup> <http://www.consumerfocus.org.uk/files/2011/03/Watching-the-middlemen.pdf>

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## Responses to specific questions

### **Q1. Do stakeholders have further evidence of the impacts of mis-selling by brokers on business consumers?**

While the majority of TPIs operate in the interests of their customers, we are aware that some TPIs behave in a way which is detrimental to consumers' interests. Incidents we have been made aware of include the submission of false documents by a TPI during the Change of Tenancy process, lack of transparency around commission fees, and false claims that prices offered reflect quotes from all suppliers. We are happy to share specific examples with Ofgem.

Further work is also required to define a TPI and we encourage Ofgem to consult on how widely their powers will extend. This will help clarify whether organisations such as Green Deal providers, resellers and Directed Utilities will be covered.

### **Q2. Do you agree with the identified gap in Ofgem's powers?**

Yes, we agree that there is a gap in Ofgem's powers which requires action. British Gas agrees that Ofgem should have the power to regulate and take direct enforcement action against TPIs operating across the non-domestic energy sector. We support Ofgem's involvement in this area.

When they act in ways which are against the consumer interest, TPIs can cause reputational damage to energy suppliers and erode customer trust in the wider energy market. Whilst the majority of TPIs adhere to high standards of customer care, we believe that Ofgem taking these powers will provide an incentive to all TPIs to recognise their role in ensuring sales are completed properly. This may include TPIs clearly explaining to the customer any commission they will be paid.

The BPMMRs are an important tool to influence the behaviour of TPIs and should form part of a wider regulatory framework to address difficulties faced by consumer protection. We support the moves made by Ofgem to create a robust and durable Code of Practice for TPIs and believe this will complement the enforcement powers Ofgem is seeking here. We believe that Ofgem is best placed to secure the continued confidence of TPIs and suppliers alike and it is for this reason that we support Ofgem taking responsibility for the proposed Code. Once the Code has been agreed, we would also support the introduction of an obligation on suppliers to only work with TPIs who are signatories to the Code; if necessary this obligation could involve a new licence condition. Any obligation should not limit the commercial decision of suppliers to work with some, rather than all, of the accredited TPIs.

The consultation does not explicitly define the limit of the powers Ofgem seek, for example by defining what a TPI is and therefore which organisations may be impacted. Whilst we support the taking of these powers, we cannot say with confidence that their scope is either sufficient or proportionate. It would be helpful if Ofgem could address this as soon as possible by consulting on how a TPI is to be defined.

### **Q3. Do you agree the exercise of the powers we are seeking will help address the issues we have identified with TPIs?**

As we state in our answer to Question 2, we believe that the benefits of Ofgem gaining these powers will be best realised if they form one component of a wider solution. The power to enforce the BPMMRs should complement a robust and durable Code of Practice. We believe that Ofgem's additional scrutiny of the TPI market is likely to influence TPI behaviour and raise standards.

For Ofgem to successfully influence TPI behaviour, the associated monitoring regime will need to actively cover TPIs and will require the permanent use of enforcement resources. Ofgem must ensure that adequate resource is in place to deliver the proposed benefits to consumers and an increase in

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confidence in the TPI sector. We encourage Ofgem to consider how they can best use consumer groups, in particular the Citizens Advice Consumer Service, to provide notice of behaviour likely to fall foul of the BPMMRs.

**Q4. Do stakeholders have further evidence on the impact of Ofgem gaining BPR powers on TPIs, including details of the number of TPI firms operating in this market, and their size and revenues?**

It is difficult for suppliers to provide further evidence on the impact of Ofgem gaining these powers. Energy suppliers are not, and cannot be, responsible for the marketing activities of TPIs, which are the sole responsibility of the TPI. We also have no precedent of enforcement action being taken in other industries.

The difficulty in understanding the impact on the market is compounded by the fact that British Gas only deals with a portion of the TPIs operating in the market and, in the absence of a licensing regime or central database of active TPIs, we cannot be sure what percentage of the total market this amounts to. Similarly, we are unaware of the size or revenues of individual TPIs.

A confidential annex to this response provides Ofgem with a list of the TPIs we know to be operating in the non-domestic energy sector.

**Q5. Do stakeholders have further view on our assessment of the regulatory impacts of Ofgem gaining these powers in terms of costs to TPI firms of Ofgem taking action under powers requested?**

Based on our experience of ensuring compliance with legislation and licence obligations, we believe that Ofgem gaining powers under the BPMMRs would lead to additional costs being passed on to all TPIs. These costs would be as much to demonstrate compliance as to achieve it and would include training staff, developing policies and reviewing any existing materials. The one-off cost would be higher than the cost of continuous compliance.

This is not to say that this extra cost is unwarranted. Indeed, significant expenditure will only be necessary where TPIs are failing to live up to the high standards required of energy sales in the industry today. To that effect, any expenditure should be seen as both necessary and beneficial to the wider consumer interest.

We are unable to provide more information on the magnitude of this cost as we do not know how compliant all TPIs operating in the market are against the BPMMRs.

**Q6. Do stakeholders have further information on the expected impact on the Court of Ofgem gaining these powers?**

We cannot provide any information to answer this question, as enforcement action under the BPMMRs has been pursued sparingly since 2008, and never against energy sector TPIs.