

27 March 2013

Phil Sumner

By email: phil.sumner@ofgem.gov.uk

Dear Phil

### **Consumer Focus response to consultation on Gaining enforcement powers under the Business Protection from Misleading Marketing Regulations**

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

We can only add to the scenarios and concerns you outline. Consumer Focus's report, (Watching the Middlemen) is cited in the consultation document. This report highlights our concerns about the detriment caused to micro-business consumers by mis-selling and poor behaviour by brokers. This situation has been exacerbated by a lack of clarity over the enforcement and regulation of brokers and third party intermediaries (TPIs). The impact, as we have stressed before, is larger than it seems because the broker is the first interaction many consumers have with the energy market. This means that poor experiences of brokers can lead to an overall lack of trust in the energy industry. Mis-selling can also lead to wider problem such as contractual disputes and, in some extreme cases, disconnection proceedings later on. Dealing with the issue thus has beneficial consequences beyond the TPI market.

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

We agree with the identified gap in Ofgem's powers, it has long been a source of confusion and frustration for micro-business consumers that Ofgem has been unable to address poor behaviour that causes detriment to energy consumers. The localised nature of Trading Standards has made it difficult to address the problems caused by brokers or TPIs operating across a wider region or nationally. We also consider that Ofgem not having the Business Protection from Misleading Marketing Regulations (BPRs) powers while it introduces a new voluntary code of conduct for TPIs would be odd and lead to further regulatory confusion. Ofgem's taking of powers under the BPRs will underpin the Code with regulation and give it more force and credibility.

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

Yes, as highlighted above, poor behaviour by a number of TPIs in the market has contributed to a large amount of consumer detriment and has bred mistrust in the energy industry. The current regulatory gap has meant that it has been difficult for bodies, such as ourselves, to understand which organisation to approach in order for enforcement action to be taken to address poor behaviour from TPIs. Mis-selling is endemic among a small number of brokers. The enforcement of basic rules regarding mis-selling and customer service cannot fail to make the situation better. As mentioned above, we believe taking powers under the BPRs will help underpin Ofgem's proposed voluntary code of conduct for TPIs.

**Do stakeholders have further evidence of 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?**

We have been told informally by suppliers that there are 'around 400' TPIs. This number includes 'one man band' companies up to the very largest aggregators and those whose main business is operating a price comparison site. We understand that there may be a resource cost to Ofgem in using and enforcing these powers, however, we are not best placed to comment exactly on what that impact will be. We are unclear whether there would be any increased cost to TPIs, as the BPRs are already in existence and TPIs should be complying with these regulations already.

We believe that Ofgem's ability to take enforcement action under the BPRs will have a positive impact on the industry as it will decrease consumer detriment, increase consumer trust and root out poor practice. This can only be of benefit to TPIs who already run their business in a responsible manner.

**Do stakeholders have further views 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?**

We are happy with Ofgem's assessment. It should be observed that in terms of the BPRs, costs are only likely to be incurred by TPIs if and when they fall foul of said regulations; if they subscribe to Ofgem's concurrent code work then no costs will be incurred. If rogue TPIs business model is dependent on the BPRs not being enforced then their being driven from the market is a good thing for all participants.

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

We hope and expect that they will reinforce the seriousness with which Ofgem is tackling TPI problems with its code through a unified approach.

Yours faithfully,

Andrew Hallett  
Policy Advocate