

Consumer Futures response to Third Party Intermediaries: exploration of market issues and options consultation

23 August 2013

For more information contact: **Gillian Cooper** on
gillian.cooper@consumerfutures.org.uk or **Hannah Mummery** on
Hannah.mummery@consumerfutures.org.uk

Twitter: @Futures_tweet
www.consumerfutures.org.uk

Copyright: Consumer Futures

**If you require this publication in an alternative format please
contact us.**

**For the deaf, hard of hearing or speech impaired, contact CCiRM
via Text Relay:
From a textphone call 18001 020 7799 7900 or telephone 18002 020
7799 7900**

London

Victoria House
Southampton Row
London
WC1B 4AD
Tel: 020 7799 7900

Glasgow

Royal Exchange House
100 Queen Street
Glasgow
G1 3DN
Tel: 0141 226 5261

Cardiff

Portcullis House
21 Cowbridge Road East
Cardiff
CF11 9AD
Tel: 029 2078 7100

Belfast

Elizabeth House
116 Hollywood Road
Belfast
BT4 1NY
Tel: 028 9067 4833

Consumer Futures represents consumers across regulated markets. We use evidence, analysis and argument to put consumers at the heart of policy-making and market behaviour. We speak up for consumers of postal services in the United Kingdom, of energy across Great Britain and of water in Scotland.

Consumer Futures welcomes the opportunity to respond to this consultation, our response is not confidential and can be published on your website.

Over the past few years third part intermediaries (TPIs), such as price comparison websites (PCWs), have established themselves as a key source of the information guiding consumers' purchasing decisions, in addition to offering new services such as facilitating switching. For example according to Consumer Futures' recent research on consumer perceptions and experiences of PCWs, 56 per cent of consumers declared they have used a PCW in the last two years.¹ Our research found that consumers use PCWs to:

- bargain hunt to get the best deal (85 per cent)
- compare prices (83 per cent)
- save money (79 per cent)
- switch/purchase (52 per cent declared they have used PCWs to switch provider or purchase products).

In particular, the use of PCWs as a switching or purchasing portal has increased in comparison to the OFT's 2010 report when only 15 per cent of those surveyed purchased or switched through a PCW.² Of that total, 37 per cent switched their energy supplier.³

However, while the TPI market has grown rapidly, concerns have been raised about issues of impartiality, reliability and accuracy of information, and general practices of TPI operators.

Consumer Futures has long been concerned about the existing TPI market in both the domestic and non-domestic sector and has carried out research looking at both the detriment to consumers and options for greater regulation in this area.⁴ For example, Consumer Futures' investigation of PCWs across six markets, including energy, found that although PCWs were a useful platform for a basic search and displayed a high proportion of relevant search details, only 20 per cent of investigated sites guaranteed savings in real terms.

¹ *Price comparison websites: consumer perceptions and experiences*, research commissioned by Consumer Futures with RS Consulting (2013), <http://bit.ly/17ljXp2>

² The OFT's Advertising of Prices market study (December 2010), <http://bit.ly/eRmeus>

³ *Price comparison websites: consumer perceptions and experiences*, research commissioned by Consumer Futures with RS Consulting (2013), <http://bit.ly/17ljXp2>

⁴ Consumer Futures and our predecessor bodies energywatch and Consumer Focus ran the Confidence Code, a voluntary co-regulation scheme for domestic price comparison sites until its transfer to Ofgem in April 2013. We are also very involved in the current development of a code of practice for non domestic TPIs.

Also their performance standards varied regarding the reliability and transparency of the information provided.⁵

Work by Consumer Futures on next generation intermediary services suggests that in the near-medium term we are set to see a range of innovative services that bring much greater convenience to consumer engagement with the energy market. A key challenge for Ofgem will be to develop a regulatory framework that both anticipates these developments, is flexible enough to respond to them and can ensure that the right consumer protections are in place.

Consumer Futures would like to see an Ofgem-run accreditation scheme for TPIs accompanied by a new licence requirement on suppliers requiring them to only deal with accredited providers. Our key objective is to ensure that no matter how energy consumers, domestic or non-domestic, choose to purchase energy or energy services they are able to access to the same rights of redress and protections as consumers that purchase the same services directly from a licensed supplier. In a rapidly developing market, adequate consumer protections are necessary not only to guard against consumer detriment but to promote consumer confidence in engaging in the market, which includes using TPIs.

However, while this overarching aim should apply to the whole TPI 'market', we would caution Ofgem against viewing TPIs as a single and homogenous market. The TPI industry has to be looked at as a collection of markets rather than a single one. That said, we are aware of the need for a clear regulatory process that applies to all TPIs so that consumers can be confident that they have adequate protections and access to redress no matter what parts of the market they engage in. Where appropriate, we have provided separate comments on our views as to what protections are needed for the domestic and non-domestic markets.

In principle however, Consumer Futures is not in favour of developing a series of different codes of practice for each sub-market as this has the potential to cause consumer confusion as well as increasing the risks that sub-optimal codes are developed. It would be easier if a code could be designed in such a way that certain clauses only come into effect when the TPI starts offering the relevant services in the relevant market(s)/sub-markets.

⁵ <http://bit.ly/13cEwUd>

Response to questions

Q1. 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?

The TPI market is a rapidly growing one and it is increasing in complexity as the energy market grows and develops. It is understandable and welcome that this consultation covers a wide range of issues and types of intermediaries, and existing as well as potential future developments in this market. We broadly agree with Ofgem on the scope and type of TPIs that have been identified in this consultation.

As Ofgem rightly identifies, TPIs can cover a large range of services from more traditional price comparison sites to the newer and more innovative collective switching projects that are now emerging. There are also significant differences between TPIs that cater for the domestic and non-domestic markets.

We agree with Ofgem that the developments of the energy market with innovations such as the Green Deal, smart meters and microgeneration means that more sophisticated TPIs will emerge. These will sell not only energy supply but a wide range of energy management services including energy efficiency, demand side response services, data management and microgeneration services to consumers. These services are currently much more prevalent in the non-domestic sector however we believe that they will grow in the domestic sector as smart meters allow TPIs to engage with domestic consumers on a more sophisticated and individual level. However, we are not convinced from this consultation that Ofgem has fully grasped the potential for the future development of these types of services in the domestic sector as well as the regulatory challenges they could pose; particularly around enforcement.

We would call on Ofgem to further clarify what is in and what is out of scope when considering TPIs. We agree with Ofgem that it makes sense that the definition of TPIs should not encompass the current advice and information services provided by charitable organisations, public bodies such as ourselves and advice providers such as Citizens Advice consumer service and the Home Heat Helpline. This, however, would need to be reviewed if these types of bodies decided to enter into new markets or contractual or commercial partnerships with TPIs.

Consumer Futures would urge Ofgem to consider whether there are other groups of intermediaries that should be included in this workstream such as landlords or freeholders who purchase energy on behalf of their tenants or local authorities who purchase group contracts on behalf of various sites, which may include domestic sites.

While there are existing (albeit more limited) protections in these markets (eg the maximum resale rules that apply when reselling energy to domestic consumers), we have concerns that these consumers have less protections than “conventional” energy consumers.

Consumer Futures’ work on park homes⁶ and the private rented sector⁷ demonstrated that while this is a fairly niche sector, often consumers in vulnerable situations can be put at a considerable disadvantage by abuses associated with the resale of energy. Being required to purchase energy in this way means that domestic consumers can be significantly disadvantaged as they are unable to choose the best tariff or supplier for their needs, they miss out on assistance programmes such as the Warm Home Discount and can be put at risk of disconnection as it is the responsibility of the third party to pay their supplier.

While none of Ofgem’s identified five options appear appropriate for these scenarios, we would like the regulator to consider how these consumers could be better protected. One option would be for Ofgem to take powers to enforce against abuses of the rules that cover the resale of energy to consumers.

Q2. Do you consider our understanding of consumers’ experience of TPIs in the retail energy markets is accurate?

Non-domestic market

We broadly agree with Ofgem’s assessment of the consumer experiences of TPIs in the non-domestic retail energy market. While the TPI market can bring valuable services to the non-domestic market and enable businesses to engage, the sector also suffers from issues of mis-selling, lack of transparency and poor behaviour as Ofgem has identified in this consultation. We have a large amount of evidence of this behaviour and the detriment that it causes to non-domestic energy customers.

We detail this evidence further in our answer to question 3.

We are also pleased to see Ofgem note that many non-domestic and domestic energy customers share the same attitudes and knowledge in terms of their energy procurement. However we would also seek to remind Ofgem that not all non-domestic consumers are businesses, we have seen examples of charities, community centres and managers of residential properties who have been misled by brokers. These groups often have even less capacity and knowledge to deal with the energy market than businesses.

⁶ <http://bit.ly/14anp1y>

⁷ An omnibus survey of 5,835 consumers in December 2012 by TNS – RI found that 10 per cent of private tenants brought their energy from their landlord. Of this group, a quarter were unsure if their landlord was charging them a fair price for their energy.

We would also agree with Ofgem's assessment that many consumers are unaware that TPIs are not subject to sector specific regulation. This can lead to frustration and confusion among consumers as they do not understand why brokers involved in the energy market are not held to the same standards as suppliers, particularly when they cannot achieve the same redress simply because of the way they purchased their energy contract.

This can also cause issues for organisations within the energy redress framework, such as our own Extra Help Unit. There are limits on what we can do to achieve redress for energy consumers if the root cause of the detriment they suffered was due to the behaviour of a broker.

Our staff generally find that they have very little negotiating power with brokers when trying to help a non-domestic consumer who may be in a very difficult situation, for example if they are locked into an unsuitable contract by broker mis-selling which is causing debt problems. Currently our staff have to appeal to the supplier involved and urge them to voluntarily agree to releasing the consumer from the contract. This depends on the willingness of the supplier and the associated negotiations can be time consuming and frustrating for all parties.

Domestic market

We also broadly agree with Ofgem's assessment of the domestic TPI market.

As the consultation document notes, collective switching has gained significant momentum in the GB energy market during the course of the past year, and has the potential to be a major way for consumers to access the energy market. The £5 million in funding provided through the Department of Energy and Climate Change's (DECC's) Cheaper Energy Together initiative has provided considerable impetus to the growth of the approach. Consumer Futures supported Ofgem's final Retail Market Review (RMR) proposals concerning collective switching, namely the opportunity for suppliers to compete for customers in collective switching initiatives using a 'fifth tariff'. We believe this will play an important role in helping the approach realise its potential.

There is currently very little published evidence on the consumer experiences of collective switching or the success of these schemes. Consumer Futures has some initial evidence and analysis and expect to be engaging with DECC on the data it receives ahead of publishing its collective switching consultation later this year. We detail what evidence we currently have in our answer to question 3.

However, we are concerned that one key area that Ofgem has not covered in this consultation is the fact that some of the factors that inhibit TPI performance, lead to poor consumer experiences and lessen their utility in consumers' eyes are matters over which TPIs have very little, if any, control over. These issues include:

- the length of time it takes to switch from one provider to another, Consumer Futures has a desire to see a much faster switching process for consumers, ideally same day switching. We are pursuing this aim through other working groups including the work of the Smarter Markets Programme as referenced in section 6.16
- industry or individual supplier data errors which can delay or halt the switch
- suppliers making tariff info available to preferred TPIs (in the price comparison segment) rather than opening it up for all to access
- mismatches between the tariff branding that suppliers provide to TPIs and what is stated on consumers' bills (which frustrates straightforward comparisons) and
- the extent to which tariff information provided by suppliers to the TPI market is up to date
- information about in which circumstances a termination fee would be levied eg many suppliers will waive a termination fee at their discretion.

These are some of the fundamental raw materials of price comparison and collective switching, so getting them right will be key to the development of more convenient, and attractive TPI services. Ofgem should be considering these matters alongside steps to ensure TPIs improve their service to consumers.

In response to concerns raised by Confidence Code accredited sites, our predecessor Consumer Focus previously explored industry's appetite for introducing a new code of conduct on suppliers to cover their interactions with TPIs during the 2009/10 Code consultation process.⁸ Suppliers expressed limited interest in taking forward this proposal and given our organisational remit, we were not able to pursue this option further. This is an option that Ofgem may wish to explore to address concerns about the ability of suppliers to constrain innovation in the TPI market.

Q3. Do you have further evidence to share regarding consumers' experience of TPIs in the retail energy markets?

Non-domestic market

Consumer Futures has long had concerns about poor practices in the non-domestic TPI market and the detriment caused to small businesses consumers. Bad experiences in this market have long marred micro business consumers' experiences of the energy market and in some cases caused real detriment.

⁸ <http://bit.ly/186qvGj>

Recent analysis of Citizens Advice consumer service contact data reveals that the service received 363 contacts related to TPIs from micro businesses between May 2012 to April 2013.⁹ Many of these complaints are about mis-representation, poor behaviour, mis-selling and unexpected fees. Analysis of the data shows that businesses seem particularly vulnerable to broker mis-representation and poor service during the change of tenancy process. This is an area that Ofgem should examine in more detail.

Illustrative case studies from Citizens Advice consumer service

Case Study 1 – Poor service

The consumer paid a broker/price comparison organisation to find her a better deal as her contract with Supplier A was due to end. The Broker found her a good tariff with Supplier B. The Broker advised her that as she has entered into a verbal agreement with Supplier B she cannot break the contract now, despite the Broker not informing Supplier A, as was agreed, that she would be ending her contract with them.

Case Study 2 – Unprofessional behaviour

The consumer stated that she moved into a new business premises 10 days ago and since then has been bombarded with sales calls from a number of different brokers who have been extremely rude to her.

Case Study 3 – Misrepresentation

The consumer stated that he moved into address on 1 October 2012. He was contacted on 24 October by Broker 1 and agreed to switch supply to Supplier A. They were going to call him back to go through a verbal contract. After that he was bombarded with calls from other brokers. He was contacted then, by a broker, he now believes was posing as Broker 1, who took him through a verbal contract and told him it was for Supplier A. He has just been contacted by Supplier B who have told him that he will now be supplied by them and there is nothing he can do about it. The consumer believes he has been misled and is not happy with this.

⁹ We examined contact data from micro businesses to Citizens Advice consumer service from May 2012 to April 2013. Because there is no specific code for TPIs cases were extracted using a key word search. It is possible that this is an under-reporting of all TPI related cases.

Case Study 4 – Withholding information

The consumer was in a five year contract with a broker and they are unwilling to provide the consumer with details of her energy supplier and the rate she is paying for her energy. The consumer has complained on numerous occasions and sought legal advice but the broker will not respond to the consumer's concerns.

Case Study 5 – Mis-selling

The consumer stated that they had only recently taken over the business was contacted by a broker. She claims that when they spoke her she wasn't informed of their intentions to switch their supply. They were switched from Supplier A to Supplier B. She stated that the recording of the conversation they had, was edited to make it sound like the owner was agreeing to the switch. They are now paying Supplier A and Supplier B. The consumer has tried to resolve issue with the suppliers but is not getting anywhere.

Our Extra Help Unit receives a smaller number of cases but we have concerns that we are seeing cases that involve serious mis-selling and misrepresentation on behalf of brokers. Some of the more serious cases involve consumer detriment among groups who are more vulnerable to mis-selling, such as those who have poor English language skills or where sales contracts have been agreed with very junior staff who are not empowered to agree contracts. Some of the most serious cases can result in consumers building up debt or even being put at risk of disconnection because they are on an unsuitable contract.

Illustrative case studies from the Extra Help Unit

Case Study 1 – Mis-selling

Consumer took over premises in November 2012. His brother discussed contract details with Broker 1 but did not have authority to agree a contract on his brother's behalf. Supplier A, the new supplier as a result of this contract, would not speak to the correct Mr M about cancelling his contract as it was agreed with his brother. Solicitors had to get involved and Supplier A released the site.

Case Study 2 – Misleading information

Supplier A phoned and advised a member of staff that they supplied the property already but as there was no contract they would be charged extortionate out of contract rates and so a contract needed to be agreed asap. Staff member advised they were not authorised to agree contract, however Supplier A put them in contact with Broker 1 who signed them up to a four year contract.

Case Study 3 – Mis-selling

Broker 1 phoned consumer and advised that Supplier A was the best available supplier, Broker 1 also advised that there would be no termination fees should the consumer wish to leave and that they were agreeing to a three year contract.

Supplier A was not the cheapest, the consumer could not cancel the contract and it was for four years instead of three. As gesture of goodwill the contract was reduced to three years.

Case Study 4 – Mis-selling to consumers in vulnerable positions

Broker 1 agreed contract with Mrs C despite being advised that she did not have the authority to agree a contract and due to language barriers she could not discuss the details of a contract for the owner Mrs L. Contract details sent in the name of Mrs C, who has no connection with the business.

Case Study 5 – Misleading behaviour

Consumer agreed a contract with Broker 1 for Supplier A in December 2012, later the same day Broker 2 called and spoke with the owner's mother who was helping out that day. The broker advised that Supplier A could not take on the supply due to Meter Supply Number problems and that only Supplier B could supply this meter.

Consumer Futures would be happy to share further complaints data with Ofgem on a confidential basis.

As Ofgem notes, Consumer Futures commissioned Cornwall Energy to carry out a study into the non-domestic TPI market in 2011. The resulting report, *Watching the Middlemen*¹⁰ identified a number of wider problems with the non-domestic TPI market that contributed to consumer detriment and a lack of trust. Two years on we believe that these issues continue to cause problems for consumers and have a negative impact on consumers' perception of the energy market.

Domestic market

Consumer Futures has also carried out work looking at the experiences of domestic users of price comparison sites and other intermediaries.

Our recent research report *Price comparison websites: consumer perceptions and experiences*¹¹ explores the experiences and perceptions of domestic users of price comparison sites and other intermediaries across a number of markets.

¹⁰ <http://bit.ly/yPgmSP>

¹¹ <http://bit.ly/17Ik6IS>

The report shows that despite a high level of consumer trust, some consumers rely on assumptions about the price they pay and the pricing details provided by PCWs, rather than accurate information when making their purchasing decisions.¹² For example, our research indicates that consumers are often not sure about ranking criteria, and are not clear about how suppliers included in the ranking are selected.¹³

Similarly some are confused by positioning of adverts and sponsored links next to research results which makes it difficult to determine whether the advertisement is part of the actual search, or not.¹⁴

Our previous mystery shopping research which investigated accredited and non-accredited PCWs across six markets, including the energy sector, found that many lacked clarity on information they display to their users.¹⁵ For example out of the 18 price comparison websites looked at:

- only 11 per cent gave an explanation about why some suppliers or tariffs might not be included
- only 22 per cent provided a glossary of the terms used (eg kWh, Direct Debit, prepayment meter)
- only 50 per cent published details of their complaint process or policy, which in most cases was difficult to find
- only 50 per cent said how frequently they updated their prices, although for most of these it was easy to find (78 per cent).

The research also identified issues with the lack of clarity on ordering search results, transparency about costs and price updating, and explanation of reasons why tariff and costs found on supplier sites were different, as illustrated by tables below.

Table 1. Whether there was an explanation of how initial list had been ordered¹⁶

Base: All mystery shops		Total (116) %
<i>Yes (total)</i>		30
Yes, explanation that was ordered on price		26
Yes, explanation that was ordered in some other way		4
<i>No (total)</i>		70
No, but could see it was ordered on price		53
No, but could see it was ordered some other way		8
No, and was not obvious how ordered		9

¹² *Price comparison websites: consumer perceptions and experiences*, research commissioned by Consumer Futures with RS Consulting (2013), <http://bit.ly/17ljXp2>

¹³ Ibid

¹⁴ Ibid

¹⁵ <http://bit.ly/14Wo1bQ>

¹⁶ Ibid

Table 2. Additional costs not previously mentioned¹⁷

Base: All mystery shops		Total (116) %
Did any of first 5 quotes have additional costs?		
	Yes	48
	No	52
Additional costs (first 5 quotes in initial list)		
	Cancellation fee	47
	Paper bills	5
	Independent Gas Transporter fee	2
	Standing charge	2
Did quote chosen to switch to have any additional costs?		
	Yes	5
	No	95
Additional costs (at point of making application)		
	Cancellation fee	4
	Paper bills	3

Table 3. Tariff costs: TPIs versus suppliers' websites¹⁸

Base: All mystery shops		Total (116) %
Could find tariff on supplier site?		
	Yes	86
	No	14
Base: All mystery shops where tariff could be found on supplier site		(100) %
Supplier site cost was...		
	...same as price comparison website	47
	...higher than price comparison website	29
	...lower than price comparison website	24

¹⁷ Ibid¹⁸ Ibid

*Table 4. Reasons for the price difference*¹⁹

Base: All mystery shops where tariff could be found on supplier site and cost was different		Total (53) %
Can see the reason for the price difference?		
Yes		15
No		85
Reasons for price difference		
Difference in way prices were calculated		9
Supplier was offering a discount		6

*Table 5. Information about price updating and VAT*²⁰

Base: All mystery shops		Total (116) %
Note on first page of quotes about price updating?		
Yes, and it was clearly displayed		33
Yes, although it was not very clearly displayed		25
No, there was not a note		42
Note on first page of quotes about VAT being included in prices?		
Yes, and it was clearly displayed		24
Yes, although it was not very clearly displayed		19
No, there was a note about VAT being excluded		6
No, there was not a note		51

Our research into consumer perceptions and experiences of PCWs also identified problems with usability and accessibility of PCWs as a reason for negative consumer experiences with PCWs, for example the lack of opportunity to customise or tailor the search.²¹ Around a quarter of the consumers in the hall test placed the ability to customise their search among their personal 'top three' factors influencing choice of PCWI.²²

¹⁹ Ibid²⁰ Ibid²¹ *Price comparison websites: consumer perceptions and experiences*, research commissioned by Consumer Futures with RS Consulting (2013), <http://bit.ly/17ljXp2>²² Ibid

Table 6. Reordering and filtering options²³

Base: All mystery shops		Total (116) %
	Able to reorder	33
	Able to filter	42
Base: All mystery shops where can reorder list		(38) %
Can reorder on...	... price	68
	...supplier	47
	...customer ratings	8
	...supplier's service rating	7
Base: All mystery shops where can filter list		(49) %
Can filter on...	...tariff type	69
	...dual or single fuel	47
	...payment type	41
	...price	27
	...supplier	16
	...supplier's service rating	14
	...annual or monthly cost	14
	...only products available via site or all products	10

In addition, the research identified privacy concerns.²⁴ In particular, consumers declared concerns about giving their personal details such as telephone number and email address, as they fear these might be shared with third parties and may result in nuisance calls and other unsolicited marketing.²⁵ The research also found that privacy concerns were cited as a barrier to consumer take up of a new generation of comparison services such as data analysers, or using PCWs for switching and purchasing.²⁶ Hence, we recommend Ofgem (and other regulators) work jointly with Information Commissioner's Office (ICO) to address the issue of PCWs' compliance with relevant data protection regulations, as well as ensuring that PCWs provide clear and prominently displayed privacy policies on their websites which give consumers the opportunity to opt-out of third party data sharing. Ensuring consumer confidence in such processes will become increasingly important with the likely development of new services alongside the roll out of smart meters and midata.

As well as specific work that focuses on energy related TPIs there is a significant body of research and evidence about wider consumer experiences of price comparison sites in a number of markets.

²³ Ibid

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

For example, Civic Consulting research²⁷ (2011) found that some PCWs lacked adequate information on delivery costs, delivery times, taxes, products' availability, as well as clear information about default rankings.

The OFT web-sweep of 55 PCWs identified scope for improvements in terms of greater clarity about the way search results are presented, identification of the business which operates the websites, liability exclusions, as well as privacy policies and their complaints and redress processes.²⁸

While there is currently very little information about consumer experiences of collective switching, Consumer Futures has gathered some initial, top line evidence about the various collective switching schemes that are currently in operation.

Initial evidence indicates that collective switching is delivering benefits for consumers who utilise the approach. For example, figures from the Local Government Association indicate that upwards of 65 local authorities have participated in schemes that have enabled 100,000 consumers to achieve a combined saving of more than £10million, with an average saving of £125. Analysis being undertaken on the performance of initiatives that benefited from DECC funding will provide a richer picture of the benefits the approach can deliver, as well as identifying what some of the issues and challenges are. The approach is also proving effective for breaking down barriers to entry for small suppliers.

As collective switching has grown in the GB energy market, it has taken a number of forms. Some initiatives have been national, while others have been regional or local in their scope. In most instances, intermediaries have formed the group of participating consumers and then used a reverse auction model to win an offer for those consumers from suppliers. But there are also instances of a 'ratchet pricing' model being used, where the intermediary agrees with a supplier a range of offers relative to the size of the group, with, for example, the offer that is made to a group of 10,000 consumers representing better value than the offer that is made to 5,000. The intermediary then looks to create a group of consumers that is large enough to unlock the best deals.

A range of organisations have fulfilled the TPI role in collective switching initiatives, including national consumer bodies, trade unions, political parties, local authorities (frequently working together as a consortia), bodies with a community energy focus and agencies who specialise in collective switching. In a small number of instances the public facing intermediary has looked to deliver all aspects of the initiative 'in house', but in the majority of instances the intermediary has worked in partnership with white label providers of collective switching platforms. These different approaches highlight the potential challenges of defining who precisely – for the purpose of compliance with any TPI regulatory framework – is the TPI in some collective switching initiatives.

²⁷ Ibid

²⁸ <http://bit.ly/QekYZi>

A rich seam of analysis and evaluation is about to emerge from the DECC Cheaper Energy Together schemes. Ofgem should scrutinise this data in support of both the forthcoming consultation and its wider objectives. For example, what does it tell us about the extent to which suppliers are willing to compete for PPM users?

Q4. What are your views on the existing regulatory measures applying to TPIs?

We agree with Ofgem that there is a suite of voluntary and binding regulations already in existence that could be applied to TPIs. However, our preference is for an Ofgem-run accreditation scheme for TPIs accompanied by a new licence requirement on suppliers that oblige them to only deal with accredited providers. We believe this approach will deliver the best outcomes for consumers.

It would have been helpful if this consultation had included more detailed analysis, including a gap analysis of how successful the range of existing measures and protections identified, including the Confidence Code, are in offering consumer protection and appropriate redress in the TPI market. The analysis should also identify the consumer redress journey and enforcement organisations for each of these protections and codes. The landscape described by Ofgem is a fairly complicated and one that can be very difficult for consumers to effectively navigate.

The main tool for governing the behaviour of TPIs in the energy market is the Confidence Code for domestic price comparison sites, and it is hard to fully answer these questions without further information about Ofgem's proposals for the Code going forwards. For instance some of the Confidence Code accredited sites have operated collective switches on behalf of third parties. The Confidence Code also needs to be able to anticipate and adapt to the next generation of PCWs, MoneySavingExpert.com's Cheap Energy Club being one example of where the market may develop in the future.

Consumer Futures notes that Ofgem states that another alternative would be for an organisation to set up a voluntary code. We do not think that proliferation in voluntary codes, each with different requirements and/or redress functions, is in consumers' best interests.

As a minimum, we would like consumers to have the same level of protection and access to redress regardless of how they engaged with a TPI. For instance the Confidence Code only applies to online price comparisons and not to the telesales operations run by the accredited sites. It does not apply to collective switching schemes, despite the involvement of accredited sites in such schemes. If TPIs start carrying out face-to-face sales, it is important that they adhere to the same rules around the transparency and accuracy of price comparisons as suppliers.

We are of the opinion that the CPUTRS can and should be used by Ofgem when seeking to protect consumers. However Ofgem has had powers under these rules for some time and has failed to use them to pursue mis-selling cases against energy suppliers.²⁹ Consumer Futures would like to see Ofgem produce specific guidance on how they intend to use their powers under the CPUTRs and BPMMRs (if they are given powers as applied for) and how they believe they apply to TPIs and energy suppliers.

Q5. 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?

Consumer Futures would like to see a new licence requirement for suppliers that requires them to only deal with accredited TPIs. Ofgem would operate the TPI accreditation scheme.

Historically consumers who have purchased energy contracts via face-to-face sales have been disproportionately affected by poor sales techniques and mis-selling, these customers are also more likely to have a low income and/or lack of access to the internet.

Ofgem has clearly had concerns in this area given the original decision to open its 2011 investigation (now closed) into the Energy Retail Association and its members and whether their actions had prevented TPIs from engaging in face-to-face marketing.³⁰ As a result these markets and submarkets will require careful and ongoing monitoring by Ofgem.

A key barrier for TPIs looking to operate in the energy market is obtaining access to current and historical tariff data. During the 2009/10 Confidence Code consultation process, we explored industry's appetite for creating a central repository of tariff information. Respondents to our consultation expressed limited interest in taking the issue forward. It is our understanding that this lack of access to tariff information continues to be a barrier for new TPIs. One option for addressing this issue, and potentially encouraging the development of new services, would be for Ofgem to set up a standing information request to all suppliers requiring them to provide all tariff details as well as details of any new tariff launches in a standardised proforma. This information could be hosted on Ofgem's website and provided free of use to any provider or consumer looking to harvest this data.

²⁹ In 2012 Surrey Trading standards successfully brought a prosecution against SSE for mis-selling using the CPUTRs

³⁰ <http://bit.ly/15zHrpN>

Q6. What are your views concerning our near term work to mitigate consumer harm and promote trust in the TPI market?

Overall we support Ofgem's near term work on TPIs and the areas identified for immediate work.

Domestic market

There is a pressing need to review the Confidence Code in the light of the RMR changes to ensure it remains fit for purpose – not least as the Code only covers internet price comparisons and not telesales or face-to-face sales. We are eagerly awaiting the publication of Ofgem's forthcoming consultations on the reforming the Confidence Code and collective switching. As previously stated, our preference is for the creation of a single accreditation scheme operated by Ofgem.

Non-domestic market

Consumer Futures very much welcomes Ofgem's commitment to develop a code of practice for non-domestic TPIs and considers this work to be urgent. We have contributed to the development workshops so far and intend to continue our close involvement.

We are keen to see the development of a robust Ofgem-run accreditation code that will ensure the poor practice is removed from this market. Ofgem should also impose a new regulatory requirement on suppliers requiring them to only deal with accredited providers.

Q7. Are there any further areas we should consider in the near term?

We believe that it is essential that any review of TPIs that operate horizontally across sectors, such as PCWs, needs Ofgem to work on a unified approach with other regulators and the OFT.³¹ To simply look at this from a vertical, energy only perspective would lead to more consumer confusion and miss the chance to regulate across the markets. This work would need to link in to the review of the Confidence Code. We feel that this approach would make much more sense to consumers and also make publicity and awareness raising much easier.

Ofgem indicates at 5.14 that it is aiming to produce a consultation setting out its analysis of collective switching and its proposed short-term remedial measures "later this year". Given the possible linkages to an evolution of the Confidence Code, we believe that it would make sense to run consultation alongside the review of the Code.

³¹ For example TPIs accredited by Ofgem such <http://bit.ly/1fkYddC>

Q8. What are your views on the potential wider scope of third party opportunities as a result of the Energy market developments?

We agree with Ofgem that there is potential for the TPI market to develop, there are particular opportunities presented by the rollout of smart meters and the Midata project.

We have covered our thoughts on the opportunities presented by collective switching elsewhere in this response.

Consumer Futures has been working closely with BIS, the energy industry and other stakeholders throughout the development of the Midata programme as we see a range of potential benefits stemming from consumers having greater access to and control over their data. Many of the benefits are likely to be generated through innovative applications and tools which can mesh energy and other consumer data to help consumers make more informed decisions. It seems unlikely (and not necessarily desirable) that energy suppliers be the driving force behind such innovations and as such this area is likely to provide a key role for TPIs.

While Consumer Futures supports the Midata programme, we are also keen to ensure that consumers maintain the same levels of protection they currently have and that there is a clear line of responsibility and accountability for consumers should anything go wrong. It should also be noted that although Midata is accurately described as voluntary, the UK Government has taken steps toward the introduction of legal requirements for data sharing in certain sectors, including energy, to encourage the private sector to participate. These moves can be seen as indicative of a sector which is not entirely supportive of the programme. If this remains the case, we also have concerns that energy suppliers and other companies may only comply with Midata to a bare minimum and in doing so reduce the potential benefits it will generate, for example by releasing data too slowly for it to be useful or in inconsistent ways that make it harder for third party applications to use the data.

With the rollout of smart metering there will also be a significant change in the amount and detail of data available to consumers. As such there is a clear connection to the UK Government's midata programme, although we are not convinced this link has always been made between the two responsible government departments.

With the significant change in the amount of data available through smart metering, there will inevitably be opportunities for a range of new consumer energy services. These could take the form of detailed analytics services examining how energy is being used in a home, how microgeneration is functioning or using energy data in combination with other consumer data to provide more tailored services and recommendations to consumers.

There will also be scope for new products and services in the home including smart appliances and the potential to integrate heating controls and other features into a combined in-home display or other consumer devices. We are encouraged by the potential developments in this area and hope they will be able to deliver real benefits to consumers.

Ofgem also mentions the opportunity for schemes to help vulnerable and hard to reach consumers. We believe that there is scope here for development of services specifically aimed at these groups who have previously found it difficult to engage with the energy market.

The main way switching services for consumers in vulnerable situations will be delivered is likely to be via DECC's Big Energy Saving Network and Ofgem's Energy Best Deal. Consumer Futures, like Ofgem, is an advisory member of the steering group for the network. We believe that an opportunity for the Big Energy Saving Network to help consumers in vulnerable situations would be for network members to partner with accredited TPIs to offer consumers support in switching supplier.

We are also keen to see the emergence of collective switching schemes that incorporate a focus on helping vulnerable or fuel poor customers. However, we are concerned that from the initial evidence is emerging out of the collective switches that have taken place to date, suppliers do not appear to be interested in bidding for prepayment meter customers. This is a worrying development and we believe that close monitoring by Ofgem is needed to ensure that all segments of the market are working effectively for consumers.

Q9. Have we captured the full range of 'regulatory' options available?

We agree that Ofgem has laid out a comprehensive list of the range of regulatory options available from maintaining the status quo through to voluntary codes and on to direct regulation.

We have considered all the available options and, as previously stated, our preferred option is for an Ofgem-run accreditation scheme for TPIs accompanied by a new licence requirement on suppliers that requires them to only deal with accredited TPIs.

Consumer Futures believes this approach has the best chance of success for achieving our goal that no consumer, should be worse off or suffer fewer protections because they have accessed energy supply or services via a TPI.

As discussed in our answer to Question 1 we agree that the TPI market is complex and diverse. The current TPI market is a number of different markets with different characteristics. The starting point to any regulation should be a clear vision of what any TPI regulatory framework needs to achieve.

Ofgem will need a clear understanding of how different types of TPIs operate at present, what services they offer and their target audience. Based on this review, Ofgem should then develop a set of principles (transparency, impartiality etc.) that reflect the kind of TPIs we want to see in the energy market and which then serve as the criteria against which the design of any regulatory framework is judged. Adherence to those principles also becomes the foundation of any accreditation scheme and, by extension, a badge of honour for TPIs.

The challenges associated with creating an accreditation scheme that covers off all potential markets and sub-markets – both domestic and non-domestic – will be significant. Not least, as the scheme will need to be flexible enough to avoid over or under regulating the different sub markets and thus stifling new and evolving intermediary services.

Q10. Do you agree with the implications of regulatory change into the TPI market?

As already noted elsewhere in this consultation there are deep seated issues within the TPI market that are already causing detriment to consumers. Unchecked these issues could develop further and cause consumers to further disengage with the energy market.

Also, as the market develops and becomes more complex there is a significant risk that a “two tier” market could develop with consumers having less protection or rights or redress if they use an intermediary service.

For instance, we believe that simply issuing guidance or proposing voluntary codes for some sections of the market, particularly the current non-domestic TPI market where some of the worst problems currently lie, may not work and may not address the worst offenders.

Consumer Futures agrees with Ofgem that there is a case of looking at each segment of the market on its own and applying a much more segmented approach. A new and emerging market may not need such strong regulation and there may even be a danger that over regulation could stifle innovation. Therefore we are in agreement with Ofgem that a suitable balance needs to be struck between consumer protection and innovation. This can be addressed through the careful design of the accreditation scheme.