

The TPI Code of Practice
London

22 August 2013

Ms Katie Brennan
Senior Economist, Retail Markets & Research
Ofgem
Millbank, London

Dear Katie

Third Party Intermediaries : Exploration of Market Issues & Options

I refer to your proposals concerning the above mentioned published on 28 June 2013. As you are aware I am the Code Manager responsible for the operation of the Independent TPI Code of Practice "the Code". I have set down below the views of myself and the newly established Code Panel. These are not necessarily the views of any other party including E.ON.

The Code was launched in April 2012 and became fully operational on 1st August 2012. At present there is one supplier E.ON although it is our desire to have all suppliers who work with TPIs in the business energy sector as members. In addition membership will also be available to TPIs in this sector.

During the last few months as the Code has developed we have

- appointed a Code Panel with two independent non-executive members
- promoted the Code through the development of the website www.tpicodeofpractice.co.uk
- appointed KPMG as the independent Code Auditor and required them to develop an initial audit methodology to ensure the robustness of suppliers' systems to monitor compliance
- commenced the annual Independent Code Audit of our supplier
- studied the practices of many of the TPIs
- worked closely with E.ON to ensure their own audits are to the required standards thus we believe enabling E.ON to make improvements to their processes for managing TPIs
- flagged up a number of breaches of the Code ensuring that corrective action has been taken in each case
- expelled one TPI whom we believe was responsible for a serious breach.

It is a cause for concern that, in the absence of wider action the TPI we have expelled can continue to operate in this sector with non-Code suppliers.

We consider that this record shows what can be achieved relatively quickly through the right combination of member commitment and independent delivery. However we must flag up that the gains could be that much greater with full regulatory endorsement for mandatory participation in and independent governance of the Code model we have established.

Turning specifically to the questions you have asked:-

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?

Yes we agree with the comments you have made reference scope and range.

It is important to remember the incredible scope and range of TPIs who operate in the energy market. TPIs offer services across the range of the sector both in the B2B and also the B2C market. TPIs is a collective phrase which covers organisations that are very substantial to ones who very much operate as “one man bands” offering services to substantial numbers of customers as much as one or two. This massive variation as well as the substantial numbers of TPIs (almost certainly countable in the thousands not hundreds) is very relevant when considering the most suitable method of controlling, policing or regulating their operations. As an example our emerging experience of certain aggregators (your reference 2.16) is that they can sometimes find it difficult to ensure all their individual agents operate to the required standards. This highlights the need to find a regulatory model which is effective for all parts of the market.

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

You make a bold statement under 3.2 that a significant proportion of consumers interacting with TPIs are subject to instances of miss-selling, pressurised conversations to secure energy contracts, nuisance calls and a lack of transparency around energy offers and how TPI costs are recovered. We are concerned that in the absence of robust data collection and audit such a statement can potentially be as misleading as an assertion that “everything in the garden is rosy”.

Although our experiences are limited to the Non Domestic Consumer it is important that we should stress that although there may be “instances” where this occurs they are a very small proportion of the total number of consumer interactions. In addition there is little evidence which says that the problem when this interaction takes place via a TPI causes any more or less of a problem than it does if the interaction is via a direct sales force employed by an energy supplier.

We are not aware of an adequate collection of data around consumer experiences which indicates anything other than the vast majority of TPIs conducting themselves professionally. However we accept the fact that there are some rogue operators who should be driven from the market without any further delay.

It is only by the use of a robust Code of Practice that is independently managed will proper data be collected and also action taken to eradicate the small percentage of TPIs who conduct themselves in an inappropriate manner.

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

The answer given above to Q2 applies here also.

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

Existing regulatory measures have been in place for some time and it does not appear that they have been able to prevent the poor experiences of certain consumers within the energy sector due to the actions of a small number of TPIs. However it must be remembered our experiences are limited to the Non Domestic sector.

Question 5 : Do you consider the current formulation of SLC 25 may be acting as a barrier in the development of more face-to-face multi-party TPI activity

We do not claim to be experts on Supply Licence Conditions. We believe that it is necessary to involve both Suppliers and TPIs alike in any improvements in the consumer experience. If SLC 25 is acting as a barrier then that barrier should be removed to ensure there is a mandatory and independent Code of Practice in place for sales and indeed other consumer interactions.

Under 4.15 you provide an example of the industry Billing Code for domestic customers and micro-businesses but it is important to stress that this is not a mandatory Code and therefore there is a danger that the Code loses much of its potential power and impact.

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

Our remit extends purely to the Non-Domestic sector. We strongly believe there is considerable benefit for consumers, TPIs and Suppliers alike in having a single mandated Code of Practice without delay. Although we know there are Codes currently in place within the industry including our own we see the benefit in having participation in and independent governance of the Code mandated by Ofgem. The process of its introduction seems to us to be unnecessarily delayed and we worry that in the interim at best there continues to be a lack of trust in the energy sector of which TPIs are an important part.

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

We have nothing further to add to our answer to Q6.

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

We agree that in the future there are likely to be yet more opportunities for TPIs to expand into the energy sector. It remains important however that any controls imposed upon them do not lead them to be any more or less controlled/regulated than the direct operations of other industry players such as Suppliers.

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

Yes we believe these are the range of options available although of course it is always possible to mix and match different options to deal with the particular problems that are being faced. We must stress again our remit only extends to the Non-Domestic sector.

We see far more scope to develop a co-regulatory model in the area of Options 3 and 4 than the purely voluntary action in 1 and 2 (which leaves the consumer, suppliers and ethical TPIs alike exposed to real and reputational risk from disreputable operators who may decide to opt out of the scheme) or the potentially disproportionate and time consuming approach of Option 5.

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

We strongly believe that a mandated Code of Practice within the Non-Domestic sector which covers both TPIs and Suppliers is the only acceptable solution to the problem of poor practices and consumer trust. There is a strong likelihood that the role of TPIs will become of even greater significance in the years ahead but it would be wrong to impose more stringent requirements on them than imposed on Suppliers. However there must be no question of Suppliers or TPIs being able to chose whether they wish to be covered by a Code of Practice. Any Code of Practice must be mandatory.

We remain unconvinced as to the benefit of direct regulation of TPIs as you have laid down in Option 5 due to the significant number of players in this market and the vast range of services they provide to consumers.

In conclusion, whilst we welcome the engagement of Ofgem with these issues we consider there is a danger of delay whilst policy discussions progress during which time both customers and reputable businesses could suffer. We therefore urge Ofgem to

- progress its deliberations as quickly as possible
- give a very clear message that, in the intervening period, industry-led action to address the acknowledged issues should not be put on hold in order to protect the overall public interest and to show that the potential for self and co-regulatory solutions have been properly tested

Please do not hesitate to contact me if you wish to discuss any of these issues in more detail.

Yours sincerely

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