

Heather Swan
Ofgem
9 Millbank
London
SW1P 3GE

Sent via e-mail: ThirdPartyIntermediaries@ofgem.gov.uk

23 August 2013

Third Party Intermediaries: exploration of market issues and options

Dear Heather,

I am pleased to attach Energy UK's response to the above consultation. It is not confidential.

If you have any questions, please do not hesitate to contact me on 020 7747 2963 or daisy.cross@energy-uk.org.uk

Yours sincerely

Daisy Cross
Policy and External Relations Executive

Third Party Intermediaries: exploration of market issues and options

Energy UK response

23 August 2013

1. Introduction

- 1.1. Energy UK is the trade association for the energy industry. Energy UK has over 70 companies as members that together cover the broad range of energy providers and suppliers and include companies of all sizes working in all forms of gas and electricity supply and energy networks. Energy UK members generate more than 90% of UK electricity, provide light and heat to some 26 million homes and last year invested £10billion in the British economy.
- 1.2. Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers. We are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and independent regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.
- 1.3. These high-level principles underpin Energy UK's response to Ofgem's consultation exploring market issues and options in the TPI market. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with Ofgem or any other interested party if this is considered to be beneficial.

2. Executive Summary

- 2.1. Energy UK welcomes Ofgem's review. TPIs are an important part of the energy market, and will continue to play an increasingly influential role, particularly given developments such as Smart Metering and Green Deal, as noted in Ofgem's consultation.
- 2.2. Both now and in Ofgem's ongoing work with respect to TPIs, Energy UK would urge Ofgem to be clear whether they are referring to TPIs operating in the residential or non domestic market (and if the latter the size of customers), or both. Clearly, different types of customers have different needs, and therefore will use different services offered by TPIs. For instance, a large non domestic customer is unlikely to use a switching site and a domestic customer is unlikely to use a broker. A clear understanding of the types of TPIs in question is required in order to ensure that the right solutions are deployed.

- 2.3. TPIs are often valuable to suppliers and customers. They offer a route to market and can offer customers better access to a broad range of products and services. However, Energy UK agrees with Ofgem that there are some problems in this market, and is working with Ofgem in a number of ways to help address activities undertaken by those TPIs which could affect confidence and trust in the industry as a whole. We hope that Ofgem's proposals will make the marketplace more favourable for the majority of TPIs who act in the customers' interest while providing appropriate constraints and challenge to those who do not meet those standards. Energy UK would like to thank Ofgem for its previous engagement with us on TPIs in the non-domestic sector through our microbusiness group.
- 2.4. Energy UK believes all companies operating in the energy sector should treat their customers fairly. This should be a guiding principle for Ofgem's review of TPIs. TPIs should be held to the same standards as suppliers, treating customers fairly, providing accurate information - including details around fees and commission - and acting honestly. Our members believe commission transparency is fundamental to reform of the TPI sector and that consumers can only make informed decisions on the benefits of using TPIs if they understand the charges and costs associated. We welcome Ofgem's commitment to look at transparency around commission payments.
- 2.5. Energy UK urges Ofgem to continue work on the non-domestic Code of Practice and to consider negative impacts on customers of delays in its review and further work on domestic and TPIs. To provide information and assistance to non-domestic customers in the period while Ofgem undertakes its review, Energy UK has initiated work on a microbusiness customer-facing TPI factsheet. We are working in collaboration with Ofgem and other stakeholders, including Consumer Futures, the Federation of Small Businesses, the Utility Intermediaries Association and Business Debt Line.
- 2.6. As stated in previous responses to Ofgem's Retail Market Review, Energy UK believes that reforms in this market need to meet two key tests, in addition to the Principles of Better Regulation, in order to be effective:
- parties responsible for regulating behaviour of TPIs must be capable and equipped to ensure compliance; and
 - customers should receive comparable protections, irrespective of which TPI they use, including access to appropriate consumer redress.

We look forward to working with Ofgem and consumer groups in this area in the coming months.

3. TPIs and the energy market

- 3.1. Ofgem identifies a broad spectrum of types of TPIs in its consultation. Ofgem defines TPIs as "parties who are not an energy supplier, but engage with a domestic or non domestic consumer to assist consumers with their energy supply needs." This is a very broad definition and members feel that the review could benefit from focussing on some more tightly defined groups within this broad framework. For instance, Ofgem could exclusively concentrate on organisations who receive payment in the form of a fee or commission (either from the supplier or customer) for the provision of energy services and advice. Our members have highlighted additional parties that may inappropriately qualify as TPIs under Ofgem's proposed definition.

- 3.2. Individual landlords may, for a number of reasons, be responsible for the energy supply on behalf of their domestic or non-domestic tenants. This could place them in an intermediary role, and Ofgem should consider whether there is any benefit in including such individuals or organisations in its review and subsequent work. Our members note that domestic landlords are already covered by the Maximum Resale Price regulations¹.
- 3.3. Managing agents may play a role in maintaining an energy supply to a particular portfolio of properties, sometimes contracting directly with the supplier and sometimes contracting on behalf of the landlord. These organisations do not receive payment from the supplier for facilitating the supply and do not receive payment from the customer solely for energy procurement. Ofgem may want to consider what the costs and unintended consequences would be of including such organisations within the review of TPIs.
- 3.4. TPIs may play a role in facilitating demand side response and corresponding participation in capacity market auctions, for instance by offering aggregation services.

4. Consumers' Experience of TPIs

- 4.1. Customers' understanding of how TPIs work and their role in the market is an important consideration in this review. Consumer Futures identified problems² in the non-domestic sector, such as TPIs pretending to be suppliers; implying they are sanctioned by governmental agencies to discuss the account; or misrepresenting their relationship with suppliers. We are also aware of TPIs claiming that their service is "free" to the customer³, and we urge Ofgem to consider how it will address the problem of TPIs misrepresenting themselves to customers. We would welcome further research into how TPIs operate and the problems they may cause, particularly in the domestic market.

5. Current Regulatory Framework

- 5.1. As stated in previous consultation responses, Energy UK is supportive of Ofgem gaining Business Protection from Misleading Marketing Regulation (BPMMRs) enforcement powers. This has been a low priority area for the Office of Fair Trading (OFT) who currently hold these powers. To date, the OFT has not used the BPMMRs to take action against TPIs in the context of energy supply. We believe Ofgem is well placed to take on these powers.
- 5.2. Energy UK supports the Energy Bill amendment clarifying that Ofgem can apply for TPI activities to be licensed. In the absence of effective self-regulation, or if other less interventionist regulatory approaches fail, then we would welcome the development of an Ofgem licensing regime for TPIs and we think that this could be a valuable addition to Ofgem's powers in the longer term.
- 5.3. Energy UK believes that Ofgem's description of the current regulatory and voluntary frameworks is broadly accurate. However, we believe that – on the non-domestic side - these are insufficient to ensure good behaviour of TPIs across the board; a tougher approach is required. For the

¹ <https://www.ofgem.gov.uk/ofgem-publications/74436/1837-mrpdecision07.pdf>

² Consumer Futures *Watching the Middlemen* report

³ Cornwall Energy *Business and broker interaction in the energy market* report 2013

domestic market, the existence of the Confidence Code needs to be taken into consideration, and Ofgem's proposed review on the Code will help members form a view.

- 5.4. In the absence of any further guidance or consideration from Ofgem, suppliers will consider SLC 25 to apply to TPIs who may act on behalf of more than one supplier in the same way as it applies to any representative acting on behalf of one supplier only. Particularly in the face-to-face environment for domestic customers - where suppliers will all have different but stringent standards for complying with SLC 25 – this could mean that a TPI is required to meet different standards for the same activity, which (if this is the case) could make this kind of activity difficult. Regarding TPIs representing multiple suppliers; we would like to know how they attribute any complaints about their behaviour (for example, do they allocate equally among all the suppliers they represent?).
- 5.5. Energy UK understands that SLC 25 has acted as a barrier to suppliers' participation in collective switching schemes because the intermediaries involved have had low awareness of the existence of SLC 25 and its requirements, which has consequently meant that it has been difficult for liabilities to be agreed. This issue has also arisen in initiatives such as DECC's Big Switch and Big Energy Saving Week campaigns, whereby aggregators wish to sell products and provide targeted advice on behalf of all suppliers in Citizens Advice Bureau offices. Energy UK endorses the policy of ensuring that suppliers only work with trustworthy and reliable brokers. While the regulatory framework for TPIs is being developed, we believe that in the interim Ofgem should do more to publicise SLC 25 and provide guidance to TPIs on expected behaviours and treating customers fairly. Energy UK would hope that, by promoting such an understanding, TPIs would be more willing to commit formally to relevant compliance procedures and corresponding liabilities.

6. Facilitating better practice among TPIs

- 6.1. Members have been supportive of Ofgem's work on developing a TPI code of practice for the non-domestic market. Energy UK looks forward to seeing this work progress. We welcome further details on ownership, monitoring and enforcement of the code. We believe Ofgem's work on non-domestic TPIs has helped clarify the regulatory options for TPIs and support the inclusive approach taken by Ofgem in creating the code. Considering its role, position and knowledge of the energy market, Energy UK would like to see Ofgem become the administrator of the proposed code.
- 6.2. Energy UK supports Ofgem's review of the Confidence Code for price comparison websites. We believe that the review should cover the offline activity of TPIs, as well as their online activity.
- 6.3. Energy UK supports Ofgem's plan to consult on potential short-term measures for the regulation of TPIs that conduct collective switching schemes. While we support and encourage this new innovation, it is important that customers benefit from and have confidence in the process. As per comments elsewhere in this response, our members believe collective switching costs and fees should be transparent to customers upfront, as well as the expected follow-on contact that will be made when the contractual outcomes from the scheme come to an end.
- 6.4. More generally we believe that Ofgem needs to take into account the commercial interests of the TPIs when considering how best to regulate their behaviour, and what form of regulation is required. For instance, some TPIs receive payment directly from the consumer, while others receive payment from the supplier. Any regulatory approach needs to be appropriate for the

various business models operated by TPIs, while providing consistent protections for customers. It should also embed fees and commission transparency.

7. Spectrum of Regulatory Options

- 7.1. We agree with Ofgem's proposed approach of reviewing separately each part of the energy sector where TPIs are active. Further research is required to understand how domestic - and to a less extent non-domestic - customers interact with various types of TPI.
- 7.2. In the non-domestic TPI market, most of our members would prefer to see how the Code of Practice, backed up by a licence condition on suppliers, develops, while some of our members favour a direct regulation approach. Most of our members believe a properly enforced Code of Practice could lead to significant improvements in customer experience and access to redress. Members feel that direct regulation would increase the likelihood of consistency of accreditation and compliance, as, under this model, rogue TPIs would be subject to formal investigation and financial penalties. However, some of our members are concerned about the costs associated with a licensing regime and are not convinced it would be a proportionate response to the problems reported in the market. Nevertheless, those members still believe that direct regulation should remain a back-stop option. With respect to the Code of Practice, Ofgem should be aware that low barriers to entry could make it easy for rogue TPIs disqualified under the Code to re-enter the market under a different company name, and so consider stronger incentives for compliance.
- 7.3. Should Ofgem choose Option 4 as its preferred regulatory option, we believe that monitoring of the Code of Practice would need to be centralised and managed at industry level to ensure consistency of accreditation standards and reduce administrative burden. Under this option, the enforcer of the code would determine whether a TPI should be accredited. This accreditation would need to be done regularly and thoroughly, to ensure TPIs don't fall through the net.
- 7.4. Energy UK is also aware that it would take some time for Ofgem to regulate the behaviour of TPIs directly, given the requirement for legislation and the development of a licensing regime. It would not be in the interests of consumers if there was a hiatus in the controlling of TPIs if these steps were taken. This is another reason why Energy UK supports Ofgem proceeding with Option 4 immediately, whereby a Code of Practice is introduced for TPIs, backed up by an obligation on suppliers to only work with accredited TPIs. Nevertheless, these standards should be seen as a minimum and in no way should suppliers' ability to enter (or not) into commercial arrangements with individual TPIs be compromised if their (i.e. the supplier's) standards for accreditation are higher. There is a risk that Code of Practice approach may prove insufficient, for example because of the reduced incentive to comply relative to Option 5. Ofgem may wish to consider following the necessary procedures involved to secure the ability to directly regulate TPIs even if these powers are only used in the event of the Code of Practice failing to improve TPI behaviour.
- 7.5. Whilst Energy UK recognises that the Code of Practice with Standard Licence Condition can be used to regulate the behaviour of TPIs who contract with/represent suppliers, we are unsure how it might be used to regulate the behaviour of TPIs who contract with/represent consumers. We would urge Ofgem to provide some clarity on this question, and consider whether different regulatory instruments may be required.
- 7.6. Members would welcome greater consistency across TPIs in the format and content of their Letters of Authority (LOAs). There is currently significant variation in the quality of LOAs used by

TPIs and we are aware of instances of LOAs being misused by TPIs. The best LOAs are produced on company headed paper, clearly specify the services the TPI is being instructed to cover and are time-bound, e.g. specifying when the LOA will cease to be effective. We would encourage Ofgem to explore whether a template LOA can be created as part of the Code of Practice.

- 7.7. Further research is required to understand the interaction between suppliers, TPIs and customers in the domestic market. Members are keen to see more detail on regulatory options and their impacts, and for Ofgem to initiate its review of TPIs in the domestic market, before reaching a definite conclusion.
- 7.8. Energy UK welcomes Ofgem's analysis of the costs and unintended consequences of the various regulatory options proposed and looks forward to taking part in further work in this area.
- 7.9. Should Ofgem ultimately proceed with two different regulatory options for domestic TPIs and non-domestic TPIs, Ofgem should be aware of the potential for gaps to form if two different licensing regimes are adopted.