



Katie Brennan  
Senior Economist  
Ofgem  
9 Millbank  
London SW1P 3GE

Name Alan Hannaway  
Phone 01905-340508  
E-Mail alan.hannaway@npower.com

23rd August 2013

Dear Katie,

Third Party Intermediaries (TPIs): exploration of market issues and options

This is the response of RWE npower to your document on the above and the suggested ways forward in terms of developing an appropriate regulatory framework for TPIs.

The review comes at an appropriate time given the important role TPIs play in giving consumers access to competition in the energy market. It also complements the RMR developments that will soon flow through to the sector, as well as building on the good work that has already commenced in the non-domestic sector to address the specific TPI issues you raise.

An important point to draw out early is that much of Ofgem's document starts from the existence of the issues and concerns that are specific to non-domestic TPIs, but then expands from there to narrative, mixing and matching, covering both the non-domestic and domestic sectors and in some instances suggests almost one size fits all outcomes. We firmly believe that this is an inappropriate way to approach the matters at hand because in Better Regulation terms any outcomes need to be appropriate, targeted and proportionate to the issues at hand, suggesting that they may differ as between domestic and non-domestic outcomes.

In this context any proposal that focuses on an overarching TPI regulatory framework seems to us to be inappropriate, because the issues (as your document draws out in places) are very different suggesting that the regulatory outcomes should be similarly so. So on the non-domestic side concerns exist about the appropriateness of TPI behaviour and the transparency of their interactions and agreements with customers. Whereas on the domestic side we are largely talking about online brokers, already subject to a regulatory vehicle in the form of the Confidence Code (for which you now have responsibility), but where it might be more a case of tightening what's there to cover their activity through other sales channels.

Another important factor to draw out is that in establishing any framework Ofgem are not starting with a blank sheet of paper, so as the above indicates in the domestic sector the Confidence Code, with its oversight of accrediting and monitoring online broker sites, already exists. From our own experience the issues here are that previously the degree of oversight through that framework might not have been as robust as possible. In addition there is an opportunity, Ofgem having taken up the mantle of overseeing it, to expand its scope to cover broker activity through other channels. Clearly the formal licence framework (SLC 25) covers elements of this, but the Confidence Code could help reassure customers that when interacting with online brokers, and their well known brands, through other channels, that they are getting the same view and choices from the market as they would online, or if not, transparency on why and to what extent their choice is limited when exchanges with brokers are on the phone or face-to-face.

Similarly activities are already underway in the non-domestic sector to seek to address concerns (mis-selling, lack of transparency around offers and TPI costs, etc.) raised in your document, principally the establishment of a code of practice to govern/accredit non-domestic TPIs.



These need to continue, be adjusted to reflect any recent developments i.e. decisions taken on the automatic rollover of contracts, and be given fresh impetus and momentum through your offices. So we see Ofgem oversight of the Code as a prerequisite for driving forward the TPI regulation agenda in a non-domestic context, for getting the buy-in of all relevant parties and providing means to incentivise, monitor and deal with any inappropriate non-domestic TPI activity. So this exercise should not slow down progress on the Code of Practice, such that this and other activities should continue in tandem to this exercise, and in fact should probably form the basis for suppliers to only engage with accredited TPIs.

The scope of any regulatory framework should be appropriate to the characteristics of the domestic and non-domestic markets. In general terms, sales agents employed by licensees are not TPIs. They are agents of the supplier, which retains the obligations under its licence and need not be included in the scope of a further regulatory framework for TPIs. On the other hand TPIs may act for a customer or many suppliers on a brokerage or consultancy arrangement, which is distinct from sales agents who act for a supplier.

Similarly, many TPIs in the non-domestic market employ sub agents. Again the principle of Agent and Principal should apply; contractors should be responsible for their sub contractors. Other companies may take on several roles simultaneously, so the scope of any regulatory framework should be clear and easily identify the parties it applies to and under what provisions to avoid confusion.

As we have already stated above any regulatory outcomes in this area must be proportionate to the issues being addressed and targeted on what the perceived issues are and the sector of the market in which they reside. So your analysis indicates that there are already provisions within the current regulatory framework that can be used in the TPI space, particularly in the domestic sector. Ofgem have picked up oversight of the Confidence Code for domestic price comparison services; elements of SLC 25 are relevant through supplier's obligations with respect to their Representatives and the Consumer Protection Regulations, which fall within general consumer law, also apply.

However, that is not to say there is not scope for adjustments and improvement, specifically in relation to the Confidence Code. In its present form it is constrained to the online activity of price comparison services, whereas increasingly their activities are flowing through into other channels (telephone, face-to-face). The danger being that a customer assumes that when interacting with brokers through other channels they are receiving the same level and breadth of service, in particular the market offers presented to them. By widening the scope of the Code Ofgem will be able to ensure that either such approaches do replicate the online service or are absolutely transparent on the fact they do not and set out the nature of what is actually being offered prior to consumers making their informed choice.

The Confidence Code is also a potential means of addressing some elements of Collective Switching, where the means of providing such schemes is through providers of comparison services. In such circumstances Ofgem would be able to insist on the necessary mechanisms and transparency to allay any consumer concerns and build trust in this alternative form of engagement with the market. Alternatively, as Ofgem have indicated, other short-term remedial measures could be explored following the promised review this year.

In summary your document rightly identifies the increasingly important role TPIs will play in the energy market, but suffers a little, in identifying current issues and concerns, from using non-domestic examples as a proxy for discussions and proposals across the whole market. In keeping with Better Regulation principles, any proposals must be proportionate and targeted at the issues at hand; even if that involves separate mechanisms in the domestic and non-domestic segments.



There appears to be scope to use a combination of the existing framework in the domestic sector (Confidence Code and formal regulation) and work already underway in the non-domestic sector (Ofgem sponsored Code of Practice) to lay the foundations for a robust regulatory framework. This would sit well with your Option 4; effectively bringing together the two sectors through the common thread of a licence condition requiring suppliers to only engage with accredited TPIs. However, in keeping with Better Regulation principles and targeting outcomes proportionately, it might be more appropriate in the non-domestic sector for Ofgem to formally oversee the licensing of TPIs as per Ofgem's Option 5 (including those without supplier agreements and sub-brokers) to address the issues identified.

Yours sincerely,

Alan Hannaway  
Regulation

RWE npower  
Trigonos  
Windmill Hill Business Park  
Whitehill Way  
Swindon  
Wiltshire SN5 6PB  
T +44(0)1793/87 77 77  
F +44(0)1793/89 25 25  
I [www.rwenpower.com](http://www.rwenpower.com)

Registered office:  
RWE Npower Group plc  
Windmill Hill Business Park  
Whitehill Way  
Swindon  
Wiltshire SN5 6PB

Registered in England  
and Wales no. 8241182