

Katie Brennan,
Ofgem,
9 Millbank
London
SW1P 3GE

ThirdPartyIntermediaries@Ofgem.gov.uk

Reference Number: 103/13
Date: 22nd August 2013

Third Party Intermediaries: exploration of market issues and options

Dear Katie,

SmartestEnergy welcomes the opportunity to comment on Ofgem's consultation on Third Party Intermediaries: exploration of market issues and options.

SmartestEnergy is a supplier in the half hourly electricity market and an aggregator of embedded generation. We are about to enter into the non-domestic NNH retail sector.

Overview

As we have highlighted previously, it is important to make a distinction between sales agents (who should be regulated through the supplier) and TPIs (who represent the customers' interests and who should be regulated using some other means.)

A uniform approach cannot easily be applied to the two sectors of the market, as sales agents are more prevalent in the domestic sector, and TPIs in the non-domestic. Achieving a 'one size fits all' policy is going to be difficult, and there may be exceptions. Using suppliers to manage TPIs is inappropriate, although it makes sense where sales agents are used.

We are also of the view that the scope needs to include the relationship between data collectors and TPIs, but the scope needs to be determined around the services provided.

We would be concerned if Ofgem is wishing to distance itself from being the administrator of any code. The decision should be less about cost, or how Ofgem see their role, but how the market can be policed most effectively in the longer term.

The remainder of this document addresses the questions in the consultation document in the order in which they appear.

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?

The scope of whom any new code/regulatory structure code will apply to could potentially be very wide and careful consideration is needed into what organisations and industries this pulls in. For example, Ofgem need to consider whether Managing Agents of all sizes (and maybe even Landlords in general) that manage utility costs should be included and, if not, on what grounds.

It is clearly important to get the scope of what services are included right. As the main areas of concern must be around commission payments and anti-competitive practices it should be noted by Ofgem that commission payments are not just made by licensed electricity suppliers to TPIs in respect of supply contracts. The existence of commissions paid to TPIs by other companies in order to gain greater market share is becoming more and more evident to us. An example of this would be payments by Data Collectors to TPIs in order for the TPI to nominate them as agent. This is in turn paid for by the supplier directly but indirectly by the supply customer. Clearly the TPI does not always make it clear to the customer that there is a choice of Data Collector or whether they are receiving a fee.

The definitions of Brokers and Consultants in the consultation document (para 2.14) seems a little thin. We would say a distinction between the two can be drawn where another service is offered beyond presenting and securing contracts.

We do not agree with Ofgem's assessment on fees (para 2.29); in our experience commissions tend to be bespoke and dependent on both the services provided and the associated consumption volumes from the respective customers. However, these are almost always in a p/kWh uplift on

rates. The concerning issue is that sometimes a TPI unilaterally sets this amount and the supplier is often unaware of whether it is disclosed or not. There are also practices where the commission rate seems to be set to what some TPIs 'can get away with'. This has recently been notable as more and more TPIs are competing against one another by comparing rates from the same supplier. Some of the less reputable brokers will ask for proposals excluding certain cost elements and lift the commission to almost an equalling amount. It is not always possible to sift those who behave in this manner out from the better ones on the day.

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

We agree that TPIs offer a useful service to customers in the non-domestic market, especially in highlighting where contracts are coming up for expiry, to the extent that, in the non-SME business market, the problem of roll-overs is simply not an issue. It is also true that TPIs can save customers time and money, but, as Ofgem themselves highlight, the lack of supplier coverage, fee level and supposed savings can be somewhat opaque.

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

No.

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

We agree with Ofgem when they say that relying primarily on suppliers to control the behaviour of TPIs may not always be the most effective way of ensuring consumer protection.

We welcome the fact that the Energy Bill will clarify existing legislation to make it absolutely clear that Ofgem's existing powers could be used to apply for TPI activities to be licensed and believe that these should be applied if the voluntary codes of practice do not engender universal improvements in TPI standards.

Question 5: 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?

We note that domestic energy suppliers are currently subject to standard licence conditions – in particular SLC25 – which hold them responsible for the actions of ‘representatives’ in respect of sales and marketing practices.

Implementing the Code of Conduct through the SLC25 feels very “parent/child” between the supplier and the TPI market. Firstly, as a supplier, we would aim to pass any liability placed on us associated with the behaviours of TPIs through to the relevant TPIs we work with. In order to ensure good practices and mitigate our associated risks to SLC25 we would look to gain access to TPIs policies, manuals and, where required, have an option to audit applicable records. Furthermore, the credit strength of TPIs becomes a concern if significant liability is set on us as supplier.

We believe therefore that the current formulation of SLC25 could be act as a barrier to the development of more face-to-face multi-party TPI activity if it were to be extended to the non-domestic market.

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

We note that under the TPI programme of work Ofgem have a number of projects to facilitate better practices among TPIs and reduce consumer harm and that it is envisaged that the shorter term work will inform and/or feed into the longer term consideration, and development, of an overarching framework for TPI regulation. We would hope that this work will be sufficient to improve the market but, as we have already stated, we would expect that Ofgem’s new powers should be exercised if the voluntary codes of practice do not engender universal improvements in TPI standards.

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

The document states the following: “Unlike in the domestic sector, there is not a sales and marketing SLC for non domestic suppliers. The possibility of introducing a new licence condition to regulate the relationship between suppliers and TPIs was made clear in the March 2011 RMR and subsequent RMR consultations. This is being considered as part of the regulatory options.

We will be consulting on all of the proposals for non domestic TPI regulatory options.”

We have already made known our views on this several times and believe Ofgem should not be considering regulation of the relationship between suppliers and TPIs where those TPIs are representatives of customers.

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 the advent of smart metering and other technology could mean that service companies start offering different packages of services. What this emphasises to us is that it is important to determine which companies are covered by any regulations through the type of service offered. In other words as we mentioned in our answer to Q1 above on definitions of Brokers and Consultants lines between services need to be drawn and regulated services identified.

Question 9: Have we captured the full range of ‘regulatory’ options available?

Yes. Regulating independent TPIs directly would be the best route, although we are not against continuing to regulate agents through the supplier licence. We still feel it would be inappropriate to licence independent TPIs through the supplier licence although requiring suppliers to work with TPIs accredited to a Code of Practice may be palatable if responsibility for monitoring the activities of those TPIs were conducted by Ofgem.

In order to get the Code of Conduct out quickly it would be best to use Option 2. This gives TPIs time to adapt, train and finance the requirement of the Code. Then, according to timetable known in advance, the Code could become compulsory via Option 3 or 4.

Either way, we are of the view that Ofgem should make it compulsory for suppliers to specify the commission rate in the principle terms.

Whilst we do not think that suppliers should be the “parent” in the Code we would not be averse to taking responsibility to report complaints or misdemeanours of TPIs to Ofgem. There could be a dispute process whereby, if an issue is not resolved after a set period of time, the supplier would be bound to report the complaint to Ofgem.

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

It is not clear to us what this question is referring to.

If you have any questions, please do not hesitate to contact me.

Please note that our response is not confidential.

Yours sincerely,

Colin Prestwich
Head of Regulatory Affairs
SmartestEnergy Limited.

T: 01473 234107
M: 07764 949374