



Which?, 2 Marylebone Road, London, NW1 4DF

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## Consultation Response

Meghna Tewari  
Retail Markets and Research  
Ofgem  
9 Millbank  
London SW1 3GE

### Third Party Intermediaries - exploration of market issues and options

Which? is the largest consumer organisation in Europe. It is an independent, not-for-profit consumer organisation with almost 800,000 members. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, services and books. Which?'s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives by empowering them to make informed decisions and by campaigning to make people's lives fairer, simpler and safer.

#### Introduction

Energy is an essential purchase and all consumers should have access to fair and transparent prices in order to play their allocated role and drive competition in the market as well as manage their own costs. Currently in the domestic energy market, some types of Third Party Intermediaries (TPIs) have an important role to play in engaging consumers, particularly in the form of price comparison and switching sites. Due to the current complex nature of tariffs, this is the only practical way for consumers to compare tariffs across different suppliers and to try and find the best deal for them. This will remain the case even after the introduction of the RMR reforms. Therefore in theory they are key in helping consumers to navigate the energy market. Whilst it is thought that the majority of TPIs operating in the domestic sector are switching sites, the TPI market is complex and varying and it is not known exactly how many intermediaries are currently offering services to household consumers.

This is an expanding area with Ofgem anticipating significant growth, particularly around energy efficiency advice services, as a result of the roll out of smart meters and also the development of demand side response (DSR) offers. Which? therefore welcomes Ofgem's TPIs workstream and the exploration of different regulatory options for the sector. It is clear that a framework is needed to ensure that consumers are protected, to give greater clarity for TPIs and to create parameters within which the market can grow in a way that is useful, transparent and accountable to consumers.

**Which? is a consumer champion**  
We work to make things better for consumers. Our advice helps them make informed decisions. **Our campaigns make people's lives fairer, simpler and safer.**  
Our services and products put consumers' needs first to bring them better value.

[www.which.co.uk](http://www.which.co.uk)

Which?  
2 Marylebone Road, London, NW1 4DF  
t 020 7770 7000 f 0207 7770 7600  
[www.which.co.uk](http://www.which.co.uk)



## **Consultation Response**

### **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?**

Which? largely agrees with the scope and range of TPIs in the energy market as identified by Ofgem. We agree that in the domestic retail energy market most TPIs operate as online price comparison and switching sites. This is also the type of TPI that Which? has the most direct experience of, due to Which?Switch. Our response to this consultation focuses primarily on energy switching sites for domestic consumers.

Under the proposals for changes to tariff structure in Ofgem's Retail Market Review (RMR) and the introduction of the Tariff Comparison Rate (TCR), switching sites will remain a necessary next step for the majority of consumers to be able to compare different tariff offers. Therefore it is important that there is a proper framework in place to ensure that TPIs work effectively for consumers and to give intermediaries clear parameters within which to operate.

Besides switching sites Which? does also recognise that there are other forms of TPIs that household consumers can, or may in the future, interact with. This includes Green Deal Advisers and the new TPIs that are anticipated as a result of the roll out of smart meters and the associated development and introduction of DSR offers. Ofgem will need to ensure that there are clear definitions for these new TPIs as they develop and that appropriate consumer protections are put in place.

#### ***Green Deal***

Ofgem needs to clarify, according to its own TPIs definition, when a Green Deal assessor/installer is or is not a TPI. Ofgem must ensure that it is clear that any consumer dealing with Green Deal TPIs is covered by the Green Deal consumer protections.

#### ***ECO***

Where a supplier is fulfilling their ECO using the brokerage system, Ofgem needs to clarify if the installers engaged by the supplier through the brokerage are also classed as TPIs and what protections would apply. The clarification of what is and is not a TPI is also particularly important under the Affordable Warmth programme as this affects vulnerable consumers.

### **2 Do you consider our understanding of consumers' experience of TPIs in the energy market is accurate?**

Ofgem has recognised the problems that exist in the interaction between consumers and TPIs, such as a lack of transparency around how costs are recovered by TPIs as well as around tariff offers themselves, mis-selling and nuisance calls - issues that also occur in direct sales from energy companies, but should now start to be addressed by the new Standards of Conduct (SOC). Which? agrees that these are causes of consumer detriment and erode trust in the energy market further.

As has been identified by Ofgem in this consultation, there is no comprehensive research into how household consumers engage with the range of TPIs available to them.<sup>1</sup> Ofgem's planned research should help all stakeholders to gain a better understanding. As the current number

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<sup>1</sup> Ofgem, *Third Party Intermediaries: exploration of market issues and options*, June 2013.



of household consumers who engage with TPIs is very low, Ofgem will need to ensure that as well as identifying the small number of consumers who have used TPIs, they also include the majority who have not. Ofgem and the industry need to understand what puts people off, and then test the use of intermediaries with this majority of consumers who don't use TPI services. Without this insight it will be difficult to move beyond general perceptions. Which? believes that this will be necessary in informing any decisions on the type of regulatory approach that is needed. Making this research publicly available would also allow TPIs to see how they can improve the experience for consumers, and increase their accountability to consumers as well as suppliers.

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

The general consumer experience of switching sites was discussed in our report *The Imbalance of Power: the retail market* (December 2012). This insight builds upon Ofgem's understanding of the consumer experience.

From the low levels of switching in the domestic retail market, it is evident that consumers do not find comparison sites easy to use. Consumers find switching processes opaque and switching times are unacceptably long - on average taking between five and six weeks. Even when individuals are prepared to search the market and switch to a new tariff, there are further problems. For all except those entering annual actual consumption data, the accuracy of switching site (and supplier) calculations is a matter of luck and potentially misleading. The switching process that follows is lengthy, unclear and expensive for those who are forced onto expensive standard tariffs for an indeterminate period of time.<sup>2</sup> This makes for a poor experience when using switching sites, as evidenced by the low number of people using them - just 4% of all consumers have ever used one and even fewer have switched in this way.

Which? has called for switching sites to be improved.<sup>3</sup> To be useful in the future, a number of issues need to be resolved now:

- The calculators should take seasonality of household consumption into account in order to give consumers who enter quarterly data a more accurate impression of the price;
- Price changes should not be applied to the cost of consumers' current usage before the date of the price change;
- To enable exit fees to be included in the calculations, suppliers should be required to use only exit fees that expire on a set date for everyone;
- The results pages should display the cheapest price for gas and electricity overall (ie. the default should not be for dual fuel offers) and also ensure that exit fees and tariff types are clearly displayed;
- To reduce errors and hassle, energy suppliers should implement 'no bill switch' technology to provide key tariff and consumption data direct to switching sites.

Individual switching sites should be able to implement the first, second and fifth changes but doing so would put them in breach of the Confidence Code. The review of the Code should take these recommendations into account.

Which? also has evidence of the consumer experience of price comparison sites in the financial services sector. This could provide a useful point of comparison and highlights

<sup>2</sup> Which?, *The Imbalance of Power: the retail market*, December 2012.

<sup>3</sup> Which?, *The Imbalance of Power: the retail market*, December 2012.



consumer frustration and distrust around receiving different results from different sites. In our recent Which? magazine article, *Is the price right?* (August 2013), consumer research with Which? members found that levels of satisfaction and trust were low for switching sites in the financial services sector, and that one in ten of members surveyed did not buy a product because the result on the comparison site was different to that on the supplier's website.<sup>4</sup> To avoid this in the energy market, particularly with the anticipated growth of the TPIs sector, Which? believes that Ofgem's approach to consider regulatory options is necessary. Distrust in the energy market will be further eroded if consumers do not feel comfortable with using switching sites, which offer the only practical way to compare prices.

Without easy access to the internet, using switching sites is an even greater hassle for these - often vulnerable - consumers. Standard Licence Condition 25 (SLC25) could be a particular problem here (discussed below in question 5).

#### **4 What are your views on the existing regulatory measures applying to TPIs?**

The existing consumer protection measures are broad, with TPIs captured by general consumer protection regulations such as the Consumer Protection from Unfair Trading Regulations (CPRs). As the consultation document highlights, there are also a number of voluntary agreements across the sector that some TPIs are signed up to.<sup>5</sup> In terms of switching sites in the domestic sector, the most important is the Confidence Code - a code of practice for online domestic price comparison sites - the governance of which has now been passed to Ofgem. We support the review of the Code by its members, and Which?Switch is actively involved in this process.

##### ***The Confidence Code***

We welcome the fact that Ofgem has now taken over the governance of the Confidence Code, which previously fell within the remit of Consumer Focus (now Consumer Futures). Which? would like to see Ofgem being more proactive in three main aspects of the Code's governance. First, taking greater ownership and a more hands on approach to monitoring. Second, Consumer Focus previously provided more guidance to the member sites<sup>6</sup> and we now see this as a role for Ofgem, as it is well placed as the regulator to provide direction. From time to time, Which?Switch need guidance on whether tariffs meet all the requirements of the Code in relation to what should and should not be included in the display of prices. For example, the inclusion of loyalty discounts into pricing. Third, it is crucial that Ofgem puts in place a robust enforcement and sanctioning regime, and a clear route to redress for consumers engaging with TPIs.

Although the Code does now sit with the regulator (as of the end of March 2013), it effectively operates as a light touch form of voluntary self-regulation. Monitoring largely takes place through processes which happen outside of the Code. For example, Which?Switch is audited by Ofgem on a quarterly basis, under which some aspects of the Code will be checked, such as the correct display of prices and logos. However, the lack of more comprehensive, continuous monitoring means that other requirements of the Confidence Code, such as that new tariffs must appear on the site within 48 hours, may not always be picked up.

<sup>4</sup> Which? Magazine, *Is the price right?*, August 2013.

<sup>5</sup> Ofgem, *Third Party Intermediaries: exploration of market issues and options*, June 2013.

<sup>6</sup> Discussion with Ofgem and Which? Switch.



### ***Supplier Licence Conditions - a form of indirect regulation***

TPIs are also subject to a form of indirect regulation through the Standard Licence Conditions (SLCs) which apply to energy suppliers. For example through SLC25 which states that suppliers are responsible for the marketing and sales activities of representatives on their behalf, and as a result of the contractual arrangements with TPIs the licence condition requirements extend to the TPIs. While Which? does not dispute the SLCs, the lack of a more specific framework for the TPIs market means that the impact of the licence conditions on TPIs does not always result in a positive outcome for consumers.

This indirect regulation can make it difficult for TPIs to operate as effectively as they might, and can make the experience more confusing for consumers. For example, in November last year suppliers were required to identify smart customers at sign up and inform them of the loss of functionality on their meter (SLC25B). As a result some suppliers asked TPIs to register and report whether the customer switching to that particular supplier did or did not have a smart meter. But not all suppliers requested that this requirement be met in the same way, and some asked for no changes at all. This lack of consistency is something that Which?Switch find frustrating, adds to operating costs, and would welcome consideration of by Ofgem.

Which? understands that as part of the TPIs workstream Ofgem is now developing a greater awareness of how licence conditions affect TPIs and how this can sometimes have a negative impact for both the intermediary and importantly the consumer. The regulator needs to ensure that it gains a full understanding of the problems that this causes and where it may need to be more interventionist on behalf of consumers in the future.

### **5 Do you consider the current formulation of SLC25 may be acting as a barrier to the development of more face-to-face multi-party TPI activity?**

Which? believes that there are some cases in which SLC25 may be acting as a barrier to greater consumer engagement. Ofgem has identified in the consultation document the problem around suppliers being concerned that they do not have enough control over TPIs who could breach SLC 25 for which the supplier would be liable.<sup>7</sup> This can deter suppliers from working with TPIs, as identified by Ofgem.

However there is another route through which SLC25 affects switching sites, and ultimately consumers. In the experience of Which?Switch, there can be problems as a result of the way in which each individual supplier interprets what the licence condition means for the interaction between switching sites and consumers. For example, each of the major suppliers provide Which? Switch with a different script for dealing with consumers over the phone, depending upon how they have interpreted SLC25. This makes the process less efficient and can mean that although Which?Switch tries to provide a consistent approach for consumers, the lack of standardisation can limit this. In cases such as this, Which? believes that guidance for switching sites should be available from Ofgem - especially now that it has taken over the governance of the Confidence Code. Ofgem will need to be more forthcoming in providing direction, not only to switching sites but any TPIs that need clarification on how to interpret the instructions imposed on them by suppliers as a result of SLC25, or indeed any other Licence Condition.

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<sup>7</sup> Ofgem, *Third Party Intermediaries: exploration of market issues and options*, June 2013.



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

Which? welcomes the review of the Confidence Code, and Which?Switch is involved in the workshops currently taking place. We think that the Code has an important role to play and that it is a useful starting point for Ofgem to build upon, to improve the sanctions and enforcement and to increase take up. We also think that the work on collective switching and community energy schemes will be valuable.

Which? is aware of the development of a non-domestic TPI code of practice and that Ofgem is further along in the process for the non-domestic market. We understand that this code of practice could provide valuable learning for the domestic market and that a workshop for all stakeholders, both domestic and non-domestic, is planned for Autumn.

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

### Consumer research

Which? would like to see Ofgem conducting a significant piece of consumer insight research to develop a more detailed understanding of where the problems for consumers are and what their experiences have been. Without this, there may be a danger that not enough focus is put on the consumer experience. The TPI market cannot be effective without consumers being able to use and benefit from the services.

### The introduction of a Code of Practice

A draft Code of Practice for TPIs in the non-domestic energy market has recently been devised by Ofgem with the input of stakeholders. We would like to see a similar approach in the domestic sector, with the creation of a Code of Practice setting minimum standards for the whole domestic TPIs market including, for example, redress routes. We would also want to see this cover the interactions between suppliers and TPIs to ensure that there is consistency and to prevent the type of situation described above<sup>8</sup>, which leads to additional costs and inefficiencies due to the variations in suppliers' approaches to the same requirements. This would underpin more specific codes for the different types of TPI. For example, we would envisage the Confidence Code to govern and accredit switching sites, with something similar but separate for energy efficiency advice providers, and underpinned by an overall Code of Practice to ensure a minimum level of protection across the board. Competing codes for a particular type of TPI should be avoided as this runs the risk of creating a 'race to the bottom' in terms of standards as schemes compete to attract members.

### The impact of the Retail Market Review

There should also be a thorough review of how any relevant new licence conditions that come out of the Retail Market Review for suppliers may then impact upon TPIs, and how the TPIs will be expected to operate within such regulation. Finally, Which? believes that it is important for Ofgem to be clear that accountability to consumers is necessary and that this will be a major feature of any regulatory framework going forward.

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<sup>8</sup> For example, in November last year suppliers were required to identify smart customers at sign up and inform them of the loss of functionality on their meter (SLC25B). As a result some suppliers asked TPIs to register and report whether the customer switching to that particular supplier did or did not have a smart meter. But not all suppliers requested that this requirement be met in the same way, and some asked for no changes at all.





## **8 What are your views on the potential wider scope of third party opportunities as a result of energy market developments?**

We agree that there is the potential for greater third party opportunities in the energy market as a result of DSR, smart meters and around energy efficiency. We do not see a particular problem with this development as long as these TPIs operate in the interest of consumers and have clear guidelines from Ofgem to do so, with firm sanctions if they are found to do otherwise. TPIs must be accountable to consumers and not single-minded with a view to supplier requirements only. It is understandable that this may be the case currently, as TPIs could lose business if they do not comply with what suppliers want. Therefore Which? sees Ofgem's role in rebalancing this so that third parties are focused on and accountable to the consumers that they serve.

Which? recognises that Ofgem have begun to map out how the future TPIs market might look in this consultation document.<sup>9</sup> We think that this is valuable and that developing a framework that protects consumers in the TPIs market now is an essential prerequisite to creating the right environment for consumers in the future.

## **9 Have we captured the full range of regulatory options available?**

Which? has no additional regulatory options to add.

## **10 Do you agree with the implications of regulatory change into the TPI market?**

We agree with Ofgem's view of the implications of regulatory change into the TPI market. Which? does not believe that maintaining the status quo would be helpful. This should be removed as an option going forward.

Which? believes that there needs to be a clearer framework in place for TPIs so that there is greater consistency in the requirements placed upon them by suppliers. There also needs to be more standardisation between the switching sites to help reduce consumer confusion, particularly when different switching sites give different results. We agree with Ofgem that a light approach to sanctioning would be in danger of failing to address current problems and would do little to increase consumer engagement, and so a more robust approach is necessary.

As this is a growing sector within a market that consumers already find opaque and difficult to navigate, Which? feels that it would be appropriate to introduce a new Standard Licence Condition requiring that suppliers work only with accredited TPIs. We would envisage this working in conjunction with a single accreditation code (underpinned by a domestic TPIs Code of Practice - see question 7) for each type of TPI. This would effectively make accreditation mandatory, and therefore ensure that consumers are better protected. It would foster a much more holistic approach, in contrast to the current piecemeal regulation that can lead to unintended consequences. A Code of Practice with a Standard Licence Condition would create a clear framework for TPIs, make the market more transparent and hopefully lead to increased consumer trust.

**Which?, August 2013**

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<sup>9</sup> Ofgem, *Third Party Intermediaries: exploration of market issues and options*, June 2013.