

Code of Practice for Non-domestic Third Party Intermediaries

Code owner tbc
Date to be confirmed

DRAFT

Note: This is an initial working draft document which has been prepared to reflect the discussions at the working group to date and to facilitate discussions with stakeholders. It should not create any expectation that Ofgem will act in a particular way in the future, including that Ofgem will adopt the Code, nor should it be taken to indicate the contents of any Code so adopted.

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1. Draft Definitions/Interpretations

“Active Energy Supplier” means an undertaking which supplies gas and/or electricity to premises and holds a gas licence granted under section 7A(1) of the Gas Act 1986 and/or an electricity licence under section 6(1)(d) of the Electricity Act 1989.

“Aggregator” means companies who manage or work with a number of third parties for arranging energy contracts for a volume of consumers. They may also interact with consumers as a TPI.

“Bundled services” means where consumers purchase multiple services from a single provider.

“Code member” means a person which has agreed to adhere to the code

“Complaint” means any expression of dissatisfaction made to an organisation, related to any one or more of its products, its services or the manner in which it has dealt with any such expression of dissatisfaction, where a response is either provided by or on behalf of that organisation at the point at which contact is made or a response is explicitly or implicitly required or expected to be provided thereafter;

“Contact” means where a consumer makes contact with an organisation but does not make a complaint;

“Direct contact” means if the TPI proactively makes contact with the non-domestic consumer to introduce or use their services. This includes but is not limited to oral, written or video contact;

“Indirect contact” means if contact is proactively made by the consumer to use the services of a TPI. This includes but is not limited to oral, written or video contact;

“Non-domestic consumer”¹ is a person supplied or requiring to be supplied with gas or electricity at premises other than domestic premises (as defined in standard condition 6 of the gas and electricity supply licences), with—

“Non-domestic Third Party Intermediary or non-domestic TPI” is an intermediary engaged in direct or indirect activities between a non-domestic Consumer (the ‘consumer’) and an Active Energy Supplier (the ‘supplier’). This may include but is not limited to;

- a) providers of bundled services
- b) aggregators

“Objective” means the objective of this code of practice;

¹ Please note this definition will be changing from 31 March 2014, as per non domestic RMR implementation.

“Principal Terms” means, in respect of any form of Contract or Deemed Contract, the terms that relate to:

- (a) Charges
- (b) The method by which Charges for the Supply of Electricity or Gas fluctuate automatically;
- (c) The price variations to the Charges for the Supply of Electricity or Gas;
- (d) Any requirement for a Security Deposit
- (e) The duration of the Contract or Deemed Contract (including but not limited too, the duration of any fixed term periods and any arrangements for renewing or extending the duration of the Contract or any fixed term periods);
- (f) The rights to end the Contract (including any obligation to pay a termination fee) or the circumstances in which a Deemed Contract will end;

Or any other term that may reasonably be considered to significantly affect the evaluation by the Customer of the Contract under which Electricity or Gas may be supplied to his premises;

“Product” means any goods or services and includes rights and obligations;

“Representative” means in relation to the licensee, means any person directly or indirectly authorised to represent the licensee in its dealings with Customers;’

“Resolved complaint” means a complaint in respect of which there remains no outstanding action to be taken by the regulated provider and which has been resolved to the satisfaction of the relevant consumer who made that consumer complaint or on whose behalf that consumer complaint was made;

“Service” or “commercial practice” means any act, omission, course of conduct, representation or commercial communication(including advertising and marketing) by a trader, which is directly connected with the promotion, sale or supply of a product to or from consumers whether occurring before, during or after a commercial transaction

2. Scope of the code

- 2.1.** This Code of Practice ('the Code') applies to non-domestic third party intermediaries (TPIs).

3. Objective of the Code

- 3.1.** The objective of this Code (the 'Objective') is to:

'protect the interests of non-domestic electricity and gas consumers and, in particular, ensure that consumers have confidence that when using a TPI, the TPI will act in a fair, honest, transparent, appropriate and professional manner and effectively assist them with their energy supply needs.'

- 3.2.** The Code member shall take all reasonable steps:

- i. to secure the achievement of the Objective; and
- ii. to avoid doing anything which jeopardises its ability to achieve the Objective.

- 3.3.** The steps, which all members shall take to secure the achievement of the Objective, shall include, without limitation, all steps outlined in section 4.

- 3.4.** All Code members agree to take all reasonable steps to interpret and apply the Contents of the Code in a manner consistent with the Objective.

4. Content of the Code

4.1. Training

4.1.1. It is each Code member's responsibility to ensure that they, all staff and any third parties, and/or agents, they use (including representatives), receive appropriate training to ensure they understand and can competently follow the requirements of the Code and adhere to their legal obligations to consumers, including relevant regulations and legislation (including, but not limited to the regulations set out in section 5 of this Code).

4.2. Fair and appropriate selling, marketing and advertising

Process

4.2.1. Each member must ensure that they communicate in a fair, appropriate and transparent manner when relating to activities for sales, marketing and advertising and must:

- i. comply with all relevant legislation and regulations. This includes, but is not limited to, the 'Business Protection from Misleading Marketing Regulations 2008'²(BPMMRs);
- ii. ensure all claims are capable of being evidenced or reliably substantiated;

Conduct

4.2.2. In particular, each Code member must ensure they are fair and transparent and do not mislead the Non-domestic consumer about:

- i. the identity of the Code member, including who they are (name), who they work for and/or represent. This includes the nature of any relationships with Active Energy Suppliers, which Active Energy Suppliers they approach for prices, including the scale of suppliers used.
- ii. their purpose whenever interacting with a consumer for all transactions.
- iii. the Principal Terms of the Active Energy Supplier's product(s) offered to the consumer, including how those differ with other products the Code member compared for the consumer; and the suitability of the product for the customer.

4.3. Protect consumers from high pressure selling techniques

4.3.1. Code members must refrain from using pressurised sales techniques. They must not force or pressure a consumer into disclosing information or agreeing a contract. Each Code member will ensure that the consumer has

² Business Protection from Misleading Marketing (Amendment) Regulations 2013

the opportunity to make an informed decision, free from any kind of pressure including sales made over phone.

- 4.3.2. In addition, the Code member must be particularly attentive to meet the needs of consumers, which are more at risk of being misled.

4.4. Commission and Fees

- 4.4.1. Prior to providing any product or service, the Code member must make the consumer aware of any charge or fee associated with their services. This includes any payment the consumer may make either directly to the Code member, or indirectly through another, named, mechanism, for example, where the Code member receives payment from or through a supplier.
- 4.4.2. At the same time, the Code member will ensure that the consumer is aware that they can request detailed information on the breakdown of the charges or fees for the product or service from the member. This information must be set out in plain and intelligible language.

4.5. Complete and accurate pre contractual information and contract terms

- 4.5.1. It is each Code member's responsibility to ensure that the consumer receives easily comparable information about the Principal Terms of the supplier product(s) being offered before the consumer enters into a contract.
- 4.5.2. Before the consumer enters into the contract the Code member:
- i. must take all reasonable steps to bring to the attention of the consumer the Principal Terms of the proposed contract and ensure that the information is communicated in plain and intelligible language;
 - ii. must take all reasonable steps to ensure that the consumer is aware that they are entering into a legally binding contract, in particular but not limited to, when entering into contracts over the telephone; and must be capable of providing evidence to this effect as and when needed. Evidence may include, but is not limited to: call recording the complete telephone call (not only the part where the consumer accepts the contract).
- 4.5.3. They must ensure that they provide this information in plain and intelligible language.

4.6. Complete and accurate notification of contract terms: post agreement

- 4.6.1. Once the contract is agreed, the Code member must:
- i. take all reasonable steps to ensure that all the express terms and conditions of the contract are set out in writing and are made available to the consumer as soon as is reasonably practicable; and

- ii. ensure that the consumer is aware of what responsibilities will lie with each party (consumer, TPI and supplier), and who they should contact in the event of an issue or concern, including any relevant contact details.

4.7. Dispute Resolution

4.7.1. The Code member must have a complaints handling procedure in place at all times. Consumers must be able to access this easily, in paper or electronically. It must include:

- i. the steps the Code member will take to investigate and resolve a consumer complaint about a TPI and the likely timescales for each of those steps;
- ii. the names and contact details of the main sources of independent help and support available to them; and
- iii. if the consumer complaint is related to an Active Energy Supplier, that the Code member will make the Active Energy Supplier aware of the consumer complaint within one working day or as soon as is practicable. They must inform the customer when they have done so.

4.7.2. The Code member must follow their internal complaints handling procedures to ensure the complaint is resolved to the customer's satisfaction, within the time scales set out in the procedures. If the consumer complaint about the Code member is not resolved following the steps above, the Code member must direct the consumer to the appropriate independent dispute resolution body

4.7.3. The consumer must be able to be contact the Code member easily and must be able to register a complaint easily via a number of channels (phone, face to face, or written correspondence, including electronic communications).

4.7.4. The Code member must keep a record of complaints and contacts for six years³

4.8. Monitoring

4.8.1. Please refer to section 3 of the consultation document

³ Proposed to be aligned with the Limitations Act 1980; c.58; <http://www.legislation.gov.uk/ukpga/1980/58?view=extent>

4.9. Enforcement

4.9.1. Please refer to section 3 of the consultation document

5. Relevant regulation

5.1. To be finalised
-Business Protections from Misleading Marketing (Amendment)
Regulations(2013)

6. Associated documents

6.1. (To be completed.)

Working Draft