

Meghna Tewari  
Economist  
Ofgem  
9 Millbank  
LONDON  
SW1P 3GE

Regulatory Affairs  
1<sup>st</sup> Floor, Lakeside West  
30 The Causeway  
Staines  
Middlesex  
TW18 3BY

[ThirdPartyIntermediaries@ofgem.gov.uk](mailto:ThirdPartyIntermediaries@ofgem.gov.uk)

9<sup>th</sup> May 2014

Dear Meghna,

**Proposals for regulating non-domestic Third Party Intermediaries (TPIs)**

1. We welcome Ofgem's review into Third Party Intermediaries and support the proposals for regulating this critical aspect of the non-domestic market.
2. We agree with Ofgem that TPIs have an important role to play in a fully functioning and competitive non-domestic market. However, while the majority behave appropriately, there regrettably remains a minority of brokers whose actions damage confidence in the whole market.
3. We answer the specific consultation questions in Appendix A. In summary, we believe a robust and comprehensive Code of Practice, with a licence obligation on Suppliers to only work with TPIs accredited to the Code, is an important step towards protecting the best interests of the consumer, and improving confidence in the energy market as a whole.
4. Generally speaking non-domestic consumers recognise that energy Suppliers are regulated, and that as such they can expect certain levels of transparency and fairness in their dealings with them. Our concern is that this could lead to a false degree of confidence in TPIs, unless such TPIs are held to similar standards.
5. Over the years there have been a number of well intentioned voluntary TPI codes operated by various bodies which have sought to raise the standards across the industry. However, these have largely failed because they do not provide one single, clear and independently managed Code that everyone is obliged to adhere to. Without a single robust code, we will fail to move everyone's practices to a common sure footing.
6. Customers deserve the same protections whoever they receive a service from. Consumer confidence will only be undermined by a two tier system, where they receive different levels of protection from poor practices depending on if they engage directly with TPIs rather than Suppliers. A requirement that TPIs meet a minimum quality standard, the main tenet of which is to empower the end consumer to truly assess value for money in the services they procure, is difficult to dispute.
7. Moreover, customers need to understand what makes up their energy bill in order to better control their costs. It is therefore very important that customers have the ability to assess any commission to be paid (whether direct from the customer to the TPI, or indirect from the Supplier to the TPI), so they can accurately assess (ex-ante) the value of the service to their organisation.
8. We therefore strongly support the proposal in the Code for TPI's to set out their commission and other charges in a clear and transparent way. We are concerned that although this information is widely available upon request, many consumers are not aware of the significance of the TPI costs either in absolute terms or as a proportion of the final price they will ultimately pay, and therefore don't take

steps to proactively request the information. Making disclosure of key contractual information, including commission sums, by the TPI mandatory and transparent will bring this key cost fully to the attention of the customer.

9. We also believe that to foster proper consumer engagement, disclosure of commission by the TPI to the consumer would need to be proactive, and the format of disclosure would need to be standardised and specified prescriptively within the Code. For example, brokers could be required to include details of commission rates within their Letter of Engagement with the customer. Moreover, there could be a specific requirement that commission rates are specified within the Letter of Authority that the customer provides to the Supplier.
10. It is only TPIs that add little value to the customer who benefit from being able to keep commission agreements opaque. The majority of existing TPIs already provide a quantifiable service which can and should be clearly articulated to a consumer – be this finding the best deal in the marketplace, bill checking, or more sophisticated energy services.
11. Just as there is in the Supplier market, a great many benefits are driven by a competitive TPI market. Indeed an effective TPI market will foster greater competition in the Supply market given TPIs are key advocates for switching Supplier. Giving the customer the tools to assess and compare the service they receive from TPIs will only help support this outcome.
12. We believe that it is right to protect consumers by holding TPIs to minimum standards and good practices. Effective regulation in this area will:
  - Provide a mechanism to remove poor and opaque TPI practices from the marketplace
  - Underline the legitimacy of the essential services TPIs provide engendering trust across the market
  - Give consumers clarity on where to turn in the event of a complaint
  - Drive a competitive and valuable TPI market, when prices and services are understood by the customer
  - Empower customers to make decisions that are right for their business
13. Finally, we note that no reference is made in the Code to monitoring and enforcement of the Code. We believe this is a vital part of any solution developed. A strong enforcement regime is essential if we are to bring an end to the misleading and opaque practices of some TPIs as such practices can do permanent damage to consumer confidence in the whole market.
14. This response is submitted on behalf of the Centrica Group of companies (excluding Centrica Storage), is not confidential, and may be placed on the Ofgem website.
15. Please do not hesitate to contact me if you should wish to discuss any of the issues raised in this response.

Yours sincerely

Matt Young  
Head of Non-Domestic Regulation  
British Gas

## **Appendix A: Answers to the consultation questions**

### **Question 1: Do you agree with the definition of TPIs? Please provide any suggestions along with supporting information.**

We don't have a preference per se between either of the proposed definitions. We do however recognise there is a wide array of stakeholders and relationships in the non-domestic sector, and it is important to capture the right ones in any TPI regulation.

The intention of the Code of Practice is to provide a fair minimum standard of practice that any customer should reasonably expect to receive, and as such we believe it should apply broadly and equally to TPIs operating in the Energy sector.

We do not believe that whether the TPI is paid by the Supplier or by the customer is a determining factor. Moreover, there should be no exclusion/exemption driven by the manner or timing of commission payment - for example, a customer who paid commission/fee directly to the TPI upfront should receive the same protections as a customer whose commission is included in the energy charge and paid by the supplier to the TPI on an ongoing basis. More important is that the definition captures those TPIs providing services in relation to the supply contract (e.g. products, price or terms) or Supplier's activities (e.g. billing).

As noted by Ofgem, there are multiple emerging markets in the non-domestic sector – such as price comparison websites – which could very well be marred by similar poor unregulated practices as has been the case in the broker market, and so these should not be excluded.

With the advent of wider energy services products, the TPI market is only going to become more complex for consumers to navigate. We recognise that the Code as proposed will only capture those TPIs who need to interact with Suppliers. Our concern is that organisations who provide services direct to the consumer without interacting with the Supplier (for example, Energy Service Companies (ESCOs), other users of consumption data or energy efficiency advisors) won't get captured by this code, because they wouldn't need to become accredited as their work would not be inhibited by Suppliers being unable to work with them. We believe that now is the time for Ofgem to consider what protections need to be afforded customers of these emerging types of service that aren't currently captured by the Code.

### **Question 2: Do you agree with our list of proposed TPIs that could be covered by any regulation we introduce?**

We do agree with the list of TPI types that Ofgem envisage being captured by the Code. However, given the variety of stakeholders in the existing energy market as well as the possible new stakeholders created in more emerging market segments, further clarity and guidance is needed about which activities and entities would be covered by the Code.

Various categories were proposed by Ofgem and we've provided specific comments against each:

- ***Broker or consultants*** - *Research and present offers from a range of suppliers to the consumer. Consultants are similar to brokers, but may also provide information on energy efficiency measures.*

This is a widely accepted definition, where consumers expect to receive an independent, impartial comparison service that can cover the whole or part of a market. Customers need to be confident about the levels of independence, and be aware of the number of Suppliers the consultant is actively engaged with.

Clarity needs to be provided about which activities undertaken by a Broker or Consultant would be covered by the code. For example, a Broker may provide energy efficiency advice as part of a Supply deal or in isolation. Would a consumer have equal right of redress under the code in both cases? The current definition of a TPI suggests that only services paid for or agreed via the Supply agreement would be covered.

- **Sales/Supplier agent** - *These companies may be employed directly with the sole interest to represent the supplier to the consumer. Some agents work for a single supplier, known as primary agents, whereas others may represent multiple suppliers, known as secondary agents.*

Where a Sales agent provides services on behalf of and at the behest of a sole Supplier, we believe the Supplier is responsible for the actions of those primary agents and so are bound by existing supplier obligations. Therefore, we believe only Secondary agents under the above definition would need to be subject to the TPI Code of Practice.

We have concerns that there are a minority of TPIs in the non-domestic space that give the customer the impression that they are dealing with the whole of the market, but actually are only dealing with one or two Suppliers – both for energy supply and services. A customer must understand the limitations of the advice they are receiving in order to make an informed decision.

- **Price comparison website** - *Service to help consumers search and compare energy deals online.*

We believe the Code of Practice should apply to this type of TPI. We recognise that Ofgem's Confidence Code is in place to ensure correct behaviours by price comparison websites, but we also note that it does not require commission transparency, the full disclosure of supplier/TPI relationships, nor the obligation to confirm whether they source prices from the whole market or a sub-set.

We believe the TPI CoP as proposed, rightly goes above the obligations of the Confidence Code, and we would expect non-domestic price comparison websites to need to adhere to the principles of the Code.

- **Bundled services providers** - *Where consumers purchase multiple services from a single provider. For the purpose of this code we refer to bundles that include but are not limited to energy.*

This definition is very broad, and may capture unintended parties. It is not clear how this differs from the Broker/Consultant model, and with the caveat – 'not limited to energy' - leaves it both open to considerable interpretation and extremely broad.

A Supplier might provide multiple energy services with or without energy Supply. Is the intention to capture them within the Code?

- **Umbrella/Franchise sites** - *Organisations that operate under a large brand name (not their own)*

We have some concerns about a practice by a minority of TPIs offering bill checking services. In some instances the TPI doesn't provide the Supplier's bill to the customer, meaning any message a Supplier includes would have limited reach. This 'rebadging' can be done with the customer's requirements in mind – say for example by condensing all utility information into a single format – or for unhealthy reasons, such as including an invisible uplift in price for the broker. Rebadging also deprives the consumer of the benefits of the changes made under the Retail Market Review (e.g. information remedies such as contract end date). It is also possible that a TPI could try to circumvent the Code by contracting services to a second 'ghost' TPI (either above them or below them in the supply chain). It may be preferable to address these practices and concerns through this reform.

- **Aggregators** – 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.

We expect this category to cover those entities that aggregate the operations of many smaller brokers, providing an infrastructure and systems to the smaller brokers which they could not afford individually.

It would be helpful to understand which other groups Ofgem envisages being included here. Would it be public sector group purchasing bodies? Would collective switching arrangements be captured? Would companies classified as ‘Directed Utilities’ by HMRC be captured? We do not see a compelling reason why these entities should not be captured.

- **Energy advice companies** - Offers energy advice to consumers

Where this advice relates directly to the supply contract then these companies should be captured. But what other forms of energy advice is intended to be included - Might a builder talking about energy efficiency options be captured? Or an organisation who sells boilers based upon the premise of reduced energy bills?

The majority of British Gas Business’ interactions with TPIs are through brokers and consultants, with a further significant volume via aggregators (i.e. sub brokers and umbrella organisations). However, we do come across different sorts of third party who may rightly or wrongly get captured by the proposed broad definition:

- It is not clear if Facilities Management companies would need to be included, and therefore need to be accredited.
- From experience we know that accountants and other professional persons quite often represent customers through a Letter of Authority. They are typically governed by strict professional body codes of conduct. Do solicitors and accountants and Independent Financial Advisors (IFAs) need to be bound by this Code?
- Customers may have more ad hoc third parties represent them – for example, customers who don’t have English as a first language may engage the services of a trusted person or organisation to engage with us on their behalf. Similarly customers with disabilities may choose to use an advocate to speak with us. Currently we are happy to accommodate this where full and proper authority is shown to exist. There are concerns that we may be unable to speak to these proxies unless they obtain accreditation, unduly frustrating our customer’s abilities to engage with their Supplier.

**Question 3: What types of organisations should be exempt from our TPI scope definition and why?**

Notwithstanding the clarity needed around the type of activities and entities captured by the code, in principle we do not believe any organisation should be exempt from the TPI scope. All consumers deserve the same minimum standard of service and information when dealing with a third party intermediary. Therefore, we do not feel it would be appropriate to allow exceptions/exemptions for charitable and not-for-profit organisations; while the premise and indeed the business model is well intentioned, it is no guarantee of transparency or quality of service.

**Question 4: Do you agree with our recommended option for regulating non-domestic TPIs?**

We believe that the proposal (Option 3) to introduce a robust and comprehensive Code of Practice, backed by a licence condition on Suppliers, offers consumers increased and appropriate protections. As long as this Code is properly monitored and enforced, then it will assure consumers that they can

use TPIs with confidence, and trust that the TPI will act in a fair and transparent manner and will promote competition in the market.

Importantly, these reforms should apply equally to all Suppliers and all TPIs (captured by the definition). There should be no exemptions for certain Suppliers nor certain TPIs (e.g. for size or maturity).

There are some practices in the TPI market that undermine consumer confidence. Prohibiting practices that are unfair - such as, TPI contracts that automatically renew if the customer doesn't give notice at the right time and then requiring customers to pay an exit fee before they can use another TPI's services, or stating that their service is free while being paid via an uplift in the customer's energy charge - would underpin a healthy market and drive positive consumer engagement.

An additional practice the Code should seek to address is the use of Letters of Authority (LoA). This Code presents an opportunity to improve LoAs and establish a common minimum standard for what key content must be included. This would make the use of LoAs more effective and efficient for Suppliers and TPIs and would provide greater protections for consumers.

We also believe that in order to achieve the stated aims, disclosure of commission by TPIs to their customers would need to be mandatory, proactive, and expressed in tangible units: this would mean providing the customer with the anticipated value of the commission payments for the duration of the contract, in full and in pounds (£), at the point of sale. Moreover, to foster consumer engagement, the format and content of disclosure should be standardised and specified prescriptively within the Code. Commission generally falls into two categories, fixed sums (typically upfront) and per unit consumption (typically ongoing) - We believe that any specified transparency would need to cover both types equally.

An additional approach to protect consumers from any gaming of the rules on commission transparency, would be to require the customer in the LoA to specify the commission that the Supplier is authorised to incorporate into the energy supply contract and pay to the TPI. Where a LoA is signed by the consumer empowering the TPI to agree the supply contract on their behalf, the LoA (addressed and provided to the Supplier) would specify the agreed commission figure (e.g. specific or maximum threshold) that the consumer authorises. This would be particularly effective in the traditional broker market and also in circumstances where the customer does not see their contract or bills, having granted full authority to the TPI to act on their behalf.

#### **Question 5: Do you agree with our proposed governance recommendations?**

We agree that all parties have a part to play in ensuring customers understand their rights and obligations. However, we believe that fundamentally Ofgem act as a natural governance body for monitoring, enforcement and accreditation activities. Therefore we believe that Option A is the most appropriate approach, under which Ofgem can utilise their powers acquired under the BPMRs. We would alternatively advocate a hybrid approach whereby some administrative and secretariat activities are devolved to an Independent Board, e.g. keeping the code under review, proposing and developing changes, and promoting the code, but importantly not monitoring and enforcement.

We are concerned that an independent board made up of active TPIs and Suppliers might be conflicted from taking, or not taking, certain actions. However well intended, the Board's participants could be put under unfair influence and an unavoidable air of suspicion placed upon their actions and decisions.

We note that the current draft of the Code is devoid of detail on monitoring and enforcement arrangements. We think it is critical that the monitoring of TPI practices in accordance with the Code is effective and fit for purpose. Similarly, we think it is imperative that the enforcement process is clear

and sufficiently robust to act as a deterrent in the first instance, and effective at halting poor practices (temporarily or permanently) in a timely fashion if enforcement is necessary.

**Question 6: Please provide your views on the appropriate representation for members of the proposed independent code board.**

Subject to our views expressed in response to question 5, and specifically in regards the adoption of a hybrid independent secretariat Board, we agree with the suggested broad makeup.

**Question 7: Do you agree that there is scope for improving complaints monitoring and information sharing? Do you have any further views?**

Suppliers are obliged to make it clear to their customers what steps they can take if they are dissatisfied by the service provided by their Supplier. However, they do not necessarily know what happens next if they find themselves in dispute with a TPI. This confusion benefits no one. Suppliers don't always get things right, but the consequence of increasing transparency and reporting about the number and type of complaints they receive, has been an increased focus being placed upon improving service and customer experience in order to reduce complaints in the first instance and resolve them swiftly if they do occur.

In order to improve consumer confidence in the wider market, TPIs must have in place a robust process to capture and resolve complaints. As in the Supplier market the organisation at the origin of the complaint – the TPI – must be accountable for putting things right, and to learn how to prevent such situations from reoccurring. It would not be appropriate for a Supplier to manage and resolve the complaint.

Indeed, a complaints process is arguably the best way to effectively monitor compliance to the Code without introducing additional auditing obligations.

The existing two tier system is unhelpful for customers when something goes wrong, particularly given the levels of influence a TPI has over what can be a material cost to the consumer:

- It is right that TPIs are held to the same minimum standard as Suppliers.
- Not all complaints will be able to be resolved to all parties' satisfaction. An arbiter and redress scheme, such as that provided via Ombudsman: Energy Services for Suppliers may be required. This could be funded (pro-rata) by the TPI as it is in the Supplier market.
- Complaint numbers, types and resolution timescales, would be reported to Ofgem to allow analysis of trends and investigate outliers to improve practices and evolution of the Code.
- Complaints information should be publically available to allow informed consumer choice – e.g. publication on a prominent part of the TPI's website.

**Question IA1: Do you agree with our assessment of likely impact on consumers? Is there any other issue(s) we should be considering?**

We agree with Ofgem's assessment of the likely impact and believe this would be enhanced by our suggested approach for Governance.

Two areas of clarification are sought:

1. In the event of accreditation being withdrawn the customer needs to understand what will happen for services being provided by a) the TPI and b) Supplier.
2. Similarly direction should be provided at the outset of the contract (and/or in Code) about any paid or unpaid/outstanding commission in those circumstances.

**Question IA2: Do you agree with our assessment of likely impact on industry? Is there any other issue/s we should be considering?**

We agree with Ofgem's assessment of the likely impact. We support the obligation on Suppliers to only deal with accredited TPIs, but we do recognise the challenge and resource implications of checking a central register of accreditation at each contact point with a TPI, e.g. a Letter of Authority in place for a 3 year contract could not be acted upon until the TPI's accreditation had been checked prior to each interaction during the 3 years (in the unlikely event accreditation had been revoked in the intervening period).

**Question IA3: Do you agree with our assessment of likely impact on competition? Is there any other issue/s we should be considering?**

We agree with Ofgem's assessment of the likely impact – Better practices resulting in more trust in the TPI market will improve competition as consumer confidence is increased.

**Question IA4: Are there any distributional effects that our policy proposals could cause?**

No effects noted.

**Question IA5: To better inform our cost-benefit analysis, please provide us with financial/costs data on the following:**

**Initial (one-off) costs: including costs to your business models and costs for familiarisation to the code of practice (this includes, costs to understand your obligations and relevant staff training and any costs to change internal processes as necessary);**

**On-going costs: this includes resourcing implications of the introduction of a code of practice to your organisation and any other expense that you think may be incurred (for example, costs of undertaking any necessary enforcement actions, monitoring compliance).**

We will incur costs to accommodate this reform but largely on an on-going operational basis. We don't expect these to be material and they should predominantly be absorbed within business as usual activities. The benefits of a robust and comprehensive code will considerably outweigh the costs.

**Question IA6: Do you have any additional comments on the risks and unintended consequences outlined above? Are there any other risks or unintended consequences that have not been considered? Please provide as much information as possible.**

None noted