

Dear Meghna

Please see below our response to the Ofgem proposal for regulating non-domestic third party intermediaries consultation draft, published date 14/02/2014.

CUB® welcomes Ofgem's principal objective to protect the interests of both existing and future energy consumers through the introduction of a Code of Practice.

The objective fits well with CUB®'s core ethics and also reflects our commitment to promote quality and value for all consumers by providing transparency and helping enable consumers in the market to make informed decisions to get a better energy deal.

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

Yes - We broadly agree with the Ofgem definition of a TPI, *"a non-domestic TPI is an intermediary engaged in direct or indirect activities between a non-domestic consumer and an active energy supplier"* however our concern with this broad definition would be with aggregators that generally work for a single supplier and therefore provide a limited choice to the consumer. The development of aggregators has mainly been driven by suppliers who have demanded certain level of business in order to deal with a TPI. In our experience this has led to the consumer not being given the opportunity to consider all options. Customers should be able to make informed decisions on the best market deal based on their business needs. We no longer work with British Gas for our SME portfolio due to them insisting on us either signing a quota of business with them or joining their umbrella broker scheme in order for us to continue working for them. At this point we had reservations about data protection with another consultant and where commissions were payable and who the customer "belonged to" that we declined to tender to BG and have ever since. We have approached both Ovo Energy and Dual Energy with the possibility of working with them in the future however they both have initially advised that they would require quantities of guaranteed signings with our customers as a quota per month in order for us to gain a relationship with them. As an independent consultant we make no guarantees with any of our suppliers for quotas of business being signed with them and match our customers' needs specifically to their business. The UIA have been involved in some instances where BG changed their aggregator terms and conditions for payment which has caused issues within the industry. (See attached)

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

Yes – However, consideration may also be required for TPI's like ourselves who provide a service to agents. Also as the market has several umbrella broker schemes at present, this needs to also be explored as to how this will work in practice to be regulated and who is ultimately responsible for the compliance, working examples of the umbrella broker adhering to the regulation however the end user broker not adhering.

We would recommend the inclusion of *TPI agent* - *These companies work independently and represent the TPI to the consumer but are not limited to energy* to the definition list also.

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

None - In our opinion this is the only way to ensure total clarity to the consumer. This regulation needs to be water tight and ensure that there are no loopholes in order for the consumer to get full protection and transparency within this market.

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

No - To fully meet with the Ofgem principal objective to protect the consumer we believe the introduction of licensing of non-domestic TPIs is the only option.

Ofgem recommended Option 3: TPI code of practice underpinned by a license condition on suppliers to work only with TPIs accredited to this code in our opinion provides too much opportunity for a lack of consistency due to the conflicting agendas of suppliers, TPI's and consumer groups.

Ofgem will be consulting on changes to the suppliers license after TPI's agree to their recommendation, so surely cannot expect consultants to agree to this option for regulation when it is unclear what they will be agreeing to.

Other considerations are: -

1. Would the cost of Option 3 be substantially more due to the number of companies involved?
2. Who would ultimately pay for the Independent industry code board and how?
3. How would the Independent industry code board be selected?
4. Would the Independent industry code board adhere to a SLA?
5. What grounds for appeal will be provided if a supplier withdraws accreditation?
6. What time frame would an appeal be undertaken in?
7. Who would pay for any legal challengers?
8. Are suppliers able to audit TPIs independently and consistently?

Also for those bodies which are being created prior to this Ofgem being agreed and implemented, such as EON's SME COP which may dilute the message and confuse the customer, what protection for TPI's does this create when Suppliers are able to start their own COP's in addition to Ofgem's and how is this being regulated?

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

No – Our preferred option would be Option A: Ofgem responsible for all aspects of governance of the code of practice. This code of practice will require the collaboration of all parties, however an independent overall governance and enforcement.

As Ofgem have some experience in managing similar codes, such as the Confidence Code there is a level of knowledge and experience to draw from and as such could be functional from the implementation of the code.

However we do believe an independent board could support Ofgem's governance of the code of practice to ensure it meets with the initial primary objectives and remains fit for purpose.

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

The configuration of the independent code board need to achieve balance. The key aim surely is to always have the initial objective of the code in mind and ensure these principle are always met. We would like to see the following represented: -

TPIs- Implementing and maintaining the code

Energy Suppliers - Supporting the TPI's

Electricity & Gas Distributors - To Provide Transparency to the industry

Electricity & Gas Transmitters & Transporters - To Provide Transparency to the industry

Metering Companies - To Provide Transparency to the industry

Trade Associations - To provide industry comment

Consumer Groups - To provide consumer feedback

DECC - To provide clarity and transparency to TPIs and suppliers

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

Yes – There should be a centralised system of capturing and analysing the data from complaints and actions which have been taken. This should include auditing of suppliers and third parties on the way that the record and respond to complaints made to them. To ensure that the customer is protected and independent information and data surrounding complaints needs to be available to the market.

There are some good points of enforcement guidelines for the micro businesses, which Ofgem could use for the COP for TPI's. Most of these guides refer to many points found on the Ombudsman's website and as such it clearly highlights where the focus of the COP will be (SME). Some form of reporting to Ofgem directly will be required and this is potentially the route in which rogue brokers will be identified and dealt with. At the point Ofgem become involved will be the "super complaints" stage, however it's not clear what level "super complaint" is and what would be described as a "super complaint". We believe that the Ombudsman service should be open to all types and size of business and not just limited to micro businesses only. This will give customers a consistent approach for all complaints and encourage best practice.

We also feel that the competition pro bono scheme may assist businesses to ensure that they have proper advice before being "struck off the TPI's adhering to the code" list. For the protection and assistance for TPI's this would be beneficial.

We cannot find where any specifics on what, when and how Ofgem will check in the gas and electricity markets to ensure that there are no grey areas which is a concern, an SLA provided by Ofgem for consultants to have confidence in the scheme.

Another area of concern is the length of investigation for complaints being 9 months. By the time an investigation is carried out a huge amount of damage could have been inflicted on a business. If a TPI isn't adhering to the COP then in 9 months they could do a lot of "damage" to customers by lack of transparency also if a consultant has done no wrong and it takes 9 months to clear them their reputation will have been severely damaged in that time. We would suggest a much shorter timescale on investigations for complaints.

We would be happy to assist in any "testing" of the draft code in preparation for the enforcement, and would be happy to assist Ofgem further during this consultation period to gather information and feedback on proposals.

We are committed to ensuring that the industry is regulated to help protect our customers and ensure that transparency and independence is maintained.

Kind Regards,

Vicky Peat, Assoc CIPD

Head of Business Support