

The TPI Code of Practice
London

9 May 2014

Ms Meghna Tewari
Senior Economist, Retail Markets
Ofgem
9 Millbank
London SW1P 3GE

Dear Ms Tewari

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

I refer to the above mentioned consultation dated 14th February 2014. As requested, my comments as the Independent TPI Code Manager and my Code Panel are set out below.

General

It is still difficult to comment in detail upon a draft Code that is missing such important sections (e.g. Monitoring and Enforcement) when their content will be so significant to the look, feel and effectiveness of the Code overall. Although we have attempted to answer all of the questions you have asked, our comments on the current drafting of the Code might change once we can see the Code in its entirety.

To be effective any Code must be binding in full for all TPIs and Suppliers. Both sets of organisations must be Code members otherwise the Code will not be effective operationally. In addition it is not entirely clear to us how any individual organisation would be incentivised or compelled to sign up in the absence of a specific requirement to do so. Regrettably a great many suppliers and some TPIs have failed to embrace the current initiatives that are available to them and we believe that a licence condition which ensures that suppliers can only contract with Code compliant TPIs is the way forward.

There is no section in the current draft covering the area of recruitment. Our considerable experience tells us that this is fundamental to the way in which the Code must operate. If dishonest or unscrupulous individuals are allowed to operate in the market it has been evidenced elsewhere that they will not adhere to the terms of a Code.

There is no section covering the maintenance of staff records about those agents who sell under the terms of the Code.

The lack of content in the sections covering Monitoring and Enforcement leave a huge gap. In summary under this heading we believe that

- The Code must be mandatory. No Supplier or TPI should be able to sell unless they are party to the Code and can demonstrate an acceptable compliance record
- All TPIs and Suppliers should be accredited before they can start selling (i.e. they are not automatically deemed as members)
- There must be regular independent audit of compliance with the Code by an experienced and appropriately qualified auditor who is responsible to the Code Manager
- Independent audit at the level of the individual organisation should be carried out against both Supplier and TPI processes
- The cost of the Code should be borne by all Suppliers and TPIs and shared appropriately
- There must be strong and effective external management of the Code
- There must be proper Code governance which includes clarity on the key roles such as the Code Manager, Board (including quasi Non-Executives) and Auditor
- There must be strong and clearly laid down sanctions which includes suspension and expulsion
- There must be standard complaint procedures which should be followed. Indeed there is considerable merit in bringing complaints within the jurisdiction of the Energy Ombudsman scheme to ensure that speedy redress is available to an individual SME when that is justified by the facts of the case. This would ensure that the Code Manager can focus upon the question of compliance with the Code and whether any broader sanctions are justified against the supplier or TPI.

Specific Questions

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

Yes we agree with the definition you have used i.e. “a non-domestic TPI is an intermediary engaged in direct or indirect activities between a non-domestic consumer and an active energy supplier”. We do not believe there should be a narrower definition as this might encourage unhelpful “gaming” as organisations seek to produce corporate structures which appear to offer regulatory certainty to consumers but in practice do not. Clearly this would undermine the credibility of the Code as a whole.

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

Yes we agree with your list.

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

We believe that as you state any TPI that receives a fee from the supplier or the customer for their service should fall within the scope of the definition.

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

Yes we believe that Option 3 is the appropriate option at this stage. Option 1 fails to respond to the real problems in the marketplace. Option 2 would add burden to those organisations currently striving to be compliant with good practice whilst doing nothing to deal with those organisations

most likely to abuse their customers. Although Option 4 has a number of attractions we do not believe this is currently an appropriate choice given both the cost and delay that will ensue.

Although the great majority of TPIs and energy suppliers who operate in this market are both open and honest it is clear that maintaining the status quo or delivering a voluntary code of practice will not deliver long term benefit to the customer. In addition we do not believe that the time and effort involved in licensing non-domestic TPIs will see sufficient benefit and may indeed drive a significant number of reputable TPIs out of the market for no apparent benefit to the market or the customer. Option 3 should deliver a faster and acceptable solution for customers, TPIs and suppliers.

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

We understand the two options you have outlined. Although we agree with the desire that the Code should be led by Ofgem we agree that Ofgem is unlikely to be best placed or sufficiently skilled for the overall delivery of the Code into the future.

Therefore we believe that Option B is probably the appropriate model to follow such that the industry wide skills and knowledge can be properly targeted and brought together. However we remain concerned that this Independent Board cannot and should not be the enforcement body given that any enforcement has to be totally fair and impartial and there is considerable danger of that not being the case where a supplier or TPI is being judged by a body involving competitors. Therefore we believe to ensure the Code effectiveness and independence of its management, governance and enforcement it is important that these decisions should lie under the Ofgem banner albeit they may delegate those tasks to a separate organisation.

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

We agree with the overall desire to deliver an Independent Code Board which we believe should be established as a limited company. It is important to stress there is a different role in establishing the Code and its early period of operation as opposed to its longer term ongoing operation.

It is possible to ask the Independent Board to effectively take the Code as currently drafted and to add to it those items of real substance (e.g. compliance, monitoring and enforcement) without which any Code will lack true impact. However to do this they must have the ability to make decisions which may well not be agreed upon by all Board members. Therefore there must be a means by which a decision can be driven through any obstacles. Without this facility any Board could run the risk of simply being a talking shop which is unable to make decisions quickly and easily. We believe that you should set firm dates by which both submission of a final Code and your approval of (or amendments to) it will happen.

The ongoing running of the Code may also require this type of decision taking by the Code Chair (a Non-Executive role) and Ofgem. Although our experience is that this would not be a regular occurrence the fact that such escalation is possible provides an important safeguard. In addition we consider that significant changes to the content or governance of the Code be subject to approval by Ofgem, working closely with the Code Chair.

As far as representation on the Independent Board we largely agree with your recommendations although we also feel that the structure is insufficient. However we feel there is a lack of clarity in your proposals as to how the routine operation of the Code will take place as opposed to how the Board should operate.

We agree with the need for representatives across industry. As indicated above we believe that there should be an Independent Code Chair although feel this role should have voting rights. Given the fact that there are industry representatives on the Board we consider in line with industry best practice there should be non-executive membership on the Code Board from individuals with relevant regulatory, standard setting and consumer experience. In order to ensure the Code operates smoothly our experience is that these non-executive members should also act as a Code Panel which hears appeals against decisions made by the Code Manager.

We agree with the Code Advisory Group which should also be chaired by the Code Chair with the non-executives mentioned above also sitting on the Group.

In relation to the operational side of the Code we believe there should be a Code Manager who is responsible for managing the Code on a day to day basis and should attend all Board meetings. We believe there should be a Code Administrator as you have outlined to assist the Code Manager in running the Code.

We agree with you retaining overall control of the Code scope as advised by and working closely with the Code Chair and the Code Advisory Group.

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

We believe that until there is an industry wide mandatory Code any reporting has the risk of being unbalanced and potentially misleading due to the lack of common standards and inadequate monitoring, compliance and enforcement. It is vital there should be one approach which has ownership and buy-in from TPIs, Suppliers and government bodies and consumer organisations. We will continue to report on matters relevant to our Code. We feel all other organisations should follow the same practice.

We agree that the delivery of a proper Code will see considerable scope for improving both complaints monitoring and information sharing.

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 the likely impacts.

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 the likely impacts.

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 the likely impacts.

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

We are not aware of any distributional effects.

Question IA5. To better inform our cost benefit analysis, please provide us with financial/costs data on initial (one-off costs) and on-going costs.

This information is held by E.ON on behalf of our Code. In the absence of other members of our Code we believe it is their decision as to whether they should provide this information to you.

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.

We strongly believe that a single industry wide Code will be easier for TPIs and Suppliers and will provide the easiest, fastest and most economical means of providing excellence to the end customer. Anything that causes further delay to delivering this Code will lead to further reputational damage to the entire industry.

In **conclusion**, whilst we continue to welcome the engagement of Ofgem with this issue, we still remain extremely concerned about the amount of time it is taking to deliver the Code. As the months pass both customers and reputable businesses could continue to suffer. We therefore urge Ofgem to

- progress its deliberations as quickly as possible
- give a very clear message that, in the intervening period, industry-led action by suppliers and TPIs alike to address the acknowledged issues should not be put on hold in order to protect the overall public interest and to show that the potential for self and co-regulatory solutions have been properly tested

There must be an insertion of pace and attention to detail to achieve a successful outcome within a meaningful timescale. We strongly believe that it is possible to finalise the Code and appoint the Code Chair by October 2014 and this would then be the driving force to deliver a fully operational Code as soon as possible thereafter.

As previously promised we remain committed to providing whatever assistance we are able to ensure the development and delivery of this Code. Please do not hesitate to contact me if you wish to discuss any of these issues in more detail.

Yours sincerely

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