

Meghna Tewari  
Senior Economist  
Ofgem

9 May 2014

Dear Meghna

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

Gemserv welcomes this opportunity to respond to Ofgem's proposals for regulating non-domestic Third Party Intermediaries. We set out our responses to the specified consultation questions in the attached paper; however, we have identified a number of areas that we consider to be of particular significance in developing the proposed governance arrangement for TPIs active within the non-domestic energy industry.

Gemserv believes that Ofgem's preferred approach of a Code of Practice underpinned by Licence Condition on Suppliers to work only with TPIs accredited to this Code is an appropriate way forward. We recognise that there is a need for intervention in the TPI market to address the negative perception of TPIs from business customers, following concerns flagged by Consumer Futures, the Citizens Advice Consumer Service and Ofgem.

However, we are also acutely aware of the significant challenges involved in managing a Code of Practice with in excess of 1,000 signatories, particularly in terms of monitoring compliance, accessions, cost recovery etc. We would therefore recommend exploring a substantially automated process. A web-based system for registering and maintaining a list of signatories to the proposed code would provide a more realistic framework in which to regulate such a large community of TPIs.

Given the similarities and relevance to the Microgeneration Certification Scheme (MCS), Gemserv would be happy to share with industry our experiences of managing a programme which processes over 500,000 online applications and payments each year.

If you would like to discuss our response further, please feel free to contact me or Paul Rocke, who has been leading on this consultation response, on 020 7090 1007.

Yours sincerely



Ken McRae  
Chief Operations Officer

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

We largely agree that Ofgem's draft definition of a non-domestic TPI is appropriate. The definition is broad enough to encapsulate the range of business models utilised by in excess of 1,000 TPIs operating in the non-domestic market. By adopting a narrower definition of a non-domestic TPI, we believe there would be a risk that certain categories of TPI would be wrongly excluded; for example, those TPIs which do not contract directly with the energy supplier.

Whilst we recognise the importance of clearly defining those organisations to be included within the scope of the proposed Code of Practice, we recognise the mixed industry perception of energy brokers and believe it is particularly important that brokers are encapsulated in the definition.

We believe that the proposed Code of Practice should apply equally for face-to-face/telephone based services and for web based services, although we do recognise the challenges in measuring compliance between heterogeneous activities. Unscrupulous techniques employed by web based TPIs have the potential to be as serious and damaging as those TPIs involved solely in face-to-face communication; therefore it would be incorrect to exclude web based TPIs from the scope of the definition or proposed Code of Practice.

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

The models of TPI included within the consultation document include: brokers and consultants, sales/supplier agents, price comparison websites, bundled service providers, umbrella/franchise sites, aggregators and energy advice companies. We agree that each type of TPI listed should be covered by any regulation, including the proposed Code of Practice. We recognise that compiling a list of all active TPIs will be challenging, given the number of TPIs and the nature of the quickly changing and innovative market.

Given the innovative nature of many TPIs in the market, the list of TPI models is always susceptible to change; the industry should remain cognisant of this possibility.

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

We believe that the scope of the TPI definition should include all companies engaged in either direct or indirect activities between a non-domestic consumer and an energy supplier, and should include both online and face-to-face engagement.

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

We agree that a Code of Practice underpinned by a Licence Condition on suppliers to work only with TPIs accredited to the Code is a proportionate and rational means of industry regulation.

There is a clear need for intervention in the TPI market to address the negative perception of TPIs from business consumers, following concerns flagged by Consumer Futures, the Citizens Advice Consumer Service and Ofgem. We believe that maintaining the *status quo* would not be appropriate and agree that this would not be in the best interests of consumers and industry.

We do not believe that a voluntary code of practice would offer the same protection to non-domestic consumers as a code of practice underpinned by Licence Condition, as it would be unlikely to cover all TPIs operating in the non-domestic market. A voluntary code of practice would be an improvement on the *status quo*; however, the industry and consumers would benefit most from an option whereby only organisations party to the Code of Practice would be considered as trusted and compliant.

The option to introduce Licence Conditions on TPIs would provide suppliers with the confidence that TPIs are tightly regulated and would ensure the professional conduct of all TPIs in the market; however such Licence Conditions may act as a barrier entry for TPIs which can be small businesses or small traders. This may restrict the innovation and competition within the TPI market, ultimately hindering the service offering for business consumers.

A code of practice underpinned by a Licence Condition on suppliers to work only with TPIs accredited to the code provides the assurance that a Licence Condition on TPIs would introduce without the burden on smaller TPIs. A code of practice could be introduced in far shorter timeframes than a new Licence Condition framework, and would therefore be a more immediate, less costly and proportionate regulatory solution.

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

We agree that the best governance option would be for an independent board to be responsible for Code of Practice governance with Ofgem as an approving, authority body. We agree that industry is best placed to develop an effective code of practice and governance framework, as industry parties are closer to practical issues impacting business consumers.

We believe that the proposed Code of Practice would be ideally directed by an independent Code Board consisting of representatives from industry (see Question 6). The Code Board would be responsible for finalising the Code of Practice, and managing the ongoing change process for the Code.

The Code Board should be independently chaired and Ofgem would retain ultimate control over the Code of Practice with the ability to veto any changes; and would act as a body for appeals against sanctions resulting from monitoring compliance activity. The Code of Practice would be supported by an independent code administrator, responsible for management of the change process, accessions to the Code, the monitoring compliance process and secretariat function.

The above method of code governance has proven success within industry. Existing industry codes such as the Meter Operation Code of Practice Agreement (MOCOPA) and Independent Gas Transporters Uniform Network Code (iGT UNC) work closely to many of these base principles.

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

We propose that any independent code board should include the following representation to provide an equitable voice for all industry parties:

- Large Suppliers                      2 Representatives
- Small Suppliers                      2 Representatives
- TPIs                                      4 Representatives
- Consumer Bodies                    1 Representative

Further parties will be invited to send representatives to meetings of the Code, including Ofgem.

This representation should ensure that the Code Board has the appropriate balance of skills, experience, independence and knowledge of the Code to enable them to discharge their duties and responsibilities effectively. A similar standard of representation is in place for industry codes, including the Smart Energy Code (SEC), ensuring an equilibrium between Suppliers and other code parties.

The Code Board should be ultimately responsible for the efficient operation and governance of the Code, the monitoring compliance process, consider issues for resolution and agree on allocation of costs for administration of the Code.

Proposed changes to the Code would ideally be considered by a wider body of industry participants prior to a decision on whether to implement a change. We believe that this body, the “Change Advisory Group” should be formed from all known TPIs, energy suppliers, consumer bodies, Ofgem and any other parties as agreed by the Code Board. Representations to proposed changes would be compiled by the code administrator and presented to the Code Board in the form of a change report.

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

We agree that there would be significant benefit in improving the complaints monitoring and information sharing process for TPIs. We would be prepared to work with Ofgem to discuss the positive work that Gemserv has carried out as the registration body for the Microgeneration Certification Scheme (MCS) and how lessons from the handling of this services could assist with the development of a scheme for TPIs.