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Dear Sirs

Response to Consultation on Proposals for Regulating non Domestic Third Party Intermediaries (TPI's)

As a company using TPI's to assist us with the complex issues of both contract negotiation and energy data management, I write in response to your consultation document issued 14th February 2014.

A more detailed response is attached. In summary whilst we disagree with the worryingly wide scope of what is proposed as a definition of a TPI subject to accreditation, we welcome the proposed clear rules and method of regulation. If the aim is to restore confidence in the probity of TPI's then the key element is that of payments from supplier to TPI's. If no payment is made then access to the data should be made on a simplified basis with written consent from the customer rather than imposing a more onerous need for accreditation. This will encourage innovation and new entrants.

There should be a distinction between advice and price, and absolute transparency on any sums paid to a TPI by a supplier in relation to a customer's account.

Advice – should be 'light touch'

Access to data should be simple to administer for suppliers, customers and TPI's. There should be no bar on the number of parties with access to the data, as long as they have customer consent. This will encourage innovation in energy management services, increasingly important after 'smart meters' roll-out.

Price – should be more stringent

Payments to TPI's should only be with the written consent of the customer and the customer's right to know what they are paying should over-ride any arrangement between TPI and supplier. This will protect against questionable practices.

We can envisage that some customers will want to pay for 'advice' through a small charge collected via the supply bills and paid to the TPI. This should be explicitly agreed in writing by the customer. Whether this would then require the adviser to be an accredited TPI should be decided by the terms of the scheme.

Property Sector Considerations

In the Property Sector it is common for Investor Landlords to appoint managers (Agents) to run their properties in their stead. The relationship between the landlord and the agent is governed by the Royal Institute of Chartered Surveyors (RICS) and the terms of the particular appointment. This leads to another key distinction between intermediaries (who are rightly in scope) and Agents who are should be excluded.

Intermediaries - advise and work on behalf of clients

It would never be appropriate for a TPI to sign a contract that they had negotiated, especially if they benefit from payments from the supplier.

Agents

This is a defined legal term and means that the agent is acting 'as though they are the customer'. The agent is therefore not an intermediary advising or working for the customer, but is the customer. An agent can usually sign contracts and appoint TPI's. It would not be normal for the agent to receive payment from the supplier, without the written consent of the customer.

Letters of Authority

The greatest difficulty we have encountered as property managers using TPI's to deal with the utility sector is in what suppliers will accept as proof of appointment, it can be either as an agent of the client, or the TPI as adviser to the client. Several suppliers each insist on different wording on 'letters of authority' (LOA). This is especially the case where JLL are acting 'as agent'.

This is making the use of TPI's unduly cumbersome or restrictive in competition and innovation. If customers have to produce a different LOA for each supplier, the tendency will be to stay with the incumbent and a small number of suppliers with pragmatic rather than a dogmatic approach.

JLL have used TPI's for many years and found them to be a good way of taking advantage of competitive market in such a complex arena. They have been instrumental in introducing a greater degree of competition and supplier switching, without which there would be a tendency to stay with the incumbent.

I trust that this information will be of use to OFGEM in its framing of the regulations and licence conditions. If you require clarification or further supporting documentation please do contact me.

David Mead

Utilities Manager

Property and Asset Management

JLL Property and Asset Management - Utilities

<p>Chapter 2</p>
<p>Question 1: Do you agree with the definition of TPI's? Please provide any suggestions along with supporting information.</p>
<p>Definition: - "an intermediary between a non-domestic consumer and an energy supplier, providing advice and assistance to the customer in relation to their energy supply needs"</p> <p>This is too broad: The main distinction should be around <i>price</i> and <i>advice</i>. It is useful for us the customers that the suppliers will have to share data with those advising customers, but this should be based on written customer consent, not accreditation, as long as there is no payment from the supplier to the TPI. As soon as a supplier agrees to make any payment to a TPI then the accreditation criteria should apply. This will allow innovation by entrants paid direct by the customer and protect the customer from hidden over inflation of their prices paid to the TPI.</p> <ul style="list-style-type: none"> • Phone and web based services, if paid by supplier, should be in scope and should declare either that they get the same payment from supplier irrespective of who supplier is or exactly what each supplier will pay them. This ensures no fear nor favour. Otherwise suspicion is they recommend the one who pays the most. In financial services IFA's are now expected to declare the commission for the products they advise on. • If the customer is paying the TPI directly for the services then there should also transparency so that the supplier has to declare all payments made to TPI on customer account. Undeclared income is one of the main areas where TPI's have a poor reputation. The customer's right to know what they are paying has to take precedence over commercial confidentiality between supplier and TPI. This should be a stipulation of the supplier's licence regardless of the accreditation of the TPI. <p>A more relevant framing for the stipulations may be;</p> <ul style="list-style-type: none"> • A supplier may only make payments of any nature to a third party intermediary (any party other than that named on the bill) if that intermediary is accredited under the scheme. • A supplier should share a customer's data with one or more third party/parties that a customer confirms in writing that they have appointed to assist them. This does not require the third party to be accredited unless payment for the service is paid via the energy contract or billing. • The customer's right to know what they are paying takes absolute precedence over commercial confidentiality between supplier and TPI. <p>We believe this would achieve the twin aims of improving energy /data services and protecting the customers from hidden costs.</p>
<p>Question 2: Do you agree with our list of proposed TPI's that could be covered by any regulation we introduce?</p>
<p>No – not all.</p> <p>"Yes" to Brokers, consultants, sales, supplier agents, price comparison providers. "No" to Bundled services, umbrella/ franchise, aggregators and Energy Advice companies.</p> <p>The list as it stands would capture facilities management providers, numerous retail chains and those focused on advising customers on energy management and sustainability. The number of potential bodies interested only in data or in administration of buildings but not receiving payment via the supplier would render the scheme administration un-manageable.</p>

<p>The relevant distinction is any of the potential list who receive payment from the supplier should need accreditation. If they do not receive payment from the supplier then it is a matter for the customer as to if they are suitable to provide advice.</p> <p>Thus a retail chain can negotiate for their franchises and should not need accreditation unless they also factor in a commission paid to them, at which point accreditation would be required.</p> <p>A bundled services provider such as a facilities management company receiving and processing bills should not need accreditation unless they also were receiving a payment from the supplier.</p> <p>An aggregator such as a trade body or a managing agent collating demand from several sites should not need accreditation unless they also were receiving a payment from the supplier.</p> <p>In many cases these groups would actually use a TPI to undertake the specialised work on their behalf.</p>
<p>Question 3: What types of organisations should be exempt from our TPI scope definition and why?</p>
<ul style="list-style-type: none"> • Any company acting ‘as agent’ of the customer (i.e. as though they were the customer). The customer should be protected by the terms of the appointment of their agent. For managing agents in the property sector, they are held responsible via RICS compliance standards. • Commercial Landlords – as there is protection via the commercial leases, and the third party access provision. • Any company, other than those negotiating the price of energy, that receives no payment from the supplier in relation to the services that the company provide to the customer.

<p>Chapter 3</p>
<p>Question 4: Do you agree with our recommended option for regulating non-domestic TPI’s?</p>
<p>Yes – Independent body is best compromise between ineffectual voluntary code, and stifling direct licence.</p>
<p>Question 5: Do you agree with our proposed governance recommendations?</p>
<p>Yes – definitely needs the weight of OFGEM. Will only be effective however if OFGEM willing to rule on individual cases at end of process.</p>
<p>Question 6: Please provide your views on the appropriate representation for members of the proposed independent code board.</p>
<p>As the aim is to ensure competition through trust by customers in TPI’s there should be a material and significant block of customer representation. This may require board to recompense companies for contributing to programme outside their core activities, whereas for suppliers and TPI’s this is a core activity and they should bear the cost of their own participation.</p>

<p>Chapter 4</p>
<p>Question 7: Do you agree that there is scope for improving complaints monitoring and information sharing? Do you have any further views?</p>
<p>Absolutely – would welcome an official forum as opposed to rumours and innuendo circulating within the industry.</p>

Appendix 2
Question IA1: Do you agree with our assessment of likely impact on consumers? Is there any other issue/s we should be considering?
Yes – Depending on how the scheme will be funded. The supplier cost of compliance spread over all of I&C customers or even just third party intermediary customers should not be too onerous. The highest cost of compliance will be with the TPI's to ensure that they meet criteria.
Question IA2: Do you agree with our assessment of likely impact on industry? Is there any other issue/s we should be considering?
Yes – Depending on how the scheme will be funded. The supplier cost of compliance spread over all of I&C customers or even just third party intermediary customers should not be too onerous. The highest cost of compliance will be with the TPI's to ensure that they meet criteria.
Question IA3: Do you agree with our assessment of likely impact on competition? Is there any other issue/s we should be considering?
As long as the burden of compliance is light (especially for data services with no payment by supplier to TPI) then competition in TPI services will improve and innovation will increase.
Anti-competitive practice around Letters of authority – ensure that 'to whom it may concern' letter using agreed terms and wording is accepted by all suppliers (some insist on overly complex or detailed LOA's making distinction for example between billing data and CRC data). Worst case insists on new LOA signed by company officer, detailing MPAN's every time a site is added or removed. This supplier is not invited to tender. Examples available on request.
Question IA4: Are there any distributional effects that our policy proposals could cause?
What is 'distributional effect'? 2.11 does not make this any clearer. If you mean will it widen the pool of potential advisers and services the answer is 'no'. If you mean will it weed out questionable practices the answer is 'maybe'.

Appendix 3
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).
If dealing with this as a customer the cost is negligible other than a centralised check of the TPI accreditation. If captured in scope then set up cost would be immense due to compliance team requirements, just to understand how to obtain accreditation and which staff would need to be trained. Such a change would increase the chance that we would enter into long term deal with a supplier rather than more frequent tendering in competitive market.

Appendix 4
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.
As currently framed building managers such as managing agents or facilities managers or even mechanical and electrical engineering (M&E) consultants would need accreditation, even to conduct the day to day business of processing bills or obtaining consumption figures for data management. This would create a huge administrative burden to both those on the ground and the scheme regulators.