



Making a positive difference
for energy consumers

To All Industry Participants

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Date: 7 August 2014

Dear colleague,

Next steps to the non-domestic TPI code of practice project

Our ambition is to put in place a regulatory framework that ensures effective customer safeguards whilst enabling the TPI market to offer value to customers through high service standards and innovative services.

This letter provides an overview of the responses to, and our conclusions on, our recent consultation on regulating non-domestic TPIs.

Following consultation, we intend to take forward our 'minded to' option for regulating non-domestic TPIs¹. This includes putting in place a mandatory code for non-domestic TPIs. We still intend for the code to be overseen by an independent board. However, we acknowledge the concerns raised through the consultation and are proposing additional oversight from Ofgem over certain aspects of the code.

Our goal for the next stage is to develop the details of the governance arrangements for the code. We plan to hold workshops/roundtable discussions with industry experts in autumn this year to inform the detailed governance arrangements for consultation towards the end of the year.

Feedback from the responses

In the consultation published in February 2014 we presented our case for intervention and set out the following options:

1. Maintain the status quo
2. Voluntary code of practice
3. Code of practice underpinned by a licence condition on suppliers to work only with TPIs accredited to this code and governed by an independent board
4. Licensing of non-domestic TPIs

Our preference was for option 3 as this represented the right balance between protecting the consumer, enabling innovation and the development of an effective TPI market. We extended the response deadline to 30 June to provide the industry, especially the diverse TPI community, more time to respond and to ensure that as many stakeholders as possible could engage with this project.

¹ [Proposals for regulating non-domestic Third Party Intermediaries \(TPIs\)](#)

We received sixty-two responses with the majority 39 (63%), of these from TPIs and TPI trade associations. 16 (26%) were from energy suppliers including the Big 6 and Energy UK. 6 (9%) were from consumer representation groups and a response from Gemserv.

There was broad support for our proposals. The majority of all respondents (41) supported our preferred option of having a mandatory code of practice underpinned by a supplier licence condition. Of these respondents, a few indicated their support was conditional on the final requirements of the code and the detail of the supplier licence condition.

27 respondents (43%) agreed with our proposals for industry-led, independent governance. The remaining respondents either suggested alternative arrangements or preferred the Option where Ofgem is wholly responsible for governance of the proposed arrangements. We set out high level views on specific aspects of the consultation below.

Scope and definition of non-domestic TPIs

We presented two potential definitions for TPIs in the consultation document. This first of which had been developed through Ofgem's working group² discussion

- a) "a non-domestic TPI is an intermediary engaged in direct or indirect activities between a non-domestic consumer and an active energy supplier".
- b) "an intermediary between a non-domestic consumer and an energy supplier, providing advice and assistance to the customer in relation to their energy needs".

Views from suppliers

There were divergent views from this group with no majority preference for either definition. Those that agreed with the broader definition (a) felt that it would capture all TPI business models and capture the wide range of services that a TPI may provide to the consumer. Two respondents agreed with the more narrow definition. The majority of suppliers provided comments on both definitions but did not indicate a preference.

Views from TPIs

Similar to suppliers, there were divergent views with 12 TPIs agreeing with the broad definition and nine believing version (b) was more appropriate as it restricted the activity to the procurement of energy. The majority of respondents either did not indicate a preference or suggested alternative definitions.

Views from consumer/consumer bodies

About half of these respondents supported the broader definition with the remainder not indicating a preference.

Our conclusion

Our objective is for the code of practice to apply to any organisation that non-domestic consumers rely upon for information and advice for meeting their energy needs. Given the diverse views of respondents in relation to both proposed definitions, we will work with stakeholders to ensure that the definition to be included in the licence condition is clear about the activities that fall within its scope and delivers the above stated objective.

² [TPI Project Working Groups Information](#)

Regulatory Framework

The majority of all respondents (41) supported our preferred option of having a mandatory code of practice underpinned by a supplier licence condition. Of these respondents, a few indicated their support was conditional on the final requirements of the code and the detail of the supplier licence condition.

Views from suppliers

14 suppliers including the majority of the larger suppliers agreed with our regulatory proposals however, 4 stated that support was conditional subject to the reviewing the additional content of the code and the new supply licence conditions.

Views from TPIs

21 of these respondents agreed with our option for regulating TPIs, indicating that it was the most expedient option and that it would encourage poor performing TPIs to raise their standards. 9 TPIs did not agree with our minded to position, of which four respondents felt that the best option would be direct regulation as this would provide the highest protection to consumers.

Views from consumer/consumer bodies

All these respondents supported our recommendation, indicating that this would be the best way to ensure customers receive a better standard of service from TPIs.

Our conclusion

We will progress our minded to position of establishing a mandatory TPI code of practice underpinned by a licence condition requiring energy suppliers to only engage with TPIs that are accredited to the code.

Governance framework

Views from suppliers

10 suppliers supported our recommendation. Three suppliers suggested that Ofgem should reconvene the working group to help define the remainder of the code. The remaining respondents in this group felt that Ofgem should be wholly responsible for managing the governance arrangements.

Views from TPIs

17 TPIs supported the establishment of an independent governance board. These respondents provided additional comments that relate to Ofgem having a more involved role in the governance arrangements, in particular suggesting that Ofgem should be the body that would undertake any enforcement action. The remainder of these respondents did not indicate a preference for either option.

Views from consumer/consumer bodies

Three respondents agreed with our recommendations. Two respondents felt that Ofgem should manage the governance arrangements directly, especially as we have veto powers.

Our conclusion

We still believe that an industry-led approach is best suited to build consumer trust in, and improve the behaviour of, TPIs. However, we recognise the risks that have been identified through the consultation on an industry-led, independent board overseeing the governance of the code. We are responding to requests for Ofgem to be more involved in the set-up and ongoing governance arrangements for the code.

We have refined our proposals, so that the key features of the governance regime will be:

- Ofgem will have ultimate oversight for the content of the code and will define the initial content of the code and agree any changes,
- an independent board overseeing the ongoing day-to-day management of the code, including, amongst other things monitoring of code compliance,
- Ofgem will develop and consult on proposals for the accreditation process, approach to non-compliance, monitoring and funding and will reflect the final arrangements in the drafting of the code,
- the responsibility of individual suppliers will be to confirm that a TPI they work with is accredited under the code.

Other Stakeholders' views

Some stakeholders have queried Ofgem's authority to put our proposals to effect. We have informed them that our statutory powers to modify licence conditions are set out in the Gas and Electricity Acts³ and that our proposals fall within the scope of those powers. Should any new issues arise relating to this matter we will engage with stakeholders throughout the next phases of this project.

Impact assessment

There was broad agreement with our draft impact assessment. The majority of respondents agreed with our assessment of the impact on consumers and the industry. A small number of TPIs indicated that they did not fully agree with our assessment on competition as they felt the competition between energy suppliers and TPIs in the I&C segment of the market was not fully considered.

We are currently of the view that our proposals will add value across the entire non-domestic market and, based on current information, will not undermine the competitive I&C segment of the market. We will welcome further industry input on this matter therefore we will consider this issue further in the autumn, as part of work to develop the scope and definition of a TPI.

Next steps

We have grouped the key activities on this project into a number of phases as set out in the diagram below.

³ The statutory provisions give the Authority a wide discretion in terms of the inclusion of licence conditions that appear requisite or expedient to the Authority, whether or not those conditions relate to the activities authorised by the licence



For the next stage (Phase 2-'set up' stage) we aim to finalise the finer details of the governance arrangements through consultation, including the detailed governance issues identified above. As part of this work, we will consult with stakeholders.

Stakeholder engagement

We are committed to engaging with stakeholders, particularly the widely diverse TPI community as we develop the next stages of our proposals. We led a number of workshops last year to develop the draft code, held bilateral meetings and actively participated in stakeholder events to inform our proposals. In the next phase, as we focus on finalising the detailed governance arrangements we intend to continue our stakeholder engagement. We plan to hold working groups and / or roundtable discussions to ensure we capture issues and solutions for consultation later in the year.

It will be difficult to accommodate all stakeholders at these meetings therefore we intend to publish the output from these meetings on our website and invite stakeholders to send any suggestions or queries to our TPI mailbox (thirdpartyintermediaries@ofgem.gov.uk)

The TPI project is a high priority programme for Ofgem. As such, we are committed to work with the industry to ensure all views are taken into account in the development of the next phase.

Should you have any comments or queries please send these to Meghna Tewari using the TPI mailbox: (thirdpartyintermediaries@ofgem.gov.uk)

Yours faithfully

Rob Church

**Associate Partner,
Smart Metering and Smarter Markets**