



**By email only**

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Dear Meghna,

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

npower welcomes the proposals to create a single code of practice for third party intermediaries; we have supported this concept for some time and wish to see a regulatory regime that will promote high standards amongst third party intermediaries and suppliers. We would like to see the code put in place quickly and for Ofgem to continue to take a prominent role in its development.

Our responses to the consultation questions are attached and are not confidential. Please contact me if you need any clarification of our response.

Yours sincerely,

Gerald Jago

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## **Proposals for regulating non-domestic Third Party Intermediaries (TPIs) – npower response to consultation questions**

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

The regime should include arrangements for accrediting members and monitoring and enforcement in cases of persistent or serious breach. In extreme cases this could result in a member losing its accreditation and thereby its ability to operate in this market. Consequently the code arrangements that enable parties to exercise such powers need to be clearly defined and unambiguous.

The consultation paper is not clear about which definition Ofgem proposes to use; the second one, in paragraph 2.7 defines third party intermediaries more precisely, but is still not tight enough for the purposes of the code of practice. As it stands that definition could cover parties providing just advice on energy supply to a customer.

The definition also refers to “working with” suppliers; again this is too imprecise for the purposes of the code. Suppliers will have a standard licence condition that requires them to only use third party intermediaries that are members of the code. The scope of the code of practice should be confined to matters covered by the supply licence, principally the sale of energy and associated activities. The code’s administrator and suppliers would be unable to include other matters, not covered in the supply licence, in any monitoring arrangements required to comply with the standard licence condition and the code of practice.

This suggests that a definition should be confined to organisations that will bring together licensed suppliers and customers to facilitate an agreement between the two for the supply of electricity or gas. Furthermore, those organisations must have some form of agreement with a supplier that is legally enforceable.

Although this definition would not cover third party intermediaries that act solely for a customer and have no agreement with suppliers, Ofgem could enforce its powers to prevent misleading selling under the Business Protection from Misleading Marketing Regulations. As some parties may remain out of the scope of the code, by choosing not to work with suppliers, they could still continue to operate for customers without a form of regulation. Ofgem should offer further guidance on how it will link the use of its powers under the Regulations with the proposed arrangements under the code of practice.

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

In the main, yes, but there are exceptions and additions to the list. The scope of the code of practice should be confined to activities covered by the standard licence conditions, principally the sale of gas and electricity and associated services. Application of this definition would more easily describe which types of parties would need to be accredited under the code.

Many of the parties described, brokers, consultants, price comparison sites, aggregators and umbrella/franchise sites as set out in Table 2 of the code would meet this description. However, there are three exceptions.

The first is sales agents engaged by suppliers to carry out certain activities, which are part of a supplier’s licence obligations. These agents discharge those on behalf of the

supplier, but the latter retains the obligations. Although legally separate from suppliers, such companies will act solely for a supplier and to all intents and purposes the customer will see no difference between an agent and a supplier. They are not intermediaries, and are already covered by standard licence conditions; inclusion in the code of practice arrangements would require them to comply with both the licence obligations and the code. It is not appropriate to describe them as third party intermediaries and there is no need for the code of practice arrangements to apply to them.

The code can only apply to those activities that would be covered by the standard licence conditions. So the two other types of intermediary to be excluded are those offering bundled services and those providing energy advice. For example, in the case of a third party intermediary offering a bundled service of utility supplies (energy, telecoms and water) the code could only enforce activities related to the sale of energy, not to other activities. In such cases other regulatory frameworks, including the Business Protection from Misleading Marketing Regulations, would apply.

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

There is no case for exemptions from the scope of the code of practice. The code should cover all organisations offering services included in its scope; this would give confidence to customers about the transparency of the code and its application. Applying exemptions would inevitably raise complex questions about types of organisations that could be exempt, which may lead to allegations of discrimination.

### **Chapter 3 Question 4: Do you agree with our recommended option for regulating non-domestic TPIs?**

Although our preferred option is for Ofgem to manage the code of practice, we support the principles set out in the proposed option 3.

We assume that reputable third party intermediaries will already adopt many of the practices set out in the code. Requiring all third party intermediaries to follow them in order to apply a single standard could quickly improve confidence in the market. It would reduce the number of parties that use misleading sales practices and would ensure that companies would comply or leave the market.

The arrangements should have some form of accreditation that balances the need to be robust and reliable, without putting in place unnecessary obstacles for third party intermediaries wishing to join the code. Given the range of size of third party intermediaries (from sole traders to large companies) it would be appropriate to have arrangements that are proportionate to the size of third party intermediary wishing to be accredited.

There are several established programmes that can offer membership and accreditation for companies; some can be tailored to meet members' needs. They can also provide audit and review arrangements. At this stage we do not believe it would be necessary to have a high standard for accreditations such as ISO 9001. There are other equivalent processes that may be more applicable, especially at the outset.

We recognise that the proposed code will change as parties agree on its scope and content. It should be a priority to put in place standard licence conditions and accreditation arrangements to support them. It may be necessary to develop the code in phases to allow parties to agree on aspects of the code.

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

We support the development of governance arrangements set out in option B. The code of practice should operate independently from suppliers, third party intermediaries and other parties in order to show customers that it is acting in their interests to promote transparency and confidence in third party intermediaries. It will need governance arrangements that enable the code and its administrators to carry out their responsibilities impartially and efficiently. There are several governance models operating in the energy supply market and other industries that also meet these requirements and the proposed structure is broadly in line with those. The detailed design of any arrangements will be iterative and will have to balance the views of the parties involved in developing them.

We recommend that Ofgem should quickly convene a formal group to develop the code. Members should include suppliers, third party intermediaries and representatives of customers. The objective of such a group would be to draw up plans to develop the code of practice. npower's preference would be to procure a temporary code administrator and staff to establish a code and associated arrangements whilst Ofgem finalises its work on the necessary standard licence conditions. Once a temporary code is running, those staff would manage the transition to a permanent one once the standard licence conditions are in force.

Accreditation is only one part of establishing standards; the code will have to set out arrangements for monitoring third party intermediaries' continued compliance with the requirements of the code. This would include providing evidence of their compliance with the code, maintenance of records and some form of periodic audit. Third party intermediaries should have adequate and appropriate arrangements for dealing with and resolving customers' complaints about their services.

To aid progress Ofgem should define the activities within the scope of the code of practice, including arrangements for joining the code.

In cases where parties do not comply with the code there will be a range of remedies to be applied. This will include removal of a party's accreditation, resulting in a loss of business for the party and their suppliers. Ofgem should give some form of indemnity to the code's administrators and to suppliers in the event of removal of accreditation. Naturally, in such cases, the code should also have arrangements for parties to take corrective action to regain their right to operate.

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

Membership of the governance panel should be wide and inclusive. It should include suppliers, third party intermediaries, Ofgem and organisations representing business customers. Appointment to the panel should be by election from relevant constituencies; for example, in the case of suppliers the constituency could be licensees. In the case of third party intermediaries it would be accredited TPIs.

### **Chapter 4 Question 7: Do you agree that there is scope for improving complaints monitoring and information sharing? Do you have any further views?**

In the first instance, third party intermediaries should manage complaints about their activities, but the code administrator should be able to manage complaints about third party intermediaries that have not been resolved. The administrator should also take

an overview of complaints as part of its monitoring activities. Presently, suppliers are only able to manage the elements of complaints that relate to their sales, whereas the proposed arrangements would enable independent oversight of the complaints process.

## **Appendix 1 – Draft Impact Assessment**

### **Chapter 2 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 that the proposed code would be more robust than the present arrangements by improving transparency and consistency across the market. In turn, that should improve customers' confidence in the market.

### **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 assessment of impact on the industry; there will be direct and indirect costs of implementing a mandatory code of practice. We believe that third party intermediaries may incur additional costs, but in cases where they already comply with a code of practice with comparable arrangements to the proposed ones, those costs should be marginal.

In order to reduce ambiguity about the operation of the code Ofgem should make clear what it means by suppliers "working with (TPIs)". We have set out our views above on the nature of the relationship between third party intermediaries and suppliers.

### **Question IA3: Do you agree with our assessment of likely impact on competition? Is there any other issue/s we should be considering?**

The Code of practice, if sufficiently robust to deliver Ofgem's objectives, would improve customers' confidence in the arrangements and could increase competitive pressure on suppliers and third party intermediaries. Suppliers would not work with third party intermediaries that were unable or unwilling to comply with the requirements of the code; these third party intermediaries would no longer be able to work and would probably leave the market.

### **Question IA4: Are there any distributional effects that our policy proposals could cause?**

There are none that we can identify at the moment.

### **Chapter 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).

To a large extent the costs of the arrangements to suppliers and third party intermediaries will depend on the detailed design of the code of practice. There are similar arrangements already operating in the energy supply industry that could give a good indication of the range of costs for establishing governance arrangements of the type proposed. The set up costs would probably be borne by those establishing the arrangements; some would be staff time, but there would also be the direct costs of

setting up the procurement arrangements, obtaining legal advice and establishing an appropriate organisation to manage the code of practice.

Internal supplier costs too would depend on the nature of the arrangements and would generally be incorporated into existing processes wherever possible. There may be other costs associated with the development of some management arrangements and training costs.

**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 and compliance).

These costs can be spilt into two main categories: the costs of running the code of practice; and suppliers' and third party intermediaries' internal costs. As for the previous answers, the costs will very much depend on the nature of the arrangements and the number of members in the code. The work of the code administrator would largely be monitoring, enforcement and managing any remedial work with members. Ofgem could gain information about the costs of such arrangement from existing governance bodies in the industry.

Internal costs would not be much greater than at present for suppliers who actively manage third party intermediaries they work with. Third party intermediaries should bear their own costs of accreditation and so those arrangements need to be proportionate and manageable for the range of TPIs covered by the code.

**Chapter 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.**

No further comments.

end