



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

1. CONTEXT. OFGEM has stated that 'The non-domestic TPI project aims to improve current engagement between consumers and TPIs in the non-domestic market, whilst promoting transparency and helping enable those engaging in the market to get a better energy deal'. Although this is a worthy aim it should not be at the expense of TPIs. I fear that implementation of the COP may prove to be a barrier to some smaller TPIs: either because some suppliers may reduce the number of TPIs they are prepared to deal with or because the cost of accreditation will be prohibitive.
2. RATIONALE FOR INTERVENTION IN THE TPI MARKET.

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

- Table 2.1 lists potential TPI types within the scope of the TPI definition and then goes on to provide two different draft definitions: 'a non-domestic TPI is an intermediary engaged in direct or indirect activities between a non-domestic consumer and an active energy supplier' or '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'. The first definition seems to take a very broad approach and would encompass all those listed in Table 2.1. However, the second definition seems to focus in on the 'energy supply needs'. I take this to mean the purchase of gas and/or electricity and may therefore exclude other services such as provision of energy efficiency advice, provision of bureau services (bill validation, troubleshooting, etc.) or the provision of metering or data or energy efficiency advice. Although my preference would be the second definition I think OFGEM needs to think about what problems we are trying to solve with this COP. If the complaints were about the purchasing activity then the second definition would suffice. However, if the scope of historical complaints covered other areas then perhaps the broader definition would be more appropriate.
- Paragraph 2.8 questions whether the definition should be narrowed further still:
 - Although I am sure that price comparison websites operate differently to brokers and consultants they should also be subject to the COP because they also need to be transparent to consumers about which suppliers they provide prices for and how much they get paid by suppliers. They should certainly not be exempt from the COP.
 - You also questioned whether the proposed regulatory approach risks not covering those TPIs who do not contract directly with a supplier? It is true to say that some TPIs – like myself - operate by being paid on a consultancy basis by the customer. Some of my clients pay on a share of savings; some pay a fixed monthly fee and occasionally clients pay a onetime fixed fee for services rendered – for example, for conducting a tender exercise. However, because my work is to act as an

intermediary between my clients and their suppliers, I do think TPIs like Overheads UK should be covered by the COP.

- The third point you asked about whether the definitions capture TPIs offering energy advice on matters other than negotiating their energy supply. I refer back to my earlier response about what the complaints have been about in the past: if they were only about the purchase of energy then you should exclude other types of TPIs.
- In conclusion, my preferred definition of a TPI would be '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'. The way the draft COP is currently written it seems to focus solely on the purchase activity. If you opt for the broader definition the COP will need to be completely re-written.

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

- Yes, if they are involved in the purchase of energy.

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

- I do not believe there should be any exceptions.

3. OPTIONS FOR REGULATION OF NON-DOMESTIC TPIs

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

- Chapter 3 of the discussion paper states that the COP targets specific market concerns: complete and clear information; honest marketing tactics, and effective monitoring and then goes on to describe 4 options before selecting Option 3 – TPI code of practice underpinned by a licence condition on suppliers to work only with TPIs accredited to this code.
- I agree that Option 1 – maintain the status quo – will not work because the problem exists now and doing nothing will not make the problem of 'rogue TPIs' disappear.
- Similarly, Option 2 – voluntary code of practice – will not work because there would be little to deter such rogue TPIs either not signing up to the voluntary code or signing up but then ignoring the code and continuing to act as they do now.
- Although Option 4 – Licensing of non-domestic TPIs should provide the most assured way of getting all TPIs to abide by the code, I think it is a step too far. It would probably take too long to implement and is likely to be the most expensive option and, therefore, could potentially prevent many smaller existing TPIs from continuing their businesses and would probably deter new TPIs setting up in business.
- In conclusion, I agree that Option 3 is the best solution.

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

- Para 3.22 states that In order to put in place an enduring framework for the code of practice, a number of different activities need to be undertaken which can broadly be grouped under the heading of "governance". These roles can be undertaken either by Ofgem or industry parties and the most appropriate body may differ for different

activities. The activities include:

- Keeping the code of practice under review.
 - Publicising the code of practice to TPIs and consumers.
 - Registering TPIs who want to sign up to the code of practice including any initial checks that might be required.
 - On-going monitoring of compliance with the code/self reporting depending on the arrangements that are agreed and set out in the code of practice.
 - Taking disciplinary action against TPIs for breaches of the code of practice.
- OFGEM's sets out two broad options for the governance of the COP:
 - Option A – OFGEM responsible for all aspects of governance of the code;
 - Option B – Independent Board responsible for COP with OFGEM as an approval body.
 - OFGEM's recommended approach is that the COP should be passed to industry (Option B) and that an independent industry code board, similar to that established for the Smart Metering Installation code of practice (SMICOP), would undertake the work.
 - At para 3.25 OFGEM points out that 'Whilst a number of stakeholders have indicated their preference for the code of practice to be run by Ofgem, it is our understanding that their primary desire is that any governance structure should be 'independent', but not Ofgem-led per se'. Having attended all of the OFGEM TPI COP Working Group meetings I was very much of the opinion that stakeholders did indicate that they wanted OFGEM to run **and to take the lead** on the COP. I cannot recall having heard any mention of it being led by the industry.
 - Para 3.33 states that 'This approach to governance would place greater responsibility on industry to improve consumer experiences in the energy retail market and similar approaches have proven to be successful in other areas, such as the Energy Ombudsman'. I do not think that the service provided by the Energy Ombudsman can be compared with what OFGEM is proposing here. The Energy Ombudsman is independent from the energy industry, the regulator and from consumer groups "so that people can trust us to be fair". The industry code board would comprise of suppliers, TPIs and consumer groups so is the exact opposite!
 - As a TPI that already follows the ACMC code of practice (http://www.theacmc.co.uk/code_of_conduct.php) I am quite happy to follow the new OFGEM code because in terms of the service I already provide my clients, very little will change. My main concern is with how much red tape will be involved in gaining accreditation for the new code and how much it will cost to be a "member". On the latter point, I suspect that the cost of being governed by industry will be greater than the cost of being governed by OFGEM and for that reason I do not agree with OFGEM's recommended option; I would prefer Option A.
 - Another reason why I prefer Option A is that there should be fewer steps in the governance process and that should improve efficiency. Option B requires OFGEM approval for the Board decisions and that will add delay to any proceedings.

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

- OFGEM has proposed that the independent Board would consist of representatives from across industry such as suppliers, TPIs, trade associations as well as consumer bodies all of whom will have voting rights.
- Because of these voting rights it is very important that the composition of the Board is correct. To that end I am concerned to see the composition of the SMICOP Board. It appears to me to be heavily weighted towards the “Big 6”. Representatives for small domestic suppliers and for micro business suppliers only have 4 votes between them compared to 6 votes for large suppliers. I would not wish to see this with the TPI Code Board.
- It is not clear how you will select TPIs to be members of the Board but you will need to be very careful in selecting a cross section of all types of TPI so that smaller TPIs have equal representation and voting rights to the larger TPI organisations.
- I welcome the fact that you propose to include trade associations on the Board and I hope that The ACMC will be one of them.

4. NEXT STEPS

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

- Of course there is scope for improving complaints monitoring and information sharing; if not, why do we need a new COP. Before this process started I was not aware of either the nature or the number of complaints against TPIs and it soon became clear from the TPI COP WG meetings that neither OFGEM nor other TPIs or suppliers had much idea of the scope of the problem. The ACMC has been operating for more than 15 years and we have had our own Code of Conduct that includes a complaints handling procedure for several years. To my knowledge, there has not been one complaint made against any ACMC member since the code was introduced. However, it is apparent that there are complaints made by business consumers against some TPIs so we do need a COP that includes a good complaints handling procedure. It is best if this were to be managed by a single organisation and that the information gleaned is shared with all stakeholders. The consultation paper poses two questions:
 - When, where and how would this information be published?
 - One of the aims of this TPI process was to get better transparency so it is important that the information is made available as soon as possible and to as wide an audience as is practical. To that end, I would suggest that the information is published by OFGEM or by The Board (as appropriate) on the Internet and as soon as the information to be published has been verified. The latter point is most important. It is my understanding that when a consumer wishes to make a complaint about the service or product being supplied by a TPI then the consumer should, in the first instant, raise the complaint with the TPI. Only if the TPI has not satisfactorily appeased the complainant should they raise the complaint to OFGEM/Code Board. The good reputation of the TPI is at stake if adverse information about the TPI is published prior to verification that the complaint is just and that it is the TPI at fault. Presumably, when OFGEM/Code Board receives a valid complaint

they will ask the TPI to rectify the complaint or risk some form of punishment (fine or lose accreditation, for example).

- What information could/would be published?
 - TPIs should record details of all complaints received from their customers. The record should show the date the complaint was received, the nature of the complaint and how it was dealt with. If the complaint was satisfactorily dealt with to the customer's satisfaction there should be no need to report this to OFGEM/Code Board but such information could be checked during any subsequent audit.
 - Only if the complaint is unresolved by the TPI and consequently passed to OFGEM/Code Board by the consumer should details be published and even then only when the complaint has been fully validated. In such circumstances details published should also indicate what action OFGEM/Code Board took and the outcome.
- Para 4.6 asks whether ahead of the COP coming into effect there is information that would be helpful to publish. Unless you are prepared to vigorously validate any information that you have prior to publication then I suggest you do not publish anything.
- I welcome the fact that various consumer organisations have expressed a desire to be involved but would suggest that once the COP comes into effect consumer organisations should refer all complaints from business consumers to OFGEM/Code Board so that their work is not duplicated, OFGEM/Code Board is fully aware and involved in all such complaints and so that business consumers are made aware of the correct point of contact for all such complaints.

5. IMPACT OF OFGEM'S RECOMMENDATIONS IN THE NON-DOMESTIC ENERGY MARKET

- **Question IA1: Do you agree with our assessment of likely impact on consumers? Is there any other issue/s we should be considering?**
 - Under Option 3 OFGEM has stated that 'It is not our intention for cost burdens to be placed on to consumers but we recognise that industry may pass on costs to their customers. It is our view that any costs passed through on to consumers will be outweighed by the consumer benefits in the form of clear and enforceable TPI standards of service including transparency of information and professional conduct.' Because I have a commercial contract with all of my clients whereby they pay me either on a share of savings (contingency fee basis) or on a fixed monthly fee there is no risk of passing costs to our customers without first renegotiating those commercial contracts; and we have no intention of doing that so any increased costs will fall on us.
- 6. **Question IA2: Do you agree with our assessment of likely impact on industry? Is there any other issue/s we should be considering?**
 - Although under Option 3 OFGEM has recognised that there will be a direct impact on TPI costs I do not think they have placed sufficient emphasis on this aspect. We have no real idea of what external costs may be placed on us but I fear that it may prevent many smaller

TPIs from continuing to operate and, therefore, reduce competition in the market.

- **Question IA3: Do you agree with our assessment of likely impact on competition? Is there any other issue/s we should be considering?**
 - I am content with the impact statements made under Option 3 but again stress the above point about the likely costs removing some smaller TPIs from the market.
- **Question IA4: Are there any distributional effects that our policy proposals could cause?**
 - Not that I am aware of.

6. DIRECT COSTS OF OUR RECOMMENDATIONS

- **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, monitoring compliance).**
- Overheads UK is a very small TPI. I work alone from home and I try to keep my own overheads to a minimum. Because I work alone I can only have a fairly small number of clients because if there are too many then I am unable to provide them with the excellent standard of service that I try to provide to each client. Because I keep the number of clients to a maximum of about 30 my turnover is also somewhat restricted and consequently my profits are generally under £50K p.a. Thus, any increased costs due to the new COP will have a detrimental effect on my business.
- Because I already abide by the ACMC code of conduct I do not foresee any major changes to the way I will operate in the future. I do not employ any staff and so there are no costs involved in understanding my own obligations or for staff training. However, there will be some internal costs involved: changes to my company website (and to the ACMC website) and to my business stationery and perhaps the need to pay for telephone call recording equipment. Note: On the latter point, the draft COP is very unclear as to who will need to record calls and under what circumstances and this needs further clarification.
- I estimate that the initial one-off cost for Overheads UK to be approximately £700 and about £200 for The ACMC to get their website updated.
- I am more concerned about the costs involved in gaining accreditation and any annual fees involved. One of the reasons I did not join the UIA was because of their extortionate membership fees; I understand it costs more than £1000 to join even for a small organisation like mine. By comparison, The ACMC charges £100 to join and an annual fee of £100.

- The accreditation fee and/or annual fee should not be set at a level that either results in some TPIs not being able to continue to operate and or deters new entrants to the TPI market.
- It is unclear as to whether the charges will be per organisation or per person. Clearly, the latter is the fairer option as each person could then pay the same fee and, therefore, an organisation with 10 customer facing staff would pay 10 times the amount of a single employee TPI like mine. I suspect that some larger TPIs – like call centres – may not like this method of charging but I think it is one of the fairest way of apportioning costs to the size of the organisation. It would also mean that franchisees in such as Auditel and Expense Reduction Analysts (ERA) would be charged per franchisee rather than as a single accreditation at the head offices.
- **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.**
- Nil.

7. OTHER COMMENTS I was surprised that you did not feel the need to ask for any comments on the draft COP itself. Even so, I wish to add the following comments:

- During one of the early TPI WG meetings I commented that I thought the COP should be clear and concise and that, preferably, it should be no more than one or two pages in length. OFGEM agreed with my comment but I see that the draft code is already 7 pages long and by the time clauses 4.8 and onwards are written I suspect it will be more than 10 pages long. Because of that I fear that very few business consumers will make the effort to read the document and consequently the whole process will have been a waste of time and effort. I understand that the COP has to contain sufficient information to be a credible and viable document but if consumers fail to read it we will not have moved forward with gaining consumer confidence. I therefore suggest that once the COP is finalised that OFGEM produces a separate executive summary document that is on only one page and that can easily be read and digested by business consumers. I recently saw such a document produced by Catalyst Energy Solutions (see - <http://www.catalyst-commercial.co.uk/tpi-code-of-practice/>) that could be used as a template. It is clear, concise and short enough to give the consumer confidence yet at the same time provides a link to where the full COP can be viewed. In my view, it is just what we need.
- Clause 4.2.1.ii stipulates that each member must ‘ensure all claims are capable of being evidenced or reliably substantiated’. What does this mean?
- Clause 4.3.1 states that ‘Code members must refrain from using pressurised sales techniques. Each Code member will ensure that the consumer has the opportunity to make an informed decision, free from any kind of pressure...’ Unfortunately, so long as energy suppliers continue to offer gas and electricity prices which are only valid for a short time, such pressure is unavoidable.
- Clause 4.3.2 states that ‘the Code member must be particularly attentive to meet the needs of consumers, which are more at risk of being misled’. I am not sure which consumers you are referring to. I note that SMICOP definition of “Vulnerable” as a Customer who is classed as Vulnerable according to the following definition – “A Customer is Vulnerable if, for

reasons of age, health, disability, or severe financial insecurity, they are unable to safeguard their personal welfare or the personal welfare of other members of the household” but then goes on to exclude Micro Business Customers from many of the provisions regarding vulnerability. I suggest that Clause 4.3.2 be deleted in entirety.

- Clauses 4.5 and 4.6 deal with pre contractual information and contract terms. It is not clear from the draft document if these two clauses apply only to those TPIs that actually sell energy to the consumer on behalf of a supplier or if it also applies to those TPIs who simply provide advice to their customers about what the supplier is offering but does not “do the contracting”. This needs some clarification.
- Clause 4.5.2 states that before the consumer enters into the contract the Code member must take all reasonable steps to bring to the attention of the consumer the Principal Terms of the proposed contract and ensure that the information is communicated in plain and intelligible language. If the suppliers provide Principal Terms that are not in plain and intelligible language there is little that I can do about that!
- Clause 4.5.2 goes into some detail about ensuring that the customer is aware of what they are entering in to: ensure that the consumer is aware that they are entering into a legally binding contract, in particular but not limited to, when entering into contracts over the telephone; and must be capable of providing evidence to this effect as and when needed. Evidence may include, but is not limited to: call recording the complete telephone call (not only the part where the consumer accepts the contract). Should all this not be the responsibility of the supplier rather than the TPI, particularly if the TPI is not involved in the actual contract itself?
- Similarly, Clause 4.6.1.i requires the Code member to take all reasonable steps to ensure that all the express terms and conditions of the contract are set out in writing and are made available to the consumer as soon as is reasonably practicable. Again, if the TPI is not doing the contract, should the TPI be responsible for this or should it be the supplier?



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