

Dear All

I am happy to be given further opportunity to engage in this process and thank Ofgem for the extension of the consultation process. I had previously resisted responding simply because I had been involved in the working group and felt it was really opportunity for those who had not been as involved at that time to voice their views. Having spent some time listening to those who were involved and those who were not at that stage I do now feel that I would like to offer further response to the consultation document.

Essentially I think that we were not brave enough in our consideration at the working groups and whilst it was necessary to ensure that all people were heard and that the atmosphere in the room did at times need to be carefully managed it perhaps meant that we were a little inhibited in discussing what need to be cleared up. The outcome is that the document that has gone to consultation perhaps does not reflect any of the opinion of TPIs concerning some very vital detail.

Firstly who will be responsible for assuring standards? There seems to be clear indication that this will be via the supply licence mechanism and this is extremely dangerous. To protect independent status third parties should be managed outside of any institution that has a vested interest in the success or failure of a particular TPI. Suppliers should be aware of those brokers who has been assessed as meeting the regulatory standard and should only deal with them but any decision making authority should be completely independent of them. Suppliers already influence the broker market through preferential commission levels for some brokers and this does provide temptation for some brokers to favour particular suppliers without clearly identifying that to their clients. Not everyone can deal with all the suppliers because clearly that is not possible but the absence or presence of a particular supplier as an option should be clearly defined for the customer to see.

One of the ways in which this might be achieved is by TPIs being required to disclose the actual payment they will receive from any contractual option presented. I do understand why brokers are timid about this because they have never done this before. Some persist in telling prospective clients that the service is free which it quite clearly isn't. It might be worth considering a staged move to full disclosure of fees. Perhaps all pre-contract information should include the phrase 'the prices quoted are inclusive of our service fees and will be paid on your behalf by the supplier throughout the term of your contract'. Once clients and brokers get used to doing this perhaps they could be moved to specify their actual fees and when and how they will be paid.

Fee disclosure is required if suppliers are to be involved with the process of regulation simply because they do manipulate the broker market through fees and not best practice. If they were unable to manipulate the volumes going to them through fees then they may also be convinced to assure service levels and work with best brokers rather than those who make a sale for them at all costs.

My second issue concerns the definition of who will be covered by this code. Within the consultation document you state that

'It is our current position that if a TPI is receiving a fee from the supplier for their service it should fall within the scope of the definition.'

I have a number of issues with the statement – firstly, if it is a fee from the supplier then the commercial relationship is with the supplier and not the client in which case there should be no obligation on us to disclose these fees since it is the supplier paying a cost of sale not the client

and so there is an argument that the service is free to the client (well as free as any direct sales team). If the client is paying the fee then it should be disclosed to the client (or at the very least it should be made clear to the client that there is a fee). We have to be clear on who is being charged before we determine what claims can be made by whom. I favour the latter and that the client is the customer and the 'uplift' charged by TPIs is a fee to them, suppliers just happen to collect it.

My second problem with this statement is much more important. This definition excludes two categories of business that are third party intermediaries.:

- Cost saving companies – there are a number of companies that state that you will pay them a percentage of the savings that they make for you on an on-going basis or sometimes as a one off fee. The issue I have with these companies is that they often use unrepresentative prices on which to make their comparisons. I have seen examples where they make the comparison to the initial price that is sent as a renewal price from the suppliers. Because this price goes out approximately 4 months before the renewal date and is generally based on averages of averages in terms of the forward pricing mechanism they are usually about 30% ahead of the true market price. Any price will look like a saving compared to that! So for instance if the renewal let from British Gas states an initial renewal offer to a smallish commercial supply of 8p per kwh for gas and actually the general prices on offer for the same supply are 4p per kwh then the broker might offer to charge 25% of savings and that looks inviting. Until you realise its actually 1p per kwh and that is a 25% increase in your energy cost. I am not clear why these people would be excluded because they are arguably less likely to find the best deal compared to other brokers who are also concerned with customer service because they are totally cost focused. One of the things that we speak with our clients about is the different billing and service processes of each of the suppliers to ensure the supplier is the right one for them. Not the cheapest necessarily but the best for them. Cost focused companies can't do that they are completely driven by price. In this respect they add very little value to the process for their clients. They almost always present themselves as transparent but transparent does not equate to value for money or righteousness.
- So called white labelling companies – there are a number of companies who undertake the practice of intercepting energy bills paying them and re-billing at different rates. If I had a pound for every person I have come across who has a complaint to make about these organisations I could give up Power Direct and just represent their issues full time and be a very rich lady. These companies are anything but transparent often they have unused supply licences and therefore give the impression that they are suppliers. I think some of their practices are not legal but getting someone to take notice is almost impossible, trading standards and the police do know about the misleading and questionable behaviours but they are not really interested because they are aimed at businesses. I have one client who we had placed in contracts for their gas and electricity who then signed an Letter of Authority for one of these companies, they remained in the same contracts (so legally were still responsible for the payments for that contract) but the company took over the billing and then sent reconciliation bills to the client after six months which meant that on the electricity they had paid the equivalent of 5p per kwh to the intermediary. I have not seen an example where it is clear to the customer what they are paying for the intermediaries service and in almost all cases the customer believes that they are being supplied by them. Where that isn't the case they believe that they are in some complicated wholesale deal which is not the case, on investigation the supplies are individually contracted. Whilst some supplier try not to deal with these companies, other will accept change of tenancies when they have not changed hands and others are happy to provide contracts to them. If the actual customer raises the issue with the

supplier they will generally be told that they have to complain to the 'third party' but the 'third party' has no meaningful complaints procedure because they are not regulated. Without court action there is little the customer is able to do and as you might expect that often proves too costly for small businesses to consider. This activity is particularly prevalent in the care sector for some reason.

Neither of these two organisation types will be covered by regulation and frankly on a day to day basis these people generate more issues than the odd broker who still insists on claiming their services are 'free'. Don't get me wrong, telephoning prospective clients and outright lying to attain their business is not uncommon among those who work in the more normal way by adding uplift to the base prices quoted by suppliers but they are generally easier to spot and easier to challenge when they do show up.

Another concern is that the suppliers will off load the responsibility to aggregators which I find worrying – some of the aggregators have some of the worst telesales reputations in the industry and struggle to meet the requirements of existing codes. They may become responsible for assuring that the TPIs who use them as a processing hub meet the requirements of the code or are signed up to the code. How well policed or audited that becomes is always going to be doubtful.

I have also heard a number of issues raised by brokers concerning regulation and some concern the issues above mainly I guess they are not keen to disclose fees or to have complaints processes that are open and have a method of redress beyond the confines of their own organisations. I think they have been given plenty of chance to put their houses in order so that they should have no fear of regulation so even though this is my business and my world I find myself at odds with perhaps the majority of my colleagues in the industry. Regulation in my opinion will save the TPI industry rather than undermine it. Mature business markets look after the gateway to the market place by ensuring that only those fit to operate are able to. Further to this I have heard brokers complain that there may be a cost involved in running regulation and that this may create a barrier to new entrants to the market. To this I say good, about time we put off the worst of the fly by night participants in our industry, those who set up one day and then disappear as soon as someone starts to take an interest in the way they make sales and what they promise. Regulation provides the opportunity to move towards an improved level of professionalism where those who operate are experts not just salespeople who moved off one thing to another to make their fortune.

As a business owner and TPI I would prefer the code to be managed by an independent body under the guidance of Ofgem with the obligation to fund it being placed on the TPIs primarily and suppliers to a lesser extent. Fees for TPIs should be levied based on the level of risk that they present so that the level of business that they complete in the market place makes a difference to the cost to comply.

I thank you once again for the opportunity to make an input and would be happy to be involved in further consultation activities.

Best Regards
Anne

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