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Dear Meghna,

PROPOSALS FOR REGULATING NON-DOMESTIC THIRD PARTY INTERMEDIARIES (TPIs)

Thank you for the opportunity to respond to the above consultation. We welcome the work conducted by Ofgem and expect that it will deliver real value to non-domestic consumers and the industry. We recognise the important role TPIs can play in the non-domestic energy market, but agree with Ofgem that certain consumer safeguards need to be in place.

In the long term we feel that licensing TPIs is likely to be the most effective way of ensuring transparency and competition in the market. Nevertheless, we agree with Ofgem that in the shorter term a TPI Code of Practice backed up with supplier licence obligations is the most expedient approach. Similarly, on governance, we believe Ofgem is in a strong position to manage the TPI code given that it manages similar codes. However, we recognise the resource implications of this for Ofgem and we agree that an independent panel with Ofgem oversight of the panel's decisions is a sensible compromise that has worked well for other industry codes.

In the light of this, we would be broadly supportive of Ofgem's recommended proposed options, subject to achieving further clarity on various aspects of the TPI definition, the scope of the code, and the framework. In particular:

- The proposed licence condition will need a clear definition of a TPI. We believe the proposed "narrower" definition in paragraph 2.7 of the consultation goes some way towards achieving this but further clarity and legal certainty is required. A good starting point would be the wording in section 143 of the Energy Act 2013 which provides the powers for possible licensing of TPIs in the longer term. However, we think that mandatory code coverage should initially:
 - be limited to intermediaries which receive a fee or commission from a supplier; and
 - exclude intermediaries which act only for a single supplier (or supplier group), as such intermediaries are effectively governed by the existing supply licence obligations on their employing supplier.

- Ofgem envisages that licence obligation will require suppliers to deal only with accredited TPIs. The licence drafting will need to capture what constitutes “working with” TPIs. Suppliers can interact with TPIs in a number of ways (paying fees, providing information, accepting instructions) and it may not always be straightforward to decline to interact in some of these ways. We think that it would be sufficient (and easier for suppliers to control) to limit the restriction to paying commissions or other fees.
- The code must ensure transparency on price and commission. Clear details of how a TPI will be paid commission, and how much, will ensure customers are protected from rogue companies recommending products merely based on the commission they would earn.
- The code should cover companies who provide advice on negotiating energy supply contracts, rather than those providing additional advice services such as energy efficiency, to the extent the latter are not already excluded by the licence definition.

We have provided our response to the consultation questions in Annex 1.

Please feel free to contact me or Gareth Williams (0141 568 3930) if you wish to discuss anything in this response.

Yours sincerely,



Rupert Steele
Director of Regulation

PROPOSALS FOR REGULATING NON-DOMESTIC TPIS

SCOTTISHPOWER RESPONSE

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

We think it may be helpful to distinguish two different definitions:

- a) the definition that goes in the licence condition and specifies the type of organisation that suppliers are prohibited from working with unless they are accredited;
- b) the definition that is used for the purpose of drawing up and administering the relevant codes of practice.

We would expect that (a) would be more narrowly defined, and drafted in a way that provides legal certainty, whereas (b) could be more inclusive and illustrative. For example, there may be categories of TPI which wish to become accredited to a CoP for marketing reasons, even if they would not be covered by the proposed licence condition. We focus our comments below on (a), since this will be the most important to get right.

We agree with Ofgem that the proposed definition in paragraph 2.6 is too broad. The definition in paragraph 2.7 goes some way to capturing the appropriate scope of TPIS but requires further refinement for clarity and legal certainty. A good starting point would be the wording in section 143 of the Energy Act 2013 which provides the powers for possible licensing of TPIS in the longer term.

This reads: “[a person] giving advice, information or assistance in relation to contracts for the supply of electricity [or gas] to persons who are or may become customers under such contracts [or] providing any other services to such persons in connection with such contracts”.

This avoids the circularity of terms like “intermediary” and the unclarity of terms such as “between” and of course has the benefit that it has been considered by Parliamentary Counsel. However, as an enabling power, these words are rather broad, and therefore it is necessary to limit them further. We suggest (with the changes shown in red):

“a person giving advice, information or assistance in relation to contracts for the supply of electricity or gas to persons who are or may become customers under such contracts or providing any other services to such persons in connection with such contracts and who

(a) receives a fee or commission from or on behalf of a supplier in relation to the conclusion or operation of such contracts; and

(b) does not represent exclusively one supplier or a number of suppliers who are all members of the same group.”

We understand Ofgem’s policy intent is that TPIS that should be captured are those which inter alia, provide advice or recommendations on a comparison of non-domestic supply contracts across the market. We would suggest that agents acting solely on behalf of one supplier (Primary Agents) do not need to be included, as suppliers are already obliged to ensure that agents acting on their behalf comply with relevant licence obligations.

We would suggest that the above definition could be used as an overarching definition within the supply licence obligation, subject if necessary to specific exclusions. We do not think that charitable or not-for profit organisations should generally be excluded if they receive fees or commissions from suppliers, as the potential for consumer harm still exists. It may also be helpful for Ofgem to provide an illustrative list of TPI types that fall within scope by way of guidance, but we would not expect this to form part of the definition for the purpose of licence condition drafting.

A further point for consideration is whether the regulation needs to cover intermediaries which are solely remunerated by fees from the customer. While it is possible that these could give poor service, there is much less risk of biased advice and our current view is that normal Trading Standards rules should be sufficient.

In addition to defining the scope of TPI activity, the supply licence obligation will also have to specify what constitutes “working with” an accredited TPI. Suppliers may interact with TPIs in a number of ways:

- a) paying the TPI a fee or commission in return for recommending customers to switch to them;
- b) providing information on tariffs to enable the TPI to provide advice – but without paying any fees or commission;
- c) accepting instructions from a TPI acting on behalf of a customer (who pays the TPI for its services).

We think it would be straightforward for a supplier to decline to work with a TPI where it is paying the TPI a fee or commission ((a) above). However, it may be difficult to withhold information, particularly tariff information which is in principle public domain ((b) above); and it may be difficult in practice to verify the accreditation status of someone contacting it on behalf of its customer ((c) above).

With our proposed definition of a mandatory TPI, it would be natural for the restriction to be limited to (a). We think that this should be sufficient – preventing a non-accredited TPI from being paid should be sufficient to make accreditation effectively mandatory.

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

We believe the list detailed in table 2.1 broadly covers those organisations intended to be bound by the code of practice, but would reiterate that any list should be illustrative. We suggest that the following amendments are required:

- We would suggest that agents acting solely on behalf of one supplier (Primary Agents) do not need to be included, as suppliers are already obliged to ensure that agents acting on their behalf comply with relevant licence obligations.
- We would also be inclined to exclude energy advice companies if they do not provide services in relation to energy supply contracts. This is achieved by picking up the statutory definition from the Energy Act 2013.

- It is not clear whether a TPI who works with customers on flexible contracts where prices are agreed, as and when decisions are made to buy, would be bound by the code of practice. We believe such TPIs should be, but this would need to be added to the table.
- We agree with Ofgem that issues relating to price comparison websites may be different to those of brokers, but we believe that the objective of the code of practice should apply to both. During the development of the code of practice, it may be an option to develop the code in two parts – a) face to face/telephone and b) websites – in order to highlight any specific differences.

Clarity would be required as to how possible participants would be identified, and who would ultimately make such a decision as to inclusion/exclusion on an individual case basis. As noted above, we would anticipate such a list being used as a guide as opposed to as part of the formal definition of TPIs for the purpose of the supply licence obligation.

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

As we set out in our response to question 1 and 2 above we believe the main exemptions should be:

- sales/supplier agents who work solely on behalf of an individual supplier ie primary agents; and
- energy advice companies who do not provide advice on negotiating energy supply contracts
- (probably) intermediaries paid solely by the customer

Aside from the parties above, our view is that the code of practice should apply to all those parties covered by the definitions in the licence and the code; we see no clear reason to exclude any party that falls within the definition.

There is a clear need to ensure the code of practice delivers the necessary balance between meeting its overall aim and avoiding unnecessary burden on its participants. If such balance is achieved we would expect any party working within its scope should find participation both acceptable and beneficial when promoting its services to potential clients.

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

It remains our view that licensing TPIs would be the most effective way of ensuring transparency and improving customer confidence. Nevertheless we recognise the timescales associated with this approach are long term and we therefore agree that Ofgem's proposed option 3 is more likely to deliver results in the near term. We agree that Ofgem should keep the situation under review, with a view to determining if in the longer term it may be useful to implement direct regulation.

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

We believe it would be appropriate for Ofgem to take the lead in the governance of the code, ie governance option A. That said we are aware of the challenges facing Ofgem adopting option A, and understand its preference for option B. We agree that under option 3 Ofgem should retain oversight of certain aspects of governance, eg modifications to ensure that the code is addressing the relevant key issues and meets the needs of consumers.

We expect the governance body to adopt standard practice including:

- maintaining an expanded list of TPI types (along the lines of that detailed in table 2.1), and agreeing any changes, subject to appropriate consultation;
- provide guidance to potential participants as to whether they would need to seek accreditation to the code of practice;
- adjudicate in disputes between a supplier and a TPI over whether accreditation is required.

Furthermore, we anticipate the governing body would maintain an additional list of all accredited companies, to which suppliers could refer in order to verify a TPIs accreditation

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

We would expect to see a mix of supplier, TPI, government and consumer representation on the panel. This body should represent the broader interests of the industry and consumers equally, without favoring any particular industry participant. We do not believe any current industry body, outwith Ofgem, has the requisite expertise to fulfil this role. This necessitates the development of a brand new independent board.

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

We agree that there is scope for improving complaints monitoring and information sharing, and our expectation is that the code will seek to introduce common processes and best practice in this area.

It is clear that there are sometimes difficulties in establishing clear ownership of complaints where the source of the issue is via a third party, and the customer complaint is often raised via the Supplier. Sharing of information, commonality in process and consistency in achieving agreed timelines could considerably improve the customer experience in respect of complaints.

QUESTIONS RAISED IN THE IMPACT ASSESSMENT

Question IA1: Do you agree with our assessment of likely impact on consumers? Is there any other issue/s we should be considering?

We broadly agree with Ofgem's assessment of the likely impact on consumers. The negative impact identified in options 1 and 2 make these impractical solutions. Given the long-term nature of implementing option 4, and the urgency of resolving issues in this area, we agree that consumers would benefit most, in the medium term, from option 3.

Question IA2: Do you agree with our assessment of likely impact on industry? Is there any other issue/s we should be considering?

Again we are broadly in agreement with Ofgem's assessment of the likely impact on industry.

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

We are broadly in agreement with the likely impact on competition, but further clarification on enforcement action would be welcome. Only option 4 refers to enforcement action against TPIs who mis-behave. While option 3 has the ultimate sanction of suppliers not working with TPIs who are not accredited, the enforcement action available to Ofgem under option 4 could result in fines being levied against non-compliant parties and potentially distributed to affected consumers. Under Option 3, it is less clear as to how enforcement would work.

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

We are not aware of any wider geographical or supply chain issues arising as a direct result of Ofgem's proposals.

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).**

As outlined in Question 5 we believe there remains a great deal of uncertainty as to how the code will be implemented, managed and governed. Until these issues are clarified it is difficult to assess any financial impact.

Assuming the cost of managing the code of practice is met by the TPIs who elect to join, including the administration and upkeep of the register of participants, we anticipate the cost

to Suppliers to be relatively small and within normal operating budgets. Any transfer of responsibility to the supplier in terms of administration would need to be assessed further when such a requirement is defined.

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.

We do not have any additional comments at this stage.

ScottishPower
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