

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

Third Party Intermediary Details

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Please note that Smith Bellerby Ltd is a member of the Association of Cost Management Consultants, which has existed for over ten years and has its own Code of Conduct. We have 25 member organisations ranging from single person consultancies to multi-million pound, multi-partner practices. Some members focus exclusively on energy procurement, but the majority offer a broader range of services to their clients, which may extend to other areas such as water, telecommunications, rent, rates etc. One of our members has recently participated in the non-domestic TPI working group.

I wish to comment on the questions posed in your recent consultation document as follows:

1	Do you agree with the definition of TPI's? Please provide any suggestions along with supporting information.	<p>The wording of the consultation document suggests to the reader that the main thrust of the proposed regulation is to prevent mis-selling of energy supply contracts to non-domestic consumers by raising the professional standards of TPI's. Therefore, I believe that the current definition of a TPI shown on page 9 ie. "a non-domestic TPI is an intermediary engaged in direct or indirect activities between a non domestic consumer and an active energy supplier" is too broad. It is in danger of capturing many organisations, which certainly participate in energy-related activities, but never get involved in the setting up of energy supply contracts.</p> <p>Therefore, in terms of who should be covered by the proposed regulation, I propose the following definition: "an organisation or part of an organisation whose activities include, wholly or in part, acting as a third party intermediary (TPI) involved in the setting up of energy supply contracts between non-domestic consumers and active energy suppliers, irrespective of how those activities are marketed and paid for".</p> <p>I believe this definition can be applied to all sizes of organisation from one man bands to larger, more complex companies. I would envisage that any individual part of an organisation ie the smallest legal entity which engages in the setting up of energy supply contracts would need to seek accreditation. So for example in a franchise situation, it would be each individual franchisee and for a large corporation, it would be the relevant trading company.</p>
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2	Do you agree with our list of proposed TPI's that could be covered by any regulation we introduce?	<p>Rather than try to come up with an exhaustive list of what types of TPI could be covered by the regulation, I prefer to employ a very simple test based upon a clear, bounded definition of what activities are covered by the regulation.</p> <p>So for example, whether organisations or parts of organisations describe themselves as brokers, consultants, sales agents, supplier agents, aggregators, energy management companies, charities, not-for-profit advice companies, franchisers, franchisees, bundled service providers etc, if they perform any activities which result in the setting up of energy supply contracts between non-domestic consumers and active energy suppliers, then they fall within the scope.</p>
3	What types of organisations should be exempt from our TPI scope definition and why?	<p>Note about charities and not for profit organisations - the main purpose of the regulations is to prevent mis-selling and raise professional standards of TPI's. This should apply irrespective of whether / how the TPI is paid. Hence, if a charity or not-for-profit organisation provides advice and support to non-domestic consumers which results in the setting of an energy supply contract, they should still seek accreditation.</p> <p>Using the same logic, exempt entities might be consultants providing energy audit services for compliance purposes such as DEC's, EPC's, ESOS etc; companies providing advice on the installation of energy efficient equipment and processes; companies who provide energy management software etc provided that none of the aforementioned organisations or parts thereof engage in ANY activities which relate to the setting up of energy supply contracts between non-domestic consumers and active energy suppliers.</p> <p>NB. If Ofgem wishes to include other energy-related activities ie. those which do not involve setting up of energy supply contracts, within the scope of the regulations, then this needs to be clarified and the proposal documents redrafted accordingly.</p> <p>There is one type of intermediary where It is not clear to me whether or not they would /should fall under the scope of the regulations and that is Managing Agents. For example, I know of several TPI's who provide energy procurement services to Property Management companies. The latter have delegated authority to sign energy supply contracts on behalf of their clients and I understand that they also pay the energy bills on behalf of their clients. Whilst the energy procurement agents would clearly fall within the scope of the regulations, would the Property Management companies? Are they an intermediary or are they the consumer? Further exploration of this may be necessary.</p>

4	Do you agree with our recommended option for regulating non-domestic TPI's?	<p>I agree with Ofgem that maintaining the status quo is unlikely to drive improvement in TPI standards to prevent mis-selling of energy supply contracts.</p> <p>Regarding the remaining three options, I favour options 2 & 4 since both clearly place the emphasis on the TPI industry itself to take responsibility for management of its own professional standards. That being the case, TPI's are much more likely to embrace the code. Indeed, they may see it as a route to providing them with a more significant voice thus allowing an important and healthy balance of power / influence within the sector.</p> <p>The consultation document states that option 3, where there is a licence condition on suppliers to work only with accredited TPI's, would place equal responsibility on suppliers and TPI's to work together. I disagree. I believe it would encourage suppliers, rather than TPI's, to take the lead in implementing and enforcing the code. In an industry where suppliers already have significant market power, this may not be viewed as beneficial by TPI's and especially by consumers. We and our clients value our independence from energy suppliers. In fact, for our business model where we are paid directly by our clients, this independence is crucial if we are to provide an effective service to them. If suppliers establish TPI vetting processes, or indeed, are seen to take up a significant proportion of the voting rights of any Code of Practice governing body, our independence might be called into question.</p> <p>Also, the consultation documents states that a key advantage of option 3 is that it will cover all TPI's. Will it? Based on my comments for Q1 to Q3 above, I would argue that only TPI's engaged in the setting up of energy supply contracts need to be accredited. However, suppliers may not be so discerning in their categorisation of TPI's, especially if the regulations are not crystal clear as to what aspects of TPI activity need to be accredited. Energy suppliers may interpret the regulations as not dealing with any TPI unless they are accredited, even though the TPI has been engaged by the consumer to liaise with the supplier about a matter unrelated to setting up an energy supply contract. For example, we know of TPI's providing consultancy advice to organisations on the CRCEES. They currently contact energy suppliers to obtain supplier statements which they then use as evidence of the organisation's energy consumption in any given CRC year. Will energy suppliers still respond to such requests for supplier statements from a non-accredited TPI? Also, we know of companies who supply energy management software. They may need to liaise with energy suppliers to obtain their clients' HH data for upload to their software. Again, will suppliers work with the software providers if they are not accredited?</p> <p>Under option 2, the voluntary code of practice, the consultation document talks about suppliers not wishing to restrict their options in terms of which TPI's they deal with, if they perceive other suppliers not doing so. My concern under option 3, is the contrary. Unless the regulations are clear and unambiguous about the activities which are covered by accreditation, suppliers could use them to drastically reduce the number of TPI's with whom they are willing to engage and therefore reduce their own compliance costs.</p>
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5	Do you agree with our proposed governance recommendations?	<p>In terms of governance, I believe that key activities should be undertaken as follows:</p> <ul style="list-style-type: none"> . Finalisation and maintenance of code of practice - governance board with Ofgem acting as approval body . Publicising code of practice to TPI's and consumers - governance board, Ofgem and energy suppliers. NB. I agree with the consultation document that this activity is crucial to the success of a voluntary code. . Registering TPI's who want to sign up to the code - Ofgem to maintain / publicise lists of TPI's who have signed up to the code and any TPI's who have been disciplined. . Ongoing monitoring of compliance with the code - governance board plus independent energy ombudsman to investigate complaints which cannot be resolved by standard processes . Taking disciplinary actions for breaches of the code - governance board plus Ofgem to maintain register of disciplinary action taken
6	Please provide your views on the appropriate representation for members of the proposed independent code board.	<p>The governance board should comprise TPI representatives plus participants from wider industry, such as energy suppliers, consumer groups etc. Non-TPI participants could sit on the board in an advisory capacity but in line with my response to Q4, I believe that voting rights should be restricted to TPI's. This would ensure that TPI's take full responsibility for regulating their own industry whilst taking due regard of other market participants. TPI representation on the governance board would need to be carefully set up to ensure that different types / sizes of TPI are adequately represented and that there is an appropriate sharing of voting power.</p>

7	Do you agree that there is scope for improving complaints monitoring and information sharing? Do you have any further views?	<p>It is my view that the success of a voluntary code of practice will hinge upon robust and transparent complaints handling / monitoring. The current code of practice will require all code members to have their own internal processes. It should therefore be fairly straightforward for code members to provide some basic statistics on the numbers and types of complaints, timescales and summaries of resolutions. Such info could be provided quarterly to the governance board / Ofgem using perhaps a web based system to minimise costs. Consumers, consumer groups, suppliers etc could submit info on complaints relating to non-code members via a similar portal. A summary of this info could be published by Ofgem and would assist in monitoring the regulatory activity of TPI's to ensure that it is effective.</p> <p>For complaints which cannot be resolved internally by code members, perhaps the Energy Ombudsman could extend its scope to provide independent investigation / resolution, even for non-micro businesses.</p>
IA1	Do you agree with our assessment of likely impact on consumers? Is there any other issue/s we should be considering?	<p>I agree that options 3 & 4, since both are mandatory, are likely to have the greatest impact on TPI behaviour in the short term. However, as outlined in my answer to Q4, option 3 may result in reduced consumer choice when it comes to selecting a TPI since there may be fewer organisations with whom suppliers are willing to work. In terms of costs of compliance, at least option 2 offers consumers more choice ie. they can choose to work with a TPI who is accredited, even though this may be slightly more costly.</p>
IA2	Do you agree with our assessment on the likely impact on industry? Is there any other issue(s) we should be considering?	<p>I broadly agree with the consultation document on the impact of the various regulatory options on the industry as a whole. I have just one comment - there is a point made on page 27 about TPI's using accreditation as a marketing tool, but not then aligning themselves to the principles of the code in practice and that this would be detrimental to consumers and the industry. This scenario is not restricted to option 2, where accreditation is voluntary. In fact, I would argue that it is more likely to happen under mandatory accreditation. The key issue is to have effective monitoring of accredited TPI's and appropriate sanctions for those who are found not to comply with the code</p>
IA3	Do you agree with our assessment on the likely impact on competition? Is there any other issue(s) we should be considering?	<p>In section 2.5, the consultation document focuses on the premiss of increasing consumer engagement with TPI's as a means of increasing competitiveness in the market place. Yet it was stated on page 4 that there are more than 1000 TPI's operating in the non-domestic market and that the majority of energy supply contracts in this sector are negotiated using TPI's. So there is already a high degree of consumer choice and engagement. The purpose of the regulations must therefore be to ensure that TPI's do not mis-sell energy supply contracts and that in conducting their business, they operate in a fair and transparent manner. The consultation document acknowledges that option 4 may be too costly and heavy-handed, thus acting as a barrier to new entrants or possibly forcing many existing TPI's to exit the market. As per my answer to Q4, I believe that option 3 may result in reduced competitiveness amongst TPI's, since suppliers will move to consolidate the number of TPI's with whom they will work. This leaves option 2 as a practical and not too costly, first step towards market regulation. If implemented with vigour by all interested parties, it could strike the right balance of "carrot and stick" towards improving overall TPI standards.</p>

IA4	Are there any distributional effects that our policy proposals could cause?	I have no further comments relating to the likely impact of the proposals on geographical or supply chain issues.
IA5	<p>To better inform our cost-benefit analysis, please provide us with financial / costs data on the following:</p> <ul style="list-style-type: none"> • Initial (one-off) costs: including costs to your business models and costs for familiarisation to the CoP (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, costs of taking any enforcement actions, monitoring compliance). 	<p>I can only comment in detail on our internal costs of compliance with any code of practice. External costs, especially those related to the setting up of a governance body and its ongoing operations, are totally unknown and I believe that these should be debated as soon as possible.</p> <p>I anticipate initial costs to understand our obligations, amend our internal processes and train staff to be between £1,500 to £2,000. If voice recording of telephone calls is also required, there would be an additional capital outlay which I understand may be up to £2,000.</p> <p>Ongoing costs to include staying abreast of code changes, monitoring internal performance, involvement in external audits of capability / performance, providing info and statistics to the governance body, responding to consultations on code changes, ongoing staff training etc to be around £1,000 pa.</p>
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