



Meghna Tewari
Retail Markets Policy
Ofgem
9 Millbank
London SW1P 3GE

Head Office
Inveralmond House
200 Dunkeld Road
Perth
PH1 3AQ

lois.wares@sse.com
01738 456410

8 May 2014

Dear Meghna

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

Thank you for providing SSE with the opportunity to provide comment on this consultation.

SSE has been supportive of Ofgem's development of a Code of Practice (COP) for TPIs working in the non-domestic retail market and we continue to believe that suppliers should be obligated to work only with accredited TPIs. We are therefore supportive of Ofgem's regulatory proposal which would make this an obligation for all suppliers.

We are concerned, however, that although under this proposal, TPIs must be accredited to work with suppliers, they will not be prohibited from entering the market without being accredited and working directly with the consumer. We are keen to understand how Ofgem intends to tackle this issue. Suppliers should not be responsible for ensuring that any TPI that comes to them to negotiate an energy contract on a consumer's behalf is accredited under the code, if that TPI is working directly for the consumer and not for the supplier.

A robust enforcement regime must be established if the COP is to be effective. SSE is concerned that Ofgem is proposing to pass on the current draft COP for finalisation to an independent board before the proposals for monitoring or enforcement have been discussed or finalised.

We are keen to engage further with Ofgem and other stakeholders to explore the best governance structure for the COP. Given that the COP aims to impose standards of service



on TPIs which are largely similar to those which are placed on licensed suppliers by Ofgem, we propose that Ofgem would be best placed to govern the COP.

You will find our detailed answers to the consultation questions below. If you would like to discuss any aspect of our response in more detail please do not hesitate to contact me.

Yours sincerely

Lois Wares
Regulation

Consultation Questions

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

SSE's preferred definition is the latter of Ofgem's two suggestions **"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"**, as we feel this better reflects the type of TPI the Code of Practice (COP) is intended to address.

We believe that the broader definition; **"an intermediary engaged in direct or indirect activities between a non-domestic consumer and an active energy supplier"**, could potentially refer to relationships with metering agents, Green Deal Providers or other intermediaries offering services on behalf of a supplier, such as installers being funded to carry out work under energy efficiency schemes such as ECO. These types of intermediaries are already subject to industry rules and governance which is specific to the service they are providing, and should not be required to be accredited under this COP in order for suppliers to continue their relationship with them. We do not believe this was Ofgem's intention but would like to ensure that this is made clear when the definition for a non-domestic TPI is finalised.

Whether the code of practise should only apply to face to face/telephone based services?

SSE believes the COP should apply to all TPIs regardless of the method by which they choose to conduct their business. The code outlines the basic standard of service that a consumer should expect to receive when dealing with a TPI for their energy supply needs. If there are other specific issues which relate only to TPIs who conduct their business online then these could be addressed in a separate section of the COP.

Whether the proposed regulatory approach risks not covering those TPIs who do not contract directly with a supplier?

We are concerned that whilst the COP and preferred regulatory approach will cover TPIs who contract with the supplier, there will be no onus on TPIs who contract directly with the consumer to become accredited under the code. SSE's process for contracting with TPIs already gives us a certain level of security that particular standards of service are being met. TPIs that contract directly with the consumer, however, are not subject to this level of scrutiny and we cannot give the consumer confidence that certain standards of service are being delivered by their TPI.

We would be interested to understand how Ofgem intends to tackle this issue. Suppliers should not be responsible for ensuring that any TPI that comes to them to negotiate a

contract on a consumer's behalf is accredited under the code, if that TPI has contracted directly with the consumer and not with the supplier. The overarching licence condition which will require suppliers to only work with accredited TPIs should only be enforced where the supplier has a contract with the TPI to provide services on their behalf.

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

We think Ofgem has correctly identified the type of TPIs which should be covered by the COP. For clarity, however, we would propose amending 'Sales/Supplier agent' to 'Supplier agent', as we feel that the term 'Sales agent' could apply to agents employed directly by the supplier.

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

SSE does not think that any organisation which meets the TPI definition should be exempt from the code. The principles of the COP are broad and should not be unduly burdensome to implement and maintain. We believe that excluding certain types of organisation would only risk detriment to the consumer.

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

SSE agrees with Ofgem's recommended option (Option 3) for regulating non-domestic TPIs.

However, we are concerned that although under this option, TPIs must be accredited to work on behalf of suppliers; they will not be prohibited from entering the market without being accredited and working directly with the consumer for a fee.

We believe that Option 4, direct regulation of TPIs, would increase the likelihood of consistency of accreditation and compliance across all TPIs participating in the market. Rogue TPIs should be subject to formal investigation and financial penalties where their actions are deemed to be inappropriate.

The most robust regulatory regime is one which includes a robust enforcement regime which is able to operate effectively and quickly. Introducing enforceable requirements for TPIs would give confidence to consumers that they are being protected.

SSE believes that direct regulation of TPIs should be considered as a backstop option to be initiated if this issue cannot be addressed via the COP.

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

SSE's preferred governance proposal is Governance option A.

SSE is concerned that Ofgem is proposing to pass on the current draft COP for finalisation to an independent board before the proposals for monitoring or enforcement have been discussed. A robust enforcement regime must be established if the COP is to be effective. Other than withdrawal of accreditation, we are unsure what other penalties could be imposed on TPIs that are in breach of the COP or how the consumer will be compensated if this breach has led to consumer detriment. We are also unsure how this will affect TPIs who have contracted directly with the consumer rather than the supplier.

Given that the COP aims to impose standards of service on TPIs which are largely similar to those which are placed on licensed suppliers by Ofgem, we think Ofgem would be best placed to govern the COP. Given the range of issues that the COP covers (e.g. unfair financial terms to misleading marketing), we are unsure whether there is currently one independent body which could address the range of issues and complaints which may come as a result of a breach in the code. From its experience in dealing with suppliers, we believe Ofgem is well equipped and experienced in dealing with all of the issues covered by the COP and would therefore be best placed to govern the COP.

We are keen to engage further with Ofgem to explore these issues and help develop the most appropriate governance structure for the COP.

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

If Ofgem chooses Governance option B, requiring an independent board to be responsible for the COP, SSE would expect a range of stakeholders to be represented on the board.

Consumers should be represented through independent bodies such as Consumer Futures.

The draft COP states that TPIs will be required to offer dispute resolution, including information about independent advice. Currently the Ombudsman only resolves complaints about energy companies and Green Deal Providers. Energy customers are not charged for this service. We are unsure whether the intention is for the Ombudsman to also have responsibility for complaints about TPIs and how this would be funded. We believe that a combination of independent consumer bodies should be represented on the board to ensure that appropriate dispute resolution paths are established.

TPIs will play an important role in the establishment of the COP and its administration. SSE is keen to see all TPIs that may be affected by the COP, be included in the policy development, similar to the involvement allowed to suppliers when new licence requirements are under development. We don't want to create barriers to market entry due to an ill-fitting regulatory regime.

As the preferred regulatory option will place a licence requirement on suppliers to only work with accredited TPIs, suppliers should be represented on the board. SSE is keen to understand what evidence will be required to show a supplier has met their obligation.

It is important to ensure that the governance body is independent and impartial, and that the objectives of the board stem from consumer welfare rather than commercial, political or other interests. The board would have to ensure consistency of accreditation and compliance across all TPIs participating in the market and have the ability to raise formal investigations and enforce financial penalties where their actions are deemed to be inappropriate.

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

SSE agrees that there is scope for improving complaints monitoring for TPIs and information sharing. We think this will help the industry recognise common issues which need to be addressed and should improve consumer confidence in the energy supply market.