

Meghna Tewari  
Senior Economist  
Ofgem  
9 Millbank  
London SW1P 3GE



[Thirdpartyintermediaries@ofgem.gov.uk](mailto:Thirdpartyintermediaries@ofgem.gov.uk)

7<sup>th</sup> May 2014

Dear Meghna

The Utilities Intermediaries Association (UIA) has promoted and enhanced the reputation of Third Party Intermediaries (Tpis) in the Energy industry, for the past 8 years in order to give confidence to those who utilise their services. One facet of their Articles of Association is to comment on government and regulatory consultations that impact on their members.

We are pleased to respond to your document seeking views on the Tpi Market regulation. As this document is not complete and has different options throughout our comments have to be taken as provisional. In our view there must be at least one further full consultation when the full proposal is known and no final decisions should be made until the results of that consultation are known.

#### **General Observations**

- The definition of what and who the proposal is to cover needs to be firmly established to enable meaningful comments on the consultation. Instead of trying to define roles it may be better to use the basis of who a Tpi works for which in itself will define roles. This may cause Ofgem other issues but the legal status of a Tpi cannot be overlooked. If it is, then any future decisions against individual Tpis will be challenged especially by rogue brokers.
- The UIA believes the only way to get anywhere close to reaching the objectives of stopping the "rogue" brokers and enhancing the reputation of Tpis is to formally licence Tpis and bring in a set of Standards of Conduct for all Tpis similar to those of the suppliers for the micro business market.
- If proceeding down the route suggested then the UIA believe there is an issue as to the legal vires of Ofgem to do so, which has been raised frequently with Ofgem without any substantive response resulting in the UIA having to instruct a legal firm to put forward these questions in order to extract a clear answer.



Registered at the Companies Registry in London No. 05812478 Registered Office: 26 Hackers Lane, Detling, Kent ME14 3JN

P.O. Box 355  
Tunbridge Wells  
Kent TN2 9ED  
t. 01622 738968  
f. 01580 879777  
e. [enquiries@u-i-a.org](mailto:enquiries@u-i-a.org)  
[www.uia.org.uk](http://www.uia.org.uk)

- Ofgem's normal methods of dictating the use of a "tool"; which is what the Code of Practice is, in the market is to set a specification and then let the market produce it. i.e. a smart meter has a specification and a number of firms manufacture to that specification. Ofgem would not attempt to dictate which meter should be used. The UIA believe that Ofgem should offer a specification to what a Tpi Code should do and allow the existing and any new codes to adapt to that specification and offer the service to the market. It is promoted by official organisations like BIS and is usual for trade bodies to issue and enforce Codes of Practice, hence the reason the UIA was created. This is a different process to regulation which is the role of Ofgem. Somewhere these processes need to merge to create the mandate and this should be by Ofgem seeking the powers of The Energy Act. This would address your duty to promote competition and to protect consumers' interests in an open and competitive market and indeed was your original suggestion.
- Ofgem have been less than transparent about costs and the possibilities of where they will fall in a document that promotes transparency. It is obvious that there will be a cost associated with Ofgem's proposals and some form of structure for meeting this. An assessment of level of cost must also have formed the basis of the consultation preparation yet there is no indication of it.
- The structure of the governance; the actual governance; and the enforcement of the governance has been "glossed over" and there is no mention of the formidable problems that will be encountered here in changing the market as opposed to creating a market.
- The document does not seem to have appreciated the role of the majority of Tpis which is as a paid representative of the consumer (we appreciate there are exceptions to this which seem to have undue emphasis in the document). All the legal documents between Tpi and supplier that the UIA have seen actually spell this out very clearly and we insist on our members having an agreement with their clients. In addition most suppliers demand a Letter of Authority signed by a customer acknowledging this fact. It maybe that Ofgem would find it easier to deal with this problem by acknowledging the Tpi as an "agent" of the supplier because the supplier factors the payment of monies from the customer to the Tpi, however, suppliers exclude the agent status and indeed the suppliers responsibilities to such agent from their contracts. The UIA questions what current powers Ofgem have in regulating a customers' chosen representative in an unregulated market.



- The RMR Review that started looking at this problem commenced in 2010. It is now 2014 and we still have no complete proposals on the table as to how this will go forward. This has reflected negatively on our business as recruitment has virtually ceased and we have had to terminate the arrangement with our Recruitment Manager because of the slow progress and missed delivery targets.
- The UIA have been promised notes from our meeting with Ofgem and phone calls to discuss competition issues, none of which have been provided which is an indication of the inefficient way the Tpi project has been carried out. Indeed it could also be an indicator of insufficient resources to successfully conclude this project which does not bode well.
- We understand that Ofgem tried to get the two supplier trade organisations (ICOS & Energy UK) to take on the creation of the governance of their proposals which was promptly declined. This is a route that the UIA would object to from the principal of a "seller" setting the process in a "buyers" market.
- The proposal put forward by Ofgem without the vires to do so represents a barrier to those wishing to enter the COP market and also could fatally damage businesses already in that market.
- Impact assessment is weak, incomplete and does not take into account the likely impact on the UIA an established Trade Association and Code holder for over 8 years and commented on favourably by the OFT following Ofgem urging them to seek such comments.
- Having been closely involved with this market for the last 8 years and part of the working group it is our opinion that the requirements for the large and small markets are different and unless Ofgem adopt a similar approach to that of the suppliers Standard Codes of Conduct there will need to be two CoPs with different elements. We appreciate the suppliers code only apply in the micro business but they can be very broad and one size could fit all Tpis,

## **SPECIFIC COMMENTS**

### Executive summary

Ofgem state that they now have powers under the BPMMRs to regulate Tpis. These are not the full powers of the regulations and if Ofgem takes as long to investigate breaches as it does at present with Licence Conditions they will not be effective. These powers appear to only deal with endemic breaches which means a large number of "victims" involved before there is any likelihood of action.

Ofgem state that a Code of Practice was developed which sets out its standards but again this is not transparent in that the code is not complete with many of the contentious issues deliberately avoided by Ofgem in the working group and is certainly not a workable CoP in its present form. If this has not been out for formal consultation this should be done.

We would recommend Option 4 irrespective of timing because it is becoming clear that the timescales expected by Ofgem will not be met and could well be longer than the licencing option. There is also a general election in 2015 and questions in regard to the future of Ofgem have been raised by politicians which could negate this entire exercise but this should not be used by Ofgem as a reason to potentially make the wrong decisions and/or act outside of their remit.

Who would put the board in place and under what mandate? We do not believe Ofgem presently has the legal vires to do this or retain a veto. It will therefore rely on voluntary participation throughout the industry and will have a similar effect to the recent group of meetings at Downing Street where the emphasis was on what the large players thought and the smaller ones; being a disparate group, sidelined.

## Chapter 2

2.1 There is no definition here for what can only be called a "sub broker" of another Tpi who interfaces between consumer and that Tpi. An estimated Fifty to Sixty percent of Tpis operate in this way at times and some always. This is an area which is "hidden" and could form a flaw and loophole in any regulation.

### 2.5 Table 2.1

**Sales supplier agent.** We do not recognise this definition and if they do exist there are few but maybe large.

**Price comparison web site** It must be understood that these do not work in the same way as the domestic web sites and often are only an electronic way of acquiring information and returning information but the process is the same as the manual operation. These would require further issues to be addressed in the CoP. A few have fully automated switching but may all use the same software.

**Umbrella brokers** is a term introduced by BGB and refers to their aggregators. The Ofgem definition should refer to Franchises

2.6 This definition would need exceptions once it was decided how processes would operate. Local Government working on behalf of another authority has its own laws. Landlords would be impossible to monitor or is the intention to capture these as intermediaries? If so, has thought been given to the cost related to necessity. Talk has been about audit at times. Is this really a necessary cost to be borne?



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Agree with Honest Marketing Why confuse again with comments like "*highest degree of professionalism*" which has many meanings and is in any case subjective!

What does Effective Monitoring mean and at what level and at what cost? If you monitor something and it isn't "effective" it is pointless.

3.8 What is the obvious legal restriction that gives rise to the statement that Ofgem does not have the power to recover costs? Is this an indication again that Ofgem has no real powers to do what it is doing and therefore acts outside of its powers?

3.11 There is no limit on sanctions by an independent body if the Tpi agrees that such sanctions can be applied. In option three you are suggesting an independent body which on your statement has no legal sanctions. This means that you will rely on the supplier to enforce any discipline against a Tpi and effectively do away with his livelihood without any processes in place at the moment. This could raise issues of unfair trading or restrictive practices. In reality this would represent no change because a supplier, at this time, is able to deal with who he wishes and if they were to cease trading with rogue brokers the problem is solved. Ofgem already have the mandate to enforce this through the suppliers standards of conduct.

3.12 What Costs and how can it be agreed between parties as Ofgem cannot enforce. It would appear, at this time, that the creation of any system has to be voluntary within the industry. If someone does not want to be part of it what happens? Competition issues cannot be "mitigated" they either exist or they don't and Ofgem's suggestion that they are "mitigating" any such issues is clear evidence that they act outside of their powers.

3.13 The whole process seems to rely on the buy-in of an amorphous body, "the industry". What happens if a portion does not? We do not agree it could be put into effect quicker than Option 4.

3.15 Energy Act powers should be applied for immediately

3.16 Tpis could then have similar conditions of conduct to the suppliers' conditions

3.17 This process should be progressed as soon as possible

3.18 If this means Suppliers are taking full responsibility for Tpis and there would be no direct penalty on Tpis then all that would happen would be the emergence of a new organisation using different front men. This again raises an issue about the identity of Tpis, especially if they are not formal companies.

3.19 Timing is not an issue to getting it right and all the signs are Ofgem haven't There is a wish for a "quick fix" in some quarters but this should not override "getting it right"

3.21 Do not agree with Option 3

3.22 These are statements with no rationale for implementing

3.24 Governance Option A This is quoted as an option, however, clearly it isn't because under present rules Ofgem is unable to operate in this way so once again we recommend they apply for licencing from the government forthwith.

#### Option B

This is really the only option offered and there are options that could have been considered which would be least costly and arguably more effective but they all fall on the present legal ability of Ofgem. Because of their apparent unwillingness to apply for the authority from the Energy Act the market could be burdened with a cumbersome costly inefficient process which may prove impossible to implement effectively.

3.28 This completely overlooks how this board will be set up. We believe Energy UK and ICOSS recently indicated a reluctance to be involved and Tpis would not want suppliers forming this board even if it was a shared membership. We do not believe Ofgem has the powers to retain overall control.

3.31 Consumers should not be involved as voting members

3.31 At what cost?

3.32 The UIA has a code and redress scheme and whatever Ofgem choses to do they intend to retain what they have. The UIA would expect to be included as a code manager for their code in any resolution that Ofgem come up with on account of its experience and work done over a period of 8 years when we have increased the trust, honesty fairness for its members' clients. In addition they have supplied Ofgem with numerous instances of bad practice and to date Ofgem have not acted on any of these stating they have no remit over Tpis. What has changed? The fact that some TPIs are verbose about not wanting to join the UIA for their own reasons should not be given undue emphasis when we represent some 13% of the I & C energy volume, have a direct membership of some 60 Tpis and represent indirectly some 300 when including sub brokers and franchises.

#### 4 Next Steps

There is lack of practicalities here and declarations in regard to how Ofgem expect Tpis to work, including rogues, that are not backed up by "powers" and will have little effect.



4.7 The Government bodies that Ofgem is engaging with all have small business responsibilities and it is clear they do not have the necessary experience of the complex Tpi and large I & C market. There are those that do have that knowledge and it should be used in a fair, honest and transparent way.

## Impact Assessment

Ofgem acknowledge that this is not complete and therefore comments must be taken as provisional

Although Ofgem must have some idea of costs involved because of their quoted "previous experience" it has been impossible to obtain this information and therefore as this will be a big factor it is impossible to comment.

4.3 This clause acknowledges that there are risks to existing participants in the CoP area but passes the responsibility to an unknown body for which there are no practical suggestions as to how this should be created except by an amorphous body "industry"

## Questions

The answers to these questions are provisional until a complete proposal is put forward to the next consultation and should in no way be used to justify any further actions by Ofgem.

- Question 1**      **Definition of Tpis.** There is more than one definition and we do not agree with them because of the complexities of trying to include all parties and therefore would suggest definitions as to who the Tpi works for. We do not believe Ofgem has authority over Tpis who work for customers and little (if any) authority over any others.
- Question 2**      **Tpis covered by the regulation** No we do not agree with this list. As stated we believe there should be different approaches to the SME and the Large market
- Question 3**      **Exemptions to the list** As we do not agree with the proposals we cannot comment
- Question 4**      **Do we agree with Option 3** No we do not agree with the option, it should be option 4



- Question 5**     **Governance recommendations** We cannot comment because they are incomplete and as stated we do not believe Ofgem has the legal vires to go down this route.
- Question 6**     **Representations on Board** It should not have customers as voting members. Customers should have another form of representation
- Question 7**     **Improving complaint recording** This could be overkill and should not be implemented unless it is proved to be required when a regulatory process is in place
- Question 1A5**   **Financial Costs** How can we provide costs if we do not have a clear picture of what is involved?
- Question 1A6**   **Unintended consequences** There has not been a constructive assessment of impact on existing Tpi codes and their organisations which could be terminal.

For and on behalf of The Utilities Intermediaries Association.

A handwritten signature in blue ink, consisting of a stylized first name followed by a long horizontal line extending to the right.