

Third party intermediary (TPI) working group, set-up phase

2<sup>nd</sup> Session

Minutes for the Third Party Intermediary (TPI) working group to discuss the set-up phase of the TPI Code of Practice.	From	Ofgem
	Attendees	TPIs, energy suppliers, consumer/trade organisations
These minutes are also reflective of input received up to one week after the session.	Date and time of Meeting	20/10/2014, 12.45 – 16.30
	Location	Ofgem offices, 9 Millbank, London

**1. Welcome and introduction**

- 1.1. 32 organisations attended the group session.
- 1.2. Jenny Boothe introduced the day’s session and briefly recapped on discussions from the previous group. All members introduced themselves by name and organisation.
- 1.3. Ofgem expressed disappointment that some members could not attend. Jenny Boothe reiterated that the working groups are not the only way to engage with Ofgem and that a number of bilateral meetings are also being held across the market.

**2. Introduction**

- 2.1. The session’s presentation can be found on the website [here](#). As part of the session, members then split into three groups to discuss information reporting, the complaints process and breaches of the code. Each of the three break-out groups then presented the outcomes of their discussions to the wider group for further comment.
- 2.2. On slide 5 (feedback from the market), Alex Tyler clarified a statistic presented from an Ofgem survey should be read that only 12% of organisations surveyed used a TPI, but of those, the majority were satisfied. One supplier commented that the statistics shown were not reflective of what they have seen at the larger end of the market. Comments were made by a number of TPIs that there should be equivalence between the requirements/ standards on suppliers and those to be imposed on TPIs.
- 2.3. Jenny Boothe restated that the principles behind the design of code included: equity, proportionality, efficiency and reasonable administrative burden. She stated that these principals should be borne in mind going forward.

**3. Reporting**

- 3.1. The reporting group fed their discussion back to the group, beginning with what should be recorded by TPIs’ internal complaint handling procedures to allow clear reporting:
  - The group began with the current legal definition of complaint: ‘any expression of dissatisfaction’
  - It was then agreed that categories should be tiered, with 5 or 6 broad categories based upon points along the ‘customer journey’ and those relating to pre-sale and post-sale

issues. Beneath these, there would be more specific categories. Some of the broad categories suggested were:

- **Marketing** – this would relate to issues with TPIs before any sale was initiated. Some sub-categories suggested were:
  - Nuisance calls – nuisance calls would relate to continued calls after a customer had asked not be contacted again.
  - Misleading advertising – this would relate to claims made in marketing materials, including sales pitches through telephone and face-to-face channels.
- **Misleading claims** – this would relate to claims made by the TPI during the sales process, which were felt by the customer to be misleading.
- **Remuneration** – consumer complaints about transparency (or other issues) of the remuneration (commonly commission) received by a TPI.
- **Execution of contracts** – consumer complaints about how the TPI executed the contract.
- **Renewals** – complaints related to consumers' contract renewals. There was some discussion over whether this was a pre-sale or post-sale issue.

3.2. Next the group discussed what kind of information the code administration function (CAF) would publish.

- The group felt that published complaints information about TPIs should not be different to the published complaints information about suppliers. The group believed that the CAF could take a role similar to that of the Energy Ombudsman.
- Some members of the group thought that any complaints information should only be published once they become a 'breach', which would occur at some point during the escalation process.

## 4. Complaints process

4.1. The complaints process group fed their discussion back to the wider group:

- Any complaints procedure must be visible to customers so that they know what route to follow. They also said that complaints should follow a pre-defined escalation route.
- Timescales for complaint handling should not be prescriptive due to the widely different organisation sizes and resource capabilities of TPIs. However, any timescale must be justified by the TPI.
- If the TPI definition is limited to procurement then all complaints to the TPI about issues taking place after the procurement of the contract should be referred on to suppliers. There needs to be a clear statement about the handling of complaints about suppliers received by TPIs e.g. signposting.
- Customers should have a direct route to contact the CAF but should raise issues with their TPI first. If the complainant has not spoken with their TPI first then the CAF should refer them back to their TPI.
- There was a question about whether suppliers should be obliged to provide information on complaints they receive about TPIs onto the CAF. The group said that implications for the customer journey should be considered carefully e.g. if they have to speak to the supplier then the CAF then the TPI then the CAF again then the process may be too onerous for already dissatisfied consumers.

- Where an aggregator is involved in the energy contract procurement all relevant information needs to go through them so that all aspects are captured
- The CAF will need the competence to understand the complaints it receives.

4.2. The wider group had further comments following the feedback from the complaints process group:

- One member suggested that a complaint should only go to the CAF if it relates to compliance with the Code of Practice. Another member cautioned against opening debate about complaint definition and suggested that the code stick to 'any expression of dissatisfaction'.
- One member said that complaints procedures should be included on TPIs' websites and be part of any ongoing audit process.
- Several members rejected the principal that different customer types could receive different complaints procedures.

## 5. Breaches and sanctions

5.1. The breaches and sanctions group fed their discussion back to the wider group. It was considered that complaints and breaches are different and could progress at the same time e.g. a complaint of poor service and the breach that contract terms were not sent to the customer. Also, there didn't need to be a complaint to investigate a breach.

5.2. The group looked at how the CAF might identify/be notified of a breach of the code:

- A TPI refers itself
- An escalated complaint
- Audit by the CAF
- Whistle-blower
- Supplier refers a breach

5.3. Following this the CAF could launch an investigation and decide whether the code has been breached. The breaches would then be categorised into minor breaches or major breaches. A TPI's intention to breach the Code would be a key consideration for deciding severity of a breach. Several minor breaches or failure to resolve a minor breach may be equivalent to a major breach.

5.4. The CAF would then make a recommendation to the Code Board, which could ultimately be responsible for deciding on whether there has been a breach and what sanctions may be taken.

5.5. The group then presented potential sanctions for breaches of the code, and some key questions surrounding them:

- A written warning. Should it be public? Even if not public, would suppliers know about it?
- Fines. Where would the money go?
- Suspension from the code. Should it be made public?
- Increased frequency of audit
- Expulsion from the code.

5.6. The group also said that a key principle should be 'if there is a breach, there is a sanction'

5.7. The wider group had further comments following the feedback from the breaches and sanctions group:

- Some members raised concern that a public warning was a 'non-trivial' punishment. Even if 99% of consumers did not know about the warning, suppliers would still know and may decide to cease trading with a broker, essentially closing them down. The same point was raised in relation to any public suspension from the code. TPIs asked whether a supplier would lose their licence, which although possible had not happened as punishments tended to be fines.
- One member raised a point that timescales would be very important as an investigation could have a very detrimental effect on a TPI's business. Another member believed that 99% of breaches could be dealt with within days and weeks rather than months and years.
- Some members were concerned about whether a TPI who was expelled from the code could avoid the restriction by reapplying with a new business.
- Two members said that giving the code board the power to levy fines was a significant power as it would be an uninsurable risk for TPIs.
- Some members were concerned that expulsion from the code is not comparable to the punishments given to suppliers as no supplier has ever lost their licence for bad consumer treatment.
- One member said that breaches of the Code should be around dishonesty; wilful failure to observe agreed rules on transparency etc.
- There was broad agreement that some kind of appeals process must be available to TPIs to challenge decisions by the board. Some members thought that this could be a role for Ofgem.
- One member said that the interaction between the Business Protection from Misleading Marketing Regulations (BPMRs) and the Code and its processes will need to be confirmed.

## **6. Code administration**

6.1. One member said the CAF would need staff with a wide range of skills, including a significant amount of management in order to liaise with all the key stakeholders. This member reiterated that the central function will need to do a lot more code management than suggested by the name 'Code Administration Function'.

6.2. One member questioned whether the CAF would have an audit function. Ofgem responded that the audit function could either be part of the CAF or outsourced by the CAF to an external agency.

6.3. Some members raised potential risks around the CAF and Board having the legal authority to undertake some functions (e.g. issue fines, publish complaints information). Some members believed that direct licensing of TPIs could mitigate these risks.

6.4. Members agreed that the independence of the code board will be key. However the options on slide 10 of the presentation were not agreed, and the group agreed to have further discussion on Code Board membership at the next meeting.

## **7. Closing remarks**

- 7.1. All attendees were thanked for attending and for their useful input. The next session will take place on 7 November 2014.