

Third party intermediary (TPI) working group, set-up phase 3rd Session

Minutes of 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
	Date and time of Meeting	07/11/2014, 10.00 – 15.00
These minutes are also reflective of input received up to one week after the session	Location	Ofgem offices, 9 Millbank, London

1. Welcome and introduction

- 1.1. 33 organisations attended the group session.
- 1.2. Jenny Boothe introduced the day's session and explained that the agenda includes both new areas of discussion and review of discussions from the previous two sessions.
- 1.3. The session's presentation can be found on the Ofgem website [here](#)

2. Review of general principles

- 2.1. The general principles on slides 5 and 6 were presented to the group. Members gave comments on the definition:
 - One member noted that the definition on page 5 only mentions supply of electricity and not gas. Jenny Boothe explained that the final definition in the Code would cover both gas and electricity supply.
 - Some members raised concerns that the definition from the Energy Act 2013 was much broader than members had expressed preference for previously. Ofgem explained that while the definition of a TPI was very broad, activities in scope of the code would be focused on energy purchase transactions.
- 2.2. Some members queried how sub-brokers (brokers that work with aggregators but do not have direct relationships with suppliers) would be covered by the Code. Ofgem explained that aggregators would be obligated by the Code to work only with accredited sub-brokers. Some members raised concern that if a sub-broker breaks the Code then the proposed regulatory structure would mean it is not enforceable. It was clarified that any party to whom prices are given should be accredited.
- 2.3. One member asked if the Code would be a set of rules or a set of principles. Jenny Boothe said that Ofgem's current intention is to have both rules and principles in the code. The principles will cover all activities while there will also be specific rules regarding complaints handling for example.
- 2.4. One member disagreed with the objective of the code on page 5, 'to raise the overall standard of TPI service to customers'. They thought that the objective of the code should be to prevent harm to non-domestic consumers.

3. Equivalence

3.1. Alex Tyler explained that the Code would seek to place equivalent requirements on TPIs and suppliers. However, she also explained that equivalence is not appropriate in all instances given some of the specific areas of harm identified by Ofgem. Members raised the following comments on equivalence (based on slides 7 to 10):

- Some members commented that many licence obligations on suppliers regarding supply to non-domestic customers are focused on supply to Micro Businesses. There was no single view among members on whether the Code should apply to just Micro Business Customers or all non-domestic customers.
- One member was concerned that the obligations suggested on slide 7 on providing terms before contract entry would eliminate verbal contracts from the market. This member felt that a more appropriate way of addressing any harm associated with verbal sales would be to require the recording of all sales calls.
- One supplier noted that there should also be equivalent requirements based on SLC 14 on customer transfer blocking.
- Some members queried the need for the Central Administration Function (CAF) to receive information on the meter points gained, and others strongly objected to using this information to publish TPI market shares. Ofgem representatives explained that the intention was not for this information to be made public but to be used to assess TPI and supplier compliance with the Code/SLC.
- There was debate about the use of a scaled measure for showing complaints against a TPI. It was clarified that numbers of complaints against suppliers are published without any assessment of legitimacy and without any reference to scale. There was agreement among several members including a consumer representative that TPIs should be transparent about how much of the market they search. One member suggested differing levels of accreditation for those that search the whole market and those that only search a selected number of suppliers, however several representatives did not agree with this approach.

3.2. Most supplier representatives did not want to be parties to the code, though some expressed a desire to be able to influence and contribute to the code. Most, though not all, TPI members also expressed reluctance at suppliers being party to code. One supplier said that the simplest option would be to licence TPIs.

4. Potential new requirements

4.1. Alex Tyler presented potential new requirements for TPIs and suppliers (slides 12 – 15). The following comments were made:

- There was widespread disagreement amongst members regarding a mandatory 14 day cooling off period for newly signed contracts. Several members felt that this would lead to significant costs and risks to TPIs and suppliers, while providing little benefit to customers.
- One member believed that allowing the cancellation of mis-sold contracts could be difficult to implement in practice and that care would need to be taken to make sure customers are not left on expensive out-of-contract rates.

4.2. On the potential reporting requirements:

- One supplier expressed concern that if the reporting requirements on suppliers are onerous then they may want to reduce the number of TPis they work with in order to minimise their reporting burden.
- Some suppliers believed that data on meter placement could be a powerful tool for identifying trends indicative of non-compliance.
- One TPI did not believe that regular reporting was necessary if the TPI has done nothing wrong. Another member believed that the probable cost of the suggested reporting requirements was unjustified.
- One TPI queried how Ofgem will ensure that suppliers only give prices to code-accredited parties, given that TPis sometimes do not go through the normal broker desk procedures to get prices. Ofgem clarified that giving prices to non-accredited TPis through any channel would be a breach of the licence condition.

5. Board Membership

- 5.1. It was suggested that the board could consist of some people from the present TPI Working Group, who could meet when needed. It was also suggested that something similar to the Working Group could be used as a low-cost Board, containing representation from TPis of different sizes or business models as well as supplier and consumer representation. Most members agreed that the board should be as small as possible while still including the expertise and representation required.
- 5.2. Other members preferred the idea of an independent Board, not consisting of active industry participants. However, it was also acknowledged that finding a truly independent Board could be a challenge as even ex-industry participants could be perceived as having bias.
- 5.3. Some members thought that the Board's role could be ultimately to make recommendations to Ofgem in order to ensure independence. Another suggestion was to have a small number of industry participants, a representative from the CAF and an independent chair or chair supplied by Ofgem.
- 5.4. There was a concern from some members that the Board's decisions around sanctions would automatically be appealed, given the potential for any public sanction to affect suppliers' willingness to work with the TPI. An arbitration process was suggested as a backup in cases of disagreement.
- 5.5. Several members stated that where there was a breach of the Code, this was likely to also include fraud and questioned how the code would interact with the BPMMRs. It was clarified that the code is intended to be preventative, whereas BPMMRs are reactive.
- 5.6. There was no single view on Board composition.

6. Code modification process

- 6.1. There was acknowledgement amongst members that while existing codes (e.g BSC, SEC, SMICoP) could provide some useful background, comparisons with the proposed TPI code would be limited given that it will be a behavioural code, rather than technical.
- 6.2. One member queried whether the Code Board would be discredited if Ofgem chose to overrule its recommendation. Another member also queried why Ofgem should have a role given that, unlike suppliers, TPis are not regulated bodies.

- 6.3. One member said that the code modification process should not be too onerous on smaller TPIs. Given that the majority of TPIs are smaller than most suppliers, the code modification processes used for current industry codes may be too onerous for many TPIs.
- 6.4. One member queried where a party would go to challenge a modification decision. It was also suggested that code signatories should have a right to appeal code modifications.

7. Funding

- 7.1. Members were asked to split into three groups (suppliers, larger TPIs, smaller TPIs) to answer the questions on slide 22. We also received one response from an independent member. The responses are summarised in Appendix A.
- 7.2. In addition to comments made on slide 22, members also raised the following points:
- Some members thought that any complaints resolution should be paid for by the TPI receiving the complaints, mirroring the arrangement between suppliers and the Ombudsman.
 - Some members said that making TPIs pay for triggered audits is effectively the same as a fine given that the cost will still be incurred by the TPI even if no compliance issues are found.
 - The CAF could self-finance set-up costs and recover these costs over time through membership fees.
 - Some suppliers were happy to contribute to the set-up funding of the code, but only if the funding required was reasonable.
 - Any questions around funding are difficult to answer without knowing the likely set-up and running costs.
- 7.3. One member estimated that it could cost around £250,000 - £500,000 to set up the code and then a similar amount in ongoing annual costs.

8. Review of previous working group topics

- 8.1. Ofgem first ran through a potential accreditation process (see slide 26). The following comments were made by members:
- Some members thought that nobody should be refused accreditation at the first instance. Compliance with the code should be determined by audit.
 - One supplier suggested that the CAF could alert suppliers of potential issues at sign up, before audit. Several members expressed disagreement with this suggestion.
- 8.2. The following comments were made by members on the potential reporting arrangements:
- One member queried what would happen if Ofgem were alerted that the CAF was not functioning well. Jenny Boothe explained that this would depend on the contractual arrangements between Ofgem and the CAF.

- One member questioned why TPIs would need to report resolved complaints. It was clarified that this was to show opportunities where potential modifications to the code were needed.

8.3. Some members thought that the results of any audit should only be public if the auditor finds a breach of the code. Other members thought that any compliance issues should only be made public at the point a TPI is either suspended or disqualified from the code.

8.4. The following comments were made by members on the potential complaints arrangements:

- Members reiterated that any complaints should go to the TPI in the first instance.
- Some members thought that there was potential for complaints to go to the CAF if they remain unresolved for a period of time, mirroring the arrangements between suppliers and the Ombudsman. This period is 8 weeks for suppliers.
- One member said that the CAF would need the discretion to act more quickly on some complaints than others, for example if someone raised a point of potentially fraudulent behaviour.
- One member raised concern that the definition of complaint as 'any expression of dissatisfaction' was too broad and that complaints should only be those in writing and about the TPI specifically.
- One member thought that the diagram on slide 29 should include a mediation step between the Code Board and the TPI.

8.5. The following comments were made by members on the potential breaches and sanctions and processes:

- Some members reiterated points from previous working groups that any public sanction or announcement that an investigation is taking place is likely to stop a TPI from being able to carry on business, as suppliers would likely stop working with any TPIs in this position.
- Some members believed that the risks to TPIs of breaching the Code would be much higher than any supplier's risk of breaching licence conditions. It was felt that a supplier is highly unlikely to put out of business over compliance issues but that the arguments preventing this did not apply to TPIs.

9. Final thoughts

9.1. Members were given a final opportunity to raise points not made so far.

9.2. One member thought that the definition should only apply where the TPI does not have a direct contract with the customer.

9.3. One member thought that more consideration could be given to differing levels of commission from different suppliers. Some TPIs noted that they would like to charge a single fee for their services but are prohibited by suppliers from doing so. One member thought that greater consideration needs to be given to commission and fee transparency.

- 9.4. One member estimated that the Code may take around 6 months to set-up but that a lot of time may be spent reaching all TPIs that need to be accredited. He also stated that the Central Function will need to be well equipped to help TPIs sign up.
- 9.5. A member asked that the CAF should be described as a management function, as it would do more than administration.

10. Next steps

- 10.1. Ofgem stated that the next milestone will be a consultation on the Code and the Licence Condition underpinning the code in Q1 2015. Ofgem will be continuing to engage with stakeholders but there are no further Working Group meetings currently planned, though feedback is welcomed via thirdpartyintermediaries@ofgem.gov.uk or via bilateral meetings.
- 10.2. Meetings to discuss the licence condition with supplier groups are scheduled for November.
- 10.3. Ofgem thanked all attendees for their time and input over the last three sessions.

Appendix A – responses to funding questions

	TPIs – group 1	TPIs – group 2	Suppliers	Independent
1. Actions in the event of shortfall/surplus	There shouldn't be one.	Reconciled in next year.	Shouldn't be one but reimburse or recover by the same proportion as initial payments made	Shouldn't happen – reimburse or recover by the same proportion as initial payments made
2. Assign costs between suppliers/TPIs	Suppliers pay for set-up, TPIs thereafter	Suppliers pay for set-up, TPIs thereafter	100% TPI. Although potential for voluntary contribution from suppliers to fund set-up.	51% TPIs, 49% suppliers.
3. Payment Structure	Depends on the size of the fee but probably annual	Annual membership and/or a higher accreditation fee	For TPIs to decide although have no objections to a flat fee.	Not answered
4. Fee variation	Majority view for flat fee for all TPIs, audit fees vary by size of TPI	If possible to band fee levels by contract value turnover	Flat fee would be easiest option – depends on the cost	Suppliers should pay based on market share, with a similar principle for TPIs
5. Actions if non-payment	Payments made in advance	Non-payment = not accredited	Is a breach of the code	After suitable warning, TPI expelled from code with suitable & appropriate publicity
6. Payment basis for audit	Potential for regular audit as part of ongoing membership fee. Potential for some sort of deposit for triggered audit (i.e. get money back if no problems found)	All audits would be at TPIs own cost. Questioned appropriateness of ongoing regular audits.	All audits would be at TPIs own cost.	Regular audits paid as part of annual membership. First part of triggered audit paid for as part of membership, any subsequent auditing to be paid by TPI on a 'case fee' approach
7. Are fines appropriate? If so, how should the money be used?	Vote 5/8 in favour of fines. Money to be used for promoting the code/reducing next year's fees	Not supported but any money should go back to central function.	Not enthusiastic about the idea of fines. An issue for TPIs to discuss.	Not appropriate