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Domestic third party intermediaries: Confidence Code and wider issues

EDF Energy is one of the UK's largest energy companies with activities throughout the energy chain. Our interests include nuclear, coal and gas-fired electricity generation, renewables, and energy supply to end users. We have over five million electricity and gas customer accounts in the UK, including residential and business users.

EDF Energy supports the growth of Third Party Intermediaries (TPIs), as we believe that it is important for consumers to have a variety of ways in which they can interact with the energy market. In order for TPIs to deliver the most benefit to consumers, they must provide an accurate and complete view of the market, and must be able to develop new and innovative approaches to marketing energy products and services.

Based on our experience with TPIs to date, we believe there are a number of issues which need to be addressed in order to ensure that TPIs present an unbiased view of the market, and that the regulatory risk associated with TPI activities is allocated to the party best placed to manage it. Failure to allocate risk appropriately could result in suppliers placing more restrictions on TPI activities through commercial agreements than would otherwise be necessary.

Our main areas of concern are:

1. TPIs present a view of the market to consumers. It is important that this view accurately represents the entire market without distortion, and that consumers are able to make well informed energy purchasing decisions based on information which is directly comparable. Because of this, we believe that the principles of the Retail Market Review (RMR) should be applied consistently across all parties that provide information to customers, regardless of whether they are a licensed supplier or a TPI.
2. Interactions between TPIs and consumers increase suppliers' exposure to regulatory risks which they are poorly equipped to manage due to the limited means available to monitor and control TPI behaviour. This can result in contractual arrangements which seek to restrict TPIs' activities so that they are aligned with each supplier's individual interpretation of the regulations. This requirement for TPIs to be party to complex and potentially conflicting contractual agreements and controls with each supplier could result in a significant barrier to market entry and innovation in the TPI market. Because of this we call for Ofgem to regulate domestic TPIs more directly, similar to the regulatory framework being established for non-domestic TPIs.

Our detailed responses are set out in the attachment to this letter. Should you wish to discuss any of the issues raised in our response or have any queries, please contact Robin Healey on 01273 428 348, or myself.

I confirm that this letter and its attachment may be published on Ofgem's website.

Yours sincerely,

A handwritten signature in blue ink that reads "Paul Delamare".

Paul Delamare
Head of Downstream Policy and Regulation

Attachment

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EDF Energy's response to your questions

Question 1: Do you agree with our summary of the current domestic TPI landscape? In light of recent developments in TPI services, are there other important factors we should be taking into account?

EDF Energy broadly agrees with Ofgem's assessment of the current TPI landscape. However, we are concerned that it does not consider the relationship between TPIs and suppliers in sufficient detail. As a consequence of this it fails to identify some problems with the current regulatory framework which could undermine the growth and success of the TPI market in the future.

Our view is that along with using the Confidence Code to ensure adequate consumer protection, Ofgem should also consider the wider issues relating to TPIs and put in place a regulatory framework which gives TPIs greater independence from suppliers by more closely allocating regulatory risk to the party with the best means of mitigating it. In this instance regulatory risk should be allocated to TPIs since they have the greatest degree of control over their compliance with the regulations.

By placing a clear and comprehensive set of regulatory requirements directly onto TPIs, Ofgem will reduce the amount of regulatory risk which suppliers need to manage through their commercial contracts with TPIs. This will reduce the amount of control that suppliers seek to exert through legal and contractual means, allowing TPIs greater independence from suppliers.

Question 2: Does the definition exclude services you would expect to be covered? If so, how might it be adjusted to accommodate them?

The definition is very broad and does not exclude any services we would expect to be included.

Question 3: Would this definition include services you wouldn't expect in light of our TPI vision statement? Why do you think these services should be excluded?

TPIs are involved in establishing a legally binding contract between two other parties. The definition should refer to the commercial or transactional element of TPI activity in order to reflect this, as it is currently too broad.

The use of the term 'intermediary' implies that TPIs are only responsible for facilitating an agreement between customers and suppliers, and that they act independently of any particular supplier. This is inconsistent with the way that TPIs are treated as Representatives in the supply licence when they are authorised by a supplier to represent them. When a TPI is representing only one supplier it is appropriate that they should be treated as that supplier's Representative, with the supplier being accountable for the actions of the TPI. However, when a TPI is representing many suppliers, it is more

appropriate that they should be treated like an independent intermediary and have their actions regulated more directly.

Question 4: Do you agree that domestic intermediaries should provide an independent, transparent, accurate and reliable service to their customers?

We agree with the principles of independence, transparency, accuracy and reliability but we question to what extent a TPI can operate independently of a supplier if that supplier is exercising control over the TPIs actions in order to ensure compliance with the supplier's interpretation of the regulations.

Providing greater transparency around the commercial arrangements in place between suppliers and TPIs will highlight to consumers how those arrangements affect the view of the market that customers receive. However, in order to ensure that those commercial arrangements do not limit or distort the market for TPI services amongst suppliers, more direct regulation of TPIs is required.

The provision of accurate information is critical to ensuring that consumers are equipped with the means to make informed energy purchasing decisions. Because of this, the principles of the RMR should be applied equally across TPIs and suppliers in order to make comparisons as meaningful as possible.

It is essential that TPIs are regarded as providing a reliable service to all consumers. Customer complaints are a key measure of how reliable a service currently is, and an important means of driving improvement in the future. Because TPIs present consumers with a view of the energy market, it is appropriate that they should be held to the same customer complaints handling standards as suppliers, in order to avoid undermining consumer confidence in TPI reliability.

Question 5: Are you aware of potential challenges for particular types of TPI models in embedding any of the principles? How might these challenges be addressed?

No response

Question 6: Are you aware of barriers to effective information exchange between suppliers and TPIs which impact on services to consumers? If so, how might these barriers be addressed?

In our experience, the lack of accurate pre-registration data available to TPIs is the most common cause of problems during registration and undermines consumers' switching experiences. This could be addressed by providing limited access to appropriate ECOES data for TPIs. Restrictions would need to be put in place to prevent TPIs from obtaining any data which could breach the Data Protection Act or which could be used by TPIs to gain an unfair competitive advantage.

In addition to this, supplier pricing and tariff information could be provided to TPIs via a central body in order to ensure a consistent and up-to-date view of market information.

Question 7: What are the specific challenges which you think exist in providing face-to-face services? What are the causes of these challenges and what is their impact on consumers?

SLC 25 introduces a number of specific challenges when providing face-to-face services. When a TPI is directly or indirectly authorised by a supplier to represent that supplier in its dealings with customers, the TPI is deemed to be acting as a Representative of the supplier, who becomes accountable for the TPI's compliance with all the relevant regulatory requirements contained in the supply licence.

TPI face-to-face interactions are particularly problematic for suppliers because they are poorly placed to manage the regulatory risk that TPI activities introduce on their behalf under SLC 25. If suppliers are not confident that TPIs are appropriately regulated to ensure that they comply with the requirements of SLC 25, this may undermine their confidence in this area of the TPI market and restrict the growth of face-to-face services provided by TPIs in the future.

Question 8: We have identified information exchange and face-to-face services as priority areas for our consideration. Are there other areas you think we should be focusing on in the near future?

In addition to prioritising work on information exchange and face-to-face services, we encourage Ofgem to complete their work on TPI cashback and incentives as a matter of urgency.

Question 9: What are your views on our proposal to increase the transparency of sites' commission arrangements with suppliers and the impact this has on the results a consumer will see?

We support the intent of Ofgem's proposals to increase the transparency of commission arrangements and the impact that this has on the view of the market that consumers receive. However, our belief is that providing commission information in isolation, for example two clicks away from the TPI homepage, is unlikely to be prominent enough to ensure that consumers are aware of the information.

EDF Energy is keen to see an end to the use of misleading phrases such as "tariffs I can switch to today" to describe a particular selection of tariffs based on commercial arrangements. We believe that a 'whole of market' view should be easily available, and that contextually relevant information should be provided to customers at the appropriate time.

Information regarding commissions and the effect they have on consumer choice should be displayed in a manner which is intuitive to consumers and which helps them to understand the impact of commissions in a tangible way. For example, all TPIs could provide an initial view of the entire market, regardless of commercial arrangements. When consumers apply filters to this 'whole of market' view, an appropriate message could be displayed, for example "the tariffs displayed are all available from suppliers which have paid a commission to appear on this list".

Question 10: Do you agree that sites should direct consumers to the sources of independent advice identified? Are there other sources you would suggest?

EDF Energy supports this signposting. Another appropriate source of advice would be the Citizens Advice website.

Question 11: Do current requirements (within the Code or more widely) or supplier practices put unnecessary restrictions on sites' business models? If so, what changes could be made to allow greater flexibility?

The most significant cause of restrictions placed on TPIs by suppliers is the way in which the current regulatory framework places accountability for TPIs' compliance on suppliers through their licence obligations. By allocating regulatory risk to a party whose only means of exercising control is by contractual means, the current regulatory framework often results in disproportionately restrictive contracts between suppliers and TPIs.

Under the current regulatory framework, suppliers are accountable for ensuring that all TPIs acting as their Representative comply with all supply licence conditions which govern conduct during customer interactions, notably SLC 25, 25C, and the provision of information to customers under the RMR. Because suppliers have different interpretations of the regulations, and have different attitudes toward the associated regulatory risk, TPIs are often subject to conflicting requirements from suppliers which could result in TPI activities being unduly restricted. Because of this, the current regulatory regime is likely to inhibit innovation and diversity amongst TPIs.

The greater the regulatory risk that suppliers are required to manage when using TPIs, the greater the restrictions placed on TPIs by suppliers. To allow TPIs a greater degree of flexibility, the balance of risk allocation between TPIs and suppliers needs to be adjusted to make the regulation of TPIs through the Confidence Code more direct and more robust with clear monitoring and enforcement by Ofgem.

Question 12: Should there be a central repository of information for prepayment customers? Who should fill this role? And in what way could sites facilitate the provision of this information to consumers?

We are not clear on what such a repository would be intended to achieve beyond providing information for customers regarding the Debt Assignment Protocol (DAP).

Question 13: What timeframe would you propose for implementing our proposals in relation to site independence?

The Confidence Code is intended to provide consumers with additional protection and to maintain trust in TPIs. Because of this, it is important that any changes to be implemented as a result of Ofgem's work should be implemented in a timely and efficient manner.

Our view is that, it is crucial to the long-term development of the TPI market to establish a regulatory framework which removes obstacles to TPI development. Because of this, we regard it as being critical to ensure that the underlying regulatory framework is fully developed before any changes are implemented.

Question 14: Do you agree with our proposal to increase consumer awareness of the availability of whole of market comparisons? Are there better alternatives?

EDF Energy strongly agrees with the principle that consumers should be made aware of the availability of 'whole of market' comparisons in order that consumer choice is not restricted or unduly influenced by TPIs.

We believe that the best way of ensuring that consumers are aware of 'whole of market' comparisons is for this to become the default view presented by all TPIs, regardless of commercial arrangements. When consumers apply filters to this 'whole of market' view, an appropriate message could be displayed, for example "the tariffs displayed are all available from suppliers which have paid a commission to appear on this list".

Question 15: Do you agree with our proposal to allow sites to compile their own supplier ratings? Are there factors other than those set out that sites should consider when formulating their ratings methodology?

EDF Energy supports Ofgem's proposal to allow sites to compile ratings, as long as ratings are derived using an appropriate methodology and are published alongside an explanation of the methodology used. It is essential that ratings are kept up-to-date to ensure customers see a fair reflection of the current service being provided.

Question 16: Do you think there is benefit in exploring further the criteria for filtering or categorising green and environmental tariffs on comparison sites? Do you have suggestions for the best way to define these criteria?

This work should be considered in conjunction with Ofgem's ongoing work to improve consumer protection in the green and environmental tariffs market.

Question 17: What timeframe would you propose for implementing our proposals in relation to site transparency?

The Confidence Code is intended to provide consumers with additional protection and to maintain trust in TPIs. Because of this, it is important that any changes to be implemented as a result of Ofgem's work should be implemented in a timely and efficient manner.

Question 18: Do you agree with our proposal for sites to use the Personal Projection methodology when calculating the cost of a tariff?

We do not agree with Ofgem's proposals to use the Personal Projection methodology for calculating tariff costs. Whilst it is essential that the information which consumers use to make energy purchasing decisions is clear and consistent, our view is that the Personal Projection methodology can be misleading for forecasts where the current tariff has less than one year remaining before it expires.

Showing a forecast based on the prices a customer would pay if they do not act when their current tariff expires can result in a misleadingly high view of the savings that a customer will make through switching, and can result in the customer switching early to a higher priced tariff than the one they are currently on. This is bad for consumers and

could undermine confidence in the market if consumers are perceived to be switching in pursuit of savings that don't materialise.

Price comparisons need to be performed in a way which is both consistent and meaningful to customers. When a customer is shopping for a new tariff, it is important to them to know how their energy costs will change compared to their current tariff so that they can see whether they will be better or worse off as a result of switching. Because of this, comparisons should be carried out between the new tariff and the customer's current tariff across an entire 12 month period, rather than comparing the new tariff to a customer's current tariff plus Relevant Cheapest Evergreen Tariff in instances where the current tariff has less than one year remaining.

Question 19: Do you agree with our proposal to require sites to display a Tariff Information Label for each of the tariffs on their site?

We agree with Ofgem's proposal to require sites to display a Tariff Information Label for each of the tariffs on their site. In order for consumers to be able to make well informed energy purchasing decisions, they must be provided with the means of understanding clearly where the value lies in each product on offer.

Question 20: Should we seek to ensure consistency of tariff cost results across the industry? Or should we allow room for suppliers and TPIs to differentiate by adopting their own methodologies?

EDF Energy advocates providing consumers with a consistent view of their forecast costs in order that comparisons can be made on a like-for-like basis. However, aligning cost forecasting methodologies between TPIs and suppliers based on the Estimated Annual Costs calculation in the supply licence will not address the problem of what constitutes a 'best estimate' of a customer's Annual Consumption Details when actual metered data is not available. Our view is that because the supply licence makes reference to accommodating both seasonal and intra-day usage levels, it is appropriate that seasonal adjustments should be made to customers' Annual Consumption Details in order that future consumption can be forecast as accurately as possible.

Question 21: What timeframe would you propose for implementing our proposals in relation to site accuracy?

The Confidence Code is intended to provide consumers with additional protection and to maintain trust in TPIs. Because of this, it is important that any changes to be implemented as a result of Ofgem's work should be implemented in a timely and efficient manner.

Our view is that there are issues with the calculation of cost forecasts using the Personal Projection methodology which need to be addressed before a common approach can be decided and included in the Confidence Code.

Question 22: Do you agree that we should introduce principles from the complaints handling standards into the Code? Are these the right principles to introduce?

We agree that TPIs should use the same complaints handling standards procedure as the suppliers to ensure consistency in how customer complaints are handled across the energy

industry. This approach will also provide consumers and suppliers with useful information on TPI complaint handling performance.

Question 23: Do you support our proposal to introduce messaging and links to Warm Home Discount information as a requirement of the Code? Do you have specific views regarding where and how this information should be presented to consumers?

EDF Energy supports Ofgem's proposal to introduce messaging and links to Warm Home Discount (WHD) information as a requirement of the Confidence Code. This information should be provided to consumers before they start to make their energy purchasing decisions since the retention or loss of the WHD could have a significant impact on the choices made.

Question 24: Do you agree that we should set up a working group to discuss site accessibility guidelines?

We agree that a working group should be established to discuss site accessibility guidelines. A large amount of work has been done in this area to establish best practice and this information should be used to inform guidance on accessibility standards for TPI websites.

Question 25: What timeframe would you propose for implementing our proposals in relation to site reliability?

The Confidence Code is intended to provide consumers with additional protection and to maintain trust in TPIs. Because of this, it is important that any changes to be implemented as a result of Ofgem's work should be implemented in a timely and efficient manner.

Question 26: Do you agree with our proposals to allow a broader range of comparison sites to become accredited under the Code?

We agree with Ofgem's proposals to allow a broader range of comparison sites to become accredited under the Code. The removal of the need for a TPI to manage and control its price comparison website and to use its own tariff database and calculator should allow additional growth in the TPI sector.

Question 27: What challenges and benefits do you envisage if we were to expand the Code to cover mobile apps? And follow-up prompt services?

We believe that these services should be included within the scope of the Confidence Code but we do not have any evidence to support what the potential challenges and benefits may be.

Question 28: Do you have suggestions as to how best to increase awareness of the Code among consumers?

We support Ofgem's proposal to raise awareness of the Confidence Code as part of its 'Be an Energy Shopper' campaign. In addition to this, we believe that TPIs themselves have a crucial role to play in raising awareness of the Confidence Code. TPIs should regard accreditation as being valuable to their customers and should raise awareness of the Code amongst consumers in order to highlight the benefits of using an accredited TPI.

Question 29: Do you agree that we should appoint a single auditor and pass through the costs to sites? Are there better alternatives for achieving this?

We agree with Ofgem's proposal to appoint a single auditor and pass through the costs to sites. This will ensure consistency during the audit and will allow TPIs to recover costs in a manner which is most appropriate for their operating model.

The results of the audit should be made available to consumers and suppliers to allow full transparency of TPI performance.

Question 30: Do you agree with the proposed changes to the Code audit, enforcement and compliance, and change processes?

Whilst we agree with most of Ofgem's proposals in this area, we are concerned that there is little explanation as to how a TPI's compliance with the Code will affect suppliers' compliance with their licence conditions.

The current proposal is for a two-tier approach to compliance enforcement, with a dialogue based approach for lesser breaches of the Code and action by Ofgem's enforcement team for more serious contraventions. Our view is that any TPI activity which could result in a supplier being in breach their licence conditions should be investigated with the TPI in question by Ofgem's enforcement team and appropriate corrective action agreed between the TPI and Ofgem.

EDF Energy
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