



Making a positive difference
for energy consumers

Gwneud gwahaniaeth gwirioneddol
i ddefnyddwyr ynni

Third party intermediaries,
energy suppliers, consumer
organisations, small businesses

Our Ref:
Direct Dial: 0207 901 7374
Email:
thirdpartyintermediaries@ofgem.gov.uk

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Dear Colleague

Next steps on our project for a code of practice for the non-domestic third party intermediary (TPI) sector

Summary

Ofgem has been developing regulatory policy intervention to improve standards of behaviour in the non-domestic TPI market. Last February, we consulted on options and the majority of respondents supported a code of practice for non-domestic TPIs¹ backed by a licence condition on suppliers to only work with TPIs signed up to this code. As set out in our letter of August 2014², the next step was to be a consultation on detailed governance arrangements of this option.

Since August, the scope of the CMA's investigation into the energy market has become clearer and they have identified microbusiness customers and the role of TPIs in the non-domestic market as areas for further examination. Reflecting this development, we have decided to defer the planned consultation on the TPI code of practice until there is greater clarity, so we can determine the appropriate level of intervention.

Following the work we undertook last year, this letter sets out a set of principles setting out the basic standards we encourage and expect responsible TPIs to adhere to. We are also updating our fact sheet for business on TPIs. In instances of consumer harm we will, in accordance with our Enforcement Guidelines³, take action to prevent breaches of the Business Protection from Misleading Marketing Regulations (BPMRs)⁴.

Background and work to date

TPIs act between the customer and energy supplier, promoting engagement with the market. They play an important role in the non-domestic market, where they facilitate the majority of contracts (up to 85% of large industrial contracts)⁵. Following issues identified during the Retail Market Review in 2013⁶ and calls from industry, Ofgem has been actively

¹ <https://www.ofgem.gov.uk/publications-and-updates/next-steps-non-domestic-tpi-code-practice-project>

² <https://www.ofgem.gov.uk/publications-and-updates/next-steps-non-domestic-tpi-code-practice-project>

³ <https://www.ofgem.gov.uk/ofgem-publications/92045/enforcementguidelines12september2014publishedversion.pdf>

⁴ <http://www.legislation.gov.uk/uksi/2008/1276/contents/made>

⁵ Third Party Intermediaries in the Business and Industrial Energy Supply Markets, Cornwall Energy, July 2014

⁶ <https://www.ofgem.gov.uk/ofgem-publications/39355/retail-market-review-final-non-domestic-proposals22-marchfinal.pdf>

The Office of Gas and Electricity Markets

9 Millbank London SW1P 3GE Tel 020 7901 7000 Fax 020 7901 7066 www.ofgem.gov.uk The Office of Gas and Electricity Markets

Cornerstone, 107 West Regent Street, Glasgow, G2 2BA Tel 0141 331 2678 www.ofgem.gov.uk The Office of Gas and Electricity Markets

1 Caspian Point, Caspian Way, Cardiff Bay CF10 4DQ/ 1 Pentir Caspian, Ffordd Caspian, Bae Caerdydd CF10 4DQ
Tel 029 2044 4042 www.ofgem.gov.uk

working with industry to determine the need for and potential shape of regulation for the non-domestic TPI market.

In June 2013, we published a draft code⁷, setting out areas of focus for TPIs. We asked TPIs to consider this in their operations but are aware of only a few organisations that have done so to date. Following consultation on our proposals for regulating non-domestic TPIs⁸, we published our preferred position in an open letter of August 2014⁹. This set out our intent to introduce a mandatory code for TPIs, backed up by a licence condition on suppliers to only work with TPIs accredited to the code. This letter also set out our aim to consult on the detailed governance in Q1 2015.

The Competition and Markets Authority (CMA) is currently investigating aspects of the energy market. In February 2015, the CMA published its Updated Issues statement¹⁰ setting out areas for further examination, which included the role and regulation of TPIs and the microbusiness energy market more generally.

Reflecting this, we consider it appropriate to change our plans for the consultation on detailed governance around non-domestic TPI regulation. This is in order to:

- Reduce regulatory uncertainty by clarifying external conditions before finalising our proposals for consultation;
- Reduce the burden on industry by not asking for consultation responses where there is uncertainty over the approach and direction;
- Ensure that proposed regulation takes into account the views of all stakeholders, (including the outputs from the CMA investigation), and delivers on our strategic consumer outcomes.

In the meantime, we are actively sharing information with the CMA on our work on TPIs, in accordance with our statutory duties.

Next steps in the TPI project

We will review the next steps for this work once there is more clarity surrounding these areas. In the meantime, we recognise from the work done to date that while TPIs offer an important service to non-domestic consumers, there is a need to define the standards we expect TPIs to meet.

Based on the work to date, Ofgem has identified a number of principles which we expect all TPIs working in the non-domestic sector should follow. They would underpin any possible future regulatory interventions.

Principle	Example of TPI behaviour
A. Honesty	You should identify yourself, the services being offered and any organisations you represent (directly and indirectly) clearly at the start of any interaction with a customer and obtain their consent before any marketing
B. Respect	You must at all times respect the consumer's wishes and should cease the current contact and avoid future contact if the customer requests

⁷ <https://www.ofgem.gov.uk/ofgem-publications/75208/non-domestic-tpi-working-group-non-domestic-tpi-code-practice-draft.pdf>

⁸ <https://www.ofgem.gov.uk/publications-and-updates/third-party-intermediaries-tpi-proposals-regulating-non-domestic-tpis>

⁹ <https://www.ofgem.gov.uk/publications-and-updates/next-steps-non-domestic-tpi-code-practice-project>

¹⁰ https://assets.digital.cabinet-office.gov.uk/media/54e378a3ed915d0cf7000001/Updated_Issues_Statement.pdf

Principle	Example of TPI behaviour
C. Accuracy	You should make the customer aware of how much of the market you searched to obtain the offers you propose to them and ensure all offers are accurately presented
D. Transparency	Before obtaining their agreement to the contract, you should make the customer aware of all principal terms of the energy contract, including the services you provide and how the customer will pay (directly or indirectly) for those services.
E. Customer-focused	You should record and investigate all complaints fully and act quickly to put things right when you make a mistake
F. Professionalism	You should ensure staff are adequately trained for dealing with customers and adhere to these principles

We want to encourage TPIs to embed these principles within their own practices, as we believe these practices would lead to a positive consumer experience, improving trust and engagement levels with TPIs and hence with the energy market. This is particularly important for micro-businesses where 40% have never switched¹¹.

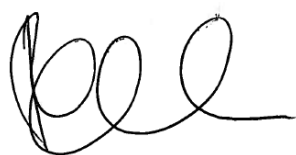
We are also publishing an updated version of our small business factsheet on TPIs. This will be publicised through joint work with Citizens' Advice, intended to support small businesses in dealing with TPIs.

As part of our regulation of the sector, we will continue to monitor compliance with the Business Protection from Misleading Marketing Regulations (BPMRs). These regulations set out a number of requirements that TPIs must meet when dealing with non-domestic customers. Breaches of the BPMRs may also constitute criminal offences which can be enforced by Trading Standards and CMA and Ofgem may notify these enforcers of identified concerns where appropriate.

Ofgem encourages all TPIs to start working to the principles above. We ask all suppliers and TPI representative groups to make TPIs they work with aware of these principles and encourage them to follow them.

Please send all comments and feedback on this letter to Meghna Tewari (Head of non-domestic retail markets) at ThirdPartyIntermediaries@ofgem.gov.uk

Yours faithfully



Rob Church
Partner, Smarter Markets

¹¹ <https://www.ofgem.gov.uk/ofgem-publications/85187/non-domquantfinalforpublication181213.pdf>