Department for Business, Energy & Industrial Strategy

Third-party intermediaries in the retail energy market

Call for evidence

Closing date: 06 December 2021

August 2021

Any enquiries regarding this publication should be sent to us at:
EnergyTPI@beis.gov.uk

Contents

General information

Why we are conducting a call for evidence

The retail energy market is undergoing a period of considerable change. Technological advances are enabling new business models, and customers have increasing choice in how they engage with the market. This has led to, and in part been driven by, new businesses that are acting in the sector. These businesses include third-party intermediaries (TPIs). TPIs sit between customers and regulated entities in the energy market (typically suppliers, but also entities such as system operators). TPIs offer a range of services and are widely used in the market, with further business models likely to emerge as the energy system evolves to meet our net-zero ambitions.

While TPIs offer services that are valuable to customers and the energy system, there are concerns that the actions of some TPIs could lead to customer harm. However, TPIs operate outside the scope of the current retail energy market regulatory framework, which was developed when most customers would engage directly with their supplier. As the role of TPIs has grown in recent years, and as it evolves in the future, we want to be confident that customers and the energy system remain adequately protected, regardless of the services used or how customers choose to engage with the market. For this reason, the government committed to consulting on regulating TPIs in the December 2020 Energy White Paper.

We are issuing this call for evidence to increase our understanding of how TPIs currently operate in the market, whether a regulatory intervention is required and, if so, how any new regulatory framework could be designed.

Call for evidence details

Issued: 16 August 2021

Respond by: 06 December 2021

Enquiries to: **Email:** EnergyTPI@beis.gov.uk

Call for evidence reference: Third-party intermediaries in the retail energy market

Audiences: We are keen to hear from TPIs, particularly those currently operating in the retail energy market, including price comparison websites, auto-switching and recommendation services, brokers and consultants, load controllers and bill-splitters. We also want to hear from energy companies, customers, customer representatives, trade bodies, academics, and any other stakeholders. It may also be of interest to licence-exempt entities.

Territorial extent: The territorial scope of this publication is GB wide, with the intention of receiving responses from customers, industry and other groups from across GB, while

recognising that certain energy policy areas are devolved in some jurisdictions, such as the provision of consumer advice and advocacy in relation to gas and electricity.

This publication cites data in relation to the GB energy market and refers to energy policy schemes that operate across GB, unless it states otherwise. This call for evidence will inform future policy development by government in areas where it is responsible for energy policy and related matters, and engagement with devolved administrations in relation to devolved policy.

How to respond

Respond online at: https://beisgovuk.citizenspace.com/energy-strategy-networks-markets/third-party-intermediaries-in-the-retail-energy-ma

We are inviting responses to this call for evidence via the online e-consultation platform, Citizen Space. Your response will be most useful if it is framed in direct response to the questions posed, providing evidence in support wherever possible. You should not feel the need to respond to all the questions posed and may choose the questions you wish to respond to depending on your specific areas of interest and/or expertise. When responding, please state whether you are responding as an individual or representing the views of an organisation.

You may also respond via email to EnergyTPI@beis.gov.uk. We advise that you do not send responses by post to the department at this time, as we may not be able to access them.

Confidentiality and data protection

Information you provide in response to this call for evidence, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request. We will process your personal data in accordance with all applicable data protection laws. See our privacy policy.

We will summarise all responses and publish this summary on GOV.UK. The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This call for evidence has been carried out in accordance with the government's consultation principles. If you have any complaints about the way this call for evidence has been conducted, please email: beis.bru@beis.gov.uk.

Executive summary

Our energy system is undergoing a fundamental transformation as we deliver our ambition to reach net-zero emissions across the whole economy by 2050. The energy retail market is the main interface between customers and the energy system, and must also evolve to meet this challenge. A dynamic, innovative and competitive retail market will best ensure we deliver the energy transition at lowest possible cost.

This will require the deployment of innovative business models, and changes in how customers interact with their energy supply. Third-party intermediaries (TPIs) play an important role in the operation of the market, and are likely to become increasingly important as the energy system continues to evolve.

TPIs act as an interface or intermediary between customers and licensed entities in the market. The licensed entity is typically the supplier, but can also be a system operator in respect of organisations managing electrical load. TPIs help customers engage with the market and have become commonly used. However, we are concerned that some customers may be experiencing detriment as a result of using their services. TPIs in the energy retail market are not currently directly regulated, although some voluntary codes of practice and accreditation schemes exist. We set out the existing regulatory landscape for TPIs operating in the retail energy market in the chapter entitled ‘Existing and potential TPI regulatory arrangements’, including a brief non-exhaustive overview of how TPIs are regulated in other sectors.

The supply of energy is an essential service and we need to be assured that customers are adequately protected, no matter how they choose to engage with the market, or which services they receive. If customers do not have sufficient trust in the market or are deterred from new and innovative approaches to market engagement, the customer outcomes and behaviours that are needed to reach a net-zero energy system will become increasingly difficult to achieve.

We committed to consulting on regulating TPIs in the December 2020 Energy White Paper. This call for evidence represents the start of that process. In this call for evidence, we set out the common types of TPI that are currently operating in the market and the associated benefits to customers, including emerging TPIs that manage electrical load. We also outline the potential areas of customer harm and energy system risks that we have identified from their activities.

Our call for evidence focuses on both domestic and business customers, and therefore the following types of TPI:

TPIs used mostly by domestic customers

- Price Comparison Websites (PCWs) that mainly operate in the domestic market and allow customers to compare tariffs from across the market quickly and easily. PCWs are widely used and understood by customers, and represent the most common way that

domestic customers engage in the market. We include internet-based, in-person and telephone comparison services within the scope of this call for evidence.

- Auto-switching and auto-recommendation services that represent an evolution of the PCW business model and actively notify or recommend customers to switch, or do so on their behalf.
- Bill-splitters that may bundle a number of services, including energy supply, into a single consolidated bill and split this across multiple bill-payers, such as Houses in Multiple Occupation (HMO)[1]. Bill-splitters may act as an agent on behalf of a domestic customer or licensed energy supplier. We understand that some bill-splitters may alternatively consider themselves to be gas or electricity resellers and consider that their activities are subject to a licence exemption[2].

TPIs used mostly by business customers

- Brokers and consultants that act as an intermediary between a business customer and supplier for their energy needs, offering services such as energy procurement and ongoing account management. Brokerage services are a common feature of the business (or non-domestic) market. Consultants also offer additional services, such as compliance audits or market analysis, which we do not propose to consider further within the scope of this call for evidence.

TPIs used across the energy system

- Load controllers who can control or impact customer energy usage using communication networks. These organisations can enable customers to reduce costs or earn revenue, in return for changing how or when the customer uses energy. This group of organisations could include aggregators, energy management system providers or electric vehicle chargepoint operators, and may not necessarily operate in the energy retail market alone. The market for non-domestic aggregation services is relatively mature, with domestic products and services offered by load controllers likely to increase significantly as we decarbonise heat and transport.

While we focus on the common types of TPI currently operating in the market, we recognise that new business models are emergent or will develop, which will offer services or interact with customers in a way that we cannot anticipate. Any potential regulatory framework must not constrain innovation, and must be flexible enough to respond to further market changes. As part of this call for evidence, we ask for views on the proposed features for any future TPI regulatory framework if required.

[1] See https://www.gov.uk/private-renting/houses-in-multiple-occupation
[2] See infra footnote 19.

Introduction

What are third-party intermediaries (TPIs)?

TPIs include a wide range of business models operating in the retail energy market that provide customers with products and services linked to energy supply, such as advice on energy procurement and switching. TPIs typically sit between the regulated entities in the energy system and customers, helping them to engage with the market. TPIs provide services to both domestic and business customers, including microbusinesses[3].

Ofgem estimate that more than 1,000[4] TPIs currently operate in the non-domestic retail market alone, with some services particularly prevalent and widely used by customers. TPIs are the most common way that customers decide to engage in the market, with around 49% of domestic customers using a price comparison website in 2019[5], and 67% of small (fewer than 50 employees) or microbusiness customers using a broker in 2018[6].

The benefits of customer engagement in the market are clear. In 2016, the Competition and Markets Authority (CMA) identified the presence of a 'loyalty penalty' for some energy customers, where disengaged domestic customers were being excessively charged for their energy, with analysis suggesting this was costing around £1.4bn a year. Microbusiness customers were also susceptible to poor outcomes, including over-paying for their energy supply, as a result of lower levels of engagement in the market[7].

The CMA identified that an important contributing factor to the loyalty penalty[8] included barriers to domestic customers and microbusinesses accessing and assessing important energy tariff information. TPIs play an important role in improving customers' engagement with, and experience of, the market. By reducing information barriers and switching costs, such as time spent comparing tariffs, they can help facilitate customers' market engagement and potential cost savings from switching tariff or supplier. TPIs can also offer a more convenient or preferred approach for customers compared to interacting directly with a licensed supplier[9],

[3] Microbusiness customers are business customers that typically use less than 100 MWh of electricity per year, and/or less than 293 MWh of gas per year, with an annual turnover or balance sheet of under EUR 2 million and employing up 10 people or their full-time equivalent. We use business or non-domestic customer and microbusiness or microbusiness customer interchangeably throughout this document.
[4] https://www.ofgem.gov.uk/system/files/docs/2019/10/tpi_forum_sept_2019_slide_pack_final_-_amended_0_0.pdf
[5] https://www.ofgem.gov.uk/publications-and-updates/consumer-survey-2019
[6] https://www.ofgem.gov.uk/publications-and-updates/micro-and-small-business-engagement-survey-2018.
[7] https://www.gov.uk/cma-cases/energy-market-investigation
[8] In July 2021, the government published its Energy Retail Strategy setting out its plans for continuing to protect domestic customers from a loyalty penalty and how it intends to tackle the causes of loyalty penalties in the retail market: https://www.gov.uk/government/publications/energy-retail-market-strategy-for-the-2020s
[9] https://wearecitizensadvice.org.uk/bill-splitting-companies-is-the-convenience-worth-the-cost-d4c7679734db

while suppliers can use TPIs as an effective and potentially lower cost means to reach and attract new customers[10].

Over time, the variety of TPIs and their services has increased. This call for evidence identifies some of the most common TPIs in the market today. However, we expect that further business models are likely to emerge as we transition to a smart, flexible net-zero system.

TPIs within the scope of our call for evidence and their benefits to customers

Domestic customers

Price comparison websites and auto-switching

Price Comparison Websites (PCWs), auto-switching and auto-recommendation services are examples of Digital Comparison Tools (DCTs), which the CMA defined as digital intermediary services used by customers to compare and potentially switch to or purchase products or services from a range of businesses[11]. Some PCWs may also offer phone-based or in-person comparison services, which we include within the scope of this call for evidence. In the retail energy market, PCWs enable customers to input preferences and their personal details, to obtain and compare tariff quotes more easily and quickly from across a wide range of suppliers. PCWs may compare the whole of the market, or only show a selection of suppliers who they have commercial arrangements with.

In 2020, PCWs were the main information source for comparing and switching energy tariffs for the 65% of domestic customers who engaged in the market[12]. PCWs are typically free of charge for customers at the point of use, but may charge commission to suppliers in exchange for how prominently their tariffs are displayed or for the ability of customers to switch directly via the PCW.

Auto-switching services automatically choose a new tariff or supplier on customers' behalf, based on customers' preferences. These can include cost, whether a supplier offers a green tariff, quality of customer service and any other applicable criteria. In addition, auto-switchers are able to exclude suppliers from the comparison at their discretion, for example one auto-switcher may exclude suppliers that do not pay commission, while another auto-switcher may instead decide to exclude a supplier which they consider to have a poor customer service rating. According to Ofgem, 5% of domestic customers were signed up to auto-switching services in 2020, with 39% of domestic customers aware of their existence[13]. Domestic customers switching for the first time appear more likely to use these services, and they

[10] https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/the-role-of-third-party-intermediaries-tpis-in-the-gb-sme-and-microbusiness-energy-supply-sector/
[11] https://www.gov.uk/cma-cases/digital-comparison-tools-market-study
[12] https://www.ofgem.gov.uk/publications-and-updates/consumer-survey-2020-update-consumer-engagement-energy
[13] Ibid.

appear to be growing in popularity, as only 2% of domestic customers signed up to an auto-switching service in 2019[14] compared to the 5% for 2020.

Auto-recommendation services are a slightly different business model which will not automatically switch customers to a new tariff but will compare the market and make a recommendation for the customer based on their preferences, or by monitoring their energy expenditure. Ofgem's research shows 20% of domestic customers were signed up to an auto-recommendation or 'energy scanning' service in 2020[15], compared to 11% in 2019[16].

Auto-switching and auto-recommendation services can help customers remain engaged with the energy market while being less proactive compared to using a PCW, as the provider will check for alternative tariffs during or at the end of the initial contract term on the customer's behalf. Some may also provide additional customer support, for example helping to submit meter readings or obtaining a final bill. Similar to PCWs, auto-switchers and auto-recommendation services may receive a commission from suppliers, or alternatively require a subscription fee from customers in exchange for tariff comparison, switching and recommendation services.

Bill-splitters

Customers in shared households, in particular those comprised of students, may also use bill-splitters. Energy tariffs are typically bundled with other utility products, such as broadband and water. These firms offer the additional convenience of one consolidated bill for the products, split across the tenants or bill-payers. Some bill-splitters may choose to offer unlimited tariffs (where the energy supply costs are fixed irrespective of usage), or alternatively tariffs where the cost is based on metered consumption. Claims from one bill-splitter suggest that at least 300,000 customers use their services[17].

We understand that some bill-splitters may be agents for the customer, entering into a contract with the supplier on the customer's behalf[18]. The bill-splitter will normally require each customer to enter into a separate contract for their services, and appears to act as the primary point of contact for each customer. It is unclear to what extent customers may also interact with the licensed supplier directly, or how this may affect the supplier's ability to discharge their licence obligations, although we understand from discussions with some bill-splitters and suppliers that the supplier may interact with the customer in certain scenarios. For example, where a customer wishes to use an alternative payment method not supported by the bill-splitter or a customer does not renew a fixed term contract with the bill-splitter and is placed on the supplier's default tariff.

Bill-splitters may also be agents acting on behalf of suppliers, with the supplier entering into supply contracts with customers. This enables the bill-splitter to offer tariffs under their own brand without the need to obtain their own supply licence. We understand that customers will

[14] https://www.ofgem.gov.uk/publications-and-updates/consumer-survey-2019
[15] https://www.ofgem.gov.uk/publications-and-updates/consumer-survey-2020-update-consumer-engagement-energy
[16] https://www.ofgem.gov.uk/publications-and-updates/consumer-survey-2019
[17] https://glide.co.uk/about-us/
[18] For example, see https://www.the-bunch.co.uk/terms-and-conditions and https://resooma.com/terms-of-use

primarily interact with the bill-splitter, though customers may also occasionally interact with the licensed supplier in particular circumstances such as those outlined above. We discuss this in further detail in the chapter entitled 'Potential customer harm and emerging system risks'. Where a bill-splitter is an agent acting on behalf of the licensed supplier, customers of that service will be subject to the same protections afforded to any other customers of the supplier by virtue of the supplier's supply licence.

We understand that some bill-splitters may instead consider themselves to be acting as gas or electricity resellers and consider that their activities are exempt from the need to obtain a supply licence. Resellers purchase gas or electricity supplied by a licensed supplier to their premises, which is then resold to another customer. Certain resellers are currently exempt from the statutory requirement to obtain a supply licence but must comply with the duties on persons benefitting from a class supply licence exemption[19], with customers using their services potentially benefiting from limited additional protections compared to contracting directly with a licensed supplier. Resellers are subject to maximum resale price provisions set by Ofgem, where the maximum price at which gas or electricity can be resold to a domestic customer is the same price as that paid by the person who is reselling it, including any standing charges and subject to some exceptions. The exceptions include where energy is resold for non-domestic use[20].

Q1. Can you provide further evidence of how bill-splitters are currently operating in the market and how they interact with licensed suppliers?

Q2. Do customers using bill-splitters receive the same protections as those given to customers contracting directly with a licensed supplier? If not, to what extent and why?

Business customers

Brokers

Business customers usually use TPIs in a different manner to domestic customers. Business customers' energy tariffs are more likely to be bespoke and individually negotiated[21], which has reduced the usage and penetration of TPIs offering price comparison services to business

[19] Section 5(1) of the Electricity Act 1989 gives the Secretary of State the power to exempt (by order) persons or classes of person from the prohibition on supply (among other activities) without a licence. Persons meeting certain requirements specified in Schedule 4 to the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 are exempt from the requirement to hold an electricity supply licence. Section 5B of and Schedule 2ZB to the Electricity Act 1989 set out the duties on persons benefitting from a class electricity supply licence exemption. Section 5(2) of and Schedule 2A to the Gas Act 1986 sets out exceptions from the requirement to hold gas licences including gas supply licences. Additionally, section 6A of the Gas Act 1986 gives the Secretary of State the power to exempt (by order) persons or classes of persons from the prohibition of supply (among other activities) without a licence. A number of class exemption orders have been made under section 6A, which specify the requirements that a person must meet to benefit from class exemptions. Section 6C of and Schedule 2AB to the Gas Act 1986 sets out the duties on persons benefitting from a class gas supply licence exemption. On 30 November 2020, the government published a separate call for evidence as part of a review of the electricity licence exemptions regime: https://www.gov.uk/government/consultations/exemptions-from-the-requirement-for-an-electricity-licence-call-for-evidence

[20] https://www.ofgem.gov.uk/publications-and-updates/resale-gas-and-electricity-guidance-maximum-resale-price-updated-october-2005

[21] In 2017, Ofgem applied a remedy to raise price transparency for microbusinesses, which the CMA introduced following its energy market investigation. The effectiveness of this remedy was evaluated in 2019 by Ofgem: https://www.ofgem.gov.uk/publications-and-updates/evaluation-cma-price-transparency-remedy-final-report

customers relative to the domestic retail market. Only 10% of microbusiness and small business (less than 50 employees) customers were estimated to use PCWs as their main comparison tool in 2018[22].

Many business customers value using brokerage services to procure their energy[23]. In 2018, 67% of small and microbusiness customers used an energy broker to help choose their current tariff or contract, with 41% using a broker as their main information source[24]. In 2019, research by Cornwall Insight found that energy brokers helped conclude nearly a third of the business market's energy supply contracts, more than a two-fold increase on 2014[25].

The benefits of using brokers can include a cheaper price, either due to the broker's in-depth expertise in enabling them to undertake a more extensive assessment of the market, or because they can negotiate a more competitive price from the supplier. They may also make the switching process easier, by taking responsibility for any administrative requirements[26]. Brokers typically receive a commission payment in exchange for their services, payable from either the supplier and/or the customer. Brokers may also contract with other brokers ('sub-brokers') and take a share of their commission payments, with the sub-broker benefiting from the primary broker's existing supplier relationships, dedicated broker portals and other support[27].

Domestic and Business customers

Load controllers

There are an increasing number of organisations who are providing products and services to control or impact energy usage using communication networks. These organisations sometimes take the role of 'aggregators' who will enable customers to reduce costs or earn revenue through changing how they use energy (also known as demand side response). For example, an aggregator may reduce the energy usage of a customer's device and obtain a financial reward (through a market transaction) for providing additional capacity to the energy system, which they pass on to the customer.

Aggregators may not control energy usage, but bring together customers who wish to participate in flexibility services, either as brokers or as contractual intermediaries. Other organisations, such as electric vehicle chargepoint operators or energy management system providers, may control energy usage using communication networks without providing

[22] https://www.ofgem.gov.uk/system/files/docs/2018/10/micro_and_small_business_engagement_survey_2018_report.pdf
[23] https://www.ofgem.gov.uk/publications-and-updates/evaluation-cma-price-transparency-remedy-final-report; https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/stuck-in-the-middle/
[24] https://www.ofgem.gov.uk/publications-and-updates/micro-and-small-business-engagement-survey-2018
[25] https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/the-role-of-third-party-intermediaries-tpis-in-the-gb-sme-and-microbusiness-energy-supply-sector/
[26] https://www.ofgem.gov.uk/publications-and-updates/micro-and-small-businesses-experiences-and-perceptions-energy-broker-services-research-report
[27] https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/the-role-of-third-party-intermediaries-tpis-in-the-gb-sme-and-microbusiness-energy-supply-sector/

aggregator services. In addition, some technology companies may control energy usage using communication networks for customer convenience, for instance through voice-activated home assistants or smart phone apps. These organisations provide services to both domestic and business customers.

Within this call for evidence, we group organisations that control electrical load via communication networks under the term ‘load controllers’. We consider some TPIs to also be load controllers, while recognising that some load controllers may not be TPIs. We group these organisations together due to their common traits, benefits and risks. The use of products and services that control load has the potential for significant benefit. They can allow customers to reduce costs and earn revenues, in exchange for providing flexibility to the energy system. There are also benefits for the energy system more broadly, reducing the need for network reinforcement and curtailment of intermittent renewables. Load controllers will become an increasingly important group of organisations within our future smart and flexible energy system. As we decarbonise heat and transport, the volume of electrical load controlled using these products and services will increase significantly.

TPIs outside the scope of our call for evidence

Our call for evidence does not cover activities involved with installation services for customers, such as energy efficiency measures or low-carbon and renewable heat technologies. Our Heat and Building Strategy will set out the importance of quality standards and certification to protect customers when installing energy performance improvement measures and low-carbon heating systems.

We are also not considering the activities of sales agents who are appointed by a supplier to work on their behalf. These sales agents are provided by an external third-party agency and are contracted by suppliers to conduct direct sales activity, such as doorstop or telephone sales. These sales agents act as a representative of the supplier and are therefore subject to oversight by the supplier to ensure compliance with existing Standard Supply Licence Conditions (SLCs)[28] in relation to sales and marketing. Where any activities are conducted by another entity (such as a ‘sub-broker’) on behalf of a TPI, we welcome views on the extent to which these entities need to be considered in future policy development, as opposed to classifying these entities as representatives of a TPI. We include comparison services conducted in-person or via the phone by a TPI within the scope of this call for evidence.

We have not sought to appraise where energy consultants offer additional services to business customers, such as compliance audits, market analysis or assistance with environmental reporting obligations. We are interested in understanding how brokers and consultants (who offer brokerage services) support business customers following the initial contracting process and change of supplier, but have not heard particular concerns about services offered in addition to energy procurement services.

[28] https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions

Q3. Are there any types of TPI which fall outside the scope of this call for evidence? If so, should we be considering those types of TPI in future policy development and if so, why?

Q4. Should we be considering entities that conduct activities on behalf of TPIs (such as sub-brokers) in future policy development? If so, to what extent and why?

Why are we issuing this call for evidence?

In the December 2020 Energy White Paper[29] the government committed to consulting on regulating TPIs. This call for evidence represents the start of that process.

The UK is transitioning to a smart, flexible net-zero energy system, with new technologies emerging and customer behaviour expected to evolve. TPIs can play an important role in enabling customers' access to the market and energy system, and will likely become increasingly important in a future market. This can bring benefits to customers, and government recognises innovation as a valuable driver of effective competition that is itself vital to protect customers[30].

However, we want to be confident that customers are adequately protected, regardless of the services TPIs provide, or how they choose to engage in the market, both now and in the future. Therefore, it is essential for us to better understand how TPIs operate in the market. In particular, we seek to understand the extent to which customers experience detriment from the activities of TPIs. This will enable us to consider whether a regulatory intervention is required and, if so, how any new regulatory framework could be designed. We are also seeking views on what additional measures could be required to mitigate risks posed by, and promote benefits to the energy system brought by, TPIs who control electrical load using communication networks.

Prior to this call for evidence, we have published our retail energy market strategy[31], setting out our wider programme of policy measures designed to improve the effective functioning of the retail market, and enable a market that can effectively deliver net-zero by 2050. Any potential intervention relating to TPIs should be considered in this context, with government taking a range of other steps to protect customers, increase competition, and improve engagement in the market.

[29] https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future
[30] https://www.gov.uk/cma-cases/energy-market-investigation#final-report
[31] https://www.gov.uk/government/publications/energy-retail-market-strategy-for-the-2020s

Potential customer harm and emerging system risks

In this chapter we set out our understanding of the main areas where TPIs' practices may harm domestic and business customers. We are seeking evidence from stakeholders on the extent to which these, and any other relevant TPIs' practices, could harm customers across the market. This will inform our understanding of the potential impact on customers from TPIs operating in the market.

Potential areas of harm

TPIs play an important role in improving customers' engagement with, and experience of, the market. As outlined in the introduction, a significant proportion of customers engage in the market via a TPI and recognise the benefits of using their services. We also expect TPIs to become increasingly popular as we transition to a smart, flexible net-zero system and further business models and services begin to emerge.

However, several stakeholders, such as suppliers, consumer groups and TPIs, have suggested that some TPIs' practices may harm customers across the market. We summarise these potential harms into the four main areas below. For all TPIs within the scope of this call for evidence, or other types of TPI you consider should form part of future policy development, we want to gain a greater understanding of the extent to which there may be harm, or risk of harm, in these areas:

- a lack of information transparency about market coverage and commercial arrangements with suppliers or other relevant market participants (including incentives, such as commission payments) where this could mislead customers into making a choice they would not otherwise have made due to a lack of relevant information or difficulty effectively comparing suppliers;
- issues arising during the contracting process or from sales practices, including a lack of transparency, mis-selling or misrepresentation, and where customers sign up to a service inappropriate to their needs;
- adequacy of customer service arrangements and wider protections offered to customers, including customers in vulnerable situations and who may require additional support; and
- the ability for customers to resolve disputes where they are dissatisfied or experiencing issues with the contracted product or service, including the need to access alternative out-of-court dispute resolution.

Q5. Are there any other harms (or risk of harm) to customers from existing TPIs that we should be considering? Please provide reasons.

Q6. Are there any other harms (or risk of harm) to customers from emerging TPIs that we should be considering? Please provide reasons.

Domestic customers

Many domestic customers use and value the services offered by TPIs, with PCW usage particularly high among such customers. Other types of TPI, such as auto-switching or auto-recommendation services, are also likely to continue to grow in popularity, in addition to other business models and services that are expected to emerge in the future. We recognise and welcome the important role that TPIs play in helping customers to engage in the market and make an informed choice regarding their energy supply.

In 2017, the CMA conducted a study on Digital Comparison Tools (DCTs)[32], which included PCWs and auto-switching services, and identified some potential areas of concern arising from DCTs' practices that may harm customers. These concerns are largely reflected in our potential areas of harm, including insufficient information about links to suppliers, how much of a market a DCT covers, and low awareness of complaint handling and redress processes. We outline these potential areas of harm below.

Lack of information transparency

Customers need sufficient trust and confidence in a TPI to be willing to use their services. The provision by the TPI of information explaining the factors that may influence how the TPI operates, such as commission arrangements or other links with suppliers, can help enable customers to trust them. For example, requiring a TPI to disclose how it decides to recommend, switch, exclude from comparison, promote and/or display a particular supplier to customers can help build confidence in customers of the TPI that it can help them to make an informed, robust decision about their energy supply.

PCWs and auto-switching services

This is particularly important for PCWs, where customers rely on being provided with suitable information (such as price, whether an initial fixed contract term applies or the tariff offers an environmental benefit) to easily and effectively compare tariffs from across the market. Customers should also have sufficient confidence in how an auto-switching service works, and understand the factors that could influence any switching decisions, given that the customer places reliance on the auto-switching provider to make an appropriate decision on their behalf. We accordingly focus on these types of TPI below, but welcome evidence where relevant to any other TPI operating in the market.

The CMA's DCT study outlined that any requirement placed on DCTs to show customers all or a certain proportion of the supplier market could undermine the benefits that DCTs bring to customers, and was not conducive to promoting competition and innovation among DCTs. The CMA confirmed that market coverage was important for customers, with 54% of customers surveyed stating their main reason for using a comparison site was to compare a large number

[32] https://www.gov.uk/cma-cases/digital-comparison-tools-market-study

of suppliers[33], but this did not imply a need for DCTs to show customers all or a specified proportion of the market. Instead, the CMA recommended that DCTs should aim to provide transparent information on a range of areas to ensure there is sufficient trust and confidence in the DCT, customers understand how to use them, and are able to make an informed choice. This includes providing information on how DCTs choose to display and rank tariffs, DCTs links to suppliers, how DCTs earn revenue, and how much of a market the DCT covers.

There are some concerns that TPIs may not always be fully transparent. This may undermine a customer's willingness or trust to use TPIs (particularly PCWs for domestic customers), potentially reducing engagement in the market and customers' ability to make an informed decision when changing their tariff or supplier, which could result in customers paying more than required.

Customers rely on PCWs to impartially display a wide range of professionally calculated, comparable tariffs[34]. However, many customers do not have confidence in the comparison results that PCWs show. Ofgem's 2020 consumer survey shows that around 26% of domestic customers are sceptical that PCWs are unbiased in how they presented energy deals[35]. Not all PCWs may provide clear information on which suppliers they work with, how their comparison results are ranked, and if commission payments from suppliers influence how their tariffs are displayed, for example in terms of ranking or prominence[36].

Commission arrangements and links with suppliers may also result in similar issues for auto-switching and auto-recommendation services, including those owned by PCWs. This may influence which suppliers are compared by the TPI when making a switching decision or recommendation on behalf of the customer. If the TPI is not transparent about how much of the market they are comparing, or why customers are switched to or recommended particular suppliers, this may result in a switching decision that otherwise may not have been made by the customer.

Ofgem's Confidence Code[37], a voluntary accreditation scheme for PCWs active in the domestic market, requires PCWs to clearly identify where commission arrangements exist with a supplier, and whether this influences how tariffs are displayed. However, this is a voluntary arrangement to which PCWs may choose to sign up or withdraw, and does not cover auto-switching services. 11 PCWs are currently accredited, which we understand is likely to cover a significant proportion of domestic customers using a PCW, although there are a number of established PCWs who are not currently accredited under the scheme.

[33] https://assets.publishing.service.gov.uk/media/58e224f5e5274a06b3000099/dcts-consumer-research-final-report.pdf
[34] ibid.
[35] https://www.ofgem.gov.uk/system/files/docs/2021/04/consumer_survey_2020_update_on_engagement.pdf
[36] https://publications.parliament.uk/pa/cm201415/cmselect/cmenergy/899/899.pdf
[37] https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/how-switch-energy-supplier-and-shop-better-deal/compare-gas-and-electricity-tariffs-ofgem-accredited-price-comparison-sites

Bill-splitters

Several bill-splitters offer unlimited energy plans[38] as an option to their customers, though some tariffs are also based on metered consumption, as part of a bundle with any other required utilities, such as broadband and water. Unlimited plans may be a beneficial option for some customers, who may otherwise self-ration their energy usage, and could result in lower costs where usage is sufficiently high, in addition to the convenience afforded by bill-splitting a consolidated bill.

Unlimited energy plans offered by bill-splitters require customers to make a fixed payment each month, with the cost of this payment typically determined by information provided by the customer during the sign-up process, such as the type of property and number of tenants. These costs are normally expressed on a per person per week/month basis. The cost of unlimited energy plans appears to not be determined by a customer's ongoing energy usage, except where a usage threshold is met. It is unclear to what extent customers are informed of their consumption usage while supplied via a bill-splitter, particularly where meter readings are not required for billing purposes.

This can make it difficult for customers to compare their tariff with other tariffs in the market, which are usually calculated as an estimated annual cost based on actual or expected yearly consumption. This could ultimately make it challenging for customers to understand whether they are paying a fair price for their usage and the service procured, which may deter them from attempting to re-engage in the market and potentially switch to a better deal available elsewhere[39].

Collective switching

TPIs, such as PCWs, may also facilitate collective switching. Collective switching schemes generally group a large number of customers together and invite energy suppliers to participate in an auction to obtain the most competitive offer, which is then presented back to the customers. Collective switching schemes are typically run-in partnership with Local Authorities or not-for-profit community organisations, supported by a TPI or organisation with energy sector expertise. We recognise the benefits of collective switching for engagement with the market, particularly as a method of supporting domestic customers who are less engaged or who may be subject to a loyalty penalty[40]. We are consulting separately on how government should incrementally introduce an opt-in switching scheme and test opt-out switching[41].

We note that market-driven collective switching schemes (i.e. collective switching schemes not related to our proposals in relation to introducing an opt-in switching scheme and testing opt-out switching) have the potential to result in similar customer harm that could arise due to a

[38] This is where the cost of energy usage is not linked to the amount of gas and/or electricity which is consumed by the customer, and customers typically pay a fixed amount per month based on their estimated average consumption, with some bill-splitters applying usage limits to the tariff.
[39] https://wearecitizensadvice.org.uk/bill-splitting-companies-is-the-convenience-worth-the-cost-d4c7679734db
[40] In 2016, the CMA identified the presence of a 'loyalty penalty' for some energy consumers. This term describes a situation where energy suppliers have been able to take advantage of consumers who do not engage effectively with the market by charging them excessively for their energy, allowing the supplier to either earn excess profit on their tariff, or to continue to operate inefficiently.
[41] https://www.gov.uk/government/consultations/energy-retail-opt-in-and-testing-opt-out-switching

lack of information transparency. For example, customers may not be aware of how many suppliers have participated in the auction, how any winning tariff compares to other tariffs available in the market, or the existence of commission arrangements and whether this has any impact on the ranking or recommendation of tariffs to customers. We have not heard any issues raised in respect of this particular activity, but welcome further views and evidence from stakeholders regarding harm that may occur to customers from market-driven collective switching schemes where offered by a TPI or any other type of business.

Q7. Does a lack of information transparency by TPIs concerning their market coverage or commercial arrangements with suppliers cause harm (or a risk of harm) to domestic customers? If so, to what extent and why?

Q8. Do market-driven collective switching schemes cause harm or a risk of harm to customers? If so, to what extent and why?

Contracting and sales arrangements

To be enforceable, consumer contract terms are required under the Consumer Rights Act 2015[42] to be fair and transparent. Fair and transparent contract terms are necessary to give customers the opportunity to evaluate the main features or future consequences of entering into an agreement, allowing customers to make an informed choice.

Auto-switching services

It is important that customers have sufficient information when entering into contracts with auto-switching services. These contract terms can allow switching decisions to be taken on the customer's behalf, at irregular intervals or a later unspecified date.

In some cases, customers may be aware of what signing up to an auto-switching service entails, and may be content to allow switching decisions to be taken on their behalf without any further involvement in the process. These customers will value the convenience of auto-switching services and may not have engaged in the market otherwise, or may prefer to engage in the market via these services. Auto-switching services may also offer adequate communication and engagement with customers in advance of each switch, allowing customers to make an informed choice as to whether to proceed each time.

However, some suppliers have suggested potential harm to customers could arise from a lack of transparency in, or issues relating to, contractual arrangements and the initial signing up or registration process. Where customers agree to use auto-switching services, some suppliers have asserted that it is not always apparent that customers have been informed of, or fully understood, what this means in practice. Some suppliers have also indicated that customers may not have realised that they have already consented to their tariff or supplier being switched on a regular basis without any further confirmation or consent being obtained from them, or may not have appreciated that they are unable to determine to whom they would switch in future. This may be more of an issue where customers have not been switched upon

[42] https://www.legislation.gov.uk/ukpga/2015/15/contents/enacted

initially signing up to the service, or have not received any further communications in advance of the switch.

Customers may seek to reverse or challenge the validity of a switch to the new supplier chosen by an auto-switching service, where they expect to be able to expressly consent before each switch, but do not receive any request to do so. We have received information from some suppliers which indicates a potential increase in the volume of erroneous transfer[43] activity. This is where customers are returned to their previous supplier, as a result of switches being initiated by an auto-switching service, which customers did not wish to proceed with. We have also received evidence from some suppliers that provides examples of customers alleging that they have never entered into a contract with an auto-switching service, where customers appear to have been switched despite previously cancelling the service, or where the customer has asked the auto-switcher not to proceed with that specific switch only.

There may be other reasons why customers do not wish to continue with their switch to a new supplier. Auto-switching services may not always fully inform customers of the criteria which they will use to evaluate and select a new supplier, what customer preferences will be taken into account, or what may change for the customer as a result of the switch and which may not be evident to customers during the initial sign-up process. This may include customer satisfaction with their existing supplier, bundled products and services tied to their tariff, or support available from social programmes delivered by suppliers[44]. This could harm customers by undermining their trust in such TPIs and creating a negative overall switching experience that may discourage customers from engaging in the market in the future. Customers may also be more immediately adversely affected as a result of the switch, for example where they experience issues with the new supplier which they are required to resolve.

Bill-splitting services

Bill-splitting services are predominantly targeted at houses in multiple occupation (HMO)[45], such as student premises, which are likely to see the greatest benefit from the convenience of a single consolidated bill divided amongst all tenants. Many bill-splitting services prominently advertise these benefits, with some stating on their website that each tenant will only pay their share of the bill. However, some consumer groups have observed that it appears less obvious that customers may remain jointly and severally liable under the contract, and may be required to pay for other tenants who do not make payment or who end their tenancy during the contract. Termination arrangements may also raise switching costs, or otherwise deter

[43] An erroneous transfer occurs where a customer is switched in error, for example due to incorrect meter details being held on industry databases. The process for returning a customer after an erroneous switch is also used to return customers to their previous supplier during their contract cancellation period where requested by the customer.

[44] Only energy suppliers above certain thresholds currently participate in the Warm Home Discount scheme. Suppliers with over 250,000 domestic customers are required to participate in the Core Group and Broader Group elements of the scheme while suppliers with over 150,000 domestic customers are obligated to deliver the Core Group only. Following the commitment in the Energy White Paper, the Government is consulting on reforms to the scheme from 2022, including reducing these thresholds to extend the coverage of the scheme and help reduce barriers to switching. The consultation will close on 22 August 2021 and can be accessed here: https://www.gov.uk/government/consultations/warm-home-discount-better-targeted-support-from-2022. For further information on the scheme: https://www.ofgem.gov.uk/environmental-and-social-schemes/warm-home-discount-whd

[45] https://www.gov.uk/private-renting/houses-in-multiple-occupation

customers from seeking to end their contract. Some bill-splitters appear to be charging higher cancellation fees or requiring a longer notice period for cancellation compared to the relevant energy supplier's standard contractual terms[46].

Some bill-splitter terms appear to allow for charges for excessive use or over-usage, where customers exceed a usage threshold as part of their unlimited energy plan. Some bill-splitters may also levy additional fees for their services and express these separately. Some bill-splitters' terms and conditions do not prominently state that additional charges, or charges for excessive use or over-usage may apply, or what constitutes excessive use under an unlimited energy plan.

Load controllers

As we transition to a smart and flexible energy system, new business models and types of TPI are likely to continue to emerge. The use of flexibility service providers, such as aggregators that offer flexibility to the grid, is one example of a TPI that has the potential for significant benefits, allowing customers to save money, earn revenue and help optimise the use of low carbon energy on the grid. As new forms of demand side services become available to domestic customers, they could be exposed to risks. For example, customers may not have sufficient information to understand and compare offerings, and some customers could be misled or mis-sold on potential revenues available from using flexibility services. In addition, customers may not be provided with sufficient information regarding how their personal data is collected and managed, and their choices regarding data protection.

Customers may be affected by a lack of transparency in contractual arrangements, including unclear ownership and liability for technologies bundled together with other services. There is a trend towards more bundled products and services[47], which can make it more difficult for customers to understand whether each product in a bundle is suitable for their needs, and the relevant costs, charges or predicted revenues likely to occur from using flexibility services[48].

Q9. Do the contracting and sales practices of any of these (or other) types of TPIs cause harm (or a risk of harm) to domestic customers or have an impact on the wider market? If so, to what extent and why?

Customer service arrangements and wider customer protections

The supply of energy is an essential service that needs to meet the specific needs of a wide range of people across a wide range of circumstances. It's important that customers are treated fairly by suppliers and receive a standard of customer service that is befitting of an essential service provider. For this reason, the SLCs place a range of requirements on

[46] Domestic customers are not required to give any form of notice when terminating a fixed term supply contract with a licensed supplier. Any termination fee payable must be proportionate and not exceed the direct economic loss to the supplier resulting from the termination of the contract. Termination fees are unable to be applied in certain circumstances, including where the contract is of an indefinite length or the customer has received notice of an increase in their charges for supply.
[47] https://www.cornwall-insight.com/newsroom/all-news/all-mod-cons-routes-to-market-for-household-flexibility
[48] https://www.citizensadvice.org.uk/Global/CitizensAdvice/Energy/Demanding%20attention%20-%20Managing%20risks%20with%20demand-side%20response,%20to%20improve%20consumer%20experience%20tomorrow.pdf

suppliers to protect domestic customers, for instance in relation to billing, payments, provision of important information, and domestic customers in financial difficulty. In particular, the Standards of Conduct are overarching, broad, principle-based rules contained within the SLCs that apply to any interaction with a domestic or microbusiness customer, which are intended to ensure domestic and microbusiness customers are treated fairly. These standards include suppliers being easily contactable, having robust customer service arrangements, and identifying and taking into account the needs of domestic customers in vulnerable situations. Suppliers must act promptly to put things right when they make a mistake.

TPIs act as an interface to the market, helping customers to engage, and can represent a service that adds significant value to the customer and improves their overall experience. TPIs may also increasingly represent the primary point of contact for customers, blurring the distinction between the responsibilities of the licensed supplier and the TPI. Customers may expect to only interact with the TPI, and may not realise when or even how to speak to the supplier.

This may be particularly problematic for customers in certain scenarios, for example where a supplier to which they have been automatically switched subsequently ceases trading. Where a supplier failure occurs, Ofgem's preferred course of action is to appoint a Supplier of Last Resort to become responsible for the customers, protect domestic customer credit balances and ensure customers continue to receive an energy supply[49]. The customers of a failed supplier using an auto-switcher may be reliant on the TPI to keep them informed and aware of the transfer to a new supplier. We have heard from suppliers that they have not always received sufficient contact details to effectively communicate with the customer and support them as required by their SLCs, which may contribute to the reliance customers place on engaging with the TPI in the first instance.

It is unclear to what extent the involvement of an auto-switcher could complicate or undermine the Supplier of Last Resort process. For example, by switching customers away from the supplier appointed as Supplier of Last Resort without allowing for the necessary actions, such as reviews of account credit and debit balances by the appointed supplier to be completed.

The lack of an equivalent process for a TPI failure may result in negative outcomes for customers, such as where a bill-splitter held credit balances rather than passing them onto the licensed supplier. Customers of bill-splitting services may have little to no awareness of where their energy supply is sourced from, and it may not be evident that they have a contractual relationship with the licensed supplier (which has been entered into on their behalf by the bill-splitter or where the bill-splitter acts on behalf of the licensed supplier).

We are keen to gain a greater understanding of what TPI customer service arrangements look like, particularly for auto-switching and bill-splitting services, and where customers in vulnerable situations may be using them who require additional support. The identification of customers in vulnerable situations is also important in respect of load controllers providing

[49] The Secretary of State may alternatively consent to an application made by Ofgem or make an application to the court for an Energy Supply Company Administration Order in accordance with Section 96 of the Energy Act 2011. For further information on Energy Supply Company Administration Orders and the Supplier of Last Resort process see https://www.ofgem.gov.uk/publications-and-updates/supplier-last-resort-revised-guidance-2016

services to domestic customers, to be able to meet the specific energy needs of the household. For instance, customers who depend on their electricity supply for medical reasons, will need to be accounted for by a load controller, and may also require extra support to understand the product or service they are using.

We have heard concerns from some suppliers that customers face difficulty in contacting auto-switching services after the switch when they have experienced issues which they are seeking to resolve. Some suppliers have reported issues including customers being given contact details for a supplier unrelated to the switch, switches that have not occurred as expected, or customers being unaware that they have been switched. We have also heard from Ofgem that actions taken by auto-switchers may lead to unanticipated increases in customer contact for the losing supplier, as a result of switching large volumes of customers away from a particular supplier over a short period of time. As per the SLCs[50], Ofgem expects suppliers to maintain thorough fit-for-purpose customer service arrangements, but we note that auto-switchers' actions could make poor customer outcomes more likely in the above scenario. We have also heard from some suppliers of instances where customers appear to have been switched to a more expensive tariff, or where a switch has occurred despite a valid request by the customer not to proceed.

It is unclear to what extent customers using bill-splitters are afforded protections comparable to those given under the SLCs. We note that some bill-splitters appear to be acting as agents of the licensed supplier, and that in this scenario the bill-splitter is required to provide their customers with the same protections afforded to customers who have a contract directly with the supplier. In a different scenario, where a bill-splitter acts as the agent of a customer, that customer may have limited interaction with the licensed supplier, as the bill-splitter enters into a contract with the supplier on the customer's behalf, which may affect the supplier's ability to discharge their licence obligations (SLCs) to the customer. This may impede the customer service offered by suppliers, which could include valuable consumer protections, for example the requirement for suppliers to take all reasonable steps to identify whether a customer is in a vulnerable situation and requires Priority Services[51], or where a customer may be having difficulty paying for their energy supply and requires additional support[52].

In addition, if a bill-splitter considers their activities to constitute the resale of gas or electricity and considers that they are exempt from the requirement to obtain a supply licence[53], customers using their services may be unaware that the bill-splitter is not providing them with

[50] SLC 0 requires suppliers to treat domestic customers fairly and achieve the Standards of Conduct, which includes a requirement that supplies maintain complete, thorough, fit for purpose and transparent customer service arrangements and processes.
[51] SLC 26 requires suppliers to establish and maintain a Priority Services Register of its domestic customers who are in a vulnerable situation and may require Priority Services. Priority Services could include help with prepayment meter access or accessible information, such as bills in large print and braille. For further information: https://www.ofgem.gov.uk/information-consumers/energy-advice-households/getting-extra-help-priority-services-register
[52] SLC 27.5 requires suppliers to offer specified services free-of-charge, such as a prepayment meter or payment plan, where they become aware or have reason to believe that a domestic customer is having difficulty paying their charges for gas and/or electricity supply.
[53] See supra footnote 19

the full range of customer protections provided for under the SLCs from which they would have benefitted if they had contracted directly with a licensed supplier.

There is evidence that some bill-splitters' practices offer fewer customer protections compared to the customer protection requirements provided for under the SLCs which only apply where a customer contracts directly with a licensed supplier (or where the bill-splitter is an agent of the supplier). One bill-splitter's terms and conditions state that they may cancel a contract (which appears to comprise both supply and bill-splitting services) if payment is not received after seven days of a payment reminder. In comparison, licensed suppliers are required to offer support to domestic customers in financial difficulty, such as payment via regular instalments or a prepayment meter where safe and reasonably practicable to do so. There are also several examples of credit refunds and final bills appearing to be issued several months (or not issued at all) following the end of the contract with a bill-splitter, in addition to potentially inaccurate billing not reflective of meter readings[54]. We have also been alerted to potential scenarios where customers have faced difficulty when trying to contact their bill-splitting service provider[55].

Q10. Do TPIs' customer service arrangements and/or approach to consumer protection cause harm (or a risk of harm) to domestic customers? If so, to what extent and why?

Q11. How do TPIs' current practices impact domestic customers in vulnerable situations and who may require additional support?

Out-of-court dispute resolution

Customers may experience issues when interacting with a TPI or in relation to the service they provide, for example where something goes wrong during the switching process. This may lead the customer to complain to the TPI, and attempt to seek redress. Where customers do not consider their complaint to be satisfactorily resolved, they may wish to seek alternative dispute resolution.

Licensed suppliers are required to maintain and operate an effective complaints handling procedure, and to inform customers about its existence, including a requirement for the procedure to be clearly and prominently displayed on their website[56]. Suppliers are also required to be members of a qualifying redress scheme[57], and to signpost customers to the redress scheme if complaints cannot be resolved.

[54] Suppliers are required to take all reasonable steps to issue a final bill within six weeks of a supply transfer or contract termination, and a refund of any outstanding credit balance within 10 working days of sending a final statement of account. Suppliers must correct any errors in a final bill or statement of account as soon as reasonably practicable.
[55] https://wearecitizensadvice.org.uk/bill-splitting-companies-is-the-convenience-worth-the-cost-d4c7679734db; https://mancunion.com/2018/02/05/investigation-are-bill-splitting-companies-taking-you-for-a-ride/
[56] The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008.
[57] The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008.

Ombudsman Services[58] provides alternative dispute resolution in relation to disputes between customers and energy suppliers. This provides domestic (and microbusiness) customers a clear alternative to resolving disputes via the courts, which is offered free of charge to the customer. The decision is binding on the energy supplier, but not the complainant, who retains the right to go to court if they remain unsatisfied. This improves customer confidence and trust in the market, and ensures that customers get the right outcomes.

These requirements do not apply directly to TPIs, although customers may be able to raise a complaint to their supplier if the TPI is acting as an agent of the supplier. The Confidence Code requires accredited PCWs to have an effective complaint handling procedure, but does not mandate an alternative dispute resolution scheme. The CMA's DCT study found that 3% of customers had made a complaint and, of those customers who had not, 73% did not know to whom they should complain[59]. As noted, the Confidence Code is voluntary and does not apply to auto-switching or auto-recommendation services, including where operated by an accredited PCW.

Research from Citizens' Advice found that over 75% of customers think they should be able to obtain advice about making complaints to TPIs, or be able to seek alternative dispute resolution if they need to[60]. Some suppliers have raised instances of customers who have complained to the supplier but have not resolved their complaints relating to TPIs, or who have complained to Ombudsman Services without being aware that they may be ineligible for this service.

Some TPIs may have an effective complaint handling procedure, or voluntarily offer a route to alternative dispute resolution, but they are not currently required to do so in respect of the services they offer in the retail energy market. We are not aware of any industry wide initiatives to provide alternative dispute resolution for TPIs offering services to domestic customers. Domestic customers can rely on general consumer law to settle disputes in court, but this is a last resort and would often be unviable for domestic customers.

Customers may also have limited options for redress in complicated disputes concerning load controllers, particularly where damage or deterioration to a customer's asset has occurred, where multiple parties have been involved in providing demand-side response (DSR) services.

Q12. To what extent do domestic customers have adequate access to redress when interacting with TPIs? Please provide reasons.

[58] The Ombudsman Service Limited (Ombudsman Services: Energy) is appointed by Ofgem as the alternative dispute resolution body for the energy sector under the Alternative Dispute Resolution for Consumer Disputes Regulations 2015.
[59] https://assets.publishing.service.gov.uk/media/59c93546e5274a77468120d6/digital-comparison-tools-market-study-final-report.pdf
[60] https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/stuck-in-the-middle/

Business customers

In comparison to the domestic retail market, where PCWs are the most common type of TPI used, brokers (and consultants) are more commonly used and valued by business customers. Only 10% of small (less than 50 employees) and microbusiness customers were estimated to use PCWs as their main comparison tool when surveyed in 2018, whereas 67% used a broker to help choose their current tariff or contract and 41% used a broker as their main information source[61]. Brokers can offer valuable market insight and contracting services to business customers, helping business customers to engage and obtain a better deal, particularly given the complexity of the market and accessibility of pricing information. While the prevalence of brokers (and consultants, where providing brokerage services) means we focus on their activities below, we are seeking evidence about any other relevant TPI active in the market[62].

Ofgem's Microbusiness Strategic Review aimed to understand and address the issues faced by microbusiness customers when engaging in the market, following concerns that it was not working as well as it should. Ofgem identified that some brokers were causing particular harm to customers, with a broader impact on trust across the market. Issues identified included a lack of transparency around commission charges, unethical or potentially fraudulent practices, and no mandated route to pursue alternative redress. Ofgem are currently consulting on proposals[63] aimed at addressing these issues, by placing requirements on suppliers via the SLCs. We support any proposals that Ofgem intends to take forward that will improve outcomes for microbusiness customers. We will continue to work closely with Ofgem throughout this consultation process, to ensure that the right outcomes for customers are achieved. We will carefully consider how any regulatory intervention that places requirements on brokers, if required, would complement measures implemented by Ofgem.

Ofgem's proposals are limited in scope to microbusiness customers, and we understand these business customers may be more likely to be affected, for example due to differences in buying power, in-house procurement expertise and understanding of the market. Our call for evidence considers all types of business customers, including microbusinesses. We are keen to understand the extent to which the potential harm outlined below and identified by Ofgem, and any other relevant issues not yet identified, affect different types of business customers.

Q13. Do any potential harms or risks impact business customers differently depending on their size? If so, to what extent and why?

Lack of information transparency from brokers

Ofgem's Microbusiness Strategic Review[64] concluded that a minority of brokers are causing harm to microbusiness customers, with a lack of transparency around commission costs identified as a specific issue. Ofgem stated that microbusinesses generally lacked a clear

[61] https://www.ofgem.gov.uk/system/files/docs/2018/10/micro_and_small_business_engagement_survey_2018_report.pdf
[62] See 'TPIs outside the scope of our call for evidence'
[63] https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-statutory-consultation-modify-slcs-all-gas-and-electricity-supply-licences
[64] Ibid.

understanding of the commercial arrangements that exist between brokers and suppliers, and how this may influence or impact the broker's recommendation, or what proportion of their energy bill relates to commission charges. Ofgem's proposals include a requirement for suppliers to disclose the charges paid to brokers on the principal contract terms and in response to any other request to do so by a microbusiness customer. As TPIs are not subject to direct sectoral regulation, Ofgem are unable to place requirements directly on the brokers.

There are several examples of how brokers may not be transparent regarding their commercial arrangements with suppliers. Brokers may claim to compare tariffs from a wider range of suppliers than their actual practice, or choose not to disclose the suppliers they have agreed to work with. As a result, business customers may be unaware of why a particular supplier has been recommended to them. Brokers may not disclose or make clear their commission charges, or any other incentive arrangements with suppliers. This lack of transparency can reduce business customers' ability to make an informed choice and determine whether they are paying a fair price for both their energy supply, and the service offered by the broker. While the CMA's Price Transparency Remedy[65] has improved the level of price information available to microbusiness customers, these broker practices could limit the effectiveness of the remedy and reduce the extent to which price transparency currently exists in the market for business customers who use brokers to search the market[66]. This could result in business customers struggling to engage in the energy market, and overpaying for their energy needs[67].

Q14. Does a lack of transparency by TPIs concerning their market coverage and commercial arrangements with suppliers cause harm (or risk of harm) to business customers? If so, to what extent and why?

Contracting and sales practices of brokers

Ofgem's Microbusiness Strategic Review also demonstrated that a lack of broker commission transparency and potentially fraudulent practices by brokers can cause harm to microbusiness customers during the contracting process, resulting in a negative experience that may deter business customers from attempting to re-engage in the market in the future.

Evidence gathered in Ofgem's Microbusiness Strategic Review suggests a minority of brokers engage in poor sales practices, including misrepresentation and mis-selling. Ofgem's Microbusiness Strategic Review sets out several examples of how this may be occurring in the market, whilst we have also been separately informed of potential poor broker contracting and sales practices from stakeholders, including other brokers and suppliers. Brokers may not be disclosing their commission payments earned from concluding a contract, or may incorrectly claim to compare a greater range of suppliers and tariffs than occurs in practice. Some brokers may also have misleading contract terms, or not clarify the full implications of them to business

[65] The Energy Market Investigation (Microbusiness) Order 2016 gave effect to a Price Transparency Remedy following the CMA's energy market investigation. The Remedy requires energy suppliers to make price information more easily available to microbusinesses through their own websites, or through PCWs. For further information see https://assets.publishing.service.gov.uk/media/58513efb40f0b60e4a0000a2/energy-market-microbusiness-order-2016.pdf

[66] https://www.ofgem.gov.uk/publications-and-updates/evaluation-cma-price-transparency-remedy-final-report

[67] https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/closing-the-protection-gap/

customers. There are examples given by brokers where several brokers appear to pretend to be representing an energy supplier or another broker, or erroneously state that the business customer's current fixed contract term has ended, and the business customer needs to switch to avoid incurring out of contract rates.

There are also suggestions of some brokers falsifying documents, such as change of tenancy applications and Letters of Authority (LOA). An LOA is a document through which a business customer gives the broker legal authority to act on the business customer's behalf, for example to negotiate with energy suppliers or obtain contract information and consumption data. LOAs are an important part of the contracting process between brokers and business customers, specifying what tasks a broker can carry out.

Some LOAs allow brokers to enter into an energy contract on behalf of the business customer without obtaining any further consent, or give the broker exclusivity, meaning that the business customer is unable to use the services of another broker during the period the LOA covers. No standardised approach to LOAs appears to exist in the industry, although this was part of Electralink's proposals (which we understand were not progressed due to the impact of Covid-19) to introduce a voluntary TPI Code of Practice[68]. These practices could result in business customers paying more than required, unable to use the services of an alternative broker, and for switching decisions to be taken on their behalf that they may not have otherwise made.

Where a broker has switched a business customer's supplier under a LOA, the LOA may leave the business customer in a weak position to subsequently reverse the switch, given that the LOA gives the broker legal authority to act on the business customer's behalf[69]. This could be a cause for concern where the broker is no longer acting in the business customer's best interests, for example negotiating contracts which maximise the commission payments for the broker but are not suitable for the business customer. If business customers are not adequately informed of their new contract terms, they may face further difficulty comparing tariffs, which may reduce pricing transparency in the market.

Some brokers may also use aggressive or pressurised sales tactics, including unsolicited and persistent contact. We note that Ofgem are in contact with the Information Commissioner's Office (ICO) regarding current investigations into cold calling by TPIs operating in the energy market[70]. The ICO have confirmed a rise in the number of complaints relating to cold calling by TPIs in the energy market and will be running a new workstream to improve TPI compliance with the relevant regulations, and taking enforcement activity against TPIs where appropriate[71].

Brokers may also have misaligned incentives with the business customer, which cause the broker to act in a way which is contrary to the interests of the business customer. For example,

[68] https://www.electralink.co.uk/2018/12/our-review-of-the-third-party-intermediaries-code-of-practice-tpicop-consultation-responses/
[69] https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/the-role-of-third-party-intermediaries-tpis-in-the-gb-sme-and-microbusiness-energy-supply-sector
[70] Under the Privacy and Electronic Regulations (2003) organisations are not permitted to call phone numbers registered under the Telephone or Corporate Telephone Preference Service. The ICO enforces these regulations.
[71] https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-statutory-consultation-modify-slcs-all-gas-and-electricity-supply-licences

brokers may contract with suppliers in a way which requires suppliers to pay a significant proportion of the commission upfront upon signing the contract[72]. There are some indications from stakeholders that this may influence the length of contract that brokers recommend, with brokers favouring a longer-term contract that provides a guaranteed or higher amount of commission, regardless of whether a longer-term contract represents an appropriate option for the business customer. There may be further examples of where different incentives between the broker and the business customer could influence the choice of tariffs presented to the business customer, or negotiated on their behalf.

Business customers could also face potential harm if brokers were reluctant to recommend smart meters, thereby restricting business customers' access to smart-enabled products or services. Brokers may find it easier, quicker and more cost-effective to recommend alternative options than consider the longer-term benefits to their customers of energy savings that may be possible with smart products or services. Promoting smart metering and selling smart-meter enabled products and services such as smart tariffs and energy management tools, may present an opportunity cost to brokers[73]. An opportunity cost might be experienced by brokers if they have to reduce their volume of sales activity to spend more time considering these options, particularly those operating business models that are based on engaging a high volume of potential customers (e.g. where the broker maximises the number of sales opportunities that they may be able to convert into customers). Business customers engaging in the market via a broker may therefore be unable to make an informed choice about how best to manage their energy supply, if prevented from understanding and unlocking the current and future benefits of smart meters and related services. This may reduce competition, slow innovation, and delay the transition to a smart and flexible energy system.

Q15. Are you aware of any contracting or sales practices by TPIs that cause harm (or a risk of harm) to business customers? If so, to what extent and why?

Q16. Do TPIs affect business customers' access to smart metering, smart tariffs and other smart products and services? If so, to what extent and why?

Broker customer service arrangements

Dependent on the services stated in the LOA, brokers can also offer additional services beyond the initial contracting process, acting as the primary contact (rather than the supplier) for business customers when discussing their energy supply and any subsequent issues that arise. Brokers may offer dedicated account management, for example, providing bill validation or assistance with metering requirements. Regardless of the LOA, business customers may expect a certain level of customer service support following the initial contract agreement, particularly where problems occur with the switch.

Insights from our own research and several stakeholders, including brokers and suppliers, suggests that some brokers may be offering an inadequate level of customer service as

[72] https://www.citizensadvice.org.uk/about-us/our-work/policy/policy-research-topics/energy-policy-research-and-consultation-responses/energy-policy-research/the-role-of-third-party-intermediaries-tpis-in-the-gb-sme-and-microbusiness-energy-supply-sector

[73] Aggregated insights from BEIS analysis of the TPI market

business customers have experienced difficulty in contacting their broker. This may be particularly problematic where the business customer has agreed an exclusive LOA, and is therefore reliant upon the broker during the period which it is valid. We have also seen reports of issues with the services offered by the broker, such as accounts being incorrectly set-up or inaccurate details used for switches.

This can result in additional costs being incurred by the business customer, and require time to resolve the problem, creating an overall negative switching experience that may deter further engagement with switching in the future and weaken wider trust in the market. There may be particularly limited incentives for brokers operating business models that are based on a high volume of potential customers (e.g. where the broker maximises the number of sales opportunities that they may be able to convert into customers) to provide good customer service, particularly where a business customer has agreed to a long-term fixed contract.

Q17. Do TPIs' customer service arrangements cause harm (or risk of harm) to business customers? If so, to what extent and why?

Out-of-court dispute resolution

The harm that business customers may experience from brokers' activities could lead them to complain about their service. Where this occurs, business customers will expect a satisfactory resolution to their complaint, which may include compensation dependent on the circumstances. If this does not occur, they may seek to settle their dispute via the courts or an independent arbitrator or body.

For business customers, suppliers are required to maintain a complaint handling procedure[74] and be a member of a qualifying redress scheme[75] for microbusiness customers. As stated above, Ombudsman Services provides alternative dispute resolution in relation to disputes between microbusiness customers and suppliers. Business customers that do not meet the definition of a microbusiness are outside the Ombudsman's terms of reference, though some suppliers may voluntarily sign up to other alternative dispute resolution schemes that these business customers are eligible for[76].

Unlike suppliers, brokers are not mandated to have a complaint handling procedure in place nor are they required to be a member of a qualifying redress scheme. The Utilities Intermediary Association (UIA) operates a voluntary code of practice[77] to which brokers can sign up. This requires members to inform their business customers how complaints will be handled, and allow for referrals to be made to the UIA, who can ask for a payment to be made to the business customer. Some suppliers may also require brokers to have complaint handling policies as a requirement for partnering with them, but there is currently no clear market-wide route to alternative redress to resolve broker disputes.

[74] The Gas and Electricity (Consumer Complaints Handling Standards) Regulations 2008
[75] The Gas and Electricity Regulated Providers (Redress Scheme) Order 2008.
[76] For example see https://www.utilitiesadr.co.uk/how-to-complain-about/business-utilities/
[77] https://www.uia.org.uk/code-of-practice

As part of their Microbusiness Strategic Review, Ofgem have proposed introducing an SLC requiring suppliers to only work with brokers signed up to an alternative dispute resolution scheme, which should address this issue for microbusiness customers. Business customers remain able to seek resolution via the courts if desired, although this can be time-consuming and expensive, and therefore not always a viable option for business customers to consider. We are however aware of a number of claims made against brokers via the services of law firms offering conditional fee agreements.

Q18. To what extent do business customers have adequate access to redress when interacting with TPIs? Please provide reasons.

Energy system risks

As part of the transition to a smart and flexible energy system, more smart appliances, electric vehicles and flexibility services will become part of the energy system. Organisations that perform an intermediary 'load controller' role will be able to remotely impact the electrical usage of multiple devices and aggregate this flexibility to participate in flexibility markets. TPIs that take on this 'load controller' role include a range of organisations across various sectors, including aggregators, chargepoint operators, digital energy management system providers, and other new, innovative business models that may not yet be developed. These organisations will bring opportunities for customers to save money, access revenues, and provide them with greater control of their devices. The flexibility these organisations provide will allow the electricity system to operate more efficiently.

Government supports the development of these technologies, given both the benefit to customers and the important role they will play in decarbonising the energy and transport systems, and we recognise they are likely to grow at pace over the next few years. As their customer bases grow, these organisations will have access to greater numbers of connected devices and will be able to manipulate greater quantities of electrical load. It is crucial that the services provided by these technologies operate efficiently and securely, so that the innovative grid services and considerable benefits load controllers bring do not compromise the stability of the energy system. Devices and service providers will need to be interoperable, to reduce the costs and barriers associated with providing flexibility to the energy system, while also ensuring customers have greater choice.

TPIs controlling significant electrical load ought to have the appropriate cyber security protections in place to protect the energy system from the impacts of cyber-attack and ensure customers have the confidence to engage. In addition, products and services that control large amounts of electrical load ought to minimise new risks to grid stability, and enable the system operator and energy networks to mitigate these risks through enabling flexibility services or other means.

Q19. Do TPIs, such as load controllers, create actual or potential energy system risks? If so, what risks and why?

Existing and potential TPI regulatory arrangements

In this chapter we provide an overview of the existing and potential regulatory arrangements for TPIs, including the coverage of voluntary schemes and codes of practice currently in operation. We then set out possible features for any new regulatory framework for TPIs (should this be necessary), including what further intervention could be required to mitigate energy system risks.

What does the existing regulatory landscape for TPIs look like?

Existing retail market regulatory framework

The concept of an energy supplier was created via the Gas Act 1986 and Electricity Act 1989 ("the Acts"), when Great Britain privatised and liberalised its energy markets at the end of the 20th century. Suppliers remain the primary interface between the energy system and customer, though some TPIs act as an interface or otherwise intermediate for certain functions between the supplier (or system operators in the case of load controllers) and the customer.

By virtue of the Acts[78], certain activities concerning gas and electricity, such as generation, transmission, distribution, and supply, are prohibited unless the person carrying on that activity is licensed by Ofgem or is exempt from the requirement to hold a licence[79]. The supply licence granted by Ofgem is the main tool for regulating the retail market. The Standard Supply Licence Conditions[80] (SLCs) place legal requirements on how suppliers are required to operate and interact with customers. Unlike suppliers, TPIs are not directly subject to a licensing regime or other specific regulatory requirements to participate in the retail market.

Within the existing supply licensing regime, some bill-splitters may alternatively consider themselves to be acting as gas or electricity resellers and consider that their activities are exempt from the statutory requirement to obtain a supply licence by virtue of a class supply licence exemption. If they are in fact exempt, they must comply with statutory duties on class supply licence exemption holders to benefit from the exemption: these include duties regarding the conditions of customer contracts and information to be provided to customers[81].

The current retail market regulatory framework, which includes primary and secondary legislation, supply licences and industry codes, was largely developed when most customers would engage directly with their supplier and directly control their own energy consumption. These regulatory arrangements define the role of energy suppliers, and reflect their role as the focal point for customers' interactions in accessing energy products and services and the wider energy system. The current framework has evolved and adapted as the market has developed,

[78] Section 4 of the Electricity Act 1989 and section 5 of the Gas Act 1986.
[79] See supra footnote 19.
[80] https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions
[81] See supra footnote 19.

but still largely does not reflect the role TPIs play in the market, their increasing prevalence and importance to customers' ability to engage in the market or manage their energy usage via TPIs.

While TPIs are not subject to a licensing regime or other specific regulatory requirements in the retail energy market, Ofgem has some indirect oversight of TPIs acting on behalf of suppliers via the SLCs. The SLCs relevant to this call for evidence include:

- SLC 0 requires suppliers to ensure that they and their representatives[82] treat domestic customers fairly, including customers in vulnerable situations, and achieves the Standards of Conduct[83].
- SLC 25 obliges suppliers to ensure their representatives do not mislead or otherwise use inappropriate tactics, when selling or marketing to domestic customers. Suppliers and their representatives must only recommend tariffs which are appropriate to the domestic customers' characteristics and/or preferences.

Ofgem's Microbusiness Strategic Review

Ofgem is also currently consulting on proposals to improve microbusiness customers' experience of the market following the findings of their Microbusiness Strategic Review[84]. These proposals would be implemented by requirements placed on suppliers via the SLCs, which seek to address the harm identified by Ofgem in their Microbusiness Strategic Review including by some brokers. The proposals include:

- strengthening existing rules around the provision of principal contract terms to ensure business customers receive this important information both pre and post-contract agreement in all cases;
- clarifying and strengthening existing supply licence obligations (SLCs) to provide information about brokerage costs on contractual documentation;
- introducing a requirement for suppliers to only work with brokers signed up to a qualifying alternative dispute resolution scheme;
- introducing a 14 day cooling-off period for microbusiness customer contracts;
- banning suppliers from requiring microbusiness customers to provide notice of their intent to switch; and
- creating new and updated information so that microbusiness customers can access up-to-date guidance and advice alongside communications to help further boost awareness of how the market operates and their rights.

We support any proposals that Ofgem intends to take forward that will improve outcomes for microbusiness customers. As Ofgem progresses its response to the consultation, we will continue to work closely with Ofgem to achieve the right outcomes for customers and consider

[82] A Representative is defined in the SLCs as in relation to the licensee, means any person directly or indirectly authorised to represent the licensee in its dealings with customers.
[83] https://www.ofgem.gov.uk/licences-industry-codes-and-standards/licences/licence-conditions
[84] https://www.ofgem.gov.uk/publications-and-updates/microbusiness-strategic-review-statutory-consultation-modify-slcs-all-gas-and-electricity-supply-licences

how any potential regulatory intervention that places requirements directly on brokers would complement and build on Ofgem's proposals.

Q20. What, if any, interventions in addition to Ofgem's proposals would be required to address actual or potential harm to business customers and why?

Regulatory requirements for TPIs operating across other sectors

TPIs operating in the retail energy market may also have chosen to provide similar services across a range of other markets, and be subject to sector-specific regulatory requirements as a result. PCWs are frequently used by customers in the insurance, hospitality and telecommunication sectors[85]. Brokers are present in the business retail water market and financial services market, while bill-splitting services may offer a consolidated bill across multiple utilities.

Where PCWs carry out insurance intermediation activities, they are subject to relevant requirements imposed by the FCA[86] set out in the Insurance: Conduct of Business Sourcebook (ICOBS). These rules include requirements on PCWs to ensure customers receive sufficient information to make an informed decision and are only offered products consistent with their demands and needs[87]. Ofcom[88] do not have dedicated powers to regulate PCWs but administer a voluntary accreditation scheme[89] for comparison tools, which aims to assure customers that comparisons produced by accredited tools are accessible, accurate, transparent and comprehensive.

Ofwat[90] have published principles for voluntary TPI codes of conduct, which include requirements for TPIs operating in the business retail water market to be fair, transparent and honest, offer appropriate products, maintain effective customer service arrangements and provide information that allows customers to make informed choices[91]. The FCA regulates a variety of brokerage services, such as credit, mortgage and insurance brokers, who must be authorised before conducting a regulated activity[92].

Maximum resale price of gas and electricity

Generally, any person who resells gas and/or electricity supplied to them by an authorised supplier will be subject to the maximum resale price set by Ofgem[93]. The maximum resale price sets the maximum price at which gas or electricity can be resold as the same price as that paid by the person who is reselling it, including any standing charges. Where gas or electricity is supplied at a price exceeding the maximum resale price, the excess charges

[85] https://www.gov.uk/cma-cases/digital-comparison-tools-market-study
[86] The Financial Conduct Authority (FCA) regulates the financial services industry in the UK.
[87] https://www.fca.org.uk/publication/correspondence/portfolio-letter-price-comparison-webiste.pdf
[88] Ofcom is the telecommunications regulator in the UK.
[89] https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/costs-and-billing/price-comparison
[90] Ofwat regulate the water and sewerage sector in England and Wales.
[91] https://www.ofwat.gov.uk/publication/protecting-customers-business-market-principles-voluntary-tpi-codes-conduct/
[92] https://www.fca.org.uk/firms/authorisation/how-to-apply/activities
[93] https://www.ofgem.gov.uk/sites/default/files/docs/2014/03/mrp_direction.pdf

incurred are recoverable by the person to whom it was resold plus interest. Some bill-splitters may consider their activities to constitute reselling of gas/and or electricity and consider that they are exempt from the need to obtain a supply licence[94].

General consumer protection law

TPIs must also comply with general consumer protection law[95], when interacting with domestic customers, which includes protections against unfair, misleading or aggressive commercial practices, the right to cancel, the right to information about the trader and services purchased, and the prohibition of unfair contract terms. Ofgem has concurrent powers with the CMA[96] to enforce certain consumer protection legislation[97], in addition to concurrent powers with the CMA and other regulators to enforce the Business Protection from Misleading Marketing Regulations 2008 (BPMMR) through the courts, which prohibit advertising which misleads traders. Business customers otherwise benefit from limited protections under general consumer protection law[98]. The government published a consultation on 20 July 2021 on strengthening the powers of the CMA and other consumer law enforcers to tackle harmful business practices[99].

Voluntary schemes and codes of practice

Dependent on the services offered by a TPI, they may choose to sign up to a voluntary accreditation scheme or industry code of practice, which seek to establish common standards or best practice for accredited members who agree and adhere to the voluntary requirements. There are various examples of self-regulation via voluntary schemes or codes of practice currently present in the market, including:

- The Confidence Code[100], which allows for PCWs to be accredited by Ofgem and includes rules on how prices and tariffs are displayed and calculated, complaint handling and independent annual audits. The Confidence Code is only applicable to services offered to domestic customers and does not include telephone or in-person comparisons, auto-switching or auto-recommendation services, including those owned by accredited PCWs. 11 PCWs are currently accredited, which we understand is likely to cover a significant proportion of domestic customers using a PCW, although there are a number of established PCWs who are not currently accredited under the scheme.
- The Utilities Intermediaries Association (UIA) Code of Practice[101], operated by the UIA as a trade body for TPIs operating in the energy and water sectors, typically

[94] See supra footnote 19.
[95] This includes the Consumer Protection from Unfair Trading Regulations 2008, Consumer Rights Act 2015, Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and Consumer Rights (Payment Surcharges) Regulations 2012.
[96] Under Part 2 and Schedule 3 of the Consumer Rights Act 2015 and Part 8 of the Enterprise Act 2002.
[97] Such as the provisions on unfair terms in consumer contracts and unfair consumer notices of the Consumer Rights Act 2015, the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and the Consumer Protection from Unfair Trading Regulations 2008.
[98] https://www.ofgem.gov.uk/gas/retail-market/market-review-and-reform/third-party-intermediaries-tpi-programme
[99] https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy
[100] https://www.ofgem.gov.uk/consumers/household-gas-and-electricity-guide/how-switch-energy-supplier-and-shop-better-deal/compare-gas-and-electricity-tariffs-ofgem-accredited-price-comparison-sites
[101] https://www.uia.org.uk/code-of-practice

representing consultants and brokers. The UIA maintains a register of accredited members, offers alternative dispute resolution and places requirements on members to provide certain contractual information. The UIA currently has 40 members who are estimated to provide services to 33,000 business customers or approximately 30GWh of energy supply[102]. This appears to represent relatively low market coverage, given the number of brokers that appear to be operating in the market, with some sources suggesting around 3,000 are active[103].

- Flex Assure[104] is a code of conduct scheme applicable to demand side response (DSR) aggregators offering services to business customers, established by the Association for Decentralised Energy in November 2018. The scheme aims to enable business customers to confidently use, compare and benefit from DSR aggregators. The scheme proposes minimum standards of practice for DSR aggregators providing non-domestic services, including in relation to sales and marketing, technical due diligence and site visits, pre-contractual and contractual information, and complaint procedures. While the market for domestic aggregation services is at an early stage of development, no codes exist that offer protections when engaging with products and services that can perform this intermediary role. Flex Assure currently has 4 scheme members.
- E.ON have a TPI Code of Practice[105], covering all energy sales to business customers completed by E.ON and its representatives. This includes all TPIs that negotiate and/or agree supply contracts on behalf of their business customers with E.ON. The code sets out principle-based rules in relation to contractual information, how TPIs behave and interact with customers, and appropriate sales of products and services. Other suppliers may also have broker agreements in place to ensure acceptable standards of broker conduct.

Electralink have also previously consulted on establishing a TPI Code of Practice[106], which included provisions in relation to fair and appropriate sales practices, accurate and transparent information and complaints handling, in addition to the prevention of erroneous transfers and the use of a standardised LOA. We understand this was not progressed last year due to the impact of Covid-19 but there may be renewed interest by Electralink and industry to attempt to establish and implement the code of practice. The TPI Code of Practice aimed to cover any TPIs conducting sales activities in the non-domestic retail market.

We acknowledge and welcome the important work undertaken by industry already through the development of, and accession to, voluntary schemes and codes of practice. They can offer improved customer protection or standards in the absence of regulatory intervention, while also promoting best practice and enhancing customer trust in the market. Voluntary schemes may also be a proportionate way to achieve desirable regulatory outcomes, for example where an emerging service is used by a minority of customers, does not expose the customer to financial risk and does not seek to replace the existing relationship with the supplier.

[102] Figures provided by the UIA.
[103] https://www.theguardian.com/business/2020/jan/26/rogue-energy-brokers-con-small-businesses-ofgem
[104] https://www.flexassure.org/about
[105] https://www.eonenergy.com/for-your-business/tpi-code-of-practice
[106] https://www.electralink.co.uk/2018/11/electralink-launches-new-consultation-on-third-party-intermediary-code-of-practice/

However, there are limitations to voluntary schemes and codes. There is no legal obligation on TPIs to sign up to the requirements, meaning that market-wide coverage and consistent protections for all customers irrespective of their choice of TPI cannot be guaranteed. There is no ability to compel redress and while code sanctions exist, including expulsion, the lack of monitoring, enforcement powers and financial penalties able to be imposed by a regulator are likely to reduce the effectiveness of voluntary initiatives.

Q21. Are any of the existing voluntary schemes and codes of practice effective in protecting customers from harm (or risk of harm) caused by TPIs? Please provide reasons.

Q22. Are there any specific requirements within the existing voluntary schemes and codes of practice which would be useful to replicate in any future regulatory framework (should this be required)? If so, which requirements, for which type of TPI, and why?

Features of any future TPI regulatory framework

Subject to responses to this call for evidence and further consultation, there are a number of approaches that we could take to develop a regulatory framework for TPIs, should a framework be required. Any regulatory framework would need to display certain features, including:

- being flexible, to accommodate both existing and future TPI business models;
- being proportionate to the harm or risk of harm identified;
- not acting as a barrier to innovation or distorting competition;
- seeking to achieve a coherent approach to regulation of TPIs across sectors where possible;
- being reflective of the significant number and variety of TPIs operating in the market, including where differences exist across or within each type of TPI; and
- enforceable, able to credibly deter TPIs from contravening their regulatory requirements, prevent harm from occurring and provide a suitable remedy for customer harm if it does occur.

An outcomes-focused approach might be more suited to any regulatory framework for TPIs rather than following a prescriptive rules-based approach. Under an outcomes-focused approach, we would focus on achieving required customer outcomes, rather than prescribing specific actions and how a regulatory requirement must be interpreted. However, this would not preclude minimum standards or prescriptive rules where appropriate. While we would not envisage all types of TPI being subject to the same requirements, any regulatory framework would need to be consistent in how it was applied to similar TPIs with similar risks of customer harm, with clear criteria on how we might consider extending or amending the scope of the framework in the future to accommodate new types of TPI.

Where TPIs are offering services across multiple sectors, we would need to consider the extent of commonalities and regulatory coordination required to avoid creating an unnecessarily complex or burdensome regulatory landscape. Other sectors may face similar issues of potential customer harm arising from TPI activities, and may seek to achieve or

improve the same customer outcomes as a result. The CMA has recommended[107] that DCTs, including PCWs, that operate in the communications sector be brought within Ofcom's regulatory remit. Ofcom[108] has also recommended that government should consider establishing regulatory oversight of third parties that participate in any Smart Data initiative in the communications sector. We intend to continue discussions with other sectoral regulators and across government regarding TPI activities and any potential regulatory changes in other sectors. Should intervention be required, we will seek to ensure a coherent and joined-up cross-sectoral approach where possible.

Regulatory coherence may include the government's Smart Data work, which aims to help customers, including business customers, securely share their data with authorised TPIs who then use this data to provide innovative services for the customer, such as automatic switching and account management. This saves time, money and effort for customers who can rely on authorised TPIs to more easily find and choose better-suited deals. Smart Data schemes also aim to raise customer protections by requiring TPIs to meet specified accreditation criteria before they can access a customer's data via a Smart Data scheme, and only then with the customer's consent. As TPIs' activities may overlap between Smart Data schemes in multiple sectors, there could be scope for a cross-sector approach to accreditation in future. This requires further consideration, however it is envisaged that Ofgem would retain oversight of any aspects of this regime relevant to the energy sector. In September 2020, government committed to introduce primary legislation, when Parliamentary time allows, extending the government's powers to mandate participation in Smart Data Initiatives[109].

Should intervention be necessary, we will consult on any proposed regulatory approach.

Q23. Do you agree that any regulatory framework for TPIs (if required) should display the features listed at the start of this chapter? Are there any other features that any regulatory framework should display? Please provide reasons.

Q24. Are there examples of regulatory frameworks for TPIs operating in other sectors that represent best practice? Please provide reasons.

Q25. What types of regulatory models should we be considering if regulatory intervention is required? Please provide reasons.

Q26. Do you have a view on how best we could accommodate emerging and future TPIs in any regulatory framework? Please provide reasons.

Further mitigations to energy system risks

As we transition to net-zero, TPIs that control load using communication networks will become an increasingly important part of the energy system. As is discussed in the previous chapter of this call for evidence, load controllers present new and growing risks to the energy system, and

[107] https://assets.publishing.service.gov.uk/media/59c93546e5274a77468120d6/digital-comparison-tools-market-study-final-report.pdf
[108] https://www.ofcom.org.uk/data/assets/pdf_file/0030/199146/consultation-open-communications.pdf.
[109] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/915973/smart-data-consultation-response.pdf

these will be catalysed by the electrification of heating and transport. Further interventions may be needed specifically for load controllers, compared to other types of TPI within the scope of this call for evidence. These interventions could be required to adequately mitigate risks to cyber security and grid stability, and to maximise the potential energy system benefits from smart energy products and services. Device, actor and system requirements could be necessary to provide suitable protections for the energy system.

Government is currently supporting the development of smart energy devices, to deliver cyber security and support grid stability, amongst other objectives. We have supported the development and publication of industry-led technical standards for energy smart appliances, and we will take powers to regulate energy smart appliances, setting requirements that underpin the principles of interoperability, data privacy, grid stability and cyber security. However, we recognise that device-level standards alone are unlikely to address the energy system risks summarised in this call for evidence.

For example, our consultation on Electric Vehicle (EV) Smart Charging in 2019 set out early thinking on the potential enduring regulatory approach for private EV chargepoints (referred to as 'Phase 2' measures), for 2025 onwards. The approach to regulating EV chargepoint operators has common ground with other organisations that control load, such as aggregators or energy management system providers, amongst others. As outlined in the 2021 Smart Systems and Flexibility Plan[110] and the 2021 EV Smart Charging government response[111], government will aim to consult in 2022 on an appropriate regulatory approach for organisations performing this ‘load controlling’ role.

Q27: What specific regulatory interventions, if any, might be necessary to mitigate energy system risks from TPIs that control load using communication networks? Please provide reasons.

[110] https://www.gov.uk/government/publications/transitioning-to-a-net-zero-energy-system-smart-systems-and-flexibility-plan-2021
[111] https://www.gov.uk/government/consultations/electric-vehicle-smart-charging

Call for evidence questions

Q1. Can you provide further evidence of how bill-splitters are currently operating in the market and how they interact with licensed suppliers?

Q2. Do customers using bill-splitters receive the same protections as those given to customers contracting directly with a licensed supplier? If not, to what extent and why?

Q3: Are there any types of TPI which fall outside the scope of this call for evidence? If so, should we be considering those types of TPI in future policy development and if so, why?

Q4. Should we be considering entities that conduct activities on behalf of TPIs (such as sub-brokers) in future policy development? If so, to what extent and why?

Q5. Are there any other harms (or risk of harm) to customers from existing TPIs that we should be considering? Please provide reasons.

Q6. Are there other harms (or risk of harm) to customers from emerging TPIs that we should be considering? Please provide reasons.

Q7. Does a lack of information transparency by TPIs concerning their market coverage or commercial arrangements with suppliers cause harm (or a risk of harm) to domestic customers? If so, to what extent and why?

Q8. Do market-driven collective switching schemes cause harm or a risk of harm to customers? If so, to what extent and why?

Q9. Do the contracting and sales practices of any of these (or other) types of TPIs cause harm (or a risk of harm) to domestic customers or have an impact on the wider market? If so, to what extent and why?

Q10. Do TPIs' customer service arrangements and/or approach to consumer protection cause harm (or risk of harm) to domestic customers? If so, to what extent and why?

Q11. How do TPIs' current practices impact domestic customers in vulnerable situations and who may require additional support?

Q12. To what extent do domestic customers have adequate access to redress when interacting with TPIs? Please provide reasons.

Q13. Do any potential harms or risks impact business customers differently depending on their size? If so, to what extent and why?

Q14. Does a lack of transparency by TPIs concerning their market coverage and commercial arrangements with suppliers cause harm (or risk of harm) to business customers? If so, to what extent and why?

Q15. Are you aware of any contracting or sales practices by TPIs that cause harm (or risk of harm) to business customers? If so, to what extent and why?

Q16. Do TPIs affect business customers' access to smart metering, smart tariffs and other smart products and services? If so, to what extent and why?

Q17. Do TPIs' customer service arrangements cause harm (or risk of harm) to business customers? If so, to what extent and why?

Q18. To what extent do business customers have adequate access to redress when interacting with TPIs? Please provide reasons.

Q19. Do TPIs, such as load controllers, create actual or potential energy system risks? If so, what risks and why?

Q20. What, if any, interventions in addition to Ofgem's proposals would be required to address actual or potential harm to business customers and why?

Q21. Are any of the existing voluntary schemes and code of practices effective in protecting customers from harm (or risk of harm) caused by TPIs? Please provide reasons.

Q22. Are there any specific requirements within the existing voluntary schemes and codes of practice which would be useful to replicate in any future regulatory framework (should this be required)? If so, which requirements, for which type of TPI, and why?

Q23. Do you agree that any regulatory framework for TPIs (if required) should display the features listed at the start of this chapter? Are there any other features that any regulatory framework should display? Please provide reasons.

Q24. Are there examples of regulatory frameworks for TPIs operating in other sectors that represent best practice? Please provide reasons.

Q25. What types of regulatory models should we be considering if regulatory intervention is required? Please provide reasons.

Q26. Do you have a view on how best we could accommodate emerging and future TPIs in any regulatory framework? Please provide reasons.

Q27. What specific regulatory interventions, if any, might be necessary to mitigate energy system risks from TPIs that control load using communication networks? Please provide reasons.

Glossary of definitions

Aggregator – A type of load controller which coordinates or aggregates demand response from individual customers to give them access to savings or revenues, and provide flexibility to the energy system.

Alternative dispute resolution - A process that enables disputes between a customer and business to be settled by an independent mechanism outside the court system. In the context of the retail energy market, they are generally free for the customer to use.

Auto-recommendation service – A type of TPI that automatically compares tariffs available from suppliers and provides a recommendation for the customer to switch, according to price or other criteria based on customer preferences. Also known as deal-scanning.

Auto-switching service (or auto-switchers) – A type of TPI that automatically switches customers to a new tariff or supplier on their behalf according to price or other criteria based on customer preferences.

Bill-splitting service (or bill-splitters) – A type of TPI that offers to consolidate a number of household utility bills, including energy supply, into a single bill and split this across multiple bill-payers, such as tenants in shared accommodation.

Brokerage service (or brokers) – A type of TPI that supports business customers with their energy procurement, such as comparing and recommending tariffs from a range of suppliers or negotiating contracts on a business customer's behalf. Brokerage services may also be offered by consultants, who offer additional services, such as market intelligence or energy efficiency audits.

Business (or non-domestic) customer – A customer supplied or requiring to be supplied with gas and/or electricity at premises other than domestic premises (as defined in standard condition 6 of the gas and electricity SLCs)

Confidence Code – A voluntary accreditation scheme administered by Ofgem for PCWs providing services to domestic customers. It does not apply to auto-switchers or auto-recommendation services.

Customer – Means a customer supplied or required to be supplied with gas or electricity at a domestic or non-domestic premises.

Customer harm (or detriment) – the loss or damage experienced by customers as a result of the provision of services and/or products

Customers in vulnerable situations – When a domestic customer's personal circumstances and/or characteristics combine with aspects of the market to create situations where the customer is: (i) significantly less able than a typical domestic customer to protect or represent their interests; and/or (ii) significantly more likely than a typical domestic customer to suffer detriment or that detriment is likely to be more substantial.

Demand-side response (DSR) – Where electricity consumption patterns are changed in response to a financial incentive or signal to help balance supply and demand on the electricity grid.

Digital comparison tools (DCTs) – Digital intermediary services used by customers to compare and potentially to switch or purchase products or services from a range of businesses. Examples include auto-switchers and PCWs.

Domestic customer – a customer supplied or requiring to be supplied with gas and/or electricity at a domestic premises (at which a supply is wholly or mainly for a domestic purpose).

Electric vehicle chargepoint operator – A company that operates one or more chargepoints (or other charging infrastructure).

Energy supply – Where gas and/or electricity is supplied to a premises for either domestic or non-domestic use.

Energy system – A system of interconnecting components that enables energy to be produced and supplied to customers. It includes production, conversion, trading, transport and delivery.

Flexibility services (and flexibility service providers) – Modifying generation and/or consumption patterns in reaction to an external signal (such as a change in price) to provide a service within the energy system. DSR is an example of a flexibility service that may be offered by TPIs such as load controllers.

Letter of Authority (LOA) – A document through which a business customer gives the broker legal authority to act on the business customer's behalf. LOAs specify what tasks a broker can carry out, which can include entering into contracts on behalf of the business customer.

Licensed supplier (or energy supplier) – A supplier of gas and/or electricity to premises which holds a supply licence granted under section 7A(1) of the Gas Act 1986 and/or an electricity licence under section 6(1)(d) of the Electricity Act 1989.

Load controllers – A type of TPI that controls customers' energy usage remotely via communication networks, and can enable customers to earn revenue or reduce costs by changing how or when the customer uses energy.

Microbusiness customer (or microbusiness) – A business customer that has an annual consumption of not more than 100 MWh of electricity per year, and/or annual consumption of not more than 293 MWh of gas per year, or fewer than 10 employees (or their full-time equivalent) and an annual turnover or balance sheet not exceeding Euros 2 million.

Net-zero – Means the Climate Change Act 2008 (2050 Target Amendment) Order 2019, a legislated target to reduce the UK's total greenhouse gas (GHG) emissions for 2050 by at least 100% relative to 1990 levels.

Price comparison websites (PCWs) – Digital platforms that aggregate and display a range of products or services for customers to compare, and allows customers to input search criteria or personal details to tailor the results. Some PCWs may also offer phone-based or in-person comparison services.

Resellers – Refers to anyone resupplying gas or electricity to a customer which has already been purchased from a licensed (or authorised) supplier.

Standard supply licence conditions (SLCs) – The conditions (or obligations) that all gas and electricity suppliers must abide by in order to supply gas and/or electricity to customers.

Third-party intermediaries (TPIs) – Organisations that sit between the regulated entities in the energy system and customers. TPIs help customers to engage in the market by providing a variety of products and services linked to energy supply, such as advice on switching or support with energy procurement.

Unlimited energy plans – A type of energy tariff offered by a bill-splitter. This is where the cost of energy usage is not linked to the amount of gas and/or electricity which is consumed by the customer, and customers typically pay a fixed amount per month based on their estimated average consumption, with some bill-splitters applying usage limits to the tariff.

This consultation is available from: https://www.gov.uk/government/consultations/third-party-intermediaries-in-the-retail-energy-market-call-for-evidence

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