



Department for
Energy Security
& Net Zero

Third-party intermediaries in the retail energy market

Summary of Responses

July 2023



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Contents

1. Introduction	4
Price Comparison Websites, auto-switching services and bill-splitters	4
Brokers and consultants	5
Load controllers	5
2. Summary of Responses	6
TPIs within the scope of our call for evidence and their benefits to customers	6
Bill-splitters	6
TPIs outside the scope of our call for evidence	7
Potential customer harm and emerging system risks	9
Potential areas of harm	9
Domestic customers	11
Lack of information transparency	11
Collective switching	12
Contracting and sales arrangements	12
Customer service arrangements and wider customer protections	13
Out-of-court dispute resolution	14
Business customers	15
Lack of information transparency from brokers	16
Contracting and sales practices of brokers	16
Broker customer service arrangements	18
Out-of-court dispute resolution	19
Energy system risks	19
Existing and potential TPI regulatory arrangements	20
What does the existing regulatory landscape for TPIs look like?	20
Voluntary schemes and codes of practice	21
Features of any future TPI regulatory framework	22
Further mitigations to energy system risks	23
3. Next Steps	24

1. Introduction

On 16 August 2021, we published a call for evidence on third-party intermediaries (TPIs) in the retail energy market, which closed on 6 December 2021. This followed our commitment in December 2020 as part of the *Energy White Paper*¹ to consult on regulating TPIs, with a view to ensuring the regulatory framework adequately covers the wider market. The call for evidence represented the start of that process. This summary of responses is now being published by the Department for Energy Security and Net Zero (DESNZ).

The call for evidence explored both domestic and non-domestic customers which included a focus on the following TPIs:

- Price Comparison Websites (PCWs) and auto-switching services
- Bill-splitters
- Brokers and consultants
- Load controllers

One of the main drivers behind the call for evidence was to understand the extent to which customers experience detriment from the activities of TPIs.

A total of 52 responses were received from stakeholders including large and small suppliers, industry groups, consumer groups and TPIs, among others. A summary of responses provided by these stakeholders can be found during the remainder of this document. We are grateful to all those who took the time to respond.

Price Comparison Websites, auto-switching services and bill-splitters

The exceptional rise in energy prices from 2021 saw a number of services like price comparison websites pausing their activities as, on the domestic side of the energy market, competitive contract offerings largely disappeared from the market and most consumers were on tariffs set at the level of Ofgem's retail price cap. Ofgem announced on 25 May 2023² that the price cap would fall to £2,074 from 01 July, the first time since October 2022 that the price cap has been below the Government-supported Energy Price Guarantee level. We therefore expect to see a return of price competition to the domestic retail market, and we can expect PCW usage to return to the market as well.

¹ <https://www.gov.uk/government/publications/energy-white-paper-powering-our-net-zero-future>

² <https://www.ofgem.gov.uk/publications/customers-pay-less-energy-bills-summer>

Brokers and consultants

Energy brokers have continued to operate in the non-domestic energy space over the past 18 months. Ofgem released their decision in relation to their Microbusiness Strategic Review in March 2022, to modify the Supply Licence Conditions (SLCs) of all gas and electricity supply licences. The implementation of the review has seen the establishment of an Alternative Dispute Resolution scheme that is currently administered by the Energy Ombudsman. The scheme went live on 1 December 2022. This has been a positive development for microbusiness customers in the non-domestic retail energy market, providing a suitable form of redress for issues they may have with an energy broker. In addition to this, and in support of transparency for microbusiness customers, the final decisions from the review also included improving cost information for customers. This came into being through the strengthening of supply licence conditions around the provision of principal contractual terms to ensure customers receive this key information. This includes provision of information on Third Party costs, both pre- and post-contractual entrance.

Load controllers

The Government is taking powers through the Energy Security Bill to ensure appropriate protections are in place for consumers and the grid by placing requirements on energy smart appliances and those who provide services around controlling these appliances³. These powers will allow for the creation of a new licence for those who provide services around remote load control of energy smart appliances. The powers in the bill also address respondents' direct concerns in respect of cyber security by allowing the government to make regulations to require that energy smart appliances meet minimum technical requirements for cyber security, interoperability, data privacy and grid stability.

³ <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-the-interoperability-and-cyber-security-of-energy-smart-appliances-and-remote-load-control>

2. Summary of Responses

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

Bill-splitters

Consultation Question:

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

Summary of responses

12 respondents directly answered this question. Examples of bill-splitters provided included 'white label' arrangements where the intermediary is acting on a licenced energy supplier's behalf, and alternative examples of bill-splitters acting as agents on behalf of the consumer (i.e. no direct relationship to a licenced supplier).

Several supplier respondents reported limited direct experience or detailed understanding of bill-splitters' operations. Furthermore, where a bill-splitter is acting as a re-seller to a domestic customer's contract, a supplier may not automatically be aware of the details of the intermediary's activities, the domestic customers which it is servicing and their characteristics, including their vulnerability status.

This lack of transparency was reported as an issue where a supplier's failure, which was managed through Supplier of Last Resort (SoLR) process, was complicated by domestic accounts being held via a bill-splitter. Similarly, the management of debt can be complicated where an intermediary business stops paying its supplier. This can result in a situation where disconnection is discussed.

Transparency issues were also raised from the perspective of the consumer. Regardless of the bill-splitter's independence from/relationship with a licenced supplier, the domestic customer may not be aware who supplies their energy. In such circumstances, customers may be unaware they are being charged additional commissions. Customers of bill-splitters may not benefit from the same customer service arrangement as contracting directly with a licenced supplier, e.g. hours of availability, including emergency contact provisions. Customers may also not understand how/if they can change their energy supplier.

Some examples of suppliers/bill-splitter relationships mitigate the issues raised above. In such cases, the bill-splitter retains principal customer service duties but clarifies which supplier is behind its contacts.

Consultation Question:

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

Summary of responses

14 respondents directly answered this question. The majority believed that, under some scenarios, customers using bill-splitters were at risk of not receiving the same protections as customers that contract directly with licenced suppliers. Despite this viewpoint, examples were put forward whereby bill-splitting arrangements could facilitate protections being back-to-backed from supplier through to customers.

Different bill-splitting models were suggested from direct customer-supplier relationships through 'white-label' sales, intermediaries acting as agents through brokering contracts between customer and supplier, through to re-sellers where there is no direct customer-supplier relationship. This illustrated the diverse nature of bill-splitting as a sub-sector and means it is not possible to make blanket conclusion about customer protections therein.

The diversity of bill-splitter business models resulted in uncertainty about licenced suppliers' ability to assess customer status, identifying vulnerability including Priority Service Register (PSR) qualification, and managing debt for customers experiencing payment difficulties. Consumers could find lodging complaints and accessing means of redress for poor service more complicated.

TPIs outside the scope of our call for evidence

Consultation Question:

3. 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?

Summary of responses

28 respondents directly answered this question.

Several respondents cited different forms of load aggregators as a priority for consideration by Government. Load aggregators were highlighted as already active for business customers, particularly energy intensive industries, performing a demand side management function. By their nature load operators deliver a unique service, different to other TPIs, in that their role can be between customer and the Energy System Operator (ESO) not an energy supplier. More information on the work that Government is currently doing to regulate this space can be found in the introduction of this document.

Several business types were put forward as being increasingly active in the energy space but are ancillary to a classical supplier-customer relationship, or TPI activities in the energy retail market. These included Claims Management Companies, which would be a regulated activity in other sectors (e.g. financial sector) but currently are not in the energy sector; 'lead generators' (marketing specialists) operating in the energy space, and energy efficiency/energy-as-a-service business models where revenues are also gained through brokering energy sales as part of the service.

Several respondents expressed the view that digital services were evolving at pace. The term Price Comparison Websites (PCW) is at risk of being too narrowly defined. Rather, Digital Comparison Tools, including services imbedded in Apps delivered by businesses should fall within the scope of future consideration. Energy-related widgets may be available in Apps provided by businesses outside the energy sector e.g. financial services. Furthermore, not all PCW or Digital Comparison Tools services are switching customers between different suppliers, as some specialise in 'retention only' switching, moving customers between tariffs with the existing supplier, and these should fall within the scope TPIs.

More broadly, there was a commonly expressed theme that there should be a level playing field, including between suppliers' direct sales and any business that places or negotiates an energy contract between a supplier and the customers.

Consultation Question:

4. 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?

Summary of responses

36 respondents directly answered this question. All bar 2 respondents believe that the activities of other entities, including TPI's sub-brokers, should be considered.

Sub-brokering, and related activities, were considered by many respondents to be a diverse pool of entities representing many different structures and governance/commercial arrangements. It is commonly believed that the small and micro-business energy market contains the greatest level of activity for sub-brokering. However, concerns of harm for domestic consumer were also put forward. Overall, there is a lack of clear market information about the true extent and precise nature of sub-broker related activity.

There was a consensus opinion that any regulation/standards should be consistent in order to provide a level playing field and prevent a system which enabled loopholes to be exploited. This could entail agents working for or on behalf of regulated entities being subject to the same standards, or creating a strict-liability framework for recognised TPIs. There may be inconsistencies in equivalence regarding licenced supplier/agent relations compared with sub-broker/PCW relations, for example. However, the perceived complexity of this area of market activity is considered to pose real difficulties in achieving this in practice, and there may be

practical limits on the extent to which liability can be extended to current licenced entities in the absence of direct regulation of sub-brokering activities.

Industry respondents highlighted corporate policies already in place which govern commercial arrangements and seek to provide service assurances which would protect consumers. Any potential regulation would have to be proportionate to the risk of consumer harm.

Potential customer harm and emerging system risks

Potential areas of harm

Consultation Question:

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

Summary of responses

33 respondents directly answered this question. There was wide agreement that the risks identified in the original Call for Evidence was broadly representative. These were:

- Lack of information transparency (including payments/commissions) making comparisons difficult;
- Contracting practices and mis-selling;
- Adequacy of customer services; and
- Access to dispute resolution.

There were significant differences reported between the nature of TPI activity in the domestic and non-domestic markets, presenting different potential benefits and risks of detriment. In the domestic market, price comparison information is readily available through PCWs. However, respondents considered data matching to be problematic with respect to identifying a consumer's vulnerability status, eligibility for schemes such as Warm Home Discount (WHD), and the Energy Company Obligation (ECO), such that consumers engaging with the energy market solely through TPIs may not be well served in the process.

Notwithstanding individual TPI practices, several respondents, representing different interests, considered an over-emphasis on price alone as constituting a wider systemic problem with TPI's activity in the energy market. There is a risk that customer switching based on price-only information/signals does not produce good outcomes or support the sector's broader transition towards Net Zero. Alternative considerations which are also important include customer service, supplier reputation, and carbon intensity, and these may not be well supported by TPIs.

Due to variation in TPI operations, the risks of harm in the non-domestic market are different. Direct price comparison options are far less available and TPI's activities lean towards broker-type models of operation. Associated with this are greater perceived risks of nuisance calls, lack of transparency around relations with suppliers, hidden commission (including 'consultancy') fees and misrepresentation of suppliers' price. More specific concerns regarding aggregator structures involved such issues as the operation of Letters of Consent and the customers understanding thereof, and the misuse of Change of Tenancy (CoT) notices impacting commercial agreements with suppliers.

As a general principle, it was suggested that disproportionately complex regulation, if placed upon existing licenced suppliers as a means of addressing TPI activities, risks motivating suppliers to restrict their tariff offering to trade in narrower sectors/consumer types. This would have unintended consequences on consumer choice going forward.

Consultation Question:

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

Summary of responses

26 respondents directly addressed this question. Most potential sources of harm identified in the existing market were reiterated as continuing to be relevant in the future. Claims Management Companies, perhaps developing out of market experience of poor practice by TPIs, was seen as being of increasing relevance. Within the non-domestic market, the activities of PCW, operating outside the Ofgem Code of Conduct, and the operation of aggregators was considered to be of ongoing and increasing concern by some.

New and emerging technologies linked to Time of Use and Export tariffs, in both domestic and non-domestic markets, were seen as becoming highly relevant in the future. The novelty of some load controller/flexibility services, with associated control of customer assets (e.g. Electric Vehicles, and batteries), will present new opportunities for emerging business models, with a direct and immediate impact on consumer outcomes. Linked to this may be issues regarding data use and cyber security risks, both to the individual and potentially more broadly within the energy system.

Domestic customers

Lack of information transparency

Consultation Question:

7. 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?

Summary of responses

24 respondents answered this question directly. Most respondents considered a lack of transparency to present a risk of harm to domestic consumers.

A number of concerns related to the declaration of commercial arrangements between a TPI and the suppliers it recommends to customers. Potential conflicts were highlighted between recommending tariffs being based on the TPI's commercial advantage over a user's benefit. Where a TPI is acting as a supplier's agent, either officially or in practical terms, it would be to the consumer's benefit for this to be made obvious.

Setting aside concerns expressed about transparency, it was emphasised that comparison tools/services can and do provide consumer benefits, and commissions may be an integral part by which such services are financed. Consequently, transparency requirements need to recognise and be balanced with appropriate boundaries of commercial confidentiality.

Differences of opinion were expressed regarding the issue of a TPI's market coverage, and the pool of potential tariffs from which a recommendation is selected/provided. Clearly the TPI's curation of supplier offers, as a sub-set of the market, and their presentation will influence a consumer's subsequent decision. Some PCWs were observed as only representing a small fraction of the market. Auto-switching services may change their market coverage during an ongoing service relationship with a consumer. This can be potentially mitigated through a requirement to display the whole of the market, but there are practical limitations on achieving this. Suppliers may provide 'exclusive offers' not available to all, TPI's cannot practically offer switches in every eventuality, and the sheer complexity of trying to reflect the entire marketplace may result a poor customer journey..

Several pointed out that transparency on extent of market coverage, and of commercial relations, themselves do not automatically guarantee informed choices. The criteria and methodology by which a recommendation is formulated may not be obvious. The use of opaque 'quality' criteria, weighted against underlying price, influencing the consumer's decision may obscure or frustrate objective decisions. Full transparency would require the customer's clear understanding of the basis by which a recommendation is being made.

Collective switching

Consultation Question:

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

Summary of responses

8 respondents directly responded to this question. Responses focussed on domestic customers, though some commented that there was poor applicability of collective switching within the non-domestic market as contracts are variable.

Most respondents highlighted the potential to exacerbate commercial risks within the wider energy market, and thereby potentially cause customer harm through indirect means. High rates of churn within the market were to the potential commercial benefit of TPIs, but it could risk promoting supplier instability if their approach to customer acquisition becomes based upon below-cost pricing, underpinned by inadequate hedging strategies.

There was a commonly expressed concern of switching decisions being narrowly focussed on price over broader criteria of 'value' to the consumer, including such priorities as progressing towards low carbon/net zero.

Fewer respondents could highlight direct harm to domestic customers from collective switching. Where it was identified, consumer harm was linked to the projected savings of a new tariff not manifesting after a switch. Savings may not be realised if the working assumptions adopted by a scheme are not universally applicable to all participants, leading to the new tariff not being well matched to an individual consumer's energy use profile

Contracting and sales arrangements

Consultation Question:

9. 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?

Summary of responses

19 respondents directly answered this question. Consumers are already afforded general protections around contracting and sales practice under the Consumer Rights Act 2015 and related Regulations.

One commonly expressed point of concern was the risk of harm associated with auto-switching business models. Customer disengagement, leading to lack of awareness of contracts being entered into, suppliers being selected from limited panels, and inadequate weighting of non-

financial concerns (customer service, supplier resilience) were highlighted. TPIs, depending on how they are set up, could benefit more financially from switches to suppliers (as a result of commissions or sales/transaction volumes) which are not aligned with customers' interests.

Consumers' ability to objectively compare different contracts, given the information they are presented with, was highlighted. For example, projected savings of 'jumping off' a Standard Variable Tariff (SVT) onto a Fixed Rate Tariff, at a time when prices were likely to come down in the near future, was likely to be misunderstood if consumers were given a simple comparison at a given point in time. Similar issues were considered to become more prevalent in the future under more complex Time of Use tariff arrangements.

Practical and administrative issues were highlighted with respect to data quality and data transfer between TPIs and suppliers. Errors which result in an erroneous transfer of data being recorded, due to switching the wrong meter, inaccurate changes of tenancy, or misaligned data to the customer's detriment. Such problems are likely to result in customer complaints which may unfairly be allocated against the supplier, as complaints against the TPI may not be recorded/reported or ultimately resolve the issues.

Customer service arrangements and wider customer protections

Consultation Question:

10. 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?

Summary of responses

17 respondents answered this question. Mixed opinions were received from across the range of respondents. It was highlighted that it is difficult to assess TPI performance objectively as there was no framework in the way that suppliers are currently monitored and assessed for recording complaint numbers or rating their performance, e.g. by Ofgem or Citizens Advice supplier scorecards.

A frequently reported observation was that TPIs are only subject to general consumer law, whereas energy suppliers are held to the standards for customer service stipulated within their licence condition. Voluntary codes of conduct (examples from both Ofgem and industry-led initiatives) seek to provide assurances in this area. However, there was a lack of evidence of a TPI being sanctioned for any non-compliance with a code. TPIs are not held to the same regulatory standards as suppliers.

Issues of consumer harm were expressed with respect to complications surrounding the handling of account information and data transfer between TPIs and suppliers, particularly where the TPI is acting as the primary interface with a customer e.g. bill splitting or auto-switching models. Specific examples of issues surrounding the management of account credit, and debt, during a switch were provided. Such credit/debt management issues could be

exacerbated in situations of supplier failure and subsequent account transfer under SoLR arrangements.

Consultation Question:

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

Summary of responses

18 respondents directly answered this question. TPI's practices were considered to impact vulnerable customers, at least insofar as all the previously noted potential risks of consumer harm remain relevant, but the impacts could be more acute.

Unlike suppliers, TPIs do not have a regulatory obligation placed upon them to identify customers in vulnerable circumstances. Failure to identify vulnerability status, e.g. Priority Service Register (PSR), eligibility for Warm Home Discount (WHD), could lead to consumer detriment through missing out on support, or on financial relief. Respondents considered that failure to identify eligibility for support could be exacerbated by auto-switching arrangements where a customer could, potentially, be switched to a supplier that does not participate in WHD.

Examples of bi-lateral TPI-supplier agreements which facilitate identification and catering for vulnerable customers were reported to exist in the market. However, the adoption of such TPI-supplier relationships was reported as being inconsistent across the market.

Out-of-court dispute resolution

Consultation Question:

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

Summary of responses

18 respondents addressed this question. Reliance upon general consumer protection law, which requires pursuing a case through the courts, was widely considered to be an unrealistic mechanism to protect domestic consumers in most cases. Whilst some issues where a TPI is involved could be resolved through the supplier's complaints processes, this is not an assured process in all cases. Furthermore, it may be unreasonable to expect suppliers to be accountable for managing all customer complaints associated with TPIs, especially where complex relationships may occur involving sub-brokers.

TPI's own complaints management processes and the extent to which they offer customers support, either directly or through sign-posting means, was seen as variable. Despite some examples of good practice, such as agreed understanding between some TPIs and suppliers, these safeguards were deemed to be inconsistent across the industry.

There was widely held support for domestic consumers to have assured access to a free, independent, out-of-court, Alternative Dispute Resolution (ADR) mechanism. It was suggested that a formal body, such as represented by the Energy Ombudsman in customer/supplier disputes, would also allow tracking of market insights into TPI behaviours and poor behaviour if this were to arise.

Business customers

Consultation Question:

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

Summary of responses

29 respondents answered this question. There was a strong consensus that size does influence the potential risks of harm. However, as the business community is highly diverse, an individual business' risk exposure in the energy market does not necessarily correlate well with either turnover or employee numbers.

It was generally agreed that larger, more intensive energy users are more likely to employ energy specialists to assist in navigating more complex energy tariffs. Consequently, although their price risk is higher, they are better positioned to manage that risk than smaller businesses for whom employing specialist staff is impractical.

The use (and potential misuse) of verbal contracts with TPIs was considered far more prevalent in small and micro-business sector. An aspect of smaller businesses may be mixed use properties, where they share a meter with a domestic customer (e.g. a flat above a business property), putting the domestic consumer at greater risk of disconnection should the business default on paying its bills. The opacity of these type of arrangements associated with smaller businesses exposes consumers to greater potential risks of mis-selling and poor customer service.

We are publishing a call for evidence on whether long-term protections are needed for domestic customers with a non-domestic energy supply this summer which will provide us with a greater insight into this topic.

Lack of information transparency from brokers

Consultation Question:

14. 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?

Summary of responses

27 respondents directly answered this question. On the question of commercial arrangements, the majority of respondents expressed views that there was some risk of harm associated with non-disclosure of commission payments to suppliers impacting the business outcomes negatively. The general concern, possible through various TPI/supplier payment arrangements, highlighted the risk that a TPI could push a client into a contract motivated more by its own commercial interests than the benefit of business consumer.

The extent to which a lack of transparency creates harm in the business market is considered to be poorly evidenced. There is a lack of relevant market data which would suggest widespread harm exists, yet the existence of diverse sub-brokering arrangements prevent suppliers from being wholly aware of all sales activity across the business market.

Several respondents suggested that transparency could be assured through regulating to require disclosure of TPI's commission payments and commercial relations. Whatever requirements may be put in place, respondents thought it appropriate for all businesses to be afforded the same protection, not just microbusinesses. TPI's were considered to offer many businesses significant costs saving benefits, and their own financing needs to be protected.

Respondents were in less agreement with respect to their views on TPI's market coverage. There are real limitations on the TPI's ability to present 'Whole of the Market' comparisons, and some questioned whether it is actually beneficial to attempt to do so. Some suppliers are unwilling to contract with some business sectors. Contract terms vary between suppliers, making comparison by non-experts very difficult, and what constitutes the 'best' deal is ultimately not a wholly objective decision.

Contracting and sales practices of brokers

Consultation Question:

15. 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?

Summary of responses

31 respondents replied to this question. Several respondents reported different anecdotes of sales malpractice by TPIs, and sales practices was considered by some to be an area

generating the greatest volume of complaints about TPIs. By their nature, sales practices are particularly noticeable to consumers. Aggressive sales tactics, cold calling, to the extent of nuisance, was reported to be commonly experienced by some sectors.

Areas of concern regarding contracting practice centred around less formal forms of contracting used to engage predominantly smaller (micro) businesses. Misuse of Letters of Authority by TPIs, or at least misinterpretation by the client business, thereby entering the consumer into sub-optimal tariffs was a commonly raised concern. Verbal contracts, and digitally signed contracts, were also noted as being open to abuse in some instances.

Incorrect or misleading forecasts of costs/savings during the sales process was highlighted. Inappropriate comparisons based on overly simple comparisons of Unit Rates, pass-through costs not given enough consideration, and deliberate misrepresentation of supplier's tariffs were examples of sales practices leading to harm. At the other end, there was anecdotal evidence of fraud through the misreporting of Change of Tenancy to suppliers.

Again, the underlying issue being the potential for a TPI to offer solutions based on their own commercial advantage, rather than the benefit of the business they are working with. This could be manifest through poor transparency regarding fees, or locking client businesses into inappropriate long-term contracts, in order to secure a greater return for the TPI.

Consultation Question:

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

Summary of responses

27 respondents answered this directly. Opinions were split on whether TPIs do, or potentially could, impact smart metering and services. Overall, respondents felt that smart services/metering was a relatively new consideration for TPIs and there was currently no strong evidence of widespread impacts derived from TPIs on these issues.

It was noted that TPIs are not under the same licence obligations as suppliers regarding smart metering and respondents queried how this may interact with incentives to drive smart meter uptake. For example, some suggested that TPIs could have less of an incentive to encourage smart meter uptake, or (by being an intermediary in the customer journey) add complexity to energy suppliers' customer engagement to drive uptake.

On the other hand, some respondents suggested that smart metering, tariffs, and associated data analysis/advice could be viewed as an emerging and disruptive influence in the established TPI business market. Consequently, it represents an emerging sales/service opportunity for TPIs to engage in new services, which offer added value for client businesses. TPIs expanding into this opportunity expect to do so off the back of promoting smart metering.

Broker customer service arrangements

Consultation Question:

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

Summary of responses

29 respondents answered this question directly. There was limited evidence of direct harm from TPI's customer service.

Some of the commercial arrangements for how TPIs engage with businesses were considered to raise the potential for poor outcomes. The use of upfront commissions prior to contract, the lack of regulatory requirement for a complaints procedure, and the existence of Letter of Authority arrangements between the consumer and supplier could create an environment which may exacerbate poor customer service and limit a business's access to remedy it.

Out-of-court dispute resolution

Consultation Question:

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

Summary of responses

29 respondents answered this question directly. There was widespread opinion across respondents that business customers have limited access to practical means of redress with energy TPIs, and that this position is not consistent with other sectors.

Several respondents acknowledged industry-led examples of complaint resolution, either through a supplier's requirements upon a TPIs it will work with, or by the TPI itself. However, this does not provide for independent arbitration. Structural arrangements in the sector do not provide an assured means of reaching settlement where the parties cannot agree a resolution, and the adoption of Letters of Authority by brokers could serve to impede a business in trying to resolve issues directly with a supplier if they wished.

Numerous respondents advocated introduction of a regulated requirement for TPIs to sign up to an Alternative Dispute Resolution (ADR) mechanism. It was felt by many that the ADR should be consistent with the energy suppliers' obligations through the Energy Ombudsman.

Energy system risks

Consultation Question:

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

Summary of responses

13 respondents answered this question directly. The consensus opinion was that to date, given the current scale of their operation, TPIs such as load controllers have not presented appreciable risks to the energy system. Respondents agreed, however, that as the sector develops potential risks could emerge in the future, and appropriate regulation may be required if there is emerging evidence of risk.

Future system risks related to flexibility providers (if at a larger scale) moving customers' demand without reference to the suppliers' positions, thereby creating problems for the Electricity System Operator (ESO) and Distribution System Operators (DNOs) and the system as a whole. Examples of emerging risk included EV charging points increasing in number (including private residential) requiring adequate protection against malicious actors influencing dispatch signals.

It was suggested that cyber security standards, and ensuring clear communication and data sharing between the relevant actors on the system would mitigate future risk. It was also highlighted that well-operated TPIs, acting as load controllers based on appropriate signals across the system, would actually reduce risk and facilitate progress towards Net Zero ambitions.

Existing and potential TPI regulatory arrangements

What does the existing regulatory landscape for TPIs look like?

Consultation Question:

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

Summary of responses

27 respondents answered this question directly. Most responses welcomed Ofgem's proposals within the Microbusiness Strategic Review. However, a majority of responses also stated that transparency was still a key concern. This included commission transparency as well as transparency around supplier arrangements with particular energy brokers.

Some respondents believed that any further arrangements should not place additional burdens or requirements on suppliers to monitor the work of energy brokers. Some responses detailed that suppliers were not best placed to monitor the work of all brokers in the non-domestic space.

There was wide ranging support for some form of direct regulation on TPIs. The positives for doing so included a standardised approach that would be easier for all stakeholders to follow in the energy market. There was also some support for standardised TPI contracting terms and conditions to make the process simpler for customers to understand and make informed decisions.

Voluntary schemes and codes of practice

Consultation Question:

21. 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.

Summary of responses

29 respondents answered this question directly. There was a mix of responses from respondents, more respondents expressed voluntary codes as being unsatisfactory and not enough. The respondents who did say that they were effective also acknowledged that there were issues with the number of voluntary options within the market and a lack of consistent approach.

A number of respondents expressed that voluntary schemes are only ever going to be useful towards the TPIs who actually sign up to them, there is nothing stopping TPIs not signing up and therefore a voluntary scheme having no effect. There was a thread that picked up on a lack of credibility for any one voluntary scheme alone. TPIs who are keen to join up to a voluntary scheme are already striving to reach best practices, so there is a perception from some respondents that voluntary schemes have a limited impact on addressing poor practice and behaviours from those TPIs who do not wish to take part.

There was some recognition that Ofgem's existing Confidence Code for PCWs was useful as it covered a large number of the market participants. As well as this, E.ON's TPI Code of Practice was also raised by a number of respondents as an example of a good voluntary scheme.

Consultation Question:

22. 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?

Summary of responses

25 respondents answered this question directly. Many respondents pointed to Ofgem's 2013 Code of Practice as a good starting point to replicate and adapt. A smaller number of respondents also suggested that a central log should be established to include all licenced brokers which would assist with transparency issues that have been raised previously in this summary of responses document.

There was also recognition from some respondents that any cost and savings calculations methodology that is used by a TPI should be standardised. This was in combination with a repeated call from some respondents for more transparency across the board.

The use of a principles-based and outcome-focused code of conduct was raised by a smaller number of respondents. In regard to which TPIs should be captured by any future regulatory

framework, there was agreement across many respondents that any requirements should be put on all market actors and therefore all types of TPIs.

Features of any future TPI regulatory framework

Consultation Question:

23. 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.

Summary of responses

30 respondents answered this question directly. The vast majority of respondents agreed with the features listed at the start of the chapter in the document. The few additional comments stated that any framework should not act as a barrier to innovation.

Consultation Question:

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

Summary of responses

20 respondents answered this question directly. There was a variety of responses to this question. Of those who did think there were examples of regulatory frames for TPIs to follow, a number of respondents pointed to the Financial Conduct Authority's work in this space. Some respondents also listed sectors more broadly such as telecommunications, waste, insurance and mortgages.

Consultation Question:

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

Summary of responses

30 respondents answered this question directly. The majority of respondents suggested some form of direct regulation as a preferred option. Of those who elaborated further, an authorisation regime was put forward as the preferred option and/or some form of principles-based outcome-focussed approach with consumer outcomes being a driving force.

A minority of respondents stated that it would not be beneficial for consumers, third party actors or suppliers for Ofgem to 'regulate' through supply licence agreements as this puts additional burdens on suppliers and does not help to make the process independent and

transparent. There was a preference instead for any regulation to set up a separate arrangement that could still be overseen by Ofgem.

Consultation Question:

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

Summary of responses

28 respondents answered this question directly. An authorisation scheme that is flexible, does not constrain innovation and can respond to future market changes was the view expressed by the majority of respondents. Some respondents reiterated a point from previous questions that TPIs should sign up to a list of 'approved' actors in the market.

Further mitigations to energy system risks

Consultation Question:

27. 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.

Summary of responses

13 respondents answered this question directly. A number of respondents expressed that there was not enough detail or evidence to express a firm opinion at present, but general reflections believed it was good to monitor the situation going forward. A few respondents pointed to any intervention being tied up with overarching TPI regulation.

3. Next Steps

As set out in the introduction section of this document, work to address load controllers has already been taken forward as part of the Energy Security Bill. These regulatory measures are an important step towards ensuring that the smart and flexible energy system is secure, safe and attractive for consumers to participate in. Regulations made under these enabling powers will ensure that devices are secure by design, and that businesses capable of controlling smart devices are meeting minimum standards of cyber security and data privacy.

On energy brokers and consultants, as part of Ofgem's microbusiness strategic review, not only has there been the introduction of a new ADR scheme for microbusinesses to seek redress against TPIs, but there has also been licence condition changes that strengthen the provision of principal contractual terms to ensure consumers receive key information, including about Third Party Costs, both pre- and post-contract entrance, in all cases.

In addition to the work that has already taken place, we will take into consideration the responses and any additional information that is more relevant to the current market conditions. We will determine if a consultation needs to be undertaken later in the year and will set this out accordingly.

Ofgem is currently undertaking a wider review of the non-domestic energy retail market. As part of this, they released a call for input on the non-domestic market on 28 February 2023 which closed on 31 March 2023. This call for input covered three main themes; pricing and contracting behaviour, competition in the market, and focused regulatory support for specific groups of customers. Although Ofgem has not asked directly on the topic of TPIs, it has been made clear that respondents could expand the scope of their answers to include any other issues that they are currently experiencing in the market. We await the findings of these results, if they include issues with TPIs we will use these to inform our future decision-making.

Ofgem will continue to use its existing powers as part of supplier licence conditions and the additional microbusiness conditions to ensure that non-domestic customers are being treated fairly.

A number of the questions within the Call for Evidence directly asked about or elicited responses on voluntary codes of practice. The Retail Energy Code Company (RECCo) is responsible for managing the Retail Energy Code (REC) – a set of rules suppliers in the retail energy market must follow when selling to consumers. They are currently in the process of developing and introducing a code of practice to the TPI market that has input from both suppliers and TPIs⁴. The Government will be watching the development of the Code with interest and will remain in contact with RECCo to understand more about the code's implementation.

⁴ <https://www.retailenergycode.co.uk/were-introducing-a-code-of-practice-to-the-tpi-market/>

Alongside the publication of this summary of responses, the Government is setting out how we will take forward targeted reforms aimed at making the retail market work better for consumers, become more resilient and investable, and support the transformation of our energy system. We expect that if any changes to how TPIs operate are to be taken forward, we would consult as part of this wider programme of retail market reform, which already includes a commitment to consult on policy options for enabling greater innovation in the retail market later in 2023.

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

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