Supplier workshop

Session 1 - Issues and risks – Supplier perspective

Scope

In this session, we presented the risks and issues that RECCo had identified through our various engagements with those in and around the industry. We wanted to understand whether these accurately reflected the experience of suppliers and what, if any, issues, and risks had not been captured. In the section below, we set out the key issues that RECCo had identified, and we provide a summary of the additional concerns that were raised by attendees.

11 Potential Risks in the Market

1. Risk of Supplier licence non-compliance due to TPI partner not presenting pre contractual commission disclosure correctly	2. Risk of Supplier license non-compliance due to TPI partner not being signed up to the ADR scheme.	3. Risk of claim against supplier resulting for legal challenge from non-disclosure of commission	4. Risk of financial loss to Supplier due to supply contract being cancelled under an ADR complaint
5. Risk of reputational loss due to financial claim being made	6. Risk of reputational loss due to successful ADR complaint by consumer	7. Risk of using an Aggregator where no direct relationship with the broker exists	8. Resource issue due to potential requirement to audit
9. Risk of financial loss due to use of Change of Tenancy as method to exit early from contract	10. Lack of established governance and assurance framework	11. Poor consumer experience	⚠️

Session output

Overall, attendees agreed that we had correctly identified the issues and risks that they face and were able to provide further insights and examples that helped to highlight concerns. Attendees expressed concern that whilst they had seen improvements in the market, sharp practices continued to be an issue. During the discussion, attendees were keen to consider solutions that could be taken forward to bring about much-needed change.

We set out below the key points raised by attendees during this session.

Supplier licence non-compliance due to Third Party Intermediaries (TPI) partner not presenting pre-contractual commissions disclosure correctly

Most attendees agreed that the greatest risk to them was that of a licence non-compliance event occurring due to a TPI partner not presenting pre-contractual commissions disclosure correctly. Attendees see a range of practices which carry the risk of non-compliance.

Attendees would welcome a Code of Practice (CoP) that helps to reduce this risk by setting a benchmark, requirements or standards that ensures more consistency in how commission is disclosed.

Transparency

Attendees identified a range of areas where there is a lack of transparency, including price/cost and other TPI charges. Some attendees noted that the duration of costs and how they are applied are not transparent. Some raised concerns that key terms were unclear or difficult to identify, which could result in poor consumer outcomes.

Overall, attendees agreed that transparency is key and should be a principle of any engagement – it should be clear what the costs are, and which components make up those costs, including the duration they are applied (having costs for the duration would be better for the consumer). Transparency was further discussed in the café workshop.

Resource

Attendees agreed that resourcing is an issue for a number of reasons, including:

- Not set up to manage the volume of brokers, which impacts/requires more resource
- Audits are placing resource issues on suppliers

Attendees indicated that they would welcome standardising approach to auditing as it would help with resourcing and creating a level playing field. This could avoid the situation where suppliers who are complying may lose a competitive advantage because other suppliers might not be doing the same.

Attendees raised concern that Ofgem's proposal to allow parties to sign up for different ADR schemes will introduce further variations in standards and requirements. This is likely to cause inconsistencies that suppliers will have to manage. These, in turn add further administrative burdens and, ultimately costs that will be passed on to consumers.

How audits are managed was debated, and overall, attendees would welcome minimum requirements being set that are consistently applied. Some attendees suggested a baseline to measure against, as this allows for performance to go over and beyond the base measures and can complement individual business approaches.

Claims and financial risks

Attendees agreed that this was an issue. They have seen an increase in claims – often because a broker has disappeared and are having to review contracts to ensure adequate protections are in place. Attendees wanted to see improvements in practices so that this risk is better managed.

Change of Tenancy

This is an ongoing risk, and attendees agreed that this is a noticeably big issue for suppliers with the potential to be further exacerbated by changes in market conditions. Attendees noted that this is an area of sharp practices and is an increasing risk which has many challenges. Key issues include how to identify a genuine CoT as there is often a lack of evidence.

Aggregators

Attendees highlighted the issues that arise because of layering – where there is more than one party involved in the chain – it can be difficult to identify the sale, and therefore how do you validate that it is a compliant sale? Attendees raised a number of points on how this could be addressed:

- What assurances could be built in to resolve this issue – could this include an extension of CoP or rules/regulations so that they apply to agents of TPIs?
- Should such governance be in REC or TPIs to manage their agents

Supplier behaviour

Attendees recognised that there were a number of other factors that need to be raised, including:

- Commercials will drive TPI behaviour, and some suppliers will work with TPIs that are an issue
- Too much effort on suppliers to manage everything – Ofgem should be doing some of this
- Suppliers should be required to only work with those who sign up to a standard or CoP

Conclusions of the session

Attendees agreed that the current regulatory framework did not provide a sufficient mechanism to address the issues and concerns that had been raised during the discussion.

Whilst legislation or other regulatory changes could address the risks and issues identified, these options would take time before they come into place. Moreover, with the uncertainty of potential steps that could be taken by government or Ofgem, attendees agreed that it is beneficial to implement other arrangements that could address risks and issues sooner rather than later.

Attendees agreed that the introduction of a CoP could resolve several of the issues and risks raised.

As a result of this, it was agreed that the focus of the workshop should be to understand the merits of introducing a CoP.

Session 2- Workshop Café

The second session of the day was focused on the workshop café, where attendees were asked to address a particular question, and provide insights and potential solutions before moving on to the next issue.

We used this session to ask the following questions:

Code of Practice

1. What are the benefits of mandatory v voluntary?

2. How far should transparency go?

3. What should be the key principles of the Code?

4. Should access to data be conditional to those who sign up to the Code?

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We set out below the key points raised by attendees.

What are the benefits of voluntary vs mandatory?

Scope

In this session, we wanted to understand if a CoP were to be introduced, should it be mandated or voluntary? Further, what benefits or issues are raised by each approach?

Outcome

Overall, attendees agreed that a mandatory CoP is a long-term solution that addresses more issues and encourages greater compliance, improves standards, and achieves better outcomes for consumers. There was little support for a voluntary CoP being pursued.

Below is the summary of the key pros and cons that were listed by attendees.

Mandatory

Pros

- Enforceable
- Creates a guaranteed minimum standard
- Wider coverage
- Encourages accountability

- Reduces administrative burden
- Allows for continuous improvement
- Raises the profile of the energy industry (PR) – a good news story
- Creates a level playing field
- Gives Suppliers confidence
- ADR sets a precedent for a mandatory code
- Eliminates rogue Brokers
- A long-term solution
- Easier for RECCo to manage – as there will be less 'opt-outs'

Cons

- Who pays for a mandatory scheme?
- Must be followed up with performance assurance

Voluntary

Pros

- Less governance

Cons

- Will not be taken seriously by Suppliers or Brokers
- Only 'good' Brokers would join a voluntary scheme
- Becomes a tick-box exercise
- Potential gain not worth the cost
- Creates a race to the bottom
- A short-term solution

2. How far should transparency go?

Scope:

In this break out group we explored the notion of 'Transparency' across the energy broker sales journey. We asked the question; how far should we take the definition of transparency and what should it cover.

Session Outcomes:

It was unanimously agreed that transparency, in whatever form it takes, should be made pre-contract and at the point of price quotation.

It was agreed across all table attendees that transparency must mean that the consumer knows what they are paying (the total commission value) and the services they are receiving in return for that payment.

- It was noted that the services to be provided must be listed on the quote documentation. This will do two things:

     i.   Allow for a simple comparison with other brokers to understand the value exchange.

    ii.   Hold the broker accountable for delivering the services they say they will deliver.

- It was also stated that if a broker is using an Aggregator then they must state that the commission includes aggregator payments.

It was stated that a separate line for commission on the actual utility bill would not be needed and that system changes to allow this would be costly.

How commission is displayed was a topic of much debate:

- Some Suppliers suggested that it should simply align with the license condition, as defined by the Micro Business Strategic Review. However, others noted that this is open to abuse by brokers purposely underestimating consumption to minimise estimated commission value.
- Others said that it should be shown as an estimated annual commission AND total contract value commission
- Others suggested that it should be shown as an uplift to the unit rate, with the other elements (such as AQ) provided to allow the customer to calculate the commission themselves. This is how it works in the FCA world.

If the requirement for transparency was stretched into SME customers it was noted that Ofgem or RECCo would need to create a definition for a SME aligned to consumption bands. There is currently one for Micro, but not for SME and each Supplier will currently have a different definition.

Transparency should stretch to include the customer in relation to clarity that they are talking to a broker. Transparency must mean they do not misrepresent themselves.

Other transparency requirements included:

- Transparency of AQ/EAC used to calculate commission. This will allow the consumer to compare like for like if they are receiving prices from more than one source.
- Transparency of the scale of market searched. Providing the customer with details of the supplier they approached for prices and the prices they provided. This could be stretched further with a requirement to provide details of the 'filters' used to search the market (for example the broker only searched those suppliers who accept certain credit ratings).

There was some debate about how far up the market should transparency go; all agreed it should cover Micro and SME, while other argued it may not be suitable in the I&C space.

It was suggested that clarity on the type of contract being offered should fall under transparency. For example, whether the contract is fixed or a pass through.

3. Should access to data be conditional to those who sign-up to the code?

Scope:

In this section, we wanted to understand that if the CoP were mandated, what, if any, benefits could be extended to those TPIs that agree to signing up. Should this be a consideration as part of the approach.

Session Outcomes:

Overall, attendees agreed that suppliers should only work with those TPIs who have signed up to the CoP. They also accepted that such a benefit could encourage TPIs sign up to a CoP and that if it is mandated, there is less value in restricting access. Attendees agreed that where access is provided, it should be via RECCo, and not indirectly via suppliers.

A number of benefits were identified of this approach, including:

- Access could be taken away if a Broker is not compliant
- Access to data could provide lead to improved accuracy of quote and commission disclosure

There was some debate around how the data is currently accessed and how it would be accessed in future. Some attendees stated that it is not clear who has access now and therefore whether providing access would be a benefit. This identified a further question – could TPIs who had not signed up to the CoP gain access to data via other means? Or would a restriction in data access potentially result in a consumer detriment?

4. What should be the key principles of the code?

Scope:

In this session we considered the key components that should form the basis of any CoP.

Session Outcomes:

The attendee's discussion pointed to three key components that would be required to make a code:

i. Overarching principles that all parties would be required to achieve.
ii. Requirements in the form of rules or prescription that sets standards. This would ensure minimum standards are clear, consistent and creates a level playing field.
iii. Performance assurance that ensures the required standards are being met and where there is failure to do so, there are appropriate remedial steps to implement improvements and compliance levels.

Below is a list of the points raised by attendees:

Transparency

This was discussed more fully on a different café table, but attendees recognised the importance of this should be captured clearly in any CoP. It was agreed that transparency should be an overarching principle and include the following components:

- We should be open and honest about the size of pool

- o Pricing and key terms
- o Broker costs
- o Product description – how the product is described and presented should include
  - ▪ Variable or fixed cost
  - ▪ What services are covered
  - ▪ Suitability
  - ▪ Duration
  - ▪ Exit fees

Consumers

- Attendees agreed that all consumers should be treated fairly and that a principle setting out expectations should form part of any CoP.
- There was some discussion around what a principle should include and whether a new principle was required. Most participants agreed that the existing Ofgem principle of 'Treating customers fairly' was well known across the industry and could easily be applied to TPIs. Attendees agreed that there would be benefit in considering the following elements to be included as part of a principle around consumers:
  - o Professionalism – minimum standard of how information is provided, including how verbal contracts are agreed, evidenced, and managed
  - o Appropriate for customer/suitability – that products meet consumer needs
  - o Consumers can expect honesty in their interactions with all parties

- Consideration was given to the elements that should be set as standards or requirements. These included:
  - Service-levels
    - o Broker to provide continuity for customers
    - o Ease of contact – method should include options that suit customer needs
    - o This should be no more onerous than what suppliers are required to provide under the current SLCs
  - Clear comms
    - o Plain English – should be a requirement so that customers can better understand contracts, terms, and conditions
    - o Key terms – must be clear and not buried in the documentation
    - o Signpost/disclosures – so that they are appropriately highlighted for the customer
  - Monitoring/records
    - o Sufficient records must be kept so that they can be monitored/audited
    - o Auditable customer journey
    - o Evidence of complying with CoP
  - Compliance
    - o Minimum uniform standards – target to consumer needs
    - o Standardisation of requirements
    - o Ensure consistency but not too prescriptive so that it can also suit business needs

- There was discussion around knowledge and that there must be a level of understanding of issues. Attendees agreed that further consideration would need to be given to the following:
    - What does good look like? There should be a benchmark so that expectations are clear on what will ensure compliance and what will therefore fall short.
    - Should we set thresholds?
    - Enforcement – what would this look like and how would it operate. Consider:
        - Thresholds/RAG ratings
        - What happens if fail to meet standards?
        - Who and how do you enforce?
        - Is the Supplier required to action enforcement?
        - Needs performance assurance – what does that look like?
        - Need to identify customer harm
        - What is done to improve performance?

- Approved Broker list – would be useful for Suppliers and consumers.