

Change Proposal R0137: ‘Introducing Third Party Intermediary (energy broker) assurance and accreditation’.

Response to Consultation on the TPI Code of Practice

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Summary

An energy broker is a Third-Party Intermediary (‘TPI’) that sits between a non-domestic energy consumer and the energy supply market. In a legal sense, the broker is an ‘agent’ that is authorised to act on behalf of a ‘principal’ (the consumer) to create legal relations with a third party (the Supplier).

These TPIs undertake an important role in streamlining the pricing and contracting element for businesses who may not otherwise have the resources or knowledge to find an offering that appropriately meets their needs.

The TPI also acts as an important sales channel for suppliers who may not otherwise have been able to establish contact with those potential customers.

However, the TPI sector is facing growing criticism for not being fair or transparent in its dealings, often stemming from the inappropriate behaviours of bad actors.

Although TPIs are currently not regulated (and there has not as yet been any follow-up to the government's 2021 proposals to introduce TPI Regulation), Ofgem has introduced licence conditions upon non-domestic suppliers, which requires them to ensure that any TPI they contract with are adhering to certain principles.

TPIs are also required to be registered to an Alternative Dispute Resolution (ADR) scheme. This licence obligation effectively requires each supplier to undertake their own audits of TPIs to ensure that their licence obligations are being discharged. This places a large burden upon suppliers and TPIs, who must undertake any audit activities many times, effectively having to repeat the process for each bilateral arrangement they enter into.

This additional burden has resulted in a contraction of the number of relationships suppliers and TPIs maintain, which may diminish competition and choice to the consumer. This also risks an asymmetric playing field, with those parties who are ‘doing the right thing’ bearing a high compliance cost, whilst their competitors may follow a path of least resistance; this could lead to a ‘race to the bottom’ and further detriment to consumer outcomes.

RECCo raised this Change Proposal to establish a Code of Practice ('CoP') that holds TPIs accountable to a set of Best Practice Principles and to address the risks and issues that had been identified.

Governance

The CoP has been designated a Category 3 document under the REC. Category 3 documents are non-mandatory guidance or subsidiary operational documents to the REC. These documents are developed and maintained by the Code Manager, a REC Committee or a REC Service Provider. Each Category 3 document has a Responsible Committee or Responsible Service Provider, as shown in the REC Baseline Statement.

Consultation Responses

Following our stakeholder engagement, where we sought views and input into our early thinking, RECCo developed its draft TPI CoP. Change Proposal R0137 was raised on 20th July 2023 seeking the introduction of the CoP into REC under a Category 3 document; a consultation was published alongside the Change Proposal asking for interested parties to provide feedback on the draft CoP before implementation as a voluntary Code in October 2023.

Respondents were split across three categories:

- TPIs: 6 respondents
- Energy Suppliers: 8 respondents
- Industry Groups: 1 respondent

The response types varied, with some respondents commenting on each Principle within the CoP, some asking specific questions of a particular Principle, others asking direct questions of RECCo, and some simply commenting on the idea of the CoP itself.

One TPI respondent said, 'The code is perfectly fair; no well-intentioned Broker will have a problem with complying', while another said, *'To protect and promote good customer outcomes, reduce administrative burden for suppliers in conducting audits and TPIs in managing several Codes of Conduct, whilst ensuring all customers are treated equally, RECCo's proposal for a TPI Code of Practice 'Code' is a necessary step in the right direction'*.

Suppliers, too, were broadly supportive of the introduction of the CoP, with one stating, *'It is important that the customer is really clear how the TPI is being paid, and the type of contract they are entering into before they contract with the TPI as this allows the customer the opportunity to change their mind if this is not something they are happy to agree to'*.

However, there were some queries around the need for clarification on the requirements of Suppliers and TPIs under the voluntary scheme and clarification on the potential anti-competitive nature of the CoP introduction. We address these two issues below.

Voluntary versus Accredited Code

As part of the next phase of work, we will seek to introduce an accreditation and assurance scheme which will require Non-Domestic Suppliers to work with TPIs who can demonstrate that they are meeting the minimum requirements set out in the CoP. The launch of the CoP will provide a period of transition, allowing TPIs a window to reach the desired standards set out in the CoP and prepare for more formal requirements. During this period, we expect to see Non-Domestic Suppliers working with their TPI partners to raise awareness of the CoP and its requirements. However, at this stage, we will not see to limit Non-Domestic Suppliers engaging TPIs who are not signed up to the CoP.

UK Competition Law

In respect of the voluntary Code of Practice, RECCo is satisfied that the voluntary code does not breach UK Competition Law and has sought appropriate advice to satisfy themselves of this.

Responses to Code Principles

RECCo are grateful for the responses received, and, where appropriate, we have looked to adopt them into our final CoP.

Of the Principles that were commented upon, RECCo has made amendments and adopted suggestions where appropriate. We set out below the key changes that have been made as a result of the feedback we received. There were also several questions where respondents sought clarification, which we have also included in our summary below.

Definition of a TPI

A number of consultation respondents noted that the definition of a TPI in the CoP did not align with the common definition found within the Standard Licence Conditions and the Energy Ombudsman's Terms of Reference for Energy Brokers and could lead to developing inconsistencies.

RECCo agreed that this needed to be addressed, and we have amended the definition of a TPI within the CoP to align with this standard definition.

Amalgamation of Principle 6 ('Awareness Training in relation to this Code of Practice') and Principle 7 (Compliance Process')

One respondent to the consultation noted, *'Principles 6 and 7 can be combined under an 'Appropriate Governance' umbrella. This would incorporate training, controls, and monitoring in relation to this Code to ensure adherence. We would recommend RECCo consider amalgamating Principles 6 and 7 under a governance-type heading to align with the recommendation the Code also drives ethical principles, not just individual requirements, to provide sufficient flexibility to an ever-evolving market'*.

After consideration, we agree with this approach and have amalgamated Principles 6 and 7 under a single Principle, titled 'Training, Governance and Compliance'. We believe this simplifies the requirement and aligns similar requirements under a single principle.

Additional Clarifications

Question: *'We currently have our version of the letter of authority. Is the intention that the example in annexe 2 (of the consultation) will be used across the industry, or will suppliers still be able to use their own that reflects the detail they feel is needed to act in the best interests of the customer?'*

Response: The LOA outlined in the consultation details the minimum expected requirements; stakeholders are free to include additional requirements if they would like to/need to.

Question: *'How will the LOA requirement work for non-registered TPIs who have not signed up to this code? The information that suppliers commonly share is what is required in the licence conditions. We would not share pricing and new contracts via non-registered TPIs and feel that there needs to be more clarification within the LOA process that this relates to registered TPIs only.'*

Response: During this initial phase, we propose that Non-domestic Suppliers seek to raise awareness of the CoP and encourage the TPIs that they have a relationship with to sign up to the CoP. Where TPIs have not done so, Non-domestic Suppliers can continue engagement as per their current process and procedures. However, at the point where the accreditation and

assurance scheme is introduced, Non-domestic Suppliers would be expected to only engage with those TPIs who have demonstrated that they meet those minimum standards as set out in the CoP.

Question: 'Where suppliers have their own TPI code of practice in place, is the intention to make suppliers follow this voluntary standard. Our TPI code of practice broadly aligns with what is set out in this document, but we have tailored it to our commercial requirements to protect our customers and business.'

Response: Stakeholders will be required to follow this CoP as a minimum standard. However, Non-domestic Suppliers would not be prohibited from adding any additional requirements as they see fit.

Question: *'We believe a reasonable adjustment period should be allowed before introducing the voluntary Code to give TPIs the best chance of ensuring appropriate processes are in place to ensure adherence to the Code from when it is launched. An adjustment period of just over two weeks is unlikely to allow for RECCo to assess feedback to the Code appropriately, implement changes brought about by the Ofgem non-domestic market and implement the Code in the market (even voluntarily). We would request a minimum adjustment period of at least three months to be reasonable (i.e., no earlier than 1 January 2024) to give TPIs the best chance at adhering to the voluntary Code from when it is launched and protecting existing customer confidence.'*

Response: RECCO believes that the voluntary period is the pseudo adjustment period for the transition to the accredited Code scheme, which we envisage will be introduced in the summer of 2024. Once live, the voluntary Code is the catalyst for further formal engagement before the accreditation scheme introduction.

Question: 'What happens if a TPI does not sign up? Will you publish a monthly list of companies who refuse?'

Response: During this initial phase, we do not plan to take any action on those TPIs who refuse to sign up to the CoP. Once transitioned to an accredited scheme, with the CoP placed within the REC Schedule if a TPI does not choose to follow the accreditation route, then they will be subject to direct Non-domestic Supplier audit as it is the Supplier who must be able to provide evidence that their TPI partners are compliant. Therefore, TPIs will be able to work with Non-domestic Suppliers so long as the Non-domestic Supplier is satisfied that the TPI meets the minimum requirements and can appropriately evidence such assessment.