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Email to
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Regulating Third-Party Intermediaries in the Retail Energy Market

About us

Consumer Scotland is the statutory body for consumers in Scotland. Established by the Consumer Scotland Act 2020, we are accountable to the Scottish Parliament. The Act defines consumers as individuals and small businesses that purchase, use or receive in Scotland goods or services supplied by a business, profession, not for profit enterprise, or public body.

Our purpose is to improve outcomes for current and future consumers, and our strategic objectives are:

- to enhance understanding and awareness of consumer issues by strengthening the evidence base
- to serve the needs and aspirations of current and future consumers by inspiring and influencing the public, private and third sectors
- to enable the active participation of consumers in a fairer economy by improving access to information and support

Consumer Scotland uses data, research and analysis to inform our work on the key issues facing consumers in Scotland. In conjunction with that evidence base we seek a consumer

perspective through the application of the consumer principles of access, choice, safety, information, fairness, representation, sustainability and redress.

Consumer principles

The Consumer Principles are a set of principles developed by consumer organisations in the UK and overseas.

Consumer Scotland uses the Consumer Principles as a framework through which to analyse the evidence on markets and related issues from a consumer perspective.

The Consumer Principles are:

- Access: Can people get the goods or services they need or want?
- Choice: Is there any?
- Safety: Are the goods or services dangerous to health or welfare?
- Information: Is it available, accurate and useful?
- Fairness: Are some or all consumers unfairly discriminated against?
- Representation: Do consumers have a say in how goods or services are provided?
- Redress: If things go wrong, is there a system for making things right?
- Sustainability: Are consumers enabled to make sustainable choices?

We have identified information, redress and fairness as being particularly relevant to this consultation proposal.

Overview

We value the government considering how to promote innovation in the energy market and deliver a range of new and useful products to consumers. However, we do not agree with the proposal set out in the consultation to have the market regulated through a general authorisation regime, due to the risk of potential harm to both domestic and non-domestic customers. While general authorisation allows for any market entrant who consents and adheres to the general principles to operate, the alternative specific authorisation model offers greater consumer protection as market entrants are required to obtain a licence from the regulator before operating in the market.

The appropriateness of authorisation models can vary across different sectors and markets. We note that the consultation cites the telecoms market as a market regulated through a general authorisation model. In contrast, financial service markets are regulated through specific authorisation. Given that energy supply is an essential for life service, the impact of detriment for energy consumers is potentially highly significant and we are concerned that a general authorisation model would not be an appropriate model for all TPIs in this sector. We would welcome the government providing further evidence or data to indicate any risks that a specific authorisation approach might present to innovation in the development of intermediaries markets.

Given the expectation that TPIs may have a growing role in the future energy retail market, it is important that the appropriate authorisation model is established to enable TPIs to deliver consumer benefits while also protecting consumers from harm. There are significant potential benefits that growth of this market could deliver for consumers, helping them to meet their needs. However, there are risks that a general authorisation regime model could allow for a thinly controlled regulatory regime, particularly if there are many small TPIs providing niche services, which the regulator would need significant time and resource to monitor and investigate if there is poor practice. These risks are lessened under a specific authorisation or hybrid model. It is important that the decision about the appropriate authorisation model is informed by a robust evidence base, drawing on learning from a range of other sectors including finance and telecoms, to understand the merits and limitations of the different models in both protecting consumers from harm and supporting innovation; and how these issues may play out in energy markets.

Given the varied roles that a TPI can play, Consumer Scotland recommend that the government consider the potential for a hybrid model of regulation of the energy TPI market that is based on the degrees of control a TPI has for a customer's decision and the potential risk of harm arising from those decisions. A regulator following a hybrid regime could, for example, set out a framework or triage process for how services could be categorised - such as general information services falling under a general authorisation regime, while those deemed to have significant control over a consumer's energy contract, such as an autoswitching service, falling under a specific authorisation framework. This could provide flexibility to the regulator in deeming what it considers to be low risk or high risk

TPIs and regulating accordingly. Innovative, low risk services would be able to enter the market quickly, while those new innovative services deemed to present a higher degree of risk due to the level of control exerted would require specific authorisation in order to reduce the risk of any potential harm to consumers.

If this hybrid model is not considered feasible, then we would support specific authorisation in preference to a general authorisation model, as this would be more likely to provide positive consumer benefits.

Question 1. Since the launch of our Call for Evidence on TPIs in the retail energy market in August 2021, have you observed any significant developments in the TPI market that could inform potential regulatory decisions?

For social landlords, the void property market has become a particular concern. From engagement with housing stakeholders, Consumer Scotland understands that some relationships between TPIs, energy suppliers and housing associations broke down during Covid and have continued to be poor since. Furthermore, there have been ongoing issues with how debt is managed and attributed by both energy suppliers and by void management companies.

Examples of TPIs in Void Management include: Energy Angels, Green Energy Switch and Pinnacle Group although some suppliers have partnered with a void management company to offer services directly (e.g., British Gas with VoidCare).¹

There appears to be a regulatory gap governing third party contracts between Registered Social Landlords (RSLs) and void management companies for domestic energy suppliers whilst properties are empty. This area is not currently covered by Ofgem License Conditions but does relate to domestic energy suppliers' activities. We suggest that Ofgem considers the potential to introduce a mechanism, such as a duty or voluntary commitment, that places greater onus on energy suppliers to actively work with the TPIs as agents of their customers so that prompt action to rectify issues is undertaken. Additionally, access to ADR schemes could provide a route for redress should an issue persist.

We have also identified challenges that can emerge for consumers as a result of the energy debt management system when a tenant vacates a property. Specifically, we have some evidence that domestic energy suppliers, and sometimes void management companies, are pursuing social landlords for debt for which they are not legally responsible when that debt was incurred by a tenant (e.g., clearing debt from a prepayment meter). Due to the outstanding debt, there is a risk that the housing association may not be able to supply the property to a new tenant if the energy supplier will not transfer that debt balance away from the property.

¹ <https://www.britishgas.co.uk/energy/voidcare.html>; <https://www.pinnaclegroup.co.uk/services/void-management/>; <https://www.greenenergyswitch.co.uk/void-energy-management/>; <https://energyangels.co.uk/>;

As there is an absence of a domestic customer in a void property, there is little recognition of the role of TPIs or domestic supplier practice and regulation that should be applied to resolve issues within this market segment. Consumer Scotland has been provided insight from multiple housing stakeholders concerned that there has been ‘bad practice’ on the part of either domestic energy suppliers or TPIs in the retail energy market. This is having an impact on the availability of social housing during a period of acute housing shortages across the UK.

Question 2. Are there any further harms and risks stemming from TPI behaviours that you believe warrant our attention? Please provide examples and any relevant specific figures, if available.

No comment

Question 3. What are the main challenges with improving price transparency?

As we state above, the information Consumer Principle is particularly relevant to this consultation.

By their very nature, TPIs create a boundary between a customer and a supplier. This can create issues for how crucial information is conveyed between supplier and customer. Information may be filtered through the TPI, and there is a risk that this may not always provide the full and accurate picture that a customer needs. As a result some TPIs could make decisions on behalf of consumers without their full knowledge and understanding of that decision and its ramifications. This is particularly acute for consumers using price comparison websites, collective switches, auto-switchers or bill splitting services.

This information filtering may occur for any number of reasons – such as lack of space to provide it, priorities of the business, or the TPI seeking to reduce the amount of information provided to a consumer to make a switch easier to understand. However, as a consequence, this filtering could mean that a consumer’s decision may not be fully informed, as the TPI has made that filtering decision on behalf of the consumer. This information barrier then removes or reduces the consumer’s ability to fully consider all available information to inform their decision and make the most appropriate choice for them .

In periods of instability, particularly where suppliers of last resort must step in when a supplier fails, the lack of a direct consumer relationship with an energy supplier can create harm.² For those using bill splitting where an account is not in a consumer’s name, consideration should be given to what the expectations should be of TPIs given their crucial role in delivering services to that consumer.

² https://assets.ctfassets.net/mfz4nbgura3g/36TcUC11Y8gf8miaitx0V0/806bd2815684713675046128161240d9/Third-party_20intermediaries_20in_20the_20retail_20energy_20market_20-20CA_20response_20061221.pdf

There are several challenges for transparency of pricing. If the market is taken under General Authorisation, the plethora of formats (arising from innovation) could confuse consumers if a consistent and easily understandable format is not encouraged. Comparability will be crucial to ensuring that the markets that TPIs operate in meet the needs of consumers, who can then exercise their right to choose the most suitable provider for them.

Best practice could be learned from the financial services markets on how this information could be conveyed to consumers. Additionally, we understand that Ofgem is considering a Consumer Duty to apply to energy suppliers,³ which it could then also extend to apply to TPIs. This extension could potentially ensure that businesses work harder to provide the right amount of information for each of their customers, taking account of their specific needs when providing critical information about the services being offered. An extension of the Consumer Duty to apply to TPIs could mitigate some of the potential risks, particularly for those consumers in vulnerable circumstances.

For brokers and sub-brokers, a clear indication, such as badging by the regulator, would provide upfront information to consumers on whether they are able to look at deals across the whole of the market or only a part of the market. This would ensure that consumers and customers are aware of the benefits and risks of working with those brokers and whether they may get the best price from a particular broker. This would, in turn, generate greater confidence in the market, alongside greater transparency, and could support greater market participation. Additionally, regardless of any validation by the regulator, there should be a clear onus on firms/brokers to provide clarity on the scope of the market/number of providers they have engaged with when surfacing options to consumers, and whether there are preferential arrangements (like paid listings) which enhance the visibility of certain offers.

The bundling of services across different sectors, such as energy, water and telecoms, will be particularly challenging for this proposal. Given that the markets may have different regulators, there could be difficulties in ensuring that clear and consistent information is provided to customers. How the breakdown of costs for each service is provided needs to be carefully considered in this cross-regulatory context. There is a potential role for regulators to work together to address any gaps and risks of harm to ensure there is clarity and comparability of each utility for customers.

This market could benefit significantly from clear direction being given to all TPIs on what information to provide. The regulator could benefit from learning what other sectors do to provide similar information, particularly in financial services.

Question 4. Do TPIs currently identify consumers who are in vulnerable situations? If so, how do they do so?

No comment.

³ <https://www.ofgem.gov.uk/sites/default/files/2024-09/OFG2266%20Consumers%20Confidence.pdf>

Question 5. Should the design principles for TPI regulation include a requirement to identify consumers in vulnerable situations? How could TPIs record and retain that information?

As we state above, the Consumer Principle of fairness is particularly relevant to this consultation. There is currently no single comprehensive, publicly owned service that holds data on UK citizens and consumers that supports services to protect consumers in vulnerable circumstances.

There are several services that operate across the UK (there are also some that only operate at a country level) that can hold and protect consumers' data for the purpose of sharing it with companies that interact with consumers in responsible ways. However, many consumers are not registered with such a service or they may only be registered with a service that a company they use does not work with. Efforts are being made at addressing the gaps for support between different utilities with the cross-sector work between Ofgem and Ofwat to encourage data sharing of PSR information between energy and water firms, which will improve support for consumers in vulnerable circumstances in England and Wales.⁴

Consideration should be given to the options that may help to address this gap at a national level. Such work could consider the merits and challenges in reducing the burden on suppliers in gathering and processing sensitive data. Such work could play a role in ensuring the accuracy of data matching and in identifying the financial interventions that can be applied, providing this information to suppliers from a reliable source.

We would also encourage the government to consider the opportunities that exist to improve alignment in regulations designed to protect consumers in vulnerable circumstances across different regulated markets. In October 2023, the Department for Business and Trade (DBT) published its call for evidence⁵ on smarter regulation and the regulatory landscape, which included the development of a proposed Share Once Support Register based on the 'tell us once' approach.⁶ In its response, Consumer Scotland supported the creation of a single, multi-sector register, stating that it could improve identification of vulnerability; overcome the challenges associated with low awareness of Priority Services Registers (PSRs); and prevent people being on one PSR and not others, in situations where the vulnerability is not sector-specific.⁷

Although the DBT proposal did not extend to TPIs, a shared register would likely simplify the process for TPIs when seeking to data-share with utilities, whilst also providing a best practice model for TPIs to learn from in their individual dealings with consumers in vulnerable circumstances.

⁴ <https://www.ofwat.gov.uk/regulators-and-industry-drive-plans-to-step-up-support-for-vulnerable-consumers/>

⁵ [Smarter regulation and the regulatory landscape - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/smarter-regulation-and-the-regulatory-landscape)

⁶ [A Spotlight on Tell Us Once – Civil Service Local \(blog.gov.uk\)](https://www.blog.gov.uk/2023/09/27/a-spotlight-on-tell-us-once-civil-service-local)

⁷ [en23-02-response-to-dbt-consultation-on-smarter-regulation-priority-services-register-section-january-2023.pdf \(consumer.scot\)](https://www.consumer.scot.nhs.uk/wp-content/uploads/2023/02/en23-02-response-to-dbt-consultation-on-smarter-regulation-priority-services-register-section-january-2023.pdf)

TPIs and consumers in vulnerable circumstances

TPIs that have a significant degree of control over a consumers relationship with their energy supplier should have responsibility for identifying vulnerability. However, this will require good guidance from government or a regulator to ensure that data is captured appropriately, and that the TPIs data protection and security processes are suitably robust to protect any such sensitive data that they hold.

If the TPI is the key point of contact for a consumer, such as for an auto-switcher or bill splitter, for their energy consumption then their relationship with the TPI becomes particularly crucial if something goes wrong. In those cases of direct consumer relationships, and thereby responsibility, TPIs should have to identify vulnerability and have a duty to protect those consumers from harm.

The supplier hub model in the energy market ensures that the supplier is the interface for the consumer, with the TPI market introducing an additional relationship that alters this traditional model. An energy supplier then may be too far removed from the interaction with a consumer that they would not be able to capture such data on vulnerability themselves. For example, as previous consultations' responses on this issue have indicated, some bill splitters do not share their customers details with the supplier - so when something goes wrong there is heightened risk of consumer harm/detriment. Any future regulator should carefully consider the implications and rationale for moving away from the supplier hub model.

For those who are digitally excluded, they may be able to sign up to an auto-switching service, for example in a local library or by a relative, that prioritises low cost to the consumer. They may not be easily contactable if the TPI does not have the right contact route for that consumer, putting them at risk.

TPIs should be required to contribute this information (clearly articulating this to consumers, or providing a route for a consumer to do this process themselves if necessary) to the relevant PSR and they should have a duty to secure this information appropriately. In our engagement with the DBT proposal, we suggested that a shared register could enable agencies to leave a 'warm lead,' or a PSR flag, which would prompt the PSR holder to make contact with a consumer who may require, or benefit from, priority services. This could apply to TPIs as part of the regulation process.

For the TPIs with significant control, suitable requirements should be put in place for those TPI's customer service agents to be trained to support those in vulnerable circumstances (such as to the relevant BI standard) and the regulator should be closely involved in examining how TPIs online systems capture that information, such as during the price comparison process or in website chatbots. The cybersecurity arrangement for TPIs should be to the suitable standard to handle and protect that information.

From the start of the new regulatory regime, given the significant role energy plays in the lives of people and particularly for those in vulnerable circumstances, enforcement and

appropriate penalties should be put in place for failing to adhere to standards to protect consumers in vulnerable circumstances. The FCA's approach to the start of the Consumer Duty in financial services is a good example of how action and enforcement can ensure general compliance with minimum standards within a short space of time, leading to improved consumer welfare.⁸

Question 6. Should ADR services be expanded to domestic customers in line with existing provisions for non-domestic consumers?

Yes, all consumers should have access to simple and accessible redress services. We consider that a single ADR scheme and ombudsman would be the most appropriate route as there is a risk of a lack of clarity for consumers when there are multiple schemes in place.

A [research paper](#) commissioned by Citizens Advice and carried out by Queen Margaret University and the University of Westminster recommended that there should only be one ADR scheme per regulated sector.

Cabinet Office guidance on [setting up Ombudsman schemes](#) also ask that consideration is given as to whether there is an existing body which can take on those duties. In this case, it appears appropriate to consider the potential for the Energy Ombudsman to take on an expanded remit.

Question 7. Are there further regulatory examples from other sectors that we should be learning lessons from?

Generally, we would encourage government to facilitate the sharing of best practice from across regulated markets in situations such as these - where new legislation for regulating previously unregulated markets is being considered.

There is a potentially significant issue around the role of verbal contracts in the sector and learnings from other sectors would benefit this discussion. We would welcome the government and Ofgem working with the FCA to examine, what, if any, the role of verbal contracts plays for TPIs in their regulated financial markets and how these are managed. As there is a high burden on a consumer or customer if something is wrongly conveyed or if information is missed, bad faith actors can make significant money from such contracts that may not be in the best interest of their customers. In such cases of verbal contracts, a proof of contract could be useful to ensure that the potential for harm is reduced, clearly demonstrating that explicit consent by a customer was given to a broker to act on their behalf.

For TPIs in the water market in Scotland, the proposed Code of Practice would require the following for different ways of agreeing contracts, a similar approach could be applied to this market:

⁸ <https://www.fca.org.uk/publications/good-and-poor-practice/consumer-duty-implementation-good-practice-and-areas-improvement>

“Where the Signatory Licensed Provider has provided the information outlined in Section (X) orally to the Customer, it shall, within 5 business days, also provide this information (i - xii) to the Customer in writing along with a copy of the agreed or proposed Terms and Conditions of Supply.

This information will be provided directly by the Signatory Licensed Provider to the Customer irrespective of how the Customer has agreed terms i.e. directly or via a third party”⁹

Following the implementation of any future regulation of this market, we would welcome Ofgem working with the other regulators and stakeholders on the design of the regulatory model and how lessons could be learned from other sectors. There could be a valuable role for the UK Regulators Network to explore how third party intermediaries work across multiple sectors currently and the potential role of growth in each regulated markets of these if AI/ML continues to bring disruption to regulated markets.

Question 8. What are your views on the types of TPIs included in the first section of the scope table?

Reasonable.

Question 9. Do you think any further types of TPIs should be explored? If yes, do these match with any of the expanded scope category and if they do not, why not?

No comment.

Question 10. Are there existing regulations for resellers currently set at the right level to prevent consumer harms?

No comment.

Question 11. Are energy suppliers aware which of their customers are resellers and, how many end-consumers the resellers serve?

No comment.

Question 12. Do you have any views on how the number of TPIs within the market might change in the coming years?

As AI/ML becomes more accessible and affordable to companies, there is potentially room for exponential growth in the number of TPIs in any regulated market, hence why we urge caution on how TPIs in the energy market will be regulated.

⁹ <https://wics.scot/system/files/2024-11/Annex%205.1%20-%20Code%20of%20Practice.pdf>

Question 13. How might the TPI market evolve in the next 5 years, particularly in the context of Market-wide Half Hourly Settlements, Net Zero ambitions and more innovative tariffs and low carbon technologies being introduced to the market?

There is a legitimate benefit for consumers in having TPIs operating in this market, which will likely grow as markets develop and become more complex. However, specific measures are required that reflect prioritisation of consumer protection against poor practices.

For example, we are likely to see more AI-driven products across all regulated markets, which may increase market engagement by consumers and businesses. However, this 'engagement' may not necessarily be active engagement by an individual, but an algorithm making that choice on their behalf that could be set up for certain preferences by the individual. In such cases, the role of choice could fundamentally change in a short space of time in this market, as well as other regulated markets. TPIs may evolve to deliver part of such new market dynamics, which brings a potential range of challenges, such as around data control and privacy.

Consumers would, in essence, be delegating a significant proportion of their decision making to a TPI, particularly in cases of autoswitching. That relationship should be built on trust in the relationship, rather than necessity (such as where a consumer in financial hardship focuses on minimising living costs). If consumers are being asked to trust these providers at a greater level than previously, it is important that both the providers and the regulator are conducting audit and reassurance, and have obligations to keep certain elements of transactions visible to consumers (or for those to be interrogated on demand)

Additionally, we could potentially see a diversification of technology used by consumers and businesses being supplied by the market. New products that maximise the consumer or businesses' desired outcomes, such as load demand TPIs are being developed. These technologies could benefit behaviour-based tariffs users particularly, meeting their more bespoke needs. There is then a role for TPIs in supporting that market. However, these may be considered as part of the domestic market load management TPIs being considered under the 'Delivering a smart and secure energy system: implementation' consultation which closed earlier this year.¹⁰

Consideration should be given to how this market could develop in the next 10 to 15 years, given these regulations will fundamentally shape the market for TPIs for the long term. For example, if we see more households 'off-grid' or 'energy independent' with their own generation that meets all their needs, which might see peer-to-peer selling of surplus at a local level, or other such innovations.

Question 14. Do you agree with the list of policy objectives?

Yes

¹⁰ <https://www.gov.uk/government/consultations/delivering-a-smart-and-secure-electricity-system-implementation>

Question 15. Do you support the government's proposition to directly regulate TPIs via a general authorisation regime? If not, what regulatory approach do you prefer, and what are the reasons behind your choice?

No.

There is a difficulty in applying one regulatory regime to the broad suite of TPIs that currently operate. There should be consideration given to whether applying this one general authorisation model is in the best interests of domestic and non-domestic consumers.

The government should consider applying a hybrid model in which different types of TPI have regulation applied to them according to the degree of potential harm. The general authorisation regulatory regime would be appropriate for those TPIs where the risks of harm to consumers are lower, such as price comparison websites. For those TPIs where the risk of harm may be greater, particularly brokers or autoswitchers, the regulatory approach should be a specific authorisation model.

Regarding the different models that are being considered for this market through this consultation, it would have been helpful for the government to have set out an assessment of the general authorisation regime in telecoms and whether it has been effective in meeting the needs of consumers, comparing this to the specific authorisation approach taken by the FCA. Providing such an assessment would have enabled stakeholders to compare the outcomes of either regime model or consider the relative appropriateness of each for the TPI market.

General authorisation regime

We understand the perceived benefits of applying a general authorisation model. The lower regulatory burden, fewer barriers to entry and increased flexibility can support market innovation and growth. However, the need for regulation has come about due to poor industry practices, hence this consultation. The Energy Ombudsman's [Brokers Report](#) found that 69% of complaints received on TPIs found in favour of the consumer, with 71% of complaints related to sales.

General authorisation involves broader oversight and less tailored consumer protection, which we are concerned may not be sufficient from harm for those using some TPIs in the energy market.

The government proposes to rely on data provided by consumer groups to help identify harm in this market, which raises issues regarding whether that will be sufficient to support the regulator to act quickly under a general authorisation model. Within the telecoms market, regulators did not intervene to tackle the loyalty penalty until they had received a super-complaint, despite the issue being raised regularly by consumer advocacy bodies.¹¹

¹¹ <https://www.citizensadvice.org.uk/cymraeg/amdanom-ni/about-us1/media/press-releases/one-in-seven-customers-still-paying-the-loyalty-penalty-despite-cost-of-living-crisis/#:~:text=In%20September%202018%2C%20Citizens%20Advice,%C2%A33.4%20billion%20every%20year.>

For consumer statutory bodies like Consumer Scotland to be able to fulfil our role appropriate resource will need to be made available to enable sufficient monitoring and reporting on the market.

For the regulation of sub-brokers, corporate policies of TPIs to manage sub-broker contracts are not set on any legal basis – thereby if any sub-brokers acted in a way that was not in their customers best interest, the only people to hold them to account could be the companies they had contracted with.

This raises several questions regarding sub-brokers under a general authorisation regime:

- Will the company step in and assume liability for any issues or harm their customers face from their contracted sub-brokers?
- If that is not the case, what should be put in place to ensure that consumers receive suitable outcomes?

Assurances aren't sufficient when someone is experiencing or facing harm and the company decides their liability is limited, requiring a potentially protracted ADR process or court action. Consideration should also be given to how sub-brokers would be regulated under a general authorisation model, or whether this and similar agents should be regulated under a specific authorisation regime.

While there is currently greater stability in the energy market than during the energy crisis, if the market enters another period of instability then there is potential for harm if there is not a specific authorisation and control of TPIs. The energy market has already been found to be lacking resilience, according to the Energy Crisis Commission,¹² and further market disruption, such as additional supplier failures, would impact on the TPI market. An influx of market turmoil could also mean that monitoring becomes less of a priority for a regulator managing a crisis. As harm was experienced during the process of supplier instability and failure, the government should set out what consideration it given to how do we avoid or mitigate that risk going forward, and the role of TPIs in such circumstances.

Additionally, as we set out above, the potential for disruption by AI backed models needs to be considered. If there is a flood of new entrants to the TPI market, without sufficient barriers to entry to prevent unsuitable providers from operating there will be a risk of harm to consumers. The lack of robust entry requirements for energy suppliers has been found to be a reason so many failed.¹³ This resulted in significant turmoil for consumers during a period of instability.¹⁴ For the TPI market, we should be learning from these lessons , and

¹² <https://energycrisiscommission.uk/>

¹³ https://www.ofgem.gov.uk/sites/default/files/2022-05/Review%20of%20Ofgems%20regulation%20of%20the%20energy%20supply%20market_May%202022.pdf;
<https://energycrisiscommission.uk/>

¹⁴ https://www.ofgem.gov.uk/sites/default/files/2022-05/Review%20of%20Ofgems%20regulation%20of%20the%20energy%20supply%20market_May%202022.pdf;
<https://www.citizensadvice.org.uk/wales/policy/publications/market-meltdown-how-regulatory-failures-landed-us-with-a-multi-billion-pound-bill/>; <https://www.nao.org.uk/reports/the-energy-supplier-market/>

considering how the proposed regulatory regime would shape entry requirements to the market, as it could be considerably easier for this to happen under a general authorisation regulatory regime than under a specific regulatory regime.

If the system is predominantly automated, then it's possible that it is set up for business as usual and is less flexible to crisis response (than an organisation with more staff resource that can perhaps shift certain things more easily). Therefore, consideration should be given to how to ensure that an organisation has the appropriate mechanisms to respond to a market disruption from a consumer point of view. This could, for example, be done through regular stress tests and regular scenario planning for crisis situations, to support understanding of any significant risks in the sector as it develops.

Furthermore, will the regulator be able to understand and scrutinise the AI models developed by the TPIs? This would be particularly acute as an issue if models are not explainable or interpretable, as the root of any potential harm being experienced by consumers is not easily identifiable. Consideration should be given as to whether the regulator has the tools and skills available to interpret and investigate any rogue models, and what should be put in place to ensure firms developing models make them as transparent as possible.

If the government wishes to continue with the general authorisation route of regulation, it is likely that there might be some disruption from this move to a general authorisation regime as firms try to improve their operations to fit the requirements or prepare evidence to show there are adhering to general principles. However, this would be less than under a specific authorisation regime.

Specific authorisation regime

The specific authorisation is deployed in financial services, and that market is arguably similar to the energy TPI market given the model of brokers and similar agents with varying degrees of control. Consumer Scotland is of the view that consideration should be given to how proactive the regulator is expected to be in this market (both now and in future). The application of fit and proper test and threshold conditions can, from the offset, ensure that any 'bad actor's' authorisation can be removed quickly, preventing them from being able to supply consumers and businesses.

Ensuring compliance with minimum standards set out by a specific authorisation scheme can help to ensure that harm is reduced from the start and there are fewer unknowns for companies on what is allowable. Without clear parameters it will likely take some time for companies to understand how to interpret general principles set out under a general authorisation regime. This could lead to organisations getting it wrong (assuming good intentions), generating harm for consumers and businesses.

This kind of regime could ensure better standards of consumer protection and control over the market, and greater market integrity as each organisation subscribes to at least the minimum standard in order to operate. While the regulatory burden may be higher for each

organisation to achieve authorisation to operate, the risk of harm could balance this out given the potential costs of enforcement and detriment to customers to drive better standards in the market from how it currently operates.

Consumer Scotland do not have sufficient evidence to indicate whether a specific authorisation model harms innovation, however the FCA should be able to provide evidence on whether it has reduced innovation as applied in financial markets. This can also be mitigated by development of regulatory sandboxes for new products to be developed and supported by regulators.

A hybrid model

A hybrid model of regulation could allow for different TPI market segments to be regulated according to the risk of potential harm to customers. For those TPIs with greater potential control over a customer's decision-making, such as autoswitchers, bill splitters and brokers, then a specific model should apply. For those with less control who are providing information services, such as price comparison websites, then a general authorisation model may be more appropriate .

This approach could ensure an appropriate balance between protecting consumers against risk of harm and providing room for growth and innovation in the market.

Under such a model consideration would need to be given to determine the decision process for assessing which level of authorisation different providers would require to adhere to; and how the level of authorisation being applied would be made clear to both providers and consumers.

Regulatory consistency

A consistent regulatory landscape and standards across sectors would encourage more consistent consumer outcomes. Using only general authorisation for the TPIs in this sector, appears to contrast with the application of specific authorisation in financial markets and in heat networks, which undermines this parity. Understanding and comparing regulatory regime choices would be useful to enable consideration under future Better Regulation work by government departments. We would welcome greater collaboration between different government departments and regulators to support understanding of the potential unintended impacts as a result of these regulatory differences.

Consideration also should be given to how Ofgem will be resourced to ensure any new regime can deliver on the aims set out in this consultation.

Question 16. Are there particular considerations and/or exemptions for some types of SME TPIs which should be considered?

No comment.

Question 17. How might these proposals impact the size of the market or influence market consolidation?

These proposals will lead to regulatory conditions for organisations operating as TPIs in the energy market, and it could be expected that the greater regulatory burden may lead to some market consolidation or market exit of weaker or poorly performing organisations. However, the certainty of regulatory conditions could mean that market entry becomes more likely for companies if TPIs can prove that they can be profitable operating under the new regime, allowing for market growth particularly if the barriers to market entry are low and/or the costs of developing new products, such as AI-based products, fall.

Under the general authorisation regime, the scale of market exit could be smaller as the regulatory burden is lower. The scale of potential market consolidation or market exit would likely be more significant under a specific authorisation than under a general authorisation regulatory regime. While some weaker organisations could be unable to meet the regulatory requirements, such a regime would allow for a quick weeding out of bad practice companies, reducing the potential for realisation of harm on consumers and businesses.

Given that this is unknown, we ask that government considers how best Ofgem can be resourced to manage any unexpected changes following the implementation of any new regime.

Question 18. What are the anticipated costs for TPIs to comply with the proposed regulatory measures, including any required changes to their operations, reporting requirements, and potential fees?

No comment

Question 19. Are there any unintended consequences you envision as a result of these proposals? I.e. could a TPI work around regulation and enforcement through certain activities or practices.

Yes, as outlined above, greater instability could lead to further disruption and consumer detriment in the market, as experienced during the energy supplier failure crisis. General authorisation does not allow for a quick weeding out of the bad actors that specific authorisation would, and could allow for some bad practice TPIs to continue operating and creating harm for consumers and businesses until the regulator could carry out enforcement, which can be a time consuming process.

There is a risk of AI driven TPIs interacting with each other in such a way to mirror pricing and artificially keep prices higher for consumers and businesses than would be the case without AI. This AI-driven interaction could be difficult to legislate or regulate for as models are not designed to be transparent and assessable by other bodies. Requirements for regular audit and assessment of any AI models used would be of benefit to building trust in the

sector should AI models develop, and, as we state above, the regulator should be given adequate powers to access and the skills to assess any models.¹⁵

If new markets arise between the intersection of different markets, then the regulatory gaps between two regulated markets will become more stark. This could be addressed by proactive work between regulators to ensure that any potential issues are addressed before they become endemic.

Question 20. How should the regulatory framework for TPIs be future-proofed and conducive to fostering innovation?

While encouraging innovation can support the development of new markets, this may not necessarily lead to future-proofing the markets if confidence in those markets is poor. While flexibility in a regulatory regime can allow for new products to develop quickly, this should be balanced with whether those products are meeting the needs of consumers who buy them. Therefore, any drive to promote innovation should be balanced with the cost of potential harm to consumers.

We would welcome the government, and proposed regulator, setting out in more detail how consumers would be protected sufficiently in this potentially fast-growing market, as well the sufficiency of monitoring to be put in place to protect consumers - particularly those who are early adopters. Positive experiences and outcomes of early adopters from the start can support both goals of growth and protected consumers if the right regulatory regime is in place.

If a regulation regime struggles to achieve its intended outcomes then an additional overarching, principles-based Code of Practice can set out expectations which allows both the end-consumer and the regulator to challenge whether specific behaviours or expectations are in line with what the TPI has agreed to. However, Codes of Practice are most effective if accompanied by processes which ensure validation and enforcement, providing confidence to consumers that these principles are being followed.

Regulatory sandboxes can allow for the development of new products in safe places. This allows for any innovation in the market to be tested under the oversight of a regulator, potentially also allowing for streamlining for approval of a new product before rollout. While this might impact the timeline for launch of a new project, it ensures that any potential detriment is understood before a regulator gives approval for the project, or provides feedback on issues with a product offering before launch to resolve any major issues.

Question 21. What do you think of these principles? Should any additional principles be considered and why?

¹⁵ <https://www.aeaweb.org/articles?id=10.1257/aer.20190623>;
https://assets.publishing.service.gov.uk/media/5bbb2384ed915d238f9cc2e7/Algorithms_econ_report.pdf

Specific consideration of consumers in vulnerable circumstances should be baked into the principles. This should be embedded and clearly articulated in the treating customers fairly, data protection, training, governance and compliance principles. The FCA's Consumer Duty is a good example of how significant improvements in how consumers in vulnerable circumstances experience a market can be realised, which this regulatory regime could learn from.

Question 22. Specifically, do you agree with the design principle titled "clear route for dispute resolution" which would require TPIs to maintain clear and accessible complaints processes and signpost customers to out-of court dispute resolution providers?

Yes, as we state above, redress is a key Consumer Principle and will need to be adequately addressed in this market. Given that the courts can have significant backlogs of cases, providing a suitable alternative route can ensure consumers receive speedy redress. Generally, we are concerned about the available resource to protect and carry out enforcement regarding consumer rights, which this regime should aim to address fully for this market.

Regarding requirements on TPIs, any complaints processes should be clear on all the TPIs websites and they should be contactable in a range of formats, including telephone or post for those who are not online. How this will work for consumers in vulnerable circumstances needs to be set out clearly by the regulator to ensure TPIs are fully aware of their additional responsibility to those customers in vulnerable circumstances to protect them.

Multiple dispute resolution providers can cause confusion for consumers and customers, particularly if there is regular switching between contracts. A single provider can ensure that consumers know who to engage with when something goes wrong. The ADR scheme manager should therefore be the same as that used in the wider energy market, as consumers and businesses will likely already be aware of the Energy Ombudsman.

We have not seen sufficient rationale for why more than one provider of ADR services having would provide any benefit to consumers.

Question 23. Do you agree that TPIs, along with energy suppliers, should play a bigger role in raising awareness and educating consumers in GHG emissions reduction and energy efficiency practices?

Yes, choice and information is crucial for all consumers and businesses. All companies that interact with consumers and businesses should be able to clearly articulate the benefits and costs of their products and the associated GHG emissions that could vary with each product offered. Taking this approach in the development of new regulations ensures all markets all pulling their weight in the drive to net zero in the UK.

While signposting to other services can provide benefits to consumers through joining up how consumers can consider in the round their GHG emissions, TPIs and energy suppliers should be also taking responsibility for their significant role in emissions and supporting the

transition to net zero. Allowing for those companies to outsource this work can create confusion and prevent this key information reaching consumers. Consumer Scotland's own research shows that a third of consumers don't feel they have the information they need to act on net-zero,¹⁶ so all organisations with a direct relationship with consumers should have clear responsibilities to improve awareness of this challenge and key actions that consumers can take.

Question 24. Are there further design principles that should be explored as part of a general authorisation regime?

Resourcing of advocacy and advice services should be considered carefully as part of this regime. Consumers and small businesses will need help navigating processes under the new regulatory regime, particularly if there is a period of 'interpretation' while TPIs work out how they will consider implementing a general authorisation model's principle. Independent advice and guidance would help reduce information asymmetry and frictions in the market, particularly if it is free at the point of access advice and assistance. This will be crucial to the functioning of the market with an ADR scheme to support a customer navigating a dispute.

Additionally, signposting to relevant advice and assistance should be as clear as possible and as accessible as possible as building confidence of people in the market could ensure more consumers and businesses can do business with TPIs, otherwise it risks becoming a privilege market for those who know how to access it.

There is also likely to be a need for ongoing consumer advocacy under the new regime. Current Codes of Practice are voluntary and mostly drawn up by industry. A working group should be set up by Ofgem made up of governments, consumer advocacy bodies, industry and relevant stakeholders to ensure that the proposed final rules are adequate. Ongoing research in both the domestic and non-domestic markets to understand the key issues in the market would provide evidence to support future policy decisions, while representation in key decision-making would ensure that the regulatory framework is robust and suitably future proof to support consumers in this market.

The design principles should give thought to how data could be shared between TPIs and what safeguards are being put in place to reduce any risk of detriment for consumers in vulnerable circumstances, for example for disabled consumers with high energy use or additional support needs. There is a risk of those consumers being excluded from these markets if TPIs if inclusive design principles are not followed .

Transparency will be crucial to ensure the effectiveness of the regime. Any data gathered for monitoring by Ofgem should be published annually to ensure the sector is held to account for its performance.

For brokers in particular, there should be a requirement of fair value of brokerage fees. Implementing a form of consumer duty as a requirement on all brokers, particularly for the

¹⁶ <https://consumer.scot/publications/consumers-and-the-transition-to-net-zero-html/>

non-domestic market, could address this issue that has been raised repeatedly in previous consultations. The demonstration of added value could ensure greater customer confidence in the market.

Question 25. Are there types of enforcement activities within the energy sector or a similarly regulated sector that would be most appropriate for TPIs?

Consideration should be given to how issues would be flagged - whether this would be through direct contact with the regulator by an affected customer, trusted third party referral to Ofgem such as by a super complaint, or through requiring TPIs to directly report issues to Ofgem, such as through auditing of activities or regulatory reporting. For any of these, sufficient resources should be available to support appropriate enforcement of the market. As we state above, if consumer advocacy bodies are to be part of the monitoring and reporting regime alongside the regulator, then partnership working would be required to determine how this would work in practice, to ensure that issues are effectively captured and acted upon.

Enforcement activities, such as escalating fines or revocation of licences, are used in financial services to ensure compliance with regulations. Reporting measures, such as those used in most other regulated markets, could be applied to TPIs in the energy sector to give the regulator visibility on market dynamics and areas to target for enforcement. However, fining companies may end up harming consumers, as those costs are passed on to the customers of those firms. Additional measures could be put in place to reduce that potential risk.

If there are repeated bad actors, there should be suitable mechanisms in place to protect consumers from them. A strict liability approach ensures that those specific individuals who cause significant harm and perpetuate poor behaviour are held to account. Additionally, those TPIs who persistently act in bad faith can manage fines if there is enough profitability from their consumer harming activities, so a mechanism for weeding out those bad actors, both individuals and organisations, should be a critical part of the enforcement tools available to the regulator.

This could include removal of authorisation from the company to act in the market, or for specific brokers and directors to be barred from the sector if found to be responsible for significant harm to consumers. For companies that 'phoenix' under too much bad press or risk of enforcement, there should be suitable enforcement powers to hold the directing minds of those businesses to account, as there is a significant risk under a general authorisation regulatory framework for such firms and individuals to operate.

Question 26. What are your views on a preferred regulator if a regulatory framework was established?

The government has not set out a long term view of how TPIs across multiple markets will be considered. For this specific consultation, Ofgem makes sense as a regulator with knowledge of the energy market, however as we state above, regulatory consistency should be considered across the sectors.

While only one regulator would be in control of the scheme, consideration should be given to how Ofgem could learn from the FCA and Ofcom and vice versa. The UKRN is a good route for ensuring collaboration between regulators, and requiring shared learning across regulators could ensure a more effective regime in the long term.

There needs to be confidence from consumers and businesses in those handling their services and data. If a regime is seen to be lax and harm is evident, with minimal enforcement action taken, then consumer confidence in the market will be harmed and there may then be less take up of new and innovative services provided by TPIs who are acting well in the market. The government should ensure that whichever regulator establishes the regime has adequate authority, levers for enforcement and resources to be effective and build consumer confidence.

Question 27. We would like to seek views on considerations and/or exemptions for some types of SME TPIs within the regulatory proposals.

No comment.

Question 28. What are the perceived impacts of the current preferred option on TPIs? This could include things such as initial familiarisation costs and ongoing costs

There would be some initial costs to ensure adherence of all TPIs to the regime, particularly if they had not signed up to a voluntary code of practice.

We have suggested in this consultation that consumer facing a data management TPIs, such as auto switchers and bill splitters, should have suitable training in place to support consumers in vulnerable circumstances, which will incur some costs. The FCA should be well placed to sharing learning from the implementation of the Consumer Duty with Ofgem on such costs.