Third Party Intermediaries in the Retail Energy Market

Decision Paper

December 2018



About the Utility Regulator

The Utility Regulator is the independent non-ministerial government department responsible for regulating Northern Ireland's electricity, gas, water and sewerage industries, to promote the short and long-term interests of consumers.

We are not a policy-making department of government, but we make sure that the energy and water utility industries in Northern Ireland are regulated and developed within ministerial policy as set out in our statutory duties.

We are governed by a Board of Directors and are accountable to the Northern Ireland Assembly through financial and annual reporting obligations.

We are based at Queens House in the centre of Belfast. The Chief Executive leads a management team of directors representing each of the key functional areas in the organisation: Corporate Affairs; Electricity; Gas; Retail and Social; and Water. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

Our mission

To protect the short- and long-term interests of consumers of electricity, gas and water.

Our vision

To ensure value and sustainability in energy and water.

Our values

- Be a best practice regulator: transparent, consistent, proportionate, accountable and targeted.
- Be professional – listening, explaining and acting with integrity.
- Be a collaborative, co-operative and learning team.
- Be motivated and empowered to make a difference.

Abstract

In the UR's Forward Work Programme 2017/2018, under the third strategic objective of protecting the long-term interests of businesses and domestic consumers, the UR committed to a project to assess if there is a need for "Energy Broker" or Third Party Intermediary (TPI) Regulation. This resulted in a position paper being issued in May 2018.

Following that paper, in July 2018 the UR consulted on a related proposal to ask or require licenced energy suppliers to publish TPI commissions on customer bills where they are known.

After careful review of all responses to the consultation, the UR has decided not to proceed with the implementation of such an obligation. Whilst the UR supports transparency on a customer's bill, we believe there are a number of risks associated with such a measure which make it unsuitable for the NI market at present.

Audience

Businesses and business groups; industry; and statutory bodies.

Consumer impact

Businesses will see a continuation of current arrangements around TPI commissions. Commissions will be agreed directly between TPIs and customers and these will not appear on customer's energy bills.

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1. CONTEXT

1.1 Protecting consumers is at the heart of the Utility Regulator's (UR) role and we pursue this, where appropriate, through promoting effective competition in the Northern Ireland (NI) energy markets. The UR operates to ensure consumers are adequately protected in these markets through fostering transparent and effective competition, alongside regulation if that competition is not deemed effective enough to adequately protect consumers.

1.2 Third Party Intermediaries (TPIs) play an important role in helping customers (usually non-domestic customers) negotiate energy contracts by operating as an interface, or go-between, between suppliers and their customers. Ofgem has previously stated[1] that a broad range of business models can be classified as TPIs, including:

- Brokers or consultants;
- Sales / Supplier agents;
- Price Comparison Websites (PCW);
- Bundled services providers;
- Umbrella/Franchise sites;
- Aggregators;
- Energy advice companies.

1.3 In the UR's Forward Work Programme 2017/2018[2], under its third strategic objective of protecting the long-term interests of business and domestic consumers, the UR committed to a project to assess if there is a need for "Energy Broker" or TPI Regulation.

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[1] https://www.ofgem.gov.uk/sites/default/files/docs/2014/02/tpi_non-dom_condoc_final.pdf

[2] https://www.uregni.gov.uk/sites/uregni/files/media-files/FWP%20201718%20final.pdf

Project to Date

1.4 In November 2017, the UR published its 'Third Party Intermediaries in the Non-domestic Retail Energy Market' - Information Paper and Call for Evidence[3]. The purpose of this paper was to communicate formally to stakeholders the commencement of the project and to gather evidence regarding the scale and nature of TPI activity in the NI market. This then informed our view regarding any need for broker regulation.

1.5 The UR published its position paper[4] in May 2018 considering a variety of measures, before choosing to implement a program of information gathering and monitoring. As a follow-up to the position paper, we confirmed we would consult on: (i) the expansion of the REMM data to include broker information; and (ii) the publication of TPI commissions on customer bills.

1.6 In July 2018 the UR consulted on the proposal to ask or require licenced energy suppliers to publish TPI commissions on customer bills where they are known.

About this document

1.7 The purpose of this document is to set out the UR's final decision in relation to the option that was consulted upon.

1.1. The document is structured as follows:

- Section 2 discusses the scope of coverage of the project
- Section 3 summarises the responses to the July consultation questions
- Section 4 outlines the UR's decision and next steps

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[3] https://www.uregni.gov.uk/news-centre/third-party-intermediaries-non-domestic-retail-energy-market

[4] https://www.uregni.gov.uk/news-centre/position-paper-published-third-party-intermediaries-non-domestic-retail-energy-market

1.8 The UR received 11 written responses to the July 2018 Consultation paper. Non-confidential submissions were received from the following organisations:

- Power NI
- Energia
- CCNI
- firmus energy
- SSE Airtricity
- Power 2 Business
- Utilities Intermediaries Association (UIA)
- HU Energy
- BJG Consulting
- Power 2 Business
- Energy Management Systems

A copy of each respondent's full submission have been published alongside this paper and can be found on our website – www.uregni.gov.uk.

Equality considerations

1.9 As a public authority, the UR has a number of obligations arising from Section 75 of the Northern Ireland Act 1998. These obligations concern the promotion of equality of opportunity between:

i. persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;

ii. men and women generally;

iii. persons with disability and persons without; and

iv. persons with dependants and persons without.

The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion or racial groups.

1.10 In the development of its policies the UR also has a statutory duty to have due regard to the needs of vulnerable customers i.e. individuals who are disabled or chronically sick, individuals of pensionable age, individuals with low incomes and individuals residing in rural areas. Some of the above equality categories will therefore overlap with these vulnerable groupings.

1.11 In order to assist with equality screening of the proposals contained within this review, the UR requested that respondents provide any information or evidence in relation to the needs, experiences, issues and priorities for different groups which they feel is relevant to the implementation of any of the proposals outlined in our July 2018 consultation.

1.12 In our consultation, the UR asked the following questions regarding our equality considerations:

Q1. Do respondents agree that where this consultation has an impact on the groups listed, those impacts are likely to be positive in relation to equality of opportunity for energy consumers?

1.13 A small number of respondents addressed this question specifically.

1.14 UIA said the measure would have a negative impact on those groups listed, stating it was:

"…not presenting the customer with the full picture, [and] indeed could distort perceptions and ultimately limit choice for the customer as TPIs exit the market place."

1.15 HU Energy and Power 2 Business stated that it would have a positive impact.

Q2. Do respondents consider that the proposal around TPI transparency needs to be refined in any way to meet the equality provisions? If so, why and how? Please provide supporting information and evidence.

1.16 UIA asked that it be clarified with customers that just as the cost of energy is comprised of various costs—such as supplier margin—so too is a TPIs commission (i.e. overheads, added value services, account management, profit, etc.).

1.17 HU Energy and Power 2 Business stated that no refinements were required.

2. SCOPE

2.1 This project looks at non-domestic TPIs in the NI gas and electricity markets. For the purpose of this project, non-domestic TPIs are defined as:

- Non-domestic Brokers – These are organisations or individuals which compare energy contracts from a range of suppliers, and present the options to businesses. Interaction between the broker and business may be face to face, online, or via telephone or any other medium.
- Non-domestic Consultants – These operate in a similar manner to brokers, but may also offer advice on energy efficiency measures.

2.2 The domestic market is outside the scope of this project, as to the best of our knowledge there are no domestic brokers in NI. However, if there is an emergence of domestic energy market brokerage in NI, the UR will consider whether to conduct another project to cover that activity.

2.3 Price Comparison Websites (PCWs) fall outside of the scope of this project as this is a market that is yet to fully emerge in NI. Again, should this circumstance change in future the UR may seek to address PCW regulation.

3. CONSULTATION RESPONSES

3.1 Respondents were asked to provide their views on the option to publish TPI commissions on a supplier's bills where those commissions are known. The questions and responses are summarised below.

Q3. Do respondents agree that TPI commissions being published on customer bills would increase levels of transparency for customers? If not please provide a clear rationale why

3.2 Responses were mixed on this Question.

3.3 firmus energy was not supportive of the measure. Whilst it commented that the measure could "theoretically" lead to an increase in transparency, the supplier stated it does not have the system capability to implement this.

3.4 firmus energy added:

"*We do not believe it to be appropriate for firmus energy (or gas suppliers) to be responsible for publishing rates established in third party bi-lateral contracts on our bills. Furthermore, by assigning a gas supplier between the customer and TPI, as a payment facilitator, it potentially confuses the contractual relationship of those two parties*."

3.5 Whilst SSE Airtricity supported increasing transparency around TPI commission, it did not support doing so through the publication of TPI commissions on supplier bills. The supplier stated it was most appropriate for this information to be provided to customers up front when they are entering into contracts so they can see this before making a decision.

3.6 Energy Management Systems expressed concern over the impact such a measure would have on transparency. As different TPIs offer a range of ancillary services beyond energy procurement, publishing commissions could be "both an unfair and inaccurate representation of what is being provided".

3.7 Several other TPIs commented that should any such measure be implemented, it should be extended to show an energy supplier's margin displayed in the same format. HU Energy also stated:

"*We agree but only with the provision that the supplier also disclose their sales and marketing cost element in the same agreed format, should that be pence per kWh, annualised cost or percentage. We feel that this would be in the best interests of fairness and balance.*"

3.8 Power NI were supportive of the measure stating:

"…*the publication of TPI commissions on customer bills would give customers a better understanding of how they are paying the broker's fee*."

3.9 CCNI welcomed the proposal and added that the measure will increase the transparency around TPIs and their commissions. Such a measure "can only help them make more informed choices" the consumer body stated.

3.10 Energia stated the measure would "undoubtedly improve transparency" and could also "engender trust" which could benefit customers, TPIs, and suppliers.

Q4. Of those customers acquired via the TPI channel, can suppliers indicate what proportion have their commission paid on pence per kWh basis? Can suppliers clarify and provide data on other common models of commission used in NI?

3.11 Power NI stated that 90% of those customers acquired via the TPI channel have commission paid on pence per kWh basis. The remaining 10% were made up of various commission models including a flat fee per site and the customer paying the TPI directly.

3.12 Practically all of Energia's customers have their commission paid on pence per kWh basis, according to its response, adding that it appears to be the industry standard.

3.13 firmus energy agreed that almost all TPIs in the gas market invoice their customers on a pence per kWh basis.

Q5. Do respondents agree that standardising the reporting of TPI commissions on customer's bills would increase levels of transparency for customers? If not please provide a clear rationale why; and if yes, how best would this be achieved.

3.14 Again, responses were mixed.

3.15 Power NI stated that it believed standardising TPI commissions would increase the level of transparency for customers. According to the supplier, this could be achieved by including the TPI fees separately on quotations then displayed as a pence per kWh rate on the bill.

3.16 Energia supported standardising the reporting of TPI commissions. It said: "*By standardising the approach and making it mandatory customers will become familiar with this as a feature of the bill irrespective of who their supplier is and will become aware of the charges of the TPI.*"

3.17 firmus energy argued that any considerations to standardise commissions should be related to the billing invoice from the TPI, and not the billing invoice between the gas supplier and customer.

3.18 SSE Airtricity stated it was "inappropriate to regulate supplier bills and require suppliers to incur costs to indirectly regulate an unregulated party".

Q6. Of those customers acquired via the TPI channel, can suppliers indicate for what proportion they would have data on the level of commission being paid?

3.19 In its response, Power NI indicated it would have data on commission levels for around 95% of customers acquired via TPIs.

3.20 Energia responded saying that it captures all that information.

3.21 However, firmus energy stated that it does not usually have knowledge of commission details.

Q7. Do respondents believe if a supplier is not aware of the TPI commission, the customer bill should include a general statement advising / reminding the customer that they may be paying commission and they should ask their broker for information on this? If not please provide a clear rationale why

3.22 Power NI said it considered that a standard statement on the bill might be helpful in highlighting that a broker fee applies.

3.23 The Consumer Council also supported that proposal, stating: "*…non-domestic energy customers would benefit from a short statement on their bills reminding them that they may be paying a commission to TPIs*".

3.24 Energia supported the proposal, but stated for it to work it would have to be "mandatory and universally applied".

3.25 firmus energy also said this could be beneficial to the customer if it was standardised and included on commercial invoices.

3.26 However, HU Energy argued that making a general statements about commission without the full information has the potential to "mislead or confuse".

Q8. What changes to billing systems—or wider systems and processes—would be required in order to enable the publication of TPI commissions on a customer's bill? Do respondents have any view of the difficulty and cost of these changes?

3.27 Several responses highlighted a concern that enabling the publication of TPI Commissions could be a complex and costly exercise.

3.28 SSE Airtricity stated that as commissions take different forms and levels of complexity, the investment required to undertake this measure would be costly.

3.29 In its response, firmus energy said it would require a system upgrade to facilitate an automatic commission line appearing on bills; and would not support any such obligation.

3.30 Power NI stated:

"*Any changes to the bill layout will take a period of time to implement […] A high level estimate for bill layout changes would be in the region of £50,000. If more detailed calculations or core billing system changes are required this amount would be increased.*"

3.31 Energia's response indicated that the proposed measure will result in suppliers having to find space in an "already packed bill". Additional work was also to be expected to enable the display of commission as separate line item. However, this could be mitigated due to the capabilities of its current billing system, according to the supplier.

Q9. What other difficulties should be considered when publishing TPI commissions?

3.32 Energy Management Systems commented that some customers have already indicated that they would be unhappy with the publication of commissions, as monthly bills are widely available within the business and accessible by staff of all levels. Customers were reported to have said that any disclosure of data other than what was agreed at the contract stage was a breach of what they had considered to be confidential and commercially sensitive data.

3.33 Power 2 Business warned against this overall project inadvertently creating negative perception of consultants who act fairly and on consumer's behalf.

3.34 Power NI said it believed there would be limited added difficulties other than the initial system changes required to enable the display of commission rates on bills. The supplier stated that additional call volumes may be expected if a TPI has failed to explain the commission fee to the customer; however, this would "increase transparency and understanding".

3.35 Energia said there would likely be some additional work required in relation to REMM reporting.

Q10. To what extent do respondents believe all the difficulties highlighted with this proposal can or cannot be mitigated? Are the difficulties outweighed by the potential customer benefit?

3.36 Both Power NI and Energia stated that the issues identified can be mitigated and that the customer benefits outweigh the difficulties.

3.37 However, firmus energy stated:

"*I&C contract customers are particularly sensitive and aware of the costs and commercial benefits pertained to engaging TPIs. Furthermore, we believe that any mitigating actions needed to regulate TPI activities, should not place inappropriate obligations upon energy providers*."

Q11. Do respondents think that a requirement on suppliers to include TPI commissions on customer bills should be voluntary, or mandated through a new licence obligation? What would respondents see as the issues with each approach?

3.38 Responses were once again mixed.

3.39 firmus energy opposed a licex`nce modification, stating:

“*firmus energy does not support any amendments or modifications to its gas supply licence that relate to commercial activities beyond our control, such as those associated with the TPI market.*”

3.40 SSE Airtricity also argued that it believed it inappropriate to regulate supplier bills and require suppliers to incur costs to indirectly regulate an unregulated party.

3.41 Power NI strongly advocated that any requirement should be mandatory, stating that a voluntary agreement may risk TPIs opting for suppliers who choose not to publish the commission.

3.42 CCNI stated the only way to ensure the proposal was effective was through modification of the supplier’s licences.

4. DECISION AND NEXT STEPS

4.1 After careful review of all responses to the consultation, the UR has decided not to proceed with the implementation of an obligation on suppliers to publish TPI commission on customer bills. Whilst the UR supports transparency on a customer's bill, we believe there are a number of risks associated with such a measure which make it unsuitable for the NI market at present.

4.2 We have outlined the rationale behind our decision below.

Unintended effects on competition

4.3 Despite TPI activity in NI being at a much lower level than in GB, they still provide an important route to market for many NI businesses. Therefore, it is important to assess the wider market impact of any measures that have the potential to affect TPI engagement, customer perception of TPIs, or the sometimes delicately balanced relationship they have with suppliers.

4.4 In its response to the consultation, CCNI requested reassurances from the UR that the proposed measure would not leave NI businesses at a disadvantage compared to non-domestic energy consumers in GB.

4.5 It is the UR's belief that whilst publishing TPI commissions on supplier bills has the potential to increase transparency for customers, there is currently a lack of clarity around whether there could be unintended repercussions on switching and competition. As such, the UR could not provide the assurance sought by CCNI around whether NI business would be disadvantaged.

4.6 For example, the published commission could be used by suppliers to persuade customers to renew their contract directly with them rather than switch; and avoid paying commission. However, it is entirely possible that the TPI could possibly secure a better deal by having the customer switch.

The customer may not engage with the TPI if they feel they might need to explain the decision to end the relationship.

4.7 As several respondents also commented, if the UR were to mandate the publication of TPI commissions in the interest of transparency, then the same consideration ought to be given to supplier margins. Whilst customers are likely aware suppliers make a margin on their contract, we accept that highlighting the TPIs commission and not the supplier’s margin has the potential to inadvertently cultivate a negative perception of TPIs. It also does not seem to be a balanced approach or applying the same logic regarding transparency to the supply contract as is being applied to the broker contract, albeit that suppliers may soon be showing their end prices (but for the small business market only) on an NI comparison site. This will not cover the medium and large sectors of the market.

4.8 Finally, the publication of commissions—most of which are on a pence per kWh basis—could lead brokers to change their commission charging methodologies in order to move away from a unit charge (which is commercially sensitive) to something that would be between the broker and the customer only. This would remove the ability of the supplier to publish the commission on the bill but may make broker behaviour more opaque than it is today.

Potential for customer confusion

4.9 The aim of this measure would be to increase transparency around what customers are paying for their energy. However, we acknowledge the comment from one respondent that TPIs offer range of different services and service levels. Therefore, a standard “pence per kWh Commission” bill component may not necessarily reflect the services received.

4.10 Whilst consultation responses indicated that the majority of TPIs in NI operate a pence per kWh commission structure, there were also reports of other commission structures. Respondents gave their view on whether or not standardising how suppliers reported TPI commissions would help with transparency. However, we cannot instruct TPIs on how to present commission to the customer as the UR currently has no statutory remit to regulate TPIs. Therefore, standardising commission reporting on the bill could create more confusion if the TPI does not present the commission to the customer in the same format that is presented on the bill (i.e. pence per kWh).

Concerns over implementation

4.11 Comments from suppliers around the practical implementation of this measure were mixed. Power NI and Energia acknowledged the work involved, but both intimated it would likely be worth the potential benefits.

4.12 However, both firmus energy and SSE Airtricity expressed concern over the difficulty implementing such a measures due to the complexities involved with system integration and upgrades. firmus energy also stated it would not necessarily have the required data to publish commissions.

4.13 As a result, the UR cannot be assured that the proposal could be implemented with ease and at an efficient level of cost.

Next Steps

4.14 We stated in the May 2018 position paper that we endeavor to review our position on TPIs after 18-24 months in order to determine whether the brokerage market has changed significantly enough to require a review of this decision. This review will also consider the UR’s position on the publication of TPIs commissions on supplier’s bills.

4.15 However, we encourage all market participants who wish to discuss this project, or TPI activity in general, to please contact us at Thirdpartyintermediairies@uregni.gov.uk.