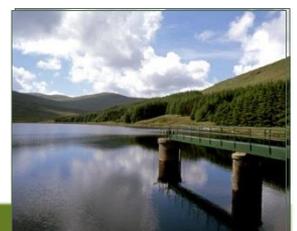


# Third Party Intermediaries in the Non-domestic Retail Energy Market

Information Paper and Call for Evidence  
November 2017



# 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: Compliance and Network Operations, Finance and Network Assets, Wholesale, Retail and Consumer Protection and Corporate Affairs. The staff team includes economists, engineers, accountants, utility specialists, legal advisors and administration professionals.

## Our Mission

Value and sustainability in energy and water.

## Our Vision

We will make a difference for consumers by listening, innovating and leading.

## Our Values

Be a best practice regulator: transparent, consistent, proportional, accountable, and targeted.

Be a united team.

Be collaborative and co-operative.

Be professional.

Listen and explain.

Make a difference.

Act with integrity.

# Abstract

Protecting consumers is at the heart of the Utility Regulator's (UR) role and ensuring there is effective competition in the Northern Ireland (NI) energy market is an integral part of our statutory duties. In the UR's Forward Work Programme 2017/2018, under the 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 Third Party Intermediary (TPI) Regulation.

Criticisms of non-domestic TPI activity in GB have been voiced by both customers and suppliers, but TPis are currently only regulated by general consumer protection law. In the NI energy retail markets, which are much less mature than those in GB, the role of TPis remains largely unexplored. The purpose of this paper is to communicate formally to stakeholders the commencement of the UR's "Third Party Intermediaries in the Retail Energy Market" project and to issue a call for evidence regarding the scale and nature of TPI activity in the NI market.

The project will look to assess the non-domestic energy brokerage landscape and its existing regulatory environment. The call for evidence is to inform our thinking and improve our understanding of the scale and nature of TPI penetration in the NI energy retail market. With this information, the UR will then determine whether any further regulation is necessary.

# Audience

Consumers and consumer groups; industry; and statutory bodies.

# Consumer impact

Consumers benefit from broker activity and they will also benefit from any project which investigates if there is suitable protections in place for consumer regarding their interactions with brokers. Consumers may also gain increased understanding of the energy market and the reassurance that intermediaries are acting fairly on their behalf. The direct consumer impact of this will be dependent on the type of measures (if any) which may be implemented.

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## Glossary

<b>BPMR</b>	Business Protection from Misleading Marketing Regulations
<b>CoP</b>	Code of Practice
<b>CPR</b>	Consumer Protection from Unfair Trading Regulations
<b>DfE</b>	Department for the Economy
<b>GB</b>	Great Britain
<b>I-SEM</b>	Integrated Single Electricity Market
<b>NI</b>	Northern Ireland
<b>RoI</b>	Republic of Ireland
<b>TPI</b>	Third Party Intermediary
<b>UR</b>	The Northern Ireland Authority for Utility Regulation or the “Utility Regulator”

## Introduction

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 competition, alongside regulation if that competition is not deemed effective enough to adequately protect consumers.

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<sup>1</sup> that a broad range of business models can be classified as TPIs, including:

- Brokers or consultants
- Sales / Supplier agent
- Price Comparison Website (PCW)
- Bundled services providers
- Umbrella/Franchise sites
- Aggregators
- Energy advice companies

Despite their prevalence in the retail market, energy brokerage is not a licensable activity, nor are energy TPIs bound by any sector-specific regulations. They are however subject to general consumer protection regulations, enforced by Department for the Economy (DfE) and Trading Standards, which include those applicable to business consumers.

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<sup>1</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2014/02/tpi\\_non-dom\\_condoc\\_final.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/02/tpi_non-dom_condoc_final.pdf)

In the UR's Forward Work Programme 2017/2018<sup>2</sup>, 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" Regulation.

Over the past five years, various work streams from Ofgem have provided insight into the scale of the non-domestic TPI market in Great Britain (GB), as well as their behaviours and business models. However, in NI the role of TPIs remains largely unexplored.

This paper is to communicate formally to stakeholders the commencement of the UR's "Third Party Intermediaries in the Non-domestic Retail Energy Market" project. It is important to note that for the purposes of this paper, non-domestic TPIs will be 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 consumer may be face to face, online, or via telephone.
- Non-domestic Consultants – These operate in a similar manner to brokers, but may also offer advice on energy efficiency measures.

Whilst the focus of this project is non-domestic TPIs, any outcomes or measures that may arise would also be equally applicable to domestic TPIs. 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 conduct another project to cover that activity.

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.

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<sup>2</sup> <https://www.uregni.gov.uk/sites/uregni/files/media-files/FWP%20201718%20final.pdf>

The UR is also issuing a call for evidence in order to inform the project and develop an understanding of the scale of TPI penetration in the NI energy retail market. All responses will be treated as confidential. Any information published will be aggregated to market level.

More detailed consultation and project development will take place early in 2018 and stakeholders will have extensive opportunities to provide feedback as the project develops.

## Background

TPIs are individuals or organisations that operate within the regulated energy markets, acting as an interface between consumers and energy suppliers. They can play a valuable role in helping customers engage in the market and can have a beneficial impact on competition.

The majority of non-domestic TPIs operating in the NI market do so as an extension of their presence in GB or the Republic of Ireland (RoI) energy markets, with fairly few being based in NI. However, a number of recent or forthcoming market changes mean TPIs could play an increasingly important role in the NI energy market. These include:

- 2017 Power NI Price Control (SPC17), as from 1 April 2017 the price control was removed from the remainder of the small business electricity market. Now only domestic customers are covered by price regulation. This has also meant that there are now no longer published regulated non-domestic tariffs which may make using a broker more attractive to businesses<sup>3</sup>
- Ongoing UR project to enhance small business competition (which will look at the issue of lack of tariff transparency outlined above)<sup>4</sup>

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<sup>3</sup> <https://www.uregni.gov.uk/sites/uregni/files/media-files/Power%20NI%20SPC17%20Decision%20paper%20Final.pdf>

<sup>4</sup>

[https://www.uregni.gov.uk/sites/uregni/files/consultations/Measures%20to%20Enhance%20the%20Operation%20of%20the%20Small%20Business%20Energy%20Market%20V2.0\\_0.pdf](https://www.uregni.gov.uk/sites/uregni/files/consultations/Measures%20to%20Enhance%20the%20Operation%20of%20the%20Small%20Business%20Energy%20Market%20V2.0_0.pdf)

- Implementation of I-SEM

In GB, TPIs play a prominent role in the negotiation of non-domestic energy contracts throughout the market, with Ofgem estimating there to be in excess of 1,000 active energy brokers with a total revenue of over £200mn per year<sup>5</sup>.

Ofgem's annual Micro and Small Business Customer Engagement in the Energy Market report provides an overview of TPIs activity. The 2016 survey<sup>6</sup> found that 28% of respondents stated brokers were the main influence in choosing their existing contract, and half were approached by a broker in 2016. However, there has also been an increasing number of customers with a poor perception of TPIs, with half of respondents reporting a negative perception of brokers in 2016 (compared with 46% in 2015 and 44% in 2014). This was thought to be driven in part by the oversaturation of 'Cold Calling', with 22% of customers saying they received over 50 calls from energy TPIs in 2016.

There have been some criticisms of TPI activity in GB that have been voiced by both consumers and suppliers, including concerns over mis-selling, pressurised selling, and a lack of transparency around contracts and commissions. However, currently TPIs are only regulated by consumer protection rules, such as the Consumer Protection from Unfair Trading Regulations (CPRs) and the Business Protection from Misleading Marketing Regulations (BPMMRs).

In November 2013 Ofgem's concurrency powers were extended to include the BPMMRs, which the regulator said would allow it to target "rogue brokers"<sup>7</sup>. This allowed Ofgem to "seek undertakings from brokers and other organisations to stop misleading marketing activity or apply to court for an injunction to ensure that they are complying with the legislation".

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<sup>5</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2014/02/tpi\\_non-dom\\_condoc\\_final.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/02/tpi_non-dom_condoc_final.pdf)

<sup>6</sup> [https://www.ofgem.gov.uk/system/files/docs/2017/04/ofgem\\_-\\_micro\\_and\\_small\\_business\\_engagement\\_2016\\_-\\_research\\_report.pdf](https://www.ofgem.gov.uk/system/files/docs/2017/04/ofgem_-_micro_and_small_business_engagement_2016_-_research_report.pdf)

<sup>7</sup> <https://www.ofgem.gov.uk/press-releases/ofgem-gains-new-powers-protect-businesses-misleading-marketing>

In its February 2014 Proposals for Regulating Non-Domestic Third Party Intermediaries (TPIs)<sup>8</sup>, Ofgem put forward four broad regulatory options for TPIs which were:

1. Status quo (i.e. continue to use existing general consumer protection regulations)
2. Voluntary Code of Practice (CoP)
3. CoP underpinned by a licence condition on suppliers to work only with TPIs accredited to this CoP
4. License non-domestic TPIs

Overall, respondents to the consultation were in favour of some form of regulation, and most agreed that it should come in the form a CoP underpinned by a supplier licence condition.

Governance of the CoP was however a much more divisive issue, and a number of respondents disagreed with Ofgem's suggestion that an independent board was the fairest way to manage and enforce the code. Some suggested that the impartiality of suppliers and TPIs on the panel may come into question when deliberating over the potential expulsion of a competitor from the code. Other respondents agreed with the concept of an independent panel, but argued enforcement decisions should only be made by Ofgem.

However, in any event in 2016 Ofgem opted not to proceed with any CoP, instead stating it will continue to utilise its monitoring powers to detect issues. This was in effect the status quo option.

There are also several industry voluntary TPI CoPs. These have been developed by E.ON UK<sup>9</sup>, Utilities Intermediaries Association<sup>10</sup> and the Energy Managers

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<sup>8</sup> [https://www.ofgem.gov.uk/sites/default/files/docs/2014/02/tpi\\_non-dom\\_condoc\\_final.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2014/02/tpi_non-dom_condoc_final.pdf)

<sup>9</sup> <http://www.tpicodeofpractice.co.uk/the-code-of-practice/>

<sup>10</sup> [http://www.uia.org.uk/full\\_code\\_of\\_practice.htm](http://www.uia.org.uk/full_code_of_practice.htm)

Association<sup>11</sup>. Table 1 provides an overview of the different components that make up these codes and each of these categories are underpinned by one or more rules, aspirations or expected behaviours.

**Table 1: Scope and components of the various TPI Codes of Practice**

<b>Utilities Intermediaries Association</b>	<b>E.ON UK</b>	<b>Energy Managers Association</b>	<b>Ofgem (Draft)</b>
Ethics	Accurate and complete	Training	Training
Responsibilities when handling data and information obtained	Presented in a full and professional manner	Fair and appropriate selling, marketing and advertising	Clear and truthful selling, marketing and advertising
Integrity	Understood by our customers	Protect consumers from high pressure selling techniques	Protect consumers from high pressure selling techniques
Contract or agreement arrangements	Products or services must be appropriate for that customer	Commission and fees	Commissions and fees
Communication and relationships with clients		Complete and accurate pre contractual information and contract terms	Complete and accurate pre contractual information
Criminal acts		Complete and accurate notification of contract terms: post agreement	Complete and accurate notification of contract terms

<sup>11</sup> <http://www.theema.org.uk/wp-content/uploads/2016/02/EMA-TPI-Code-of-Practice-for-Nondomestic.pdf>

However, responses from Ofgem's non-domestic Retail Market Review and stakeholder engagement sessions suggested that these voluntary codes mentioned above had limited effectiveness.<sup>12</sup>

## Purpose of Project

Whilst we have outlined the key role TPIs play in the GB non-domestic energy retail market, less is known about their activities in NI. The UR now wishes to examine the areas where we can, in conjunction with stakeholders, identify the scale of TPI participation in the NI non-domestic energy market. Taking stakeholder views into account regarding the need for extra regulation on brokers, we will develop a set of potential measures. These measures may include, but not be limited to:

1. Status quo (i.e. investigate and enforce TPI behaviour through DfE / Trading Standards powers under general consumer protection laws)
2. A voluntary CoP for TPIs, which would contextualise the BPMMRs for the energy retail market in NI. Those responsible for the creation of any such code may include one or more of the following bodies:
  - a. The UR
  - b. Northern Ireland Trading Standards Service
  - c. DfE
  - d. A trade association
  - e. A panel of industry representatives

Whilst the code would be voluntary, TPIs not adhering to the BPMMRs (and hence not adhering to the code) may be referred by a supplier, customer or

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<sup>12</sup>

[https://www.ofgem.gov.uk/sites/default/files/docs/2013/10/open\\_letter\\_on\\_third\\_party\\_intermediaries\\_tpi\\_programme\\_0.pdf](https://www.ofgem.gov.uk/sites/default/files/docs/2013/10/open_letter_on_third_party_intermediaries_tpi_programme_0.pdf)

the UR to the DfE or Trading Standards for further investigation. The code could address themes such as:

- Fair and honest marketing and selling
  - Clear offers that are understood by consumers
  - Transparency of commissions
3. A CoP supported by a licence condition for suppliers to work only with CoP accredited TPIs. Under the voluntary option, a number of industry bodies were suggested as potential creators of the code, and under this option one or more those bodies may also be responsible for accreditation of TPIs and enforcement of the CoP.
4. An obligation on suppliers to have in place arrangements to ensure customer protection regarding TPI activity. This could be implemented as principle-based licence condition, with the onus on suppliers to ensure it has sufficient processes and that customers are protected. Conversely a more prescriptive approach could dictate certain conditions that suppliers must meet, including:
- a. Creating and enforcing a CoP that ensures customers are protected;
  - b. Obligating suppliers to regularly audit all the TPIs they work with;
  - c. Ensuring TPI commissions are displayed clearly and prominently on all bills.

At this stage, the UR is not considering the option of making energy brokerage a licensable activity. Such an option would be extremely lengthy to deliver and require a change in law, and falls outside of the scope of this review. However, the option may be kept for consideration regarding future work streams addressing TPI regulation.

This Information Paper constitutes the formal external project commencement. The project will include the development of a consultation paper examining if any further

regulation is necessary. This is expected to be completed by March 2018, followed by review of the consultation responses in June and July 2018, and the formulation of the decision paper later in the year.

The project will aim to:

- Research and report on the scale of non-domestic TPI activity in NI at a market level
- Identify whether there is a sufficient risk from disreputable brokers to require more regulation than there is at present
- If more regulation is required identify, develop and critically analyse a set of potential measures for the NI market which can be implemented to ensure fair and transparent behaviour from TPIs
- Undertake stakeholder engagement in the development of these potential measures e.g. in the format of bilateral meetings and/or workshops
- Consider the logistical and regulatory policy implications of all measures (such as the requirement for licence modifications or legal issues)

## **Scope of the review**

This project will be looking at non-domestic TPIs. For the purpose of this project, non-domestic TPIs are defined as energy brokers and consultants, which are those organisations or individuals which compare energy contracts from a range of suppliers, and present the options to non-domestic consumers. However, as mentioned previously any outcomes or measures that may arise will also be applicable to domestic TPIs. The project will cover the retail energy business markets in both electricity and gas in NI.

## Timeline

Date	Milestone
January 2018	Stakeholder Roundtable Discussion
February 2018	Analysis and Formulation of Proposals
March 2018	Consultation Paper Issued
April/May	Potential Stakeholder Workshop (dependent on requirement)
June/July 2018	Review of responses and development of Decision paper
Late 2018	Publication of final report/decision paper following UR Board approval

## Call for evidence

The UR is issuing a call for evidence to determine the scale of TPI activity in NI.

### Supplier Data Request

Templates 1 and 2 are for suppliers to copy or complete for electricity and gas respectively. Completed tables will provide information on the proportion of their non-domestic customer base acquired through the TPI channel, as well how many brokers they are working with. Guidance on the information required can be found in Annex 1

We are also requesting respondents to provide a list of all known TPIs operating in the NI energy retail market.

### Template 1 Supplier request for evidence - electricity

Customer consumption	Number of existing non-domestic customers acquired via the TPI channel	Percentage of non-domestic customer base acquired via the TPI channel	Number of brokers currently contracted with
<50 MWh			
50 MWh – 500 MWh			
>500 MWh			

### Template 2 Supplier request for evidence - gas

Customer consumption	Number of existing non-domestic customers acquired via the TPI channel	Percentage of non-domestic customer base acquired via the TPI channel	Number of brokers currently contracted with
<73,200 KWh			
73,200 KWh – 732,000 KWh			
> 732,000 KWh			

## TPI Data Request

Templates 3 and 4 for TPIs to complete for electricity and gas respectively.

Completed tables will provide information on how many non-domestic customers they have and the number of suppliers they are currently contracted with. Guidance on the information required can be found in Annex 1

### Template 3 TPI request for evidence - electricity

Customer consumption	Current number of customers	Number of suppliers currently contracted with
<50 MWh		
50 MWh – 500 MWh		
>500 MWh		

### Template 4 TPI request for evidence - gas

Customer consumption	Current number of customers	Number of suppliers currently contracted with
<73,200 KWh		
73,200 KWh – 732,000 KWh		
> 732,000 KWh		

## Request for All Stakeholders

The UR invites views from all stakeholders on the following questions

**Q1. What are the key issues that arise from energy brokerage activity in NI?  
Where possible, please support with evidence.**

**Q2. Do energy TPIs in NI require regulation beyond existing consumer protection rules?**

**Q3. What other pertinent information should the UR take in account when undertaking an assessment of TPI activity in NI?**

## Responding

All responses will be treated as confidential. Any information published will be aggregated to market level.

Responses to this request for evidence should be in excel format and forwarded to reach the UR on or before 4pm on 8 December 2017 to:

Colin Magee  
The Utility Regulator  
Queens House  
14 Queen Street  
Belfast  
BT1 6ED  
Email: [Colin.Magee@uregni.gov.uk](mailto:Colin.Magee@uregni.gov.uk)

## Annex 1 - Guidance for call for evidence

Below are guidance notes for suppliers and TPIs responding to the URs call for evidence.

### Suppliers

Data point	Notes
<b>Customer consumption</b>	<ul style="list-style-type: none"> <li>Data provided should be segmented into three categories for each fuel based on the annual consumption of the non-domestic customer in question.</li> <li>For electricity, the three segmentations are &lt;50 MWh, 50 MWh – 500 MWh, and &gt;500 MWh</li> <li>For gas the three segregations are &lt;73,200KWh, 73,200KWh – 732,000 KWh, and &gt; 732,000KWh</li> </ul>
<b>Number of existing customers acquired via the TPI channel</b>	<ul style="list-style-type: none"> <li>The total number of non-domestic customers in each consumption band that were sourced through a TPI</li> <li>This includes customers acquired or retained through a TPI</li> </ul>
<b>Percentage of customer base acquired via the TPI channel</b>	<ul style="list-style-type: none"> <li>The total number of non-domestic customers in each consumption band that were sourced through a TPI, represented as a percentage of the suppliers entire non-domestic customer base within that consumption band</li> </ul>
<b>Number of brokers currently contracted with</b>	<ul style="list-style-type: none"> <li>The total number of separate TPIs that the supplier currently has a commercial relationship with</li> </ul>

### TPIs

Data point	Notes
<b>Customer consumption</b>	<ul style="list-style-type: none"> <li>Data provided should be segmented into three categories for each fuel based on the annual consumption of the customer in question.</li> <li>For electricity, the three segmentations are &lt;50 MWh, 50 MWh – 500 MWh, and &gt;500 MWh</li> <li>For gas, the three segregations are &lt;73,200KWh, 73,200KWh – 732,000KWh, and &gt;732,000KWh</li> </ul>
<b>Current number of customers</b>	<ul style="list-style-type: none"> <li>Total number of customers on energy contracts for which the TPI received a commission</li> </ul>
<b>Number of suppliers currently contracted with</b>	<ul style="list-style-type: none"> <li>The total number of suppliers that the TPI currently has a commercial relationship with</li> </ul>