

Third Party Intermediaries in the Retail Energy Market

UR Consultation

July 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: 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, proportionate, 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 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. We completed this work, and the resulting TPI position paper published in May 2018 considered a variety of potential measures before choosing to implement a program of information gathering and monitoring.

As a follow on from the TPI position paper, this paper consults on the proposal to ask or require licenced energy suppliers to publish TPI commissions on customer bills where they are known. It also asks for further evidence from suppliers to inform the UR on TPI commissions and how they are structured and charged by brokers to NI non domestic customers.

Audience

Businesses and business groups; industry; and statutory bodies.

Consumer impact

Businesses benefit from TPI activity when associated information is clear and transparent; and they will also benefit from any project which investigates if there are suitable protections in place regarding the transparency of interactions with TPIs. Businesses may also gain increased understanding of the energy market and the reassurance that intermediaries are acting fairly on their behalf.

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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. In the UR's Forward Work Programme 2017/2018¹, 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 Third Party Intermediary (TPI) Regulation.

Project to Date

- 1.3. On 9 November 2017, the UR published its 'Third Party Intermediaries in the Non-domestic Retail Energy Market' - Information Paper and Call for Evidence². 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 would then inform our view regarding any need for broker regulation.
- 1.4. On 17 May 2018, the UR published its position paper³ 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.

About this document

- 1.5. The purpose of this document is to consult on a specific measure to enhance transparency regarding TPI activity in the NI energy market – namely exploring the option of licenced energy suppliers making TPI Commissions clear and transparent on non-domestic customer's gas and electric bills. It also asks for further evidence from suppliers to inform the UR on TPI commissions and how they are structured and charged by brokers to NI non-

¹ <https://www.uregni.gov.uk/sites/uregni/files/media-files/FWP%20201718%20final.pdf>

² <https://www.uregni.gov.uk/news-centre/third-party-intermediaries-non-domestic-retail-energy-market>

³ <https://www.uregni.gov.uk/news-centre/position-paper-published-third-party-intermediaries-non-domestic-retail-energy-market>

domestic customers. This further information will assist us in reaching our final decisions.

1.6. The document is structured as follows:

- Section 2 outlines the background and issues
- Section 3 discusses the proposed scope of coverage for the measure
- Section 4 outlines the proposed measure for consultation
- Section 5 summarises the consultation questions and the next steps for the project

Responding to this consultation

1.7. The UR is keen to hear all stakeholder views on the proposals set out in this consultation paper.

1.8. Responses to this consultation should be forwarded to reach the UR on or before 4pm on 28th August 2018 to:

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

1.9. Your response to this consultation may be made public by the UR. If you do not wish your response or name made public, please state this clearly by marking the response as confidential. Any confidentiality disclaimer that is automatically produced by an organisation's IT system or is included as a general statement in your fax or coversheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

1.10. Information provided in response to this consultation, including personal information may be subject to publication or disclosure in accordance with the access to information regimes; these are primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA). If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things with obligations of confidence.

1.11. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for

disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.

- 1.12. This document is available in accessible formats. Please contact: Colin Magee on 028 9031 6626 or colin.magee@uregni.gov.uk

Equality considerations

- 1.13. 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
 - iv. persons with dependents and persons without.
- 1.14. It is our view that any impacts are likely to be positive in relation to equality of opportunity for energy consumers. Whilst this project is focused on non-domestic customers, ensuring a high level of transparency around energy prices can have benefits to the wider market.
- 1.15. The UR must also have regard to the promotion of good relations between persons of different religious belief, political opinion, or racial groups.
- 1.16. 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.
- 1.17. In order to assist with equality screening of the proposals contained within this consultation paper, the UR requests 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. Furthermore, the UR welcomes any comments which respondents might have in relation to the overall equality impact of the proposals.

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?

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

Timeframe and next steps

- 1.18. Once all the responses to this consultation paper are received and analysed, the UR intends to issue a decision paper which will assess stakeholders' responses to this consultation, and outline our chosen way forward. The anticipated timeline for this report to be issued is Autumn 2018.
- 1.19. The UR collects information about energy retail markets via our Retail Energy Market Monitoring (REMM) framework. As a follow-up to the position paper, we committed to consult on a small addition to the REMM data to include broker information in the data that we receive regularly from energy suppliers. However, this will be consulted on separately from this current consultation, as potential additions to REMM are accumulated and consulted on concurrently. This will include the addition of certain TPI metrics for the next REMM-related consultation, which will probably occur later in 2018/19.

2. BACKGROUND & ISSUES

- 2.1. Third Party Intermediaries (TPIs) play an important role in helping customers negotiate energy contracts by operating as an interface, or go-between, between suppliers and their customers. Ofgem has previously stated⁴ 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.
- 2.2. Despite their prevalence in the retail market, energy brokerage is not a licensable activity, nor are energy TPIs bound by any sector-specific regulations in NI. They are however subject to general business protection regulations, enforced by the Department for the Economy's (DfE) Trading Standards Service (TSS).

UR's TPI Position Paper

- 2.3. On 17 May 2018, the UR published its 'Third Party Intermediaries in the Non-domestic Retail Energy Market' position paper. One of the main concerns highlighted by respondents to the call for evidence was the lack of transparency around the operation of TPIs.
- 2.4. Our understanding is that there are several ways that TPIs structure their commissions. Anecdotal evidence suggests it is mainly charged on a pence per kWh basis, but can also be a fee for the overall contract or staged payments. There may be other charging models that we are not aware of, or are yet to emerge in the NI energy market.
- 2.5. Comments from several call for evidence respondents addressed TPI commissions, suggesting that in some circumstances customers were not always being made fully aware of what commission rates they were paying. This was partially due to lack of consistency in the approach from TPIs with some insisting the commission be built into the unit rate whilst others are charging a separate fee.

⁴ https://www.ofgem.gov.uk/sites/default/files/docs/2014/02/tpi_non-dom_condoc_final.pdf

- 2.6. In situations where the unit rate was inclusive of the commission, several respondents stated that the business customer had been misled (whether intentionally or unintentionally) over who is paying the TPI. Anecdotal evidence from one response suggested some customers were incorrectly told TPI commissions were obtained from the suppliers, whilst another supplier reported numerous customer queries about whether their unit rates included TPI commission or not.
- 2.7. In the position paper we outlined three options that were considered in relation to potential regulation of TPI activity:
1. Information Gathering and Monitoring
 2. Voluntary Industry Code of Practice
 3. Mandated UR regulation via Energy Suppliers
- 2.8. In developing the position paper, we crystallised that the UR currently has no statutory remit to regulate TPIs; nor revenue raising powers to resource such work. And as TPI activity was found to be at a small scale in NI, we determined that an option that has a focus on monitoring and reporting would be best suited to the market at present. Therefore, given all considerations legal and otherwise, we saw the only viable choice as Option 1 and chose to proceed with its implementation.
- 2.9. However, we also committed to follow the position paper with a consultation on the possibility of suppliers publishing TPI commission on customer's bills, arguing that this could help introduce a level of transparency and protect businesses from excessive charging.

CMA Investigation of similar issues in GB marketplace

- 2.10. As to relevant lessons from the GB marketplace, in the final report of its Energy market investigation⁵, the CMA stated that TPIs have the potential to help customers engage with the energy market and reach good outcomes if TPIs pursue ethical and sound business practices. However, the CMA added that if customers did not trust TPIs this benefit could be undermined.
- 2.11. The report noted that customers in GB appear to lack information about how TPIs charge them, and that 2014 and 2015 surveys reported that only 5% and 8% of microbusinesses and small businesses that had used a TPI reported that they had been charged for the service.
- 2.12. The CMA stated that if customers avoid TPIs because they do not trust them or understand how they charge, then this may lead to lower levels of

⁵ <https://assets.publishing.service.gov.uk/media/5773de34e5274a0da3000113/final-report-energy-market-investigation.pdf>

engagement than would otherwise be the case. The CMA stated it was concerned over the lack of transparency as well as the existence of incentives not to give non-domestic customers the best possible deal.

- 2.13. It is our view that this research is relevant and comparable to the NI energy market, especially given the evidence given to us in the earlier parts of the project and anecdotal concerns raised at various points by consumer representative bodies. Responses to our call for evidence indicated a lack of knowledge about how customers are charged for TPI services. It is this concern over the transparency of TPI commissions that has led to the development of the proposed measure, and the consultation questions outlined in Section 4.

3. SCOPE

- 3.1. 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.
- 3.2. 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 conduct another project to cover that activity.
- 3.3. 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.

4. MEASURES FOR CONSULTATION

- 4.1. Responses to the UR's TPI call for evidence indicated that a lack of transparency on pricing and commission levels was one of the largest concerns around TPI activities in the NI energy market. Comments indicated a particular concern around customers not fully understanding the commission arrangements.
- 4.2. One supplier commented that they receive customer queries about whether energy rates include a TPI fee, stating this may be evidence of TPIs not disclosing this to the customers. Another response stated that there was a lack of clarity over what is being paid due to "inconsistent charging including commission, finders' fees and unit rate add on".
- 4.3. Options to improve transparency in this area are limited as the UR does not have the direct remit to regulate these third party intermediaries and as such cannot enforce measures onto them. However one approach put forward in the UR's TPI position paper would be asking or requiring suppliers to publish any TPI commissions on a customer's bill. In so doing, customers will be made aware of the cost of TPI commission and the proportion of their bill that it comprises.

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

- 4.4. We are aware of some of the potential for difficulties in implementing such a remedy, such as:
 - **Structure of commissions** – With TPI commissions being a largely unregulated facet of the NI energy market, some respondents to the call for evidence highlighted the commissions can be structured in a number of different ways. Primarily TPI commissions will be charged as pence per KWh, but can also take the form of a contract fee or staged payments. This could complicate the uniform reporting of TPI commissions.

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?

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.

- **Source of commissions** – Typically TPIs operate a supplier-pays model, rather than the customer. However, one respondent to the call for evidence suggested some customers are paying TPIs directly. Whilst this would prevent suppliers from knowing—and therefore publishing—commissions, we would also expect that in this scenario customers would be aware of what they are paying for commissions.

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?

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

- **Supplier Billing** – If suppliers were to publish TPI commissions on customer bills, they would be likely to require some amendments to the billing processes for those customers obtained through the TPI channel. There may also be additional changes required to wider supplier systems and processes.

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?

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

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?

- 4.5. Should any such intervention be deemed necessary, it would need to be determined how best to implement it. A requirement on suppliers to publish TPI commissions could be a voluntary arrangement or more formally implemented through a licence requirement.

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?

5. CONSULTATION QUESTIONS NEXT STEPS AND TIMELINES

5.1. The UR is keen to hear the views of interested stakeholders and invite representations on the following questions:

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?

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

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

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?

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.

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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?

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

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?

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?

5.2. Responses to this consultation should be forwarded to reach the UR on or before 4pm on 28th August 2018 to:

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

Next Steps

5.3. Once all the responses to this consultation paper are received and analysed, the UR intends to issue a decision paper which will take on board all

responses and outline the UR position/decision or further next steps. The anticipated timeline for this report to be issued is Autumn 2018.

- 5.4. As mentioned earlier, as a follow-up to the TPI position paper published in May 2018, we committed to consult on the expansion of the REMM data to include broker information. However, this will be consulted on separately from this project, as potential additions to REMM are accumulated and consulted on concurrently. Therefore there will be the addition of certain TPI metrics for the next REMM consultation, which will occur later in 2018/19