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Trust in water

Protecting customers in the business market – principles for voluntary TPI codes of conduct

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About this document

Introduction

Through the Water Act 2014, all eligible non-household customers¹ (referred to here as business customers) may now participate in the competitive water retail market in England (referred to here as the business retail market) and choose their supplier of water and wastewater retail services. This change has allowed approximately 1.2 million business customers in England to shop around for their water and waste water retailer².

Third party intermediaries (**TPIs**) are common in a wide variety of markets including those with similar structures to the business retail market, such as energy and financial services. The use of TPIs is a key opportunity for customers to engage through a forum they already use for other services and may also offer a range of services bundled and sold together including other utilities. TPIs have therefore been helpful in markets by enabling customers to compare alternative offers and in enabling new offers to be seen by customers. However, in some instances there have also been concerns about the way certain TPIs have operated and how this has impacted customer decisions.

In our May 2016 document, [Protecting customers in the non-household retail market - decision document](#), we set out that the ability to take enforcement action against TPIs is an important element of customer protection, particularly when engagement with a TPI may be the first interaction a water or wastewater customer has with the business retail market. In February 2017, we consulted on our proposed approach to protecting customers in the business retail market through the introduction of **principles** for any new voluntary code of conduct for TPIs.

¹ In this document when we refer to eligible non-household customers “in England”, we mean those who are supplied using the supply system/sewerage system of incumbent monopoly water and sewerage companies whose area is wholly or mainly in England. When we refer to eligible non-household customers “in Wales”, we mean those who are supplied using the supply system of incumbent monopoly water and sewerage companies whose areas are wholly or mainly in Wales and who use more than 50ML water annually and who will continue to be able switch their retailer of water, but not sewerage services.

² Those companies holding a Water and Sewerage Services Licence from Ofwat.

Our consultation took into account the scope of our existing statutory powers and interested parties' feedback on the measures which they considered necessary to ensure that business customers are protected. As well as describing our proposed principles, the consultation also set out how we intended to implement them.

Consultation response

We received twenty two responses to our consultation from interested parties including licensed retailers, incumbent water companies, energy companies, consumer groups, TPIs and the Information Commissioner's Office (ICO). We would like to thank all interested parties that responded to our consultation.

This document summarises the key issues raised by respondents to our consultation, as well as our responses to those issues and our finalised principles for a voluntary code of conduct for TPIs operating in the business retail market. As set out in our consultation document, we will shortly publish all of the non-confidential responses to the consultation on our website at www.ofwat.gov.uk.

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1 Our proposed principles

Consultation responses

In our consultation we set out our proposed principles for any voluntary industry TPI codes of conduct for the business retail market. Our proposal was for a set of tailored principles that used as their base the principles from our [Customer Protection Code of Practice \(CPCoP\)](#) for business customers, but allowed additional principles that are directly relevant to TPIs. This approach was supported by respondents to the consultation. However, respondents also suggested additions or changes to the principles set out in the consultation including:

- A principle that all water and wastewater retailers must respect and comply with the wishes expressed in a customer authorised letter of authority, whether or not it complies with the format we proposed in our consultation;
- Differentiating in the principles between the different business models of TPIs and their degrees of independence from the water and waste water retailers. Specifically, between TPIs who directly represent business customers and act as procurers of products and services on their behalf (and who are often paid directly by customers and known as first party intermediaries), and TPIs who act as sellers of retailers' products and services to customers (and who are often recompensed by way of supplier commissions);
- A principle that would require TPIs to confirm any agreement with a business customer either in writing or by retaining recordings of agreements made by phone, as well as a requirement to confirm the method of remuneration any TPI receives from a retailer for such an agreement;
- Specific principles that mirror and reinforce the protections for micro-business customers in the CPCoP; and
- Specific principles that give guidance on the unsuitability of and restrictions on cold calling or unsolicited approaches.

In addition, respondents raised whether the principles should cover the need for TPIs to comply with existing obligations in relation to data protection, particularly given that where a retailer or TPI interacts with an unincorporated business (which many microbusinesses may be), that business's data will constitute personal data for the

purposes of the Data Protection Act 1998 (and also for the General Data Protection Regulation, which will come into force on 25 May 2018).

Final decision

As we set out in our consultation, one of the main protections for business customers in relation to poor practices by TPIs is that all water and waste water retailers are required by their licences to comply with the terms of the CPCoP. Under [paragraph 6.3 of the CPCoP](#) all retailers are already responsible for the actions of any TPI who represents them in sales and marketing activities. There is therefore a responsibility on retailers to ensure that the TPIs they deal with understand and comply with the provisions of the CPCoP.

As well as the customer protection measures set out in the CPCoP, in our view voluntary codes of conduct set up by industry will benefit TPIs. This is because it will give TPIs the opportunity to demonstrate to business customers that they offer clearly established standards of conduct in comparison with unaccredited TPIs, as well as offering the same commitments on customer protection as licensed water and waste water retailers. However, as we pointed out in our consultation (and which was reiterated by several respondents to the consultation itself), we do not have powers to regulate directly those TPIs that operate in the business retail market. We have considered respondents' suggested amendments to the principles with this in mind.

As highlighted above, respondents to the consultation raised several specific issues which they believe need to be addressed through the principles, particularly given the concerns in other retail markets (such as the markets in energy and financial services). Many of these issues relate to existing obligations that TPIs must comply with rather than new requirements to protect customers. The principles already require TPIs to be honest and transparent which, in our view, means that TPIs must already abide by the wishes of business customers (whether expressed in a letter of authority or not) and ensures that TPIs must also adhere to the terms of any agreement reached with a business customer.

We believe that adding further principles on the specific issues raised will not provide customers with any additional protections and may lead to the principles being overly prescriptive. By way of example, a revised set of principles that take account of both current and future TPI business models will inevitably be complex and a set of detailed obligations may then lead to low take-up of the principles among TPIs,

undermining the benefit of their creation. We consider that distinctions between third and first party intermediaries to be such a case in point.

Further, if the principles were simply mirroring existing obligations customers would again not receive any additional protection and where such obligations were commonly understood, there may be reduced incentives for TPIs to join such a code (there being no distinction between those that have joined and those that have not given the obligations arise elsewhere). With Ofwat not being able to enforce adherence to the principles, linking the principles to other obligations may create a false sense of protection. Examples of these types of obligations include TPIs' responsibilities under the Data Protection Act 1998 and the restrictions on TPIs using certain forms of direct marketing set out in the Privacy and Electronic Communications (EC Directive) Regulations 2003. Both of these obligations are only enforceable by the Information Commissioners Office and cannot be enforced by Ofwat. Similarly, all TPIs must comply with the prohibitions on misleading advertising to business customers under the Business Protection from Misleading Marketing Regulations 2008 (**BPMMRs**).

At this point both Trading Standards and the Competition and Markets Authority (CMA) are enforcement authorities for the BPMMRs, but these organisations cover many markets and approach cases on a priority basis. As set out in our consultation document, we intend to seek to be designated as an enforcement authority for the BPMMRs. We believe that being designated as an enforcement authority will provide customers in the business retail market with additional reassurance in relation to preventing and/or dealing with poor practice by TPIs.

Some respondents requested that the principles include a requirement that TPIs sign up to an accredited ADR scheme – something that all water and waste water retailers must do under the terms of their licences. Again, while there may be some benefit for business customers, we consider that the costs and complexity involved in creating and administering such a scheme would not appear to be warranted at this stage and such an ADR scheme could reduce the willingness of TPIs to participate. TPIs and business customers may also view codes of conduct that include ADR provision as offering an advantage, thereby making them more attractive. This is something we would not want to inhibit. On this basis we have not revised the principles to include an ADR requirement.

The changes we have made to the principles have therefore been limited to ensuring that the language is clear and unambiguous. We have also removed terms that may cause confusion – we have deleted 'NHH' to remove any confusion with the energy reference to 'non-half hourly'. Finally, we have combined two overlapping principles

centred on the provision of information to business customers. We set out a marked-up version of the revised principles below and the final version in the Appendix to this document:

Revised principles for voluntary industry TPI codes of conduct for water

1. TPIs shall be fair, transparent and honest.
2. Communication with customers (business, charity and public sector) shall be in plain and clear language.
3. All information provided to customers by a TPI shall be reliable, accurate, complete, timely and not misleading. Such information shall be made through appropriate channels and enable customers to make informed choices.
4. TPIs shall not offer products that are unnecessarily complex or confusing.
5. TPIs shall not sell a customer a product or service that is not fully understood by that customer, nor sell a product or service that is inappropriate for that customer's needs and circumstances.
6. TPIs shall not exaggerate the savings that could be achieved by switching, but shall ~~and try~~ to be as accurate as possible.
7. TPIs shall inform any micro-business customers that they have a 14 day cooling off period.
8. TPIs shall cancel any mis-sold contract without penalties.
9. TPIs shall respond to customers in an appropriate and timely manner.
10. Customer service arrangements and processes shall be accessible to and effective for customers.
- ~~11. Any information provided to NHH Customers shall be contemporaneous complete, accurate and not misleading.~~

2 Implementation

Consultation responses

In our consultation we proposed two alternative Options for implementing our principles: Option 1 of non-binding guidance that could be used for any TPI code of conduct established by existing or new accreditation schemes; or Option 2 of a requirement on all water and wastewater retailers (enforced via their licence conditions) to only work with accredited TPIs i.e. TPIs that were signed up to a code of conduct that incorporated our principles.

Some respondents to our consultation expressed support for Option 1 – non-binding guidance. However, many respondents also expressed reservations with the approach of self-regulation by TPIs through a voluntary code. Respondents stated that experiences in other markets, particularly the energy retail market, suggested that the self-regulation approach would not be supported by TPIs, nor would it be effective in preventing possible customer detriment from poor practices by TPIs.

In particular, respondents took issue with how TPIs operating in the business retail market would be held to account for failing to adhere to any voluntary code. There were suggestions that only direct regulation of TPIs by Ofwat would be sufficient, or at the very least an Ofwat-led accreditation scheme was needed to enable customers to understand which TPIs were appropriate to engage with. Another suggestion put forward was for any code of conduct to be run by an independent third party that would monitor and ensure compliance with the code.

Finally, respondents also highlighted the importance of effective monitoring of TPI-related complaints to ensure that we, and others who do have jurisdiction over TPIs such as the ICO and the CMA, have the opportunity to address issues quickly and effectively.

Final decision

As we set out in our consultation, we are aware that our proposed approach would be reliant on TPIs working in the business retail market adopting and adhering to our TPI code principles. However, we have been clear that we are not able to regulate directly TPIs operating in the business retail market and we do not have the power to accredit TPI codes covering the market either.

Although some respondents expressed strong support for Option 2, we are still of the view that it is not appropriate to require water and wastewater retailers to work only with TPIs accredited to a code of conduct given our current powers. As we set out in our consultation, this option could result in a proportion of the TPI sector being forced out of the business retail market if they chose not to sign up to a TPI code of conduct, regardless of whether that TPI had engaged in poor practice. It could also potentially limit new market entrants and place cost burdens on industry that would be passed onto customers.

Accordingly, at this point, and given our current powers, we believe that the CPCoP together with us issuing our TPI code principles through non-binding guidance is the most effective and proportionate approach. With regard to the suggestion that any code of conduct to be run by an independent third party that monitors and ensures compliance with the code, this approach is an available option that respondents may wish to pursue. However, we are not in a position to accredit or prioritise such a code over any other given our current powers.

We will shortly publish our final approach to monitoring the effectiveness of the business retail market which will include collecting information from retailers, and customers themselves, on relevant issues and complaints, including those related to TPIs. We may use this information to consider the ongoing appropriateness of our approach to TPIs, as part of our broader customer protection strategy. Our monitoring work will also involve liaising with other regulators and the CMA, particularly Ofgem given the likely bundling of energy and water services, to ensure consistency in the application of our principles across markets and gather intelligence on potential cross-sector issues.

3 Letter of Authority

Consultation responses

The majority of respondents to our consultation supported our updated draft template letter of authority (which water and wastewater retailers must obtain from a micro-business customer where that customer has a TPI acting on their behalf).

Respondents did suggest some additional changes to the draft template including removing possible ambiguity over the reference to ‘authority with restrictions’. There were also suggestion that the template should be required for all sites and customers within the business retail market and be submitted on the customer’s own letterhead.

Final decision

At this stage we are not proposing to revise the template letter of authority. We believe that the template as drafted retains sufficient flexibility to accommodate the issues raised, particularly in terms of clarifying a business customer’s intent.

We will, however, keep the template letter of authority under review and consider any further proposals for change using the governance and change proposal arrangements set out in the CPCoP (see [section 5 of the CPCoP](#)).

4 Next steps

Our final principles (see the Appendix to this document) will now be published, alongside the template letter of authority, and we will begin our monitoring of the business retail market.

As we set out in our consultation document, we will also now encourage TPIs to sign up to become members of a voluntary code of conduct which follows our principles. We will use our standing and reputation to highlight which voluntary codes of conduct follow our principles and which TPIs have signed up to such codes.

Finally, we will engage with the UK Government to become a designated enforcement authority for the BPMMRs.

Appendix

Principles for voluntary industry TPI codes of conduct for water

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