

## For: Consultation with Interested Parties

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### Third Party Intermediary Code of Practice

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## Version Control

Version	Summary of Changes	Date	Comments
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## 1. Definitions

The following definitions are particularly relevant for this Code of Practice and will be helpful in understanding its content fully:

<b>Term</b>	<b>Definition (in the context of the Code)</b>
<b>“Audit Schedule”</b>	Means the plan maintained by the Code Manager for all audit and assurance activities.
<b>“Audit Specification”</b>	Means the document which sets out the audit methodology against which the Code Manager will deliver all audit and assurance activities.
<b>“Change of Tenancy”</b>	Means the process where the existing Customer moves out of a property and a new Customer moves into a property.
<b>“Code Manager”</b>	Means the organisation, from time to time appointed to carry out governance and assurance activities specified within this Code of Practice. Responsible for delivering day to day management of the code, audit and assurance and secretariat services including the support of the Corporate Board and Governance Panel.
<b>“Code of Practice”</b>	Means the TPI Code of Practice i.e. this Code.
<b>“Contract”</b>	Means an agreement between two or more parties.
<b>“Contract Overrun”</b>	Means any period beyond the relevant Contract end date where the incumbent Supplier is still obligated to supply electricity or gas in respect of the (relevant) supply point.
<b>“Customer”</b>	Means any person supplied or requiring to be supplied with electricity or gas at any premises by a Supplier.
<b>“Data Schedule”</b>	Means the document setting out the process and procedure whereby a TPI can request and access can be considered to industry EAC data. Noting that the final decision is made outside the Code’s assurance framework and instead the DTS User Group.
<b>“Default Rate”</b>	Means where a Contract has expired but a Consumer continues to consume past the Contract end date and is subject to a Default Contract Rate.
<b>“Disclosure and Barring Service (DBS)”</b>	Means the organisation that helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups.

<b>Term</b>	<b>Definition (in the context of the Code)</b>
<b>"Erroneous Transfer (ET)"</b>	Means an incorrect transfer of a supply point to a Supplier without a valid Contract being in place.
<b>"Founder Member"</b>	Means the TPIs and Suppliers which become initial signatories to the Code and form the Corporate Board and Governance Panel.
<b>"Meter Point Administration Number (MPAN)"</b>	Means the unique identifier for each electricity meter point.
<b>"Meter Point Reference Number (MPRN)"</b>	Means the unique identifier for each gas meter point.
<b>"Ofgem"</b>	Means the Office of Gas and Electricity Markets: a government body formed in 1999 by the merger of the separate regulatory bodies for gas and electricity; its functions are to promote competition and protect consumers' interests.
<b>"Party"</b>	Means a signatory to this Code of Practice.
<b>"Point of Sale"</b>	Means the time where a retail transaction is completed which may include verbal agreement or written Contract signing.
<b>"Pressure Selling Techniques"</b>	Means high pressure and aggressive sales techniques to confuse the buyer and intimidate them into signing a Contract as set out in the Code Framework document.
<b>"Register of Acceded Parties"</b>	Means TPI organisations that have acceded to the Code of Practice and through on-going assurance measures demonstrate compliance against the core principles.
<b>"Retail Ombudsman"</b>	Means the organisation established to resolve disputes between retailers and consumers.
<b>"Supplier"</b>	Means the holder of a licence to supply gas given under Section 7A(1) of the Gas Act 1986 as amended, or a person excepted from the requirement to hold a licence by virtue of paragraph 5 of Schedule 2A of the Gas Act.
<b>"Terms and Conditions (T&amp;Cs)"</b>	Means the specific terms included within the relevant Contract between the Customer and Supplier.
<b>"Third Party Intermediary (TPI)"</b>	Means organisations in the non-domestic sector, delivering sales activities which includes all methods such as using price

<b>Term</b>	<b>Definition (in the context of the Code)</b>
	<p>comparison websites, telemarketing or field sales both in relation to initial sales and renewals.</p> <p>For further clarity, the definition of a TPI excludes energy efficiency advisors and such activities.</p>
<b>“TPICoP Board”</b>	<p>Means the legally appointed Directors as defined by the Companies Act and responsible for the management of TPICoP Ltd on behalf of its shareholders and in accordance with the Articles of Association.</p> <p>Means the TPICoP Board will have no involvement in the TPICoP Governance Panel.</p>
<b>“TPICoP Governance Panel”</b>	<p>Means representatives appointed from both the TPI and Supplier communities (but not representing the interests of their individual companies to which they are employed) responsible for the on-going running of the Code, the audit and assurance mechanism and change management processes.</p>

## **2. Purpose of the Code of Practice**

- 2.1 This independently managed Code of Practice is aimed at improving business sales practices and consequently customer trust in the energy sector. The Code is intended to ensure all TPI signatories are trusted advisors demonstrated by consistently putting the Customer first.

The Code shall provide an industry benchmark for accredited TPIs ensuring the TPI acts in a fair and transparent manner. By introducing this Code, independently accredited TPIs will become market leaders, lobbying for change within the energy industry to ensure the needs of the Customer are prioritised.

## **3. Scope of the Code of Practice**

- 3.1 The Code includes two distinct sections:

3.2.1 The Code Measures which details the expected behaviour that TPIs shall consistently display towards each Customer, and activities that shall be undertaken to protect the Customer's interests.

3.2.1 The governance and assurance provisions, including an independent audit of compliance to the Code, to hold TPIs accountable for their actions.

## **4. Conditions Precedent**

- 4.1 It is essential that all TPIs act in a responsible manner to protect the interests of Customers. Customers should benefit from TPIs adopting a consistent approach to the issues covered by the Code of Practice and thus minimise potential areas of Customer detriment. The Code of Practice has been developed to encourage all TPIs to act in a fair, transparent, professional and consistent manner with regard to the issues it covers.

- 4.2 There is no legal vehicle, under the Gas or Electricity Acts and associated legislation, to oblige TPIs to adhere to the Code of Practice, and as such the document is not legally binding. However, all TPIs who become signatories to the Code of Practice are required to comply with the Code Measures. Failure to comply may attract adverse publicity and / or pressures from Ofgem, Consumer Groups and Consumers.

## **5. Duration**

- 5.1 This Code of Practice shall remain in effect in respect of a Party until such Party voluntarily withdraws from the Code of Practice in accordance with paragraph 5.2 or is required to withdraw in accordance with paragraph 14.3.

- 5.2 A TPI shall cease to be a Party to this Code of Practice where the Code Manager, acting on behalf of the TPICoP Board and TPICoP Governance Panel, receives 30 Working Days' written notice of the TPI's intention to cease to be a Party.

5.3 Funding will be retained by TPICoP Ltd up to the end of the financial year.

## **6. Parties**

6.1 TPIs may become signatories to this Code of Practice at any time.

6.2 A Party wishing to be admitted shall apply to the Code Manager for admission using a standard application form. The Party shall confirm that its systems and processes are fit for purpose to enable compliance with the TPICoP. The Code Manager shall confirm within 5 Working Days arrangements for an initial compliance audit to be undertaken, in accordance with the audit provisions in section 14. Following successful completion of the initial audit and approval by the TPICoP Governance Panel, the Code Manager shall confirm that the Party has acceded to the Code of Practice and update the Register of Acceded Parties accordingly.

6.3 The Code Manager shall keep a register of all Parties, which shall include contact details for resolving management and operational issues.

6.4 Suppliers may also become signatories to this Code of Practice at any time, however will not be subject to audit prior to becoming a Code of Practice signatory.

6.5 Interested Independent Third Parties are also invited to become signatories to the Code of Practice in support of the principles that the Code of Practice is intended to promote across the industry.



## Part Two - Operational Requirements

### 7. Code Measures

7.1 This section details the behaviours and activities that TPIs shall demonstrate in all Customer interactions:

#### 7.1.1 Transparency

- Clarity from the outset that the Customer is talking to an energy broker (TPI).
- Clarity and visibility of scale of the market that has been searched; which Suppliers were approached for prices and the prices they submitted.
- Clarity on how the TPI is remunerated and level of remuneration (including any partners or sub-brokers used in the sales process).
- Clarity on any instances where there is a commercial relationship between a TPI and a Supplier which is resulting in preferential terms or additional services.
- Ensuring the Customer is aware that, where appropriate, calls are recorded for training and compliance purposes or alternative evidence is retained.

#### 7.1.2 Independent Advice

- Where quotes are provided for more than one Supplier, TPIs shall not promote or advocate one Supplier over another.
- TPIs shall ensure that any energy advice is accurate, and the source of that information is identified, and the delivery of any such information is consistently delivered to the Customer.

#### 7.1.3 Fair and Appropriate Selling

- Where it is stated that a price is fixed, it shall be ensured that this includes all non-energy costs.
- TPIs will ensure that any commission is fully disclosed and where a TPI uses partners or sub-brokers during the sales process, any additional commission is included in this disclosure statement. The Code of Practice does not however stipulate the unit value for disclosure.
- Where a price is fixed for a certain period only, then this shall be explained, including the consequences of not renewing the Contract and entering into the Default Rate should be explained.
- A TPI's shall ensure its compliance with the 'Business Protection and Misleading Marketing Regulations 2008' (BPMMRs).
- TPIs shall only classify Customer transfers as Change of Tenancy where there is evidence that the tenancy for the property has changed. The TPI will retain the evidence for at least 24 months from the effective date of the Contract.

- All Field Sales staff shall undergo full Disclosure and Barring Service (DBS) checks prior to contract of employment being offered.
- TPIs shall treat each Customer as an individual, with respect and in a professional manner.

#### 7.1.4 Training

- Training shall be undertaken on a regular basis as part of an embedded assurance process as an active measure to prevent 'Pressure Selling techniques'.
- Training shall be provided to ensure all staff, third parties, agents or representatives understand and completely follow the requirements set out within this Code of Practice.

#### 7.1.5 Accurate Contract Information

- TPIs will use the standardised Letter of Authority (LoA) during initial engagement and/or renewal of Customers;
- Suppliers who are signatories to the Code of Practice will endorse the use of the standardised LoA.
- TPIs shall ensure the Customer is aware that they are entering into a legally binding Contract. Records shall be maintained to demonstrate this.
- TPIs shall explain the T&Cs within the Contract and compare different Contracts across a range of Suppliers (where applicable) to help Customers understand the Contract they are entering into.
- TPIs shall ensure all T&Cs are in writing and are available to the Customer prior to the Point of Sale.

#### 7.1.6 Prevention of Erroneous Transfer

- TPIs shall collect sufficient Customer information to ensure the correct meter point is transferred from the incumbent Supplier to the new Supplier, including where possible the MPAN or MPRN and full address details including postcode.
- Where TPIs becomes aware that an Erroneous Transfer has taken place, TPIs shall facilitate the resolution by contacting the Customer and / or the relevant Supplier(s).

#### 7.1.7 Dispute Resolution

- TPIs shall establish a complaints procedure that is easily accessible to Customers in hard copy or electronic format.
- Customers shall be able to register complaints by phone, face to face, written or electronic format. All complaints shall be logged electronically with the pertinent information captured regarding complaint date and reason, and then updated at regular intervals with action taken / outcome.
- TPIs shall provide a complaint handling procedure including an initial internal investigation, and escalation procedure if the Customer is not satisfied with the initial response.
- TPIs shall signpost the Customer to The Ombudsman.

#### 7.1.8 Data Protection

- TPIs shall handle Customer data in line with the relevant data protection regulations applicable at the time.

### **8. Standardised Letter of Authority**

8.1 The use of a standardised Letter of Authority (LoA) as developed under the Code delivers benefits to the industry and customer experience in terms of a standard approach to the management of customer consent and improvements in terms of the timescales in establishing energy contracts and reduction in administration errors and/or mis-selling.

8.1.1 As a signatory to the Code, TPIs will adopt and consistently use the standardised Letter of Authority.

8.1.2 As a signatory to the Code, Suppliers will adopt and consistently accept and process the standardised Letter of Authority received from TPIs who are signatories to the Code.

8.2 The LoA shall be subject to the change control procedures set out in section 13. Any proposed changes to the LoA shall be in accordance with the change request process, with final decision being made by the TPICoP Governance Panel.

8.3 TPIs shall manage completed LoAs in accordance with the data protection requirements set out in section 7.

### **9. Data**

9.1 It is recognised that the use of accurate EAC data ensures a positive customer experience in terms of energy quotation, negotiation and subsequent contract agreement.

9.2 In recognition of this benefit, a Data Schedule is included under the Code which sets out the process for TPIs to gain access to an EAC API function and the capability to look-up EAC values having first gained customer consent as prescribed in the standardised LoA detailed in section 8.

9.3 The Code and the governance framework does not influence or automatically grant access to the EAC API capability. This is the responsibility of the DTS User Group and the established governance process as set out in the Data Schedule.

## **Part Three - Governance**

### **10. TPICoP Board**

- 10.1 The TPICoP Board shall have responsibility for:
- Managing the company in accordance with the provisions of the Companies Act and Articles of Association;
  - Procurement and management of legal advisors, auditors, tax advisors and the Code Manager;
  - Establishment of the TPICoP Ltd Bank account and distribution of TPICoP funds;
  - Playing no part in the management of the Code or its change process; and
  - Remaining independent of the Code Governance Panel.

### **11. TPICoP Governance Panel**

- 11.1 The TPICoP Governance Panel shall have responsibility for:
- Considering and voting on change proposals progressed in accordance with section 12;
  - Considering suspected events of breach in accordance with section 14;
  - Determining whether Parties should be granted derogations in accordance with section 15;
  - Appointing the Code Manager and other professional advisors as required; and
  - Considering operational issues and making recommendations to Parties where required.

- 11.1 As a minimum, the TPICoP Governance Panel shall consist of the following members:
- 3 members appointed by TPI organisations; and
  - 3 members appointed by gas and / or electricity Suppliers.

- 11.3 TPICoP Governance Panel meetings may be attended by Ofgem and / or independent third parties / consumer representatives where required.

- 11.4 The constitution of the TPICoP Governance Panel will be reviewed from time to time, based on the number of signatories to the Code of Practice on-going.

### **12 Change Control**

- 12.1 Parties can request changes to the Code of Practice at any time by sending a written request to the Code Manager (via a change proposal).

12.2 Each change proposal shall include:

- Details of the issue that the change proposal is seeking to resolve;
- Details of the proposed solution, including revised Code of Practice drafting; and
- Details of any specific timescales, within which the change proposal should be implemented.

12.3 Within 5 Working Days of receipt, the Code Manager shall notify all Parties that the change proposal has been raised. This notification shall include timescales (not being less than 10 Working Days from the date on which notice is provided) within which Parties may make representations or objections in relation to the proposed change.

12.4 The Code Manager will include the change proposal on the agenda for the next available TPICoP Governance Panel meeting, following the closing date for the receipt of representations. At this meeting, the TPICoP Governance Panel will determine whether to approve the change proposal, based on the consensus of those attending the meeting. If required, the matter may be put to a vote on the request of any Party in attendance with a simple majority of attendees at the meeting determining the outcome.

12.5 Where the TPICoP Governance Panel does not believe that there is sufficient information to make a decision, it may request that the proposer provides further details. Where further details are provided, the Code Manager will repeat the steps set out in paragraphs 12.3 and 12.4 until the TPICoP Governance Panel is able to make a decision.

12.6 Following a decision made in accordance with 12.4 the Code Manager shall communicate the outcome to all Parties within 2 Working Days. The communication will also confirm the details of the change and the date of implementation for the change.

## **Review**

12.7 The TPICoP Governance Panel may initiate a wider review of the Code of Practice to ensure it incorporates any significant changes to the UK gas and electricity markets. Where this review results in recommendations to amend the provisions within the Code of Practice, details of proposed amendments will be provided to the Code Manager for notification to all Parties, in accordance with paragraph 12.3.

## **13 Disputes**

13.1 Where a Party (the Disputing Party) has concerns regarding non-compliance with the Code of Practice by any other Party, then they shall initially raise their concerns, with the Code Manager. It is envisaged that the majority of issues will be resolved at this early stage.

13.2 If the issues cannot be resolved by the Code Manager, the matter shall be escalated to the TPICoP Governance Panel.

## **14 Breach, Default and Remedy**

- 14.1 Complaints received from Customers or other industry parties via the Code Manager, which highlight potential non-compliance with the terms of the Code of Practice will be logged by the Code Manager and passed to the TPICoP Governance Panel.
- 14.2 The Code Manager shall agree a corrective action plan with the relevant Party(s) and monitor compliance with the corrective action plan, until the non-compliance is resolved.
- 14.3 Where the Code Manager and Party(s) cannot agree a corrective action plan, or where the Party fails to comply with the action plan, then the non-compliance will be escalated to the TPICoP Governance Panel for determination on what further action shall be taken.
- 14.4 The TPICoP Governance Panel shall consider the evidence provided and shall have the right to take whatever action they see fit including but not limited to expulsion of the Party from the Code of Practice. For the avoidance of doubt if the matter under consideration relates to a Party who is also part of the TPICoP Governance Panel then they shall be excluded from acting as part of the TPICoP Governance Panel in relation to this matter.

## **15 Derogations**

- 15.1 The TPICoP Governance Panel may grant a derogation to any Party or Parties in relation to any obligation contained in this Code of Practice, which may be subject to conditions and shall specify the term, scope and application of such derogation, and may amend or retract any such derogation, or any such conditions relating thereto, from time to time as it sees fit.
- 15.2 A Party may, apply to the TPICoP Governance Panel for a derogation by sending a request to the Code Manager. A notice of the derogation request shall be provided to all Parties, unless the TPICoP Governance Panel deem the derogation to be confidential, stating:
- that the application for derogation has been made, setting out the terms of the derogation sought, and the identity of the Party making the application; and
  - the time (not being less than 10 Working Days from the date on which notice is provided) within which Parties may make representations or objections with respect to the derogation which has been applied for.
- 15.3 If any Parties make representations or objections with respect to the derogation that has been applied for to the Code Manager, the Code Manager shall provide such representations and objections to the TPICoP Governance Panel before a decision is made on whether the derogation should be granted.

- 15.4 Where a Party is granted a derogation, that Party shall be excused from complying with the obligations specified in the terms of that derogation and shall be deemed not to be in breach of this Code of Practice for failing to comply with the relevant obligations for the term of the derogation but shall be required to comply with any modified obligations which are specified as a condition of the derogation.

## **16 Code Manager**

- 16.1 The TPICoP Governance Panel shall procure an independent organisation to manage code governance and deliver an audit of compliance against the provisions set out within the Code Measures.
- 16.2 The Code Manager shall be responsible for maintaining the Code of Practice and shall deliver the following:
- Publication of the Code of Practice and Audit Specification on an independent website;
  - Periodic reviews of the Code of Practice to ensure the content reflects the latest regulations;
  - Management of a change control process to ensure future versions of the Code of Practice are implemented effectively;
  - Implementation of an audit framework to ensure compliance with the provisions within the Code of Practice and Audit Specification based specifically on the Code Measures;
  - Reports to the TPICoP Governance Panel summarising audit findings and recommendations.

## **17 Audit Provisions**

- 17.1 The Code Manager shall audit each TPI, in line with the TPICoP Audit Specification document and shall be a combination of desk based and on-site audits to ensure that policies and procedures adhere to the Code Measures.
- 17.2 Desk based audits shall include a review of documented processes and procedures, internal controls, compliance records and training materials.
- 17.3 On-site audits shall ensure that, as far as practicable, the TPI adheres to the Code Measures and has implemented any changes in a controlled manner. The audit shall include:
- Reviewing processes to assess compliance with documented policies and procedures.
  - Listening to a sample of calls (or alternate evidence to demonstrate compliance).
  - Reviewing interactions with Supplier and third-party providers.
  - Reviewing a sample of Contract sales.
  - Reviewing a sample of disputes and complaints to ensure appropriate resolution.

- 17.4 Prior to each audit, the Code Manager shall agree the scope of the audit with each TPI as part of an audit scoping meeting. The Code Manager will confirm the scope of the audit with an individual TPI in writing and setting out the requirements of the upcoming audit and evidence that will need to be made available.
- 17.5 Following each audit, the Code Manager shall discuss the findings with the relevant TPI senior management team and shall provide an audit findings report setting out:
- Overall assessment of compliance against the Code Measures;
  - Details of any specific non-compliance that have been identified; and
  - Observations setting out where policies and procedures could be improved to reflect best practice.
- 17.6 Where a TPI passes its initial audit it shall become accredited in relation to the Code of Practice. In order to retain this accreditation, the TPI will need to undergo additional annual audits. Where a TPI fails their audit, and in conjunction with the TPICoP Governance Panel, accreditation may be withdrawn.
- 17.7 It is the responsibility of the acceding TPI to ensure that all partners / sub-brokers operate in compliance with the Code and the acceding TPI will be expected to demonstrate these controls during assurance audits.
- 17.8 Where areas of non-compliance are identified during an audit, or in conjunction with the Governance Panel, non-compliance issues are reported outside of the Audit Schedule corrective action plans may be required which shall be established and reviewed by the Code Manager.
- 17.9 Any additional assurance activity will be chargeable to the TPI in question. In the most significant cases a full annual audit may be triggered earlier than planned in the Audit Schedule by the Code Manager in conjunction with direction from the TPICoP Governance Panel.