For: Consultation with Interested Parties

Third Party Intermediary Code of Practice Framework

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Code Lead: Mark Olliver
Email: Mark.Olliver@electralink.co.uk
Direct Line: 07921 286755

Contents

1. Introduction

1.1 In January 2019, ElectraLink will be launching an independently managed TPI Code of Practice ('the Code'), aimed at improving business sales practices and consequently customer trust in the energy sector. The Code will initially be launched as a voluntary code targeted at TPIs and Suppliers selling energy contracts to business consumers. It is the aim to increase membership over time as clauses set out in the Code become adopted as common practice.

1.2 Key to the Code's success is an independently managed audit and assurance framework. TPI signatories will be required to undergo a pre-enrolment audit, annual and mid-term audits, being assessed against code clauses, to insure they adhere to the sentiment of the Code. This mechanism will assure Suppliers that TPI signatories are following best practice keeping consumers fully informed when signing new energy contracts. The ElectraLink code has evolved from Ofgem's Code of Conduct initially set out in 2013, and has since been supported by Ofgem, BEIS, Citizens Advice, Federation of Small Business, TPIs and Suppliers. At the heart of the code is the requirement for TPIs and Suppliers to be transparent on commission structure and market breadth searched.

1.3 This document sets out the proposed set up, governance structure and funding mechanism for the Code. It also provides indicative costs that 'founder member' signatories can expect for 2019. This document is designed to be read alongside the draft TPI Code and guidelines and questions issued by ElectraLink in the November 2018 consultation pack.

2 Benefits

2.1 ElectraLink's TPICoP is open to all TPIs and Suppliers selling business energy contracts. It is specifically targeted at the micro and SME market which experience a particularly high level of customer distrust as well as proven fraudulent behaviour. All TPIs wishing to become signatory to the Code must successfully progress through a pre-enrolment audit and put in place the required processes to ensure they continue to meet the minimum criteria during the annual audit.

2.2 This is aimed as a consumer code to improve customer satisfaction in the market to benefit the whole supply chain. The consumer can expect a more consistent, efficient and transparent service from TPIs which in turn leads to a smoother energy switch and more accurate billing set up with the Supplier. The Code aims to:

- Increase repeat business and life time value of customer by demonstrating commitment to, and consistently delivering best practice in an open and transparent way;
- Reduce the number of data issues by ensuring data is captured correctly and passed through the supply chain;
- Remove poor practice resulting from incorrect COTs and Erroneous Transfers;
- Standardise the Letter of Authority; and
- Provide standardised training to TPIs to promote a consistent baseline.

2.3 The two workshops facilitated by ElectraLink in September and October 2018 to develop the Code have already shown improved trust and working relationships between TPIs and suppliers involved and provided a forum to resolve wider challenges in the business switching market.

3 Set up of TPICoP Ltd

Construct

3.1 ElectraLink proposes to create a limited liability company (TPICoP Ltd), the construct is illustrated in Figure 1. The TPICoP Board would be independent of the Governance Panel. With the TPICoP Board running the company and the TPICoP Governance Panel running the Code. There would need to be an elected Board of Directors ('Corporate Board') responsible for the corporate and financial management of the company. The separate governance framework set out in this section will enable the code to be amended in a robust, independent and transparent manner and provide the foundation for behavioural change across the market.

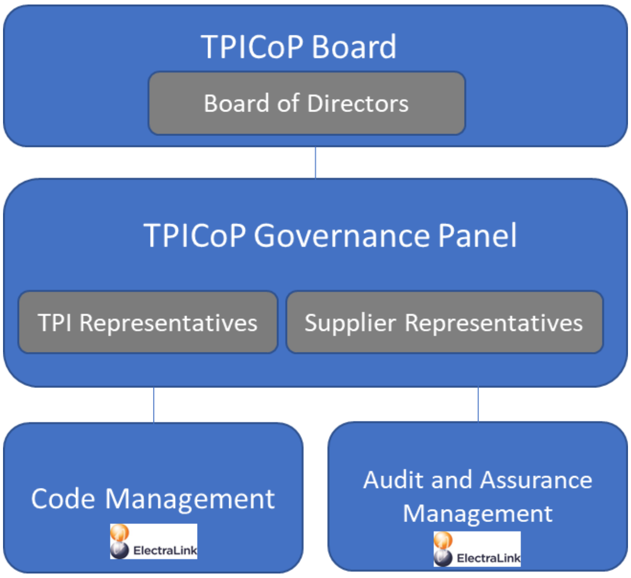

Figure 1 – Basic Code Construction

3.2 TPICoP Ltd would be set up as a not for profit limited company. This is standard practice for code companies and it is proposed to be a limited liability company, owned by shareholders and managed by a Board of Directors ('TPICoP Board').

3.3 The corporate vehicle would; procure the services necessary to support the Code e.g. the Code Manager, auditors, legal support etc; and provide a funding channel through which subscriptions are collected from TPICoP Parties.

3.4 To support formation of TPICoP Ltd, ElectraLink propose to purchase a shell company, providing the most cost-effective and least complex way of establishing a code company. This follows other industry standards such as the Retail Energy Code and would come with a standard Articles of Association. These would be amended to reflect how TPICoP Ltd would be run.

3.5 Mirroring the same model as several other industry codes companies, TPICoP Ltd would be a not for profit organisation, with no financial benefit in being a shareholder. The company would not pay dividends, and neither would there be any growth in capital value of a shareholding.

3.6 ElectraLink proposes that founder signatories become shareholders and as such participate in the annual election of Directors, approval of annual accounts, changing the Articles of Association etc. We anticipate that the majority of Directors would be from TPIs, with Suppliers placing a higher importance on the Governance Panel. As membership grows, each code signatory would remain entitled, but not obliged, to become a shareholder of TPICoP Ltd.

3.7 It is proposed that the TPICoP Board would remain entirely separate from the governance of the Code, rather providing a vehicle for financial management. The governance would be the responsibility of the TPICoP Governance Panel, described in more detail later in this section.

The TPICoP Board

3.8 During formation 'founder members' would be both TPIs and Suppliers and thus become the shareholders whom would appoint the members of the TPICoP Board. Persons appointed to the TPICoP Board would be legally appointed Directors as defined by the Companies Act.

3.9 In accordance with the Companies Act, their responsibility would be to TPICoP Ltd and its shareholders. Their role would not be to represent the views of their employing organisations. The Directors would be responsible for the management of TPICoP Ltd, on behalf of the shareholders and in accordance with the Articles of Association.

3.10 The TPICoP Board and the TPICoP Governance Panel would be independent of each other. Each would, largely, have different members, as the TPICoP Board is a vehicle to manage the company rather than the code formation and does not need to be representative of constituent. By contrast the TPICoP Governance Panel would be made up of equal representation from the defined constituents. The difference in membership would reflect the respective roles of the two groups and the specialist skills required for each group.

3.11 The TPICoP Board would not have any involvement in the management of the Code or its change process. The TPICoP Governance Panel would have no involvement with operation of TPICoP Ltd.

3.12 The role of the TPICoP Board would be ringfenced to the management of TPICoP Ltd and would include:

- Managing the company in accordance with the provisions of the Companies Act and the Articles of Association;
- Playing no part in the management of the Code or its change process;
- Be independent of the TPICoP Governance Panel;
- Be appointed by the shareholders;
- Members, as is normal for Boards of Directors, would be required to retire by rotation;
- The skills and experience necessary to run a company; and
- Not be remunerated.

3.13 Key responsibilities include:

- Procurement and management of legal advisors, tax advisors and the Code Manager; and
- Establishment of the TPICoP Ltd Bank account and distribution of TPICoP funds.

Governance Panel

3.14 The TPICoP Governance Panel would be responsible for the management and governance of the Code. Each Governance Panel member would be required to attend panel meetings on a monthly basis to oversee running of the Code, the audit and assurance mechanism and change management process.

3.15 It is proposed that the constituency of the Governance Panel includes representatives from both the TPI and Supplier community with neither category having a majority advantage. It is anticipated that the TPICoP Governance Panel would consist of three TPIs and three suppliers and a Chair.

3.16 The TPICoP Governance Panel would have overall responsibility for the change control process and shall assess each change proposal to ensure that it is consistent with the overall strategy of the Code.

3.17 It is envisaged that changes to the TPICoP would be relatively infrequent and can be raised by signatories to the Code, the TPICoP Governance Panel, or the Code Manager. A simple change control procedure has been included in the TPICoP which enables all signatories to review the change and submit comments to the Governance Panel. It has been proposed that change proposals would be approved where there is support from the majority of Governance Panel attendees.

Assurance

3.18 The assurance regime would be delivered by the Code Manager with initial audits being completed prior to a new TPI becoming a Code signatory. This would be followed by ongoing audits to ensure continued compliance. Compliance reports would be presented to the TPICoP Governance Panel by the Code Manager for consideration recommended actions and approval of next steps.

3.19 TPIs would be required to rectify non compliances identified by the Code Manager in a timely manner and report back to the TPICoP Governance Panel, with the Code Manager overseeing this rectification activity. Where a TPI fails to rectify a non-compliance, or fails to accept that the non-compliance exists, the Code Manager would recommend the best course of action to the TPICoP Panel, with the ultimate sanction that the TPI would be expelled from the Code.

3.20 Decisions in relation to audits and specifically expulsion from the Code shall be appealable to the TPICoP Governance Panel.

4 Funding

4.1 This section sets out current funding mechanism for similar code companies and the proposed funding mechanism for TPICoP Co Ltd based on similar models currently operating successfully in the market.

4.2 A key principle in centralised charging arrangements is that the recipients of benefit contribute to the cost of such arrangements. Consequently, in all but one of the funding arrangements listed in this section, all parties provide some level of funding towards the costs of the arrangements. However, it is recognised that there is a broad range of funding models employed across the energy industry.

4.3 Existing industry funding models range in complexity from simple models which allocate total costs evenly between two constituencies and then allocate based on “market share” e.g. the Distribution Use of System Agreement (DCUSA), to more complex models where the recipients of a specific service line fund the costs of that service line (e.g. Xoserve charges).

4.4 The table in this section provides a summary overview of existing funding arrangements.

Arrangements	Code Management Cost	Parties	Charging Model
Distribution Connection Use of System Agreement ('DCUSA')	£750k	Electricity Suppliers Electricity Distributors	Costs split 50/50 between Supplier and Distributor categories. Then allocated to parties based on 'market share' of registered MPAN's • Registered MPANs to a Supplier • Registered supply points on an MPAS system
Supply Point Administration Agreement ('SPAA')	£377k	Gas Suppliers Gas Transporters Meter Agents (for MAMCoP)	100% funded by Suppliers Contribution based on market share of registered supply points.
Master Registration Agreement ('MRA')	£7.28million	Suppliers Distributors BSC Agent	Total costs allocated 2/3rd to Suppliers and 1/3rd to Distributors Suppliers fund based on their market share Smaller Distributors (<750k registered supply points in area) pay based on market share Larger Distributors (>750k registered supply points in are) each pay an equal amount. BSC agent makes no contribution to costs. Certain costs e.g. Green Deal database are 100% Supplier funded.
Balancing and Settlement Code ('BSC')	£11million	Transmission Company Distributors Trading Parties Suppliers Interconnector	The amount each BSC Party pays (Funding Shares) depends on their market role and the volume of energy they generate, supply or trade. All BSC Parties pay a fixed charge associated with being a BSC Party.
Smart Metering Implementation Code of Practice ('SMICoP')	£89k	Suppliers	Costs are 100% funded by Suppliers who have >50,000 customers Costs allocated on a market share basis
Data Transfer Service Arrangement ('DTSA')	Regulated	Suppliers Distributors Meter Agents	All parties contribute to the costs of the service. Suppliers pay most costs. All parties liable for a cost reflective charge for

Arrangements	Code Management Cost	Parties	Charging Model
		Green Deal Parties BSC Agent	• The class of network connection they use • The volume of data they transmit Suppliers pay for all other costs, not recovered through charges above, based on market share.
Smart Energy Code ('SEC')	£6.79million	Suppliers Distributors	Costs are initially 100% funded by DCC. SEC costs are bundled with other DCC costs and are recoverable as part of the fixed charge payable by Suppliers and Distributors
Uniform Network Code ('UNC') and Centralised Data Services Provider ('Xoserve')	£600k	Shippers Transporters	UNC costs are recovered from Gas Transporters DSC costs are allocated to service lines. Recipients of the service line fund the costs Service line recipients can be one parties (e.g. Grid) from one constituencies (Shippers) or from both constituencies

Table 1: Existing Funding Arrangements

4.5 As demonstrated in Table 1, except for SPAA, all existing codes and centralised arrangements are funded by the parties whom are signatories. This reflects the principle of contributing to the costs in recognition of the benefits secured and representation rights within the governance process. They may use differing terminology to describe their charges, but parties pay either a volume / usage / market share based charge e.g. DCUSA or a fixed contribution e.g. MRA distributor charge.

4.6 In recognition of the above principle, ElectraLink's proposed funding would be that both TPIs and Suppliers contribute to the cost of TPICoP, with TPIs paying for the audit and assurance requirements under the Code.

4.7 The administration cost would be significantly less than any other code within the industry and would reflect the governance structure and change control required for the TPICoP Company. The TPICOP Board would need to review and adjust the budget annually to ensure that TPICoP Co Ltd remains cost neutral. At the end of each financial year no profit can be carried into the next financial year, with excess funds being distributed between signatories in proportion to collections of fees from the outset.

4.8 Reflecting the voluntary nature and anticipated fewer changes, Code management activities would cover:

- Management of Financial Accounts, Articles of Association, AGMs and Auditing;
- Maintaining the TPICoP;
- Publishing the TPICoP and Audit Specification on a hosted and independent website;
- Documenting and maintaining the change process and version control;
- Maintaining accurate contact details for operational contacts of all TPIs and Suppliers who are signatory to the Code;
- Hosting 12 Panel meetings per annum, ensuring that relevant consultations, regulatory and policy changes are fed into the TPICoP Governance Panel, change process and corresponding audit frameworks. During these meetings lobby opportunities and collective viewpoints would be determined. These meetings would include minutes and an actions log;
- Documenting and maintaining audit frameworks with agreed audit points to ensure compliance with the code by all code signatories;
- Implementing an assurance framework which enhances the benefits of being signatory to the code, this would include a robust assurance approach using a number of assurance techniques; and
- Providing four centralised training days for signatories.

4.9 ElectraLink propose that Suppliers contribute a fixed annual subscription which it is estimated would be no more than £10k. This charge reflects the benefits received from TPICoP but is not at a level to discourage Suppliers from becoming parties. All remaining costs not recovered through this fixed subscription fee would be recoverable from TPI parties apportioned on the number of contracts signed in the prior year.

4.10 ElectraLink's proposed contribution from TPIs is dependent on the size of the TPI for both the contribution towards the Code management costs and the audit and assurance prerequisites. This reflects the differing audit requirements placed on different sized TPIs. TPIs during the pre-enrolment audit would be asked to declare the number of customer contracts signed in the previous financial year:

- Tier 1 – 0-9 employees and 1 sales channel
- Tier 2 – 0-49 employees and more than 1 sales channel
- Tier 3 – 50 – 249 employees and more than 2 sales channels

Note: The scaling of TPI size for assurance purposes is based on EU Definitions of Company Size. The tier against which a TPI is measured will be agreed as part of pre-audit engagement.

Proposed Timeframe for Implementation

Figure 2, below sets out the intended timeline for the Code of Practice and governance implementation.

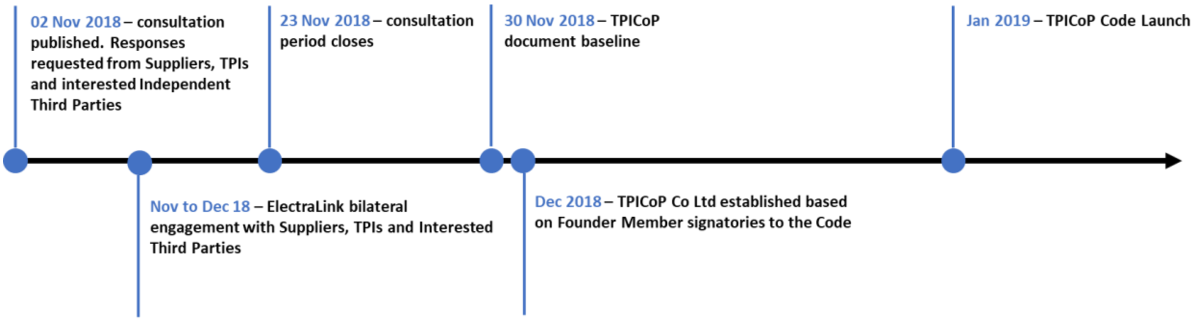

Figure 2: Proposed timeframe for the Code of Practice and governance