

# **Protecting customers in the business market – a consultation on draft principles for voluntary TPI codes of conduct**

## About this document

### Introduction

The Water Act 2014 will allow all eligible non-household customers<sup>1</sup> (referred to in this document as business customers) to choose their supplier of water and wastewater retail services from April 2017. This change will allow approximately 1.2 million business customers in England to be able to shop around for their water and waste water retailer<sup>2</sup>.

The new competitive water business retail market in England (referred to in this document as the business retail market) is on track to open in April 2017. The design is complete, shadow operations started in October 2016 and final checks are now being carried out to ensure the market is ready to deliver the expected benefits for customers.

Third party intermediaries (TPIs) are common in markets that have similar structures to the business retail market, including the energy market and the financial services market. In the energy market, TPIs are organisations or individuals that give energy related advice, aimed at helping customers buy energy and/or manage their energy needs. Third party intermediaries include switching sites, energy brokers and any company that offers support with energy procurement. We expect to see similar services being offered by TPIs in the business retail market.

The use of TPIs is a key opportunity for customers to engage through a forum they already use for other services and to potentially benefit from multi-utility offerings. For example, there is potential for a triple utility offering should a current energy TPI choose to enter the water sector. Product bundling may become a new business model within the business retail market.

---

<sup>1</sup> 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 will continue to be able switch their retailer of water, but not sewerage services.

<sup>2</sup> Those companies holding a Water and Sewerage Services Licence from Ofwat.

## **The activities of TPIs are therefore likely to be an important contributor to the successful functioning of the water business retail market.**

Given the overlap between the services offered by TPIs and those offered by licensed retailers, as well as the business models operated by some TPIs, we think it is possible that business customers will not necessarily know whether they are being supplied by a TPI or a licensed retailer. Our view is that business customers should have the same level of protection whoever supplies them. However, we do not have the same regulatory powers in respect of TPIs as we do over licensed retailers.

This document sets out 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. And we set out our proposed approach for implementing these principles. We consider that the opportunity to sign up to a voluntary code of practice will benefit TPIs because it gives them the opportunity to demonstrate to business customers that they offer the same commitments on customer protection as licensed retailers.

We also set out in this document where we could enhance our ability to protect water and wastewater customers through powers to enforce existing consumer protection legislation.

## **Context**

In line with our statutory duties, we must ensure that the new arrangements for the business retail market provide real choice for business customers and that, through their ability to shop around, they can get the price and service package they want from their licensed retailer. We recognise that the experience of other sectors may suggest that there could be certain situations in which additional specific regulatory measures are required to protect customers when things go wrong. So, in May 2016 we published our [Customer Protection Code of Practice](#) which seeks to provide protection for business customers by placing obligations on licensed retailers and appointees<sup>3</sup> while not acting as a barrier to a high level of competition among retailers.

---

<sup>3</sup> In this document when we refer to appointee we mean an incumbent monopoly water and sewerage company licensed by Ofwat.

Throughout our earlier work on customer protection, we said we would explore the development of a voluntary code of conduct for TPIs. We have engaged with interested parties and other regulators and sought their experience of other markets and other codes in place to protect customers.

**Accordingly, this consultation sets out our proposed principles for any existing or future voluntary TPI code of conduct and how these principles should be implemented. It reflects our current thinking, taking into account the scope of our existing statutory powers and interested parties' feedback on the measures which they consider to be necessary to ensure that business customers are protected. In particular we recognise that customers are likely to need more protection in the early stages of market opening.**

As the new business retail market matures, we may need to review where, when, and in what form, measures are needed to protect customers, beyond those needed to allow the market to open.

### **Need for principles for TPI codes of conduct:**

In our earlier work on customer protection, we recognised the potential involvement of TPIs in the business retail market as we have seen active engagement by TPIs in other sectors and in the [business retail market in Scotland](#). The involvement of TPIs in the business retail market could provide many direct benefits to customers and support market development by facilitating higher levels of customer engagement and potentially encouraging a multi-utility market. But, there is a risk that the activities of some TPIs may cause customer harm, especially for smaller business customers.

As we set out in our current consultation on [monitoring the business retail market](#), well-functioning markets have certain clear hallmarks, such as:

- customers being confident in their ability to engage with the market in their best interests; and
- customers being treated fairly; having accurate information about the offers available in the market and not being subject to, for example, mis-selling or misleading marketing;

If business customers have the confidence to engage with the business retail market it will benefit everyone in the market. Having appropriate protections in place is an important part of how we can give business customers that confidence.

TPIs will have a unique status in the business retail market. They are not likely to be market participants under the market codes, nor do many of the activities which we expect them to undertake require a licence from us<sup>4</sup>, yet their behaviour in the business retail market has the potential to directly affect levels of trust and confidence in the sector and in the effective functioning of the market.

While many TPIs offer valuable services to customers, there is **evidence** from other sectors that some TPIs are unprofessional and misleading in their conduct and offerings. This leads to poor customer experience and negatively impacts future customer engagement. Respondents to Ofgem's [Retail Market Review consultation](#) in 2011 cited the following poor behaviour:

- misrepresentation of information;
- lack of transparency about commission charges;
- poor quality of customer service; and
- inconsistent advice.

The Competition and Markets Authority's [ongoing market study](#) into price comparison websites, and the granting of additional powers to Ofgem to enforce the Business Protection from Misleading Marketing Regulations 2008, suggest that the regulation of TPIs is an important and ongoing issue affecting multiple sectors. So we consider our approach to the business retail market should balance the need to ensure TPIs can play a full role in driving effective competition in the market, and the need to take action (or encourage others to take action where they are better placed to do so) where we become aware of any behaviour of TPIs that may be to the detriment of customers.

In our May 2016 document, [Protecting customers in the non-household retail market - decision document](#), we maintained that the ability to take action against TPIs is an important element of customer protection particularly when engagement with a TPI may well be the first interaction a water or wastewater customer has with the switching process within the business retail market. We also noted that we have limited powers in relation to many of the activities likely to be undertaken by TPIs and that obtaining further powers was not within our control.

---

<sup>4</sup> Although we are aware that TPIs may choose to be licensed or may undertake activities that require a Water Supply and Sewerage Licence.

Accordingly, this document sets out our proposed approach within our current powers. But, it is our view that evidence from other sectors suggests formal powers to regulate TPIs and/or their activities will be important if we are to be able effectively to ensure business customers are treated fairly and are able to get the best deal for themselves with confidence.

## Contents

1	Responding to this consultation	7
2	Background	8
3	Current regulatory framework	11
4	Our TPI policy work in the business retail market	19
5	Our proposed approach for TPIs within our existing powers	21
6	Giving effect to our principles in existing or future TPI codes of conduct	24
7	Next steps	28

## 1 Responding to this consultation

We welcome your responses to this consultation by **7 March 2017**. Please email your responses to [customerprotection@ofwat.gsi.gov.uk](mailto:customerprotection@ofwat.gsi.gov.uk), with the subject 'Third Party Intermediaries: principles for voluntary TPI codes of conduct consultation', or post them to:

Retail Market Opening Programme  
Ofwat  
4th floor  
21 Bloomsbury Street  
London WC1B 3HF

If you wish to discuss any aspect of this consultation, please contact Rowaa Mahmoud on 0121 644 7503 or by email at [Rowaa.Mahmoud@ofwat.gsi.gov.uk](mailto:Rowaa.Mahmoud@ofwat.gsi.gov.uk).

Subject to the outcome of this consultation, we are aiming to publish our final TPI principles by the end of March 2017.

We will publish responses to this consultation on our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk), unless you indicate that you would like your response to remain unpublished.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with access to information legislation – primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004.

If you would like the information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act 2000, there is a statutory 'Code of Practice', which deals, among other things, with obligations of confidence. 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 we can maintain confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on Ofwat.

## 2 Background

### 2.1 Third party intermediaries – introduction

Third party intermediaries (**TPIs**) such as water brokers, price comparison websites (**PCWs**) and cost consultants are parties who are not licensed water or sewerage retailers, but engage with business customers to assist them with their water supply or wastewater needs. TPIs may offer advice and products to assist with a range of services including water procurement, efficiency and management. Our understanding from recent workshops involving TPIs is that their services are likely to be used extensively in the new business retail market and we welcome this engagement.

TPIs are expected to play an important role in the competitive business retail market, which is opening in April this year. TPIs have been very helpful in other markets in enabling customers to compare alternative offers and in enabling new offers to be provided in the market. However, there have been concerns about the way some TPIs have operated.

Some PCWs have not always been transparent about the commission they receive for referrals and whether they are disclosing all offers in the relevant market. A lot of TPIs are web-based and concerns have been expressed about the divide between customers who have access to the internet, are easily able to use it and benefit from using these web-based intermediaries, and those who are unable to access them. But PCWs can be a significant tool to help customers to make and act on their choices in an easier and less time consuming fashion than would have been possible in the past.

There are a variety of different business models used by TPIs including, for example the following.

- Retailers using their own TPIs (which are called First Party Intermediaries) to market only the products offered by that retailer. This may suggest that the retailer is the party that pays the TPI's commission.
- Independent TPIs which do not represent a particular retailer but act as agent for multiple retailers.
- Sub-contractors engaged by retailers who may support the management of the customer's services (eg meter reading agents).
- Other agents a customer may use for advice, for example, solicitors and accountants.

- PCW/metasearch companies which may or may not have an arrangement with a retailer enabling them to advertise a retailer's price.

As well as these more 'traditional' TPI-related business models, new types of TPIs have recently entered the energy market to enable customers to search and switch. Some offer services whereby energy customers are automatically switched onto the best deal. Others allow users to switch retailers on their mobile phone. These services may address customer concerns about markets being too confusing or market engagement having too much of a 'hassle factor'.

However, both the 'traditional' and 'new' types of business model for TPIs rely on the availability and access to high quality customer data (eg customer identity, location and consumption).

## 2.2 Research and insight

Our research on other sectors and jurisdictions showed that while customers find TPI services valuable, there are concerns about the clarity of charges that TPIs levy on customers, their selling practices and the extent to which they make customers aware of their redress options. These behaviours negatively impact upon customer engagement and if replicated in the new business retail market could impact on the sector's reputation.

There is consistent evidence of TPI practices which involve the alleged mis-selling of energy contracts. While affecting a minority of business customers, these practices can lead to detriment both financially and in terms of other resources, including the time it takes a business to try to sort out the issue<sup>5</sup>.

Comments in [Ofgem's research](#) made by business customers on their views and experiences of TPIs, particularly related to cold calling, included:

---

<sup>5</sup> [http://hb.betterregulation.com/external/ukia\\_20130159\\_en.pdf](http://hb.betterregulation.com/external/ukia_20130159_en.pdf)

'From my own experience, if any company phones up to say they'll give you cheaper electricity, but could you just tell us who your supplier is... the answer I'll give them is no. They get very irate at that. We only want to know who your supplier is, and I just say, I don't want to give them that information... I really think there should be some kind of control... I work with Supplier X is not the same as working for Supplier X' (micro business) .

Brokers were felt to employ scare tactics to encourage commitment then and there 'If you don't sign up to this new deal now it will be gone and you will be stuck on a hugely inflated tariff' (Small business) .

'I've had the situation where a broker has phoned me pretending to be our own broker and that is really unethical. Or phoning to say that they are phoning on behalf of [our supplier] about our renewal so we got to the stage where they almost fooled us and now that's absolutely unethical' (large business) .

Consumer Focus' ['Watching the Middlemen' Report, May 2013](#), also highlighted a range of issues and behaviours with TPIs. In particular, it stated that businesses can be committed to contracts which are not best suited to their needs, because the prices and terms offered by certain TPIs are not at competitive levels. In some cases, this may be as a result of TPI commissions not previously disclosed being included on the final price.

In the Scottish water market, [anecdotes](#) suggest that some TPIs:

- do not always help to create a full customer understanding of the wider market or the contract; and
- may exaggerate the savings that could be achieved by switching.

## 3 Current regulatory framework

### 3.1 General legislation

Before considering proposals for a regulatory framework for TPIs in the business retail market, it is important to understand the current regulatory context in which TPIs will operate. We have considered both short-term and long-term measures to address issues impacting customers and facilitate robust practices among TPIs.

The starting point for us is that we do not currently license TPIs unless the company in question also holds a licence from us to act as a retailer within the business retail market. In addition, while TPIs are subject to general consumer protection regulation, these mainly offer protection to residential consumers.

Any retailer wanting to use the supply system or sewerage system of an incumbent monopoly water and sewerage company to supply water and wastewater services to customers has to be licensed by us. Using a supply system or sewerage system to supply water and wastewater services to customers without a licence or appointment is an offence. In addition to complying with licence conditions and market codes, both licensees and appointees are also required to comply with all other relevant legislation. This includes the Business Protection from Misleading Marketing Regulations 2008 (**BPMMRs**), the Competition Act 1998 (**CA98**) and the market investigation provisions in the Enterprise Act 2002.

While we can enforce the conditions of licences and appointments, the terms of market codes and certain provisions of the CA98, we does not have power to enforce the BPMMRs. We anticipate that the core activities of TPIs will not involve them using a supply or sewerage system and therefore their activities will not require a licence (although they may choose to hold one). However, we do believe that their activities will be regulated by relevant legislation, in particular the BPMMRs and the CA98.

### 3.2 Business Protection from Misleading Marketing Regulations 2008

The BPMMRs prohibit misleading advertising to businesses (which is broadly defined) and set the conditions under which comparative advertising is permitted. This aspect of the **BPMMRs** is relevant to the selling of contracts within the business retail market where a TPI compares a business customer's current charges with

those of other retailers. The power to enforce the BPMMRs as regards the business retail market is currently held by the CMA and Trading Standards. These organisations have an economy-wide remit and prioritise issues accordingly. The specific issue of TPI mis-selling in the business energy market has not been a priority for these organisations and we expect this to be the case for the water sector. The Department for Business, Energy & Industrial Strategy is the government department with policy responsibility for this legislation<sup>6</sup>.

In an attempt to address any potential customer detriment from inappropriate sales and marketing practices in the new business retail market, we have explored the possibility of increased powers to be able to enforce the BPMMRs. The additional powers would be gained by amending the BPMMRs to nominate Ofwat as an enforcement authority in respect of a limited range of the available enforcement provisions. However, the UK Government has not yet decided to give us these powers over TPIs, [with Defra saying](#) :

“The marketing activities of TPIs operating in the water market are already subject to regulation. The Competition and Markets Authority and trading standard authorities have roles in ensuring customers have the correct information when switching to alternative retailers. Defra will keep under review whether Ofwat should have powers to prevent inappropriate marketing activities, as Ofgem has in the energy sector.”

### 3.3 Competition law

Under section 54 of the CA98 and section 31 of the Water Industry Act 1991, both Ofwat and the CMA have the power to apply and enforce the competition law prohibitions<sup>7</sup> in relation to all commercial activities connected with the supply of water or securing a supply of water, and with the provision or securing of wastewater services in England and Wales<sup>8</sup>.

---

<sup>6</sup> In contrast, the Department for the Environment, Farming and Rural Affairs (**Defra**) is responsible for the business retail market.

<sup>7</sup> Both Chapter I and Chapter II of the CA98 and Articles 101 and 102 TFEU.

<sup>8</sup> Ofwat’s competition law jurisdiction does not extend to the supply of water and wastewater services in Scotland and Northern Ireland. In these parts of the UK the CMA has the sole power to enforce CA98 with respect to these services.

Complaints received by us will be reviewed and assessed in the light of the nature of the alleged conduct and available evidence. Our resources are finite and when deciding whether to open an investigation we will take into account our Competition Act prioritisation principles of: impact; strategic significance; risks; and resource implications. Further information on the proposed use of our competition law powers is available [on our website](#).

We also have concurrent jurisdiction with respect to the provisions of the Enterprise Act 2002 relating to market studies and could, for example, refer TPI activity in the sector to the CMA for a detailed market investigation.

### **3.4 Market monitoring**

Under our regulatory model we intend to make better use of markets to enable and encourage water and waste water service providers to deliver more for less for their customers. Correspondingly, it is important for us to ensure we have effective tools for monitoring markets to ensure customers have confidence to engage with them and that we are able to step in to make the market work better and protect customers as necessary. For the business retail market our market monitoring activities will sit within a new work programme – the Market Outcomes and Enforcement programme – which will be tasked with using the full range of our regulatory tools to ensure that customers are able to benefit from the market.

As referred to earlier, we are currently consulting on our overall market monitoring proposals; the consultation can be found [on our website](#).

As part of our approach to market monitoring, we may conduct own-initiative investigations to address issues concerning companies and across the sector on a particular regulatory requirement or industry risk. We will use our monitoring framework to ensure compliance with our new codes and licences when they become effective in April, for example, to help industry understand these new requirements or to assess compliance with new requirements across industry.

Where our monitoring work or any complaint data we receive directly or via customer representatives, such as the Consumer Council for Water (CCWater), reveals information that suggests it may be appropriate for us to investigate a particular company or multiple companies, we will use our prioritisation criteria to decide

whether to open an enforcement case<sup>9</sup>. If we do not open a case we may, as an alternative, carry out compliance work with a company.

An additional area of consideration is how oversight and monitoring of TPI activity may be handled in the future. The appropriate solution for this may be dependent on the type of framework developed more generally. We welcome initial views on this point, but we will be looking to develop monitoring solutions alongside the options outlined below.

### **3.5 Customer Protection Code of Practice**

Our [customer protection code of practice \(CPCoP\)](#) is a document that sets out the minimum standards that all retailers operating in the retail business market will need to comply with when dealing with business customers. We have developed the CPCoP in consultation with customer representatives, water companies and others. We also learned from experiences in other utilities markets and listened to feedback from a wide range of interested parties. The CPCoP stipulates that all retailers shall comply with six code principles when dealing with business customers. These principles are included in Figure 1 below.

---

<sup>9</sup> Specific considerations and actions, up to and including opening a case, apply in relation to competition law complaints. See our recent publication '[Guidance on Ofwat's approach to competition in the water and wastewater sector in England and Wales: a consultation](#)' for further details.

**Figure 1: CPCoP code principles**



### 3.6 Other customer protection measures

The main way that business customers will be protected within the business retail market is through their ability to shop around for the best service for their needs. But customers will also be protected by:

- each retailer being licensed to operate by us with the grant of that licence being dependent on the retailer showing that all those concerned with its direction or management are “fit and proper”;
- minimum standards of service (the ‘Guaranteed Standards Scheme’);
- retailer of last resort arrangements to maintain services to customers if a retailer goes out of business; and
- default terms and conditions which could apply in certain situations where there is a supply to the customer but terms and conditions have not otherwise been agreed. These are sometimes referred to as ‘deemed contracts’ or Schemes of Terms and Conditions.

In addition to these protections, under the terms of their licences all retailers must comply with our CPCoP. In the CPCoP we have placed obligations on retailers in the following five areas of market activity in order to protect business customers to further the code principles:

- sales and marketing (including mis-selling and the role of TPIs);
- the provision of information to business customers;
- the transfer of business customers;
- billing; and
- complaint handling and dispute resolution.

As all retailers operating in the business retail market must comply with the rules within the CPCoP as part of their licence conditions, if a retailer breaks those rules (and thereby breaches the terms of its licence) we can take enforcement action against that retailer – including imposing fines or, as a last resort, taking away the licence.

As we have set out above, we do not regulate TPIs. In a business retail market we also expect there to be interactions between customers and retailers or TPIs which do not necessarily involve us. Commercial disputes and debt recovery proceedings occur across retail markets and are subject to more general laws accordingly. For example laws relating to misrepresentation and unfair contract terms could be relevant to the interactions between TPIs and customers and the resolution of disputes between them but will not involve intervention from us.

However, to support and protect customers as far as we are able we set out in our [May 2016 document](#) that any retailer operating in the business retail market is responsible for making sure that any TPI it may use is aware of and complies with the CPCoP. Specifically:

- for TPIs acting for retailers: retailers shall take all reasonable steps to ensure that these third parties are aware of, understand and comply with the provisions of the CPCoP;
- for TPIs acting for business customers: retailers will obtain written confirmation – known as a Letter of Authority – from the relevant customer(s):
  - that the named TPI is acting on their behalf;
  - of the extent of the TPI’s authority; and
  - as to how the TPI’s fees are being paid.
- where the business customer is also a micro-business, the written confirmation shall be in the form of a template (which accompanies the CPCoP).

Notwithstanding the above, we recognise that relying primarily on retailers to control the behaviour of TPIs may not always be the most effective way of ensuring customer protection. So we have set out in this document our view of the options for strengthening the incentives directly on TPIs to behave in an appropriate manner.

### 3.7 Voluntary TPI codes of practice in other sectors

TPIs in other sectors are subject to voluntary and self-regulatory measures, such as codes of practice. TPIs have also developed their own accreditation schemes and/or codes of practice in other sectors to promote good practice and help customers understand who they can trust.

Below we summarise the current regulatory landscape for TPIs in the water business retail market:

**Table 1: Regulating TPIs**

Type of regulation	Details
Binding regulation	<p>The Business Protection from Misleading Marketing Regulations (BPMMRs), are enforceable by the CMA and Trading Standards and prohibit misleading advertising and sales activities amongst other things. Ofwat does not have powers to enforce the BPMMRs.</p> <p>All water and wastewater business retailers will need to comply with the <a href="#">Customer Protection Code of Practice</a>. Where TPIs are acting for retailers, retailers must take all reasonable steps to ensure that the</p>

	third parties are aware of, understand and comply with, the provisions of the code.
Voluntary regulatory steps	There are a number of voluntary sector agreements that some TPIs are party to. Examples include the <a href="#">UIA</a> and <a href="#">E.ON Code of Practice</a> .

## 4 Our TPI policy work in the business retail market

As part of our customer protection work for retail market opening, we committed to examining the potential role of TPIs and to consider the role that we and others might play in terms of ensuring their involvement in the market benefits customers.

On 20 January 2016, we held a workshop on ‘[Customer protection in the retail non-household market](#)’. The purpose of this workshop was to discuss our customer protection proposals and the high level messages from the consultation responses received on an early draft of the CPCoP, but the role of TPIs in the market was one of the main issues discussed. Attendees (who did not include any TPI representatives) discussed the different business models within which TPIs operate and the different customer and contractual relationships they entail that may or may not help to provide assurance about how TPIs behave. For example, where a TPI is acting as the retailer’s agent, there is likely to be a contract between the retailer and the TPI which can ensure the right level of assurance.

However, attendees noted that when a TPI is directly appointed by the customer, the retailer should not have responsibility for the TPI’s behaviour. The group also highlighted a view that TPIs should sign up to a set of standards or an accreditation scheme. It was broadly agreed that if this approach were to be taken it should be voluntary and did not need to be ready before market opening given the absence of any evidence of TPI issues in the sector ahead of the market opening.

Consequently, in March 2016 we [consulted on our draft CPCoP](#) and our final proposals for our customer protection policy for the business retail market, including our proposed approach to TPIs. Some interested parties commented that our proposals for TPI voluntary arrangements did not go far enough and that we should reconsider our position in light of evidence in the energy market.

We decided to explore the issue further and held a TPI stakeholder workshop in September 2016. During the workshop we shared our latest thinking on the role of TPIs in the market and sought further views on the TPI market in general. We also discussed potential regulatory options for providing customer protection in relation to TPIs in the new business retail water market.

A number of attendees agreed with our above characterisation of the key issues relevant to the operation of TPIs and offered valuable feedback. Some attendees noted that there needed to be clear benefits to adhering to the voluntary code or an incentive to using only accredited TPIs. Concerns were also raised about how the

sector would manage TPIs who were acting poorly in order to reduce a negative impact on the reputation of the sector as a whole. Some of the attendees asked us to consider a more direct role in regulating TPIs than a voluntary arrangement and for us to have a role in information gathering and investigating complaints that might arise following market opening.

In addition, during this workshop we asked for feedback on the draft Letter of Authority which we published in May 2016. We are now publishing alongside this document an [updated draft Letter of Authority](#) based on feedback received. Any changes are intended to improve the clarity of the document in reflecting policy intent. We have not made any changes which deviate from the policy positions outlined in our May 2016 decision document. However, we would welcome any further comments on the Letter of Authority.

### **Consultation questions**

**Q1.** Do you have any views on the updated version Letter of Authority?

## 5 Our proposed approach for TPIs within our existing powers

During our September 2016 workshop, we presented a draft set of principles for a voluntary water TPI code of conduct. Attendees welcomed our approach in developing principles for voluntary TPI codes. It was suggested that bad behaviour in the energy market is likely to continue in the water market unless we intervene to stop it. Some noted that working alongside other regulators would be key to ensuring consistency in policy and approach for multi-utility TPIs. Attendees also noted that the principles set out in the CPCoP could also apply to TPIs, but that in addition they highlighted specific principles that are more tailored to TPI interactions with customers.

Attendees noted that within any water TPI code of conduct there should be principles specific to TPIs about the following themes:

- sales channels;
- price comparison practices;
- contract practices;
- customer service;
- accurate and complete information;
- clear communication; and
- mitigation of misleading sales and marketing.

### Consultation questions

- Q2.** Are there lessons from existing TPI codes of conduct in other sectors that we have not considered and should be reflected in our proposed code principles?

### 5.1 TPI code principle proposals

We have considered a number of options for TPI code principles and these have been influenced by feedback at our stakeholder workshops. Our September 2016 workshop helped inform our development of the principles for use in any water TPI code of conduct. The [slide pack of the workshop](#) and the draft TPI [code principles](#) are available on our website. We value the input we have received from interested parties in developing the principles of any TPI code.

Following our engagement with interested parties and further reflection on our regulatory objectives for the new business retail market, there are two options that we have considered with regard to the principles that should apply to TPIs:

#### **5.1.1 Option 1: mirroring the CPCoP principles in any water TPI code of conduct.**

This option would ensure a consistent, familiar and not fragmented approach across the sector. This is particularly important as some licensed retailers may be direct competitors of TPIs (eg a retailer may be a TPI at the same time or both retailers and TPIs are competing to “sell” direct to business customers). In the future, we could alter this approach but it would ensure that: the CPCoP principles remain fit for purpose as the market matures; we do not place additional requirements on either TPIs or retailers that would distort competition; or that we create confusion for TPIs by encouraging particular behaviour when they interact with customers but require different behaviour when they act on behalf of retailers.

#### **5.1.2 Option 2: tailoring the CPCoP principles to TPIs (see Table 2 below).**

This option is based on feedback from interested parties received at our September 2016 workshop and would enable us to add additional principles that are directly relevant to TPIs e.g. a principle that relates to sales channels which takes account of standard TPI practices.

To ensure consistency with expectations in other sectors, for example, energy, insurance and mortgages, some interested parties who operate in other sectors suggested that any tailored TPI principles we may introduce should be a combination of those commonly used in other sectors.

### **5.2 Our recommendation**

We recommend option 2. We consider that there should be the option for the sector and TPIs to create specific principles that take account of TPI practices and expectations from other sectors that build on, but are not limited to, the CPCoP principles.

So we propose that any voluntary TPI code of conduct for the water sector include high level principles that we expect TPIs to follow in offering a high standard of service to their current and prospective business customers. Table 2 below sets out

how the existing principles in the CPCoP compare with our proposed new principles for the voluntary TPI codes of conduct for water.

We are interested to hear views on our proposed TPI principles, particularly as compared to the principles within the CPCoP.

**Table 2: Principles for voluntary code(s) of conduct for TPIs**

<b>Principles in CPCoP</b>	<b>Proposed principles for voluntary industry TPI codes of conduct for water</b>
Retailers shall be fair, transparent and honest; while putting the customer at the heart of their business.	TPIs shall be fair, transparent and honest. TPIs shall not sell a customer a product or service that (s)he does not fully understand or that is inappropriate for their needs and circumstances.
Communication with NHH Customers shall be in plain and clear language.	Communication with NHH customers (business, charity and public sector) shall be in plain and clear language. TPIs shall not offer products that are unnecessarily complex or confusing.
Retailers shall ensure they provide appropriate and timely information to NHH Customers to enable them to make informed choices.	TPIs shall ensure they provide reliable, accurate, timely information and through appropriate channels to NHH customers to enable them to make informed choices. TPIs shall inform any micro-business customers that they have a 14 day cooling off period. TPIs shall cancel any mis-sold contract without penalties. TPIs shall not exaggerate the savings that could be achieved by switching and try to be as accurate as possible.
Any information provided to NHH Customers shall be complete, accurate and not misleading.	Any information provided to NHH Customers shall be contemporaneous complete, accurate and not misleading.
Retailers shall respond to NHH Customers in an appropriate and timely manner.	TPIs shall respond to NHH Customers in an appropriate and timely manner.
Customer service arrangements and processes shall be accessible to and effective for NHH Customers.	Customer service arrangements and processes shall be accessible to and effective for NHH Customers.

### **Consultation question**

**Q3.** Do you have any comments on our proposed principles for TPI voluntary codes of conduct?

## 6 Giving effect to our principles in existing or future TPI codes of conduct

We have set out below examples of potential regulatory intervention we could take using our existing powers in order to give effect to the TPI code of conduct principles outlined above.

We have considered a range of options for implementing our proposed principles for TPI voluntary codes of conduct in light of interested parties' comments and our current statutory powers which are set out above.

**Table 3: Options for TPI Code of Conduct principles implementation within our existing powers**

<b>Options for TPI code principles implementation</b>	<b>Details</b>
We set voluntary code principles and the sector leads on its implementation.	A voluntary approach in which we would set out principles which it would expect TPIs to follow. The sector would be encouraged to lead on embedding these principles in existing or future codes as well as ongoing governance and monitoring of these codes. We would monitor TPI performance in the market as part of our wider market monitoring policy.
We propose a change to CPCoP	In this option we would require retailers (via their WSSL and Instrument of Appointment licence conditions) to take further actions to assist with the regulation of TPIs, for example requiring retailers to work only with TPIs accredited to a robust code of conduct. This would involve making a code modification proposal in line with the published code governance.

## **6.1 Option 1: We set code principles and the sector leads on their implementation**

This option would act as non-binding guidance outlining our expectations for TPI interactions with business customers. This guidance could then be used for any TPI code of conduct for water established by existing or new accreditation schemes thereby ensuring some basic consistency across such schemes. This option would mean that our role would be to set out the principles of the TPI code with minimal direct oversight arrangements and indirect oversight through our planned market monitoring and insight work post-market opening.

A voluntary code would have similarities to some of the existing voluntary codes of practice which currently operate in the energy TPI market. We would encourage TPIs to sign up to become a member of any of these codes and we could use our standing and reputation to highlight which voluntary codes of practice follow our TPI code principles and which TPIs have signed up to such codes. We consider that there would be a strong reputational incentive on anyone running or planning to run a TPI code of conduct in water to show to us how their code complied with our principles and which TPIs had signed up and were complying with that code.

By providing this information we would be assisting business customers to make informed decisions about which TPI to choose in the business retail market.

The broad scope of this option would ensure it would be suitable in scope to cover all TPIs that operate in the market and would be quick and easy to implement. We acknowledge that the nature of this voluntary approach may not help address potential poor behaviour due to the lack of direct sanctions. However, any potential TPI code of conduct may choose to offer a redress scheme to its members.

We are very aware that this approach would be reliant on all TPIs working in the business retail market adopting and adhering to our TPI code principles. We would therefore look for cooperation from consumer groups and other regulators to assist with any monitoring we may choose to do in the new market in order to understand business customers' experiences of interacting with TPIs. Retailers may also choose to recommend TPIs – particularly in light of their obligations in relation to TPIs under the CPCoP (see section 3.5 above) – and could publish a list of trusted TPIs on their websites. We may also from time to time ask retailers to share information with us on customer complaints against TPI practices. This is in addition to using our licensing functions to gather information necessary to assess compliance with the CPCoP.

We intend to develop the arrangements needed to monitor the effectiveness of the new market and recently published [a consultation on our approach to market monitoring](#). In this context, it is important to think more broadly about how to ensure customers interacting with TPIs are being treated fairly and appropriately, in both the near and long term.

## **6.2 Option 2: Proposed change to the CPCoP – We require retailers (via Licence Conditions) to only work with accredited TPIs**

Implementing principles in voluntary codes of conduct for all TPIs as described in Option 1 would offer a minimum level of regulatory intervention. Our licensing framework, including both the Water Supply and Sewerage Licence and Instrument of Appointment (or the CPCoP introduced under those instruments), could require retailers to work only with TPIs accredited to a code of conduct. This approach may give customers more confidence that both retailers and TPIs are responsible for the overall transactions undertaken with a TPI. This option would require making changes to the CPCoP in line with its code governance process, or making changes to licences or appointment conditions in line with the appropriate process under the Water Act 2014<sup>10</sup> or Water Industry Act 1991.

This approach would have stronger sanctions for TPIs who do not follow the behaviours set out in the code of conduct. Potentially transgressors could be removed from the accreditation list of approved TPIs and therefore would not be able to trade with retailers. Some stakeholders have voiced their support for this type of option. Their support would aid the success of this type of regulatory intervention, which would depend on industry buy-in and effective publicity to educate the market.

However, it is possible that this option would result in a proportion of the TPI sector being forced out of the water market if they chose not to sign up to a TPI code of conduct. It could also potentially limit new market entrants. Further, whilst this option might improve customer trust and enhance market engagement, it would certainly

---

<sup>10</sup> Specifically, section 55 of the Water Act 2014.

have cost implications for both TPIs and retailers. It would also not set standards for TPI behaviour that are directly enforceable by us.

Enforcement of this option would rely on retailers monitoring the activities of TPIs and ensuring that they only transacted with TPIs conforming to the code of conduct. This is because, as we have set out earlier in this document, we do not have the power to directly regulate TPIs intending to operate in the business retail market.

Some stakeholders have voiced their concerns that this option may mean that we pass on responsibility for regulating TPIs to retailers and may also be associated with cost burdens on industry that would be passed onto customers.

## 6.3 Conclusion

We are keen for our proposed code principles to be used in any existing or future TPI codes of conduct that would operate within the sector. Given that aim and having considered both the two options set out above and the limitations of our current powers, we consider that option 1 is the most suitable to pursue at the moment.

We consider option 1 provides as much protection for customers as possible without transferring regulatory responsibility (and the cost that brings) to companies and customers. We also have concerns that option 2 could militate against innovation in the market and therefore potentially deny benefits to business customers. Option 1 provides TPIs, retailers, customers and other interested parties with guidance on 'acceptable' TPI practices, whilst giving the sector ownership of any codes of conduct and the space to innovate.

To take option 1 forward, given the multi-utility model associated with TPI businesses we intend to continue working closely with other regulators, particularly Ofgem, to ensure consistency in the application of our principles across the markets. We also plan to share relevant customer information via the [Open Water website](#), which will include help for customers on the benefits and risks involved when working with a TPI.

### Consultation question

**Q4.** Do you agree with our recommended option to help address TPI issues?

## 7 Next steps

In this document we have provided some high level analysis of various aspects of the TPI market, the participants who are active in it and how the TPI market is likely to interact with the business retail market. This consultation is a valuable opportunity for interested parties to contribute their views on these issues and the best way to build the customer trust and confidence that are essential for both the TPI market and the business retail market to flourish.

There remain a small number of areas where we propose to take forward more work either to finalise the finer detail of the principles for the proposed voluntary TPI codes of conduct, or more broadly to support effective implementation of our customer protection arrangements in the sector from April. These areas are set out below.

1. **Seek to gain powers to enforce the BPMMRs.** We are seeking to gain powers to be able to apply for injunctions to ensure businesses comply with certain provisions in the Business Protection from Misleading Marketing Regulations 2008. This will enable us to address situations where TPIs mis-sell to business customers by marketing water and wastewater contracts in a misleading way.
2. **Publish a final version of the TPI code principles in March 2017.** Following the responses received from this consultation, we will publish our final principles for any TPI code of conduct.
3. **Develop monitoring arrangements for the new market.** In a number of instances, we recognise that we will need to monitor how the market is developing to understand if our TPI proposals, as well as our customer protections more widely, are working, or if they need revising or removing entirely because they are unnecessary. We intend to take forward this work as part of a broader exercise to develop the arrangements needed to monitor the effectiveness of the new market – further information on our market monitoring proposals can be found [on our website](#).
4. **Continue our campaign to raise awareness of business retail market opening.** We have recently commissioned a national survey to gauge levels of awareness and understanding of the changes in the water market. The results, which will be recently published, provide us with a clear picture of levels of awareness enabling us to build on it. Further support on customer engagement comes in the form of the [Open Water website](#). This has recently been relaunched with a much greater customer focus as well as being a source of information for

the industry. The site will continue to be developed over the coming months as a hub for relevant impartial guidance and information about the market, eligibility and switching.

If you have any questions about the contents of this document, please email Rowaa Mahmoud at [customerprotection@ofwat.gsi.gov.uk](mailto:customerprotection@ofwat.gsi.gov.uk) or call Rowaa on 0121 644 7503.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales. Our vision is to be a trusted and respected regulator, working at the leading edge, challenging ourselves and others to build trust and confidence in water.

Ofwat  
Centre City Tower  
7 Hill Street  
Birmingham B5 4UA

Phone: 0121 644 7500  
Fax: 0121 644 7533  
Website: [www.ofwat.gov.uk](http://www.ofwat.gov.uk)  
Email: [mailbox@ofwat.gsi.gov.uk](mailto:mailbox@ofwat.gsi.gov.uk)

Printed on 75% minimum de-inked post-consumer waste paper.  
February 2017

ISBN 978-1-911588-04-7

© Crown copyright 2017

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit [nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party copyright information, you will need to obtain permission from the copyright holders concerned.

This document is also available from our website at [www.ofwat.gov.uk](http://www.ofwat.gov.uk).

Any enquiries regarding this publication should be sent to us at [mailbox@ofwat.gsi.gov.uk](mailto:mailbox@ofwat.gsi.gov.uk).

