



Watching the middlemen

Brokerage services for micro-business energy consumers

Nigel Cornwall and Robert Buckley, Cornwall Energy



About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

Consumer Focus also has a statutory obligation to represent the interests of micro-businesses¹.

¹ A micro-business is a small business which has fewer than 10 employees (or their full-time equivalent) and an annual turnover of under €2 million or consumes less than 200,000 kWh of gas each year or 55,000 kWh of electricity each year.

Foreword

We are concerned that micro-business consumers may be suffering due to the way some third party intermediaries (TPIs) use their information advantage when striking supply contracts. We believe there are two major areas of concern:

- Micro-business consumers are being committed to contracts that are not best-suited to their needs, because the TPI's prices and terms are not at competitive levels
- TPIs may be motivated to place contracts with suppliers that would pay them commission, perhaps at excessive levels and undisclosed to the customer. Suppliers typically incorporate any commission they pay to TPIs in their prices to customers, so the costs of this commission would be borne directly by the customer

In late December 2010, we asked Cornwall Energy to look into the market for brokerage services from TPIs for energy supply contracts for micro-businesses. We asked them to:

- scope the scale of the broker market, typical terms of trade and range of services available
- consider future scenarios for broker business development as demand for energy services increases, including as result of the Green Deal and smart meters
- assess the risks to micro-business consumers and others if the sector remains unregulated
- review opportunities for the creation of or strengthening of an existing self-regulation code of practice and the potential for more formal regulation
- make recommendations for how we might lead improvements to the market that would benefit micro-businesses consumers

Cornwall Energy found that there is a need for better consumer education, greater controls over TPI services and there are concerns about the way commissions are disclosed. Their report to Consumer Focus follows.

Following their findings we will work with the Office of Fair Trading and Ofgem to clarify which has regulatory responsibility for TPIs and work with that organisation to address our concerns.

Date: February 2011

Brokerage services for micro-business energy consumers

A summary for Consumer Focus

Prepared by: Nigel Cornwall and Robert Buckley
Cornwall Energy

Table of contents

I	Executive summary.....	4
1.1	Terms of reference.....	4
1.2	Process and approach.....	4
1.3	Role of TPIs in the micro-business market.....	4
1.4	Charges and service levels.....	5
1.5	Areas for improvement.....	5
2	Brief and market context.....	8
2.1	Consumer Focus's brief.....	8
2.2	What is a micro-business in the energy market?.....	8
2.3	The micro-business energy market.....	9
2.4	Why do micro-businesses use TPIs?.....	9
2.5	Why do suppliers use TPIs?.....	10
2.6	What are TPIs?.....	10
2.6.1	TPI charges.....	11
2.7	The Utilities Intermediaries Association.....	11
3	Perception of TPI services.....	13
3.1	Approach.....	13
3.2	Consumer Direct contact data.....	13
3.3	Our own research.....	14
3.3.1	Renewal pricing and TPIs.....	14
3.3.2	Mis-selling of verbal contracts.....	15
3.3.3	Manipulation of credit scores.....	15
3.4	Opinions from market participants.....	15
3.4.1	Role of TPIs.....	15
3.4.2	Charges and service levels.....	16
3.4.3	End-to end recording of telephone calls.....	18
3.4.4	Independent regulation.....	19
3.4.5	Codes of practice.....	20
3.5	How competition for TPI Services might develop.....	20
4	Conclusions and recommendations.....	22
4.1	Better consumer education.....	22
4.2	Regulating TPI conduct.....	22
4.3	Treatment of commissions.....	24
4.4	Next steps.....	24

Appendix 1: Approach from Cornwall Energy

Appendix 2: Organisations contributing to this research

Index of figures

Figure 3:1: Possible licence condition mandating disclosure of TPI commissions on their bills by suppliers . 20

Index of tables

Table 2:1: Cornwall Energy's assessments of non-domestic energy supply contracts that could be held by micro-businesses.....	9
Table 2:2: Full members of the Utilities Intermediaries Association February 2011	12

Disclaimer

While Cornwall Energy considers that the information and opinions given in this report and all other documentation are sound, all parties must rely upon their own skill and judgement when making use of it. Cornwall Energy will not assume any liability to anyone for any loss or damage arising out of the provision of this report howsoever caused.

The report makes use of information gathered from a variety of sources in the public domain and from confidential research that has not been subject to independent verification. No representation or warranty is given by Cornwall Energy as to the accuracy or completeness of the information contained in this report.

Cornwall Energy makes no warranties, whether express, implied, or statutory regarding or relating to the contents of this report and specifically disclaims all implied warranties, including, but not limited to, the implied warranties of merchantable quality and fitness for a particular purpose.

Cornwall Energy
Heath Farm Cottage
Paston
North Walsham
Norfolk
NR28 0SQ

T +44 (0) 1692 407865
F +44 (0) 870 7063003
E info@cornwallenergy.com

www.cornwallenergy.com

I Executive summary

In this section we summarise key points from the report and its recommendations.

1.1 Terms of reference

In late December, Consumer Focus asked Cornwall Energy to map the market for brokerage services from third party intermediaries (TPIs) for energy supply contracts for micro-businesses to:

- scope the scale of the broker market, typical terms of trade and range of services available;
- consider future scenarios for broker business development as demand for energy services increases, including as result of the Green Deal and smart meters;
- assess the risks to micro-business consumers and others if the sector remains unregulated;
- review opportunities for the creation of or strengthening of an existing self-regulation code of practice and the potential for more formal regulation; and
- make recommendations for how Consumer Focus might lead improvements to the market that would benefit micro-businesses consumers.

Consumer Focus outlined to us concerns it held about the way some third party intermediaries (TPIs) may be using any information advantage they hold over micro-businesses to strike supply contracts that may be causing detriment to consumers. There were two major causes of this damage:

- the TPIs were committing the user to contracts that were not best-suited to their needs, because their prices and terms were not at competitive levels; and
- these commitments may be being made as the TPIs were motivated to place contracts with suppliers that would pay them commission, perhaps at excessive levels and undisclosed to the customer. Suppliers typically incorporate any commission they pay to TPIs in their prices to customers, so the costs of this commission would be borne directly by the customer.

1.2 Process and approach

This report has been compiled using our own research in to the TPI sector, analysis of sample data from Consumer Direct on contacts to it from micro-businesses about TPIs, a brief review of press commentary plus a canvassing of views of sector participants. These views were received via telephone and in writing during January and February 2011 after an initial approach early in January 2011. The approach was made to 16 parties, including the Big Six and independent suppliers, consumer and TPI representatives. Some 11 parties replied including four of the Big Six, several independent suppliers' sector and consumer and TPI representatives.

A copy of our approach is included at Appendix 1 with a list of respondents at Appendix 2.

1.3 Role of TPIs in the micro-business market

Third party intermediaries (TPIs) are generally perceived to have the capacity to play a beneficial role in the micro-business energy markets by making consumers aware of the opportunities open to them from competitive supply markets and providing a channel through which they can be accessed. For suppliers, especially those looking to grow market share, TPIs effectively undertake "free marketing" as one respondent put it. All suppliers make significant use of them; some channel virtually all of their sales through them.

1.4 Charges and service levels

TPIs are very diverse in size and in terms of the range of service offerings. Many TPIs can provide a high quality and professional service that benefits both micro-business – through more competitive contracts – and suppliers – through accessing more and higher quality accounts. But service levels are variable.

Some concerns about TPIs and their conduct are held variously by suppliers, consumer and trade representatives and TPIs themselves. They appear to be borne out by experiences reported both in the press and to Consumer Direct and encompass:

- misrepresentation of their roles, offers from suppliers and their fees;
- poor quality service provision leading to sub-optimal advice being provided; and
- a lack of transparency, especially on commission levels and supplier coverage.

Of late and particularly since Ofgem's *Retail Market Probe* of 2008-09, suppliers have been working hard to tighten up their processes for dealing with TPIs, especially those that they commission to operate directly on their account. There is a high degree of confidence from suppliers that these relationships are delivering for them signed contracts from consenting customers. But it is much harder to gauge whether contracts that result from TPIs that act independently are sourced according to similarly robust processes. There are also very significant concerns about whether commissions taken by TPI are unduly high and insufficiently disclosed to the consumer. We have also heard anecdotes that some TPIs take commissions from both the supplier and the consumer.

We believe these concerns are significant enough for Consumer Focus to push for improvements to the market.

1.5 Areas for improvement

We believe there is a need for much more consumer education on the role of TPIs and the benefits they can bring. The role being played by Consumer Focus in this regard needs to continue after the organisation is abolished.

We think that Consumer Focus should encourage micro-business consumers to use TPI services if they are not confident they can address the full opportunities from energy supply competition on their own but they should adopt due process in doing so. Consumer Focus's factsheet *How to switch energy supplier— advice for small businesses*¹ includes a number of useful questions for micro-businesses to ask TPIs. TPI trade group the Utilities Intermediaries Association (UIA) also provides useful guidance for consumers on its website².

In addition to the advice set out by the UIA and Consumer Focus, micro-businesses should also be encouraged to:

- remember TPIs are businesses that need to make a profit so claims of free service should always be challenged;
- always instruct a TPI in writing confirming exactly the work required, with a letter of authority the TPI can present to suppliers. The UIA has provided us with its sample letter of authority and this is included at Appendix 3;
- always provide full information to the TPI on energy consumption, contracts and credit status so the TPI can secure the best offers available;
- never commission more than one TPI to secure contracts even if there appears to be no cost involved as this will create confusion amongst suppliers and probably result in fewer and more expensive offers; and
- always ask for full, itemised evaluations of all quotations the TPI has secured on their behalf, including

¹ <http://www.consumerfocus.org.uk/files/2010/01/Small-business1.pdf>

² <http://www.uia.org.uk/consumer-guidance.htm>

commission payments.

We see a general desire from suppliers for more controls over TPI services, especially those provided by companies with whom they do not contract direct, and this should be encouraged. There was also a desire from consumer groups and many TPIs themselves for a raising of standards. The TPIs seeking better conduct want to see a more professional service but also are concerned about unfair competition from operators who were less reputable.

We also note that the UIA has been established for some time to provide a forum for TPIs to address common issues, promote higher standards and interact with stakeholders. Though it has some high-profile participants, it is not yet at the stage where enough TPIs feel there are sufficient incentives to them becoming members and there is an absence from its membership of the aggregators (who manage sales by groups of TPIs, many of whom may be individuals) who are so important in the micro-business market.

The UIA's two codes of practice set out a basic template to which all TPIs should adhere in some form either through the UIA or some alternative governing body. We believe the code provisions could be enhanced by mandating the amount as well as origin of TPI fees, at least for micro-businesses where the primary service provided by TPIs is the sourcing of supply contracts. We believe the benefits to micro-businesses of complete transparency of how their money is being spent considerably outweigh the commercial sensitivities some TPIs fear may result from disclosing their full fees to their customers.

Consumer Focus should seek clear confirmation from the Office of Fair Trading or Ofgem that it is the body with regulatory oversight of the TPI sector for all non-domestic energy users, and that it is aware of the shortcomings in this sector and its regulation.

That body should then set a clear path to implementing the measures set out below:

- improved information on TPI services for micro-businesses combining the best of that from Consumer Focus's existing resources, the UIA and the suggestions we have made. This information should be disseminated by TPIs, suppliers and consumer groups;
- a raising of standards for all TPIs to micro-businesses through:
 - a ban on all TPI contracts that preclude non-domestic customers from contacting their suppliers. Consumers should always have the right to contact their supplier in the case of query about any aspect of their supply relationship including, for example, what they may be paying in commission to their TPI through their energy bills;
 - mandated accreditation by the end of 2011 for companies providing TPI services to micro-businesses with a sector organisation tasked with maintaining and raising standards. The UIA is already providing this central service role on a voluntary basis and appears well-placed to take on this on a mandated basis, especially as it has in place codes of practice. Consumer Focus should argue for mandated membership of a trade association by all TPIs³. This may be the UIA but there may also be an option for the larger suppliers working collectively through the Energy Retail Association (ERA) to be directed to take forward a code of practice and invite non-ERA suppliers to participate in the initiative;
 - a mandated standard implemented as soon as possible for individuals providing TPI services directly or indirectly for micro-businesses whether they are employed by companies, self-employed or act as aggregators along the lines the Statement of Professional Standing⁴ proposed by the Financial Services Authority (FSA). Again this should be led by the UIA (or an alternative trade body); and

³ We recognise that Consumer Focus will have a powerful voice in the debate about the regulation of TPIs, and it will wish to consider carefully in establishing standards of conduct and their enforcement whether it believes UIA should be the body to facilitate that role.

⁴ The statement will be issued to those that demonstrate they: act in the public interest and further the development of the profession; carry out effective verification services; have appropriate systems and controls in place and provide evidence of continuing effectiveness; and they cooperate with the FSA on an ongoing basis.

- every individual advisor providing TPI services (whether direct or indirect) demonstrating appropriate training and being registered on a database kept by the UIA (or an alternative trade body).
- improved standards from TPIs with assistance from suppliers through:
 - all suppliers undertaking a verification call for every micro-business contract sourced via an independent TPI with those not being verified recorded by the supplier. This call should clarify that the contract has been properly sold by an accredited TPI. While some suppliers undertake such calls as a matter of routine, we recognise there could be an extra cost here. An alternative would be mandated recording of all telephone contacts between TPIs and micro-businesses but we believe in the round this would be more onerous and difficult to police; and
 - all suppliers undertaking information periodically to the UIA (or an alternative trade body) on the number of micro-business contracts that could not be verified and the TPIs that were their source. This information should be publicised by the UIA (or an alternative trade body) and used in its work on maintaining sector standards.

We also believe that there is a very strong argument in favour of mandated disclosure of commissions by suppliers through a licence condition in both the micro-business and larger business markets. However at this stage we do not believe this should be taken forward as there are competition concerns about how disclosure would impact the TPI market given that the service offerings of providers can and do differ significantly.

We believe these measures should be progressed urgently so that revised institutional arrangements can be established by April 2012 so that they provide a firm basis around which new broker and service provider roles can be administered with the roll-out of the Green Deal and smart meters.

2 Brief and market context

Below we summarise the brief we received from Consumer Focus with contextual information on TPI services to the micro-business sector.

2.1 Consumer Focus's brief

- See Foreword

2.2 What is a micro-business in the energy market?

Distinct processes and terms and conditions apply for energy supply contracts involving micro-businesses. A micro-business is defined as a company (not site) that meets at least one of the following criteria:

- annual electricity demand less than 55,000kWh;
- annual gas demand less than 200,000kWh; or
- fewer than 10 employees (or their full-time equivalent) and an annual turnover or annual balance sheet total not exceeding €2mn.

The micro-business definition in energy markets was introduced as a consequence of Ofgem's 2008 Energy Supply Probe⁵. Effective for contracts signed after 18 January 2010, the following protections now apply through new a standard condition 7a of electricity and gas supply licences⁶:

- before signing the supplier must explain the key terms and conditions to the customers whether the contract is agreed by phone or face-to-face;
- within 10 days of sign-up the customer should receive a full written contract, including renewal terms;
- termination notice may be given by the customer at any time for a fixed term contract (though the customer must arrange new terms to continue after expiry if it wishes to remain on a contract supply rather than out-of-contract terms);
- the supplier must send the customer details of key renewal terms between 60 and 120 days before contract expiry. This information must include prices and details of what will happen if the customer does not wish to renew or take no action;
- 30 days is allowed for the customer to negotiate a new contract with the incumbent or switch to another supplier. Renegotiated terms with the incumbent must be valid for the 30 day period;
- in the event that no action is taken by the customer the supplier can "roll-over" new terms for a maximum of one year; and
- formal dispute resolution procedures must be operated by the supplier, and there should be access to the Energy Ombudsman scheme.

From the perspective of this analysis, the key point is that TPIs must adhere to and comply with the supplier's responsibilities.

⁵ <http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=4&refer=Markets/RetMkts/ensuppro>

⁶ 7A. Supply to Micro Business Consumers <http://epr.ofgem.gov.uk/index.php?pk=doc617000> for electricity and <http://epr.ofgem.gov.uk/index.php?pk=doc617173> for

2.3 The micro-business energy market

Suppliers are obliged to know whether or not a business customer meets the micro-business criteria and they have been taking different approaches to securing this objective. But there is little hard and fast information on the number of micro-businesses in Great Britain. Research by Experian in September 2010⁷ concluded that there were 400,000 micro-businesses – which it defined differently from the energy rules as employing one or two people – up 117% over the preceding five years.

Cornwall Energy undertakes regular surveys of shares for the supply markets for domestic and non-domestic electricity and gas. This survey segments the non-domestic market by factors including energy volumes and numbers of meters attaching to contracts. The most relevant information from the latest survey of standings at 31 October 2010 is shown in Table 2:1 below. It shows that there were 1.75mn electricity contracts that were predominantly non-half hourly metered and attaching to either single site or 2-10 meter multi-sites with 0.58mn for gas.

Our definitions are different than the micro-business scope outlined above as they focus on contracts by the numbers of meters attached to them and for electricity whether they are attached to non-domestic trading profiles or for gas whether they attract VAT at the 20% rate levied on non-domestic users. This means that they exclude micro-businesses attached to domestic energy accounts. However we believe they form useful context for the commentary in this report.

Table 2:1: Cornwall Energy's assessments of non-domestic energy supply contracts that could be held by micro-businesses

(mn)	Electricity non-half hourly	Gas under 25k th	Total
Single site	1.64	0.54	2.18
Multi-site with 2-10 meters	0.11	0.04	0.15
Total	1.75	0.58	2.33

Source: Cornwall Energy supply market share survey 31 October 2010

Likewise we believe it is also important to place this report in a qualitative as well as quantitative perspective. For many consumers, the non-domestic energy markets are characterised by complexity and volatility. The Forum for Private Business shared with us the findings of its *2010 Utilities Report*⁸. This included the results of a survey of its members from small and medium enterprises, many of whom are micro-businesses. This survey showed some dissatisfaction with the price and quality of service of utilities supply and also concerns about complexity. Around half of businesses felt that the cost of utility provision was poor or very poor; fewer than 10% felt that the cost of utility provision was good or very good.

Some 11% felt that contracts were easy to understand, with 51% stating that they were no worse than other types of contract, and a little under 40% reporting that terms were poor or very poor. Respondents also claimed it was not easy to switch suppliers, particularly in comparison to the household market. One in three felt the switching process could be improved, especially as there are short windows for switching embedded in supply contracts.

2.4 Why do micro-businesses use TPIs?

With a market characterised by millions of individual contracts, relatively few providers and significant complexity, there is a niche for third parties to mediate between consumers and suppliers. As we discuss in Section 3.4 below TPIs take several forms. In our experience, which we have confirmed with TPIs

⁷ <http://www.experianplc.com/news/company-news/2010/2010-09-16.aspx>

⁸ The survey addressed electricity, gas, water and telecoms. http://www.fpb.org/images/PDFs/2010_FPB_utilities_report.pdf

themselves for this research, there are three broad and closely-linked motivations for micro-businesses to engage them.

Micro-businesses will seek help from a TPI in sourcing their energy supply contracts because of:

- **fear of the unknown** – the business energy markets are seen by consumers as complex and requiring specialist knowledge to understand their main terms and charges. This in turn is related to;
- **independence** – suppliers are perceived to have an information advantage and trade on their own complex terms and conditions. Consumers therefore need an informed and independent counterparty to offset these two disadvantages. And this is in turn related to:
- **specialist resource** – TPIs are able to offer quick and timely access to competing offers meaning both more choice through more offers for the consumer and the possibility of a lower-priced offer than the consumer would be able to access direct.

2.5 Why do suppliers use TPIs?

TPIs provide an important support service to suppliers through:

- **Awareness** – making customers aware of the commercial opportunities available to them from energy supply competition, and providing a convenient route to accessing them. Sector group the UIA describes this as “free marketing”;
- **route to market** – with payment on properly accredited signed contracts, TPIs provide suppliers a relatively low-cost, incentive-based and convenient route to market. So, though they are used by suppliers of all types, they can therefore be particularly useful to non-incumbent suppliers;
- **data management** – organising the collection and verification of customer information and data for suppliers to price is especially important for small sites like those operated by micro-businesses; and
- **speed of response** – with their prompt analysis of complex pricing offers TPIs can enable the quick decision-making by consumers necessary in markets, which can be very fast moving.

For suppliers TPIs form one of a number of channels that they can use to acquire business. Other channels they may use include: direct mail; in-house or commissioned telesales; the internet; their own field sales teams; new connections; customers moving premises. The larger suppliers tend to be the least reliant on TPIs for new sales, while new entrants and independents can be almost exclusively dependent on them.

2.6 What are TPIs?

TPI as a term describes operators of various forms. Not always immediately visible to the micro-business, these differences emerge clearest from a supplier perspective. TPIs can include:

- **sales agents** – can be employed directly or indirectly with a primary interest to represent the supplier to the consumer. Directly employed agents will operate exclusively on behalf their supplier (sometimes these operators are known as “primary agents”), while indirectly-employed may represent multiple suppliers (“secondary agents”) or operate on an exclusive basis. In the indirect sector, an agent may be employed by a TPI or be self-employed. Some sales agents are larger businesses with significant turnovers and numbers of employees operating across multiple sectors of which energy is one;
- **brokers** – present and evaluate offers from a range of suppliers for the consumers. An internet price comparison site is an example of a broker. Should it take commission from the chosen supplier for securing a contract, it effectively becomes a secondary agent; and
- **consultants** – present and evaluate offers from a range of suppliers for the consumers taking a fee from the consumer for providing their service. This fee can either be billed direct to the consumer or collected indirectly as an oncost on the energy bills. These companies are most prevalent supporting larger businesses where sourcing a supply contract is one of a range of energy management and reporting services available to consumers.

Often the boundaries between these three types of TPI can be difficult to discern and individual companies can operate in different ways in different market spaces. Additionally companies are emerging that mandate

individual agents' brokers to procure contracts and aggregate them for delivery to suppliers. As such they are managing third parties while acting as a TPI themselves. These companies are sometimes referred to as "aggregators" or "broker pricing specialists".

Energy TPI activities have not been specifically regulated in the way that, say, those in the financial sector are. The energy sector regulator the Office of Gas and Electricity Markets (Ofgem) enforces its regulatory powers through licences and there is no current requirement for a licence, or any professional qualification for TPI services to be offered by a company or individual. The Office of Fair Trading (OFT) enforces general consumer protection and competition law. There has been some debate as to whether the OFT or Ofgem has regulatory oversight for energy TPI activities.

2.6.1 TPI charges

TPIs generally derive their income from one or more of the following:

- **commission payments from suppliers** – typically triggered on the commencement of a live supply contract that has been secured by the TPI in line with procedures agreed with suppliers (that reflect suppliers' own contractual or regulatory obligations). Payment will normally be made periodically during the life of the contract to the TPI by the supplier as the consumer pays for the energy that has been contracted for. TPI commissions are typically added by suppliers to the bills of consumers with rates sometimes differentiated for a new contract as opposed to a renewal;
- **fixed fees** direct to the consumer for providing services; and
- **shared savings** or performance-related fees levied on the consumer based on a benefit share of a measure of what the consumer would be paying for their energy without the intervention of the TPI.

Until the advent of the micro-business rules embedded in the supply licence, fixed fee and shared savings arrangements had been supplanted by commissions payable by suppliers and normally recharged by suppliers on consumer bills. As we discuss in Section 3 there have been recurring suspicions expressed in the marketplace that some TPIs have been receiving commissions from suppliers that are not being declared to the end-user customer even though this money is included in their bills.

Many suppliers will offer supply tariff schedules for secondary agents, brokers and consultants to promote to micro-businesses. Typically these schedules will be presented net of commission payments, with these to be added on where the TPI wishes to earn its fee from the consumer.

A brief scan of these tariff schedules current at February 2011 alludes to commissions for micro-business electricity contracts typically offered at up to 0.6p/kWh consumed, but with some in excess of 1p/kWh. These figures equate to approximately 4-8% of delivered costs. But we have anecdotal evidence of some commissions being very significantly higher.

2.7 The Utilities Intermediaries Association

The Utilities Intermediaries Association (UIA) is established as a trade association for TPIs "facilitating energy purchasing contracts between supplier and consumer". With 27 full members (see Table 2:2 overleaf), the UIA's remit includes:

- promoting and enhancing the reputation of TPIs and their interests in the energy industry and circulating relevant information in and outside the membership;
- maintaining codes of practice "with the object that full membership of UIA be recognised as a guarantee of integrity, competence and a high standard of service" and a register of compliant TPIs; and
- offering a channel for redress for clients dissatisfied with services they have received.

The UIA maintains two codes of practice:

- **a code of practice**⁹ of "written standards for the conduct of professional work by third party intermediaries operating in the energy markets". Its nine sections address matters including ethics,

⁹ http://www.uia.org.uk/full_code_of_practice.htm

responsibilities when handling data and information obtained, integrity, contract or agreement arrangements, and communication and relationships with clients; and

- **e-bis Code of Practice**¹⁰—sets out minimum standards through six commitments for internet business electricity and gas price comparison services. The commitments concern supplier representation, payment, offer evaluation and explanation.

Table 2:2: Full members of the Utilities Intermediaries Association February 2011

UIA members			
Apollo Energy	Commercial Utility Brokers (UK)	Inenco Group	SB Energy
Auditel	Cost Centre Services	Nationwide Energy	Slash Marketing
BlueMark Consultants	Direct Energy Associates	Optima Energy Management Services	The Energy Company
Budget Control	Direct Power Associates	Orchard Energy	Utilities Savings
Business Direct Utilities	ENER-G Procurement	Power-Tel (UK)	Utility & Environmental Solutions
Central Power	Gaia Communications	Precision (Energy Management Services)	Utility Assist
Church Energy Savings Consortium	Hotel Energy	Professional Energy	

Source: *UIA* [website](#)

¹⁰ http://www.uia.org.uk/ebis_code_of_practice.htm

3 Perception of TPI services

Below we summarise findings from our research into the role of TPIs in the micro-business energy markets with thoughts on their implications for consumers and Consumer Focus.

3.1 Approach

To provide some context for our research, Consumer Focus also made available to us information from one month of contacts to Consumer Direct¹¹ by micro-businesses about TPIs. Having reviewed this information in January and February 2011, we canvassed views from a number of energy industry stakeholders, including consumer groups, representatives from TPIs and energy suppliers. We did this having in mind that TPIs are not part of the redress arrangements that include Consumer Direct so businesses would not be uniformly signposted to the organisation. Likewise suppliers do not have to signpost their micro-business customers to Consumer Direct in the same uniform way as they have to for domestic consumers.

3.2 Consumer Direct contact data

Consumer Focus provided us with information on contacts made by micro-business consumers to Consumer Direct in September 2010 in connection with TPIs. We were told that the contacts that occurred in that month were typical of those received by Consumer Direct recently. In total there were just under 60 contacts. More than half outlined specific complaints by micro-business consumers about TPIs. In contrast there were less than five that specifically related to conduct by suppliers alone.

Features of the complaints about TPIs included:

- misrepresentation of pricing with customers led to believe they would be signing up to lower prices than their existing contract but then finding they had been committed to higher costs. These higher costs might have resulted from commissions that had not been disclosed to the consumer;
- misrepresentation of the purpose of the contact by the TPI. There are two aspects to this:
 - official sounding names that give the impression the representative contacting the micro-business has no commercial interest but is merely seeking and providing information, while they are in fact seeking to broker a supply contract and using any information they obtain from the consumer for that purpose; and
 - official sounding purposes – like “you have to register your meter with us” for an energy supply, “we are not a broker, we work on behalf of all the energy companies”, “we are an independent ombudsman body that offer independent information on prices and are not a broker”, “working on behalf of Ofgem” – also used to pressure the micro-business customer to commissioning the broker making the contact to secure a supply contract
- difficulty for the consumer to re-contact the TPI to pursue queries and concerns;
- suppliers enforcing contracts consumers believed that they had been mis-sold by TPIs. Although we only saw a very limited amount of data, there were several instances of this occurring that featured a small number of suppliers.

Additionally there were also complaints about persistent and excessive contact of micro-business consumers.

¹¹ Consumer Direct is the government-funded telephone and online service offering information and advice on consumer issues. Consumer Direct is funded by the Office of Fair Trading and delivered in partnership with Local Authority Trading Standards Services. From 1 October 2008, Consumer Direct has offered advice on energy supply complaints and enquiries for households and micro-businesses.

3.3 Our own research

We canvassed views about TPI conduct to follow-up the main points gleaned from the Consumer Direct data from within the market, including from TPIs themselves. This research added information on three further practices by TPIs that appeared to be not in the best interests of consumers:

- some suppliers appeared to be unaware of the dealings of – or not sufficiently in control of the dealings of – sales persons acting on their behalf. It was alleged that there were instances of abuse of processes for confirming contracts verbally and that some TPIs may be operating without identity;
- TPIs may be presenting offers that were not their most advantageous for consumers because suppliers were skewing commission payments towards the deals they wanted to sell; and
- industry dataflows may be being misused by TPIs seeking knowledge of when supply contracts may be available for renewal. If true (and we have heard it from more than one source), this very serious allegation centres on the Electricity Central Online Enquiry Service (ECOES), which allows non-domestic consumers access to information including on their meter numbers. There were even rumours that data from this source was available for sale over the internet.

We also had **anecdotal evidence** of how a minority of TPIs may be conducting themselves currently to further their interests in ways that may be disadvantageous to micro-business consumers. One part that we discuss further below was how TPI practices had evolved in the light of the way suppliers appear to be pricing renewal contracts now that the new micro-business roll-over arrangements are in place. Others concerned a lack of awareness of who closed the sale and whether they undertook their role in a manner that complies with the supplier's standards.

We also reviewed press coverage of TPIs¹² notably several articles which have appeared in the *Daily Mail* since 2008. They highlighted issues, some of which were similar to those picked up in the Consumer Direct data.

3.3.1 Renewal pricing and TPIs

The new arrangements for renewing micro-business contracts provide for roll-over arrangements of a maximum of a year in defined circumstances where the consumer has not opted out. There are signs that TPIs have adapted to these changes, especially where the roll-over price has been pitched at very high levels or where the consumer has terminated the arrangement but for one reason or another not put in place a new contract. In the latter circumstance the micro-business can find itself buying energy at very high out-of-contract rates.

TPIs have adapted to this change by pitching propositions to micro-businesses that show significant savings based on the difference between existing low-priced terms and the proposed new roll-over or out of contract schedules. They present a shared savings offer to the consumer in the expectation that they should be able to secure an alternative more favourably priced deal than the very high starting point.

So in circumstances where the customer is loyal and has no wish to switch, it is feasible that it will not have given notice to terminate. The customer may not be aware that the renewal offer is negotiable so the TPI who identifies such a customer can find a windfall by immediately identifying to the customer a massive “apparent” saving can be made by switching (even if they are precluded from doing so by their contract terms and conditions). In many cases the price offered by the TPI may be lower than the renewal offer but not competitive with the wider market due to commission.

¹² http://www.thisismoney.co.uk/markets/article.html?in_article_id=452023&in_page_id=3

http://www.thisismoney.co.uk/news/article.html?in_article_id=452466&in_page_id=2

http://www.thisismoney.co.uk/work/small-business/article.html?in_article_id=517401&in_page_id=10

http://www.thisismoney.co.uk/work/small-business/article.html?in_article_id=505734&in_page_id=10

This situation has brought about a significant resurgence in the fortunes of TPIs, especially brokers. It was argued to us that the roll-over arrangements have played into the hands of TPIs and, while many were “totally honourable”, there were others who have “very quickly realised the opportunities that exist”.

3.3.2 Mis-selling of verbal contracts

This situation can arise through verbal contracts with mis-selling alleged by often small TPIs that target micro-businesses. Recordings should be made of verbal contract sales, but there have been allegations that these recordings can be manipulated to indicate that a customer has consented to a contract when it has not.

Due to concerns of this kind, some suppliers will not allow verbal sales. Others insist upon the full recording rather than just the final verification section. Others undertake a welcome call to the customer to affirm the customer is happy and wishes to proceed.

3.3.3 Manipulation of credit scores

The question of credit checks was also raised with us. It is commonplace for a business user to seek alternative prices at or near to the end of their contract so consequently several suppliers and perhaps TPIs too will access the commercial credit checking facilities within a short timeframe. The way that these facilities are understood to work is that several searches within a short period could reduce the customer’s credit score. Should it fall too low it may result in the customer either being declined an offer by some suppliers or even having their renewal price increased. It was suggested to us that some TPIs may be aware of this fact and deliberately seeking credit checks on customers to manipulate credit scores and thus make them appear less attractive to competitors and therefore more dependent on their services.

3.4 Opinions from market participants

To supplement the information from Consumer Direct and that from our own research, we canvassed opinions from the market on whether these practices were recognised. We sought information on four broad themes, concerning stakeholders’ opinions on:

- the role of TPIs in the market for supplying electricity and gas to micro-business customers;
- the charges and service levels from TPIs currently and how they have developed since the micro-business definition was introduced;
- issues with TPIs that may act to improve or inhibit the micro-business customer’s experience of the energy supply market with suggestions for how improvements may be made; and
- how competition for TPI services might develop over the next two years given developments like smart metering and the green deal.

We received responses from 11 organisations either by telephone, email or letter.

3.4.1 Role of TPIs

Generally the opinion was that TPIs played a beneficial role in the market on behalf of micro-businesses. In comments that echoed those by many others, one of the Big Six told us that this value came from TPIs:

- being a “point of contact” that “can explain Industry terminology and present clear definitions of the terms and conditions issued by suppliers”;
- “providing a solid platform for negotiations, obtaining competitive prices and contract terms for their customers”; and
- “providing an administration service which handles the customer’s supply contract through acquisition and renewal stage, ensuring all terms and conditions of the chosen supplier are met. A level of advice is also offered by the TPI, assisting customers to achieve their preferred metering and billing arrangements.”

This supplier also told us that it had a contract that it liked to put in place with all TPIs that were not acting directly on its behalf. “We make it very clear to brokers and consultants that they are not our agents and that they must act in the best interests of their customers” and that its contract “obliged them to disclose any conflict of interest and information related to fees received from us”. Concerning sales agents working under its direct instruction, this supplier commented that: “following [Ofgem’s] Energy Supply Probe, we have rolled-out extensive training internally and also to our representatives to ensure that they are meeting our licence obligations”.

Another Big Six supplier told us “in general TPIs fulfil a valuable role by providing micro-business customers with access to a range of suppliers and prices. The system works well when the TPI has customers’ interests at heart.”

A third argued that “while it is difficult to say, for example, if a TPI will get a better price on renewal than if the customer decided to approach us directly, this is likely to be dependent on the customer’s own ability to invest time in their market evaluation, or indeed if they have the knowledge to do so. This could therefore stand to benefit the less experienced customer, as the TPI will likely be better placed to assess and find the right package for their business needs”.

Independent suppliers, who tend to be more dependent (and in some cases almost totally reliant) on TPIs for new business, were also generally supportive of TPIs. The arguments they advanced mirrored those on knowledge and market access from the Big Six but also included TPIs:

- being “critical to suppliers in their acquisition of new business” as they were “impartial and reassured consumers that they are being offered a range of options and not simply being railroaded into a specific supplier or product”. “If TPIs did not operate in the marketplace, consumers would have far less freedom of choice” this argument continued;
- “encouraging switching by proactively speaking to customers” taking advantage of a “lower cost base because usually they are also marketing other products at the same time”. Their fees were usually negated by the savings they delivered for the customer and without them consumers “would remain on high prices with the incumbent”; and
- providing an economy of scale enabling independent suppliers to compete on “with the Big Six on an even cost basis” as they were “to be able to contact a far wider portfolio of customers than we would be able to in running our own call centre. The Big Six have the economies of scale needed to set up and maintain large outbound call centres which we, as a small supplier don’t have the capital to do”.

There were some concerns that a minority of TPIs may not understand enough of the detail of the markets they were operating in or even be abusing their information advantage over consumers to direct micro-businesses to contracts that may not be in their best interests.

Two independent suppliers told us that this minority could be significant, being perhaps 20%-30% of TPIs in the market and ranging from very small TPIs to larger concerns. One felt that it was being precluded from significant section of the market because it was not prepared to do business with TPIs whose methods of operation it did not respect. It felt this was anti-competitive and wanted a full competition investigation as a matter of urgency.

Another independent supplier touched on the role of larger aggregators delivering services for suppliers. It commented, “while there are a large number of TPIs operating in the marketplace, most are small one-man band operators but the role of the larger operators as aggregators is key in the industry—they monitor the quality of TPI contract sales to ensure acceptable levels are maintained at all times. We have always found the role of aggregators to be vital in maintaining standards and almost all suppliers have similar relationships as we do with specific aggregators”.

3.4.2 Charges and service levels

There is a general perception that charges and service levels offered by TPIs vary significantly. Sourcing supply contracts is the primary service offered by TPIs but many operators offer energy reporting, management and accounting services. As well as the range of services offered, quality is also held to be variable.

One Big Six supplier told of “a variety of different service levels offered to customers, and a number of different charging methods”. Services range from “simply price gathering and making a recommendation to the consumer who will then be left to arrange the contract themselves, to a more hands-on approach of negotiating contracts on the customer’s behalf and the validation/checking of bills. This is generally dependent on the level of service the TPI wants to provide and indeed the service the customer has signed up for”.

Another Big Six supplier commented that it had cut back significantly the number of TPIs that it dealt with as though there were some “really good quality service providers”, there were also a “huge number of mediocre businesses” that “did not really understand the energy market”.

A third supplier commented that it operated a code of practice embedded in its contracts with TPIs to ensure they provided service of an acceptable quality to micro-businesses. But it added that it was “aware that there are some [TPIs] who seek to present themselves as suppliers, such that customers are unclear about exactly who they are dealing with” so “the relationship may be problematic”. It also told us that it had followed up the Ofgem Energy Supply Probe recommendation “by changing our contract terms to require our brokers to be open about how they are funded and who they represent”, but it did not think that the “introduction of the micro-business definition has had any significant impact on charges and service levels so far”.

Different skills are required by suppliers engaging with independent brokers and consultants as opposed to sales agents they contract with directly, though the same concerns to secure properly signed and authorised contracts clearly remain. Some, especially the Big Six (but also some other suppliers), choose to manage their relationships through a contract, while others prefer less formal mechanisms. Some suppliers told us that they had strengthened their procedures for managing TPIs in the light of concerns they had picked up. These procedures included recommended scripts when selling to potential customers, contracts governing the relationship between the supplier and TPIs plus standardised reporting on contracts.

One independent supplier shared its contract for TPIs with us. It required that the TPI:

- provides a letter of authority for all consumers it has been instructed to act for;
- performs its services with reasonable care and skill and in accordance with generally recognised commercial practices, standards and relevant laws;
- acts towards the supplier conscientiously and in good faith and does not to allow its interests to conflict with the duties that it owes to the supplier;
- provides to the customer all necessary information as required by law or by any relevant regulator, and uses best endeavours to ensure that the customer has understood the information provided;
- acts in accordance with sound commercial principles in its relations with customers and potential customers;
- employs a sufficient number of suitably qualified dedicated personnel to ensure the proper fulfilment of its obligations;
- uses its best endeavours to ensure the accuracy of the information supplied by it to the supplier;
- informs the supply company promptly of any complaint or after-sales enquiry concerning any of the supplier’s contracts; and
- ensures that all customers it introduces to the supplier fulfil their obligations properly.

There were practical suggestions for measures that TPIs could take to improve their services to micro-businesses. TPIs should:

- make the customer aware of the market particulars in relation to micro-business where appropriate, and engage with suppliers more in relation to the supplier approach to micro-businesses according to one of the Big Six;
- conduct satisfactory due diligence to establish the amount of energy to be supplied and ensure they discuss the supplier’s terms and conditions, especially for payment and any “variance” clauses;
- explain the registration process, including the rights for their incumbent to object to a switch; and

- use supplier literature to assist their communications with customers and make sure they understand industry processes and requirements from third parties such as meter operators, data collectors and aggregators.

But there were also some significant concerns about whether the conduct of some TPIs was inhibiting micro-businesses from benefitting from energy supply competition.

One Big Six supplier told us that: “There is a wide range of intermediaries ranging from very professional to extremely dishonest¹³”.

Two independent suppliers told us separately that they thought 20-30% of TPIs could be operating not in the best interests of their consumers, through misrepresenting offers from suppliers and taking large undisclosed commissions.

All suppliers emphasised their own controls for working with TPIs, including contracts containing provisions of the kind outlined above. One Big Six supplier told us “after the decision to work with certain brokers and intermediaries, we regularly monitor their behaviour and seek reassurance to ensure that they are meeting their obligations under our commercial agreement”. But it added “we do not work with all intermediaries and it is the actions of some of these intermediaries where we have concern”.

Another Big Six supplier argued that “there are several things that could improve the experience for micro-business customers”. In doing so it highlighted the three main solutions to poor TPI conduct:

- “to help deal with complaints, the requirement for end-to-end call recordings”;
- “an independent body to oversee TPIs and the way they work;¹⁴; and
- “aligned with this, a code of practice that all must follow (this could include specific requirements about charges, etc)”.

Comments on these concerns follow below.

3.4.3 End-to end recording of telephone calls

The recommendation for end-to-end recording of telephone calls was made by this supplier even though “we know that brokers have a number of concerns [with this approach], because during the sales call they will discuss the products and prices of a range of suppliers. So there are issues of confidentiality and perhaps competition issues. Also, the necessary technology and storage are very expensive and could therefore rule out smaller brokers and reduce customer choice. These obstacles would need to be overcome”.

These concerns were also addressed by an independent supplier. It told us that it was against the recording and retention of discussions between TPIs and micro-businesses because:

- “in reality a TPI could speak to a consumer many times over a long period of time and the recording of huge volumes of often unrelated discussion would be a waste of resource;
- most TPIs are small operators who work from home and most have no IT resource to record such a volume of calls or to store them securely;
- such a mandatory requirement would drive most small TPIs out of business, thereby depriving consumers of the current choice of supplier and product they enjoy;
- where would the recording of such discussions end? A large volume of contracts are still arranged on a

¹³ Although it is out of the remit of this review, several suppliers commented on undisclosed commissions taken by TPIs serving larger corporate customers. “Although there are small, rogue brokers who may be mis-selling supply contracts to micro-businesses, there are also some very large intermediaries with significant influencing power in the market, who could be more transparent about their services and fees to their customers” was one comment. On the other hand we were told by a TPI representative that “transparency of fees is always a debating point but not really an issue on the ground. Those who shout most are the suppliers most of whom have never really tried to find out what a TPI does but is very willing to let them be their sales team”.

¹⁴ We have already noted in Section 2.6 the Utilities Intermediaries Association and its codes of practice

face to face basis and for consistency all discussions taking place face to face should also be recorded and retained, as should all contacts by fax, email and post. Clearly recording and storing all communications by all means would be impossible; and

- the Data Protection Act 1998 requires that all recorded calls contain a clear message at the beginning of every such call that the call is being recorded and giving the reasons why (e.g. for verification or security purposes). This means that if all calls were to be recorded, every single call would need to start with such a message which would hugely increase the time the call would take.”

This supplier suggested that if “no other means of customer communication had to comply with the same requirements, the few unscrupulous and rogue TPIs would simply move into a means of customer communication outside this regulation and would thereby continue to operate in the same unacceptable way as they had previously”. It recommended that aggregators meet regularly to share intelligence on TPIs with those performing poorly or with evidence of unethical behaviour no longer being dealt with.

3.4.4 Independent regulation

The requirement for an independent body to oversee TPI conduct was highlighted by several suppliers and also by the Forum for Private Business in its *2010 Utilities Report*. The Forum argued that suppliers should be signed up to a recognisable professional body which would encourage best practice and that “all brokers, intermediaries and other suppliers should be members of the UIA”.

One Big Six company noted Ofgem’s probe recommendation for self-regulation by TPIs plus the establishment of the UIA. But it commented “despite some of the good work they [the UIA] have done, I would argue that self-regulation is simply not working”. It pointed out that the probe had also recommended that consumers and suppliers also consider TPI practices prior to entering into business arrangements with them and said that it had done so including through establishing an intermediary agreement. It was “unaware what other suppliers have done to take this recommendation forward but the fact some TPIs refuse to sign our Intermediary Agreement suggests to me that other suppliers may not have similar standards to us”, it commented.

This company recommended that “it may be time to regulate intermediaries in a similar way to independent financial advisors or mortgage advisors are regulated by the Financial Services Authority¹⁵. This is probably not necessary for supplier representatives as we can control, manage and monitor their actions and behaviour through our commercial agreements and operational arrangements. The need for regulation will be targeted towards brokers and consultants who represent or should be representing the interests of customers”.

Some other suppliers felt the establishment of an independent regulatory framework would be burdensome and take too long. They suggested mandating disclosure of commissions by suppliers through an amendment to electricity and gas supply licences. One supplier shared with us a condition it had drafted and thought might be suitable. It is shown in Figure 3:1. It felt that mandating disclosure would increase transparency and encourage TPIs to provide competitively-priced services to their customers.

But equally there were suppliers that opposed mandated disclosure through a licence condition. Reasons included anti-competitiveness (the actions of suppliers in one sector impacting competition in another), the increased regulatory burden on suppliers¹⁶, and distortion of the market as very often TPIs provide varying degrees of service in their offerings that are collected through commissions from suppliers. Micro-businesses may not be making like-for-like comparisons if they judged any commission line highlighted on their bills with those of peer organisations.

This argument on like-for-like comparisons was extended to the larger business sector. On the one hand one supplier felt that the practice of undisclosed commissions by independent TPIs was more widespread and damaging to its business and consumers while another argued that there was more service differentiation in this sector between TPIs making mandated disclosure less useful.

¹⁵ <http://www.fsa.gov.uk/Pages/Doing/Do/index.shtml>

¹⁶ One Big Six supplier told us: “from our perspective we feel that any action to regulate or monitor the sector should be directed at TPIs rather than subcontracting that regulatory process to licensed suppliers”.

Figure 3:1: Possible licence condition mandating disclosure of TPI commissions on their bills by suppliers

1. The Licensee must give in writing to each of its Customers before the commencement of the supply of electricity/gas to any of the Customers' premises information relating to any commission, referral fee or brokerage charge ("Commission") that is being paid to a third party in relation to that electricity/gas supply.
2. The information to be provided pursuant to clause 1 is:
 - a. the fact that a third party has a financial arrangement with the Licensee;
 - b. the amount of the Commission paid to the third party which is calculated by reference to that electricity/gas supply;
 - c. whether the Commission forms part of the charges applied to the Customer for the electricity/gas supply; and
 - d. when the Commission is to be paid.

3.4.5 Codes of practice

Related to arguments for independent regulation were those calling for a code of practice governing conduct of TPIs. As we have noted above, the UIA sponsor two codes of practice. These codes are linked to an independent redress scheme that is legally binding and has been compiled with the help of the OFT. Generally the codes of practice were seen favourably though there was some comment that the UIA lacked the teeth to enforce their provisions and they could be improved by mandating disclosure to the customer of the amount as well as the source of any fees earned by the TPI.

3.5 How competition for TPI Services might develop

With the potential for the Green Deal on funding long-term energy savings to cover the micro-business sector, there is seen significant potential for TPI services to evolve in the coming years. An independent supplier told us of scope for a "a two-tier system of TPIs developing" with smart metering and the Green Deal "used as sales hooks by the consulting type"¹⁷, while others concentrate on securing supply contracts alone. The latter may find they "are unable to grow their business due to restrictions on their service and knowledge offering" as the former may well be able to demonstrate they are offering more value to consumers.

These sentiments were echoed by a major supplier, which told us it "could envisage a role for TPIs in perhaps sourcing finance and/or the best joint energy and energy efficiency deals for prospective Green Deal customers". But it added a note of caution: "whatever develops, accreditation of players will be extremely important, including for the TPIs involved".

One of the Big Six also foresaw scope for significant changes in the role of TPIs due to the Green Deal, even though full details of the scheme are still to be finalised. It also cautioned: "We do not know how or the extent [to which] the players will be regulated and which aspects of the scheme TPIs would want take part in. What we do know is that there will be a lot of customer data with developments in both smart metering and the Green Deal and we need to ensure that they are not misused".

Another Big Six supplier referenced potential abuse of existing ECOES dataflows and commented: "we need to ensure that the problem [of information abuse] will not be exacerbated once the Data Collection Company (DCC) for smart metering or the central database to administer the Green Deal go live.

¹⁷ This would see the micro-business market driven by the Green Deal in much the same way as the Carbon Reduction Commitment Energy Efficiency Scheme has in the larger corporate market.

In contrast an independent supplier commented that TPIs might be deterred by complexity from becoming involved with the Green Deal. It told us that “the numbers of TPIs that would investigate the benefits of employing the Green Deal will be few, as they do not get a direct benefit from any energy savings installation as they would pass this kind of project to contractors. There may be interest amongst TPIs to become Green Deal providers or agents for these, though we have not heard anything to indicate that this is being considered at present”. There may though, it felt, be some interest from TPIs in deploying energy savings technology.

4 Conclusions and recommendations

In this section we set out the learning points we have taken from our research with recommendations for Consumer Focus on how it can improve the TPI market for micro-businesses.

4.1 Better consumer education

We believe there is a need for much more consumer education on the role of TPIs and the benefits they can bring. We think that Consumer Focus should encourage micro-business consumers to use TPI services if they are not confident they can access the full opportunities from energy supply competition on their own. But they should adopt due process in doing so. Consumer Focus's factsheet *How to switch energy supplier – advice for small businesses*¹⁸ includes a number of useful questions for micro-businesses to ask TPIs. This factsheet demonstrates the value Consumer Focus can provide micro-businesses and any successor organisation should maintain this responsibility.

TPI trade group UIA also provides useful guidance for consumers on its website¹⁹.

In addition to following the advice set out by the UIA and Consumer Focus, we think micro-businesses should also be encouraged to:

- remember TPIs are businesses that need to make a profit so claims of free service should always be challenged;
- always instruct a TPI in writing confirming exactly the work required, with a letter of authority the TPI can present to suppliers. An example is included at Appendix C;
- always provide full information to the TPI on energy consumption, contracts and credit status so the TPI can secure the best offers available;
- never commission more than one TPI to secure contracts as this will create confusion amongst suppliers and probably result in fewer and more expensive offers; and
- always ask for full, itemised evaluations of all quotations the TPI has secured on their behalf, including commission payments.

4.2 Regulating TPI conduct

We see a general desire for more controls over TPI services. From suppliers this centres on those TPI services provided by companies with whom they do not contract direct. There was also a desire from consumer groups and many TPIs themselves for a raising of standards. The TPIs seeking better conduct felt they were offering a professional service and but were subject to unfair competition from operators who were less reputable.

We also note that the UIA has been established for some time to provide a forum for TPIs to address common issues, promote higher standards and interact with stakeholders. Though it has some high-profile participants, it is not yet at the stage where enough TPIs feel there are sufficient incentives for them to become members and there is an absence from its membership of the aggregators (who manage sales by groups of TPIs, many of whom may be individuals) who are so important in the micro-business market.

The UIA's two codes of practice set out a basic template to which all TPIs should adhere in some form. We believe the code provisions could be enhanced by mandating the amount as well as origin of TPI fees, at least for micro-businesses where the primary service provided by TPIs is the sourcing of supply contracts. We believe the benefits to micro-businesses of complete transparency of how their money is being spent considerably outweigh the commercial sensitivities some TPIs fear may result from disclosing their full fees to their customers.

¹⁸ <http://www.consumerfocus.org.uk/files/2010/01/Small-business1.pdf>

¹⁹ <http://www.uia.org.uk/consumer-guidance.htm>

We have also discerned some confusion amongst market participants about which, if any of Ofgem or the Office of Fair Trading held regulatory oversight for the TPI sector. It was felt that this confusion was creating a blind spot that was allowing practices to develop that were detrimental to the interests of all non-domestic consumers including micro-businesses.

Consumer Focus should seek clear confirmation from one of the Office of Fair Trading or Ofgem that it is the body with regulatory oversight of the TPI sector for all non-domestic energy users, and that it is aware of the shortcomings in this sector and its regulation.

That body should then set a clear path to implementing the measures set out below:

- improved information on TPI services for micro-businesses combining the best of that from Consumer Focus's existing resources, the UIA and the suggestions we have made. This information should be disseminated by TPIs, suppliers and consumer groups;
- BIS considering whether energy TPIs need to be specifically regulated as part of its review of the consumer landscape given that Consumer Focus and the OFT will no longer exist after 2013;
- a raising of standards for all TPIs to micro-businesses through:
 - a ban on all TPI contracts that preclude non-domestic customers from contacting their suppliers. Consumers should always have the right to contact their supplier in the case of query about any aspect of their supply relationship including, for example, what they may be paying in commission to their TPI through their energy bills;
 - mandated accreditation by the end of 2011 for companies providing TPI services to micro-businesses with a sector organisation tasked with maintaining and raising standards. The UIA is already providing this central service role on a voluntary basis and appears well-placed to take on this on a mandated basis, especially as it has in place codes of practice. Consumer Focus should argue for mandated membership of a trade association by all TPIs²⁰. This may be the UIA but may also be an option for the larger suppliers working collectively through the Energy Retail Association (ERA) to be directed to take forward a code of practice and invite non-ERA suppliers to participate in the initiative;
 - a mandated standard implemented as soon as possible for individuals providing TPI services directly or indirectly for micro-businesses whether they are employed by companies, self-employed or act as aggregators along the lines the Statement of Professional Standing²¹ proposed by the FSA. Again this should be led by the UIA (or an alternative trade body); and
 - every individual advisor providing TPI services (whether direct or indirect) demonstrating appropriate training and being registered on a database kept by the UIA (or an alternative trade body).
- improved standards from TPIs with assistance from suppliers through:
 - all suppliers undertaking a verification call for every micro-business contract sourced via an independent TPI with those not being verified recorded by the supplier. This call should clarify that the contract has been properly sold by an accredited TPI. While some suppliers undertake such calls as a matter of routine, we recognise there could be an extra cost here. An alternative would be mandated recording of all telephone contacts between TPIs and micro-businesses but we believe in the round this would be more onerous and difficult to police;
 - all suppliers undertaking to share information periodically with the UIA (or an alternative trade body) on the number of micro-business contracts that could not be verified and the TPIs that were their source. This information should be publicised by the UIA (or an alternative trade body) and

²⁰ We recognise that Consumer Focus will have a powerful voice in the debate about the regulation of TPIs, and it will wish to consider carefully in establishing standards of conduct and their enforcement whether it believes UIA should be the body to facilitate that role.

²¹ The statement will be issued to those that demonstrate they: act in the public interest and further the development of the profession; carry out effective verification services; have appropriate systems and controls in place and provide evidence of continuing effectiveness; and they cooperate with the FSA on an ongoing basis.

used in its work on maintaining sector standards.

4.3 Treatment of commissions

We also believe that there is a very strong argument in favour of mandated disclosure of commissions by suppliers through a licence condition in both the micro-business and larger business markets. However at this stage we do not believe this should be taken forward as there are competition concerns about how disclosure would impact the TPI market given that the service offerings of providers can and do differ significantly. There would also be costs and burden for suppliers implementing it.

We therefore believe the option for mandating disclosure should be held as a last resort and implemented only if insufficient progress by a pre-set deadline is made in implementing the recommendations above.

4.4 Next steps

We believe these measures should be progressed urgently so that revised institutional arrangements can be established by April 2012 so that they provide a firm basis around which new broker and service provider roles can be administered with the rollout of the Green Deal and smart meters.

Appendix I: Approach from Cornwall Energy

Below is a copy of the text of the main approach email Cornwall Energy sent in January 2011 to market participants seeking their comment on TPI services to micro-businesses.

Cornwall Energy has been asked by Consumer Focus to undertake summary research of the market for third party intermediary (TPI) services provided to micro-business customers seeking energy supply contracts. Its purpose is to secure a basic understanding of current market dynamics and, where necessary and appropriate, highlight areas for reform and improvement. Consumer Focus has been prompted to undertake this work as a result of concerns recorded from some micro-businesses via Consumer Direct and others about their experiences with TPIs.

Consumer Focus is very keen to ensure that the research incorporates the views of market participants and to this end would be very pleased if you would talk to or provide information to us on:

- *your perception of the role of TPIs in the market for supplying electricity and gas to micro-business customers;*
- *your assessment of the charges and service levels from TPIs currently and how they have developed since the micro-business definition was introduced;*
- *any views you may have on issues with TPIs that may act to improve or inhibit the micro-business customer's experience of the energy supply market with suggestions for how improvements may be made; and*
- *your views on how competition for TPI services might develop over the next two years given developments like smart metering and the green deal.*

The output of the research will be a short report with recommendations to Consumer Focus if we believe measures may be appropriate to improve the micro-business customer's experience of TPI services. Our timelines are for initial findings at the end January with a final report shortly thereafter.

We are well aware of the commercial sensitivities in this area. To this end, whilst we would prefer as open a process as possible, we understand that there may be information you may wish to provide us confidentially. Consumer Focus and Cornwall Energy will of course respect any information provided to us in this way.

Appendix 2: Organisations contributing to this research

We are grateful to the following for their input to our research.

- BES Commercial Electricity
- British Gas Business
- Corona Energy
- EDF Energy
- First Utility
- Forum for Private Business
- Haven Power
- Opus Energy
- RWE npower
- Scottish and Southern Energy
- Utilities Intermediaries Association

We have also undertaken our own research with TPIs who would prefer to remain anonymous.

Appendix 3: Sample letter of authority from the UIA for consumers to use when instructing TPIs

LETTER OF AUTHORITY

(Please delete all criteria that does not apply and print on client's letterhead where appropriate)

1. I/We hereby authorise to act exclusively as the utility management company for, to obtain quotations for our Electricity, Gas and/or Water Contract and to obtain copies of and deal with enquiries regarding ANY relevant data to enable us to do this. We authorise them to terminate contracts on our behalf. We also authorize them to deal with any changes to the portfolio during the life of any contract.
2. I/We agree to accept that the above company will search the market on our behalf and will present to us recommendations for the best value energy contracts.
3. I/We authorise the above company to receive debt information, authorise adjustments, refunds, billing or payment method changes.
4. I/We agree that the above company, should receive copy bills and half hour data for the duration of any contract and deal with billing disputes on our behalf.
5. I/We agree that the above company can represent us in any dispute that is dealt with by the Energy Ombudsman Scheme.
6. I/We agree that this letter is signed to comply with the Data Protection Act
7. In particular, please accept this letter as authorisation to release customer information direct to the above organisation, including all contract renewal offers.
8. I/We agree that the above company can obtain account information directly from the supplier to enable any issues likely to cause impediment to the smooth running of the contract.

*On signing this document it is important that clients copy all correspondence from a supplier to the TPI and should not enter into any other contract or arrangement with a **supplier or a TPI** during the life of this authority*

Client details	Third Party Intermediary (TPI) details
Company:	Company:
Signed:	Representative:
Name:	Address 1:
Position:	Address 2:
Dated:	Tel No:
Email:	Email:
Valid until: To be completed by the client):	

IF YOU ARE YOU A MICRO-BUSINESS YOU HAVE TO BE GIVEN THE MAIN TERMS OF THE CONTRACT BEFORE YOU ENTER INTO A CONTRACT WITH A SUPPLIER.

Suppliers have to meet certain contract conditions and clients can use the Energy Ombudsman Scheme if they are a micro-business A micro business is a business that employs fewer than 10 full time equivalent people and has a turnover less than €2mn or uses less than 200,000 kWh of gas per year or 55,000 kWh of electricity per year

If you are a micro business please sign against which criteria you meet (more than one if appropriate)

Less than 10 FTE employees and turnover less than €2mn _____signature

less than 200,000kWh gas _____signature **and/or** less than 55,000 kWh electricity_____signature

Cornwall Energy

Consumer Focus
Fleetbank House
Salisbury Square
London EC4Y 8JX

t: 020 7799 7900
f: 020 7799 7901
e: contact@consumerfocus.org.uk
www.consumerfocus.org.uk

Media team: 020 7799 8004/8005/8006

Published: March 2011

If you have any questions or would like further information about our research, please contact Andrew Hallett, by telephone on 020 7799 7938 or via email andrew.hallett@consumerfocus.org.uk

For regular updates from Consumer Focus, sign up to our monthly e-newsletter by emailing enews@consumerfocus.org.uk

If you require this publication in Braille, large print or on audio CD please contact us.

Deaf, hard of hearing or speech impaired consumers can contact Consumer Focus via Text Relay:

From a textphone, call 18001 020 7799 7900

From a telephone, call 18002 020 7799 7900