

Inspired PLC response to Department for Energy Security and Net Zero consultation on regulating Third-Party Intermediaries (TPIs) in the retail energy market.

Executive summary

Inspired PLC (“Inspired”) is the leading TPI operating in the UK markets (source: Cornwall TPI report 2018 to 2024). With over 700 utilities experts in house, we serve over 3,500 clients and manage over 275,000 meters across the country.

We have the industry presence, diverse service offering and robust track-record of supporting some of the UK’s largest and most complex energy users, making us well-placed to make a meaningful contribution to the crucial dialogue around regulating the TPI landscape.

Although Inspired does not operate in all the industry segments this consultation covers, our experts and leadership teams have extensive experience working across suppliers, customers and other TPIs and are therefore able to offer our views on the whole market.

The TPI sector has, even prior to privatisation, provided a valuable conduit between suppliers and clients and has been fundamental to the successful evolution of the competitive retail energy market.

Regrettably, the sector does have some allegedly bad actors that have created customer harm, resulting mainly from underhand selling and excessive hidden commission or fees.

However, without the work of TPIs consumer engagement with energy would be considerably lower and supplier margins arguably considerably higher.

The need for a form of regulation is acknowledged. Prior attempts to set codes of conduct and/or operating parameters have lacked consequences and enforceability and most importantly, universal supplier endorsement.

However, for any regulation to be effective it must consider the following design features:

1. Supplier and TPI parity.

Any regulatory scheme should be augmented by balanced requirements on the way suppliers operate with TPIs to ensure TPIs are able to continue to deliver real customer value. To achieve this, TPIs should be represented in all regulatory conversations.

2. Recognise the difference between consumer types and services provided.

The fundamental requirements of a regulator for a domestic consumer are different to those of a business with complex energy needs. Blanket regulation, as currently drafted, across all sectors will dilute the effectiveness of any regulation. It is our belief that the product or service the TPI provides needs to be regulated and the nature and complexity of those products and services vary by client, as illustrated in **Figure 1**.

3. Recognise the difference between contracting types.

Potential harm from a consumer perspective is heightened where there is a lack of transparency and/or clarity on expectations of service. This is markedly more prevalent where no bilateral agreement between the consumer and the TPI exists. Where a bilateral agreement does exist, caution should be exercised not to override the principles of a bilateral contract (where disputes are resolved by redress to the contract and where necessary, the courts) with well-intentioned regulation.

4. Independence.

Any regulator and advisors to the regulator must be free to act independently and therefore cannot be drawn from individuals or organisations that have ongoing vested interests in either suppliers or TPIs.

Inspired welcomes the consultation and the opportunity to shape and form an effective and appropriate regulatory regimen, targeted by consumer type and contracting method focused on reducing areas of potential harm, under which TPIs continue to promote the competitive nature of our energy markets balanced with supplier obligations.

UK Third Party Intermediary Client Market Segmentation

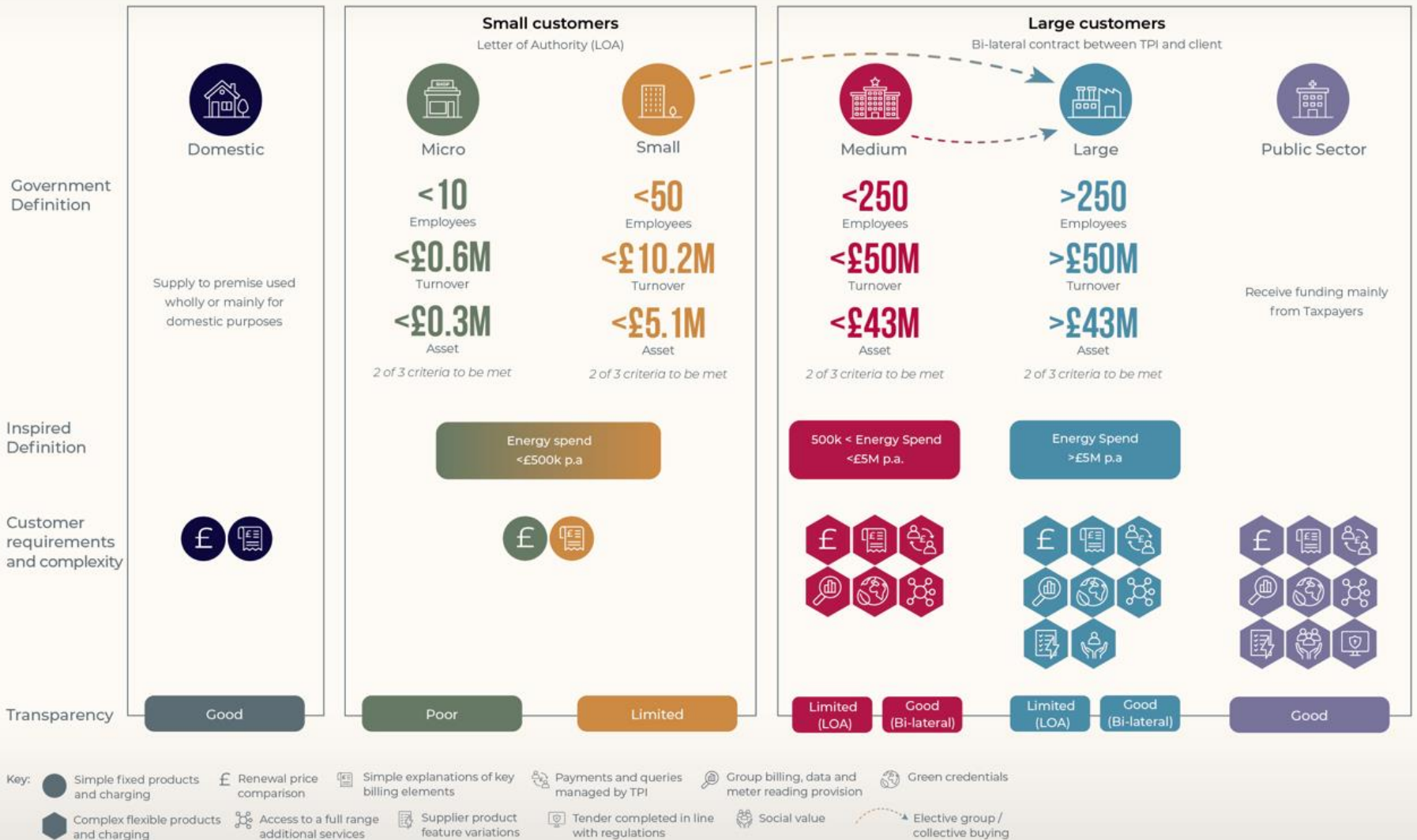


Figure 1: Differing regulation needs by client market and differing products and services to meet their needs (PDF version available [here](#))

Overview

This document sets out our detailed response to each of the questions within the consultation. However, as we have worked through these questions, it has become clear to us that the approach to regulation requires more granularity than is currently envisaged by the consultation as published.

Our observations can be summarised as:

- a) The nature and substance of the regulation needs to be different for diverse types of customers and specific to the products and services they consume, not the size of the customer or the TPI type (as regularly referenced by Government).
- b) Regulation should focus on the removal of customer harm and should not prejudice contract law.
- c) TPIs currently do not have representation in the current Ofgem and Supplier forums, which has led to a culture of ‘Suppliers blaming all of the industry issues on TPIs.’ The majority of poor TPI behaviour has at some point been enabled by a supplier and as such, regulation should be balanced and all-encompassing.

Segmenting Regulation by Customer Need

Inspired believes the TPI market can be segmented into three distinct parts:

- a) Domestic.
- b) Small customers; Micro and small businesses.
- c) Large non-domestic customers; Medium and Large energy users, portfolios, and the Public Sector.

Inspired operates in the last segment, containing the larger and more complex customers. It is our assertion that all segments cannot be regulated by one broad brush-approach, as the energy and service needs of customers in each category are diverse and the regulation

of services needs to vary based on the products the consumer has selected to meet their needs.

To help promote understanding of these various customer needs and the differing regulatory issues for consideration, our view of the market is illustrated in our

Segmentation Matrix (attached in [appendix one](#)), which outlines:

- a) Our definition of these market segments.
- b) Their typical electricity and gas spend.
- c) Their objectives as a customer when working with a TPI.
- d) How the customers within these segments find a TPI.
- e) Contracting mechanism between the customer and TPI within each segment.
- f) Market penetration within these segments by TPIs.
- g) Barriers to entry for new TPIs within each segment.
- h) Size of the TPIs operating within each segment.
- i) Market transparency within each segment.
- j) Supplier participation within each segment.
- k) Price transparency within this segment.
- l) Dispute resolution within this segment.
- m) Complexity of processes within this segment.

Our Segmentation Matrix then goes on to map the stated areas of potential harm and their relevant impact in each sector.

As we consider these segments, the following becomes clear:

- a) It is not the customer's size that determines the products and services they need, but their energy needs and commercial objectives.
- b) TPIs, Suppliers and Customers interact differently in different segments.
- c) The nature and complexity of products and services varies by sector as does the regulatory requirement.

Given that regulatory requirements are specific to a product or service, any consumer should have the right to select to be treated in a regulatory manner that reflects the products and services that meet their energy need.

We can take learnings from the Financial Services area, where Retail Clients can request to be treated as Elective Professional Clients and so on, based on an informed choice.

A practical example of this is where smaller customers wish to procure energy on ‘flexible’ basis and not on a ‘fixed price contract’ and they elect to procure energy in a group (often known as a portfolio or collective) to give them access to more sophisticated and cost-reflective energy tariffs. In making this commercial choice based on their energy need, the customer is acknowledging that they may forgo some of the potential protections afforded them by regulation based on size, as more sophisticated products that access live market prices are incompatible with a ‘cooling off period.’

Regulating for differing contracting arrangements

One of the specific areas where potential harm (either real or perceived) occurs is where expectations between a customer, TPI and supplier are not clearly defined.

There are two types of fundamental contracting model for a TPI:

- Acting on a commercially negotiated Bilateral contract (“Bilateral”) that has express terms and clear costs that set out the obligations of each party and are governed by the TPI having to provide its services with a duty of skill and care.
- A Letter of Authority (“LoA”) approach, where the TPI undertakes speculative work to secure prices for a customer based on authorisation granted by the consumer. The TPI then relies on an agreement with the Supplier for collection of fees with no explicit Bilateral agreement signed between the customer and TPI.

It is this LoA-type of contracting arrangement that has the highest propensity for potential harm due to its more ambiguous service expectations and lack of commercial terms.

Regulation in this area needs to focus on both TPI and Supplier behaviour as most of the alleged harm under this contracting arrangement has been caused by both parties.

A Bilateral arrangement covered by contract law should be an agreement two organisations have freely entered. It is important that regulation does not create a contradiction to the contract between the parties as this can lead to a perverse incentive for customers to abuse the regulations for commercial gain.

Energy is a commodity with extreme levels of price volatility. A decision a customer makes for good reasons at one point in time can lead to regret in hindsight if market prices subsequently fall. The Bilateral arrangement protects both parties against Customers who may have a perverse incentive to be 'bad actors.' It is important regulation does not inadvertently create a scenario where such perverse incentives increase the number of bad customer behaviours in the market.

Furthermore, it is important the form of contractual arrangement is not confused with the method of payment. Bilateral contracts govern the relationship between the Customer and the TPI and determine whether the customer pays the TPI directly or nominates the agreed fee to be paid by the supplier to the TPI. Whereas the fee for the LoA is always paid by the Supplier to the TPI.

It is the form of contractual arrangement which should determine the regulatory approach, not the method of payment.

Consistent Regulation

We believe that the differing regulatory needs of different products and services provides a logical, pragmatic and practical way of applying regulation across the TPI space.

However, we would observe the following inadequacies that need to be corrected as part of this process, which can be summarised as:

- a) TPIs need to be represented on regulatory modification panels with an opportunity to remove the asymmetry of information that can be presented by suppliers.

- b) Regulations need to place, where appropriate, reciprocal obligations on Suppliers to ensure behaviours that could cause harm are not enabled by Suppliers. One component for achieving this is ensuring Suppliers' contracts with TPIs are not biased in favour of suppliers (who have a disproportionate amount of power in the contractual relationship), leaving blanket liabilities being passed through to TPIs, rather than suppliers correcting the behaviours that could enable harmful behaviours from some TPIs.
- c) Any future regulator and/or TPI membership organisations should not only be "not for profit", but also truly independent of both suppliers and TPIs. The status of 'not for profit' alone does not negate the need for suitable control and accountability to ensure there is no perverse incentive to work in their own interest, rather than in the interest of consumers, Suppliers and TPIs in an impartial way.
- d) Regulations should not prejudice Bilateral contract arrangements.

Conclusion

In conclusion, regulation is welcomed. Whilst specific authorisation dependant on service offered would be the ideal solution, from a pragmatic perspective, a general authorisation would work, providing:

1. Regulation is differentiated appropriately for different customer energy requirements and the products and services they consume in line with market segmentation presented.
2. Regulation is focused on the LoA-type arrangements, ensuring contract law prevails in the Bilateral market to prevent regulation creating perverse incentives for customers or TPIs to circumvent contractual agreements and to avoid unintended stifling of innovation and reduction of customer benefit.
3. Regulation is consistent across all stakeholders in the industry and all parties have representatives in those forums.

Our detailed responses to the consultation questions are presented in the next section.

Responses to Specific Questions

1. Since the launch of our Call for Evidence on TPIs in the retail energy market in August 2021, have you observed any significant developments in the TPI market that could inform potential regulatory decisions?

Three key events have happened since:

- The March 2022 Microbusiness Strategic review.
- In October 2023, Recco - Retail Energy code – was announced, proposed to become mandatory in 2025/26.
- In April 2024 new and updated rules for energy suppliers were published following Ofgem’s Non-Domestic market review.

The Access to Alternative Dispute Resolution (ADR) services was first introduced for Microbusinesses and has recently been extended to the small business segment.

Inspired is supportive of the alternative resolution process the Energy Ombudsman offers micro and small business customer segments. However, we have found the current process even for simple queries is long and drawn out and would therefore be sub-optimal for larger non-domestic users.

Consumers in the medium and large segments are typically going to have more complex queries which would require specific subject matter expertise well-versed in the complexities of the issues that complex energy users and TPIs face. We do not think such queries are suitable for the Energy Ombudsman in its current form. Regulation to this effect also has a high propensity to prejudice Bilateral contract agreements.

Any well-structured Bilateral contract between a customer and their TPI would outline an alternative dispute resolution and mediation process. Therefore, regulation should be focused on the area of potential harm where there is no explicit Bilateral contract between the customer and the TPI.

We note the positive development of greater transparency across the TPI marketplace. Mandating the declaration at contracting stage of fees and including them as a line item in the contract is a significant step forward and affords some protection from harm for customers.

Whilst the Retail Energy Code of Practice has some reasonable principles by which a business should operate, it does contain structural issues.

Firstly, the principles are heavily weighted toward the smaller or less complex consumer needs. It is solely focused on procurement and the impact on procurement of change of tenancies, not other services a TPI provides. It focuses on the method of payment (via a supplier) and not on the method of engagement with the consumer (LoA or Bilateral).

There are superfluous elements to the code, such as the Data Protection Arrangements. These principles are already governed by statutory legal obligations and risk being contradicted under another code of practice. Any code should not need to repeat, over-emphasise, or go beyond already drafted and passed legislation. As a voluntary code it lacks the consequences of non-adherence, and fundamentally its funding structure means it cannot be considered a truly independent organisation.

The focus of the code cannot be on the potential harms of the TPIs without balancing those requirements with equal measures on energy suppliers.

Any regulator must be made up of independent parties within the industry. Advisors to any regulator must be drawn from individuals that have no ongoing vested interest in any supplier or TPI.

2. Are there any further harms and risks stemming from TPI behaviours that you believe warrant our attention? Please provide examples and any relevant specific figures, if available.

To answer this, it is imperative to clearly identify the difference between Letter of Authority (LoA) and Bilateral contracting arrangements.

LoA

This is where a TPI conducts an activity (often but not exclusively procurement-based) where they are acting on temporarily granted authority from the consumer. This letter of authority (level 1) allows them to gather information to tender and present market prices back to a consumer.

At this stage, the consumer can choose to accept or potentially decline and seek alternative arrangements. Assuming they accept, a contract is formed between the consumer and the supplier. The TPI has an umbrella contract with the Supplier for the payment of commission added to the consumer monthly invoice.

This service, when operated well, suits the supplier (effective route to market) and the consumer (non-binding call-off of expertise in a niche market).

The potential harm comes in when the consumer is not made aware of all the facts when making decisions, as highlighted in the consultation questions such as:

- a) Which suppliers were approached?
- b) What non-financial consideration have been taken into account?
- c) How have the offers been evaluated when comparing different fixed and floating elements?

Furthermore, the expectations of the consumer regarding post-contract services have not been established. The consumer may be expecting further services that the TPI does not plan (nor has it committed) to offer, leading to service disputes and potential issues.

This is further compounded when considering Level 2 LoAs (LoAs that grant the recipient the authority to enter a binding contract on behalf of a customer). Level 2 LoAs have a

place in the market for consumers choosing more sophisticated products and services to meet their energy needs.

However, Level 2 LoAs should only ever be permitted with the backing of a specific Bilateral agreement between the customer and the TPI, which stipulates under what circumstances the LoA can be used and the contractual consequences if it is not used correctly.

As an example, a consumer that has appointed a TPI under a lateral agreement to manage a complex estate of meters with lots of changes may wish to simplify and streamline their operations by granting their TPI an authority to place contracts on its behalf. This type of Level 2 authority could be easily validated and the consumer's wishes subsequently followed. This is quite a different practice from a Level 2 LoA being used to bind a single site into a contract they have never seen.

Bilateral Agreements

This is where the TPI works under the direction and control of a specific Bilateral contract actively negotiated with a consumer. Given the size and scale of these organisations, contract terms are frequently based on customer's own standard purchasing terms and conditions used to procure goods and services across their entire supply chain.

These contracts determine whether the terms will have suitable protections for both the TPI and the customer. A contract contains a clear set of expectations of what services are to be delivered and in what manner. The price paid for those services will be specified, along with the recovery method (either direct fee invoiced to the consumer or as a p/kWh recovered on their supply invoice). The contract will also identify what to do in the case of a dispute and lays out clear liability and insurance requirements.

Inspired routinely work under Bilateral agreements and our stance is that these agreements are broadly self-regulating. Any new regulation should focus on where only a Letter of Authority (LoA) exists.

Additional considerations:

Buyer's Regret

Setting expectations from the outset will often reduce the number of service issues and complaints. Buyer's regret can be a feature of any market and should not be confused with a potential area of harm.

When potentially fixing (or not fixing) a price in one of the most volatile commodity markets in the world, a consumer cannot be given a perverse incentive to get out from a regretted, but freely entered energy supply agreement, due to a regulatory intervention on the grounds of potential harm. A TPI is not there to underwrite the market.

Change of Tenancy

It is the nature of the market that premises change hands, and responsibility passes from one entity to another. This is an area that has been exploited by allegedly unscrupulous TPIs as a mechanism to break supply contracts. Suppliers are clearly tuning into this. However, the varied and convoluted process some suppliers are now hiding behind is unduly delaying legitimate transfers. An industry-wide process and validation mechanism is desperately needed to effectively regulate TPI activity in this area.

Out of Contract Rates

Occasionally there are instances where delays occur between supply transfers. Often, the TPI is assisting the customer but is reliant on supplier actions to initiate or react to registration requests. Significant customer harm can occur when suppliers do not act in a timely or appropriate manner. However, this can be perceived as the fault of the TPI.

Any regulatory mechanism which endorses the notion that a TPI can be held responsible for suppliers' actions or inaction must be resisted.

Fee Warranties (no 'double dipping' clauses)

Bilateral contracts dramatically reduce the risk of market abuse. However, there have been examples where some TPIs in the large segments of the market have entered into a Bilateral contact with a consumer for a product or service and simultaneously receive a commission from the Supplier for the same product or service. This allows the bad actor TPI to undercut the market for a product or service and make a secret profit from the Supplier. All Bilateral contacts should include a fee warranty to prevent this behaviour.

3. What are the main challenges with improving price transparency?

To address this question, we need to define what price transparency could be referring to:

- a) Rate of commission or fees included in the supply price and payable to the TPI. This is not an issue for domestic consumers as fees are not directly passed back to consumers. It has previously been a big problem in micro and small and to a lesser extent at the smaller end of the large customer segments when dealing with LoA-type procurement.
- b) Whether the consumer can be assured they are not missing out on a better alternative. This is more challenging to regulate. Regulation cannot simply state that prices must be displayed to the whole market. Firstly, suppliers will pick and choose who they want to quote (both TPIs and end consumers). Secondly, especially at the larger end of the market, the consumer will have preferences and requirements that will discount certain suppliers. Finally, a pre-qualification exercise may have already been conducted by the TPI for a certain contract type (e.g. a call off-contract done under public procurement regulations).
- c) Supplier price presentation. One supplier may fix an element, and another may choose to pass that element through. One may be on a shaped product, the other on cash out. A good TPI uses their expertise to bridge the gap between supplier and consumers to explain these nuances.
- d) Bonuses or additional payments that TPIs receive for the size of overall business they place with a supplier.

All the above affirms ensuring a clear upfront mandate under which the TPI should operate. A Bilateral contract addresses the issue of transparency, LoA procurement will benefit from regulating the expectations.

4. Do TPIs currently identify consumers who are in vulnerable situation? If so, how do they do so?

Price Comparison Websites (PCW) have questions used to identify Vulnerable customers. Regulation should not be extended to other parts of the market as vulnerability is a concern for the domestic market.

An argument could be made that it should extend to micro-business but should not extend any further into the rest of the B2B marketplace. A TPI should identify microbusinesses as per current practice, but no further obligations should be placed on TPIs operating beyond these consumer segments.

5. Should the design principles for TPI regulation include a requirement to identify consumers in vulnerable situations? How could TPIs record and retain that information?

Overall, the concept of vulnerability is a concern for the domestic consumer segment and might extend to micro businesses when the key decision makers consist of singular people.

This is not and should not be made into an issue impacting the consumer segments beyond microbusiness.

6. Should ADR services be expanded to domestic customers in line with existing provisions for non-domestic consumers?

We support expansion of alternative dispute resolution services to domestic consumers. However, if this were to be agreed, ADR services should continue to only focus on micro and small consumer segments within the non-domestic market.

It would be impractical to resource the ADR service to be able to deal with the complex issues that a large consumer and TPI may face, where those services should be managed by a Bilateral contract which is governed by the contract law.

7. Are there further regulatory examples from other sectors that we should be learning lessons from?

We would like to highlight the current practice within provision of financial services, where a consumer can choose to be treated in a different manner to their natural classification.

Retail Clients can request to be treated as Elective Professional Clients and so on based on an informed choice.

Whilst we are not advocating this for domestic users, under this system, a consumer can choose to benefit from products and opportunities in a different way and in return, acknowledge a lower form of protection from the regulator.

A similar practice should be applied in cases of more sophisticated energy products. For example, small and medium-sized business clients concerned around energy costs, could benefit from becoming part of a group procurement arrangement (often known as a collective or a portfolio). This collective arrangement will have features and benefits that need to be explained, along with the risk.

However, once informed, the consumer should be free to avail themselves of that product. In doing so, they may be required (depending on what regulations are put in place) to forgo some of the features of regulation that may apply to their natural state to participate.

8. What are your views on the types of TPIs included in the first section of the scope table?

The “type” of a TPI should be irrelevant. Activity, and consumer segment rather than TPI type, should be the deciding factor on whether a TPI should be governed under a regulatory scheme. For example, a TPI offering energy procurement advice should be governed by regulation, whether the company describes itself as a bill splitter or an energy broker.

A single TPI may have overlaps in service provision across the categories outlined in the consultation document. Therefore, it is the nature of each service to each segment that may or not benefit from regulation and it should be the services offered, and consumers served by the TPI which will determine which regulations they are subject to.

9. Do you think any further types of TPIs should be explored? If yes, do these match with any of the expanded scope category and if they do not, why not?

If as stated in response to question 8, activity, rather than type, should be the deciding factor whether a service is regulated. If a TPI provides a regulated service, it should be governed under the regulatory scheme for that service. Further consideration should be given to:

- a) Any organisation giving price or buying advice, for example anyone providing energy efficiency or self-generation that could give a customer a price forecast that they are relying on to make a financial decision, should be covered by the same type of regulation placed upon the TPI when quoting prices.
- b) Any generalist procurement advisors that cover energy in their portfolio such as Crown Commercial Services, YPO, LASER, NEPO, Consortium Education, ESPO and CBC.

10. Are there existing regulations for resellers currently set at the right level to prevent consumer harms?

To the extent that this question refers to the logical and not physical reselling of energy, the reselling of domestic energy is suitably regulated.

It is not envisaged that the physical (landlord tenant sub billing) element of reselling energy is covered under TPI regulations. However, this should be noted as an area of potential harm that existing regulation does not address particularly well.

Reselling of energy is not a feature of the market for the larger consumers and therefore not an area of concern from our perspective.

11. Are energy suppliers aware which of their customers are resellers and, how many end-consumers the resellers serve?

It is unlikely that all suppliers know all the end-consumers served by re-sellers.

12. Do you have any views on how the number of TPIs within the market might change in the coming years?

The current TPI market landscape is multifaceted, with low barriers for entry.

If proportional and reasonable, regulation should not have a stifling effect on the TPI market. Instead, it will change the landscape by removing bad actors and encouraging new entrants.

In this scenario, we do not see dramatic changes to the number of TPIs operating within the market, but the potential harm to consumers would in theory be reduced.

13. How might the TPI market evolve in the next 5 years, particularly in the context of Market-wide Half Hourly Settlements, Net Zero ambitions and more innovative tariffs and low carbon technologies being introduced to the market?

In the large customer segment, TPIs have proven to be adept at taking a market with traditionally low consumer engagement and creating value-added solutions for those clients.

Noting that energy suppliers have effectively outsourced their sales function to TPIs, the market needs a functioning TPI sector to make things happen.

At the start of deregulation of the industry, the take-up of contract negotiation even for the very largest consumers was minimal. TPIs drove engagement and have remained at the forefront of propelling advancement ever since.

For example, if you were to consider a Mass AMR roll-out and remove customer estates that are managed by a TPI, the take-up would be woeful. TPIs have demonstrated the benefits of AMRs and driven the suppliers, meter operators and consumers into action.

Net zero is “easy” to commit to but harder to achieve. Although TPIs may choose to evolve their business into a full sustainability suite offering, this should not be a requirement.

The required skillsets to procure an energy contract and advise on net zero and wider sustainability-related activities are vastly different. The danger of combining the roles is potentially legitimising TPIs that do not have the capability or competence to provide such services, which requires significant investment.

A robust TPI landscape should offer provision for choice. A customer should be able to seek out an energy procurement or an energy accounting service instead of a full suite of services if they so choose. Regulation should not force a customer to procure, or a TPI to provide, an unwanted service which they do not have qualifications or skillset to offer.

Market Wide Half Hourly settlement is a great opportunity for innovation around tariffs and real cost-reflective pricing. It should also aid billing accuracy, eliminating the issues around estimated reads.

However, experience tells us that most consumers will once again be agnostic to the changes until the benefits are clearly articulated - the role a TPI performs in practice.

14. Do you agree with the list of policy objectives?

We agree with most of the policy objectives in principle. However, further information is required on how they are to be achieved in practice.

Regulation should be balanced to ensure an equitable playing field and not made so onerous that operating as a TPI contains a level of jeopardy that is not reflective of the work undertaken.

TPIs are akin to an outsourcing solution. The protections a larger (or informed) consumer should expect should not extend beyond that of contract law.

As highlighted in our response to Q13, when aligning Government initiatives caution is needed not to blur the lines around a TPI's strategic choice to offer services based on skills and capability.

15. Do you support the government's proposition to directly regulate TPIs via a general authorisation regime? If not, what regulatory approach do you prefer, and what are the reasons behind your choice?

Although we believe specific authorisation would serve the requirements of larger and more complex business customers more appropriately, Inspired acknowledges that a general authorisation scheme is the Government's preferred option.

However – as currently described – a general authorisation scheme will either be so complex as to be unenforceable or too generic to be beneficial if it does not acknowledge the differences between consumer requirements as reflected by their energy needs and the products and services they procure, rather than their turnover number of employees or other irrelevant factors.

An effective and enforceable general authorisation scheme must be founded in the requirements of the different consumer segments and acknowledge the role of contract law. A Bilateral contract between a customer and their appointed TPI should set out the services, obligations, and key legal terms, such as liabilities, termination, and breach. Contract law then performs the function of regulating the service in question.

The greatest risk of harm to consumers exists where there is no Bilateral contract. Therefore, regulation should be focused on that area.

16. Are there particular considerations and/or exemptions for some types of SME TPIs which should be considered?

Regulation should be differentiated by customer segment based on energy needs and especially focus on service and delivery not governed by Bilateral contracts.

As a TPI can serve customers across all segments, there should be no exemptions from the regulations. To exempt some types of SME TPIs would seriously undermine the objectives of regulation, given where potential harm can occur.

17. How might these proposals impact the size of the market or influence market consolidation?

Effective regulation removes bad actors and encourages new entrants, benefitting consumers, whilst onerous regulation stifles competition, potentially leading to a sub-optimal solution for consumers.

18. What are the anticipated costs for TPIs to comply with the proposed regulatory measures, including any required changes to their operations, reporting requirements, and potential fees?

Further details are required about the proposed regulatory measures to anticipate the costs associated with them. Reasonable regulation would not entail excessive costs for a TPI to provide suitable training for its staff and selling in an honest manner.

However, the Government and any appointed regulator should ensure that regulation is focused on areas of maximum potential harm (LOA activity) and differentiated by customer energy needs, thus any cost associated with regulation will be manageable for TPIs and ultimately beneficial overall to consumers.

19. Are there any unintended consequences you envision as a result of these proposals? I.e. could a TPI work around regulation and enforcement through certain activities or practices.

As they stand, the implementation of a broad-brush and undifferentiated regulatory regiment would create a lot of additional work and thus cost for suppliers and TPIs alike. Unless the regulations are segmented by product and service to meet customer needs, they will prohibit the provision of valuable services to consumers and stifle innovation.

An example of this would be a TPI having to prove every supplier has been given a chance to quote, even if the piece of business is not in the supplier's target market or the supplier is not suitable for this requirement. This can be seen in some of the regulations for Public Sector procurement that theoretically ensure anyone that wants to can submit a bid for a contract.

However, in reality, very few suppliers bid for such work. This can result in wasted time and effort from suppliers that are not capable of providing the nuanced services required and additional onus on the consumer to evaluate offers.

20. How should the regulatory framework for TPIs be future-proofed and conducive to fostering innovation?

Regulation should require a TPI to be clear and transparent with a consumer, explaining the cost, benefits, and any potential risks of the service in question. This information should ideally be encompassed in a Bilateral legal contract both parties have freely entered.

If the principles of transparency and risk identification are adhered to, two willing participants should be able to enter a contract without undue concern of further regulation.

Potential harm arises when a consumer is unaware of the commitment a TPI is either asking a consumer to make or is making on a consumer's behalf, especially when carried out under a Letter of Authority rather than a Bilateral contract.

Futureproofing is never infallible. Therefore, any regulatory regime must be dynamic to allow immediate responses as the market develops. However, this will require all stakeholders to be represented within standard regulatory meetings – not just Ofgem and the suppliers.

Futureproofing also involves regular reviews of new products offered into the market to identify any potential harms and make sure the objectives of regulation are being met.

21. What do you think of these principles? Should any additional principles be considered and why?

Overall, these design principles must consider the unique requirements of different customer segments:

- **Treating customers fairly:** Genuine market volatility could be construed as a high-pressure sales tactic for a smaller user but is vital information for larger consumers. Regulation to protect the smaller user should not restrict operation in the wholesale market for customers who require more sophisticated products and services to meet their energy needs.
- **Clear route to dispute resolution:** Non-expert agencies like Citizens Advice or the Energy Ombudsman are not able to address the complexities of large consumer issues and disputes. Whilst suitable for the smaller end of the market, these agencies should not be burdened with trying to resolve commercial disputes between organisation of equal (and often arguably dominant customer power) commercial standing. Good TPIs will have an internal escalation process to resolve disputes. Disputes that cannot be resolved between the two parties need to fall under the jurisdiction of the courts under the Bilateral contracts entered into. Contracts are there for a reason – to protect both parties in a dispute.
- **Appropriate data protection arrangements:** The principles of General Data Protection Regulation (GDPR) are clear and universally accepted. Further regulation beyond this is not necessary.
- **Training, governance, and compliance:** The focus of a TPI should be understanding the energy market and how to address the needs of their customers in this context. Therefore, regulation should require for a TPI's training provision to be tailored to its customer segments.
- **Consideration of net zero and energy efficiency (EE) targets:** Net zero and energy efficiency target support fall under different skillsets and it is not appropriate to enforce a change of business model on all TPIs. There are many other actors who

provide these services who are not TPIs, and any regulation would need to be consistent for other actors who are not TPIs. Customers already have access to specialist support in these areas and many will already have their own Net-Zero strategies in place. A TPI may choose to offer this support but should not be forced to by regulation requiring them to offer a service they do not have the resources or experience to deliver. Such a practice will create risk for consumers and potentially force some TPIs out of Business. Regulating this has the potential of legitimising the provision of service from companies that do not have the specific competencies or skillsets required within their organisation.

22. Specifically, do you agree with the design principle titled “clear route for dispute resolution” which would require TPIs to maintain clear and accessible complaints processes and signpost customers to out-of- court dispute resolution providers?

We support micro and small businesses being able to access alternative dispute resolution services such as the Energy Ombudsman.

However, we have already found the current Ombudsman process for micro business customers to be long and drawn-out for simple queries.

Non-domestic customers in the medium and large segments have more complex queries, which we do not think are suitable for the Ombudsman.

Any well-structured Bilateral contract between a customer and their TPI should outline an alternative dispute resolution and mediation process. Therefore, regulation should only be required where there is no Bilateral contract.

23. Do you agree that TPIs, along with energy suppliers, should play a bigger role in raising awareness and educating consumers in GHG emissions reduction and energy efficiency practices?

Greenhouse gas emissions reduction and energy efficiency practices fall under different skillsets. There are many sources of service providers who can do this, and they would need to be regulated in the same way as TPIs. If a TPI strategically wants to provide such services that should be their commercial decision, but regulation should not require it.

Regulating this has the potential of legitimising the provision of service from companies that do not have the specific competencies or skillsets required within their organisation.

24. Are there further design principles that should be explored as part of a general authorisation regime?

We have referred to these points in some of the previous questions. To highlight further, there are two key design principles we consider to be appropriate for this regulation:

- Regulation should be in place where there is no Bilateral contract. Where there is a Bilateral contract, contract law governs the service provision.
- All regulation is not applicable to all customer segments. What is appropriate for the smaller segments is not appropriate for the larger consumer segments and regulation needs to be based on the product and service provided.

25. Are there types of enforcement activities within the energy sector or a similarly regulated sector that would be most appropriate for TPIs?

Answering this question requires further detail on what a regulatory scheme seeks to enforce.

26. What are your views on a preferred regulator if a regulatory framework was established?

The choice of appropriate regulator is dependent on the areas regulated. If the regulation centres around the vulnerable, domestic, and smaller business customers, Ofgem has a strong track record of protecting them and would therefore be the appropriate option.

However, all stakeholders need to be represented in all aspects of regulation of the industry. Currently suppliers are representing all industry views and there is a danger this is not accurate or appropriate.

In the case of other sectors, the answer would depend on the degree to which a regulation is envisaged for this sector.

27. We would like to seek views on considerations and/or exemptions for some types of SME TPIs within the regulatory proposals.

Exempting any TPI that undertakes activities that can be identified as having the potential to cause a customer harm should be covered by the regulations.

SME TPIs where LOA procurement is prevalent should be a focal point in any upcoming regulation. These TPIs do not have clear Bilateral contracts with their customers, which is the area of highest potential harm.

Furthermore, whether a TPI should be governed under a regulatory scheme should be decided on activity, rather than type. For example, a TPI offering energy procurement advice should be governed by regulation, whether the company describes itself as a bill splitter or an energy broker.

28. What are the perceived impacts of the current preferred option on TPIs? This could include things such as initial familiarisation costs and ongoing costs.

Any regulation is going to increase operational cost, but this depends on the extent of the regulation. For example, this could include the cost of the regulator, as well as the cost of implementing any regulation.

However, more detail is required to comment further on the extent of these costs.