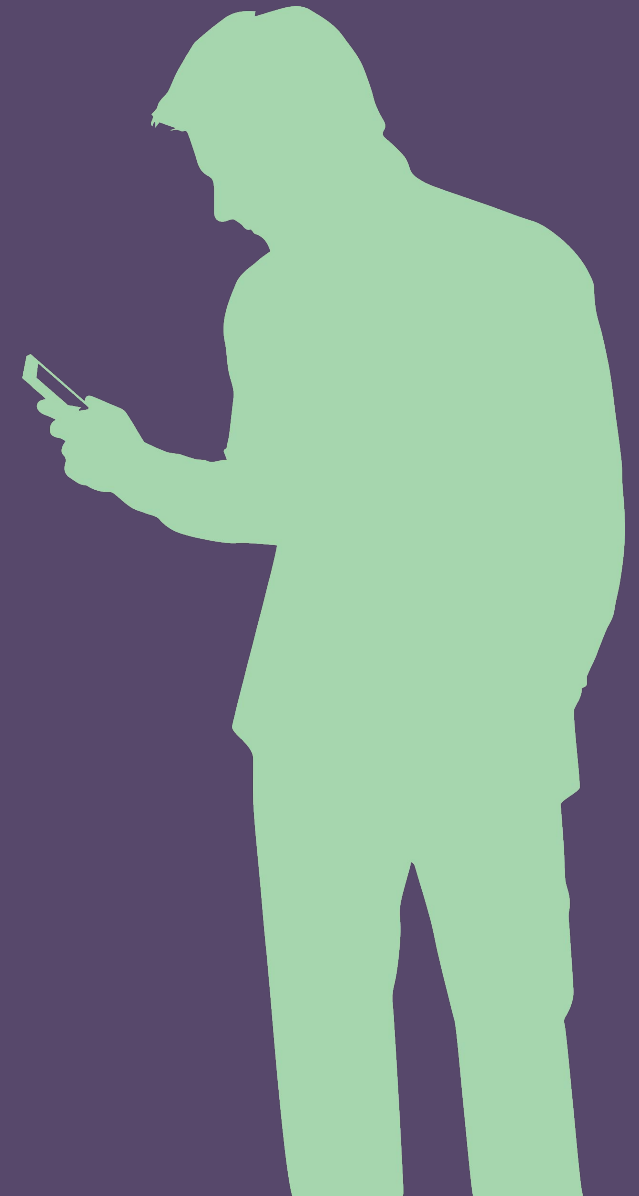


# Stuck in the middle

How to improve protections for people using energy third party intermediaries



**citizens  
advice**

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## ➤ TPI describes a range of services



Price comparison websites



Collective switches



Bill splitters



Autoswitchers



Smart TPIs

## ➤ They play a growing role in the energy market



of switches in 2019 were completed using a third party service

Number using an automated switching service:

2016  
0

2019  
~300,000

## ➤ Their role will expand in future



In 3 years time, 40% of households will have a smart appliance<sup>1</sup>

This means more consumers will use smart TPIs to manage smart appliances to access lower energy costs

## ➤ There are gaps in protections for consumers using energy TPIs



Unlike energy suppliers, TPIs aren't subject to regulatory oversight by Ofgem. When things go wrong consumers have fewer options to get things sorted



Across all markets 1.1m people have made a complaint about a TPI service



As TPIs take on a greater role, the gap in protections could increase the risk to consumers of using these services

## ➤ Consumers want to see these gaps closed



**70%** of consumers think that energy price comparison sites and autoswitchers should be regulated



**Over 75%** of people think they should be able to get advice and support about complaints to TPIs and take their complaints to an Ombudsman if they need to



## Ofgem should regulate these services

Our research suggests this would be most effective through an authorisation regime, similar to how the FCA regulates insurance TPIs

A majority of consumers think TPIs should be required to:



Treat customers fairly



Be clear and simple to use



Be transparent about how they work



Keep information on products up to date



Protect personal data

# Introduction

**As we move to net zero, third-party intermediaries will become even more important to the energy market. It's vital to put in place the right regulation to protect consumers using these services.**

Reaching the UK's net zero goal will have major implications for the people we help everyday. Third party intermediaries (TPIs) are just one area where technology and data are having a dramatic impact on how people use energy. They can be a tool to avoid paying the loyalty penalty, give people more choice of energy services, and make it easier to decarbonise. But they can also be confusing when things go wrong.

Our previous research has outlined that public support will be crucial for a successful transition to a low-carbon future.<sup>2</sup> One way the government and regulators can build public trust is by tackling the net zero regulation challenge: to ensure people have the confidence to engage in the market and that no one gets left behind.

TPIs play a key role in energy, acting to simplify a complex market and increase engagement. They range from helping consumers choose an energy supplier to making decisions on a consumer's behalf, like selecting their supplier for them.

Despite their important role there is no direct regulatory oversight of energy TPIs, and consumers can struggle to resolve problems when they arise.

We expect TPIs to become even more prevalent in the next 5 years, playing an increasingly sophisticated role in delivering a net zero energy system:

- New schemes to increase consumer engagement could mean millions more using services powered by TPIs
- Energy usage data will be opened up to enable personalisation and better recommendations, including for low-carbon energy products<sup>3</sup>
- TPIs will help manage smart appliances and electric vehicle charging to minimise costs and allow more renewable energy on the energy system

At Citizens Advice, we already see cases where TPIs aren't transparent about their service, where consumers are switched to inappropriate products and where they miss out on protections, with very little recourse.

Poor practices by some TPIs will undermine consumer trust, while a lack of regulation may allow energy suppliers to lock innovative TPIs out of the market.

The government is preparing to publish its forthcoming energy white paper. It must take this opportunity to introduce a proportionate and flexible regulatory approach for TPIs. This would enable positive innovation for consumers, alongside support and access to redress when things go wrong.

# Research approach

**This report is based on three new pieces of research**



## Qualitative research with consumers

Carried out by Community  
Research, in November 2019



## Legal analysis

Carried out by law firm  
Pennington Manches Cooper



## Polling

Survey of 1,793 bill-payers by  
Opinium, completed in February  
2020

It is also supported by:

- Information collected from companies using our statutory powers
- Analysis of contacts to our consumer service helpline. This is a free service that provides practical and impartial advice on how to resolve consumer problems.

The full research reports for the legal and qualitative research are published alongside this report.

More detail on the research approach can be found on page 35.

# What are energy TPIs?

**Third-party intermediary (TPI) is a catch-all term. It describes a range of business models that sit between a customer and supplier and helps the customer to engage with the energy market.**

Some examples and their key characteristics are outlined below. These models are not mutually exclusive and one organisation may offer several of these services.



### Price comparison site

- can list available tariffs or just a selection
- can carry out a switch for a consumer
- can send a prompt when a better deal is available, or when the tariff ends
- can be integrated into other third-party apps, like banking



### Collective switch

- can negotiate a bespoke deal on behalf of a large number of customers to get best deal
- will execute the switch on consumer's behalf



### Bill-splitter/sharer

- can enter a contract on behalf of a household and split the costs
- popular with students
- can be a white-label of a supplier



### Autoswitcher

- can switch tariffs on your behalf, automatically choosing your supplier
- some charge customers a fee, while others earn commission from suppliers



### Smart TPIs

- will control household appliances to optimise use in response to price signals
- this energy flexibility can be combined (aggregated) and sold into power markets
- established for businesses but largely at trial stage for domestic consumers

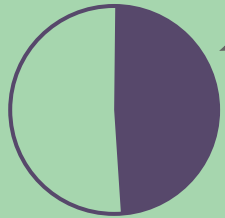
Increasing degree of control given to the TPI



# TPIs play a central role in the market

## The majority of people switching energy suppliers will engage with a TPI

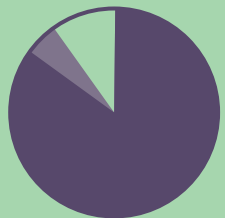
Price comparison websites are the most common. TPI services can offer a convenient and simple route into a market that can be seen as off-puttingly complex.



In 2019, 49% of domestic consumers who engaged with the market, said they did so through a comparison site<sup>4</sup>



10% used an autoscanning or autoswitching service



In the small and medium-business energy market, suppliers report TPI channels typically provided more than 85-90% of new business<sup>5</sup>

## Use of autoswitchers is growing fast

While still only 2% of all consumers that found an energy deal, the number of customers using autoswitching has grown rapidly since the first service was launched in 2016.

### Increase in consumers using autoswitching services<sup>6</sup>



## Some consumers have problems with TPIs

The majority of experiences with these services are positive and help consumers engage with the market. However, a minority of people experience problems with these services.



1.1m

In 2017, research for Competition and Markets Authority (CMA) found that 3% of people who used price comparison sites across all markets had made a complaint - equivalent to 1.1 million people<sup>7</sup>

# TPIs in the future

**Over the next 5 years we expect more people to use TPIs, with more sophisticated models becoming established.**

## Consumer engagement

Ofgem has included growth of autoswitchers as part of its assessment of conditions for effective competition. This annual process will run until 2023 at the latest and result in a recommendation on whether conditions exist to lift the energy price cap.<sup>8</sup> The regulator's framework views the growth of this type of service as a structural change that can promote competition.

Ofgem has also extensively trialled opt-in engagement measures for disengaged customers, including collective switches.<sup>9</sup> These measures - alongside more radical opt-out schemes - are among the policy options being considered by the BEIS/Ofgem Future Energy Retail Market review<sup>10</sup> to prevent the re-emergence of the loyalty penalty once the price cap is lifted. Such schemes would need a TPI - like a price comparison site - to run them.

**These developments could see significantly more consumers using TPIs in one form or other. This would include more vulnerable groups who may have previously been less likely to switch.**

## Digitalisation of the energy system

A number of reforms are underway that will improve systems and processes, and provide richer data.

- From mid-2021 consumers will be able to switch as quickly as the next working day, with data improvements reducing switching errors. These changes could enable much more frequent switching by TPIs.
- The continuing smart meter rollout will mean that more granular data about consumer energy usage is produced. Some TPIs already collect this data via devices that can connect to a smart meter.
- The Midata programme will allow data about a consumer's energy tariff and usage to be easily shared, subject to privacy controls. This will enable TPIs to make better tariff comparisons, including for smart time of use tariffs, and provide more personalised energy saving advice.

**Access to new data and systems will improve the performance of TPIs in helping people switch. However, our research has shown that for consumers to share their personal data they need to trust that it is being used appropriately. The government's Smart Data Review is looking at how access to open data is regulated.**



# TPIs in the future

### A smart, net zero system

Further changes will enable even more sophisticated models to emerge.

- Ofgem is introducing changes that will enable more cost reflective electricity pricing.<sup>11</sup> This will mean that people can respond to price signals according to time of use. For example, when lots of renewables are generating and prices are lower, this can be passed on to people who move their energy usage.
- Smart appliances (including smart charging for electric vehicles), smart export tariffs for microgeneration, and battery storage will offer new opportunities for services to manage energy use in response to new price signals.
- Consumers may also be able to use more than one energy supplier at once<sup>12</sup> - for example supplementing their main supply with energy from local renewables.

TPIs are one way that people will be able to manage their energy usage and smart appliances. While some of these services may be provided in a complete package by an energy supplier, some consumers will prefer a more bespoke and flexible arrangement using a TPI.



## Current framework

# The legal framework for TPIs

**All consumers are protected by general consumer protection laws and regulations. In some areas, including the energy sector, there are also sector-specific regulations.**

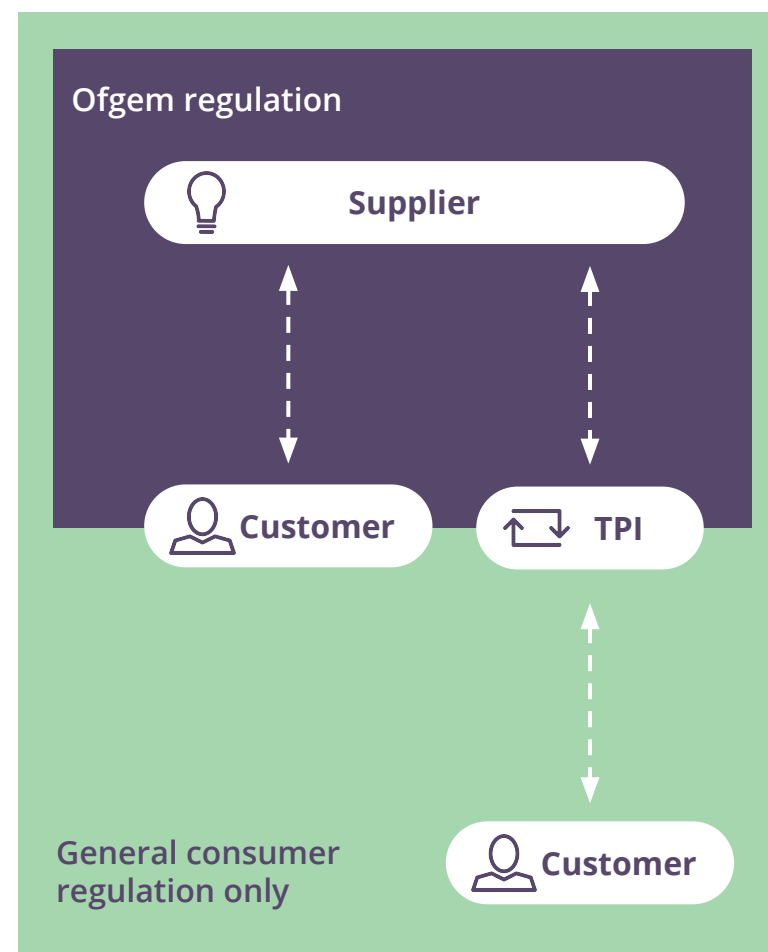
In energy, consumers receive these additional protections when dealing with licensed companies, like energy suppliers. Suppliers have to comply with licence conditions and standards of conduct. These regulations lay out how energy suppliers need to behave and what responsibilities they have towards consumers.

TPIs in the energy market are not licensed. If consumers engage with the market via a TPI the rules an energy supplier has to follow still don't change, for example, on charges and billing, information provision, contract renewals and complaints handling.

Some of protections can be passed on via contracts between the supplier and the TPI, where these exist. But a TPI acting on behalf of a consumer<sup>13</sup> is not directly required to meet - or help a supplier meet - any of the standard licence conditions that suppliers have to follow. There is a greater risk that protections are disrupted if the TPI's role means that the consumer has little direct engagement with the energy supplier.

Ofgem's guidance<sup>14</sup> says suppliers don't have to work with TPIs if doing so prevents them from meeting their obligations. This makes it more likely that consumers are protected, but increases the power of suppliers to prevent innovative TPI models emerging.

**How consumer protection frameworks cover energy TPIs**



## Current framework

# Existing protection gap

The difference between general consumer protection laws and sector-specific regulations are significant in key areas.

### Energy sector regulation

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- ✓ Required to engage consumers fairly and recommend appropriate products
- ✓ Offer alternative dispute resolution, meet complaints handling requirements and signpost to Citizens Advice for independent advice
- ✓ Identify and support consumers in vulnerable circumstances
- ✓ Sector-specific and enforced by specialists through various mechanisms
- ✓ Comparatively fast to reform through consultation
- ✓ Extends some protections to microbusinesses

### General consumer law

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- ✗ Required only to avoid unfair practice
- ✗ No requirements for complaints handling or signposting to independent advice, redress may only be achieved in the courts
- ✗ No requirements for consumers in vulnerable circumstances
- ✗ Non-specific, enforced by generalists, generally through the courts
- ✗ Inflexible, requiring new primary legislation
- ✗ Only prevents misleading marketing protections to microbusinesses, with no route to redress

## Current framework

# Customer journeys

How could consumer experiences differ when they engage with a supplier compared to a TPI?



Amit started switching to a new energy supplier, but a week after initiating the switch he decided against it.



Amit contacted the new supplier to cancel the switch, but he later got a notification it had gone ahead and saw that a direct debit had been taken by the new supplier.



He contacted the supplier again but they refused to reverse the switch as they claimed there was no record of his request to cancel.



After struggling to resolve the complaint with the supplier directly, Amit called the number on his energy bill for the Citizens Advice consumer service helpline.



Because he was struggling to cope with the complaint he was transferred to the Extra Help Unit for support.<sup>27</sup> They helped him switch back to his previous supplier and get his money back.



Sandra subscribes to an autoswitcher who moves her to a new supplier. She was notified that she would be transferred, but saw that the supplier had bad reviews.



Sandra asked the autoswitcher to cancel the switch, but she later got an email saying that her account and direct debit had been transferred to the new supplier.



Sandra tried to resolve the issue with the autoswitcher, but they claimed they did nothing wrong.



She contacted the new supplier and asked to switch away but they told her she would have to pay exit fees to leave and that the problem was the autoswitcher's fault.



The only way for Sandra to seek redress from the autoswitcher would be find grounds to take them to court.

# People are missing out on protections

**Citizens Advice helps millions of people each year with problems related to their energy supply online, over the phone and in person.**

While most consumers have good experiences with TPIs, we know that some people have problems. We've started monitoring consumer issues related to TPIs and tracking problems that arise.

Consumer protections in energy rely on suppliers knowing who their customers are, understanding their characteristics and preferences, and knowing if they have additional needs. We're aware of cases where the actions of bill splitters make this difficult.

**Following an energy supplier failure last year, Citizens Advice was told by the supplier of last resort that around 15% of domestic accounts with the failed supplier had been held in the name of a bill splitting company, rather than in the customer's name.**

It is unclear how the failed supplier would have met its obligations to its customers if it did not know who they were.

This risk can extend to other areas. For example, suppliers must ensure they provide their customers with information in order to achieve certain outcomes. This includes helping customers make informed choices about their tariff and energy usage, understanding how to get assistance and advice, and providing sufficient billing information.

If these communications are received by a TPI rather than the customer, these important messages might not be passed on.



The caller did not receive any energy bills from their bill splitting company during the contract. They've discovered they were underpaying because their energy usage was estimated. The energy supplier is now chasing them for £250.

Call to the Citizens Advice consumer service

### Example from a bill splitter's terms and conditions:

If you wish to obtain a copy of a Utility Bill, please contact us [...] it is not always possible to provide copies of the original bills, because the bills go into our company name and are often bulk bills with multiple property details which we cannot share, for data protection reasons.

# It's not always clear if TPIs offer a good deal

Autoswitchers don't necessarily compare all companies in the market. Those that operate by collecting commission from suppliers may only compare companies that pay them. The fewer companies they compare, the more likely it is that consumers are missing out on much better deals on the open market.



The new tariff was more expensive than other tariffs the supplier was offering on their own site. 5 mins on a price comparison site and I found tariffs cheaper than my current provider, and than my autoswitcher's offer. I cancelled my account and will do my own switching.

Review from Trustpilot<sup>15</sup>

Energy suppliers are required to be transparent with their customers and help them make informed choices, whereas under consumer law autoswitchers are only required to avoid misleading customers. But autoswitchers aren't always clear about how many suppliers they can switch customers to.

### How autoswitchers describe their market coverage

"We have one of the biggest selections"

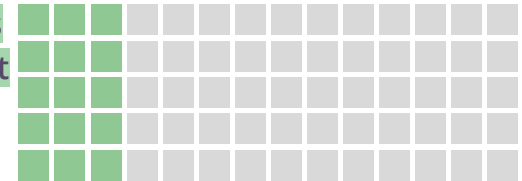
"We can switch you to all the main providers"

"There isn't anyone else out there that can switch you to more providers"

We got data from 8 autoswitchers about the tariffs they sold. Some autoswitchers were able to switch consumers to fewer than 15 suppliers, out of a total of around 70 suppliers in the market.<sup>16</sup>



Some autoswitchers only switch to 15 out of 70 suppliers



We estimated this could lead to customers spending up to £70 more than if they had searched themselves. The best performing autoswitcher saved £65 more than the worst.

When the CMA looked at price comparison sites in 2017 they recommended that consumers check how many suppliers a site compared, and use more than one site to make sure they were getting a good deal.

In contrast, autoswitchers are specifically designed so consumers only need to use one service at a time, and the information they provide about their market coverage isn't easy to compare. This makes it difficult for consumers to make informed choices about which autoswitcher to use.

Some autoswitchers we've spoken to have told us that market coverage is to some extent outside of their control, because some energy suppliers refuse to work with them<sup>17</sup> - even where they don't charge commission.

# People can be stuck if things go wrong

We've seen cases where consumers get stuck in the middle of disagreements between their autoswitcher and their energy supplier.



My autoswitcher tried to switch me to a supplier I didn't want. I asked them to cancel but the switch went ahead. The autoswitcher said they asked for a cancellation, but the supplier says they didn't and is refusing to cancel.

**Call to the Citizens Advice consumer service**

In these situations it can be difficult to get the problems resolved, or get to the bottom of who's responsible.

Energy suppliers are required to follow a clear complaints process, and if their customers aren't happy with the resolution of the case they can take it to the Energy Ombudsman. This is a free, independent service that resolves disputes between consumers and companies. Resolutions can include requirements to put things right and compensation.

TPIs don't have to follow these rules. So if the autoswitcher is to blame for the problem and it can't be resolved, the customer would ultimately have to find grounds to challenge them in court under consumer law.



The caller got a message from his supplier to say they were sorry he was leaving. He called them as he had not requested a switch, but they said one had been processed and gave him the new supplier's details. The new supplier said the request had come from an autoswitcher and that the information they'd provided must be wrong. He asked for compensation, but they refused because it was the autoswitcher's fault.

**Call to the Citizens Advice consumer service**

Suppliers also have to treat customers fairly by making it easy to contact them and acting promptly and courteously to make things right. Similar rules do not apply to TPIs.



[The autoswitchers] automated responses that ask for certain information (bills) were exasperating and unnecessary, the whole process took ten times longer than it should have done.

**Review from Trustpilot<sup>18</sup>**

# Some people are more at risk

### The need for additional support

Some consumers have additional needs that should be factored in when switching. For example, some consumers would struggle to use an online-only service. Some people on low incomes qualify for Warm Home Discount rebates, which may be lost if the new supplier is smaller and doesn't have to offer these.



The caller switched to a new supplier because they were told by a TPI that they offered Warm Home Discount, but they've now discovered that they don't.



The caller switched through an autoswitcher. Their bill has gone up and no one has come to read the meter, even though they are on the Priority Services Register and their old supplier read them. They can't reach the meters because they have a disability.

Calls to the Citizens Advice consumer service

### Mis-selling and pressure sales

Some issues have existed with TPI services for a longer length of time. Between 2007 and 2012 there were particular issues with doorstep sales by some suppliers.<sup>20</sup>

These issues have been dealt with by Ofgem to date through specific rules on suppliers which apply to their representatives when they sell products and services.<sup>21</sup> These mean that companies must make sure any tariff recommended to a customer is appropriate for that customer's characteristics and preferences.

Despite improvements as a result of these rules and better technology, face to face sales remain one of the more common issues we see with TPIs.



Someone knocked at the door and said Ofgem had sent them and that he needed to check their smart meter. He said they were paying too much and that their supplier was changing its brand soon, so they should change to a new supplier. When the caller asked the agent to leave he got aggressive.

Call to the Citizens Advice consumer service

It's unlikely that this approach to regulation will work for newer TPIs - especially those where the TPI acts on the customer's behalf and there is no contractual relationship between the TPI and the supplier.



# TPIs aren't always getting the right outcomes for consumers

## Price

If TPIs use estimated consumption levels to make comparisons then the deals they find customers may not be accurately priced. This can be the case when TPIs use a proxy for consumption, for example when price comparisons embedded in banking apps estimate usage based on the level of a direct debit.

If a consumer uses an autoswitcher the switch may have already begun to be processed by the time the customer is notified of the new cost and realises it may not be right.

This is a risk that exists when people do their own price comparison searches, but there is more opportunity for them to identify issues with overestimated usage when they review the results.

## Tariff requirements

In some cases the full details of what a tariff entails can be unclear to consumers when they switch.



The caller switched via a price comparison site, but it was not clear they would need to have a smart meter fitted as part of the tariff and he doesn't want one

Call to the Citizens Advice consumer service

## Customer service

While price is often the most important factor for consumers when switching supplier, customer service is also important. Price comparison sites often offer little or poor information about customer service levels at different suppliers.

We've seen cases where consumers are switched to suppliers with poor service records or to suppliers who subsequently failed, causing additional stress and hassle.



The caller used an autoswitcher who switched them to OneSelect. Then OneSelect failed and they were moved to Together Energy. There was £600 in credit on the old account. When they called about a refund they were told there was no record of the account and that they should contact Ofgem.

## Call to the Citizens Advice consumer service

Some autoswitchers say that they only work with suppliers offering a good level of service. But when we asked 8 autoswitchers about which suppliers they switched people to, between 15% and 35% of the suppliers scored below 3 out of 5 stars in our customer service star rating.<sup>19</sup>

## Emerging harms

# Things need to change

The issue of how to protect consumers using TPIs has been considered before.

Voluntary initiatives such as Ofgem's **Confidence Code**, which it has run since 2013, have been used to improve protections for consumers to some extent. The Code is only suitable for energy price comparison sites, and the CMA has said it is not an appropriate vehicle for TPI regulation in future.

Beyond voluntary codes, relying on consumer law means Ofgem can't set new regulations, launch investigations, or easily take action to protect consumers when things go wrong.

This protection gap has already been looked at several times by a range of key stakeholders, over the past 5 years. But to date no action has been taken.

2015

### **Energy and Climate Change Select Committee:**



"The current voluntary Consumer Code for energy price comparison sites does not provide adequate consumer protection"<sup>22</sup>

2017

### **CMA Digital Comparison Tools study:**



"We recommend that the government look to bring intermediaries like Digital Comparison Tools into regulators' scope in energy and telecoms."<sup>23</sup>

2018

### **Ofgem Future Supply Market Arrangements**



"The continued emergence of new types of third party intermediaries and services mean that protections need to evolve so that risks to consumers can be managed in an effective and proportionate way"<sup>24</sup>

2019

### **Energy UK**



"With a majority of energy customers now making use of [TPI] services, there is a risk of customer detriment as the regulatory framework has not adapted to these evolving customer behaviours [...] This is a particular concern with customers in vulnerable circumstances using such unregulated services"<sup>25</sup>

Now

**The government and Ofgem's Future Energy Retail Market review is considering the appropriate protection framework.**

# Consumer views

Consumer knowledge about regulation of TPIs is low. Research for the CMA's Digital Comparison Tools Study in 2017 found that 6 in 10 consumers who had used a comparison site either thought or assumed that comparison sites are checked and approved before they can operate.<sup>26</sup>

We held a series of workshops to understand what consumers think about the market, their views on the protections they have, and how they expect them to evolve.

The workshops were held by Community Research, a research company, with representative groups of consumers.

We wanted to find out if consumers expected:

- Protections that are unique to energy TPIs
- Protections to be the same across sectors or within sectors
- Access to an ombudsman service or an alternative dispute resolution service
- Specific protections for people in vulnerable situations

At the start of the sessions, consumers gave their top 3 issues in relation to the energy market more broadly.

### Consumers' top issues in the energy market

1. Price
2. Environment or green energy
3. Customer service

Many other issues came up in the discussion, like mis-selling, data concerns and some awareness of price protection.

There was some degree of trust for more established brands. Smaller brands are seen as riskier because of a lack of awareness.

A survey of participants at the start of workshop revealed a consensus that protections in the energy market are not adequate for the future.



**Only 1 in 4 workshop participants were confident that current systems to protect customers were adequate for next decade**

# How consumers see the benefits and risks

In the workshops consumers were introduced to three key types of TPI and their characteristics.

The discussion revealed consumers' perceptions of the benefits and risks of these models.



### Price comparison websites

Comparing tariffs and completing a switch

- ✓ Save money
- ✓ Simple
- ✓ Familiar

- ! Because not all suppliers are covered by each you may not get the best deal
- ! Can be unclear on the details, like exit fees
- ! Concern about data use



### Autoswitchers

Automatically moving supplier for you

- ✓ Save more time
- ✓ May be good for those who are less engaged or more vulnerable

- ! If the company has preferential relationships means you may not get the best deal
- ! You lack control
- ! A lack of accountability if problems come up



### Smart TPIs

Controlling devices in the home

- ✓ Save money
- ✓ Help the environment
- ✓ Less to think about

- ! Big concerns about data being misused either intentionally or accidentally
- ! Complex and not transparent
- ! May not be accessible for vulnerable groups
- ! A lack of accountability and redress if problems come up

# Views from customers in vulnerable circumstances

**The research also included a series of face to face interviews with people who found it difficult to attend a workshop due to their circumstances.**

Energy suppliers are required to identify consumers in vulnerable circumstances and offer support. TPIs and other companies outside the scope of sectoral regulation don't face any similar obligations, but do have to follow the Equality Act.

Most interviewees thought extending regulatory oversight to TPIs would offer a safety net for consumers who are more vulnerable. Even without being prompted, consumers in the workshops recognised the risks that TPIs could pose to their friends and family members in vulnerable circumstances. There was also a real recognition that TPIs could make accessing the energy market easier.

### Priorities identified by vulnerable consumers

- Accessible information, including different formats
- Easy access to redress and advocacy, including third-party advice that can be trusted
- Intermediaries taking on a responsibility to widen participation

From our discussions with TPIs operating in the market, it is clear that many companies are aware that vulnerable consumers might be put at risk. But companies are not consistent in the information they provide, how they identify and support vulnerable consumers, nor in who they consider to be vulnerable. There was limited recognition of transitory vulnerability depending on consumers' circumstances, for example life events like an acute illness or bereavement.



"It's probably only Ofgem who are going to make them. They must be given the power to say to these [TPIs], you have no choice but to ensure that your service is accessible to everyone who's going to use them."

**Workshop participant**


The more people learnt, the more they thought vulnerable consumers needed protection.



**Only 1 in 3 participants in our workshops thought current systems were adequate for the most vulnerable consumers**

# What protections do people expect?

**When the current system of regulation for TPIs was explained, there was a consensus that consumer protection needs to be reviewed and strengthened.**

 It would be reassuring if they were regulated the same [...] even if it was different rules and regulations because they all operate differently. Especially as it's a bit of unknown because they are such new companies."

Workshop participant

Consumers don't have a strong preference about what form regulation should take, as long as the system is obvious and easy to navigate and people can understand their rights.

There was a recognition that different TPIs carry out different activities, and that regulation needs to be proportionate.

The degree to which a consumer gives control to a TPI to take decisions on their behalf was seen as a key factor. Smart TPIs are seen as having greater involvement in day to day life, so require more stringent regulation.

**7 in 10 bill-payers we polled thought price comparison sites and autoswitchers should be regulated by Ofgem**




There was also support for consumers to be able to access to support with problems with TPIs, particularly for consumers in vulnerable situations.

Citizens Advice provides free and independent advice to people when they have problems with their energy. Our role means we can refer complaints directly to energy suppliers and networks. For people in vulnerable situations or with complex problems, the Extra Help Unit can intervene on their behalf. If we think companies aren't dealing with complaints properly we can refer the matter to Ofgem.<sup>27</sup>



**Over 3 in 4 bill-payers we polled thought TPIs should have to work with Citizens Advice and the Extra Help Unit**

Participants felt that a problem would need to be serious to use alternative redress like an ombudsman service, but it was important to have the option if companies didn't fix an issue.

 "if you end up in financial bother with it... and nobody wants to know, they do need some form of ombudsman."

Workshop participant



**Over 3 in 4 bill-payers we polled thought customers of TPIs should be able to take complaints to an ombudsman**

# Views from microbusinesses

**Microbusinesses are small businesses, such as corner shops and hairdressers, with fewer than 10 employees. Citizens Advice is the statutory advocate for microbusiness energy consumers.**

The most common type of TPI in this market is a broker - a company that arranges energy contracts. Of those microbusinesses that have switched supplier in the last 5 years, 67% used a broker.<sup>28</sup> The small business broker market is worth £250m in commissions per year.<sup>29</sup>

Problems with brokers have been well documented.<sup>30</sup> Previous research commissioned by Citizens Advice has found clear problems with a minority of brokers in the non-domestic market.<sup>31</sup> These include contract issues, including use of verbal contracts, and aggressive tactics to misrepresent and mis-sell.



Broker called claiming to represent the government in order to get us to agree to a new contract



So persistent and constantly calling... very very rude and the final straw was telling our receptionist to f\*\*\* off

**Citizens Advice consumer service and Trustpilot**

The research also identified issues related to transparency about market coverage, similar to domestic autoswitchers.

In a survey 2 out of 3 brokers compared 10 suppliers or less, out of a market with 86 suppliers.

The legal review for this report considered microbusiness protection in relation to TPIs. The level of protection afforded to microbusinesses is lower than domestic customers, as they are not covered by general consumer law. They do have some rights under the Business Protection from Misleading Marketing Regulations (BPMMRs), but enforcement of the BPMMRs is minimal. There is no provision for microbusinesses to access redress if the BPMMRs are broken.



“There are a lot of very good brokers out there, give great customer service, have a great record on compliance, [but] for every one ethical broker, there are five unethical ones springing up.”

**Microbusiness workshop participant**

In contrast, many energy supplier regulations apply to both domestic and microbusiness consumers, including a general requirement to treat customers fairly.

Our report Closing the Protection Gap<sup>32</sup> included recommendations which are applicable to the domestic TPI market, including transparency on commission, market coverage and fees.

More broadly, any future TPI protection framework should include small non-domestic energy users as well as households.

# What protections do people expect?

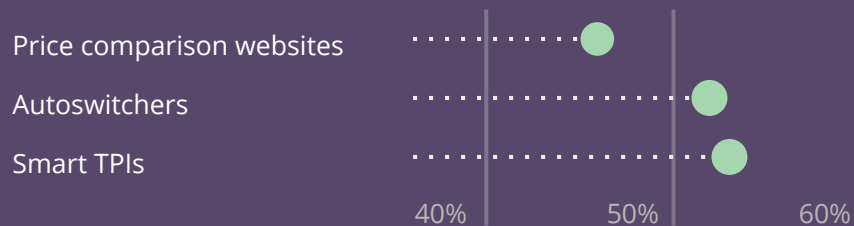
We asked workshop participants about the key outcomes they would want to see from regulation. Across these, some common themes emerged.

When we polled energy bill-payers, we tested these outcomes by asking if a future regulatory regime should include rules in each of these areas. The proportion who said yes for each category is shown to the right.

### Variation between types of TPI

We asked people what they thought each of the three types of TPI: price comparison websites, autoswitchers and smart TPIs. In most cases there was almost no variation between types of TPI: people tended to think regulation should apply equally to all types.

The biggest variation was for regulation to cover support to vulnerable groups. This was higher for the types of TPIs that have more direct control.



### Customer focus

Customers are treated fairly and there is good customer service

60%

### Ease of use / clarity

An emphasis on ensuring simplicity for customers

60%

### Accuracy

Information on services is up to date, including on contract lengths and exit fees

59%

### Transparency

Clear information about market coverage and how they are funded

60%

### Safety

A high level of data protection

64%

### Responsibility

Support vulnerable groups

50%



# Helping those who don't use TPIs

This research has focused on the experience of people who have previously used TPI services. We know that a large number of people remain digitally disengaged and may struggle to use these services without help or support.

 **10%** of households lack internet access<sup>33</sup>

 **21%** of adults lack at least one basic digital skill

In 2017 we commissioned Illuminas<sup>35</sup> to look at the usability of price comparison sites. This qualitative research found that unconfident consumers could struggle to use price comparison sites for a range of reasons, including:

- infrequent internet use and limited access to technology
- fears that the process will be difficult and time consuming
- worries that mistakes will lead to wrong decisions or increases in their household bills

When they were asked to try a price comparison site these consumers were more likely to stick to known brands, at the cost of paying a higher price for their energy.

Since then, Ofgem's consumer engagement trials - based on sending personalised letters - have demonstrated the importance of non-digital routes for some disengaged customers.

In one of these trials, over 70% of switches were completed by phone, rather than using a web alternative.

**At Citizens Advice we've taken a number of steps to help overcome some of these issues for unconfident users**

- ✓ operating a whole of market energy price comparison site
- ✓ publishing our star rating to give consumers information about supplier service quality
- ✓ delivering outreach programmes that reach tens of thousands of consumers each year to help them switch and save energy
- ✓ trialling new TPI services like autoswitchers with Citizens Advice clients across a range of markets to understand if they can benefit our clients<sup>36</sup>

Although changes to regulate energy TPIs should lead to increased consumer confidence, there will still be people who struggle to use digital services.

It's vital that regulators and government continue to consider what protections are in place to prevent these consumers from paying the loyalty penalty.

# Options for regulation

It is clear that consumers need and expect regulation of energy TPIs.

To help us better understand the options for such regulation, we commissioned legal analysis. This assessed the 4 main options for regulating TPIs.

## Options for regulation considered by the legal analysis

1. **Voluntary schemes**
2. **Better enforcement of consumer law**
3. **Licensing**
4. **Authorisation**

## 1. Voluntary schemes

These act as good practice standards, above the general consumer independent protection regime. They are monitored by an body who has powers to sanction members or remove accreditation for repeated/serious breaches. Examples include:

- Ofgem Confidence Code for price comparison sites
- Association for Decentralised Energy Flex Assure Code for aggregators working with business consumers

Both schemes have requirements for certain information to be provided to consumers and effective complaint handling processes.

Although voluntary codes can provide some additional benefits for customers, they are unlikely to lead to market-wide protection.



The voluntary schemes adopted in energy and telecoms appear more likely respectively to lead to distortions or to lack substantial impact.<sup>37</sup>

CMA, 2017

### 2. Better consumer law enforcement

Ofgem could be given powers to more easily enforce existing general consumer law, without having to go to court

- Precedent exists as Ofgem already enforces the Capacity Market (which is outside of sectoral regulation) like as if it were part of the Energy Act
- This would not address the lack of complaints handling and redress requirements
- Ofgem (or another regulator) would not be able to implement rules that specifically relate to TPI activities and potential harms

Enforcement of general consumer law may be easier and more effective than the status quo, but this regime wouldn't enable new rules to be implemented which would deal with TPI-specific problems.

Reforms to enforcement of consumer law have been indicated previously, including moves to give the CMA powers to determine whether consumer law has been broken and impose fines.<sup>38</sup>

### 3. Licensing

This is the approach already taken by Ofgem with energy suppliers. It means companies have to get a licence before they can operate in the market.

- Ofgem can already apply to the government to license TPIs without primary legislation
- TPIs would need to apply for a licence and could need to meet certain tests to get one
- Ofgem would be able to enforce these rules directly
- Ofgem can only impose licence conditions to the extent that their activities relate to energy supply, which might leave gaps for cross-sectoral TPIs
- Licensing can be challenging for markets with a lot of companies and diverse business models
- Primary legislation would still be needed to address the lack of complaints handling and dispute resolution requirements

While licensing appears to be a quicker option for regulating TPIs, it would leave several gaps in protection without fresh legislation and may pose disproportionate barriers to entry for new participants or different business models.

### 4. Authorisation

An authorisation approach allows companies to start and continue operating as long as they follow certain rules. The Financial Conduct Authority uses an authorisation approach to regulate intermediaries in financial services.

- Primary legislation would be required to enable an authorisation regime
- It could give Ofgem powers to develop rules to address emerging problems
- It could include powers to revoke authorisation for persistent rulebreakers
- Legislation could also provide for alternative dispute resolution of consumer complaints
- Some authorisation regimes require firms to pass checks before they operate (eg a fit and proper test)
- A cross-sectoral regime would allow for regulation of TPIs operating across multiple markets

Authorisation has the potential to be a successful way of regulating TPI activities without posing undue barriers to new models and market entrants. Although authorisation is not currently used in energy, the government recently proposed the introduction of an authorisation regime for heat networks, governed by Ofgem.

Careful consideration would be needed about what activities should be captured by the regime, what requirements would be placed on participants and how best to account for cross-sectoral TPIs.

Such an approach would also need to be resourced, as Ofgem would need to oversee a wider range of market participants.

## Recommendations

### Authorisation provides the best framework

	Speed to implement and adapt	Enforcement	Innovation	Protections	Convergence with other sectors
<b>Consumer law, enforced by Ofgem</b>	Slow to change - needs legislation ★	Ofgem unfamiliar - rules rarely used ★	High scope for innovation, but services may be poorly defined in law ★	Low level of protection compared to sectoral regulation ★	Consumer law applies to all sectors, but other regulators may approach enforcement differently ★
<b>Voluntary codes</b>	Relatively fast to implement, can be industry led and doesn't require legislation ★	Enforcement only through sanctions or code ejection ★	High scope for innovation, but services may fall outside code definition ★	Low level of protection compared to sectoral regulation ★	Difficulty in convergence if code is based on activity ★
<b>Licensing</b>	Fast to implement some elements, but would still require legislation for others ★	Easy to enforce, familiar approach ★	Regime is rigid, new activities would need new licences ★	Higher level of protection, would fall within sectoral regime ★	Poor convergence with other sectors, e.g FCA already operates authorisation for intermediaries ★
<b>Authorisation</b>	Would require legislation, but then fast to adapt ★	Proven model in other sectors to allow enforcement ★	Principles-based approach would enable a high degree of innovation ★	Higher level of protection, would fall within sectoral regime ★	High degree of convergence possible ★

An **authorisation regime** offers the best balance to regulate third-party intermediaries (TPIs) operating in the energy sector moving forwards. Under such a regime, companies would need to notify Ofgem that they are operating in the sector and abide by certain rules. If they break these rules and it was proportionate to do so, Ofgem could launch investigations and impose remedies. It's important that Ofgem could ultimately

revoke authorisation where TPIs cause consumers severe detriment. This approach allows innovative models to enter the market, while protecting consumers. This should cover TPIs working with both domestic and microbusiness consumers. The key consumer outcomes we would like to see are set out on the following pages.

## How can TPIs be regulated?

# Some aspects of regulation could be cross-sector

The majority of price comparison sites sell products across sectors, in markets like insurance and telecoms. Some autoswitchers have plans to extend into other markets in future. Future TPI models will interact with products like smart appliances, and are likely to be part of a bundled service.

In the non-domestic space, brokers are increasingly offering water services, following the opening of the business retail market in 2017.

This research has explored the key protection issues in the energy market. We recognise that there are trade offs and circumstances where it makes sense for regulators to introduce rules specific to their sector.



I do think it's important that [TPIs] behave to a higher standard in energy. I think the gap [in regulation] with TPIs is actually more shocking, when you think of the money that's involved and the essential nature of the commodity.

Workshop participant

However, some elements of consumer protection in regulated markets are more universal. A broad fairness principle already applies in financial services (including to intermediaries), with similar rules for energy suppliers.

### How cross-sector and sector-specific regulation could work together

#### Shared cross-sector principles

Fairness

Dispute resolution

Data protection

#### Sector specific regulation

Energy

Insurance

Other sectors

There are also moves to better align regulation. The government's Smart Data Review<sup>39</sup> suggested cross-sector accreditation to access consumer data. In 2019 both the

National Audit Office<sup>40</sup> and the National Infrastructure Commission<sup>42</sup> called for more collaboration and coordination between regulators including through forums like the UK Regulators Network. We support moves to make regulation consistent across sectors where possible and, as regulatory regimes evolve, an activities-based form of regulation would allow for greater convergence.

However, there is likely to be a continued need for some sector specific requirements, for example related to security of supply in energy. And progress to protect consumers using TPIs in the energy market, where these services are growing quickly, should not wait for cross-sector action.

Ofgem is the logical regulator for this market, but any rules for TPIs in energy should be designed with cross-sector alignment in mind.

## Recommended outcomes

### Energy TPIs should treat customers fairly

**Fairness was a recurrent theme in our research with consumers.**

Under Ofgem's Standards of Conduct<sup>42</sup> and the FCA Handbook<sup>43</sup> respectively, energy suppliers and insurance intermediaries are regulated to behave and carry out any actions in a "fair, honest, transparent, appropriate and professional manner". Rather than meeting a check-box list of prescriptive rules, companies must consider how to treat consumers fairly and ensure their actions do not cause detriment. This overriding principle should apply to TPIs as it does for energy suppliers and insurance TPIs.

### Energy TPIs should be transparent

**There is a need to make sure TPIs are transparent about key aspects of their service, how their business model works and how many suppliers they work with**

Consumers should have clear information about the services TPIs offer and be able to understand if a TPI has a special deal with an energy supplier. Consumers should also kept up to date about a service, for example they should know if an autoswitcher is comparing significantly less of the market than when the service started. Consumers should also always be able to understand on what basis an estimate of savings from switching is being given. Principles-based rules in the supply licence on customer communications and informed choices could form an appropriate starting point.

## Recommended outcomes

### **TPIs and suppliers should cooperate**

#### **Energy TPIs and the wider energy sector should work together to deliver consumer protections**

Consumers shouldn't lose out on protections because they use an intermediary. TPIs should ensure their service does not block suppliers from delivering these.

For example, suppliers must be able to meet their obligations in relation to customer communications and understanding customer characteristics and preferences.

Similarly suppliers should not block consumers from using TPIs or stifle innovation. As long as a TPI is authorised, suppliers should have to allow consumers to use them to act on their behalf.

The introduction of authorisation should be an opportunity for TPIs to work more collaboratively as part of the industry on delivery of reforms like faster and more reliable switching, to improve consumer experience of these changes.

### **TPIs should ensure consumers can access advice and redress**

#### **Energy TPIs must have effective complaints handling procedures, signpost to third party support and be accredited with an alternative dispute resolution service**

Like energy suppliers, energy TPIs should have a clear complaints handling process that they make consumers aware of, comply with and adequately resource. If consumers need help resolving their problem they should be referred to free, confidential and impartial advice. Those with complex problems or in vulnerable circumstances should be offered additional help from the Extra Help Unit.

If a consumer can't resolve a complaint directly with the company, they should be able to easily use an alternative dispute resolution (ADR) service for a binding decision, rather than having to seek redress through the courts. There may be benefits to having a single ADR service for energy suppliers, networks and TPIs, in order to more easily resolve problems where it is unclear which party is responsible.



## Recommended outcomes

### **TPIs should support vulnerable consumers**

#### **Authorised TPIs must take steps to support consumers in vulnerable circumstances**

Similar to network companies and energy suppliers, TPIs should take steps to signpost consumers to schemes like the Priority Service Register, ECO and Warm Home Discount, and third party support. This would align with Ofgem's 2025 Vulnerability Strategy<sup>44</sup> that says TPIs should "take responsibility" for consumer groups including the digitally disengaged and disabled.

As the TPI becomes the consumer's main point of contact, or where its service has implications for a consumer's security of supply, further safeguards may be needed.

TPIs could take more responsibility for identifying vulnerability and, subject to appropriate data privacy controls, it may be beneficial for TPIs to pass on customer information to suppliers and energy networks to ensure consumer protection.

### **TPIs should protect consumer data**

#### **Only TPIs that are authorised should be able to access industry systems.**

This is particularly key for the industry systems that contain sensitive data such as consumer consumption. People should be reassured by having clarity about how and why their data will be used, as well as control over who can see it.

There are already examples of services incorporating devices that operate outside of the Data Access Privacy Framework which sets rules on access to smart data for suppliers and networks.

# Approach

**This report is based on findings from three independent pieces of research commissioned by Citizens Advice. The insights are supported by case studies from the Citizens Advice consumer service and Extra Help Unit. It also draws on previous analysis by Citizens Advice and desk-based research.**

## 1. Qualitative consumer research

All-day deliberative workshops were conducted by Community Research with an overarching objective to explore consumer attitudes to consumer protections relating to TPIs in the energy market.

These were held in three locations across Great Britain with a total of 39 consumers. Separately, face to face interviews were conducted with consumers in vulnerable circumstances who might otherwise struggle to attend.

Consumers were encouraged to share their experiences of the energy market. They were briefed on existing mechanisms of consumer protection in energy and they set out principles of what they viewed as desirable outcomes in the market.

The workshops introduced three key TPI models, explaining how they work in practice. It was a combined with information on broader possible developments in the energy market. This allowed people to engage with the TPI models, through their own experience, and define potential benefits and risks.

## 2. Legal research

This was conducted by legal consultancy Penningtons Manches Cooper. It considered what protections are in place for consumers engaging in the retail energy market through a licensed supplier compared to those who engage indirectly via a TPI. This gave a side-by-side comparison of how protections differed. It also looked into the legal and regulatory issues with, and potential impacts of, alternative models of future TPI regulation.

## 3. Polling

An omnibus survey was conducted by Opinium with a representative sample of 1,793 bill payers in Great Britain. This provided a picture of the proportion of consumers who wanted to see wider protections for using TPI services being put in place.

**We engaged widely ahead of publication with representatives of TPIs including price comparison websites, autoswitchers and bill-splitters, as well as energy suppliers, Energy UK, Ofgem, BEIS and the Ombudsman: Energy Services.**

**We thank all contributors for their time and insights which have informed this report.**

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