

Date: 13 October 2011

Ofgem's response to DECC's call for evidence on data access and privacy

We welcome the opportunity to respond to DECC's call for evidence on data access and privacy in relation to the smart meter roll-out. Ofgem regulates the gas and electricity markets in Great Britain. Our principal objective is to protect the interests of existing and future gas and electricity consumers, wherever appropriate by promoting effective competition. In carrying out our functions we must also have regard to, amongst other things, the interests of vulnerable consumers, including those who are disabled or chronically sick, of pensionable age, with low incomes, or residing in rural areas.

Ofgem has a role in helping to ensure that the interests of consumers remain protected both during the transition to smart meters and once the smart meter roll-out is complete. We will also play a key role in monitoring and, where appropriate, enforcing compliance with new regulatory obligations relating to smart meters.

The Government's data access and privacy policy will need to protect consumers' interests and facilitate the delivery of benefits from the smart meter roll-out. As referenced in the call for evidence, there are privacy concerns about the use of consumers' smart meter data. Protecting consumers' right to privacy not only protects their interests, but will also maintain their confidence in smart metering and in the market more widely.

Evidence of consumers' views about data access and privacy in the context of the roll-out

We welcome the reference in the call for evidence to the research on smart metering data privacy issues conducted using Ofgem's Consumer First Panel in early 2011¹. Overarching points from the research include that consumers do not want more 'noise and confusion' in their lives as a result of sharing their smart meter data, such as increased levels of direct marketing. They want choice about how their data is used – and clear information about who is using their data and for what purposes. The Appendix to this letter sets out more detailed conclusions from the research, which supplement those included in the call for evidence.

We have also undertaken earlier research into consumers' views of the smart meter roll-out more generally, which touches on data privacy issues. Research conducted using Ofgem's Consumer First Panel in November 2010 found that data privacy was one key area of

¹ *Ofgem Consumer First Panel Year 3 – 2010/2011: Report from the third set of workshops: Smart Metering Data Privacy Issues*, Ofgem, June 2011

concern in relation to the smart meter roll-out². Panellists were wary of their data being shared with third parties and wanted to know who these third parties were and how their data might be used. Some were also concerned about the security of their data. They were keen that clear information on a range of issues relating to smart meters, including data privacy, was provided.

In 2010, we commissioned research into consumer awareness of, and attitudes towards, smart metering to inform the Smart Metering Implementation Programme³. This research was published alongside the Prospectus document in July 2010. While it was not a strong theme, some people involved in the research voiced concerns about data privacy.

We welcome that the Programme has issued this call for evidence to seek views from a range of stakeholders to inform their data access and privacy policy. Given the importance of data access and privacy issues to consumers, policy decisions should be taken on the basis of robust evidence, including detailed analysis of the costs and benefits to consumers and industry more widely. Consumers' smart meter data has commercial value, and to help ensure they can benefit from this, decisions on the level of granularity and frequency of access that suppliers and other parties receive for particular purposes must be evidence-based. This is especially important where access to personal data (rather than data that is aggregated or anonymised, for example) is proposed.

Key features of an effective regulatory framework for data access and privacy

The Government's Response document published in March 2011 set out a number of high-level principles underpinning the data access and privacy policy in relation to smart meters. A fundamental principle is that each consumer controls access to their personal data, and can choose whether to share it with other parties, except where data is required to fulfil regulated duties. To put this principle into practice, consumers must be able to access their smart meter data, and share it with authorised parties, in a straightforward and secure way.

Policy decisions relating to data access and privacy should, where appropriate, facilitate competition in the energy retail and related markets. A competitive energy retail market benefits consumers, for example by keeping pressure on supplier costs and promoting innovation in products and services. The regulatory framework should help consumers to realise the value of their smart meter data, including by being able to access innovative and competitively-priced new products and services. There is a risk that if these new products and services cannot be offered competitively, then benefits to consumers may be reduced and innovation may be stifled.

In addition, there are potential benefits to consumers and industry from the use of more accurate and timely data to improve the efficiency of industry processes. This will require suppliers and network companies to access certain levels of smart meter data. For example, access to some smart meter data will help network companies to maintain an efficient and economic network. We are pleased that the Programme is exploring how this can be achieved while minimising the disclosure of personal data.

Over time, understanding of consumer attitudes to smart meters and the potential of smart meter data will develop. The regulatory framework therefore needs to protect consumers' interests whilst being sufficiently flexible, so that it can evolve over time. The regulatory framework will also need to be compliant with existing legislation such as the Data Protection Act 1998.

² *Ofgem Consumer First Panel Year 3 – 2010/2011: Findings from first workshops (held in November 2010)*, Ofgem, January 2011

³ *Consumers' views of Smart Metering, Report by FDS International, Ofgem, July 2010*

Related Ofgem work

In the period before the new regulatory framework for smart meters is in place, we want to help ensure that suppliers who are already installing meters with advanced functionality comply with existing legislation and regulatory obligations, and that consumers are clear about their rights and options. It is suppliers' responsibility to ensure that they comply with existing data privacy legislation, and we will continue to protect consumers' interests by enforcing consumer protection law where appropriate. We will work with the Information Commissioner's Office to ensure that consumers' interests are adequately protected.

We are also putting in place new measures to protect consumers, particularly vulnerable consumers, during this transition period. For example, our Smart Metering Consumer Protections Package includes measures where remote functionality is used to switch a customer to prepayment mode or for disconnection⁴. These took effect on 1st October 2011. We are separately consulting on measures to facilitate the change of supplier process for domestic customers who are currently receiving meters with advanced functionality⁵.

Given the importance to consumers of data access and privacy issues we would welcome swift progress in this area, and look forward to further constructive engagement with you in the coming months.

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⁴ <http://www.ofgem.gov.uk/Sustainability/SocAction/Publications/Documents1/Modification%20Direction.pdf>

⁵ *Commercial interoperability: proposals in respect of managing domestic customer switching where meters with advanced functionality are installed*, Ofgem, August 2011

Appendix – Research on smart metering data privacy issues conducted using Ofgem’s Consumer First Panel

In addition to the points referenced in the call for evidence, the following conclusions were drawn from the research on smart metering data privacy issues conducted using Ofgem’s Consumer First Panel⁶:

- consumers do not want more noise and confusion in their life as a result of sharing their smart meter data
- consumers want choice as to how their data is used and generally like the opt-in model (where the consumer has the final say on what data is shared with what party and for what use)
- consumers can see the benefits of suppliers having consumption data but are often uncomfortable with this concept
- consumers not on direct debit see bank details as the main piece of data that they would feel uncomfortable sharing
- consumers have varying levels of understanding about how data is used by third parties, and need reassurance on this.
- In particular, consumers are opposed to their data being used to generate unwelcome sales and marketing.

Some overarching points can be extracted from the Panel’s discussion:

- **Choice** – Consumers want to choose how their data is used
- **Simplicity** – Consumers do not want more noise and confusion in their lives
- **Clear information** – Consumers want clarity on what data will be used, by whom and for what purpose.

⁶ *Ofgem Consumer First Panel Year 3 – 2010/2011: Report from the third set of workshops: Smart Metering Data Privacy Issues*, Ofgem, July 2011