

Data sharing in a digital future: Consumer Consent

Open Data Institute response

January 2024

About the ODI

The Open Data Institute (ODI) is an independent, non-partisan, not-for-profit organisation founded by Sir Nigel Shadbolt and Sir Tim Berners-Lee in 2012. We have a mixed funding model and have received funding from multiple commercial organisations, philanthropic organisations, governments and intergovernmental organisations to carry out our work since 2012.

The ODI wants data to work for everyone: for people, organisations and communities to use data to make better decisions and be protected from any harmful impacts. We work with companies and governments to build an open, trustworthy data ecosystem. Our work includes:

- consultancy: working with organisations in the public, private and third sectors, building capacity, supporting innovation and providing advice
- research and development: identifying good practices, building the evidence base and creating tools, products and guidance to support change
- policy and advocacy: supporting policymakers to create an environment that supports an open, trustworthy data ecosystem

Our [5 year strategy](#) sets out what we think are the elements of an open and trustworthy data ecosystem for a world where data works for everyone. Our approach allows us to adjust our implementation and engagement as the world around us, and the organisations we work with, change. Our activities will be set out on an annual basis, mapped to the six principles that guide everything we do:

1. We believe that a strong data infrastructure is the foundation for building an open, trustworthy data ecosystem on a global scale and that this can help address our most pressing challenges.
2. Strong data infrastructure includes data across the spectrum, from open to shared to closed. But the best possible foundation is open data, supported and sustained as data infrastructure. Only with this foundation will people, businesses and governments be able to realise the potential of data infrastructure across society and the economy.
3. For data to work for everyone, it needs to work across borders – geographic, organisational, economic, cultural and political. For this to happen ethically and sustainably, there needs to be trust – trust in data and trust in those who share it.

4. There is greater need than ever for trusted, independent organisations to help people across all sectors, economies and societies to benefit from better data infrastructure.
5. For data to work for everyone, those collecting and using it need to be highly alert to inequalities, biases and power asymmetries. All organisations working in data must take proactive steps to ensure that they contribute fully and consciously to creating a diverse, equitable and inclusive data ecosystem.
6. The world needs a new cohort of data leaders – individuals who have data knowledge and skills and are equipped to understand the value, limitations and opportunities offered by data, data practices and data sharing.



The ODI's approach to this consultation

This document responds to Ofgem's consultation on ["Data sharing in a digital future: Consumer Consent"](#). As we outline in this response, we believe that consent data in the energy ecosystem is an example where a central function is required to improve clarity and trust with consumers, and accountability for system stakeholders. This process should not just focus on the technical solution, but also on the surrounding stewardship function and what that requires, including the potential risks.

We believe that data sharing should be considered through two lenses that we have developed through our work. These are:

1. Ensuring [data infrastructure](#) is as open as possible
This means that data assets, standards, policies, technologies and organisations should be as open as possible while respecting the need to protect privacy and respect other forms of sensitivity. [We define 9 areas of data practice](#) that need to be addressed to make sure any organisation's work with data is trustworthy. In this response we have aimed to discuss how a consent solution should offer transparency and accountability across all of these domains.
2. [Responsible data stewardship](#)
Our five principles for responsible data stewardship highlight that data stewardship processes should be iterative (require consistent negotiation and reflection), systemic, address public benefit, carefully consider harms, and redress structural inequalities. This should be considered across all data practices.

At the ODI we have extensive experience working on decentralised data sharing models and data portability. The ODI's work on data portability includes our work on Open Banking - for example, as a member of the Open Banking Working Group that helped [develop the standards and guidelines for open banking](#), as part of the Open Banking Expert Consumer Group and as participants in the Future Entity Working Groups, [where we have also submitted our views](#). We have also responded to the recent [FCA consultation on Open Finance](#) which addressed data asymmetries with Big Tech in financial services.

Further, the ODI has supported open data initiatives with Ofgem and Ofwat, and has [stewarded the OpenActive initiative to generate open data in the sports sector since 2016](#). Our Global Head of Policy Resham Kotecha is currently an Advisory Council Member of the government's [Smart Data Council launched in April 2023](#), set up "to help lower bills for consumers and small firms by making it easier to switch utility providers". We are also currently in the process of running the [Smart Data Discovery Challenge](#), which was launched at the end of October in cooperation with the [Department for Business & Trade](#), [Challenge Works](#), and [Smart Data Foundry](#).

In particular our work on data sharing in the energy sector includes a project with the Data Communications Company on “[improving data access in the UK smart meter data ecosystem](#)”. We also [co-organised an event](#) with Zuhlke discussing their project about consent data sharing for the energy system. We have further worked together with the [Energy Systems Catapult](#), and [offered our reflections](#) on delivery of a digitised energy system.

Finally, we believe it is important that civil society take part in government solutions to challenges such as data portability, and would recommend involving relevant organisations in stewardship of a consumer consent solution to ensure different groups in society are properly represented.

1. Yes/No: Do you agree that a Consumer Consent solution is required as per the taskforce's recommendation?

Yes.

2. Could you please provide any reasons why the current methods for obtaining consent from a consumer might be ineffective or inefficient?

Consent for the use and sharing of personal data is required both due to GDPR and widely held views on an ethical approach to data. GDPR has also enshrined the right to data portability, for which consent is required. However, as has been proven by the lack of success with the [midata](#) voluntary programme and the success of [open banking](#), without sufficient data infrastructure underpinning and supporting portability, consumers are unlikely to engage with it, yielding suboptimal results compared to if portability was a simple and trusted process.

As open banking has proven, when granting consent is simple to do, easy to understand and leads to valuable services, individuals and small businesses will take part, improving their own circumstances and leading to better outcomes in the wider sector.

As such, consent options should be simple and well-structured, and with clear and effective accountability measures.

Currently, there are multiple different approaches to generating consent data. In consent systems this is a problem because:

- With consumers increasingly changing energy providers, they could be confronted with significantly varying approaches to consent. These may demand different levels of involvement by consumers, and hold different risks. This makes it difficult for consumers to understand such systems and how they differ from one another, which can undermine trust and generate risks.

- It is more difficult to generate oversight and accountability across many different systems.

As such, we believe that a common and open industry standard is a better mode for giving consent (discussed further under question 8). While in many cases, the UK's approach to energy data standards has been industry-led, in this area we believe that government and the regulators Ofgem and the ICO are well placed to lead the design with input from industry and civil society.

3. Do you believe that consumers are sufficiently motivated to engage with the consent solutions proposed in this Call for Input? Please elaborate on your answer.

We have noted earlier and in our work that without a robust and easily usable data infrastructure it is difficult to encourage consumers to take a more active role in stewarding data about themselves and their communities. We believe that motivation will depend on the benefit that consumers understand they will receive from such engagement, and how well minimisation of risk is demonstrated. Given that there are use cases that offer benefits to consumers, such as tackling the crises of the environment and cost of living, including fuel poverty, as well as just helping with bills, we do believe that this will support the goal to obtain such consent, although it is important that benefits are clearly communicated.

Further, we note that clarity of the consent mechanism is likely to be key, as we discuss further within answers 2 and 7. With this in mind, and aware of [the digital divide](#), we also highlight that it is essential that there are alternatives for those excluded by a central system. For example, individuals affected by digital divide might be those without access, or with limited access, to technologies such as computers and the internet (discussed in [this government POST brief](#) about the impacts of the digital divide during Covid-19) - or those whose accessibility requirements make it difficult to use a platform. If only consumers who are able to engage with a specific consent solution can benefit from products, there will be disparities in who benefits from the solution, which may deepen existing inequalities. [Participatory research](#) should be used to generate a better understanding of diverse needs.

4. Do you agree that the four use cases referenced are high priority use cases? Can you describe any other high priority use cases?

These use cases referenced by Ofgem are:

- Retail specialisation
- Energy system flexibility
- Reduced barriers to market entry and increased competition

- Consumer empowerment, protection, and trust

In [our June 2021 report](#) based on a research project funded by the [Data Communications Company](#) we highlighted similar key use cases: “achieving net zero and local decarbonisation; addressing consumer vulnerability and fuel poverty; and optimising efficiency and reducing costs around domestic energy and bills.”

One key area we highlighted that is not discussed in Ofgem’s briefing paper is the potential role of a consent solution in addressing fuel poverty, a consequence which could be delivered through various of the four use cases outlined. UrbanTide, [who shared this article on the DCC website](#), highlighted that mechanisms for addressing fuel poverty through use of smart meter data include: better understanding areas at risk of fuel poverty/detection of previously “hidden pockets” of fuel poverty; making it easier to target support and improve the benefits from energy efficiency campaigns; highlighting areas in particular need of retrofitting; increasing uptake of efficiency schemes to reduce costs to households; and better ability to understand how interventions affect fuel poverty through ‘before and after’ insights.

Further, in [this July 2021 article](#) on an ODI collaboration with DCC about use of smart meter data, we highlighted the potential for “creating benefits beyond the energy sector into other utilities”. As part of our broader work on data portability, we are interested in how a smart data infrastructure can be considered as a whole, with ‘pillars’ across multiple sectors. As such the implementation/standards bodies for smart data in each sector can work towards building and maintaining collective data infrastructure, which could include sharing datasets, linking data through standards, identifiers, etc., and ensuring robust security measures. This will take efforts and resources for coordination and use case development across the smart data ecosystem.

5. Do you believe that a new Consumer Consent solution would enable the improvements to the energy system described in the four use cases? If not, could you please elaborate?

Yes, we agree that the consent solution can deliver benefits across these use case areas. As discussed in our introduction to this consultation response, we believe that this work must build on strong data stewardship, ensuring that all important areas of practice are addressed (see our [recent work on defining ‘data practices’](#)) and that all stakeholders are taking a proactive approach to ensuring this work addresses its societal implications and any potential harms (see our work on [responsible data stewardship](#)).

However, while unlocking such benefits offers a huge amount to the industries, the risks must also be accounted for. Broadly, as [this white paper by DCC highlights](#), building on their Data for Good programme supported by the ODI, there is a clear need to generate effective safeguards for privacy and security - and “strong mechanisms around consent, progress monitoring and

redress". Further consultation on the stewardship approach surrounding the proposed consent solution would be welcome.

6. Do you agree with our method and scoring of options?

We agree with the conclusion and do not have any significant objections to raise with the method of scoring.

7. Which of the options referenced in chapter three do you believe would be the most appropriate Consumer Consent solution, for the industry, the government, and the consumer?

The options presented by Ofgem are:

Option One: A single technical solution to obtain consent, such as a Consumer Consent dashboard. This proposal builds on the Energy Digitalisation Taskforce's recommendation to deliver a technical consent solution.

Option Two: A set of principles outlining a consistent way for trusted market participants to obtain consent, such as Data Best Practice.

Option Three: An industry-developed code of conduct outlining a consistent way for trusted market participants to obtain consent, such as the Confidence Code.

We agree option one is the best of the options proposed.

8. Please can you explain why you chose a specific option? Do you have any suggestions on how to improve this option?

As outlined in our answer to question 2, as far as possible we think that solutions should not work too differently from energy company to energy company to prevent confusion among customers. As the energy data and smart data ecosystems mature, we would expect to see both more switching of providers and more automated switching to ensure that customers are getting the best deal and most appropriate service. Having a consistent, recognisable and therefore trusted consent solution will help facilitate this, leading to better consumer outcomes.

There is also the element of the legal basis for consent that we should consider. Having a single 'code of licence' and legal framework for the consent solution will make it easier to generate oversight.

In addition, having a central, public infrastructure for consent will help others with pre-existing consent solutions to ensure these are interoperable with this approach. As such, we believe that making the technical information about the architecture of the consent platform would be

beneficial. Such an approach could allow, in addition to the central platform, other interface options where deemed more appropriate or useful by organisations, and also allow interoperability between these and consent solutions offered within other sectors.

While having a single central approach may in some ways be preferable, the ability for other systems to fill gaps where it does not achieve the requirements, and remain interoperable with the central consent system, could help to optimise the consent approach overall.

This interoperability is just one recommendation of six made by the Energy Digitisation Taskforce in 2022. We further elaborate our perspectives on each of these recommendations [in this blog](#), for example highlighting the importance of governance approaches such as data ethics in delivering digitisation. Using data ethics approaches can help ensure a more equitable distribution of value from digitisation processes, and is something we would recommend as part of this work.

9. What barriers do you see to the successful implementation of a new consent solution?

Primarily, the need to ensure harm reduction and trust are prioritised, as discussed throughout this response. As the consultation brief points out, particularly in the case of a single technical solution, breaches of trust could significantly undermine the initiative.

10. What do you think are the roles of Ofgem, industry and other stakeholders in enabling a simple and effective consent solution?

We suggest that a [data institution](#), similar to that stewarding the open banking initiative, could be essential to ensuring roles and responsibilities in the ecosystem are appropriately covered. Such institutions support the convening of stakeholders, and act as a platform to ensure [responsible data stewardship](#). Such an initiative should involve civil society organisations to ensure different groups' interests are well represented.

Ofgem, via the medium of this data institution, should consider sustainability of funding (and how it ensures continued equitable benefit from the scheme), other mechanisms to ensure equitable benefit from the scheme, and mitigation of risks.

Ofgem should delegate responsibility for the technical solution to a specific party, while leading the overall initiative and working together with diverse stakeholders to consider the best models for ownership and delivery/operation of the consent solution.