

## Consultation response

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### WHICH? RESPONSE TO OFGEM AND DECC SMART METER PROSPECTUS CONSULTATION

#### INTRODUCTION

- 1 Which? is an independent, not-for-profit consumer organisation with around 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, and books.
- 2 This document contains Which?'s response to the following consultations:
  - > Smart Metering Implementation Programme: Consumer Protection<sup>1</sup>
  - > Smart Metering Implementation Programme: Data Privacy and Security<sup>2</sup>
  - > Smart Metering Implementation Programme: In-Home Display<sup>3</sup>

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<sup>1</sup> *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>2</sup> *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010

<sup>3</sup> *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

## SMART METETERING IMPLEMENTATION PROGRAMME: CONSUMER PROTECTION

### Developing services for consumers

*Question 1: Do you have any views on our proposed approach for addressing potential tariff confusion? What specific steps can be taken to safeguard the consumer from tariff confusion while maintaining the benefit of tariff choices?*

No clear steps are proposed in this consultation<sup>4</sup> to address potential tariff confusion, we do not support this approach- it will not address potential or even the existing issue of tariff confusion.

70% consumers' find the current tariff offerings confusing<sup>5</sup>, many fail to navigate tariff offerings to get a better deal on the cost of their energy with a third actually ending up worse off after a switch<sup>6</sup>. In addition, the related consultation on in-home displays (IHD) sets out the limitations of the IHDs to provide consumers with accurate cost data due to the structure of tariffs<sup>7</sup>. It is unacceptable for DECC and Ofgem to accept that tariffs are so complex that computational units are unable to derive running totals<sup>8</sup> but equally to accept that consumers should be willing and able to calculate the costs themselves. Which? supports choice and innovation but choice should be quality choice. We reject the implication that that development of complex, confusing and incomprehensible tariffs constitute either innovation or a greater quality choice for consumers.

Ofgem has "broad powers to tackle these issues"<sup>9</sup> however there appears to be a lack of enthusiasm or an ability to use them. The Standards of Conduct<sup>10</sup> were introduced as part of the Probe Remedies package and are cited in this consultation as a mechanism to address potential tariff confusion<sup>11</sup>. These Standards are not underpinned by a licence condition. While adherence to them maybe taken into account by Ofgem when assessing breaches of licence conditions, as there are no licence condition that relate directly to tariff confusion, complexity or structure it

<sup>4</sup> 2.1-2.16, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>5</sup> Ofgem's research shows 70% of people find the number of tariffs available confusing, and just over half find it too hard to work out whether they would make any saving if they switched supplier, *Key facts, Consumer First-Consumer Engagement Summary*, December 2008.

<sup>6</sup> *Energy prices, fuel poverty and Ofgem*, Eleventh Report of Session 2007-08, House of Commons Business and Enterprise Committee, Paragraph 77, Volume I, HC 293-1, 16 July 2008.

<sup>7</sup> 2.14, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

<sup>8</sup> We accept that there is a separate issue with gas due to the calorific values, and we address this point separately

<sup>9</sup> 2.1, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>10</sup> *Energy Supply Probe- Proposed Retail Market Remedies*, Ofgem, August 2008

<sup>11</sup> 2.7, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

is not clear how they can ever be effectively used. Furthermore and as we have previously stated<sup>12</sup>, we do not believe that there is an need for any energy product to be either complex or confusing, it is not clear how Ofgem is fulfilling its duty to protect consumers by suggesting that energy suppliers do not offer any that are seen to be (although by whom is unclear) overly confusing or complicated.

As we have stated above, Which? supports choice and innovation but these must result in quality choices and benefit to consumers. In order to ensure that tariffs deliver a minimum level of quality minimum standards for tariffs must be introduced. We believe that these should include:

- > *Time guarantee* - tariffs should be guaranteed for a minimum of 12 weeks i.e. making sure the price stays the same for the time it takes for the switch to complete. Which? research reveals that two thirds of members feel the price they pay for their gas/electricity should be guaranteed not to increase for a set period.<sup>13</sup>
- > *Reasonable warning about price changes* - companies should commit to provide a minimum of 12 weeks notice if a tariff is going to be changed, or when special deals are going to end.
- > *Meaningful tracker tariffs* - until there is a standard measure used to benchmark tracker tariffs they should be removed from the market.
- > *New version guarantee* - if a new cheaper version of an existing tariff is created, customers on that tariff should be moved onto it. Which? research shows 96% agree that their gas/electricity supplier should be responsible for notifying them if cheaper tariffs become available.<sup>14</sup>
- > *Notification for time based tariffs and a one month grace period* - companies should notify customers within one month of their deal coming to an end about what tariff they will be transferred to if they do not switch before the end date. For example, Ovo Energy's send a letter or email six weeks before the end, followed up by notification with two weeks to go. Following the example of EDF Energy, all companies should allow customers to switch away from the new tariff during the first month without incurring charges.
- > *No hidden charges* - no more 'no standing charges' tariffs when these costs are just subsumed into the overall price, and no unfair penalties if you want to change energy tariff.

<sup>12</sup> Which? Response to Ofgem Remedies Decision Document, September 2009

<sup>13</sup> Which? surveyed 7,883 Which? Connect members online in November 2009.

<sup>14</sup> Which? surveyed 7,883 Which? Connect members online in November 2009.

In addition to these standards, to improve the comparability of tariffs we believe all bills, statements, sales and marketing materials should include a summary box which sets out the key aspects of the tariff, including:

- > the tariff name
- > the rate of gas and/or electricity per kWh and how this is broken down on a daily basis
- > how the cost has been calculated
- > any discounts being applied to the account and when they end
- > any fees payable if a consumer wishes to change supplier
- > the type of account (online or paper-based)
- > the payment method and frequency of payments

This approach has been introduced in the credit card market, and is generally regarded as having improved the understanding and comparability of products.

It is imperative that steps are taken to improve the quality and comparability of tariff offerings being made to consumers before there is an explosion of new poor quality tariffs onto the market. The package of measure that Ofgem intend to bring in spring 2011<sup>15</sup> is an ideal opportunity to do this.

#### *Time of Use Tariffs*

We welcome the proposal that “consumers will not be forced to take Time of Use (TOU) tariffs”<sup>16</sup>. However it is not clear how DECC and Ofgem propose to do this or what steps will be taken to ensure that other tariffs are not priced unattractively as to essentially force consumers to switch. Furthermore, clarification is required regarding how “appropriate volume of consumption of data” that is required to be met before suppliers are able to sell TOU tariffs<sup>17</sup> will be defined and by whom.

**Question 2:** *Do you agree with our proposed approach for addressing unwelcome sales activities during visits for meter installation?*

**Question 3:** *What do you consider as acceptable and unacceptable uses of the installation visit and why?*

For the smart metering rollout to be successful it must be a positive experience for consumers. Given the low level of trust in this sector<sup>18</sup> and the poor history sales

<sup>15</sup> 7.5, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>16</sup> 2.12, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>17</sup> 2.12, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>18</sup> Which? surveyed 2000 members of the public between April and May 2010, only 1 in 5 agree that energy suppliers are trustworthy, even banks are considered more trustworthy (23%).

practices in the energy sector we do not believe that any sales activities during the installation should be allowed. This would ensure a clear line between advice and sales activities, maintaining the focus on quality and positive experience for the consumer without any distraction from sales activity. There is no reason that the supplier can not follow up with information regarding products or services that may help the household use energy more efficiently, providing they have permission from the customer.

**Question 4:** *Do you agree with our proposed approach to ensuring that the IHD is not used to transmit unwelcome marketing messages?*

Which? support the proposal to regulate the transmission of marketing messages via the IHD<sup>19</sup>. We recommend that Smart Metering team undertake research or review existing research to assess the impact of ‘welcomed’ messages on energy consumption.

**Question 5:** *Do you agree that consumers should be able to obtain consumption information free of charge at a useful level of detail and format? How could this be achieved in practice?*

Yes, Which? agrees with the proposal that consumers should be able to obtain access to their consumption data<sup>20</sup>, we recommend that that this is extended to provide consumers with a breakdown of the cost data.

We support the principles that should be able to access their information easily, securely, free of charge and in an appropriate format<sup>21</sup> as the data is the consumers’ data. We support the proposal to undertake further work to determine what would be a useful format and level of tariff<sup>22</sup>.

Furthermore we agree with the view that the consumer should be able to gain access to their data without having to go to their supplier and or another third party<sup>23</sup>. We believe that the data should be held in the smart meter to facilitate this.

<sup>19</sup> 2.24, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>20</sup> 2.29, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>21</sup> 2.29, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>22</sup> 2.29, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>23</sup> 2.33, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

## Prepayment and remote disconnection

### *Supporting consumers' ability to switch*

It is paramount that during the roll-out of smart metering that all consumers retain the ability to switch energy supplier, without penalty.

### Cost recovery and monitoring of costs

**Question 17:** *Do you have any comments on our proposals to prevent upfront charging for the basic model of smart meters and IHDs?*

Which? supports the position that 'levying an upfront, one-off charge may amount to an unfair financial burden', that this approach from suppliers could be detrimental to the success of the roll-out<sup>24</sup> and agrees with the proposal to prohibit suppliers imposing upfront charges<sup>25</sup>. We recognise that there are a number of factors that should encourage to suppliers not to impose up front charges, however it is not clear how these form a prohibition of imposing levies which would imply regulatory underpinning.

### *Government review of costs of environmental programmes*

Clarification is required regarding the possible impact of the Government's<sup>26</sup> consideration of this issue in the wider context of the costs of environmental programmes on cost recovery and monitoring of the costs.

With regard to reporting requirements, we have set out our position in our response to Part one of the Prospectus consultation.

### *Monitoring costs*

Which?'s concerns with regard to costs, is that the current arrangements<sup>27</sup> may not be sufficient to ensure that they are incurred efficiently and that benefits are passed onto consumers. We do believe that reporting roll-out costs on consumers' bills would address these concerns and we support the proposal not to require this<sup>28</sup>.

<sup>24</sup> 5.7, *Smart Metering Implementation Programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>25</sup> 5.8, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>26</sup> 5.16, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>27</sup> A market assessed by the Ofgem to not be fully competitive in the Probe Initial Findings

<sup>28</sup> 5.18 *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

## Other consumer issues

### *Back billing*

For the duration of the smart metering roll-out, as with the current meter replacement arrangements, Which? believes that consumers should not be back billed beyond a 12 months period should it be discovered that the meter being replaced is faulty and the household has been underpaying.

## SMART METETERING IMPLEMENTATION PROGRAMME: DATA PRIVACY AND SECURITY

### General Comments

Which? is generally supportive of the proposals set out in the document. Consumers should have full control over their data and how much they want to disclose (bar the obligations to disclose data to meet regulatory requirements) is a sound one and we support the proposal to give them this control<sup>29</sup>. Which? supports the approach DECC and Ofgem have taken in consulting a wide range of privacy groups<sup>30</sup>, agreement that the data falls under the protection of the Data Protection Act<sup>31</sup>, and that lessons have seemingly been learnt from the failings of other members states in their roll out of the smart meters<sup>32</sup>.

We fully support the principle and proposals around ‘privacy by design’<sup>33</sup> and we believe that ‘transparency by design’ is an extension of this and that it should be considered alongside security and privacy by design. Smart meters should be built to provide an easy and quick method for consumers to access their information which is sent to third parties, rather than the protracted processes of Subject Access Requests which are currently available.

### Default Security Position - opt-in versus opt-out

Consumers will often not utilise the choices made available to them<sup>34</sup>, or even be aware that such choices are there. Therefore it is essential that consumers should be protected at the outset when it comes to detailed personal data being passed to

<sup>29</sup> 3.11, *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010

<sup>30</sup> 4.2, *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010

<sup>31</sup> 2.16-2.21, 3.1 & 3.2, *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010

<sup>32</sup> 2.22-2.30, *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010

<sup>33</sup> 3.3-3.7, *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010

<sup>34</sup> Page 43, Flash Eurobarometer No 225, 2008

third parties. Furthermore, an ‘opt-out of control’<sup>35</sup> is not a natural outcome of the principle that *‘the consumer should be able to determine who has access to their consumption data beyond that which is required to fulfil regulatory duties’*. Opt-out could be circumnavigated by communicating to the consumer that they can opt-out by contacting the supplier - and this notice could be imbedded in pages of the literature which accompany the smart meter in font 6 - and never seen.

### Privacy Charter

Which? supports the principle of a ‘privacy charter’<sup>36</sup>, however it is not clear how this will function in practice. There is a need for clarification as to who will monitor and enforce compliance with the charter, what incentives and penalties will underpin and give strength to the charter. The Governance arrangements for the scheme and its independence from industry will also be key.

### Distinction of role of Ofgem and Information Commissioners Office (ICO)

In the Consumer Protection consultation<sup>37</sup> a distinction is made as to Ofgem’s role with regard to consumer protections however it is not clear how the roles and responsibilities for ensuring data protection compliance fall between Ofgem and the ICO (Information Commissioners Office). The ICO is generally reactionary and already over stretched, to rely on the ICO to appropriately police compliance without an increase in resource is not realistic.

### Collection and Retention of Data

While there is recognition<sup>38</sup> that no data should be collected beyond that which is required to provide the service (in line with the principles of the Data Protection Act), we can not emphasise enough how important this is. In addition, guidance should be given to industry as what would be acceptable retention times for this type of data.

<sup>35</sup> 3.15, *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010

<sup>36</sup> 3.25 & 3.26, *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010

<sup>37</sup> Summary, *Smart Metering implementation programme: Consumer Protection*, DECC and Ofgem, July 2010

<sup>38</sup> 3.8, *Smart Metering implementation programme: Data Privacy and Security*, DECC and Ofgem, July 2010



## SMART METETERING IMPLEMENTATION PROGRAMME: IN-HOME DISPLAY

### Functional Requirements of the IHD

Which? supports the proposed minimum functional requirements for the IHD<sup>39</sup>, however this should also include cost information both in forms of rates and cumulative amounts. As recognised in this consultation, consumers prefer information relating to consumption to be expressed in pound and pence as energy units are poorly understood<sup>40</sup>.

**Question 1:** We welcome views on the level of accuracy which can be achieved and which customers would expect, in particular in relation to consumption in pounds and pence.

#### Electricity

Which? does not accept that the structure of tariffs should limit the quality of the data provided to consumers. Consumers should have access to real time cost data in the form of rates and cumulative information. If the structure of tariffs inhibits this, then we recommend Ofgem and DECC address the structure of the tariffs. Furthermore, we find it unacceptable that it is deemed acceptable that suppliers are able to offer tariffs that a computational unit such as an IHD is unable to interpret.

#### Gas

We acknowledge that the calorific value of the gas supplied will determine the consumption, and so cost, information and that with current dumb meters the calorific value is not determined in real time and that this could impact on the accuracy of data provided to consumers via their IHD. However PPM are able to provide real time<sup>41</sup> consumption feedback in the form of remaining credit to consumers. Which? recommends that industry is encouraged to innovate in this direction and so address the issue of accuracy.

Where it is not possible to ensure that consumers have access to real time<sup>42</sup>, research should be undertaken to determine acceptable and useful parameters of accuracy, e.g. to within 1%.

<sup>39</sup> 2.12, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

<sup>40</sup> 2.13, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

<sup>41</sup> Within the limitations of the battery life of the gas smart meter

<sup>42</sup> Within the limitations of the battery life of the gas smart meter

### *Discounts*

Discounts such as those for paying by direct debit and having an online account form part of the price and therefore should be reflected in the rate and cumulative cost information.

### *Presenting Historical Data*

Which? supports the proposal that consumers should have access to high-level historical data<sup>43</sup>, there is a need to clarify how this high-level data set will be defined.

### *Account and tariff information*

We support the proposal that the IHD should display the costumer's current tariff at a unit price of p/kwh<sup>44</sup>. However as discounts and other factors (e.g. block levels) impact on the price these must also be presented on the display.

**Question 5:** *We welcome evidence on whether portability of IHDs has a significant impact on consumer behavioural change.*

Which? believes that portability of IHDs would support and encourage consumer engagement as it allows consumers to go from room to room reviewing appliances and the impact they are having on energy consumption and costs without having to dash back to the kitchen, for example, to check.

**Question 6:** *Do you agree with the proposed minimum functional requirements for the IHD?*

Which? supports the proposal to require minimum information requirements in the IHDs rolled out with smart meters<sup>45</sup> as stated above it is crucial that accurate cost feedback in the form of rates and cumulative data is provided to the IHD user. Not including cost information on the basis of tariff complexity is not acceptable and we question how any such tariff can be fulfilling the Standards of Conduct criteria of not being overly complex or confusing<sup>46</sup>.

### **Nature of the Mandate on Supplier in relation to the IHD**

<sup>43</sup> 2.17, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

<sup>44</sup> 2.21, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

<sup>45</sup> 2.12, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

<sup>46</sup> *Standards of conduct for suppliers in the retail market*, Ofgem, October 2009



**Question 7:** Do you have any views or evidence relating to whether innovation could be hampered by requiring all displays to be capable of displaying the minimum information set for both fuels?

Which? does not believe that positive innovation will be hampered by requiring displays to meet minimum information standards. Unlike the situation with domestic energy tariffs, these minimum standards should ensure that developments meet minimum quality standards and so a base level of a quality choice.

**Question 8:** Do you agree with the proposals covering the roles of and obligations on suppliers in relation to the IHD?

#### *Dual functionality*

Which? supports the proposal that all IHDs should be capable of displaying the minimum information for both gas and electricity<sup>47</sup>.

#### *Early movers*

Which? supports the proposal that early movers should be given the opportunity to get an IHD at no extra cost<sup>48</sup>. This proposal should be supported with clear guidelines on how this is to be communicated to these consumers and monitoring of the take up of IHDs.

#### *Length of mandate*

Which? has no objection to a one year requirement to provide an IHD<sup>49</sup> where the IHD does not have an enduring functionality that is required for normal use and management of the energy account.

**Which?**

**October 2010**

<sup>47</sup> 3.4, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

<sup>48</sup> 3.10, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010

<sup>49</sup> 3.21, *Smart Metering implementation programme: In-Home Display*, DECC and Ofgem, July 2010