

Consultation Response



Office of Gas and Electricity Markets
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DATE: 13th April 2011
TO: Claire Tyler, Head of Social Policy
RESPONSE BY: Fiona Cochrane, Energy Policy Team Leader

Smart Metering Spring Package- Addressing Consumer Protection Issues

Please find below the response on behalf of Which? to Ofgem's consultation on the Smart Metering Spring Package¹. Which? is supportive of the central objective of this consultation, namely to ensure consumers are adequately protected in response to early moved by suppliers to start to install smart meters ahead of the government's mandated rollout.

Please contact me if you wish to discuss any of this.

Regards

Fiona Cochrane

Energy Policy Team Leader
Which?

¹ Smart Metering Spring Package- Addressing Consumer Protection Issues, Ofgem, 7th February 2011



**For all
consumers**

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EXECUTIVE SUMMARY

About Which?

Which? is an independent, not-for-profit consumer organisation with around 1 million subscribers 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, online services and books. Which? is a consumer champion working to make things better for consumers. Our campaigns make people's lives fairer, simpler and safer.

Which? approach to smart metering

Which? supports the roll-out of smart metering. An end to estimated bills and the opportunity to facilitate a greater understanding of energy consumption are welcomed. Which? believes that the success of the programme, including realising the full benefits, requires consumers to truly be at the heart of the programme.

Which? does not believe that a positive experience for consumers in relation to smart metering will occur without action from Ofgem and Government, and we welcome recognition of this by both the Minister² and Ofgem³. Suppliers' track record in their treatment of consumers, including provision of complex and confusing information and products and serial occurrence of misselling, clearly highlights the need for putting in place a robust framework of protections to drive a positive consumer experience. Anything less would not just leave consumers unprotected, but it could also undermine the success of the programme and the benefits it can bring.

Which? welcomes the intention of the Spring Package to protect consumers in the context of "early movers". With the start of the Government mandated roll-out now scheduled for 2014⁴ and increasing interest, as well as activity, from suppliers to "go early" it is more important than ever that Ofgem puts in place a comprehensive and robust protection framework.

However we do not believe the proposals set out in the consultation are sufficiently comprehensive. It is important that in finalising their proposals Ofgem does not separate issues and protections to be dealt with either by the Prospectus, and ongoing programme, or by the

² *Response to Prospectus Consultation*, DECC, 30th March 2011

³ *Summary, Smart Metering Spring Package- Addressing Consumer Protection Issues*, Ofgem, 7th February 2011

⁴ *Response to Prospectus Consultation*, DECC, 30th March 2011



Spring Package- we do not believe that this reflects the activity of suppliers or what consumers will face. Furthermore, we strongly believe that it would not be appropriate for Ofgem - with its duty to protect consumers - to fail to put in place measures (interim or longer lasting) to address existing or potential areas of consumer detriment while a “full regulatory framework” was in development. For example, data and privacy issues, as with sales and marketing problems, are equally likely to occur whether a consumer gets a supplier with an “early mover” or as part of the mandated roll-out. It is therefore important that Ofgem include provisions to address this as part of the Spring Package.

It is important that the success of the entire smart metering programme is not undermined by poor foresight and a weak consumer protection framework for early installers. Where objections of unnecessary regulatory burden maybe be valid in other sectors the poor performance of suppliers in sales, marketing, information provision in energy supply, together with low levels of trust and the importance of this scheme should more than outweigh any here.

We have set out our responses to the consultation questions as applicable below, in addition we have provided a summary of what Which? believes the Spring Package must deliver.

Sales and Marketing:

- > No marketing, sales or advice on tariffs or other supply related products
- > Suppliers must seek explicit consent from householders in order to market products to householders at the point of installation
- > No conclusion of sales at the point of installation
- > For any and all sales concluded through a follow-up call made either by the householder or supplier, the householder retains a seven-day cooling off period and right to cancel irrespective of the cost of any goods or services purchased.

Data and Privacy

- > Suppliers be required to get explicit fully informed consent (opt-in) to gather data at any frequency greater than weekly or at an appliance level
- > Fully informed, voluntary, written and revocable explicit consent (opt-in) to be gathered for third part access to all data collected
- > Where a smart (or advanced) meter has already been installed and consent was not collected but data is now being collected at a frequency greater than weekly or is being passed to third parties, full informed consent (opt-in) to be sought retrospectively
- > A narrow definition of regulated activities
- > Data should be stored locally and only for as long as required to fulfil the purpose of the scheme (13 months)
- > Creation of a privacy charter that sets out principles to protect privacy



- > Consumers must be properly informed about how they can access their data, what is being collected, for how long and for what purposes
- > Data must be anonymised and safeguards must be in place to avoid identification of consumers based on usage data

Access to product, payment methods and switching

- > There is no reduction in the range of payment methods or tariffs on offer to a consumers
- > Suppliers who “go early” should ensure technical and commercial interoperability processes are in place to support all consumer switching decisions, for example where there is a smart or advanced meter in Prepayment (PPM) mode, the incumbent supplier should provide a service platform than enables the incoming supplier to supply the consumer

Complaints and Redress

- > Complaint recording for smart metering is included in obligations on suppliers recording and reporting practices
- > The scope of the Energy Ombudsman be extended to cover all complaints relating to products or services sold in associate with smart metering, such as for example insulation or IHDs

IHDs

- > Suppliers should be responsible for replacing faulty IHDs beyond a year period where the IHD is required for the normal use of the supply account

RESPONSE TO CONSULTATION QUESTIONS

Chapter 2 - Prepayment and Remote Disconnection

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| Question 6: Do you consider it necessary to explicitly require suppliers to provide the ability to top-up by cash where payment is made through a prepayment meter? |
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Yes, the roll-out of smart meters should not result in any reduction of service for consumers, including payment options. Should there be any question or risk that this may occur, it is important that suppliers should be required to maintain existing options.



Chapter 3 - Privacy

Ofgem's own research has highlighted that data and privacy are areas of concern for consumers⁵. This has also been a contentious issue in the roll-out of smart metering in other countries- most notably in the Netherlands. In reflection of these points and the Government's recently stated position on data and privacy⁶- which we agree with and support- Which? recommends that Ofgem include in the Spring Package proposals to address concerns regarding data and privacy. This should include:

- > Suppliers be required to get explicit fully informed consent (opt-in) to gather data at any frequency greater than weekly or at an appliance level
- > Fully informed, voluntary, written and revocable explicit consent (opt-in) to be gathered for third part access to all data collected
- > Where a smart (or advanced) meter has already been installed and consent was not collected but data is now being collected at a frequency greater than weekly or is being passed to third parties, full informed consent (opt-in) to be sought retrospectively
- > A narrow definition of regulated activities
- > Data should be stored locally and only for as long as required to fulfil the purpose of the scheme (13 months)
- > Creation of a privacy charter that sets out principles to protect privacy
- > Consumers must be properly informed about how they can access their data, what is being collected, for how long and for what purposes
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Chapter 4 - Commercial Interoperability

Which? supports the proposal that the original supplier should offer reasonable and non-discriminatory terms for use of the meter⁷ and that these terms should be transparent⁸. However Which? does not believe that the proposals set out in Chapter 4 go far enough with regard to ensuring that consumers are supported in all their switching decisions.

The risks, obligations and any associated costs should fall onto the supplier who is choosing to "go early". As stated above, there should no reduction in service, ability or relative ease with

⁵ Ofgem Consumer First Panel Year 3- 2010/2011, January 2011

⁶ *Response to Prospectus Consultation*, DECC, 30th March 2011

⁷ 4.17, *Smart Metering Spring Package- Addressing Consumer Protection Issues*, Ofgem, 7th February 2011

⁸ 4.25, *Smart Metering Spring Package- Addressing Consumer Protection Issues*, Ofgem, 7th February 2011



which a consumer can interact with the market and this should be irrespective of the type of account of payment method they use.

The ability to switch is a fundamental proponent of the domestic retail market, any activity that impinges on the ease or ability of a consumer to do so must be considered as attempting to undermine the market. Furthermore this sits against a backdrop of low levels of participation and enthusiasm for the market⁹, as well as the low levels of trust of suppliers¹⁰. Should a supplier chose to install a smart meter that could exacerbate this then they - the supplier - must ensure that they have mechanisms in place that will support both technical and commercial interoperability and so consequently, consumer switching decisions.

For example should there be a scenario where a supplier chose to install a smart meter in a credit customer's house and the customer then elects to change to a PPM account with the same supplier, and then the customer chooses to move suppliers. The original supplier should support use of the meter for the customer in PPM mode for the incoming supplier. As set out above the terms should be reasonable and non-discriminatory to the extent that they are not additional to those already incurred by an incoming supplier and are at no extra cost to the consumer. The original supplier, in this scenario, has chosen to install and offer smart meters ahead of the interoperability specifications having been agreed and as would be expected of a competitive market, they should bear the risk and any costs of such an activity.

Chapter 5 - Other Elements of Consumer Protection

The consultation sets out that Ofgem cannot see a case a for additional licence obligations in the short term to address issues of standards for IHDs, provision of appropriate advice; back-billing and the importance of no upfront charging¹¹. In light of the increasing interest and activity of supplier to go early and the new roll-out date of 2014 Which? recommends Ofgem re-examine these issues and case for additional protection and incorporates into the Spring Package a requirement for suppliers to replace and repair IHDs where they are requires for the normal and proper use of the supply account.

Sales and Marketing at Point of Installation

⁹ 3. Update on Consumer Switching, *Update on Probe Monitoring*, Ofgem, July 2010

¹⁰ Which? research November 2010- 2,350 people were asked to what extent they considered organisations to be trustworthy, energy suppliers received a Trust Score of 22%, banks were higher at 24%.

¹¹ 5.1-5.5, Smart Metering Spring Package- Addressing Consumer Protection Issues, Ofgem, 7th February 2011



Which? does not believe it is adequate or appropriate for Ofgem to leave concerns regarding sales and marketing at the point of installation in the hands of the Energy Retail Association (ERA) or a Code^{12,13} that will have no required compliance prior to 2014¹⁴.

The Code of Installation and Interim Measures

Which? has a number of concerns with the draft Code ranging from a lack of governance framework, to vague wording, to a lack of clarity as to how supplier actions at the installation visit would comply with, or even undermine, the doorstep¹⁵ and distance selling regulations¹⁶. We have fed these concerns back to ERA and we will continue to engage. However there are a number of gaps in the Code as it currently standards as well as a lack of interim protections- which is what we believe Ofgem must address through the Spring Package.

On going poor practice

Our concerns are based on existing poor practice and highly questionable effectiveness of self regulation in this sector.

For example, the EnergySure Code¹⁷ is aimed at addressing misselling at the doorstep however since the establishment of the Code Ofgem has fined nPower for misselling¹⁸, has had to revise related license conditions¹⁹ and Ofgem currently investigating four of the Big 6 on the grounds of misselling²⁰.

Beyond the sale of tariffs, Which? has serious concerns regarding the provision of advice and any consequential sales and marketing activity of energy efficiency or microgeneration related products as two undercover investigations conducted by Which? illustrate.

Which? conducted an under-cover field investigation of solar thermal selling in 2010²¹. This snapshot investigation showed problems of poor site inspection, misleading claims about the

¹² ERA Smart Metering Installation Code of Practice

¹³ 5.9, Smart Metering Spring Package- Addressing Consumer Protection Issues, Ofgem, 7th February 2011

¹⁴ Roll-out Strategy Smart Metering Implementation Programme, DECC, March 2011

¹⁵ Cancellation of Contracts made in a Consumer's Home or Place of Work etc Regulations 2008

¹⁶ The Consumer Protection (Distance Selling) Regulations 2000

¹⁷ www.energy-retail.org.uk/salespractice

¹⁸ <http://www.ofgem.gov.uk/Media/PressRel/Documents1/221208OFGEM38.pdf>

¹⁹ This includes revisions as part of the Energy Supply Prove

²⁰ http://www.ofgem.gov.uk/Media/PressRel/Documents1/Misselling_Press%20Release%202Sept.pdf

²¹ Mysteries of the Solar System, Which? Magazine, May 2010



savings you can make and hard-sell tactics. Some of the 14 companies investigated were MCS-accredited yet the results included:

- > Ten out of the 14 companies investigated made misleading claims about the savings that could be made. E.g. double glazing giant Everest claimed that savings would be about six times larger than our estimate.
- > Unfair sales tactics were used by several e.g. 28% was the biggest discount offered for signing up on the spot.
- > Common to all 14 companies investigated was the low level of site inspection of the mystery shopper's house.

More recently the second investigation into cavity wall insulation provided additional evidence of poor practice. The investigation invited assessments by a number of household brands- including energy suppliers- to assess and make a recommendation for a cavity wall installation in a house deemed unsuitable for cavity wall by a chartered surveyor²². The investigation found that:

- > Not one of the eight companies carried out at least a “satisfactory” assessment of the property
- > All eight said the property was suitable for cavity wall insulation when Which?’s independent expert said it was not
- > There was a gap of £279 between the cheapest and most expensive quotes to insulate the property.

The wrong sort of incentive

In addition, the structure of a number of remuneration packages currently being advertised to prospective smart meter installers where salaries can be topped up by for example 16% based on incentives²³. Should these incentives be based on sales rather than good customer service or satisfaction outcomes we are seriously concerned that it will drive poor practices.

Addressing the gaps

Ofgem's Spring Package can address these concerns and we recommend that at a minimum it sets out:

- > **Ban on the sale of tariffs at the point of installation-** the history of misselling and Ofgem's ongoing investigation provide Which? with no confidence that consumers best interests of that of the scheme will be served by supporting this.
- > **Marketing of energy efficiency related products to be limited to provision of information-** in the form of leaflets

²² Insulation- The Price Gap, The Advice Gap, Which? Magazine, April 2011

²³ An example includes <http://jobview.monster.co.uk/GetJob.aspx?JobID=98141124&from=indeed>



- > **Sale of any products of less than £35.00 to be covered by an extension of the Consumer Protection Regulation²⁴**- these are currently not covered and as such consumers have no redress
- > **Clarifying the lines between “advice”, “marketing” and “offer” and providing extra protection is required**- How these are interpreted by suppliers, installers and consumers; together with how and where an offer is made - whether within the home in person or over phone- create a substantial grey area between the protections provided by the “doorstep”²⁵ and “distance”²⁶ selling regulations. The consequence of which is the impact on the consumers right to cancel.
- > **Widening the scope of the Energy Ombudsman** - There is currently no route for redress for products and services from a supplier that are not related to a supply account, such as insulation or IHDs.

Which?
April 2011

²⁴Consumer Protection from Unfair Trading Regulations 2008

²⁵ Cancellation of Contracts made in a Consumer’s Home or Place of Work etc Regulations 2008

²⁶The Consumer Protection (Distance Selling) Regulations 2000