

Consumer Futures Consultation Response to Ofgem's Consultation on extending the existing smart meter framework for data access and privacy to Smart-Type Meters and Advanced Meters

February 2014

If you require this publication in an alternative format please contact us.

**For the deaf, hard of hearing or speech impaired, contact Consumer Futures via Text Relay:
From a textphone call 18001 020 7799 7900**

London

Victoria House
Southampton Row
London
WC1B 4AD
Tel: 020 7799 7900

Glasgow

Royal Exchange House
100 Queen Street
Glasgow
G1 3DN
Tel: 0141 226 5261

Cardiff

Room 3.90, 3rd Floor,
Companies House
Crown Way
Cardiff, CF14 3UZ
Tel: 029 2078 7100

Belfast

Elizabeth House
116 Holywood Road
Belfast
BT4 1NY
Tel: 028 9067 4833

Introduction

Consumer Futures welcomes the opportunity to respond to this consultation, the output of which we hope will be stronger protection and reassurance for energy consumers who have smart-type meters in their homes, bringing their experience in line with those consumers who have SMETS-compliant meters. Ensuring that all consumers are treated equally with regard to smart metering will be essential as any other approach risks unnecessary detriment for the 800,000 consumers who have had smart-like meters installed as well as significant potential reputational damage to the smart metering rollout as a whole. Any exemptions or inconsistencies are unhelpful and arguably run at odds with the rationale behind the existing privacy framework.

We know from our conversations with consumers that the vast majority of those who have a smart-type meter installed are unaware of the distinction between their meter and a SMETS compliant meter and as such would expect any and all protections afforded to those consumers with compliant meters to be applicable to them. This is entirely reasonable assumption for consumers to have made, particularly as many smart-type meters are marketed at the time of installation by suppliers as 'smart meters'. A disparity between protections for the two meter types will not only generate inequality, it will also cause confusion among consumers unaware of the distinction and what kind of meter they may have.

This lack of awareness has a knock-on effect for any advice provided to consumers regarding smart meters. In a world where a consumer cannot easily determine whether they have a smart or smart-type meter advice agencies like the Citizen's Advice Consumer Service will be unable to offer accurate guidance to consumers who contact them as neither party will be able to determine what kind of meter the consumer has and therefore what protections apply to them. All of these issues apply equally to the protections and guarantees provided in documents like the SMICoP as they do to those around data access and privacy.

It should also be noted that a key factor in any work in this area will be about making it clear to consumers what they are or are not agreeing to. We know that consumers distrust small print and extensive terms and conditions and it will be key not only to implement clear and consistent opt-in and opt-out regulations but also to ensure that consumers are engaged with and aware of their choices. Too often consumers find that they have agreed to something without realising it or have not understood what it is they have agreed to or the implications of this decision. We would expect energy suppliers to ensure that opt-in and opt-out mechanisms are not buried in large documents, placed in such a way that consumers can opt-in without realising they had a choice or phrased such that consumers are unable to understand correctly what they are agreeing to.

While promptly addressing the current disparity in protections is vital there are also other significant gaps in this policy area that Ofgem will need to ensure are addressed, these include:

- The monitoring and enforcement of the new data privacy and access framework. It is unclear at what stage and how, if at all, suppliers are notifying customers of their data rights and choices. We are not aware that suppliers are clearly explaining the risks and benefits of different decisions in an independent way so that requirements around 'full disclosure' are achieved. Customer's decisions on whether to share data

should be based on a clear understanding of the consequences – ‘unambiguous consent’. We continue to query how Ofgem plans to monitor the new rules and in particular how the roles and responsibilities will be shared between Ofgem and the Information Commissioner’s Office (ICO).

- Clarifying how Ofgem will link proposed work on data with EU Regulations on data, particularly those currently under development.
- Clarifying the current complaint handling and redress processes for energy data. We are unclear where customers should go for help if they feel a breach has taken place and what happens thereafter. If a consumer is concerned about how their supplier or a third party is handling their data their first contact point should not be the organisation they are concerned is not adhering to the rules.
- Ensuring that consumers are able to use switching sites with proportionate disclosure of personal information and that suppliers provide appropriate benefits in exchange for any data shared by consumers.
- Ensuring parity of protections between domestic and micro-business customers.
- Ensuring only complex data based services are chargeable and where they are that charges are cost reflective and fair.

Question Responses

Q1: Please provide views on the different approaches to extending the data access and privacy framework discussed in this chapter. In particular, which is your preferred approach and why?

We agree that the Privacy Requirements’ obligations should be extended to those customers with smart-type meters and the reasoning for it. Regarding the specific approaches suggested we strongly believe that the policies for consumers with smart-like meters should be aligned with those established for SMETS-compliant smart meters. Any other approach would be unfair, inconsistent, and arguably at odds with the rationale behind DECC’s data privacy framework which is designed to give all customers, choice and control over how their data is used. We also believe that the current imbalance in protections has the potential to create unnecessary vulnerability. It is arguably therefore also at odds with Ofgem’s own responsibilities and vulnerability strategy in this area. We also query if it is consistent with existing data privacy legislation around informed consent and proposals being discussed as part of the draft EU Regulation in this area. As we understand it, the Department for Energy and Climate Change (DECC) is also supportive of this move but did not have powers under the Programme to extend protections to non-compliant meters.

Ofgem is correct to identify the importance of incentivising energy suppliers to offer improved services in return for what is potentially valuable and personal data – but this should be a customer choice, an informed choice based on awareness of both the risks and benefits. In addition, there is considerable reputational risk to the rollout Programme from failure to take action in this area with the resulting impact being higher costs and the failure to realise benefits.

As such we would not support proposed exceptions whereby detailed data collection is

undertaken on an opt-out rather than opt-in basis. This is the case both for consumers who are yet to have a smart-type meter installed and those who already have one.

Q2 Does the licence drafting at Appendices 2 and 3 achieve our policy aims?

It appears to yes

Q3 We have questioned whether a consumer who already has a Smart-Type Meter being approached again regarding their choices for data privacy could create a poor experience. Relevant to this is the nature of the Consultation on extending the existing smart meter framework for data access and privacy to Smart-Type Meters and Advanced Meters conversation on their choices they had at installation. If you think a more flexible framework (i.e. opt-out consent permissible if accessing Detailed Data) is necessary to prevent poor consumer experience, please provide evidence that the consumer would be unnecessarily inconvenienced by a further conversation regarding their choices.

As noted in our response to question 1, we do not think that those consumers who already have smart-type meters should be treated differently to those consumers who have a smart meter or future consumers who receive a smart-type meter. An additional conversation with the consumer about data is preferable to these consumers being left without the same protections as other consumers which, if handled properly should not significantly add to the risk of 'noise and confusion' referenced in the consultation document.

The consultation document raises the potential issue for suppliers if they have to "have a further discussion with their customers regarding use of data" due to a switch from opt-out to opt-in. We are of the view that this should be viewed as an opportunity rather than a threat. Recent research undertaken by Consumer Futures in conjunction with Energy UK examining consumer needs from a data document on smart metering has demonstrated the importance to consumers of these very discussions. This would represent a significant opportunity to communicate with consumers who had smart-type meters installed and are likely to have far less of an understanding of what options, protections and choices are available to them regarding their data.

In many cases any initial conversation about data will not only have taken place in the context of fewer extant protections but was also likely to have been based on incomplete or prototype supplier communication materials and messaging lines. In some cases it may well have not occurred at all. Through the Citizen's Advice Consumer Service we have seen cases where consumers have no awareness of what data their smart (or more frequently smart-type) meter is collecting or even how the meter is different from a standard meter.

As such this should provide an opportunity for suppliers to clearly explain what data they are and are not collecting, what added consumer benefit this collection may provide and what choices customers are able to make about it. This will also provide an opportunity for

consumers to reevaluate any decisions they may have made previously in light of new, clearer communications. As the consultation document notes consumers with compliant smart meters should expect regular updates on what data is being collected and how it is being used anyway so this should not represent a significant burden for suppliers.

With regard to the potential for some consumers to lose functionality being provided by their supplier due to their accessing more detailed data we would expect that suppliers would have adopted a best practice approach of informing their customers what data they are collecting, why they are collecting it and what services it enables. Where this hasn't happened the change will represent an opportunity for suppliers to address this oversight.

It is worth noting that we are not currently aware of any services offered by GB energy suppliers to domestic consumers outside of specific trials that would need to make use of such granular data to provide a service. For example 'smart energy reports' provided by British Gas to their smart meter consumers are based on daily (and in some cases weekly) readings and it is our understanding following a statutory information request that they already operate half-hourly data analytics services on an opt-in basis. Having said this evidence from British Gas customers indicate that they often receive reports based on much less granular data. Of course this does not mean that more detailed data is not being collected by suppliers for their own analysis and use but the current benefit being derived by consumers appears to be limited.

Q4 If we fully extended the Privacy Requirements, what would the impact on consumers be in terms of loss of services?

As outlined in our response to question 1 we are not aware of any services currently on offer that make use of detailed data and as such suspect that the impact will be minimal. Should there be services that do make use of this data we are of the view that the opportunity to have a conversation with consumers about how their data is used, what detailed data is collected, and what benefits consumers are able to derive from it, would be a beneficial and necessary step that would outweigh the detriment of any service losses. As noted, in our response to previous consultations on data privacy and access – we do not think the case has yet been made by suppliers for this level of data granularity¹. All customers should have choice and control over how their information is used and receive proportionate benefits in exchange for their data when they share it.

Q5 If we introduce a flexible framework, what level of consent (ie opt-in or opt-out) should suppliers be required to obtain from domestic consumers before using any data for Marketing purposes?

As outlined throughout this response we are not of the view that a 'flexible' approach is necessary or helpful for those consumers who already have a smart-like meter installed. As noted in the consultation document consumers are particularly concerned about their data

1

<http://webarchive.nationalarchives.gov.uk/20130503103454/http://www.consumerfocus.org.uk/files/2011/12/Consumer-Focus-response-to-DECC's-call-for-evidence-on-data-access-and-privacy.pdf>

being used for marketing purposes and their receiving unsolicited or unwanted marketing as a result. This is a very sensitive area with implications for the success of the smart meter rollout as a whole as if smart (or smart-like) meters develop a reputation for allowing or enabling unsolicited advertising consumers may well distrust and be less likely to accept smart meters in their homes. As such we would advocate for an opt-in policy regarding the use of data for marketing purposes, this will also help ensure that suppliers offer significant enough benefits in return for an opt-in decision from the consumer. It should be emphasised that the vast majority of consumers are unaware of any distinction between smart-like and smart meters and as such reputational damage to smart-like meters will be indistinct from reputational damage to the smart metering programme more generally.

Q6 If we introduce a flexible framework, do you consider there should be a grace period, after which suppliers would be required to get opt-in consent for Detailed Data? What would be an appropriate amount of time? Please provide reasons for your answers.

Again, as outlined throughout this response we are not of the view that a 'flexible' approach is necessary or appropriate for those consumers who already have a smart-like meter installed. However in the event that one were applied the need for a grace period would vary significantly dependent on when such a regulation was to take effect. We would expect suppliers to need some time to contact consumers before changes were made that might result in a – from the consumer perspective – unexplained change to how their data is handled. However at this point suppliers who have rolled out smart or smart-like meters should already have established means to communicate with their customers about how their data is handled and any changes to this and should also be providing regular reports to their customers about how their data is being used and why so the process should be fairly straightforward. Elsewhere in the consultation document a timescale of 56 days is suggested between the introduction of any changes and their going into effect. We feel that this should represent enough time for suppliers to inform consumers of any changes, particularly as they will have been aware of the potential for a forthcoming change before the 56 day period.

Q7 We invite comments on our proposal to extend the Privacy Requirements to cover Smart-Type Meters installed at micro businesses.

Consumer Futures is of the view that many of the issues facing microbusinesses are essentially the same as those for domestic consumers and as such believe that the protections should be extended to cover them too. This includes privacy concerns, unsolicited marketing; and potentially greater risks in terms of industry profiling which could restrict choices and increase costs; and security. This will also help simplify establishing who is covered by the protections rather than generating a situation where there is potential ambiguity, particularly as we already see many domestic consumers who live, for example, in flats above shops whose electricity is provided on a non-domestic contract. The consultation document includes reference to some of the reasoning applied by DECC when consulting on privacy requirements which rightly flags that privacy concerns are likely to apply in much the same way as they do to domestic consumers.

Q8 Do you agree with our proposal to not extend the existing data access and privacy arrangements that apply to network companies for premises with smart meters to network companies for premises with SmartType Meters?.

We do not agree with this proposal. There seems to be no downside to extending protections for consumers across energy suppliers and networks. The consultation document notes that to access consumer data, networks would need to use the DCC and that because a smart-like meter would likely not work with the DCC this issue becomes moot. There remains however some uncertainty as to precisely which meters will be enrolled into the DCC and the degree to which different meters may be embedded into it – for example there is talk of ring-fencing certain meter types for security reasons while still allowing them access to some DCC services.

Our conversations with suppliers also indicate differences of opinion regarding which meters can be considered SMETS-compliant and which meters have the potential to be upgraded to SMETS-compliance via firmware updates or other future modifications. These disagreements are carrying over into current discussion around DCC enrolment criteria. In an environment where it is possible that a smart-like meter could be connected to the DCC in some form, and where there is no potential detriment or risk to requiring networks to apply the same protections to smart-like consumers as those with SMETS-compliant meters, we take the view that the protections should be extended in line with a precautionary principle. If it is the case that networks would not be able to access personal data from smart-like meters then extending the protections would place no extra obligations or requirements on networks anyway.

Q9 Do you agree that 56 days is sufficient for suppliers to become compliant with their new obligations?

As outlined in our response to question 6 we feel that this is an adequate amount of time given that we would expect suppliers to already be in a position to communicate with their smart meter customers about how their data is being used and be providing regular updates on it as a matter of course.

Q10 If we extend the Privacy Requirements, are there any reasons why suppliers wouldn't be able to comply based on the metering stock it would apply to?

Not that we are aware of

Q11 We welcome views and evidence from stakeholders on whether consideration should be given to extending the existing SMICoP rules to the installation of Smart-Type Meters.

Yes, we fully support this. While we would not expect energy suppliers to still be installing many smart-type meters now that SMETS1 has been specified it would be appropriate to extend SMICoP rules to any installation of smart-type meters for the reasons outlined throughout this consultation response regarding data.

As has been noted previously consumers are not aware of the distinction between smart-like and smart (SMETS-compliant) meters. Energy suppliers have consistently described smart-like meters as 'smart meters' in their communications with consumers and as such it is entirely reasonable that consumers assume that these meters are smart meters. In this context these consumers will reasonably assume that any smart-protections or requirements (such as the SMICoP) will apply to them. The fact that they are not currently covered by such protections is an oversight we are glad Ofgem is seeking to address, including SMICoP coverage should clearly be part of this.

There is potential for domestic consumers to have smart-like meters up until 2020 when they will need to be replaced. To not have these consumers served and protected in the same way as other consumers because they are early adopters is counter-intuitive and risks a significant negative impact on the wider smart meter rollout as there is potential for a narrative of unequal and inconsistent treatment of smart consumers to develop. We would also once again note the issues such an inconsistency causes for advice provision, an area which will become all the more critical with the launch of the Central Delivery Body and the likely increase in media attention around smart meters that will follow. If consumers are told to expect certain things based on the content of the SMICoP and these are not delivered or there are exemptions there is a significant likelihood of a much wider reputational risk.