



Information Commissioner's Office

The Information Commissioner's response to Ofgem's consultation regarding default tariffs for domestic consumers at the end of fixed-term contracts

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 ("DPA"), the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations ("EIR") and the Privacy and Electronic Communications Regulations 2003 ("PECR"). She is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

It should be noted that data protection laws are undergoing significant reform at the present time and the General Data Protection Regulation (GDPR) will take effect in the UK from 25 May 2018. Laws concerned with electronic direct marketing are also undergoing reform and this may lead to changes to PECR.

The Information Commissioner welcomes the opportunity to respond to Ofgem's consultation on the proposal to enable suppliers to place domestic consumers on follow on default tariffs at the end of fixed-term contracts. The Commissioner's response is restricted to those areas that fall within her regulatory remit.

The consultation document proposes that individuals will receive prompts when their contractual terms are coming to an end and information about 'roll-over' terms when contracts have already expired. The content of such prompts will need to be carefully considered if they are to be sent without engaging the direct marketing provisions of the DPA/GDPR and, if the prompts are to be sent electronically, the PECR/forthcoming ePrivacy Regulation.

The DPA defines direct marketing as being the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals. This includes the promotion of products, services, goods, aims or ideals. Under the DPA individuals have the right to require that organisations do not use their personal data for direct marketing purposes. If the content of the prompts is marketing, then any

sending of those prompts will need to comply with the law, including the right to prevent processing for direct marketing.

It is our view that the content would need to be neutral and informative, and not promote any particular service, provider or seek to raise the sender's own profile.