



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to DECC's call for evidence on data access and privacy

October 2011

About Consumer Focus

Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy-makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

Our response

Consumer Focus welcomes the opportunity to respond to this call for evidence on data access and privacy. We are broadly supportive of the Government's approach to privacy to date. This includes the decision to embed privacy by design into the smart metering programme and the commitment that customers should have a choice about how their smart metering data is used and by whom, except where it is required to fulfil regulated duties. The proposal to define regulated duties narrowly is in our view appropriate. We continue to assert that industry has not yet made the case for requiring every customer's individual half hourly data and more granular reads to fulfil its duties.

We strongly support sector-specific regulation which could help to address many of the weaknesses in the current data privacy framework. We recognise that any approach will need some flexibility to take account of market developments. Particular work is required around how customers are able to make informed decisions about their personal data and how it is used. This is especially the case given the challenge of raising customer awareness of the risks on the one hand, so they can take steps to mitigate them, while maximising consumer engagement on the other.

Consumer Focus strongly supports the commitment to enable consumers to share their consumption data easily with other parties, should they wish to do so but more work is needed around how this is achieved in practice. Approaches on data access need to be joined up with the Department for Business and Skills' (BIS') MiData project. It is essential that suppliers do not become the de-facto data controllers. This would limit competition and innovation in supply and other emerging markets with potentially negative impacts on prices, customer service and choice.

We continue to have concerns that many small businesses are charged to access to their own energy consumption data – in one instance, 52p a day for data via an online portal – and therefore face barriers to accessing the energy efficiency benefits of smart metering. More work is needed on the needs of small businesses more generally.

We urge the Department for Energy and Climate Change (DECC) to seek legal advice on the impact of human rights legislation on the scope of data collection that is permissible. We query if half hourly collection would fail Article 8 of the European Convention of Human Rights (HCHR) on the same counts as previous legislation in the Netherlands. We recommend that a human rights legislation test carried out on any proposed GB policy, and we could urge DECC to commission/pay for such a test if it hasn't done so already.

We look forward to continuing to work with Government, industry and wider stakeholders on the development of the Privacy Framework – in particular going forward the Privacy Charter and the Smart Energy Code. For more information on our work on privacy and previous submissions please visit <http://bit.ly/ugjWwq>

Question 1: Please submit any further evidence, such as surveys or consumer research, regarding privacy issues and smart metering. In particular is there evidence available about the availability of daily versus half hourly-data?

As noted in Consumer Focus's response of October 2010 on data privacy and security, there is a strong body of evidence from other sectors highlighting customer concerns around privacy, data access and use¹. Consumer attitudes towards privacy are complex with some customers very concerned about use of their personal data, and others more comfortable with sharing information in the digital age.

We are aware that to date in GB there have been very few public concerns voiced specifically about smart metering data but the potential for this to become an issue that jeopardises consumer engagement and results in customer detriment should not be underestimated.

Energy suppliers have anecdotally reported low levels of customer concerns and Consumer Direct has only received a couple of calls about privacy. This is no doubt in part due to the lack of awareness that smart meters will result in a step change in the granularity of data produced and the implications of that. Also, consumer and privacy groups in GB have committed to work with Government and industry to ensure that the right protections are put in place to safeguard customers and help maximise consumer engagement. This has meant that contrary to other places, such as the Netherlands, or parts of California where concerns about 'spy in the home' have contributed towards considerable consumer backlash, there has been little media and negligible campaigning activity in GB.

Low levels of consumer concerns should be seen as a positive indictment of DECC's proactive and preventative approach to date, rather than misinterpreted as meaning privacy is not an issue or a potential issue for GB consumers.

The consultation reports that Ofgem's Consumer First Panel found that most customers were not unduly concerned about suppliers or network companies having access to their consumption data. Our discussions with the panel researchers found that at no stage during the research were customers informed of the risks, ie the potential for uses of data at this level of granularity and the impact that might have. This study, as with many, does not therefore reflect how customers might feel if they were fully aware of the possible detriment. While we welcome DECC considering customer views when deciding the framework, care must be taken to ensure that these would in fact be customer attitudes should they have greater awareness of the risks².

In addition, as noted, Government needs to ensure that the policies it introduces are lawful. The framework that the Government establishes must be compatible with the requirements of the Human Rights Act 1998. This is particularly the case with the right to respect for private and family life where any interference needs to be justified. We urge DECC to seek a legal opinion on access to half hourly and more granular data in particular sooner rather than later in the decision making process. This may well be the overriding factor to determine policy decisions.

¹ Consumer Focus response to Smart Metering Implementation Programme: Data privacy and security, October 2010 <http://bit.ly/ud2eeD> (PDF 975KB)

² Ibid

A summary of key studies and research of which we are aware is below:

- Consumer Focus research *Private lives: a people's inquiry into personal information* (2010)³, found that consumers have varying degrees of tolerance towards data sharing depending on the area in question (so health was the most important in terms of safeguarding privacy). However, even when consumers are relatively tolerant they absolutely want to know and understand what is going on, so transparency is essential. They want to exercise control over whether or not their data is shared or collected or not, and to be able to change their minds according to circumstances. Young people in particular are increasingly aware that their data has a commercial value and want something in exchange for it, rather than companies having default access
- IBM's UK consumer survey (2010) found that 42 per cent of people will share their data to manage energy and bills; 21 per cent will not and 16 per cent will not share data for any purpose⁴
- Which?'s research (May 2011) explored customers willingness to share data with different parties and consumer concerns. A key finding of the research was that more than seven in ten members of the public (71 per cent) prefer suppliers to access their data weekly or less often⁵
- Accenture's research (2011) explores customers' willingness to allow suppliers to share data with third parties. It found that if consumers perceive value, nearly half (48 per cent) would be comfortable with opt-in and share their personal usage data with third parties, if it would help them save on their electricity bill. Higher proportions of younger respondents and low income earners were reluctant to share this data⁶
- Navetas's smart meter research (May 2010) found that 49 per cent of consumers were happy to share information on appliance consumption with their energy provider, 10 per cent with other companies, with 39 per cent saying that they would rather their information be kept within their home⁷
- The Information Commissioner's Office's annual tracking report on individual attitudes and awareness of data protection (2009) shows an overwhelming majority of respondents are concerned about how their personal information is handled (93 per cent of respondents are concerned about the protection of people's information – up 23 per cent since 2004)⁸
- Evidence from other sectors shows that consumers' concerns over safety of personal data may undermine their confidence to engage in the use of new technologies, such as e-commerce or online public services. There is no reason to suggest attitudes towards engagement with smart metering will not be the same⁹

³ Demos research, supported by Consumer Focus and the ICO examined, through ground-breaking deliberative research methodology over several weeks, people's attitudes to information privacy linked to communication data, targeted advertising and health records. Participants learned first about the issues in depth from experts (including industry), and then discussed, came to conclusions and made recommendations

⁴ UK Consumer Survey, 2010, 473 recipients <http://bit.ly/uLesDg> (PDF 797KB)

⁵ <http://bit.ly/sIY8bn> (PDF 456KB)

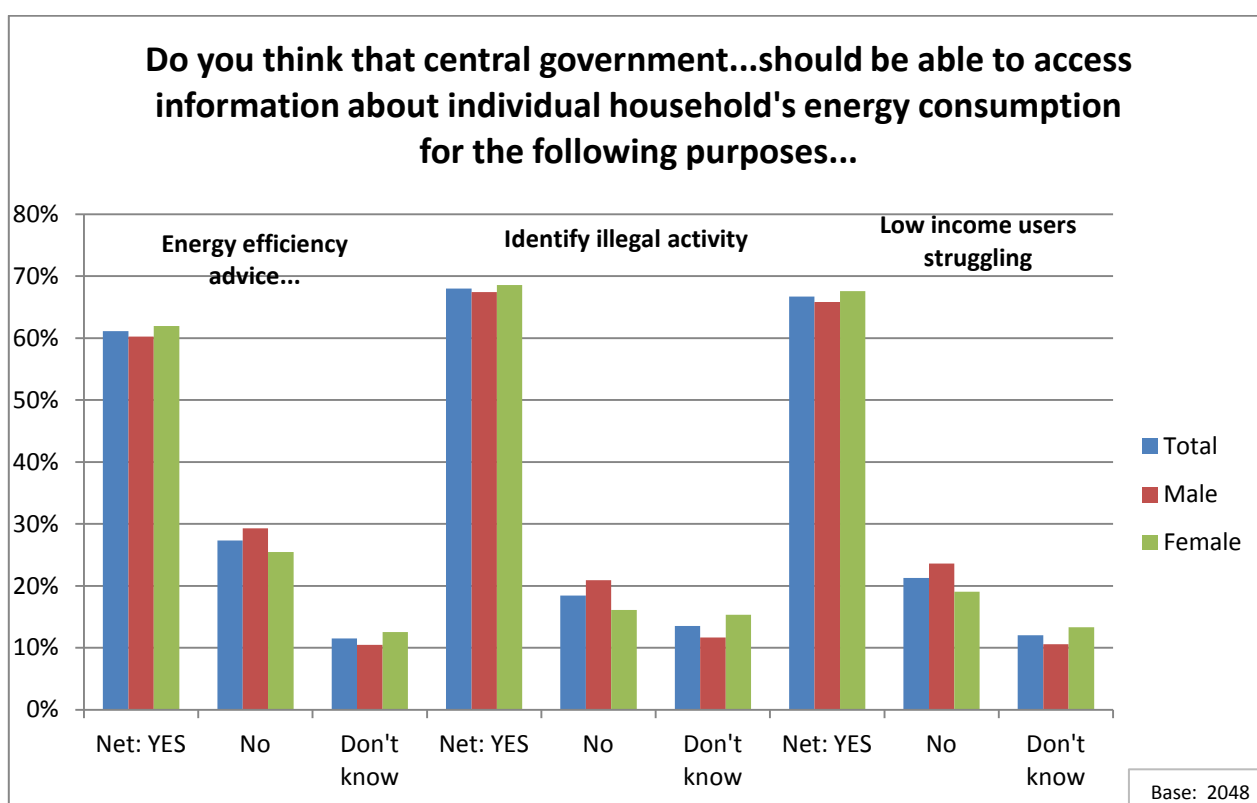
⁶ Revealing the values of the New Energy Consumer. Accenture end-consumer observatory on electricity management 2011, p.33

⁷ Navetas Smart Meter Evaluation. Prepared by Optimisa Research, May 2010

⁸ ICO Annual Track 2009. 4.1 and 4.2

⁹ See for example Office of Fair Trading recent study of e-commerce that confirms some of these concerns <http://bit.ly/aaeRZz>

- Consumer Focus research (January 2011)¹⁰ found that 17 per cent of customers were not interested in receiving any kind of messages on their in home display, even energy efficiency information or emergency messages such as planned power cuts. Of those against, in an unprompted free text box, 6 per cent said this was because it 'feels like Big Brother'; and 36 per cent because of they didn't want unsolicited approaches or would feel bombarded and hassled in their own home¹¹
- Consumer Focus's online omnibus research (March 2010) found that around two-thirds of consumers thought that central government or a government body should be able to access information about individual householder's energy consumption to target energy efficiency advice at customers, to tackle illegal activity, and target assistance at low income customers who may be struggling to afford to pay their bills. Under half were willing to share their own data



- The German Federation of Consumer Organisations, which has a similar status to Consumer Focus,¹² carried out empirical research to investigate consumer attitudes to smart meters:
 - More than half of the German population has never heard of digital power meters, and the term smart meter is practically completely unknown. But once the concept was explained, only 20 per cent remained sceptical about roll-out

¹⁰ The Omnibus research was carried out by TNS Research International on behalf of Consumer Focus in January 2011. A sample size of 2,049 adults were surveyed in face-to-face interviews across Great Britain, comprised of a representative sample across all social and income groups.

¹¹ Ibid

¹² This was both qualitative and quantitative research <http://bit.ly/tfGw2F> (PDF 31.9KB)

- More than half of German consumers spontaneously mentioned disadvantages of digital power meters: the main fear is to become a 'transparent customer', especially if data protection laws are not sufficiently strict
- Main (prompted) consumer concern is that electricity providers could take advantage of detailed customer profiles to purposely raise electricity rates during specific times of the day

Question 2: To what extent would different rules for access to data between suppliers and third parties be expected to impact on the development of an energy services market (in terms of product and tariff innovation and/or entry to the energy market by third parties)? What are the particular data uses to which these concerns apply?

Consumer Focus has consistently raised concerns about the lack of competition in the energy supply market and the knock-on effects in terms of poor customer service and higher energy prices. The roll-out of smart metering could help improve competition, encouraging new entrants into the market, as opportunities arise for companies to compete not only on price of supply, but also a more diverse range of smart and energy efficiency products and services. Accenture research indicates that 68 per cent of UK customers would consider purchasing their electricity, energy-efficiency products/and or related services from general retailers, phone companies, cable providers or online sites¹³. Younger people in particular were more likely to consider alternatives to their utility company to supply their electricity.

Encouraging non-utilities into the energy services market is also arguably important as research has consistently shown low levels of trust in energy suppliers. Consumer Focus research for example found that only 26 per cent of customers trusted their electricity supplier to help them save money on their energy bills and go green, with confidence in gas companies even lower at 23 per cent¹⁴. This compared to 31 per cent of customers trusting online price comparison sites. Similarly Accenture's 2011 research found that only 16 per cent of UK customers trust their utility to inform them about actions they can take to optimise their electricity consumption, down from 17 per cent in the previous year. There may therefore be particular advantages, in terms of consumer engagement and behaviour change from encouraging new entrants into this emerging market. Given that £4.6 billion¹⁵ of the customer benefits from smart metering are meant to come from consumers using smart data to reduce their energy consumption, this is significant.

Energy suppliers already have an unfair competitive advantage in the energy products market, given their obligations under the Carbon Emissions Reduction Target and the upcoming Energy Company Obligation. The proposal to allow suppliers to be able to sell during the face-to-face visit will further exacerbate this.

Potential third-party service providers report that in order to provide energy efficiency products and services in particular, you need economies of scale, ie hundreds of thousands if not millions of customers. Suppliers already have this advantage because they have a ready-made large customer base, while any third party would need to gain them or enter into partnerships. Indeed while arguably not serious commercial propositions, the challenges of third-party entrance are perhaps illustrated by Google's withdrawal of its PowerMeter¹⁶ and the discontinuation of the Microsoft Hohm service¹⁷.

¹³ Revealing the values of the New Energy Consumer. Accenture end-consumer observatory on electricity management 2011, p.11

¹⁴ P.14

¹⁵ DECC Impact Assessment: smart meter rollout for the domestic sector (August 2011)

¹⁶ <http://bit.ly/iq3LD8>

Both of these aimed to help consumers to better manage their energy use and both reportedly were withdrawn because lack of scale, ie not enough consumers subscribed to their services.

Given the challenges therefore and the potential benefits in terms of product innovation, lower costs, greater choice and improved customer service that could stem from effective competition it is essential that every effort is made to ensure a level playing field in terms of data access and use. Consumer Focus does not therefore support suppliers having default access to half hourly or more granular data (appliance level data, real-time information) for value added services including tariff propositions, energy efficiency services, as well as smart products and home appliances. This would give incumbents a further unfair advantage. As the Ofgem Panel research highlights unsolicited sales and marketing are also unpopular with customers.

As we understand it, under the current proposals, third parties potentially have access to data via three routes: the Data Communications Company (DCC), via the customer physically contacting them with information (eg web, telephone, letter, face to face), or via a bridging device direct from the smart metering system. All of these require some initial action and engagement by the consumer which immediately puts the third party at a disadvantage. How much of a disadvantage will depend on how easy and fast the process is via each of these routes. The greater the number of steps needed by the customer, the greater the disadvantage to the third party; the slower and more onerous the process the customer has to go through to get what they want – whether a quote for a better tariff or on-going energy efficiency advice – the greater the chance the customer will lose interest and disengage along the way. Certainly if the customer has to purchase up front a bridging device this will act as a barrier to engaging in that service.

We also have concerns that suppliers will select in-home communications solutions that could result in technical barriers to new entrants that use data. For example we understand that the frequency and protocols around ZigBee are such that product innovation around the home area network (HAN) could be limited, as appliances such as iPhones and HTC phones do not contain ZigBee chips.

While we welcome accreditation of any third party accessing data via the DCC and the need for the Smart Energy Code, this should not be unduly onerous for small companies and new entrants. It is particularly important that the governance arrangements around the DCC do not favour incumbent utilities' interests.

We have especial concerns about access to data pre-DCC. In order for the customer to switch to a basic tariff, for example, they can access the key information they need about their overall energy consumption from their annual statement, bill or even their in home display if they have one. They can acquire price comparison sheets from Consumer Direct, call a switching site or go online. But for more complex tariffs, such as time of use, greater granularity of data will be required. As we understand it, at present, the customer would have to go via their supplier for this kind of information. Experience in the mobile phone market highlights that where the incumbent provider is the data controller this can act as a barrier to competition. Ofcom recently introduced new regulation as they found that the customer needing to go to the incumbent for their Porting Authorisation Code (PAC) before they switched resulted in mobile companies reserving their best deals for customers about to leave, and stalling on the provision of information the customer needed to switch, so they gave up moving provider.

¹⁷ The company reported that 'the feedback from customers and partners has remained encouraging throughout Microsoft Hohm's beta period. However, due to the slow overall market adoption of the service, we are instead focusing our efforts on products and solutions more capable of supporting long-standing growth within this evolving market' <http://bit.ly/tpcdeC>

While the big six energy companies have signed up to the MiData initiative, there is little detail around this. We are still very unclear as to how consumers will obtain their detailed energy consumption and other data in a format that allows them to share it with third parties in a timely and meaningful way to find the best deal for them, or better manage their energy use.

Consumer Focus has particular concerns that suppliers having default access to half hourly data could result in restricted customer choice which could cause particular detriment to some customers. Again experience in the mobile phone market suggests that where suppliers have greater granularity of data they can further profile their customers in ways which help to minimise their debt risk and maximise their revenues. For the customer this may mean that when they phone up their supplier to switch to a deal that their friend or colleague has, they find, because their usage profile is different, it is not open to them. Rather than suppliers using the information to offer customers a better deal or 'lifestyle tariffs', our fear is it will result in customer's choice of tariffs being restricted rather than having access to a full range of transparent offers available in the market.

Question 3: Are there any data uses, apart from those set out below, where the arrangements for access to data could have an impact on the benefits programme. How does this analysis differ for the gas market?

- We agree with the main potential uses listed and outline a further two below. Consideration is needed in each use case as to what granularity of data is required to deliver the purpose, what frequency of collection, data retention periods and if personal information is needed. If personal data is required, Government should consider if benefits could be delivered from just a proportion or a sample of customers
- We remind DECC that Government has committed to privacy by design in the development of its framework for smart metering. A key principle of this is data minimisation – what is the least amount of data needed to deliver the stated aim. This should be the starting point
- DECC should be clear about what the tangible benefit is that is delivered to the customer where their data is shared
- Consumer Focus continues to assert that none of the services listed would currently, on the evidence we have, require suppliers or networks to have default half-hourly personal data collection from all households
- Some of the uses, such as time of use tariffs will require either more permanent or temporary granular data. But this could and should be achieved following an informed decision by the customer, or a change of contractual arrangement with individual households on a case-by-case basis. We believe this is sufficient for the delivery of the benefits outlined in the DECC impact case, and in some instances, requiring consent will facilitate the benefits coming on stream
- Consideration needs to be given to pragmatic solutions related to temporary access to granular data – how long will the supplier have the right to access and use the data eg a household can provide very granular or even real-time data with consent for a period of time for the purpose of obtaining an energy usage profile and detailed advice on reduction measures. After this has been established, there is no more need to collect this very detailed information unless and until there is a significant change in the household to require

- In terms of additional uses, as raised in the Smart Metering Design Group (SMDG) sub group on data, we continue to believe there is also a value in customers having access to information on the quality of their supply and in particular time spent off supply. This will enable customers to hold suppliers to account in terms of quality of service and would help with complaint handling and redress
- In addition, there are potentially opportunities in terms of price comparison services; if third parties have access to customers' energy consumption information, with their consent, they could prompt households to switch to a better deal by recommending a cheaper product and highlighting the potential savings that could be made. Government has stated that easier switching is a benefit of smart metering. There is a role for DECC in facilitating such uses

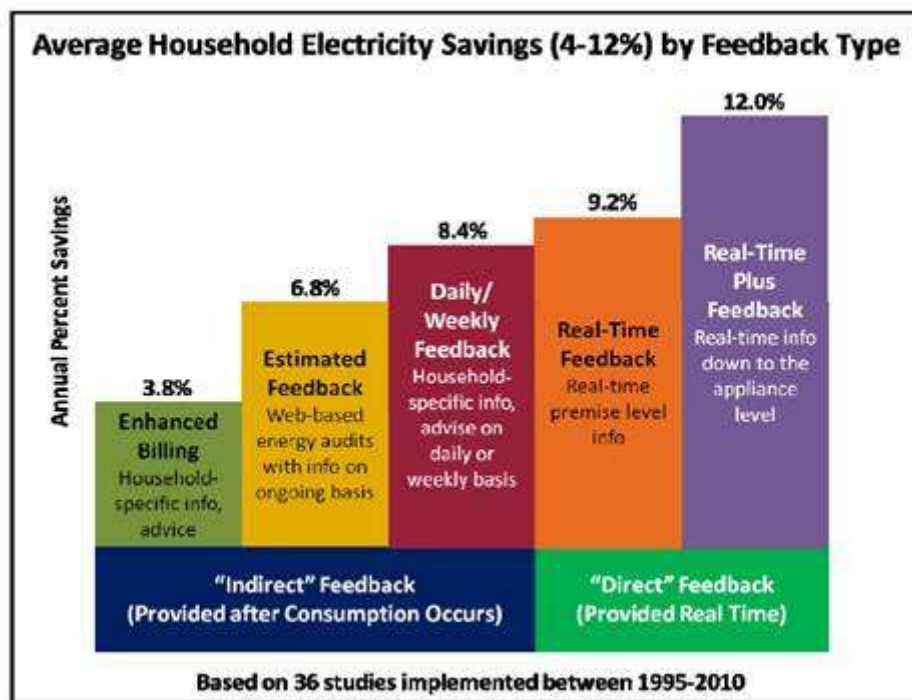
Question 4: What types of energy services and energy advice could be provided by the market (by suppliers and/or ESCOs/potential new entrants) that require access to specific levels of data? What level of data granularity (frequency, time-lag) are needed to provide such services and what is the potential impact of these services in terms of percentage energy savings? Please provide empirical examples and explain the basis of any assumptions and distinguish between gas and electricity.

Types of energy services and advice

Tailored energy efficiency advice – this could include giving you detailed information on how you are using your energy at different times of day, and comparing your usage to similar households. With access to appliance level data, companies could provide information on the energy used per appliance per billing period, and the approximate cost of each appliance. Linked to this, companies could also provide appliance diagnostics, where they identify appliances which are using more energy than they should be and may be faulty. The Onzo Energy report provides an interesting example of how this information could be provided.

Granularity of data required

International studies suggest that the more tailored energy efficiency advice is to a household's needs and the more immediate the feedback, the greater potential for energy savings achieved. The findings below are from the American Council for Energy Efficient Economy (2010).



Tailored advice can involve appliance level data – the company identifies behaviours based on appliances that are costing the customer significant amounts of money and recommends changes. However we would consider it unacceptable for suppliers to have default access to appliance level data and real-time data given that this would enable a unique insight into a customer's pattern of living in their own homes. We also query whether it would be legally possible to do this under Article 8 of the Human Rights Act, Right to Respect for Family and Private Life¹⁸.

There is arguably much that suppliers could do by way of providing advice to customers without access to half-hourly or more granular data. Organisations such as OPower combine energy consumption data with additional information about a customer's dwelling type, its energy efficiency and the household make-up¹⁹. In Denmark, electricity savings of 17 per cent were reportedly achieved across 55,000 households over three years²⁰, in part from segmenting the customer base and providing regular tailored communications and target setting amongst other approaches.

¹⁸ Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

¹⁹ <http://bit.ly/u1zFPD>

²⁰ Empower Demand, 2011, VaasaETT/ESMIG, p. 79. The report looked at 100 international pilots, covering 450,000 consumers.

Default access, opt in/opt out?

As noted, suppliers have suggested that with access to more granular data the energy savings delivered could be significantly increased, but that they would not be able to persuade consumers to take-up this advice without being able to first demonstrate the value to them, which, they argue, requires consumers to provide this data as the default. In contrast, Consumer Focus is concerned that giving suppliers default access to data would be a missed opportunity to engage with customers on energy efficiency. If suppliers do not have default access to customers' detailed energy consumption data there will be more onus on them to actively engage with customers and promote the benefits of the services they offer. Proactive marketing would help normalise energy efficiency, and budge consumers from being passive in the energy market, to more engaged. A proactive approach from companies is particularly important given the limited resources available from government to promote the benefits of sustainability. Consumer Focus research found that nearly half of all consumers did not know where to go to get help on energy efficiency and saving money on their bills²¹. This is a reflection of the lack of public facing activity in this area.

In addition, Consumer Focus has concerns that if suppliers had default access to data, they would cherry pick the customers they offered free energy efficiency advice to – resulting in them collecting valuable data for all customers but only offering useful services to able to pay or valued consumers. This would be unacceptable. Similarly only offering internet advice to customers would restrict access for a considerable number of households. Latest figures from the Office of National Statistics estimate that there are as many as 8.43 million adults in the UK who have never used the internet²².

As mentioned, having default access to this data gives energy suppliers a competitive advantage in any energy advice market. As noted, there may be particular advantages in encouraging new entrants into this market given low consumer trust in suppliers to help them go green and save money on their energy bills. However, we are unclear as to the potential for this market to develop, and the likelihood of it taking off given the challenges to new market entrants mentioned in Question 2. If a market did not develop, in the future, there may be an argument for allowing opt out, but only where there is a demonstrable benefit to all consumers. At present, we believe there is a lot more suppliers can do by way of advice without this data.

Question 5: Should theft management be considered a regulated duty for which suppliers should have access to a certain level of smart metering data? What level of data would be required and how would this be used to manage theft?

We have sympathy with theft management being considered a regulated duty. This is in line with Ofgem's proposed new licence condition to detect, prevent and investigate theft of gas. The Government's Impact Assessment (IA) indicates that £237 million could be avoided through the use of smart meters to reduce energy theft. This cost is currently passed on to all customers. Energy theft is also potentially a dangerous act because of the risk of explosion.

Suppliers already monitor consumption pattern changes through billing reads. Changes outside of expected tolerances trigger exceptions for further investigation. We query why daily reads are requested by suppliers rather than weekly or monthly data for this purpose.

²¹ This was an online survey of 2,048 consumers aged over 18 years conducted by ICM on behalf of Consumer Focus in March 2010

²² Internet users and non-users in the UK, for 2011 Q3 (16 November 2011). By the third quarter of 2011, 8.43 million adults in the UK had never used the Internet <http://bit.ly/vEJr6s>

We recognise that new smart technology will probably lead to new mechanisms for theft – via the HAN or the wider area network (WAN). We agree with Ofgem that it is important that the regulatory framework is capable of responding to the changing and dynamic nature of gas theft.

The roll-out of smart meters presents a unique opportunity to check every meter in Great Britain as they are changed for smart meters. The proposals for a coordinated approach to identifying and managing gas theft include options for a central database and it is essential that Ofgem and DECC coordinate this to ensure that data is not duplicated between the Data Communications Company and any potential gas theft database.

Question 6: Does data need to be collected from all customers all of the time, for theft management, or could there be a trigger for accessing more detailed data (for example where theft is suspected)?

It is crucial that wherever possible no single trigger is relied upon to identify theft but used in combination with other approaches. A change in consumption can be caused by any number of things (new appliances, extra people in the house, or a change of circumstances that results in greater energy use eg new baby, redundancy, ill health). Industry need to establish transparent policies so that rational for action is clear (including any trigger thresholds).

Similarly while tamper alerts can warn of attempted threat to the meter, they are as yet largely untested. It is imperative that suppliers do not have a 'knee-jerk' reaction to any alert. If suppliers are to be allowed more granular data for this purpose with that must come additional responsibilities. There must be an obligation on the industry to put in place robust policies which will ensure that any alert is properly investigated before any action is taken to move toward disconnection. It is vital that there is no option to 'auto-disconnect' or load limit remotely in cases of suspected meter tampering. Customers should receive compensation when wrongly accused in order to deter over-zealous approaches and provide appropriate redress for customers.

It is important that consumers who have any unrecorded supply or safety concerns caused by accidental damage are treated fairly on a case by case basis as this is a different situation to wilful tampering and intent to steal. Vulnerable customers must also be appropriately protected following any new approach. In particular, it is imperative that in a smart world all suppliers are obliged to ensure they understand their customers' circumstances prior to taking action, and that this applies to disconnection for theft/meter tampering/revenue protection. Consumer Focus's full views are set out in our response to Ofgem's consultation *Tackling gas theft*²³ but in short, if customers' data is to be collected for this purpose, an appropriate framework must be put around this to safeguard consumers.

²³ <http://bit.ly/rWenmw> (PDF 904KB)

Question 7: What level of take-up of time-of-use tariffs could be expected under different scenarios for access to data? What information is needed to design time of use tariffs? In particular would sample or anonymised data be sufficient?

- Consumer Focus is strongly opposed to suppliers having default access to half-hourly and more granular data for the development of tariff offerings including time of use. This is for a number of reasons:
 - It is not needed to design tariffs. Consumer Focus believes that periodic sampling would be sufficient to develop time of use and other demand response propositions.
 - It encourages lazy competition and would be a missed opportunity to engage customers. If suppliers do not have default access to customers detailed energy consumption data there will be more onus on them to actively engage with customers and promote the benefits of the services they offer eg energy efficiency advice or lower cost time of use tariffs. This would help increase customer understanding, normalise demand response approaches, and budge consumers from being passive in the energy market to being more engaged. This is particularly important given the limited resources available from government to promote the benefits of sustainability.
 - It is not needed to deliver the business case. As we understand it, the business case is based on one in five customers taking up time of use tariffs not all customers. Given the potential privacy risks, the impact on competition in the market, the fact that there is no guaranteed benefit to customers and also, that critically TOU is still a choice, the onus should be on the supplier to promote the benefits of data sharing and its products and services.
 - Not all consumers would necessarily benefit. As noted in the DECC's latest impact assessment (IA), there could be winners and losers from new deals: *'Bill savings for some customers may be offset by bill increases for other customers as the cross subsidy unwinds'*. Time of use is now no longer classified as a customer benefit in the IA. We welcome DECC and Ofgem carrying out a distributional analysis of the impact of time of use tariffs.
 - Customer choice could be restricted. If suppliers are able to access half-hourly and more granular data by default they will further profile consumers. Industry often asserts that more granular data will enable them to offer 'lifestyle' tariffs tailored to the customer's needs. In practice the opposite can happen as suppliers seek to minimise their debt risk and maximise revenue. In the mobile phone sector it is not uncommon that a customer finds a deal that was open to a friend or colleague is not open to them because of their consumption profile. Thus rather than the customer having transparent access to the full range of deals available in the market, customers choices are restricted as the supplier matches tariffs to the customer.
 - It is anti-competitive. If the incumbent supplier has default access to granular energy consumption information and is the data controller, they have a competitive advantage in offering energy products and services (see Question 2). Consumer Focus believes that suppliers may not be best placed to offer demand response tariffs in the future.
 - Value to customers. Consumer Focus's *Private Lives* research found that customers are increasingly aware that their data has a value and want something in exchange for it. Eg when they share data with

supermarkets and receive a store card, they get discounts. What will supplier's offer customers in exchange for their valuable data?

- We recognise that time of use tariffs will require half hourly reads. But this could and should be achieved following an informed decision by the customer, or a change of contractual arrangement with individual households on a case-by-case basis. We believe this is sufficient for the delivery of the benefits outlined in the DECC impact case, and as noted, requiring consent and a more proactive approach by industry, could facilitate the energy efficiency benefits coming on stream.
- Consumer Focus does not have estimates for the projected take-up of time of use and demand response deals. We are aware that estimating current uptake is challenging and existing figures may be unreliable. However we are involved in two research projects which may be able to help inform this question going forward: We are co-sponsoring Sustainability First's demand response project along with DECC, Ofgem and other players; we are also conducting some qualitative and quantitative research into the experiences of existing time of use customers on Economy 7/8 and other basic time of use (TOU) deals as well as exploring customer attitudes towards demand response. We will be happy to share the findings from this with DECC.

Question 8: Do you agree that individual half hourly data is not currently required for suppliers to meet their obligations in relation to settlement?

Yes. We think this is self-evident; this data is currently unavailable and there is no suggestion that this has resulted in suppliers being unable to meet their settlement obligations. As noted Elexon are looking at the benefits of moving to greater use of half-hourly meter readings for settlement, but at this stage there is no requirement on suppliers to settle individual customers using half-hourly readings. There are also significant barriers to suppliers doing so for domestic customers, in terms of the process and systems implications, as well as the handling of other costs, such as distribution charges. Consumer Focus agrees that at this stage suppliers do not need access to half hourly data to meet their obligations in relation to settlement and would not expect it to be included in the regulated duties. However, we recognise that changes could be made over time to the settlement rules which might require it. We agree that settlement bodies would only require data in aggregated form.

Question 9: How far would aggregated or sample data provide suppliers with what they need in the area of wholesale hedging? Please provide examples of how the data would be used and where possible quantify the potential benefits and costs.

We think that suppliers will only need data at aggregate level in order to hedge their positions. Contract nominations in the balancing arrangements are made in relation to the supplier, not to the premises. As such, we consider that suppliers will only need to know aggregate consumption positions in order to hedge – it isn't plausible that the behaviour of an individual domestic premise will materially affect a supplier's hedging position and it is not necessary for data of that granularity to be used.

Question 10: What level of data would be required and how would this be used to manage debt? Please provide practical examples. How would suppliers envisage using daily data to support debt management and what evidence do they have to support claims of additional savings that could be achieved with access to daily data as opposed to less frequent data?

Question 11: How would suppliers envisage using daily data to support debt management and what evidence do you have to support claims of additional savings that could be achieved with access to daily data as opposed to less frequent data?

- Consumer Focus firmly believes that customers should opt-in to sharing any data that is more granular than weekly linked to 'debt management'.
- We support early intervention when debt is building but any action taken should be carried out in agreement with the customer, not 'done to them' using data available to the supplier.
- We recognise that greater granularity of data can enable suppliers to provide more tailored advice and help with budget setting. However, consent is especially important as any changes made eg to a customer's supply of energy, Direct Debits, or target budgets would have to be negotiated and clearly communicated to the customer so they understand the implications. Suppliers also need to be able to establish if the approach taken is appropriate to the needs of the customer, particularly in the case of vulnerable consumers.
- We have real concerns about how suppliers might use smart metering to better manage their debt risk. This includes switching more customers to prepayment when it may not be the most appropriate payment method and limiting the amount of energy the customer can have on credit in line with their payment record or credit rating. This could result in a customer having a credit limit of £50, for example, which if they exceed leads to the supplier limiting their load or putting them onto a higher cost tariff.
- If Government is to categorise debt prevention as a regulated duty, we advocate that where suppliers are given the right to access data for this purpose, they are also given a responsibility to provide customers with tailored help and support such as referrals to social assistance schemes and benefits entitlement checks.
- We think it would be unacceptable for suppliers to use energy consumption reads to establish when the customer is likely to be at home, for chasing outstanding debt on energy bills.

Question 12: How could smart metering data to be used to identify and protect vulnerable customers?

- Customers should have access to an up to date account balance on their in-home display (IHD), which tells them how much they owe. This will help them budget more easily and prevent them getting into debt with the knock-on effects where they can be pushed onto more expensive payment methods. Contrary to the assumption in the Call for Evidence, the current proposed IHD may not go far enough to help customers budget more easily as it does not show them how much they owe (ie does not include an accurate account balance). The draft minimum specification only requires the IHD to show only indicative costs in pounds and pence (ie the price per unit of energy used); this total will not include any debt repayments, standing charges or in the future green deal charges for example. This could mean that the customer's bill at the end of the month is higher than the figure on the display and therefore higher than they expect. This limits its use as a budgeting tool.

- Our full arguments are outlined in our joint letter to DECC with Age UK, the Fuel Poverty Advisory Group (FPAG) and Sustainability First²⁴. It is not just low-income customers that could benefit from an accurate account balance. Face-to-face omnibus research carried out for Consumer Focus in May 2011 showed that 93 per cent of consumers would be interested in having an account balance on their IHD that showed how much their electricity and gas had cost, and how much they owed their energy supplier, since their last energy bill. This interest was consistent across all social classes²⁵.
- DECC should explore what data might be needed for the delivery of tele-health and tele-care services which could reduce the burden on the NHS and social services and enable people to live independently in their own homes for longer²⁶. For example, messages may be able to be sent to carers when a customer gets up and makes a cup of tea, to give the carer peace of mind that they are ok or warnings sent when the temperature falls below a level which is safe and practicable. We understand that TAHI and the Assisted Living Working Group (ALWG) has been carrying out work in this area²⁷.
- Smart meters will enable load limiting. This could be used to provide a lifeline of energy as an alternative to disconnection for electricity *PPM* customers. This should be explored further. Consideration should be given to an obligation on suppliers to monitor and provide help to prepayment meter customers who are no longer vending or are relying on this trickle flow of electricity as they may be in financial difficulty. In Tasmania, for example, suppliers are required to contact customers who self-disconnect three or more times for at least 240 minutes on each occasion, in a three month period. They have to offer these customers advice on alternative payment options, provide advice on government assistance schemes, and (where the customer has consented) make referrals to the scheme²⁸.

²⁴ Sent to the Smart Metering Programme Team at DECC on 13/07/11

²⁵ When broken down by payment type, consumers paying by Direct Debit were the most interested in this functionality (95 per cent consumers that paid by monthly Direct Debit were interested, and 97 per cent of those paying by quarterly Direct Debit), followed by consumers paying on demand (93 per cent). Consumers with a prepayment meter were slightly less interested; 86 per cent of this group were interested in an account balance on the IHD. This could be because they already have access to account balance information on their meter.

²⁶ Project Hydra suggests that delivering the benefits of non-core services over the smart meter infrastructure adds little marginal cost whilst these extra revenue streams for stakeholders improve the economics of a smart meter roll out. <http://bit.ly/uQLjtT>. For more information see also TAHI – Interoperability for Smart Homes and Communities. The Assisted Living Industry Sector Working Group (ALWG) <http://bit.ly/hGaqoe>

²⁷ <http://bit.ly/vxMwZs>

²⁸ Cited in Smart Prepay in Great Britain. March 2010, p.21 Sustainability First. Gill Owen and Judith Ward. This research was part-funded by Consumer Focus <http://bit.ly/bCyV8T>

Question 13: Do you consider that use of data by network companies to support them in maintaining an efficient and economic network should be considered a regulated duty?

Yes in principle, but as per suppliers' regulated duties, further clarification is required around precisely what data is needed, for how long, in what format and for what purpose. In particular, a distinction will need to be made between information that is required now, and that which might be needed in the future.

We recognise that there is learning being carried out as part of the Low Carbon Network Fund projects and we look forward to this being shared. We welcome that the Energy Networks Association (ENA) is developing a baseline statement of their data needs and in particular carrying out privacy impact assessments. Network operators clearly need some level of data for proper network management and they will also need, as stated, to address operational issues related to electric vehicles or calculations of inputs into the grid from micro-generation by individual households. We look forward to further discussion around this.

Question 14: Do you agree with the requirement for such data to be anonymised or aggregated wherever possible and how should this be monitored?

The ENA's baseline assessment assumes that Network Operators will receive data for each half hour for each day for both gas and electricity from all smart meters, and that this will be aggregated by a new 'smart data controller' function within each network operator, then passed on to the relevant departments, with appropriate security and Chinese walls. The baseline also assumes that some disaggregated data will be passed to the relevant section when there are specific network issues related to consumers with electric vehicles, heat pumps and micro-generation. ENA anticipates that as the smart grid evolves they'll need more of this disaggregated data.

We agree that wherever possible aggregated and anonymised data should be used before storing and subsequent use. However, instead of collecting, aggregating and keeping disaggregated data more privacy friendly solutions should be explored. For example:

- We understand that technologies are in development that can link and aggregate information from several meters in a district, so the networks will receive data that is already aggregated, thus eliminating the need for creation of another layer of 'smart data controller' which increases both costs and vulnerabilities. Even if such technologies are in test mode at the moment, there is sufficient time to develop and trial them before the mass roll-out, and as much attention should be paid to their developments as there is to process and policy solutions
- Regarding disaggregated information for households that have electric vehicles or micro-generation: we seek clarity how those households will be identified specifically. The baseline statement says that 'disaggregated data will be passed to network planning and operational management sections where there are specific network issues arising from concentrations of consumers with electric vehicles, heat pumps and micro-generation'. It seems more logical that such households will be subject to separate contractual arrangements via their suppliers, and that transmission of relevant data to the networks (ie third parties) will be clearly outlined in their privacy notices and terms and conditions. This issue needs further clarification.

Monitoring

With the exception of management of customers with micro-generation and some other specific needs, Consumer Focus believes that aggregation should be sufficient in majority of cases. If, as suggested above, technologies are developed to allow for aggregations to be performed straight from the meter, then the whole monitoring function would be simplified as well, as it would be a matter of the right configuration. Furthermore an additional layer of monitoring would effectively be provided if the IHDs have a functionality for a visible status of remote reading features (as the Dutch government has proposed for eg to the EG2 taskforce in Brussels.) Generally we have some concerns over the robustness of self-regulatory approaches and the practicality of ENA's proposals. That said there may be a transparency value in terms of requiring an annual statement setting out in detail what data they collect and how it is used.

Question 15: Would suppliers be expected to advise consumers of network company usage of data given network companies do not have a direct relationship with the customers?

Network companies are technically third parties under the terms of Data Protection Act. If data passed on to them is aggregated and not personally identifiable as discussed above, there is no compulsion to advise consumers of their usage of data.

If personally identifiable information is passed, eg for consumers who micro-generate, then this should be clearly communicated to the customer by the supplier in their data notice, privacy charter and reflected in the terms and conditions.

Question 16: Are there any alternatives to a basic opt-in or opt-out approach to consumer choice such as some form of prompted choice?

Question 17: What evidence is there of likely take-up rates that could be achieved through different approaches to consumer choice?

- Consumer Focus strongly welcome DECC's decision that suppliers should obtain explicit, informed consent to access smart metering data, beyond what is required to fulfil regulated duties
- We remind DECC that giving consumers an unambiguous, fully informed choice is not negotiable as it is a legal requirement under EU data protection legislation: '*The Working Party would remind data controllers that reliance on consent will require consideration of the fact that valid consent only exists when the data subject has made a fully-informed decision, etc...*'²⁹. This means that collection of any consumption data that goes beyond that needed for 'legitimate purposes' or 'regulated duties' has to be subject to meaningful consent, and the collection has to have a clear explained purpose and be not 'excessive'
- In our response of October 2010 we highlighted that our investigation into suppliers' compliance with data protection legislation found that many companies did not notify the customer of any change in data collection, or give customers choice in what data they collected or shared. Some did not even give customers a choice to opt-out of half-hourly collection. Choice in this sector is particularly important as energy, unlike other products, is an essential service which customers rely upon for health and wellbeing. Following our investigation some suppliers have taken steps to improve their approach but not all have yet taken action

²⁹Article 29 Data Protection Working Party, Opinion 12/2011 on smart metering, April 2011

- As noted, our research *Private lives* found that even when customers were willing to share their data they wanted transparency around who was accessing their data for what purpose, and choice and control. They also wanted to know and be able to withdraw consent if they wanted. It is therefore particularly important to get this right from a customer engagement standpoint as well as DPA compliance. Whatever approach is taken, it is important that it is easy for customers to engage and understand
- As the Article 29 WP has suggested, there should be some kind of easy functionality to enable also revocation of the consent. Further work is needed in this area that aligns with the approach adopted by MiData
- The conditions and choices open to a customer should be explained before the meter is installed, and again at the time of the installation
- Overall we remain of the view expressed in our previous submission that a full discussion on forms of consent and the best ways to achieve meaningful consent must take place when the regulated duties are fully defined, and we know what kind of choices can be presented to customers. This discussion is also bound up with considerations on the role of privacy enhancing technologies
- As highlighted, we have not yet seen any strong arguments why the suppliers would legitimately need universal collection of granular data by default, or even with the possibility of opt-out. If consumers opt for specific tariffs, or specific services, then the terms and conditions and the contracts can be used to ensure consent regarding collection of very granular data
- DECC's initial thinking highlighted a graduated process of consent with some uses opt-in and some uses opt-out. We have some reservations about the necessity or practicality of this approach. Firstly, as noted the case has not been made for the need for half-hourly data from all customers to deliver any of the outlined proposed regulated duties. Where suppliers need to do sampling, they should offer the customer a financial benefit for their valuable data (as they do now) not have default access. Secondly, we query how this will be communicated to customers. There is a risk it could be complicated and confusing
- Consumer Focus is planning on looking at good practice in consent mechanisms and privacy notices across sectors. We welcome DECC committing to carry out work in this area and we are happy to share any learning

Question 18: What current and future technical options exist for energy consumption data minimisation/privacy enhancing technologies?

Discussions so far around smart meters and privacy increasingly show that applying pure policy is not enough, and that privacy enhancing technologies (PETs) that can be built into the meters from the start will have an important role to play³⁰.

While the smart meters themselves are the result of advancements in technologies, advancements in technologies to achieve privacy by design in smart meters appear not been properly investigated or embraced by the energy industry.

PETs can enable giving the necessary data in necessary granularity without actually revealing personally identifiable data. It is one of the areas where third party innovation and business models can develop.

³⁰ eg Microsoft Research in Cambridge, see <http://bit.ly/nxpUBN>

With regards to data minimisation, experts we talked to say that technologies exist to have real-time but aggregated data. For example a number of meters can be linked in a group, which then can aggregate and send encrypted readings; it seems this is a software issue, and existing meters can be retrofitted with such software.

Consumer Focus strongly supports DECC investigating options in this area. Development of PETs and data minimisation techniques would need to be actively encouraged and supported both by the technical specification and the suppliers. Its application would help to ensure privacy by design and may result in less need for setting up extra privacy and security management processes at supplier, third party and DCC levels.

Question 19: Which parts of the policy framework should be delivered by regulation and why?

- We strongly support sector-specific legislation. The Data Protection framework as it stands is too high-level to be effective. Our investigation into suppliers' compliance with the data protection legislation found that there were fundamental differences in views as to what were legitimate commercial reasons for suppliers having access to the data. The Information Commissioner's Office is not best place to rule on this given the technicalities. We strongly welcome therefore DECC and Ofgem clarifying this by defining what are regulated duties
- Similarly, our investigation found that even when there is agreement between consumer groups and industry on what constituted a legitimate commercial reason for using data eg network management, there is a lack of clarity and fundamental lack of agreement between stakeholders as to the granularity of data needed to deliver that duty. It is therefore hard to establish what might be deemed to be 'excessive' collection of data under existing legislation. Clarification on the amount of data needed to deliver each duty and the basis on which it is collected is therefore essential
- The argument has been put forward by industry that sector specific rules could lead to customer confusion. We strongly disagree with this. On the contrary, as highlighted above, clearly defining regulated duties and legitimate collection of data could help clarify the rules and strengthen protection and understanding of rights in this area. As noted, the Information Commissioner has confirmed that sector specific legislation which is in line with the DPA would be wholly appropriate
- We agree that any approach taken would need to be flexible so that regulated duties could evolve over time to reflect changes in the wider energy market. For example, when settlement rules change and technology develops
- As noted in our October 2010 response³¹, there are a number of fundamental weaknesses in the existing legislation and suppliers' application of it, which sector specific regulation could help to address. These include:

³¹ Consumer Focus response to Smart Metering Implementation Programme: Data privacy and Security
October 2010: <http://bit.ly/ud2eeD> (PDF 975KB)

- **Very poor monitoring and enforcement of compliance** – illustrated by the fact that our investigation into suppliers' data practices in relation to smart metering found that none were fully compliant with data protection legislation. The ICO is under-resourced both in terms of powers and resources and not well equipped to tackle this issue; it appears to have fewer powers to investigate and enforce the law than its counterparts in other EU countries. For example it lacks the authority to compel companies to be audited, although it does now have the power to audit government departments and the levels of its fines have been increased for serious cases³²
- **Rules around transmission of data outside of the EU and third party access.** If the harm is done when information is stored or transferred overseas, there are questions of applicable law as well as other practical barriers. There would be no possibility for group action, which would help larger groups of consumers whose personal information has been disclosed illegally for example. This issue is increasingly acute with the advent of 'cloud computing', as well as extensive use of call centres outside the EU. It is also compounded by the EU's slow process in confirming which countries have adequate data protection legislation (the adequacy test) and by the very poor implementation of the US-EU Safe Harbor agreements, whereby US companies who want to do business with the EU self-certify that they adhere to the EU data protection principles. We also seek clarity about how the rules around third party use of data apply in the context of the energy market given existing licence conditions. The DPA regulatory framework neglects altogether the area of liability for third party data loss and negligence³³
- **Lack of transparency around data collection and use.** There is an 'abysmally low' level of compliance with data protection law by 'data controllers' and 'data processors' in this area and this was mirrored by our investigation into suppliers practices. For instance, the transparency rules – ie the legal obligations to inform consumers and citizens (data subjects) about the collection and processing of personal data – do not work. Many privacy policies do not abide by the compulsory transparency rules³⁴. Our investigation found that that many suppliers did not explicitly notify customers of the change in data use, where they did this was often hidden within pages of terms and conditions

³² See in particular the European Commission DG JFS report (note 4 above) Annex 6, United Kingdom Country Study

³³ Eg about 350,000 third-party applications are offered through Facebook, which by default have access to user information

³⁴ See inter alia: *New challenges to data protection*, Final Report, European Commission – DG JFS, January 2010, p. 45; Annex 6, United Kingdom Country Study, <http://bit.ly/bkJsSx>; Data sharing and data protection – National Consumer Council's response to Data Sharing Directive 2008 <http://bit.ly/as9VK4>; and more generally evidence provided in the Consumer Focus response to ICO consultation on a Code of Practice for personal information online, March 2009, <http://bit.ly/auMbTY>.

- **Inadequate redress procedures.** The rights of consumers (data subjects) are increasingly abused and it is very difficult for ordinary people to identify and correct errors, which may only become apparent when something goes seriously wrong. There is also very little that consumers can do if their data is disclosed deliberately, hacked into or lost through negligence. When these rights are breached, consumers do not receive redress. The remedies provided on complaint to the ICO are very limited, while litigation is not practical and very expensive for the majority of people, so in reality civil actions are rare or non-existent³⁵

Question 20: What is the most effective way to set out any sector specific protections around privacy (eg licence conditions or other alternatives)?

We strongly advocate for smart meter-specific data privacy requirements being included in the licence conditions, supported by guidance that could be more easily updated to provide flexibility of approach as the market develops. This could and should seek to address the gaps outlined above. In particular we would strongly welcome explicit licence conditions around disclosure of information (what data is being collected, for what purpose and by whom) as well as customer access to their information (how can they find out what data is being shared, how can they correct data) and how can they withdraw or give consent. Experience from all sectors highlights that privacy notices, are often over-complicated, hidden away and frequently obscure on vital issues. These were areas of particular weakness identified by our investigation. We will be producing a summary of key findings shortly and are happy to share this with DECC.

There is also scope to include *some* though not all provisions within Smart Energy Code (SEC) depending on how it develops. But we do have some reservations about this – in particular around independence, monitoring and enforcement. The advantage of this approach being that it would cover not just the suppliers but networks and any other third parties accessing data via the DCC.

As well as focusing on protections, regulation should also seek to facilitate the realisation of consumer benefits identified in the impact assessment. For example, it is particularly important that customers have the right to access their data for *free* in a *format* that allows them to compare deals on the market on a like for like basis if there is to be easier switching. Customers must be able to access data in a way that enables them to monitor their quality of service eg time off supply, or better manage their energy use in orders to access the energy efficiency savings.

³⁵ Ibid. Regarding applicable law, see also BEUC response to the consultation on the EU Data Protection Framework, December 2009, p.7 <http://bit.ly/aQoL0Q>

Section 3 – Data access

Question 21: What practical options for authentication would provide the right balance between allowing easy access to consumer data in the home while providing the necessary privacy protection? Are there any other issues or options that the programme should be considering in developing the approach in this area?

Any approach needs to find the right balance between ease of use for the customer (ie minimum effort required) and ensuring security of data. Consumers will want convenience – to be able to share their data or access their data with the minimum action as quickly as possible. If the process for authentication is overly onerous or time-consuming they are less likely to engage or stay engaged. This could negatively impact the development of third party services and limit choice and innovation. We welcome DECC carrying out further work in this area.

Question 22: Are there other issues that need to be considered to make using the HAN a viable route for access to data in the home, from either a process or a consumer perspective?

We have some reservations about how these proposals will work in practice and strongly urge DECC to consider the practicalities of the customer journey. The exact steps a customer is expected to take to access their data and the likelihood of this route being used in practice. Consumer Focus believes it is essential that a mechanism is found to ensure that all customers, not just those that are technically engaged, are able to access their data without going via their supplier. Experience in the mobile phone market, where customers had to go via their supplier to get a porting authorisation code (PAC) before switching, have shown that this can act as a barrier to switching. In the mobile sector providers reserved their best deals for those who were about to leave them, and also stalled on the provision of key information in a bid to deter the person from switching. Ofcom was reportedly required to regulate as a result. It is critical that suppliers are not the key data controller. We raise the following questions/issues:

- Availability and cost of any bridging device for customers – DECC appears to be relying on the market to provide this mechanism – what will happen in practice if it doesn't? Will this only be available to able to pay customers? As noted in Question 2 we have concerns that suppliers will select in-home communications solutions that could result in technical barriers to new entrants that use data. For example we understand that the frequency and protocols around ZigBee are such that product innovation around the HAN could be limited as appliances such as iPhones and HTC phones do not contain ZigBee chips.
- What are the options for consumers who are not comfortable with using technology to access their data? Will they be reliant on going via their supplier? What will be the unintended consequences of this?
- What happens when the customer moves home to any device purchased if suppliers use different communications systems in their homes? Will it still work? How will the customer be notified of any potential problems before they purchase the device?
- Reliability of the HAN – How do you ensure the customer can access their data when they want it? As noted, work to date suggests that achieving and maintaining a reliable HAN in certain property types could be challenging.
- Format of data – What format of data is needed to ensure that the customer can use it for their required purpose. For example: to compare energy deals on a like for like basis to find the best tariff for them; to monitor quality of supply and quality of service.

Question 23: What sort of arrangements would provide an appropriate balance between providing ease of access for consumers seeking to sign up to new services and adequate protection for consumers' data when accessed via DCC? Do you have any suggestions for alternative approaches?

Consumer Focus supports the proposals outlined including:

- Third parties who access data being signatories to the Smart Energy Code (SEC) – though we query what consumer protections will be in place for companies accessing data directly from the HAN
- The proposal that third parties should be required under the SEC to inform customers annually if they are collecting data on an on-going basis (rather than just a one-off request) and if so how to cancel that arrangement. This should outline what they collect, for what purposes and who they share it with. The implications of this should be made clear to the customer eg if they share data with credit referencing agencies or other parties how that might affect them in terms of application for loans, profiling³⁶
- DCC keeping a record of all requests and would commission independent audits from time to time to ensure that third parties had the necessary consents
- That a failure by a third party to comply with the requirements of the SEC could lead to them being prevented from gaining access to data via DCC in future and could also constitute a breach of the DPA which would be taken forward by the ICO

It is important that the process for third parties is not so onerous as to prevent new entrants and innovation in this market while ensuring customers are protected from data cowboy practices. We welcome more stringent arrangements being required if third parties wish to offer load control as part of an energy services package. This is a necessary and sensible approach.

Question 24: Are there other issues or options that the programme should be thinking about for the Foundation Stage or for non-domestic customers to facilitate data access?

Question 25: Do you have any suggestions as to how the Foundation Stage can be used to further learn about our approach to data access and privacy?

- Further consideration needs to be given to how BIS's MiData programme links in with DECC's approach to privacy and data access and use. There needs to be greater focus on what the customer needs and wants and the net effect of these different proposals on the customer experience. For example, we think it will be confusing for a customer to have a smart metering privacy charter, a MiData Charter and potentially also a customer charter
- We seek further clarity around what rights to access and use Government and security services have to data
- Consumer Focus also seeks clarity as to who owns the data, in the cases of a dispute and who has rights of access to it. For example, would energy consumption patterns be admissible as evidence in a court of law where it can show activities within the home and patterns of lifestyle. We query if all members or previous members of the household or just the bill payer have the right of access to it

³⁶ For more information on how credit referencing is already been used by energy suppliers, please see our recent report: *On the record, Energy suppliers and credit reference information*, October 2011, <http://bit.ly/quUM3s> (PDF 552KB)

- More work needs to be done around consumer empowerment. Consumers generally have low awareness of current data protection legislation and would value reassurance that their data will be handled in a clear, sensitive and transparent way; they also need to be clear what steps they can take to minimise risks. We recognise the challenge in both raising customer awareness of the risks associated with increased data use and ensuring customer engagement but stress the importance of ensuring that customers are able to make informed choices. We urge companies to trial different approaches in the foundation phase. It would also be useful to pilot different types of consent mechanisms and the proposed Privacy Charter.
- We would also welcome more thinking around variable data retention periods different uses – the length of data retention should not exceed what is necessary to achieve the regulated duty. Precisely how long is considered ‘excessive’ may require clarification.

Proposals should clarify direct marketing and information to in-home displays. We are aware at least one supplier sends messages to the customer via their IHD. Customers are not informed during the installation about their right to opt-out or how this can be done. Consumer Focus research³⁷ (January 2011) showed that consumers’ willingness to receive messages via their IHD was very dependent on the nature of the message. 17 per cent of consumers wouldn’t want to receive any messages at all via their IHD. The most popular types of information that consumers wanted to receive were advice on how to reduce their energy use and cut their fuel bill (49 per cent), and emergency technical messages such as planned power cuts (44 per cent). Only 14 per cent of consumers wanted to receive information from their supplier on new products and services. Of those against, in an unprompted free text box, 6 per cent said this was because it ‘feels like Big Brother’; and 36 per cent because of they didn’t want unsolicited approaches or would feel bombarded and hassled in their own home.

- It is important that both domestic and micro-business customers are not charged to have access to their data in a format that allows them to use the data to make informed switching decisions or to better manage their energy use. Also that free options are available for those without internet access or who do not feel comfortable using technology
- Linked to above – more work is needed on ensuring small businesses can access the benefits that can derive from smart meter data. Consumer Focus’s information request found that several suppliers do not enable non domestic customers online data access to information from smart metering and where they do frequently charge customers. This cost can be up to 52p *a day* to access information via an online portal. Thus the consumer has advanced metering installed but is not able to access the information to reduce consumption or costs
- This is particular missed opportunity as the Carbon Trust research has reportedly found that that smaller non domestic users have a higher propensity to reduce gas consumption by responding to information feedback. Indeed non-domestic users have a higher average consumption per premise than domestic users, increasing the value of any percentage saving derived from the use of smart or advanced metering. We continue to advocate that small business customers should be offered an energy display alongside their smart meter at no up front or additional cost. We have concerns that failure to provide a ‘free’ display will act as a barrier to small businesses being able to access these benefits and delivering the cost savings identified in the impact assessment

³⁷ The Omnibus research was carried out by TNS Research International on behalf of Consumer Focus in January 2011. A sample size of 2,049 adults were surveyed in face to face interviews across Great Britain, comprised of a representative sample across all social and income groups.

- We urge DECC to seek legal advice on the impact of human rights legislation on the scope of data collection that is permissible. The case in the Netherlands, analysed by Tilburg University, demonstrated at length that the Dutch smart metering law as proposed at that time could not pass the privacy test of Article 8 European Convention on Human Rights (ECHR) on three counts: generating and passing on of 15min./hour values to the DSO; daily values to DSO and supplier; and mandatory use. We query if any proposed GB policy that allows collection of half hourly data would fail Article 8 of the ECHR on the same counts – having a smart meter in your home will be de facto mandatory; potentially consumption data will be generated at intervals of 30 minutes, and potentially suppliers will collect and store half-hourly values. It will be very interesting overall to have a Human Rights legislation test carried out on the proposed GB policy, and we could urge DECC to commission/pay for such a test if it hasn't done so already



**Consumer
Focus**
Campaigning for a fair deal

Consumer Focus response to DECC's call for evidence on data access and privacy

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