

Sarah Harrison
Ofgem
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Dear Ms Harrison,

Response to Smart Metering Consumer Protections Package – Statutory Consultation

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (DPA98) and the Freedom of Information Act 2000 (FOIA). He is independent from government and promotes access to official information and the protection of personal information. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to comment on the **Smart Metering Consumer Protections Package – Statutory Consultation**.

The Information Commissioner welcomes the general principle of bolstering existing protections for all domestic customers and is pleased that modifications are being proposed to protect customers in this intervening period between the pilot stage and the start of the formal implementation where there is potential for there to be gaps in good practice.

The Information Commissioner recognises that the early mover process has enabled the industry and associated stakeholders to learn lessons, but, in so doing has also raised concerns that this process may not have been sufficiently transparent for consumers who were early recipients of smart meters. We accept that those customers who volunteered to be part of this early wave may well have high levels of engagement and understanding, however it is not appropriate to rely on this assumption in every case. For example, those customers who have moved into a property where a smart meter has already been installed are far less likely to be aware of the way that their personal data is being processed and the implications of this processing. In any case, in order to ensure that personal data are being fairly processed, and in compliance with the first principle of the Data Protection Act (1998), the situations of all consumers should be addressed. Bearing this in mind, it seems sensible to set up safeguards for the protection of consumers prior to the launch of the mandated roll out in 2014. There is no condition for processing or exemption in the Data Protection Act (1998) to allow for pilot schemes or trials. Therefore, the data controller is responsible for ensuring that personal data continues to be processed compliantly regardless of whether it is being processed

over a period where an organisation is gaining knowledge and insights for a particular project. The additional protections set out here with regard to particular situations, such as prepayment, should help to safeguard consumers and promote compliance with the Act.

It would be wrong for consumers who have “early” smart meters in their homes to be disadvantaged by receiving incomplete information from suppliers preventing them from making informed decisions. Based on our meetings with suppliers, in which we have discussed fair processing and ongoing, updated communication with customers, it appeared that suppliers had sufficient information at their disposal to enable them to deliver this, for example, by explaining the principles of how a smart meter works and the flow of personal data, enabling consumers to be aware of their rights and options. That the Programme is in its infancy would not be a reason to withhold this fair processing information as the general picture is clear even if many of the final decisions have yet to be taken.

The Information Commissioner would agree that consumers who have early smart meters installed in their homes should be made aware of new terms and conditions and be able to make well-informed decisions. This is absolutely crucial to any attempt at compliance with the DPA98. Certainly revisions to terms and conditions should be clearly communicated, but it is also important to ensure that consumers are clearly informed about the *scope* and *nature* of the way that smart meters process personal data, and how this may be affected by the choice of a particular tariff. It is likely that a sizeable proportion of consumers will be uninitiated in the world of smart meters so information should be pitched to reflect this in order to achieve the right balance. Customers will also need to be informed about retention policies for personal data (possibly indicating that a permanent policy has not been agreed, but being clear about current arrangements) and also ensuring that consent has been obtained in a fully informed, specific and freely given manner. As a new innovation for many, consumers may not necessarily appreciate appropriate questions to ask, so this should be anticipated by the Programme and suppliers.

These fair processing arrangements should also underpin the other aspects of activity that this consultation addresses, namely remote disconnection and interoperability. It is important that the process remains transparent and the consumer should understand the purposes for which their data is being processed, by whom it is being processed and with whom this might be shared. In the context of smart metering there may be some considerable changes to these activities, particularly in the method of processing and this should be properly reflected in the information that is given to the consumer. It is probably not enough to simply make a few revisions to privacy policies for the pre-smart environment. The document rightly points out that particular attention should be given to the way that information is communicated to vulnerable customers. It is important that in areas where consumers could suffer real harm or detriment, for example, because of disconnection or load limiting, particular care should be paid to fair

processing. The ERA Safety Net should act as a useful safeguard. It is also sensible that assessment of whether a customer should be disconnected must not rely on decision-making made by technology alone.

The Information Commissioner's Office has discussed with Consumer Focus the work that they have carried out on the topic of early movers and welcomes the fact that it draws attention to the vulnerabilities in this area.

Finally, just one point of clarification, on page two, final paragraph, it could be clearer that individuals have a right to request from a data controller that they cease processing for the purpose of direct marketing. This right is given to the individual by the DPA98. There could be scope for some misunderstanding in this paragraph that this is something that relates only to British Gas.

Yours faithfully,

Anne Russell
Policy Officer, Strategic Liaison
On behalf of the Information Commissioner's Office