

Citizens Advice Response to BEIS' Call for Evidence: Implementing MiData in the Energy Sector

February 2017



Introduction

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. It values diversity, promotes equality and challenges discrimination. Since 1 April 2014, the Citizens Advice service took on the powers of Consumer Futures to become the statutory representative for energy consumers across Great Britain.

The service aims:

- To provide the advice people need for the problems they face
- To improve the policies and practices that affect people's lives.

The Citizens Advice service is a network of nearly 300 independent advice centres that provide free, impartial advice from more than 2,900 locations in England and Wales, including GPs' surgeries, hospitals, community centres, county courts and magistrates courts, and mobile services both in rural areas and to serve particular dispersed groups. There are 23,000 trained, trusted and knowledgeable volunteers across England and Wales. In 2015/16, Citizens Advice service advised 2.7 million people on 6.2 million problems, with 36 million visits to their website.

Since April 2012 we have also operated the Citizens Advice Consumer Service, formerly run as Consumer Direct by the Office for Fair Trading (OFT). This telephone helpline covers Great Britain and provides free, confidential and impartial advice on all consumer issues.

In the last four quarters Local Citizens Advice have dealt with 84,000 enquiries about fuel debt, while hits to the energy section of our website doubled in October and November, the period during which suppliers announced their price increases last year. Calls to the Citizens Advice Consumer Helpline seeking advice about energy doubled in the same period.

Response

Question 1: Do you agree that API access for TPIs should be available on an 'access by default' basis? Do you have any evidence that such an approach could cause customer detriment? If so, please provide details.

The principle of implementing 'access by default' is a sound one, as the consultation document notes such an approach will help prevent energy suppliers from becoming gatekeepers to which services consumers can use with their data. The assumption that it is consumers who have clear control over whom they share their data with should be at the heart of the MiData programme and this step helps ensure it. Suppliers certainly should not be put in a position where they can exclude services that might benefit a consumer but not them - for example services that allow a consumer to more easily switch away from a supplier - either by 'going slow' with data transfers or by instituting charges or other obstacles to TPI access to consumer data.

There are risks to this approach that must be addressed, The consultation document makes no mention of encrypted security tokens to confirm consumer consent for TPI data access, though there are references to the use of online accounts to verify a consumer's identity. Previous work on MiData had identified security tokens as a reliable method to ensure that only companies with a consumer's informed consent can access data from a supplier. The proposals laid out in this consultation document risk taking a backward step from past decisions with regard to consent-check mechanisms which should be avoided. The exact methodologies by which consumer consent will be communicated will have to be laid out before steps are taken to implement API access on a default basis.

Consumers will only engage with services they trust so a robust system must be put in place to reliably record a consumer's consent and the details of that consent. To do otherwise risks a world in which liability becomes unclear, where suppliers can argue that they are obligated to share by default, only reacting if a TPI is under investigation by the ICO or where an energy supplier "suspects" data protection laws are being broken. The latter of these two criteria is vague as stated and risks both suppliers not taking action due to the difficulty of defining a valid level of "suspicion" or using a stated suspicion to block access from legitimate services that the supplier simply doesn't want consumers to use as has happened in other industries.

Question 2: Do you agree that Government should provide energy suppliers some flexibility about how to apply conditions on authorising access to customer's data? If you do not agree, please give reasons and suggest an alternative proposal.

The proposed approach to provide flexibility is reasonable but some robust principles will need to be laid out for energy suppliers to prevent potential abuses or lack of action where consumer data are at risk detailed in our response to question 1. At its heart this principle should ensure that suppliers can't use this flexibility to penalise services they don't want consumers to use rather than services that may represent a risk to consumers.

Question 3: Do you agree that customers should have the choice between providing consent to a third party to access their Midata on a one off, time-limited basis and annual or ongoing basis?

Yes, this is a sensible approach, we would also add that the rollout of Smart Meters will introduce a further question of detail of data. That is, with regard to meter reads, frequency of data from monthly to near-real-time. This is an area where the Smart Metering Privacy Framework should be consulted to ensure consistency of approach. Given the direction of travel for the wider energy market the MiData programme should ensure that these future data questions are aligned with the protections and principles in the Smart Metering Data Privacy Framework.

Again a key caveat to this model will be instituting a robust system to ensure that a supplier is able to verify that a TPI has a consumer's consent to collect their data.

Question 4: Do you agree that for one off access 30 minutes is an appropriate consent period? Please provide details.

Yes, subject to the aforementioned implementation of a robust consent-checking mechanism.

Question 5: Do you think that longer access periods should be for one year or ongoing subject to customers opting out? Please provide details

While ongoing or longer-term access should certainly be available this should be provided on an opt-in rather than opt-out basis. Any service that is seeking to provide a consumer with a service should be clearly explaining what their service is, what it does, how it will work and therefore what level of data access it will require to offer different functionality. Any TPI expecting to engage consumers will have made this communication clear and if their product is appealing then consumers

are likely to opt-in with a clear understanding of what they have signed up for, and that they can opt-out at any time.

An opt-out approach risks TPIs always requesting ongoing access by default even where the product they offer does not justify this. Consumers should have both transparency and control¹ over how their data is used and should not feel that things are being “done to” them - an opt-in approach would help ensure this.

The other clear benefit of an opt-in approach will be to incentivise TPIs to properly engage with their customers to make their offers clear and the access request proportionate to the service being provided - if they want ongoing data access they will have to make a clear case to the consumer in order to earn their consent rather than knowing they can always take it by default.

Opt-in should always be the default setting for data services to ensure consumers retain control over, and understanding of the data-driven services they use.

Question 6: Do you agree that all customers, including those without an online account, should be able to grant Third party access to their data?

Yes, only allowing MiData services to those who have an online account risks excluding a significant portion of consumers. However we would again highlight the need for a robust consent-check mechanism to be in place. As previously noted past discussions on MiData concluded that encrypted security tokens represent a cost-effective and reliable way to achieve this. Once such a methodology is in place offline consumers should have easier access to TPIs via MiData.

Question 7: Is there a minimum number and/or combination of data fields needed to safely verify a customer is legitimate and if so, which data fields would be appropriate for this function?

Citizens Advice does not have the expertise to definitively answer this question but would advise that any data fields would have to go beyond the information that could be found on a single piece of correspondence from an energy supplier, for example a consumer’s account number, postcode and name would all be visible on a bill - in some cases without even opening it.

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<http://webarchive.nationalarchives.gov.uk/20140728011208/http://www.consumerfutures.org.uk/reports/smart-and-clear-customer-attitudes-to-communicating-rights-and-choices-on-energy-data-privacy-and-access>

Question 8: Do you agree that the following data fields should be added to the API specification: meter type, Warm Home Discount Indicator, consumption data by time of use for those customers on Economy 7 or other time-of use tariff?

We agree that these all represent reasonable additions but would note that there is also a need to future-proof these fields to some extent. For example if every home in Great Britain has a smart meter by 2020 there will no longer be any Economy 7 meters on walls but rather smart meters operating in a far more wide range of Time of Use Modes, some of which may replicate current Economy 7 functionality. MiData should ensure that this future step-change in the detail and types of data are also factored in lest the programmes' data streams become dated before they are rolled out in earnest.

Question 9: Should additional data fields be introduced from the start of the mandatory Midata implementation or phased in over time? If you think they should be phased in, how and when should this be done?

As noted elsewhere in this response, and in the consultation document, most crucial will be ensuring that MiData is ready for a future Smart World - the ability to add new data fields will likely be a crucial part of this as new services emerge that are offered via the DCC as well as MiData.

Question 10: Should Government follow a collaborative process with stakeholders if changes to the technical specification need to be made?

Yes, work should also be undertaken to ensure that the right stakeholders are included. If working as desired the MiData programme should catalyse new entrants to this market offering innovative new services - it will be vital to ensure that their voices are heard in addition to established participants in the market.

Question 11: Do you agree that existing data protection legislation is sufficient to deal with misuse of customers' energy Midata? If not, please provide evidence and a proposal for how additional protections could work

As the consultation document notes the existing data protection legislation is due to change in the near future. One concern is that as data markets become increasingly complex and involve a greater number of parties both known and unknown to the consumer it becomes increasingly difficult to establish responsibility and indeed liability where things go wrong. This is true of both

breaches of data protection legislation and wider customer service issues where a service does not provide the expected service or customer care.

As such there is a clear need for robust consent-check mechanisms to be put in place - this need was identified in previous work on the MiData programme and is all the more important now. Consumers are increasingly wary of how their data is used and how little control they feel they have over it and data protection law has not much to assuage these concerns as it is seen as distant and inaccessible to the average consumer². Consumers should also have clear transparency and control over who is accessing their data, in what detail and for what purposes and be able to edit or amend this access as they see fit. Instituting such controls will increase consumer confidence with services and therefore their ability to benefit from them³

Question 12: Do you agree that Ofgem is the most appropriate organisation to carry out monitoring and enforcement of fulfilment of Midata requests? If not, which organisation would be preferable and why?

The logic of appointing Ofgem is sound but we do not currently know whether Ofgem has the in-house expertise or resource to effectively undertake this role and evaluate supplier decision making, particularly with regard to incidents where suppliers “suspect” a TPI may be breaching data rules. As energy networks increasingly become data networks the barriers between sector-specific areas of regulation are swiftly being eroded and new approaches will be needed to ensure regulation keeps up with the increased pace of change. As such we would expect Ofgem to collaborate closely with the ICO and others.

Question 13: Do you agree an enforcement regime overseen by Ofgem would be the most appropriate way to deal with breaches of Regulations requiring suppliers to provide customer data? If not, can you propose an alternative and say why this would be more appropriate.

The Licence conditions are an effective tool for ensuring energy suppliers adhere to regulations, as such this is a sensible model. TPIs will exist outside of this structure so other enforcement regimes will need to work in tandem with regulations requiring suppliers to provide consumer data.

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<https://blogs.citizensadvice.org.uk/wp-content/uploads/2016/07/Fairness-and-flexibility-data-expectations-final-report.pdf>

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Question 14: Do you think that quality assurance of Midata needs to be undertaken? If so, how would this be best achieved?

The quality of MiData will depend on the quality of recording by energy suppliers. We know that in some areas this is currently not always optimal. While we are hopeful that data quality will improve over time it does seem reasonable to institute quality assurance of data - though clearly this is an exercise energy suppliers should be undertaking already to ensure they have accurate information about their customers.

Question 15: Are there aspects of the wider Midata programme that we should take into account when developing Regulations in the energy sector to maximise the benefits of the wider programme for customers?

We support ensuring that the adoption of MiData across regulated industries is consistent and that best practice is adopted and learned from. Factors that have obvious crossover include providing a tool for consumers to see who is accessing their data, in what detail and for what purposes and allowing consumers to amend this. Similarly a standard consent-check mechanism could be adopted across sectors.

Question 16: Are you aware of any evidence available from other countries that have implemented similar proposals? If so, can you provide details on customer benefits?

The most commonly referenced international equivalent to the MiData is the 'Green Button' initiative in the US - though we are not aware of any specific research evaluating its beneficial impact for consumers.

Question 17: Do you agree that energy suppliers with fewer than 50,000 customers for a given fuel should be exempt from this regulation?

Given the reduced capacity of suppliers of this size this may be a reasonable approach, however smaller suppliers certainly should not be prevented from participating in the MiData programme if they wish to

Question 18: In view of the work already undertaken and the recommendation of the CMA, are there any further issues to consider with regard to when these proposals should be implemented?

As referenced already in this response we would strongly encourage the MiData programme to revisit its past findings around encrypted security tokens to confirm consumer consent to suppliers - having such a model in place, as well as platforms

to allow consumers to easily see where their data are going will be crucial to enabling a wider take up of MiData

Questions 19-30:

As these questions relate to estimated costs to suppliers we have not provided a response

Question 31: Finally, do you have any evidence and estimates of the benefits that might accrue to consumers from these proposals?

The majority of current energy MiData TPI proposals hinge on enabling easier switching. The benefits of switching for consumers are well known and have been widely reported and quantified. We also note the potential for new services to emerge that make use of energy data, potentially in conjunction with other consumer data sets - the potential nature, and therefore benefits, of such services are currently unknown but should not be underestimated. It should also be noted that data-driven services generate both potential benefits and risks for consumers, this is the case even moreso where data sets are combined. An area which has already received some attention is the enthusiasm for insurance companies to access more detailed data about consumer choices and lifestyles - the products generated through such insights may well benefit some consumers but potentially disadvantage others as the ability to profile becomes more accurate and the pooling model of insurance is eroded. As such there will always be a role for government and regulators to ensure that benefits are available to all consumers and that consumers are able to retain control, transparency and a clear sense of who is responsible for what at all times.