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Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
T. 0303 123 1113 F. 01625 524510
www.ico.org.uk

By email only: jonathan.brearley@ofgem.gov.uk

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Dear Mr Brearley,

Re: ICO position on data sharing of cross-utility Priority Service Registers (PSR)

Following our discussion on 29 June 2021, I am writing in relation to the proposed data sharing project between companies providing energy and water.

Background

Water and energy companies offer non-financial support services to their customers through Special Assistance Registers (or Water SARs) and Priority Services Registers (or Energy PSRs), respectively. This allows customers to seek support with billing and meter reading and other aspects linked to the provision of utilities to individuals at the customer's address on the basis of vulnerabilities such as restricted mobility or sight loss.

Customers who require support with the provision of their water supply are likely to need similar support with the provision of energy supply. Accordingly, Ofgem and Ofwat have jointly initiated a data sharing project (referred to here as the 'PSR project') to allow for the sharing of PSR data held by energy suppliers with water providers, with the aim of improving the support of vulnerable individuals[1].

Further to a request from industry partners involved in the PSR project for clarity around the lawful basis for sharing data under the UK GDPR, in May 2020 we provided the view that the sharing of PSR data between water and energy companies for the purpose of safeguarding vulnerable individuals would meet:

- the legitimate interest requirements for processing under Article 6(1)(f) of UK GDPR; and
- the substantial public interest requirements for processing under Article 9(2)(g) of UK GDPR and Schedule 1, Part 2, paragraph 18 (safeguarding of children and individuals at risk) of the DPA 2018.

On 29 June 2021 we participated in a roundtable event with relevant industry stakeholders to discuss progress with the project. This letter confirms the ICO's position as set out during the meeting.

[1] The outline of this data sharing project was published in report in 2017 (Making better use of data: identifying customers in vulnerable situations), with a follow-up report in 2018.

The proposed data sharing

We understand that Water SARs and Energy PSRs contain information about individuals who are of pensionable age, disabled, chronically ill, who live with children under the age of five or are otherwise vulnerable or in need of additional support due to access, safety or communication needs (all 'vulnerable individuals'). Individuals are added to the register either at their request or based on the company's decision. When an individual requests to be added to the register, they are given the option to request priority service.

Currently, Energy PSRs are held by distribution network operators (DNOs) and energy suppliers[2]. The PSR project proposes that the data be shared with water providers as well, and that data from Water SARs will be shared with energy suppliers. The paragraph below set out the ICO's view on the data protection considerations relevant to this proposal.

Legal basis for data sharing under Article 6 UK GDPR

The Energy PSR and Water SARs contains personal data (details about vulnerable individuals) including, for many vulnerable individuals, special category personal data (eg. health data relating to disability, ethnic origin data in relation to communication needs).

In order for the sharing of Energy PSR data between DNOs and water companies and Water SAR data between water companies and energy companies to lawfully take place, a valid legal basis will be required (amongst other compliance issues, as briefly discussed below).

In our view, the most appropriate legal basis for the proposed data sharing is Article 6(1)(f) UK GDPR ('legitimate interests'). Sharing this data is in the legitimate interest of the DNOs and the energy and water companies, who can provide better support to vulnerable individuals, and in the interest of the individuals themselves.
The envisaged data sharing is necessary to achieve the purpose, as DNOs and water companies cannot provide the additional support without it. The provision of additional support depends on the insights produced by the sharing of vulnerability information across utility providers.

We do not consider that consent is the most appropriate legal basis for the data sharing under Article 6 UK GDPR. This is because there will be vulnerable individuals who are unable to consent or who do not consent, and this puts them at significant risk. Also, having to obtain the consent of every individual would prejudice that purpose (and so para 18(2) Part 2 Schedule 1 is met).

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[2] This is underpinned by a legal regime which this letter does not detail, as the ICO has not been asked to comment on the existing framework of Energy PSR data sharing between DNOs and energy companies.

There will be individuals who do not wish their information to be shared in this way. We consider that the better approach to dealing with this is through transparency obligations (making sure individuals are aware that their information will be shared in this way) and the right to object, as discussed below.

Legal basis for sharing of special category data under Article 9 UK GDPR

As some Energy PSR and Water SAR data shared will contain special category data, a valid condition for processing under Article 9 UK GDPR will also be needed. In our view Article 9(2)(g) is appropriate, as there is a substantial public interest in vulnerable individuals receiving additional customer support when receiving utility services and priority assistance in case of a utilities outage or issue.

Under section 10 DPA 2018, Article 9(2)(g) UK GDPR can only be relied on if a condition under Part 2 of Schedule 1 is met; this Schedule sets out the conditions in which Parliament has recognised the existence of a substantial public interest. In our view, paragraph 18 Part 2 Schedule 1 applies to the envisaged data sharing as it will allow for the protection of "*the physical, mental or emotional well-being of an individual*" who is "*aged under 18 or aged 18 or over and at risk*".

The paragraph describes "at risk" as meaning that the controller has "*a reasonable cause to suspect that the individual (a) has needs for care and support, (b) is experiencing, or at risk of, neglect or physical, mental or emotional harms and (c) as a result of those needs is unable to protect himself or herself against the neglect or harm or the risk of it*." This therefore would apply to families with young children, where the data sharing aims at protecting the children (under 18), or adults who are categorised as at risk due to vulnerabilities such as disability, older age or communication difficulties and are therefore at risk of harm in cases of outages or other utilities issues.

Right to object to data sharing under Article 21 UK GDPR

It is important that there is a clear method for objecting to the data sharing, either via the energy and water providers with whom customers interact or, in the case of energy customers, via the DNOs.

Article 21 UK GDPR gives individuals the right to object to all processing activities based on Article 6(1)(f) ('legitimate interests'). In the case of an objection, the processing can only continue if there are compelling legitimate grounds for it to do so, which override the interests, rights and freedoms of the data subject, including those expressed as part of the objection. This may be the case where an individual is at risk of significant harm if their data is not shared.

The correct approach in the case of an objection will need to be considered, so as to balance the protection of vulnerable customers while respecting their request to object. The approach is likely to depend on the specific vulnerabilities of the individuals. A case-by-case approach will be needed to assess whether the data sharing should not take

place, and how long the objection should remain in place. Any decision made should be clearly communicated to customers. Where an objection is upheld, our view is that the objection should be time limited, continuing for so long as the DNOs and providers can be reasonably certain the circumstances and risk to the vulnerable individual will not change.

Additional data protection considerations

For completeness, we note that the assessment of the correct legal basis and associated legal conditions for processing special category personal data is only one of the data protection issues to be addressed. The parties involved in the PSR project will need to consider their data protection roles in relation to the data (ie. controller, processor and/or joint controllers) and ensure that they comply with the requirements of UK data protection law.

This will involve, amongst other things, clearly communicating the data sharing project to affected customers in order to satisfy the transparency principle. The security of the storage and transfer of the PSR and SAR data will also be an important element. We recommend that the parties involved in the project refer to the ICO's Data Sharing Code of Practice for additional guidance on this topic.

We also note that the analysis above relating to the legal basis applies only to the data sharing done in order to achieve better customer service and support to vulnerable customers. If utility companies have any additional purposes for the processing, further analysis of the legal basis would be required.

Conclusion

I trust that the position laid out above will provide companies with sufficient regulatory clarity in order to progress this important project and safeguard the interests of vulnerable customers. I wish you success in taking this important project forward.

Yours sincerely,



Stephen Almond
Director of Technology & Innovation