

MARKET DATA CONFIDENTIALITY

1. Introduction

This Guidance Note seeks to draw attention to requirements set down in Section 10 of the Market Code regarding Trading Parties' obligations to keep Market Data confidential and only use it for purposes set out in the Market Code.

This Guidance Note includes illustrative examples of situations that would or would not comply with the confidentiality obligations but is not intended to be a comprehensive list of permitted uses.

This Guidance Note has been prepared by the CMA, in response to a request from the Market Data Confidentiality Working Group.

2. Confidentiality obligations

MCCP299 amended Section 10.5 of the Market Code to clarify and strengthen the confidentiality obligations of Licensed Providers, Scottish Water and the CMA. In particular, MCCP299:

- created a specific obligation on LPs, Scottish Water and the CMA not to use any Confidential Information (including the MDS) except for implementing the Market Code or as allowed by the Market Code
- clarified that LPs, Scottish Water and the CMA can share Confidential Information with contractors and sub-contractors to operate in the Market and carry out the normal functions of those organisations
- clarified that LPs, Scottish Water and the CMA must ensure that any third party they share Confidential Information with does not use that information for wider commercial benefit
- clarified that LPs, Scottish Water and the CMA must ensure that any third party they share Confidential Information with does not claim to have access to market data in any of its promotional activities

3. Illustrative examples

Example A – Data Consultancy

A Licensed Provider wishes to employ a consultancy company to review its customer and SPID occupancy data and recommend process improvements.

This is explicitly permitted by the new Section 10.5.1B of the Market Code.

The Licensed Provider must include requirements in its agreement with the consultancy company:

- to return or destroy any Market Data at the end of the assignment;
- only to use the Market Data for the purpose set out in the agreement;
- not to claim to have access to the Market Data in any promotional material, including on its website.

Example B – Data Analysis Tool

A private company wishes to build a data analysis tool to sell to Licensed Providers and/or Scottish Water.

It is permitted for a Licensed Provider or Scottish Water to provide the company with Market Data only if the LP/Scottish Water has bought or licensed the data analysis tool.

It is not permitted for a Trading Party to provide Market Data – even if the data are out of date – to a private company to help it develop a tool without a contract to buy / license the data analysis tool.

The private company must not claim to have access to the Market Data in any promotional material, including on its website.

If the company licenses its data analysis tool to more than one LP, it must get separate copies of the Market Data from each LP. Each LP is responsible for getting its copies of the Market Data back if it stops licensing the data analysis tool.

Example C – Third Party Intermediaries (TPIs)

A Licensed Provider wishes to use one or more TPIs to help it secure new business.

This is expressly permitted by the new Section 10.5.1B of the Market Code because sales (including identifying sales targets) is a normal function of an LP and a TPI is sub-contractor carrying out that function on behalf of the LP.

The Licensed Provider must include requirements in its agreement with the TPI:

- to return or destroy any Market Data at the end of the assignment;
- only to use the Market Data for the purpose set out in the agreement;
- not to claim to have access to the Market Data in any promotional material, including on its website.

If a TPI works with more than one LP, it must get separate copies of the Market Data from each LP. Each LP is responsible for getting its copies of the Market Data back if it stops working with that TPI.

Example D – bill validation services to Customers

A private company wishes to offer bill validation services to Customers and asks an LP to share Market Data to help them do this.

This is not permitted: validating other LPs' bills is not a normal function of an LP.

This is true even if the company that holds a licence also offers added value services such as bill validation. The Market Data can only be used to support the "Licensed Provider" elements of that company's business.

Information to validate Customers' bills must be obtained from the Customer.

Example E – water efficiency

An LP wishes to win new Customers by offering them water efficiency advice and/or water saving devices. The LP wishes to use the Market Data to identify businesses that are consuming more water than normal for their industry.

This is legitimate as long as the LP is attempting to win the business as a retail Customer.

It would not be legitimate if the LP intended to leave the business with its existing LP and only offer water efficiency advice.

Example F – Customer pricing portal

An LP has employed a software company to develop and operate a pricing portal for potential Customers to request quotes online by filling in some basic information from their existing bills such as SPID number. The portal then uses Market Data to generate a quote for the potential Customer.

This is expressly permitted by the new Section 10.5.1B of the Market Code because sales (including providing quotes) is a normal function of an LP and the software company is sub-contractor carrying out that function on behalf of the LP.