

4 October 2024

Response to consumer consent solution consultation

Dear Lindsay, Tom and Charley

Thanks for the opportunity to respond to this consultation. We support Ofgem's work to build trust in smart tariffs and products so everyone can benefit from the cost savings arising from flexible consumer demand, and recognise the consent solution is part of building that trust.

As set out in our last policy response, we remain sceptical of the market need right now for a technical consumer consent solution. However, we recognise the direction of travel and are keen to provide input as you move to a market-design approach. We agree that the energy industry can learn from the successes of other sectors, such as Open Banking.

We also recognise the considerable efforts Ofgem has made to listen to stakeholders and to adopt an agile approach to this complex area and encourage you to continue. In that vein, we wanted to share some reactions:

1. Clarity on the problem being solved

Overall, we urge Ofgem to be crystal clear about the problem this consumer consent solution is trying to solve and to ensure this is communicated effectively to stakeholders. Our understanding is that this solution is for quite a narrow problem: how to provide consistent data and privacy protections for customers who consent to share their energy data. We agree that solving this problem could help build trust in the retail energy market and help enable the development of demand-flexibility products and services - but it is not a game changer. An apparent "scattered" approach to customer consent (which we have not yet seen in practice) is not currently a barrier preventing the emergence of smart energy products. While firms providing flex services do face challenges accessing smart data in the form they need (e.g., half-hourly settled), these challenges are beyond the scope of this consultation and would not be solved by a consent solution. As this work develops, it will be important for Ofgem to be clear on which issues the consent solution is solving, and which it is not. Otherwise, there is a risk of the consent solution being like looking into a foggy mirror. Everyone sees a blurry reflection, and they fill in the gaps with their own assumptions, which can lead to confusion, mismatched expectations and overdesigned solutions.

2. Emphasis on the need to not over engineer the consent solution

As the consent solution is for a market problem which is not yet at scale, it is crucial that the solution itself does not create more challenges. We think this can be avoided by taking the following approach:

- Ensuring that any framework for consent management is based on existing law and does create new rules bespoke to the energy market. Doing otherwise will limit interoperability, drive up compliance costs and may undermine adoption.

- Ruling out any centralised control over a firm’s consent journey. As Ofgem notes, suppliers already have very developed consent journeys - this solution should not change them. The solution should be a frictionless, “behind the scenes” intervention and solution and not a customer journey solution.
 - Reconsidering the need for a consumer-facing dashboard. We are cautious about introducing a new consumer-facing dashboard or wallet. There doesn’t seem to be a clear demand for it just now, and it would likely incur high costs (in particular as it would need a brand). For example, as far as we are aware Open Banking has no specific central dashboard. We urge consideration of alternative solutions here.
 - Favouring less centralised data-sharing. We do support the direction towards a less centralised data-sharing model, as opposed to the previously proposed central repository. Over-centralisation introduces risks, including:
 - A single point of failure, which could compromise privacy and cybersecurity.
 - Inflexibility, which would make it difficult to adapt to a fast-evolving system.
 - Higher delivery costs and longer implementation timelines.
- 3. Concerns about cost and funding.** One of our main concerns is the lack of focus on cost and funding in the current proposals. Consumers will end up paying for the solution so we need to ensure it will provide consumers some value. Striving for an efficiently designed solution that is not over-specified and expensive is crucial. We urge Ofgem to consider the funding/cost recovery model as part of its assessment of the delivery body. We note that some of the delivery bodies could provide up front delivery funding themselves and then a “user pays” model which may drive greater efficiencies and better product market fit. Technical expertise should also play a bigger role in selecting the Delivery Body.
- 4. The importance of a level playing field.** We are concerned the current proposal will be paid for - and have to be used by - licensed bodies (i.e. suppliers) for an issue that is not of their making. Insofar as they exist, the apparent issues with a “scattered” (in the words of the consultation) approach to consent are predominantly amongst un-regulated firms such as price comparison websites and aggregators, rather than amongst suppliers. In this context, it’s crucial that a consent solution does not undermine a level playing field amongst these unregulated and regulated firms by imposing costs and obligations on suppliers only. DESNZ’s incoming regulations on aggregators and TPIs could be used to help create a level playing field.

Finally, we note that consumer consent is not the largest barrier to enabling demand flexibility markets to scale. We encourage Ofgem to dedicate resources and focus to ensuring the successful delivery of market-wide half-hourly settlement, consistent consumer protections, and enabling access to markets like the Capacity Market.

We believe that by keeping the solution simple, flexible, and cost-effective, Ofgem can create real value for consumers without unnecessary complexity. We welcome continued dialogue to ensure the solution meets the needs of all stakeholders and would be happy to discuss any of these points further.

Best regards
 Alexandra Meagher, Group Head of Regulation, Octopus Energy

Responses to Consultation questions

1. Do you agree with these Design Principles? Would you recommend any additional Design Principles?

Before commenting on the design principles, we wanted to comment on the elements of Ofgem's proposed solution. Ofgem's proposed solution appears to have, at least, four core elements which we provide comments on below:

Element	Octopus commentary
Framework for consent management	Any new consent framework must be based in existing law and not create additional laws specific to the energy market. We have not seen any evidence that the current rules are insufficient. This means the framework must replicate GDPR, the supply licence and any code requirements, rather than create new bespoke rules. Additional rules would limit the long-term interoperability of the solution, drives up regulatory compliance costs and could actually undermine the success of the project.
Technical solution to ensure consistency of consent granting and revoking	Any technical solution must be developed in close collaboration with the other projects going on across the energy sector to improve consent sharing. For example, DCC is currently improving the access route for the "other user" role under the SEC. This project will be important to align with the consent solution. We are more drawn to decentralised solutions, which do not create additional friction for consumers and do not require firms to redesign existing and working consent journeys. This should primarily be a "behind the scenes" intervention and solution and not a customer journey solution. We urge Ofgem and the delivery body to rule out any control over/centralised deliver of a firm's consumer consent journey and unnecessary friction. See further in response to questions 2 and 3.
Consumer-facing interface such as a dashboard or digital wallet	We are less convinced that there is a need for dashboard or digital wallet. The need for this has not been well articulated yet by Ofgem. We suggest that this be carefully assessed on a consumer need and value for money basis as the solution develops. For example, as far as we are aware

	<p>Open Banking has no specific central dashboard. Any consumer-facing interface is likely to require the creation of a consumer-facing brand of some kind which would be expensive and drive up the regulatory costs of the solution.</p> <p>We support Ofgem's decision not to focus on a marketing campaign in this consultation and caution against the need for anything like this.</p>
Consent-seeking side of the consumer consent solution	<p>We note that in the consultation (para 5.3) Ofgem refers to a "consent seeking side" of the solution which may be optional for suppliers to use. We support Ofgem's decision not to require licensees to use a specific consumer journey as we believe this will create unnecessary friction and cost. We are sceptical of the need for other firms to use this product as any legitimate firm interacting with consumers to gain their consent should already have a developed UX. We suggest that, as with the consumer-facing interface, the need for this be carefully assessed by Ofgem and the Delivery Body on a value for money basis.</p>

We make the following observations about Ofgem's design principles:

- **Simple and low friction:** we agree that any solution should be simple and low friction, especially from the consumer's point of view. We urge Ofgem and the delivery body to rule out any control/centralisation of a firm's consumer consent journey and unnecessary friction. See further in response to questions 2 and 3.
- **Interoperable:** We support this principle and urge Ofgem to continue to play a role in linking up the various energy data workstreams across government in particular DESNZ's tariff interoperability and flexible asset register workstreams. This is a role that Ofgem can be really valuable in, even when the delivery body is leading on the consent solution. Interoperability also means ensuring that any new framework for consent management does not create additional laws specific to the energy market.
- **Secure by Design:** We support this principle. We repeat the call we made in the earlier consultation about being careful about widening access to consumer consumption data. Aggregated or synthetic data can be accessible by a broader range of parties for research and development purposes, which may in many cases negate the need for wider access to direct consumer consumption data. It is also of high importance that data sharing permission is only granted for the length of period the consumer has agreed to with a specific third party and only that third party is permitted to use consumption data in the way that has been described to the consumer. This is an extremely important principle to retain to ensure that consumers give active consent to every party that requests access to their consumption data. Retaining this principle will ultimately help to maintain, and not worsen, consumer trust in the energy industry.

We suggest the following principles be added, and would like to also see these reflected in the Options Assessment and choice of the Delivery Body.

- **Value for money:** Consumers will end up paying for this solution in some way and so it is crucial that it provides them some value. Striving for an efficiently designed solution that is not over-specified and expensive is crucial. For this reason, while we support Ofgem moving to a regulatory-based design, we would urge moving to a cost-benefit analysis quickly and ensuring that this is a genuine go/no go decision if, for example, the case for intervention cannot be made. Value for money assessments must also consider “who pays” and ensure effective competition in the retail market - as set out under level playing field.
- **Effective competition and level playing field:** We are concerned that the current proposal will be paid for by licensed bodies (i.e. suppliers) for an issue that is not of their making. Insofar as they exist, the apparent issues with a “scattered” (in the words of the consultation) approach to consent are predominantly amongst un-regulated and unlicensed firms such as price comparison websites and aggregators, rather than amongst suppliers. In this context, it’s crucial that a consent solution does not undermine a level playing field amongst these unregulated and regulated firms by imposing costs on one suppliers only.
- **Collaborative:** The consent solution will not operate in a vacuum. It will be being designed and developed at the same time as wider changes to the storage and access of smart meter usage data across industry (e.g. the development of Elexon’s smart meter data repository, and the improvements to “Other User” access requirements under the SEC). As it moves to the next phase of this consultation, Ofgem could consider making the roles of other market players such as Elexon and the DCC explicitly part of the programme alongside the Delivery Body, to ensure that this join-up happens.

2. Do you have a preference between the centralised, decentralised or hybrid models? Please elaborate.

We support the direction of travel to a less centralised data-sharing model that previously presented (i.e. central repository), we continue to advise against an overly centralised design. The risks with a centralised design are well articulated by Ofgem in the consultation, in particular:

- A single point of failure (as you have identified), which risks inadequate protection of customer data (in terms of both privacy and cybersecurity)
- Inflexible design, not agile to changes in a rapidly changing system or different use cases that develop over time.
- Likely longer delivery times and higher costs.

3. Do you consider the security measures referenced in this section, including the access control measures, will meet the requirements of a consent solution holding consumer data? Which additional protections would you recommend?

While we commonly support high security and data protection standards, we are sceptical of the need for consistent consent granting journeys and mechanisms across all firms/authorised providers. We are unsure if Ofgem is proposing this as part of the design. We are supportive of Ofgem using the term “low friction” in Figure 4, and note that later in the consultation Ofgem says “we are not proposing to require supply licensees to use the consumer consent solution to obtain consent from consumers”, but there remains ambiguity when compared with the designs set out in the consultation.

Overall, we are seeking to guard against the risk that a badly designed, centralised mechanic could actually reduce the likelihood of consumer consent to share data, not improve it. At Octopus, we work hard to make our flex/smart products attractive and easy to use, ensuring that people save money through them. This makes obtaining data consent relatively easy as the customer knows what they’re getting for it. Other firms may have less well developed journeys and may want to rely on centralised infrastructure but this should not be the default. We are aware that at least one of the delivery bodies being considered (Electralink) supports this approach.

4. Do you consider these standards are sufficient parameters to ensure inclusivity, accessibility and interoperability for the consent solution? Which standards would you recommend?

We urge Ofgem to go further than saying the Delivery Body will have “*less direct control of consumer-interfacing applications and UX for granting consent*” and say that the Delivery Body will have no control over this. We are supportive of common standards and rules (i so far as they are needed beyond existing law and licence conditions) but see no need for prescriptive control by a delivery body of a consumer-facing firm’s consent process. This is particularly the case for suppliers who have well developed consumer journeys.

5. Do you agree with the options assessment conducted by Ofgem? If not, why?

We consider that two factors are missing from the options assessment which are likely to have been determinative: (i) cost and value for money; and (ii) track record of tech delivery. We urge Ofgem to speak again to the delivery bodies again and take into account these views.

The question of cost recovery in particular is crucial. The preferred delivery body, RECCO, will fund the model through charging suppliers. We cannot support this without a clear cost benefit assessment. Other potential delivery bodies have noted that have reserves that could fund initial delivery and then move to a “user pays” solution where it is funded by the firms that use it more. This kind of funding mechanism may drive the delivery body to deliver a solution which genuinely meets market need (because it has a revenue stream) and not a theoretical market need.

Further, we are concerned to see so little emphasis on the track record of technological delivery in the analysis framework. At least two of the delivery bodies have deep experience in managing smart meter data sets, more than the “minded to” delivery body. Given that Ofgem has explicitly chosen a technical solution to the consent issue (rather than the other

non-technical options discussed in the earlier consultation), we suggest technical assessment and track record should be a more important part of the options assessment.

6. Do you agree with Ofgem’s minded-to position that RECCo should be selected as the Delivery Body for the consent solution? If not, which of the three proposed organisations should be selected as the Delivery Body for the consent solution, and why?

We suggest that Ofgem consider revisiting its assessment process in line with our response to question 5.

7. Do you hold any views as to how the proposed solution should be funded? Please consider the points regarding fairness raised in paragraphs 4.12–4.14 and Ofgem’s duty to consumers when providing your answer.

As set out in response to question 5, we consider it very important that the funding of the solution is explicitly considered by Ofgem as part of the Delivery Body assessment. We support Ofgem’s leaning towards a presumption of any increase to consumer bills, and its expectation that those who benefit the most from the solution should pay (para 4.14). However we note that the preferred delivery body has an approach which is wholly initially funded by billpayers, whereas other delivery bodies have offered alternative approaches such as initial start-up funding from the delivery body and then a “user pays” solution where it is funded by the firms that use it more. This kind of funding mechanism may drive the delivery body to deliver a solution which genuinely meets market need (because it has a revenue stream) and not a theoretical market need. The question of cost is crucial and Ofgem must see the cost-benefit analysis with the Delivery Body as a genuine go/no go decision, rather than a tick-box exercise.

8. Do you agree with our position to make sharing consent data with consumers (via the consent solution) an obligation for licensees?

This should only be an obligation for licensees if it is also an obligation for other firms, such as aggregators and third party intermediaries. Both these bodies are currently not regulated/licensed but could be in the future. For reasons of effective competition in the retail market and a level playing field, it’s crucial that these firms also have a requirement to report where consent has been obtained in the consent solution. This is particularly important as there is no evidence to date of a scattered/problematic approach to consent obtaining/revocation amongst licensed suppliers - only amongst non-licensed players who are subject to much less regulatory and public oversight than licensed suppliers.

9. Do you consider SLC 0 an appropriate route for implementing these changes, or should Ofgem create a bespoke licence condition?

We support Ofgem’s recognition that licensees already have processes in place for obtaining consent from consumers that would be costly to change. We urge Ofgem and the delivery body to rule out any control over/centralised delivery of a firm’s consumer consent journey and unnecessary friction.



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We do not see the need for a bespoke licence condition, but as in question 9 we note that any obligation on suppliers should also apply to other non-licensed firms.