

Question 1: Do you have any comments on our overall approach to data privacy?

We are pleased that Ofgem recognises the importance of protecting customer privacy. Data protection and security are becoming more important for all businesses, including for British Gas. We already hold and use large volumes of customer information, with around 16 million customers and a relationship with half the households in the UK. This includes sensitive information covering, for example, credit risk information (from credit reference agencies), account records and payment information. Therefore, there is a strong commercial imperative for us to work to ensure customers trust us and how we handle their information. It is simply not in the interests for either the Programme as a whole, nor our work as a Supplier, to be undermined through poor privacy and security practice.

We support the principles of Privacy by Design and Security by Design. But, whilst not being completely opposed to Ofgem's data privacy principle, we do have concerns about how this may work in practice and are keen to ensure Ofgem does not duplicate data protection laws that are already in place. It is important that current law is used unless it is demonstrably inadequate. We have seen no such evidence to date.

Smart metering will bring a big change in the volumes of consumption information that British Gas holds on its customers. This information can provide huge benefits for customers and us. Care must be taken not to undermine the potential benefits of smart metering by strangling suppliers with excessive red tape. We need to be able to collect and use data in order to offer fit-for-purpose tariffs (that help customers switch load and deliver demand-side management), reduce theft, prevent customers getting into debt, and deliver other customer focused improvements in service. For example, benefits included in the Smart Metering Impact Assessment are set at £390m and £113m respectively for time of use tariffs and theft reduction. In addition, British Gas believes that the potential benefits of theft detection are significantly greater at over £440m. Delivery of these benefits simply will not

occur if Suppliers are prevented from accessing information we need, not only to bill customers, but to develop new ways of tackling theft, developing new products and services, and generally improving the way our businesses are run.

As an absolute minimum, Suppliers need to be able to access information on a half-hourly basis for electricity and on a daily basis for gas. These rates are consistent with electricity and gas energy balancing frequencies and purchasing units. We have set out below some examples of how this consumption information will be used. Each use delivers benefits to consumers that are contained in the Impact Assessment. We hope this will show the uses are not intrusive or harmful to consumers but are in fact beneficial to both consumers and suppliers.

It is important for Ofgem to note that these uses of consumption data are not new. We already do each of these to a greater or lesser extent with the customer consumption data we already hold, and each of the uses are already covered in our privacy policy. The difference in the smart metering world is that we can do more with this data; deliver more sophisticated and customer-centric products, provide higher quality, more personalised quality energy efficiency advice, more proactively detect and prevent theft; and so on - delivering benefits for both customers and British Gas that are considered in the Smart Metering Impact Assessment.

Helping customers choose appropriate products and services

A key benefit of understanding more about how our customers consume gas and electricity is that we can help those customers choose the most appropriate tariff. For example, time of use tariffs will generate considerable interest but may not be appropriate for all customers. We can use a customer's own consumption data to help them determine whether they would save money were they to switch to a time of use or any other tariff. A similar approach is used by mobile phone companies to help consumers choose between different mobile phone tariffs. In addition, we will be able to proactively provide 'best tariff' advice to customers, advising them on the

cheapest or most appropriate value tariff available to them based on their current consumption patterns.

Developing new products and services

Consumption information will enable us to better understand consumption patterns. In turn, we can use this understanding to develop new and innovative products and services, which help consumers to reduce their bills and manage their energy more effectively - key goals of the programme. By using real data based on real customers, these new products and services will better meet the needs of consumers precisely because they are designed around real customers and their usage.

More accurate energy efficiency advice

Most energy efficiency advice is currently based on average figures released by the Energy Savings Trust or others. Smart meters can help deliver more accurate, personalised energy efficiency advice to customers by using up-to-date consumption and tariff information from a households' own meter. This advice can be proactively communicated to customers as a value added service, as well as allowing us to make more detailed commercial services available, such as energy efficiency audits. Given that the IA estimates consumer energy savings of £4.468bn, better energy efficiency will be an important factor in delivering the benefits of smart metering. Energy efficiency advice is most helpful and effective when it is clear and relevant to the customer. It is important that we are free to provide the advice and not prevented by onerous restrictions.

Theft prevention and detection

Theft of energy costs honest paying consumers, including the vulnerable and the fuel poor, estimated at £440m every year. Suppliers are open to theft because we are unable to tell when a meter is bypassed and therefore cannot tell when energy is being stolen. Energy can be stolen by bypassing the meter so, no matter how sophisticated the metering equipment, it can always be circumvented. However, Smart meters can significantly improve our ability to detect and prevent theft. By analysing unusual falls or patterns in energy

consumption, we can proactively investigate and prevent theft, leading to resultant significant costs savings. The IA anticipates a benefit of £113m per annum from theft reduction (which we regard as an underestimate). However, improvements in prevention and detection will require access to more detailed and frequent meter reading than mere billing data can provide. We cannot deliver these benefits without access to this data; those who may wish to steal energy are unlikely to “opt in” to provision of consumption data that would mean that they could get caught.

Improve energy procurement and management

Like other suppliers, British Gas buys electricity in half hourly units and gas in daily units at variable rates. These units are then sold on to customers at set rates in the form of their tariff. Consumption information available at present does not enable us to analyse in detail the differences between the purchased rates and prices and rates given to customers, nor how these vary according to different times, dates and geographical locations. Holding consumption at levels equivalent to these purchase periods will enable Suppliers to better understand hedging needs and improve forecasting models and settlement methodologies. More effective buying and selling of gas and electricity could provide a crucial ability for suppliers to put some downward pressure (or restrict upward pressure) on prices at a time when network costs, green energy and such other costs are pushing end user prices upwards. It is vital we are not blocked from using consumption information for these purposes.

Whilst we are clear that it is imperative that suppliers can access more detailed levels of consumption data than we can at present, we should be clear that British Gas will not operate a policy of accessing any consumption data it can, just because it can. Smart meters will be capable of collecting information down to a ‘per second’ level. Such detailed information will not be collected by British Gas without a customer’s agreement. Whilst it is reasonable and necessary for us to collect more detailed information than we do at present (including at half hourly level), we fully recognise and agree that suppliers need to be able to justify the collection of the information they obtain, at whatever level. Our meters will collect consumption data only at a

level which is legitimate, reasonable and needed for the interests of our customers or us. This in practice means that meter reads at a more granular level than half hourly are only likely to be accessed where a customer wants specific services, such as a detailed energy efficiency audit or when they sign up for some other product or service involving this level of data – and therefore agrees to us accessing it. These are likely to be commercial offerings that the customer chooses or ones offered under social or vulnerable customer support schemes.

The data privacy regulatory framework

At an industry level, we broadly agree with Ofgem's principle that consumers should "*choose in which way consumption data shall be used and by whom, with the exception of data required to fulfil regulated duties*". We expect that those without a direct relationship with a customer will only be able to access and use consumption information to fulfil regulated duties in the absence of a customer's agreement. Suppliers, however, need more flexibility. Within the context of a supplier-customer relationship, for the reasons articulated above, it is vital to ensure that we are able to obtain consumption information from meters where we reasonably require this to run our business, serve our customers, and deliver the benefits that are set out in the IA.

The best way to protect customer privacy within this relationship and to maintain supplier ability to deliver on the potential of smart metering is by using the current Data Protection Act 1998 (DPA) to regulate the use of consumption data. Consumption information, like other customer related personal and account details, is 'personal data' for the purposes of the DPA. This is a well-established framework for determining how to handle personal information, in operation for over 25 years in the UK. We see no reason of policy or law to reinvent the wheel and develop a whole new set of laws and regulations when current laws can be used effectively and are more than adequate to do achieve the goal. We have seen no analysis of the DPA or other laws that would support taking a different approach. Furthermore, the EU Commission is reviewing the current Data Protection Directive from which

the Act is derived so any weaknesses in the Act, if any, can be fed into that review.

As regards its practical operation, the DPA requires us to be able to demonstrate that any uses of consumption (or other data) are necessary in order for us to pursue our legitimate interests. The Act also requires us to ensure appropriate protections for consumer rights are in place and ensure customers are told how their data is to be used. This flexible but strong approach provides a good basis to regulate Supplier use of consumption data. Where Suppliers can show they need consumption data to pursue legitimate purposes, and if they have taken steps to protect the fundamental rights and freedoms of customers, they will be able to collect and use data, subject to compliance with the other aspects of the data protection principles. Where they cannot, consent from the customer is likely to be required, save for debt collection or other activities related to enforcing contractual rights. The DPA also facilitates the provision of opt-ins or opt-outs if they are needed, such as the right to opt-out from unwanted marketing messages (including marketing messages to the IHDs).

A further benefit of the DPA, particularly for consumers and their representatives, is that it would prevent Suppliers from obtaining excessive, unnecessary consumption data (a requirement of the 3rd data protection principle) – reinforcing the stance outlined above. The DPA contains strong enforcement provisions, including new measures introduced in April this year. If any of the principles are broken, the Information Commissioner can take regulatory action, including enforcement action to force Suppliers to take compliance steps. For example, he could order us to delete or cease collection of any information that would be in breach of the Act. The Commissioner can fine for serious breaches of the Act (currently up to £500k). In addition, the Ministry of Justice could, if it were justified, make Suppliers (and any other business) subject to the Assessment Notices power under s.41A-C. This would give the ICO the right to audit supplier compliance without consent. The proposed Privacy Charter could also be made a formal code of practice under the DPA.

The key advantage of this DPA-based approach is that we are essentially set up to comply with it already (though some changes and developments will of course be required in line with increased privacy risk resulting from more detailed data being held), helping to lower implementation costs. British Gas customers are already informed about how their data is to be used via our privacy notice, which is included in terms and conditions and on our website. This is also approved by plain language groups to ensure it is clear and easy to understand. As discussed above, these privacy notices set out how we use customer data and these purposes will fundamentally not change in the smart metering world. What will change, because of the more detailed information available, is the range of products and services, the quality of the energy efficiency advice and customer service, Suppliers' ability to prevent and detect theft and debt.

We note that Ofgem's consumer research¹ shows consumers are not overly concerned about the impact on their privacy of supplier access to their consumption data. The report notes "*Far more participants expressed doubts about the costs, reliability and the devices causing problems for elderly people than voiced concerns about data privacy and how the data collected might be used*"². Customers "*were generally relaxed about the idea of energy suppliers having access to more accurate and up-to-date usage data*"³. There "*were no widespread concerns about energy companies having access to information about their energy use*"⁴ and that where concerns were raised, "*these issues were not echoed or supported by the majority of other participants*"⁵. These views support our own experience and understanding of consumer attitudes to privacy. Consumers want to know their information is being kept safe, being used fairly and that it is protected from misuse; but they do not necessarily want to be actively involved in every facet of how

¹ Ofgem's 'Consumers' views of Smart Metering - Report by FDS International'

² Page vii

³ Page 10

⁴ Page 16

⁵ Page 15

companies manage their information, whether via preference choices or other mechanisms.

We must emphasise that these conclusions and views do not mean that we believe there should be anything other than strong privacy protection in place; there must. They do, however, support the development of a simple, consumer-friendly, commercially viable approach – using current laws so far as possible. The focus should be on ensuring that consumption information is used in fair, reasonable and transparent ways, which protect customers from misuse. Consent is not the ‘be all and end all’; other protections are equally important.

The burden of managing lots of consumer preferences would also be costly. Each preference available to a customer would need an opt-in or opt-out box in each of a Supplier’s information systems requiring significant IS changes (adding to the costs included in the IA), whilst staff would need to be trained in how to collect and administer preferences and how to use new or changed IS systems. At the very least, any preference would need to be very clearly defined and targeted, but more importantly, Ofgem should be really clear these are genuinely what consumers want and value before requiring suppliers to put them in place. Ofgem’s consumer research suggests a negative answer to both these points.

We strongly believe a programme of consumer education is needed to help consumers understand what smart meters are, what they aren’t, and how information from those meters is used and protected. We are developing our own. Such exercises have been undertaken for a number of years by credit references agencies. This approach has helped the public to understand what credit information is used for, how they can access it and get incorrect information corrected, and provides an opportunity to tackle myths (for example, the existence of credit black lists). A similar approach would be helpful in the smart metering context and go a long way to avoiding consumer misunderstanding. British Gas is keen to work with Ofgem, Consumer Focus and others to develop such an education and awareness programme. To

help with this, we are seeking to develop more detailed consumer guidance on how their consumption information is used, as well as other education tools.

Finally, it is vital that suppliers are able to be a part of the Privacy & Security Advisory Group. This will ensure a practical, real-world understanding of managing data privacy and security is included in the Programme. A workable, but customer focused privacy framework may otherwise not be developed.

Question 2: We seek views from stakeholders on what level of data aggregation and frequency of access to smart metering data is necessary in order for industry to fulfil regulated duties.

The levels of access to smart metering information should be determined by the role that party plays in the smart metering programme. Suppliers have a direct and on going relationship with customers so should be able to access information for legitimate business activities. With respect to other parties, we would propose the following:

DCC – should only hold data necessary for its core functions, such as managing Settlements and facilitating change of supplier. This would require it to hold, for settlement, one meter read per Settlement period and, for change of Supplier, the closing meter read for the customer. These details should only hold that information for so long as is needed to fulfil those duties.

Network companies – should only need aggregate data on consumption for particular geographical areas, unless specific address level information is required in future to help them manage demand spikes caused by, for example, electric cars.

Third parties – it is not clear that third parties require any access to consumption or other smart metering information. Access should only be permitted following the consent of the individual (consumer) to whom the information relates.

Question 3: Do you support the proposal to develop a Privacy Charter?

We support the development of a Privacy Charter, although we feel it would be better combined with the Consumer Protection Code of Practice. This will avoid multiple codes of practices, which may in reality significantly overlap.

As stated earlier in our response, we feel a programme of consumer awareness and education is needed. A Privacy Charter could be an important part of this education process, as well as promoting good practice by all industry participants.

It will be important to define the scope of the Charter. It should define key requirements Suppliers should have to put in place to protect privacy. It should contextualise the Data Protection Act, privacy-related consumer regulations and other requirements relevant to the energy sector. This would help consumer groups, Suppliers, customers and others in understanding how these varying requirements broadly apply.

Importantly, it must not make rules regarding what suppliers can and cannot use consumption data for, other than in exceptional cases where this may be justified. This must be left to those Suppliers to facilitate a competitive market or Ofgem risk stifling innovation and the development of services.

Question 4: What issues should be covered in the Privacy Charter?

The Charter should focus on matters such as, for example:

- The information that should be given to consumers about the level of consumption data that will be accessed and by whom;

- The information parties need to give consumers about how that data will be used;
- Guidance as to customer choices over how their consumption data is used, and how those choices are to be communicated or presented;
- How access to consumption information should be administered, including requirements around consent for access;
- Requirements concerning training and awareness of staff;
- Defining requirements around protecting vulnerable customers;
- The data security arrangements that should be employed;
- How smarter metering specific regulations interact with wider privacy and security regulations.

A Privacy Charter, developed properly and combined with a broader public awareness and education campaign, could be a useful way to ensure consistency of practice in these crucial areas, without stifling competition. We would welcome the opportunity to work with Ofgem, DECC and other parties on this proposal over the next few months.

Question 5: Do you agree with our approach for ensuring the end-to-end smart metering system is appropriately secure?

We agree with the approach set out in the Prospectus. Security of the metering infrastructure is imperative and requires a robust, co-ordinated effort from all parties. We look forward to continuing discussions with Ofgem and other industry parties on exactly which measures should be employed and how risk should be assessed. It is, however, important that all parties work closely together on security. A common approach, set of principles, and open security standards must be used.

We do not propose to publish a detailed proposal on security at this stage: we will leave this for future discussions. We believe though the following

elements of a security approach are not adequately covered by the Prospectus:

- The DCC should have end-to-end ownership of the communications infrastructure and security thereof, up to and including the communications hub in the customer's home. This will ensure the DCC has full responsibility for security of the public element of the communications network.
- Each party should assess and mitigate risks posed by its full supply chain. Meters and other elements of the infrastructure will be manufactured or hosted in a variety of countries and territories. Parties must take steps to ensure robust security measures are employed throughout the smart metering supply chain.
- Consideration should be given to additional security measures to be employed on the in-home components of the smart meter. For example, this could include whether certain sensitive messages delivered to an In Home Display should be password or PIN code protected.