



Rob Turner
Smart Metering Implementation Programme

*Promoting choice and value for
all gas and electricity customers*

30 May 2012

Dear Rob,

Ofgem's response to DECC's consultation on data access and privacy

We welcome the opportunity to respond to your consultation on data access and privacy in relation to smart meters. Ofgem regulates the gas and electricity markets in Great Britain. We have an important role in ensuring the interests of consumers are protected, both during the transition to smart metering and in the enduring framework. We will also play a key role in monitoring and, where appropriate, enforcing compliance with any new regulatory obligations relating to smart meters.

This consultation on the proposed framework for smart meter data access and privacy is a significant step forward in the policy design for the smart meter roll-out. Data access and privacy issues are important: safeguarding consumers' right to privacy will not only protect their interests, but will also maintain their confidence in smart metering and in the market more widely. Consumers' smart meter data has commercial value, and the data access and privacy framework should help them to access this value and share it with other parties should they choose to do so. Final decisions on the framework should be based on robust evidence, including analysis of the costs and benefits to consumers, industry and the economy more widely.

We support the objectives set out in the consultation for the smart meter data access and privacy framework, namely protecting consumers' interests, enabling proportionate access to data by authorised parties and promoting innovation and competition in the energy services market. We detail below our main observations on the specific proposals set out in the consultation document.

Suppliers accessing daily consumption data from consumers on an opt-out basis

We recognise the benefits of suppliers and network companies accessing some data from consumers' smart meters. However, some of the benefits from consumers' smart meter data will come from third parties competing with each other and with suppliers to offer innovative services and products.

We therefore have concerns about the proposal that suppliers could access up to daily consumption data, provided the consumer does not opt out – meaning that this is in effect the default position. Authorised third parties, such as energy services companies, can only access consumers' data on an opt-in basis. This proposal could therefore give suppliers a competitive advantage over third parties. It could also hinder future innovation, for example by limiting energy services companies' ability to develop new ways of realising value from consumers' smart meter data. It is not clear what the rationale is for this

proposal. We would therefore favour an approach that creates a more level playing field between suppliers and third parties, for example requiring opt-in consent for suppliers to access more granular than monthly data for any purpose. We also note that suppliers do not appear to be required to provide consumers with anything of substantive value in return for accessing daily data on an opt-out basis.

It is also important that consumers have confidence that their smart meter data is appropriately protected. We are not aware of any consumer research about attitudes towards the specific approach proposed in the consultation. However, given that the impact on consumer trust could potentially be significant, we would urge caution unless and until it can be established that an opt-out approach will not damage consumers' confidence in the roll-out.

We note the related proposal that suppliers could use daily data accessed on an opt-out basis for marketing free products and services. Consumers could benefit from this, as it might help suppliers identify households that could benefit from the Energy Company Obligation scheme and access free insulation measures, for example. However, consumers may have privacy concerns regardless of whether data is accessed and used to offer a free product or used to offer a paid-for product. This proposal would also potentially exacerbate the competition concerns described above. For example, suppliers could potentially offer free services in a manner that stifles competition in energy services. Furthermore, the research on data privacy issues conducted using Ofgem's Consumer First Panel in early 2011¹ showed that consumers do not want more 'noise and confusion' in their lives as a result of sharing their smart meter data – such as increased levels of direct marketing.

Implementation of the data access and privacy framework

The proposal that aspects of the framework are implemented via licence conditions would create a new area of responsibility for Ofgem. Given the relevance of data access and privacy issues to consumers and the market, we recognise the arguments for placing appropriate elements of the framework in licences. As referenced in the consultation, any provisions in licences will need to align appropriately with related or more detailed provisions in the Smart Energy Code (SEC). We look forward to engaging with you to help ensure that the final regulatory design reflects best practice and is consistent with existing UK and EU legislation such as the Data Protection Act 1998.

The consultation proposes that the framework should only apply to compliant smart meters installed after the underpinning licence conditions are in place. We consider that the data access and privacy framework should extend to **all** compliant smart meters so that every consumer with such a meter has the same protections. Once final decisions on the data access and privacy framework for compliant smart meters have been made by Government, Ofgem will consider whether similar protections should be extended to consumers with non-compliant smart meters.

Communicating the framework to consumers

Research on data privacy issues conducted using Ofgem's Consumer First Panel found that consumers wanted clear information about who is using their data, and for what purposes. We welcome the proposals in the consultation for consumers to be presented with clear choices about how parties will access their smart meter data, and updated on these choices at an appropriate interval. It is important that this information is presented to consumers in an accessible way that complements the provision of related information, and helps them to engage with the choices available to them.

As referenced earlier in this letter, the Ofgem Consumer First Panel found that consumers did not want more 'noise and confusion' in their lives as a result of having a smart meter.

¹ *Ofgem Consumer First Panel Year 3 – 2010/2011: Report from the third set of workshops: Smart Metering Data Privacy Issues*, Ofgem, June 2011

This will need to be considered when implementing this approach, given the potential for consumer confusion as a result of too much information or inconsistent messaging. As we are considering the provision of information to consumers more widely, we would welcome working with you to help ensure that a coherent approach is taken.

Consumer access to their smart meter data

A fundamental principle set out in the joint DECC/Ofgem March 2011 Response to the Prospectus consultation was that each consumer controls access to their personal data, and can choose whether to share it with other parties, except where it is used to fulfil 'regulated duties'. To put these principles into practice, consumers must be able to access their smart meter data, and share it with authorised parties, in a straightforward and secure way. We welcome the Programme's discussion of the options available to consumers in relation to data access, and note that routes for data access will need to be economic and easy to use (even for those consumers without access to a computer) to help ensure uptake. This should also be the case where the meter is not enrolled with the Data and Communications Company (DCC).

We would expect that suppliers would provide information to consumers about their consumption that is commensurate with the data they are accessing from the consumer's smart meter. We may consider whether it would be appropriate to set minimum standards in that regard. We are also mindful of developments with Government's *midata* project², designed to help consumers access their own data more readily and subsequently realise the value that can be gained from sharing this data with third parties.

Treatment of third parties

Following on from the observations above, we have concerns that there are some further proposals set out in the consultation that may imply inappropriate differential treatment between licensed and unlicensed parties. There may of course be some cases where different treatment of unlicensed parties is justified, but it is not clear that there is evidence to demonstrate this in all cases. One example of potential different treatment is the proposal that third parties would be subject to auditing requirements in relation to their data access-related records under the SEC, but that this would not apply to licensed SEC parties. It would appear to be more appropriate that, to the extent there are to be audit rules under the SEC, these should apply to both licensed and unlicensed parties.

Network company access to data

We welcome the development in policy regarding data access for network companies. As set out in the consultation, network companies are price-controlled and do not operate in a fully competitive market. Therefore competition concerns about network companies' access to data are likely to be different to those related to suppliers' access. It is important that the final framework allows network companies to access appropriate levels of consumers' data, aggregated or anonymised where possible. This will have a range of benefits, such as helping network companies to maintain an efficient and economic network and supporting the development of smart grids. We encourage DECC to continue discussing these issues with the network companies to help minimise the risk that data access issues constrain the future development of smarter, more efficient electricity networks.

Approach for non-domestic consumers

We note the consultation's discussion of the differences between the domestic and non-domestic sectors in relation to data access and privacy issues. There is some research undertaken as part of our Retail Market Review that indicates smaller non-domestic consumers behave in a similar way to domestic consumers. We have not undertaken any specific research on data access and privacy issues in the non-domestic sector. We would

² <http://www.bis.gov.uk/policies/consumer-issues/personal-data>

encourage development of the evidence base in this area to better inform decisions on the appropriate data access and privacy framework for the non-domestic sector.

Related Ofgem work

In the period before the new regulatory framework for smart meter data access and privacy is in place, we want to help ensure that suppliers who are already installing meters with advanced functionality comply with existing legislation and regulatory obligations, and that consumers are clear about their rights and options. It is suppliers' responsibility to ensure that they comply with existing data protection legislation, and we will continue to promote consumers' interests by enforcing consumer protection law where appropriate. We will work with the Information Commissioner's Office to explore options for ensuring that consumers' interests are adequately protected.

We have taken steps to ensure consumers remain protected more broadly as suppliers install meters with advanced functionality. Through the Smart Metering Consumer Protections Package, we introduced licence modifications to protect consumers where remote disconnection and remote switching to prepayment functionality is used. Suppliers also agreed to voluntarily compensate customers disconnected in error as part of this work.

We appreciate the constructive engagement with your team thus far and look forward to this continuing in the coming months. If you would like to discuss this response in the meantime, please contact Philippa Pickford, philippa.pickford@ofgem.gov.uk or Rachel Zammett, rachel.zammett@ofgem.gov.uk.

Yours sincerely

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