

Email: retailpriceregulation@ofgem.gov.uk

Date: 10 October 2019

Reviewing the allowance of the smart metering rollout in the default tariff cap: Disclosure Arrangements

1. Later this month, we will consult on our proposals to update the non-pass through Smart Meter Net Cost Change allowance ("SMNCC") for the smart meter rollout in the default tariff cap ("the Cap"). This letter sets out the disclosure arrangements for the SMNCC model and underlying data that inform our proposals.

Background

2. We are reviewing the costs of the smart meter rollout. On 16 September 2019, the Government published its new Smart Metering Implementation Programme cost-benefit analysis (new SMIP CBA), which is the starting point for our review.¹
3. Based on that review of costs we will set out proposals to update the Smart Metering New Cost Change (SMNCC) allowance in the default tariff cap. Alongside our proposals we will disclose information allowing stakeholders to understand and intelligently respond to our proposals and the reasons for them.

¹ BEIS (2019), Smart meter roll-out: cost-benefit analysis 2019.
<https://www.gov.uk/government/publications/smart-meter-roll-out-cost-benefit-analysis-2019>

4. On 3 September 2019 we published draft disclosure proposals for stakeholders to comment on. We have considered stakeholders' views and finalised that disclosure process.²

Suppliers' views

5. Stakeholders welcomed our proposal to disclose the SMNCC model in a virtual disclosure room or in a confidentiality ring, rather than in a physical disclosure room (which we had used to disclose the current SMNCC model in 2018). They also welcomed our proposal to provide suppliers' employees with direct access to the model.
6. Nonetheless, some stakeholders' made four additional requests
 - a. **Disclosure of underlying data, including suppliers' individual data.** We proposed not to disclose confidential supplier data. Instead we proposed to provide statistical summaries so that suppliers could assess how we interpreted underlying data, and identify which variables in the model had the potential to vary.³ Some large suppliers requested that we disclose, on a confidential basis, underlying source data. They considered this disclosure to be necessary, so that they could (a) use whatever statistical analysis they wished (rather than the statistical analysis we had proposed) and (b) check for computational errors.
 - b. **Looser or no restrictions on disclosure arrangements.** Some suppliers requested that we publish the SMNCC model, making it widely available with no restrictions. These suppliers either disbelieved that the model contained confidential information, or considered that the confidential information was a relatively minor part. If publication were not possible, some suppliers requested less 'onerous' disclosure arrangements. For instance, some requested we remove the proposed compliance document (which requires suppliers to explain the processes that they have in place to ensure data remains confidential) and some suppliers requested that we allow them to nominate less senior representatives to confirm that they recognise their obligations and commit to them.
 - c. **A broader permitted purpose.** Some suppliers requested permission to use the SMNCC model in business activities not related to the consultation, such as

² Ofgem (2019), Reviewing smart metering costs in the default tariff cap: Response paper #4. <https://www.ofgem.gov.uk/publications-and-updates/reviewing-smart-metering-costs-default-tariff-cap-response-paper-4>

³ Ofgem (2019), Reviewing smart metering costs in the default tariff cap: Response paper #4, paragraph 39. <https://www.ofgem.gov.uk/publications-and-updates/reviewing-smart-metering-costs-default-tariff-cap-response-paper-4>.

business planning or benchmarking their costs. Some suppliers (mistakenly) appeared to have understood that we would not permit them use information from the disclosed material to inform legal disputes with Ofgem in connection with this consultation.

- d. **Earlier disclosure of the new SMNCC model.** We proposed to open the disclosure room a week after the publication of this consultation, which would give stakeholders time to read and understand our proposals. Some suppliers requested that we provide access to the SMNCC model as soon as possible, or no later than the start of the consultation period.
7. In relation to the contingency arrangements, two stakeholders requested that we disclose the current SMNCC model. They argued that if we set cap period four using the current SMNCC model as a contingency arrangement, then the same principle of disclosure must apply (i.e. we should disclose it for suppliers to scrutinise).

Considering disclosure

8. We agree that disclosure of the new SMNCC model is an important part of the consultation on our substantive proposals.
9. Throughout the consultation process, we have set out proposals on disclosure arrangements to ensure that our approach is fair and sufficient. Suppliers have provided their various views, which we have considered and taken into account.
10. We consider that our disclosure arrangements are more than sufficient for the purpose of consultation. We will disclose the SMNCC model (which is fully executable and in the form we use to inform our proposals) to suppliers themselves (noting that suppliers have stated they are best placed to compare the model to their own circumstances and consider the differences).
11. This disclosure allows suppliers to:
 - a. understand how we have modelled costs and benefits and make representations on whether the approach (including the simplification it involves) is appropriate;
 - b. replace inputs with their own data to understand and assess whether there are variables to which the model is particularly sensitive to variation, and make representations on the impact and likelihood of potential variations;
 - c. compare their costs and benefits with the model (at an aggregate and granular level) and make representations on those differences and their impact; and

- d. assess whether the model has weaknesses or computational errors.
12. We have also considered suppliers' requests for additional information, so that their advisers can, for example, quality assure the model's underlying data. We have decided to make this information available under appropriate confidential arrangements.

Disclosed materials

13. We will disclose:
- a. **Modelling ("Disclosed Model")**: This includes the full SMNCC model, in the form which has informed the proposals we are consulting on.
 - b. **Underlying data ("Disclosed Data")**: This includes underlying data that we have used to calculate inputs in the SMNCC model. This data includes specific information from individual suppliers and is commercially sensitive.
14. After considering suppliers' views we have decided to make Disclosed Data available. We do not consider that this information is essential in order to understand and intelligently respond to our proposals (as some suppliers have claimed). However, if suppliers wish to have external advisers select and perform their own statistical analysis and conduct checks on our calculations then we are content from them to do so.
15. There is no purpose to disclosing the current SMNCC model. We propose to set a contingency allowance for cap period four, in the event we are not able to implement our proposals. One option is that we set the allowance at the level that the current SMNCC model would set for cap period four. The assumptions in the current model are not relevant. We have explained that the underlying assumptions in the current SMNCC model are inaccurate. That is why we are reviewing the costs associated with the rollout and consulting on what the updated assumptions should be (in a new SMNCC model).
16. We are already consulting on updated assumptions and disclosing the new SMNCC model (which includes the our proposed updates). If we can conclude what the updated assumptions should be, then there will be no need to set a contingency allowance (with the current SMNCC, or otherwise). We would only use the current SMNCC model to set a contingency allowance if we were unable to establish how to update underlying assumptions in time to set cap four (and required further consultation). In that event, it would be no contingency at all if we sought to also

update the current SMNCC model with revised assumptions (which we could only do after further consultation).

17. However, in the consultation we will disclose the cash level of the contingency allowance. This provides all relevant information that stakeholders require to fully understand and respond on the appropriateness of the contingency arrangements (and in any event, the new SMNCC model will allow stakeholders to make representations on underlying assumptions for the cap period four).

Disclosure arrangements for Disclosed Model

Permitted purpose

18. We provide access for the sole purpose of allowing stakeholders to review and understand the Disclosed Model in order to prepare submissions and representations for the consultation. That is the reason for which we have acquired, developed, and will share this information.
19. We understand that some suppliers may find the Disclosed Model useful or relevant for other business activities that are not part of the consultation on our proposals. That is not a relevant consideration affecting whether or not stakeholders can understand and respond to our proposals.
20. Some suppliers said that they had understood that the permitted purpose denies them the ability to use the Disclosed Model in any appeal associated with our consultation. This is incorrect.
21. For the avoidance of doubt, suppliers are able to use the understanding and information they acquire from disclosure in any subsequent legal proceedings that relate to our consultation and the decision that follows it. We have made this explicit in the Undertakings, such that the Permitted Purpose allows stakeholders "(if relevant) to prepare and conduct an appeal against any decision of the Authority in connection with any decision in respect of the SMNCC resulting from the Consultation, including an appeal in which the Relevant Party is, or is intending to apply to be, an intervener, in which case the arrangements established by these Undertakings may be extended to apply for the purposes of such appeal".

Access to the Disclosed Model

22. We will provide the Disclosed Model to representatives of a stakeholder seeking to respond to the consultation (a "**Relevant Party**").

23. For the Disclosed Model, we will provide access to up to 10 “**Authorised Attendees**”. An Authorised Attendee can be either a direct employee of the Relevant Party responding to our consultation, or an external adviser to that Relevant Party.
24. We recognise that in order for a Relevant Party to respond to the consultation, Authorised Attendees may need to discuss the content of the Disclosed Model with other employees of the Relevant Party that do not need to inspect the Disclosed Model first hand. For this purpose, we will allow Authorised Attendees to discuss the content of the Disclosed Model with **pre-approved Non-Authorised Persons**. Relevant Parties must name Non-Authorised Persons for approval by Ofgem. We will confirm approval within 1 working day of notification.
25. Both Authorised Attendees and approved Non-Authorised Persons must use information from the Disclosed Model for the Permitted Purposes and no other purpose and this will be a condition of disclosure to such an approved Non-Authorised Person.

Disclosure Arrangements for the Disclosed Model

26. Once we grant access, an Authorised Attendee:
 - a. will receive the Disclosed Model available via **secure encrypted email**. This be sent on 22 October at the earliest, or 1 working day after access is granted.
 - b. is permitted to copy the Disclosed Model (creating a “**Permitted Copy**”). Authorised Attendees may edit, adjust, adapt, and copy a Permitted Copy, or parts of a Permitted Copy, such copies are also Permitted Copies.
 - c. must delete the Disclosed Model, Permitted Copies, and other relevant material and documents on the expiry of the period for bringing an appeal in respect of any decision relating to the Consultation. Authorised Attendees must notify Ofgem of the manner of, and date of, the destruction and/or deletion of the relevant material and documents.
27. Originally we proposed to provide access to the Disclosed Model through a Virtual Disclosure Room, or if we were not satisfied with the functionality available, through a Confidentiality Ring.⁴ We are not satisfied that an online version of the model in a virtual disclosure room would replicate our model completely and without error, or

⁴ Ofgem (2019), Reviewing smart metering costs in the default tariff cap: Response paper #4. <https://www.ofgem.gov.uk/publications-and-updates/reviewing-smart-metering-costs-default-tariff-cap-response-paper-4>.

be compatible with software package Authorised Attendees may wish to use to assess the model. On that basis, we will use the Confidentiality Ring arrangements.

28. Originally, under the Confidentiality Ring arrangements, we proposed to provide our model on USB hard drives. We are satisfied that secure encrypted email delivery is efficient and effective, so we no longer require stakeholders to collect a hard drive from Ofgem's premises. Logistically, this approach is more convenient for consultees than collecting USB hard drives, and is closer to the flexibility that our preferred Virtual Disclosure Room option potentially offered.
29. One stakeholder asked that we include a provision in the Undertakings so that Ofgem could review Authorised Attendees' summary reports, which is a feature of the CMA's process. This feature is not relevant for the Disclosed Model, for the reason discussed in Response Paper #4.⁵ The Authorised Attendees are not reviewing information that is confidential *to suppliers*, so Ofgem does not need to review the information Authorised Attendees disclose to those writing representations in response to our consultation. This is not the case for the Disclosed Data, see below.

Disclosure preparation for the Disclosed Model

30. Before we grant access we require:
- a. In a Compliance Document, a description of the processes that the Relevant Party has in place or is putting in place to provide assurance that Disclosed Model will be kept secure, provided to Ofgem for approval by **Wednesday 16 October 2019**;
 - b. Relevant Party Undertakings – written undertakings signed on behalf of the Relevant Party, provided to Ofgem by **Monday 21 October 2019**; and
 - c. Attendee Undertakings – written undertakings signed by each Authorised Attendee, provided to Ofgem by **Monday 21 October 2019**.
31. We are aware that most stakeholders are sophisticated organisations with mature processes for handling sensitive data. We also recognise that these processes may differ from organisation to organisation – there are a variety of ways in which confidentiality can be assured. On that basis, we are not prescribing specific steps or processes that stakeholders must take in order to gain access to the Disclosed

⁵ Ofgem (2019), Reviewing smart metering costs in the default tariff cap: Response paper #4, paragraphs 23-30. <https://www.ofgem.gov.uk/publications-and-updates/reviewing-smart-metering-costs-default-tariff-cap-response-paper-4>.

Model. Stakeholders are free to explain their own processes. They should describe those processes in their Compliance Document. Once we are satisfied that they are appropriate, Ofgem will approve the Compliance Document ("**Approved Compliance Document**") setting out the "**Permitted Arrangements**".

32. Compliance Documents should explain, at a minimum:
 - a. Security Arrangements: Processes to store electronic and physical copies of the Disclosed Model, and in doing so maintain their confidentiality in accordance with the Undertakings.
 - b. Working Environment Arrangements: Processes to ensure that Authorised Attendees can work on the Disclosed Model and discuss their contents, and in doing so maintain their confidentiality in accordance with the Undertakings.
 - c. Support Arrangements: Processes to ensure that Authorised Attendees are aware of their responsibilities and the arrangements the Relevant Party has in place, that sufficient monitoring and governance is in place to maintain confidentiality, and that support and guidance is available to Authorised Attendees.
33. We require the Relevant Party Undertakings and Compliance Documents to be signed by a sufficiently senior and accountable person. This demonstrates that the Relevant Party understands its responsibilities and takes them seriously. We recognise that suppliers have different organisational structures, making it difficult to specify a single appropriate role. As a default, we (clearly) will accept a member of the Board of the licenced entity (as opposed to parent company's board). Where a Relevant Party considers it can identify an individual that has sufficient accountability and responsibility (but is not a board member), then at our discretion, we are happy to consider that person as an alternative.
34. Some suppliers suggested that the compliance document is onerous and that they have mature processes in place to maintain the confidentiality of any information disclosed. We do not consider that it is onerous for an organisation that already has such processes in place to describe in a compliance document what those processes are. The compliance document provides us with assurance that Relevant Parties have sufficient processes in place to keep disclosed material secure. We expect this should be a straightforward exercise for relevant stakeholders, but it is nonetheless appropriate for Ofgem to ensure that all Relevant Parties meet that standard.

Disclosure arrangements for Disclosed Data

Permitted purpose

35. The Permitted Purpose for the disclosed individual data is the same as for the Disclosed Model, described above. Disclosed Data is disclosed for the Permitted Purpose only.

Access to the Disclosed Data

36. The Disclosed Data contains commercially sensitive third party data.
37. For the Disclosed Data, we will provide access to up to 10 **Authorised Advisers**. Authorised Advisers must be external advisers to the Relevant Party employed by a "**Firm**" contracted to provide advice to the Relevant Party, and must not be an employee of the Relevant Party. An individual that is an Authorised Adviser may also be an Authorised Attendee (with access to the Disclosed Model).

Disclosure Arrangements for the Disclosed Data

38. Once access is granted, Authorised Advisers
 - a. will receive access to the Disclosed Data via **secure encrypted email**. This be sent on 22 October at the earliest, or 1 working day after access is granted.
 - b. will be able to copy the Disclosed Data (a "**Permitted Copy**"). Authorised Advisers may edit and copy the Permitted Copy, or parts of a Permitted Copy, such copies are also Permitted Copies.
 - c. must delete the Disclosed Data, Permitted Copies, and other relevant material and documents' on the expiry of the period for bringing an appeal in respect of any decision relating to the Consultation. Authorised Advisers must notify Ofgem of the manner of, and date of, the destruction and/or deletion of the relevant material and documents.
39. Authorised Advisers must not disclose to the Relevant Party:
 - a. Data relating to third parties; or
 - b. Information that could allow third party data to be inferred.
40. Authorised Advisers may, in order to facilitate the Permitted Purpose and at the discretion of the Relevant Party, prepare reports for submission to Ofgem (each a "**Confidential Report**").

41. Authorised Advisers may, in order to facilitate the Permitted Purpose, prepare reports for submission to the Relevant Party (each "**Non-Confidential Reports**"). Prior to providing such Non-Confidential Reports to the Relevant Party, we require Authorised Advisers to submit the Non-Confidential Reports to Ofgem (this applies to any information Authorised Advisers propose to disclose to the Relevant Party that relates to the Disclosed Data). Ofgem will respond to Authorised Advisers within 2 working days, either approving the report, or providing redactions as necessary.
42. Ofgem will not redact information from Non-Confidential Reports unless they disclose third party data, or we reasonably consider that they allow third party data to be inferred. For illustration:
 - a. in Non-Confidential Reports Authorised Advisers can comment on and disclose to the Relevant Party:
 - i. the Relevant Party's own data;
 - ii. descriptive statistics of third party data that do **not** disclose third party data or allow it to be inferred, this would include averages, standard deviations, the number of data points in a range;
 - iii. The existence, explanation, and quantum of errors and the impact of that error on the SMNCC.
 - b. Authorised Advisers cannot disclose to the Relevant Party:
 - i. third party data;
 - ii. descriptive statistics of third party data that disclose third party data or allow it to be inferred, such as statistical data points that match third party data (this would include minimums, maximums, medians, or quartiles), or descriptions of the relationship between third party data and known data points (for example, this would include stating that the minimum data point is half the level of the average).

Disclosure preparation for the Disclosed Data

43. We require:
 - a. In a Compliance Document, a description of the processes that the Firm has in place to provide assurance that Disclosed Data will be kept secure, provided to Ofgem for approval by **Wednesday 16 October 2019**;

- b. Firm Undertakings – written undertakings signed on behalf of the Firm advising the Relevant Party, provided to Ofgem by **Monday 21 October 2019**; and
 - c. Adviser Undertakings – written undertakings signed by each Authorised Adviser, provided to Ofgem by **Monday 21 October 2019**.
44. Compliance Documents should explain, at a minimum:
- a. Security Arrangements: Processes to store electronic and physical copies of the Disclosed Data, and in doing so maintain their confidentiality in accordance with the Undertakings.
 - b. Working Environment Arrangements: Processes to ensure that Authorised Advisers can work on the Disclosed Data and discuss their contents, and in doing so maintain their confidentiality in accordance with the Undertakings.
 - c. Support Arrangements: Processes to ensure that Authorised Advisers are aware of their responsibilities and the arrangements the Relevant Party has in place, that sufficient monitoring and governance is in place to maintain confidentiality, and that support and guidance is available to Authorised Advisers.
45. The Compliance Document must be signed by a suitably senior person of the Firm (as determined by the Authority, acting reasonably. Once we are satisfied that they are appropriate, Ofgem will approve the Compliance Document ("**Approve Compliance Document**") setting out the "**Permitted Arrangements**".
46. We anticipate that most stakeholders engage advisers with well-established processes for handling confidential data, which Firms should find straightforward to describe. We consider it appropriate to ensure that all recipients of the Disclosed Data meet this standard.

Next steps

47. We intend to publish our consultation on 22 October 2019, and will make Disclosed Model and Disclosed Data available at the same time (or not later than one hour after publication). The dates below apply for Relevant Parties seeking access (for their Authorised Attendees and and/or Authorised Advisers on that date).
- a. **Expression of interest:** Stakeholders seeking access to the Disclosed Model and/or Disclosed Data should register their interest with Ofgem

(retailpriceregulation@ofgem.gov.uk) as soon as possible and not later than **Friday 11 October 2019**.

- b. **Draft compliance documents:** Draft compliance documents should be prepared and submitted to Ofgem as soon as possible and not later than **Wednesday 16 October 2019**. Ofgem will review these documents and respond on **Thursday 17 October 2019** to confirm Permitted Arrangements, or ask for clarifications.
 - c. **Undertakings:** Undertakings should be completed and submitted to Ofgem not later than **Monday 21 October 2019**.
 - d. **Access details:** In order to receive the Disclosed Model and/or Disclosed Data, Relevant Parties should provide a named lists of Authorised Attendees and Authorised Advisers, each with professional email addresses and roles, to Ofgem not later than **Monday 21 October 2019** in order to receive the relevant disclosures.
48. All correspondence and expressions of interest should be sent to retailpriceregulation@ofgem.gov.uk.

Kind regards

Anna Rossington

Deputy Director – Retail Price Regulation