

**David White**

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**From:** Rosemary Lundy  
**Sent:** 23 November 2012 16:39  
**To:** David Trethowan  
**Cc:** Alan Bissett  
**Subject:** RE: ACX/RHI 004 - Renewable Heat Incentive- Administrative Arrangements

David

I suggest the following response:

The access rights exercisable under the Data Protection Act 1998 (DPA) are rights against the Data Controller. A "Data Controller" is a person who (either alone or with others) determines:

- the purposes for which; and
- the manner in which personal data are processed.

It is important to note that here may be more than one Data Controller in respect of the same personal data. A Data Controller may act alone, or jointly or in common with others.

Essentially this means that the Data Controller is the organisation which decides how and why personal data is processed. Having some discretion about the smaller details of implementing data processing (i.e. the manner of processing) is not enough in itself to make an organisation a Data Controller. Therefore if ofgem merely has some control over how the data is processed (e.g. what software to use) this will not be enough to make it a Data Controller. If this is the case, the department would be the Data Controller and ofgem would be a Data Processor, even though it decides the details of the processing method.

Where personal data are processed pursuant to an obligation imposed under an enactment the body on whom the obligation to process data is imposed is the Data Controller. This is the case even if processing personal data is an inevitable, but not the main, part of performing the legal duty. If performing a legal duty directly or indirectly involves processing personal data, the organisation under the duty will be the Data Controller in relation to such data processing.

If the organisation subject to the statutory duty delegates its performance to another organisation. The body with the overall responsibility for achieving the **purpose**, or performing the function, bears the responsibilities of the Data Controller. Greatest weight is generally placed on **purpose** rather than manner of processing i.e. the key consideration is whose decision to achieve a business purpose (or to carry out a statutory function) has led to personal data being processed. If the department retains overall responsibility for administering the provision of the benefits, it should remain the Data Controller. I note that neither the primary nor secondary legislation refers to ofgem but refers at all times to DETI.

Therefore, if performing a legal duty necessarily involves processing personal data, the body required to process such data will be the Data Controller and will be legally responsible for ensuring that the processing complies with the DPA.

Therefore as the Department has engaged ofgem to acquire hold or otherwise process personal data that the department is under a statutory duty to acquire hold or otherwise process, the department should be the Data Controller of those data even though it is ofgem who carries out the processing.

Processing is an extremely broad concept under the DPA and covers simply obtaining, recording or holding information or data as well as carrying out any operation or set of operations on it. The definition is extremely wide and will cover the activities carried out by ofgem.

At this stage without precise details of where responsibility lies for achieving the purpose of the function or how the data is to be collected, processed used, stored and destroyed, I am unable to provide a definitive view on who the Data Controller is. However based on the information provided to date my initial view is that the department is likely to be regarded as the Data Controller and ofgem appears to me to be the Data Processor. I would be happy to comment further on receipt of fuller information.

It is important that sufficient provisions are included in the Admin Agreement with ofgem as to the processing of the data which must be in conformity with the principles of fair processing set down in the DPA including; how subject access requests will be dealt with; security arrangements for storage of the data and arrangements for its destruction.

Duties under the DPA apply throughout the period when personal data is processed– as do the rights of individuals in respect of that personal data. The DPA must be complied with from the moment the data is obtained until the time when the data has been returned, deleted or destroyed. “

Happy to discuss

Regards,  
Rosemary

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**From:** Alan Bissett  
**Sent:** 21 November 2012 10:56  
**To:** David Trethowan  
**Cc:** Rosemary Lundy  
**Subject:** RE: ACX/RHI 004 - Renewable Heat Incentive- Administrative Arrangements

They'll have no idea of the answers or what we're talking about...

See if you and Rosemary can distil the relevant questions into an email for me to send and they can go off and find out the answers

Thanks

Alan

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**From:** David Trethowan  
**Sent:** 21 November 2012 10:30  
**To:** Alan Bissett  
**Cc:** Rosemary Lundy  
**Subject:** RE: ACX/RHI 004 - Renewable Heat Incentive- Administrative Arrangements

Alan,

I had a quick chat with Rosemary yesterday evening on this.

The flow of data will have an impact on whether Ofgem and/or DETI will be considered data controllers or processors, and will also have an impact on who actually owns the data.

I think we should set up a call with the Department to ascertain how the flow of data and information will actually work. I don't think they have provided clear information as to whether the data will pass to DETI then to Ofgem, or if it will go direct to Ofgem. Also we will need to know if the data which is processed by Ofgem is then sent back to DETI (I assume it will be).

Thanks

DT

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**From:** Alan Bissett

**Sent:** 19 November 2012 18:42

**To:** 'Stewart, Susan'

**Cc:** McCutcheon, Joanne; Hutchinson, Peter; David Trethowan

**Subject:** RE: ACX/RHI 004 - Renewable Heat Incentive- Administrative Arrangements

Susan

Many thanks for this – we will review and revert.

Regards

Alan

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**From:** Stewart, Susan [<mailto:Susan.Stewart@detini.gov.uk>]

**Sent:** 19 November 2012 17:21

**To:** Alan Bissett

**Cc:** McCutcheon, Joanne; Hutchinson, Peter; David Trethowan

**Subject:** ACX/RHI 004 - Renewable Heat Incentive- Administrative Arrangements

**Importance:** High

Alan