

## **The Information Commissioner's Office response to Ofgem's Consultation on Mandatory Half-Hourly Settlement: aims and timetable for reform**

### **The Information Commissioner's Role**

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 ("DPA"), the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations ("EIR") and the Privacy and Electronic Communications Regulations 2003 ("PECR"). She is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to respond to Ofgem's consultation on mandatory half-hourly settlement. This response is focussed on areas where the privacy of individuals will be affected by a potential move to mandatory half-hourly settlement.

The Commissioner provided a response to Ofgem's open letter of the 17<sup>th</sup> December 2015 on "Half-hourly settlement: the way forward".<sup>1</sup> This set out a number of the privacy concerns surrounding the smart metering program and the collection of half-hourly consumption data for settlement, and this response will try to avoid repeating the points made in that previous response. This response will concentrate on the aims and timetable put forward in the consultation document, and we look forward to commenting further on policy issues when Ofgem consults on the details of how half-hourly data will be mandated for settlement.

It is worth reiterating at this point that a consumption data linked to a particular Meter Point Administration Number (MPAN) is personal data when it relates to a domestic customer or a sole trader.

The main issue that will be highlighted in the answers below is that mandatory half-hourly settlement is in conflict with the energy sector's Data Access Privacy Framework (DAPF). The DAPF was drafted by Ofgem

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<sup>1</sup> <https://ico.org.uk/about-the-ico/consultations/ofgems-half-hourly-settlement-the-way-forward/>

and governs the energy industry's access to various granularities of data from smart meters. The DAPF states that access to half-hourly data is restricted to instances where the individual has actively opted in to the collection and processing of such data by their supplier. Mandating half-hourly data be used for settlement directly contradicts that framework, and it is that framework that will have governed the access to consumption data when a large number of consumers will have made the choice to have a smart meter installed. Therefore changing the framework to allow for mandatory half-hourly settlement should not be taken lightly, and any change made must be drafted narrowly so as to only allow half-hourly data to be used for settlement unless the consumer has opted in to further processing of that data.

The consultation brings up the potential for elective half-hourly settlement as a first step. Elective half-hourly settlement does not raise the same data protection issues as mandatory half-hourly settlement as the customer will have opted in to their supplier accessing their half-hourly consumption data and as such would be in line with the DAPF.

This response will now turn to the relevant questions asked in the consultation document.

**Question 2.1: *Do you have any views on our proposed approach?***

It is a matter for Ofgem to determine the most appropriate approach to take in making the necessary changes to the smart meter regulatory regime. However, the use of half-hourly data from smart meters raises potential privacy concerns, so any change to the rules governing the use of such data should be made in a way that affords the necessary high level of scrutiny and consultation with regard to the final reforms. It is encouraging to note that Ofgem see the Significant Code Review and license modification powers as the most suitable for doing so, as this should provide opportunity for comments to be sought and considered on the final model that Ofgem decides to go ahead with.

**Question 3.1: *Do you think we have identified the necessary reforms? Are there other reforms that should be listed?***

It is clear that for mandatory half-hourly settlement to take place the Data Access and Privacy Framework will need to be amended, along with the related licensing conditions. Any changes should be kept to the minimum necessary to achieve the aims of mandating half-hourly settlement. If half-hourly settlement is to be mandated then any ability of suppliers to use this half-hourly data without the consent of the customer should be drafted as narrowly as possible to ensure that the data is used only for settlement. Any changes must also be communicated to customers to ensure that they are aware of how their data are being

handled. Consideration must be given to what happens if a customer objects to their half-hourly consumption data being used for settlement purposes.

**Question 4.2: Do you agree with the scope of issues identified in [the roles and responsibilities] section? Are there others we should be considering?**

The consultation makes mention of two potential options for supplier agents, either a centralised agent or a number of agents offering their services to energy suppliers. Consumer trust is important and there is the potential for a centralised agent to have a negative impact on that trust. Consumers may be concerned about all half-hourly data being collected in a central database and what may happen with that data, especially if the database were government run. A centralised agent could also be perceived as a single point of weakness. Having a number of agents offering their services to energy suppliers also raises some risks that would need to be considered. The privacy risks with each option should be highlighted by any Privacy Impact Assessment process that Ofgem should partake in.

**Question 4.5: Do you agree with the scope of issues identified in [the consumer issues] section? Are there others we should be considering?**

Of particular note, the consultation document states that:

“Settling customers using their half-hourly consumption data will expose the true cost of supplying that customer in any given half-hour, putting incentives on suppliers to help customers move their consumption to periods when electricity is cheaper... .”

Whilst balancing network usage is clearly one of the main benefits of mandating half-hourly settlement, care must be taken when using any data to profile individual customers and attempt to nudge them onto more efficient tariffs. A large number of people have already had smart meters installed under the current consent model whereby half-hourly data can only be collected and processed by energy suppliers where the customer has opted in to that processing. One of the main privacy concerns that the Commissioner raised in the response to the 2015 open letter was that half-hourly consumption data gives energy suppliers the ability to profile individuals and to use those profiles to make decisions about that person. It is therefore important that the opt-in model for half-hourly data remains in place where the profiling of individual MPANs takes place for reasons beyond settlement, including using the data to target individual consumers in an attempt to change their energy usage or tariff.

It is also important to ensure that all consumers are able to take advantage of any benefits that may come from half-hourly settlement and that those who are not in a position to change their usage patterns or move to smart tariffs are not put at a disadvantage. It may also be necessary to consider how energy suppliers can communicate any change in the use of half-hourly data to vulnerable customers who may require different methods of communication to be able to understand how their data are going to be used.

Information Commissioner  
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