

ICO's Call for evidence – Age Appropriate Design Code: summary of responses

Introduction

In June 2018, the ICO issued a [call for views on the Age Appropriate Design Code](#) ('the Code'). Overall, we received 97 responses from a variety of stakeholders. [Responses from organisations](#) are available to read on our website.

The call for views is one strand of the ICO's consultation, with research commissioned to understand the views of children and their parents expected in January 2019. Once we have received the results of this research we will consider it alongside the responses to the call for views. We will then produce an ICO response to the themes raised.

Key themes

A wide variety of general and detailed issues were raised. Whilst it is not possible to cover every point that was raised in detail, a number of key themes emerged which are summarised below.

Age brackets and evidence

Many respondents felt that the suggested age brackets were appropriate or very appropriate, with some suggestions of how these could be improved or amended (eg to reflect key stages in education).

Some respondents, particularly those representing the views of ISS, felt that the age brackets were not really or at all appropriate. Some of the reasons given include that they would require collection of more personal data and the implementation of age verification procedures. Concerns were raised about how this would fit in with data minimisation standards.

Potential difficulties in obtaining and verifying parental consent for children under 13 were also raised.

Concerns were also expressed that age brackets will be difficult to implement into online services, resulting in the withdrawal of products or a lack of child access to certain services. Some respondents also noted that use of age brackets may result in five different versions of the Code, making it difficult to comply with and administer.

A key theme that emerged, however, was that design standards shouldn't be based solely on age, as ISS providers need to take into account that children develop differently at different rates and don't fit neatly into different age groups. Accordingly, it was felt important to consider other factors, such as children's cognition, social and emotional development, disabilities and special educational needs, mental age, etc. In addition, many respondents noted that more vulnerable children will require additional protections.

Finally, the importance of the role of parents/carers was noted. Particularly, it was suggested that parents/carers are best placed to judge the child's competency. Similarly, it was expressed that parental/carer involvement would be beneficial to children's privacy as they could assist the child in adjusting settings or considering privacy information. It was, however, noted that not all parents/carers are digitally literate or understand the implications of the use of a service on a child's privacy.

The United Nations Convention on the Rights of the Child

Most respondents were positive about applying the Convention to the provisions of the Code, with many suggestions about how the Convention may apply in this context.

Most prominently, it was expressed that ISS should act and design services 'in the best interests' of the child, putting the child's best interests above the commercial interests of the ISS.

Several respondents commented that although Article 16 – the right to privacy – is perhaps the most relevant to the Code, it is still important to take into account the other rights in the convention, and to ensure any focus on privacy is balanced with them – eg right to information and protection from harmful information, right to be heard, etc. The implication of this being that overly prescriptive standards and privacy settings could affect a child's other rights under the convention.

Some noted the Convention's recognition of a child's evolving capacity, which could be relevant to the design of ISS at different age brackets.

Aspects of design (meaning, coverage, where the bar should be set and challenges)

- Default privacy settings

Most respondents felt that default privacy settings should be high and set to collect the least data possible. It was also expressed that it should be very clear to children where they should go to alter their privacy settings. There were conflicting views on whether privacy settings should revert to default once the child has navigated away from the page. Whilst some

believed this was a credible option, others felt that this was taking control away from the user. It was also expressed that reverting to default settings every time results in a poor user experience.

Another theme that emerged was that if service or software is updated, the default settings should not be altered to be less restrictive. Others commented that there may be an appetite for standardised privacy settings, allowing children to easily recognise where to locate and how to adjust settings.

Finally, a number of respondents noted that high privacy settings shouldn't unnecessarily restrict or block children from using a service. Neither should the design of the service encourage children to lower their privacy settings when it wouldn't be in their best interests.

- Data minimisation standards

There was a consensus amongst respondents that an ISS should only collect and process the minimum personal data necessary for the operation of the service, particularly where collecting children's personal data. In addition, respondents felt that the ISS must show reasonable justification for the collection and processing of all personal data.

Other suggestions made by respondents include higher data minimisation standards for the youngest users; for processing of personal data to cease as soon as the child exits the service; and that personal data should be deleted when the child has finished using the service. Linked to this, it was suggested that there should be expiry standards, data caps and time limits and that children should be given frequent opportunities to delete their personal data.

Several respondents raised concerns about the effect on data minimisation if the proposed age brackets were implemented. It was felt that age brackets may require the implementation of age verification and parental consent mechanisms, resulting in ISS collected more personal data to verify the child's age and/or parental consent.

- Presentation and language of terms and conditions and privacy notices

Respondents considered that this aspect should cover the wording, phrasing, length, format, etc of terms and conditions and privacy notices. Respondents noted the challenges of providing privacy information and ensuring that it is read and properly understood by young children. Many highlighted research/studies which show that many people do not read privacy information. One respondent felt there is too much emphasis on privacy information as it relied upon the child being capable of reading them (or having a parent/carer who is).

The prominent theme was that the presentation and language of terms and conditions and privacy notices need to be appropriate for the age of the user. This included using plain, simple and concise language and presenting it in an accessible way. It was suggested that ISS should be encouraged to use child-friendly methods such as audio and video, as well as using images and bigger font sizes.

As with default privacy settings, some respondents felt that children should not be restricted from using a service if they refused to accept the terms and conditions. It was noted by some that terms and conditions form part of legally enforceable agreements and cannot be oversimplified or else they will lose meaning.

Finally, some respondents expressed concern that the code should not prescribe specific methods or limit the way privacy information is provided. It was argued that a requirement to use certain methods may be too costly for smaller organisations, meaning they cannot operate in the market. Similarly, restricting the way privacy information is provided may prevent organisations from going above and beyond to provide information in new and innovative ways.

- Uses of geolocation technology

Respondents suggested that this should cover any information including location, time, duration and traffic information relating to an individual's use of a device. It was suggested that the definition of geolocation be clearly set out in the Code to avoid limiting tracking, for example, for anti-fraud purposes.

The majority of respondents felt that geolocation should be turned off by default unless critical to the service offered. Again, it was suggested that this default should not revert after a software update, etc. In addition, there was support for the idea that geolocation data should only be used whilst the app/service is in use and there should be a clear indicator to remind the user this data is being processed. Furthermore, it was felt that the user experience should not be downgraded for children who chose not to allow location tracking.

Others considered that geolocation should not be offered to children under a certain age, although there were differing views on where this age should be set.

- Automated and semi-automated profiling

It was suggested that profiling should be clearly defined within the Code, including distinguishing between 'good' and 'bad' profiling.

Some respondents believed that automated/semi-automated profiling is inappropriate for children and therefore should not take place, unless it can be demonstrated to be in child's best interest.

Some felt that a Data Protection Impact Assessment (DPIA) should be a prerequisite before any profiling of children takes place. It was also important to some respondents that children (or their parents/carers) were able to understand the basis of the profiling before it takes place, express a view on the results and contest the accuracy.

- Transparency of paid-for activity such as product placement and marketing

Respondents tended to agree in this area that paid for activity should be overt and transparent so it should be clear to children. There was strong feeling that children's data should not be used for commercial purposes/exploitation, or processed for behavioural advertising.

It was suggested that this area may be challenging for the Code to cover as it crosses into the remit of the Advertising Standards Authority.

- Sharing and resale of data

It was noted that the Code should define and distinguish between these two areas. 'Sharing' was taken to cover both internal sharing and sharing with external third parties.

Generally, it was felt that the sharing/sale of children's personal data should be strictly controlled or limited. Any sharing should be transparent, with the ability to track who the data has been shared to. Where consent is given to share data, it was expressed that this should not be considered unlimited by the ISS.

Linked with the default privacy settings, it was suggested that ISS should not automatically opt children in to sharing of their data by default, nor should opting in be a condition of the service. The concern for many was that commercial interests should not override what is in the best interests of the child.

In contrast to the standards ISS should adhere to when deciding whether to share children's personal data, some respondents also considered the ability of children themselves to share their personal data. This links in with privacy settings, in that younger children perhaps should be more restricted in what they can share, with a greater element of control to share as they get older, with warnings or messages about the potential risks/consequences of sharing given by the ISS at the point they wish to change settings to enable sharing, or when posting content.

- Strategies used to encourage extended user engagement

The main themes arising from respondents was that this practice should be limited, made appropriate to the age of the child, and clearly identified. Respondents suggested it should cover features designed to extend user engagement (so-called 'sticky' features'), and factors such as wording used by ISS, forced actions, the ease of changing privacy and other settings, rewarding children for using a service, as well as notifications, autoplay and infinite scroll features.

Much of the concern was around the negative aspects of compulsive or persuasive design, leading children to spend more time online and consequently to provide more personal data. A particular issue noted was that many children struggle to manage their time online and are more susceptible to these features. Some respondents thought that strategies to encourage extended user engagement should be clearly identified and rated, linking in with the suggestion of establishing a labelling or rating system for privacy. This would contribute to an ISS's overall privacy rating, allowing users to make more informed decisions about using the service.

Others thought that persuasive design features should be removed due to their perceived negative aspects, whereas others considered that implementing measures to mitigate against them may be more effective. For example, some respondents suggested that notifications about a child's use/time spent on an ISS may be more effective than imposing time restrictions. They also wanted best practice guidance on persuasive design on children, including where extended use could be harmful, and where such designs can be acceptable and age-appropriate.

Also, as a counterpoint to banning persuasive design outright, one view was that ISS should be free to develop fun and engaging content, so long as this is transparent and within the law.

- User reporting and resolution processes and systems

Most respondents agreed that the reporting and resolution processes for children should be easy to use and responsive to their needs. This may include adding reporting buttons to content/posts, or otherwise clearly signposting reporting mechanisms. In addition, including human support as part of the process, or allowing children to take their own action (such as 'un-tagging' pictures of themselves) was felt beneficial.

It was also felt important to include the ability to track the progress of a complaint, and establishing a timescale to address it, with the ISS having to give reasons if it rejects or refuses to investigate a complaint, and having to signpost an appeal route or how the child can then exercise their rights. Some suggested that there should be a universal reporting standard, so the process is familiar to all children and therefore easier to exercise.

One other suggestion was to introduce the grading of complaints by urgency, based on the child's perspective. For smaller businesses, some felt it was important not to force costly solutions on businesses, in order to maintain a level playing field.

It was noted that introducing specific processes for children to report concerns may create the additional challenge of requiring age verification procedures.

- Ability to understand and activate a child's right to erasure, rectification and restriction

Like with user reporting and resolution systems, respondents considered it would be beneficial for ISS to develop standardised tools to allow children to exercise their rights in a simple and straightforward manner. Again, making the process easily accessible and responsive is seen as key. Some consider that ISS should be compelled to incorporate the activation of rights into the design of their services.

A presumption in favour of accepting a child's request to exercise their rights was also promoted, although some felt this would undermine the legal requirements of the right and risk data being erased which is necessary. Particular focus was made by some respondents on the importance of the right to erasure – this was in the context of issues around so-called 'sharenting' or where children are the victims of bullying and sexual exploitation, and the general concern about children posting information when they may not fully realise the consequences.

A number of respondents advocated the implementation by government of Article 80(2) of the GDPR, feeling this would increase protection by allowing other bodies to be proactive pursue matters on behalf of children.

Another respondent made the point that the principles of activating/exercising rights should be consistent to both adults and

children and that business should be allowed to work out best way to deliver information about exercising rights.

- Ability to access advice from independent, specialist advocates on all data rights

As a continuation of the general theme of making processes and systems easy for children to use, respondents were in favour of ISS enabling children to access help and advice and making the process easy and responsive.

General themes and comments

A point that was raised by a number of respondents was the importance of including the input of children themselves into the process of developing design standards and the design of ISS.

A number of respondents wanted clarification/explanation of any terms used in the code and to make them as plain English as possible

Another theme that came out of the submissions was that changing or setting the standards of design as detailed above would shift the responsibility for ensuring the privacy of children from the children themselves and their parents, to ISS, where children can't be expected to bear the burden of ensuring their own privacy, which can be a complex area.

A theme by some respondents was the introduction of a traffic light or labelling systems for different aspects of design of ISS, in order to make it easier for children and their parents to determine the privacy standards of any given ISS.

Again, the idea that children's 'best interests' should be the focus in all aspects of design was a common theme. Similarly, making ISS be required to carry out a 'childhood' DPIA to cover the different aspects of design was recommended.

Noting the overlap with other industry standards and indeed other pieces of data protection guidance, a number of respondents wanted to see various other codes and guidance incorporated into the Code to place them on a 'statutory footing'.

Many respondents were supportive of the proposals of 5Rights in response to the call for evidence, or at least elements of its submission.

A number of respondents noted that to be successful, the Code would need to be influential internationally, given that not all ISS will be UK-based.

Additional standards

Some respondents suggested age verification itself should be subject to a design standard. They also considered ISS should be required to carry out DPIAs focussed on children's interests and issues as standard. Indeed, some extended this to including children in any design process.

Certification of ISS was also suggested by some.

One respondent in particular considered that there should be an overarching duty of care employed by ISS that they be held to. Linked to this could be the incorporation of the precautionary principle, which it was felt would be a more suitable approach to setting standards given the fast pace of technological change.

Challenges and opportunities

Challenges:

- Many respondents felt that age verification and obtaining parental consent would be a significant challenge. Either process would require the collection of more personal data and may be bypassed.
- Getting ISS to implement design by age brackets would require a redesign of existing services which, alongside developing multiple versions of new platforms, could be costly.
- Respondents felt that it would be a challenge to use existing child development evidence to make design standards appropriate for each age group. They noted the difficulty in ensuring they do not hinder children's development online and allow them to evolve as individuals.
- The international nature of ISS was noted as an additional challenge particularly as the Code will be developed from UK law. There were more general concerns about monitoring compliance.
- There was concern that if the Code was too prescriptive, it could be costly (by forcing particular solutions) and discourage innovation in products (by restricting the collection of personal data, or by setting limits in what an ISS can and can't do) and potentially disadvantage SMEs.

- The fact that technology evolves so quickly was noted as a challenge, being too prescriptive or having specific technical standards could render the code outdated quickly. It was suggested that the Code would work better if it was principle based/flexible, allowing for the development of new technology.
- There was a view that setting some of the standards (where to draw the line – or even if saying something must be done in a child’s ‘best interests’ – and what are the definitions) can be challenging.
- Many respondents felt it can be a challenge providing privacy information to children (and to a lesser extent, to parents).

Opportunities:

- An opportunity to reshape the online experience for children – protecting their privacy, changing expectations and norms.
- Many respondents noted the opportunity to raise awareness of privacy issues with children and their parents/carers and to educate them.

Examples of good ISS design

Most responses to this question provided either examples of ISS that respondents considered of a good design, or what they considered would be good design (the latter mirroring in many instances the standards discussed above). Of the existing ISS, it’s notable that the vast majority of these were services already aimed specifically at children as their intended audience/user base.