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 also commissioned to understand the views of children and their parents. This research has now been completed and the resultant report [Towards a better digital future – informing the Age Appropriate Design Code](#) has been published on our website.

This summary of responses has now been updated with the ICO's responses to the key themes that were 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.

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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.

> **ICO Response**
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> Our draft of the Code for public consultation has regard to the fact that children have different needs at different ages (as required by s123 of the DPA 2018) by including some content specific to the age ranges that we consulted upon in our call for evidence. However we have sought to recognise that that age ranges are not a perfect guide to the interests, needs and evolving capacities of each individual child by presenting this content as guidelines to inform a general approach, rather than as prescriptive requirements. There will be one version of the Code which requires some tailoring of service to age range.
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> We have sought to recognise the challenges and privacy implications of requiring ISS providers to put robust age verification mechanisms in place to establish which of their users are adults, which are children and how old those children are, in order to provide an age appropriate service. We have therefore taken the approach that ISS providers whose services are likely to be accessed by children should provide a default service which is suitable for use by all users regardless of their

age. With this as the (child-friendly) default position ISS providers can then rely upon self-declaration of age to inform their communications with users and to tailor other aspects of their online service to the age range of the user (be they child or adult), putting additional mitigating measures in place depending upon their assessment of risks. If they wish to they can also offer users the option of proving their age via a robust age verification mechanism instead, with the result that, for those users who can prove they are adults, the provisions of the code would not have to apply. We hope this provides a balanced and proportionate approach to a challenging issue, providing appropriate protections for children whilst recognising the privacy rights of all users including adults.

We have sought to recognise the importance of the role of parents and carers by including various provisions which will mean that ISS providers need to prompt and support age appropriate parental involvement in children's use of online services and connected devices, whilst also taking their own responsibility for providing an age appropriate service and respecting the child's evolving capacity to make their own decisions.

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.

ICO response

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Our draft of the Code for public consultation has regard to the United Kingdom's obligations under the United Nations Convention on the Rights of the Child by incorporating the key principle from the convention of 'the best interests of the child' as a specific standard of age appropriate design and also as a theme that runs throughout the provisions of the Code. It recognises that the best interests of the child are a primary (but not the only) consideration under the Convention and that it provides a framework which balances a number of different interests and concerns. Our draft accounts for other convention rights such as the rights to privacy, access to information, the child's evolving capacity to have their views accounted for, and the role of parents in acting in the best interests of the child.

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.

ICO response

Our draft of the Code for public consultation includes a standard on providing high privacy settings by default, recognising the high level of

support for this proposal which also came through clearly in our consultation with children, parents and carers. We have sought to respect issues of user choice and impact on user experience by saying that ISS providers should give users a choice between retaining any changes they may have made to the default settings or reverting back to the high privacy defaults, and by providing that software options should respect existing user choices whenever possible.

- 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.

ICO response

Our draft of the Code for public consultation seeks to provide clarity about what data minimisation means in the context of online services. ISS providers will need to differentiate between different elements of their services, allow children choice over whether to activate elements of service, be clear about what data is needed to provide each individual element and not collect any more data than is really needed to do so.

The issue about collection of data for age verification purposes is addressed under the earlier heading age brackets and evidence.

- 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.

ICO response

Our draft of the Code for public consultation seeks to address the point that many children do not currently read privacy information or terms and conditions by making the transparency standard only one standard, which sits alongside other standards which do not rely upon children or their parents or carers engaging with such information.

> We provide guidelines on communicating with children within different age ranges, without being prescriptive and address the point about the purpose of terms and conditions and the risks of oversimplifying th

- 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.

> **ICO response**
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> Our draft of the Code for public consultation provides that geo-location services should be turned off by default and, for services which make the child's location visible to others, after each use.

- 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.

ICO response

Our draft of the Code for public consultation addresses the different ways in which profiling can be used in an online context. It provides that any settings or features based on the profiling of children should be switched off by default but stops short of prohibiting the profiling of children. This recognises the European Data Protection Board opinion that profiling of children is not prohibited and also the results of the consultation with children and parents and carers who had mixed views about the pros and cons of profiling but wanted to retain some user choice. We sought to respect parental choice and the rights of the child to have their views taken into account in line with their evolving capacity by allowing children or parents to choose to activate profiling options, whilst mitigating risks via standards on transparency and nudge techniques. We also sought to avoid unintended consequences of restricting user choice by prohibiting profiling (such as increasing incentives to lie about age and thereby losing the protection of age appropriate measures).

We provide that ISS providers who provide online services likely to be accessed by children will in any case (even if no profiling) always need to do a DPIA.

- 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.

ICO response

Our draft of the Code for public consultation provides that ISS providers should not use children's personal data in ways that run counter to industry standards, such as the Committee for Advertising Practice

(CAP) code, which covers the transparency of paid for activity and product placement. This recognises the results of the consultation with parents and carers whose preferred solution to this issue was to ensure that advertising content meets industry guidelines for advertising directed at children.

- 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.

ICO response

Our draft of the Code for public consultation provides that data sharing options should be switched off by default. We have addressed issues of transparency, and of best interests of the child when selling personal data for commercial gain.

> We have addressed issues about children's own sharing of their personal data in the section of the Code on privacy settings

 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.

> **ICO response**
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> Our draft of the Code for public consultation notes that there is no conclusive evidence in relation to the effect of strategies used to extend user engagement on the health and wellbeing of the child, but draws upon an opinion issued by the Chief Medical Officers of the UK which recommends a precautionary approach to this issue. We have therefore

said that, pending conclusive evidence, children's personal data should not be used in strategies designed to extend user engagement.

 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.

ICO response

The draft of the Code for public consultation addresses providing prominent and easily accessible age appropriate tools that are easy or children to use, and that allow for tracking of progress. It stops short of mandating standardised or universal tools, allowing ISS providers some discretion in this respect. We do not require the introduction of age verification mechanisms to support reporting of concerns by children.

In the future certification schemes could be used to encourage some industry standardisation.

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.

ICO response

Our draft of the Code for public consultation addresses these suggestions without being prescriptive about the exact nature of the tools that should be provided. It stops short of mandating standardised or universal tools.

We do not address the implementation of Article 80(2) as this is a matter for Government and outside the remit of the Code. However we are clear about our intention to enforce in relevant cases.

 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.

> **ICO response**
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> Our draft of the Code for public consultation addresses these points and makes it clear that ISS providers have to take their own responsibility for providing age appropriate services. We have also included an accountability standard to ensure that ISS providers demonstrate that they have done so.

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.

> **ICO response**
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> Our draft of the Code for public consultation acknowledges the part that such a certification scheme might play in supporting children and parents in making positive choices about which online services to use, and ISS providers in demonstrating their compliance with the Code. It does not introduce a scheme as this would go beyond the remit of the Code, and encourages the development of schemes by industry.

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.

> **ICO response**
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> Our draft of the Code for public consultation includes standards that address the best interests of the child and DPIAs.

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'.

> **ICO response**
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> We have not incorporated this suggestion as we felt it raised practical challenges, given that the content of other codes is outside of our control and may be subject to change (which would require updates to the Code via the Parliamentary process). Instead we have emphasised that ISS providers need to keep up to date with relevant industry standards and have cross referenced some of the most relevant. We have also said that ISS providers need to embed privacy management frameworks as part of their wider accountability measures.

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.

ICO response

We have not gone so far as including these additional standards. Age verification is an area in which we have given some guidance but we would seek to support marketplace innovation, including through our regulatory sandbox, as industry develops privacy friendly solutions to this challenging area.

Certification is an area that we would like to see developed but we consider it to be beyond the remit of this Code.

An overarching duty of care is one area that has been suggested for consideration by Government in their Online Harms work, which the ICO has contributed to.

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).

> **ICO response**
> Some of these challenges, such as age verification, multiple jurisdictions and the global nature of online services and cost implication remain and may be the subject of future work. Others have been addressed within the draft of the Code for public consultation.

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.

> **ICO response**
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> We agree that the Age Appropriate Design Code provides a major opportunity to bring about real and meaningful change in the practice of ISS providers and the experience of children online. We look forward reviewing the responses to the public consultation stage.

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.