

## **Age appropriate design code - GMG response overview**

### **1. About GMG**

Guardian Media Group (GMG) is one of the UK's leading commercial media organisations and a British-owned, independent, news media business. GMG is the owner of Guardian News & Media (GNM), which is the publisher of theguardian.com and the Guardian and Observer newspapers, both of which have received global acclaim for investigations, including the Paradise Papers and Panama Papers, and Cambridge Analytica. As well as being the UK's largest quality news brand, the Guardian and Observer have pioneered a highly distinctive, open approach to publishing on the web and it has achieved significant global audience growth over the past 20 years. Our endowment fund and portfolio of other holdings exist to support the Guardian's journalism by providing financial returns.

### **2. Introduction**

GMG welcomes attempts to safeguard children online through the Data Protection Act 2018, and, in principle, through a delegated Code of Practice on age appropriate design (the Code).

GMG believes that the privacy of children is extremely important and the Code provides an opportunity to reflect on further steps that can be taken in the context of the online world. The online world has brought many benefits to society, but it has also amplified existing threats, and created new dangers for the most vulnerable in society, many of whom are children. The best interests of a child include considerations relating to its right to access news, along with its privacy rights and the need to protect it from other online harms. However, GMG does have concerns about the proportionality of the proposed Code, in its current form.

GNM is the publisher of The Guardian and The Observer, both of which publish high-quality, liberal journalism. We have no shareholders or proprietor and we are guaranteed to be free from political and commercial influence. Our journalists report in the public interest and our teams carefully consider the impact of journalism on our audience, in accordance with editorial norms and codes, journalistic best practice, and the law.

Our approach to the distribution of our journalism is both open and global. In May 2019, GNM broke even for the first time in recent history, aided by a record online readership, reduced costs and increased financial contributions from readers.<sup>1</sup> Central to our strategy - including increasing readership of our journalism online, contributions, and digital revenues - was engaging with a broad audience for our journalism. We seek to engage this broad audience with our journalism wherever they are, whether on our own sites and services, or via a range of third party platforms.

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<https://www.theguardian.com/gnm-press-office/2019/may/01/guardian-media-group-announces-outcome-of-three-year-turnaround-strategy>

GMG believes that access to news content is imperative for children’s development and education. As the draft Code rightly notes, this is widely accepted and enshrined in law such as the UNCRC - especially articles 12, 13.1,14.1, and 17.

GMG’s commitment to this imperative is borne out by the funding of the Guardian Foundation to promote news literacy. Through the Guardian Foundation’s Education Centre, which opened in May 2002, over 134,000 visitors have participated in our workshops, events and activities.<sup>2</sup> NewsWise - a free programme for primary schools - launched in 2018 by the Guardian Foundation, among others, aims to create a generation of news-savvy children, and was referred to in the Online Harms White Paper as exemplary.<sup>3</sup>

GMG strongly supports the right of children to access news - and we see a role for our publications in educating children about the world around them, without restrictions or impaired access.

However, GNM does not target its sites and services at children, and industry data suggests that children do not comprise a significant proportion of the total audience for our desktop and mobile sites. Industry data suggests that visits by children to sites operated by GNM represent a small proportion page views, with children aged under-13 accounting for just 0.16% of total page views, while the total number of page views on our site by children under the age of 18, represents just 7.75% of the total number.<sup>4</sup>

Given that the draft Code applies to information society services (ISSs) that are ‘likely to be accessed by children’, GNM strongly believes that its sites and services are not ‘likely to be accessed by children’.

In addition, given the importance of the provision and consumption of high quality information by citizens of all ages, GMG does not believe that the Code should apply to its sites and services as a matter of principle, and that any attempt to age-rate responsible news sites would set a bad precedent in the UK and beyond.

In this response, we examine the impact that the imposition of age verification would have on sites and services operated by GNM were it to be applied, including the significant impact it would have on the Guardian’s editorial freedom, commercial operating model and business viability.

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<sup>2</sup> <https://www.theguardian.com/gnmeducationcentre>

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<https://www.theguardian.com/gnm-press-office/2018/sep/18/newswise-a-free-programme-for-primary-schools-to-create-a-generation-of-news-savvy-children>

<sup>4</sup> Comscore UK demographics figures, April 2019

### **3. The Guardian, journalism and children**

As set out above, GMG strongly supports the right of children to access news, however we also note that visits to sites operated by GNM are incidental, represent a small proportion of the total number. Industry research suggests that, globally, visits to The Guardian by users under-13s accounted for 0.16% of total page views and 7.75% of total page views on our site are by under-18s.

When users under the age of 18 do visit our sites, they engage with some of the most important aspects of our news coverage. Through the industry data available, we understand that the sections children are most likely to visit are Environment, Science, Film and Music. Of these, Science is the highest with 11.28% of views by under-18s.<sup>5</sup>

GMG takes its data obligations as a responsible publisher extremely seriously and is constantly improving its privacy processes. As part of the implementation of GDPR, we have considered the impact of our sites and services on children. We continue to seek to lead the industry in designing appropriate and proportionate safeguards in areas of the website where children may, incidentally, access those services. But we do not believe that the measures outlined in the Code consultation document are fair or proportionate, for the reasons set out below.

### **4. Scope of proposals and application to GMG**

In line with requirements in the Data Protection Act 2018, the proposed Code applies to ISSs that are “likely to be accessed by children”. The meaning of the term ‘likely to’ is not defined. When viewed alongside other terms such as ‘probably’ and ‘possibly’, each carry a different intimation of scale.<sup>6</sup> This is not a matter of semantics - while differences between these terms may be viewed as subtle, certainty and clarity of this defining term is important. Something that is ‘likely to occur’ appears to mean something that is more than a mere possibility, but is also less than a probable event. The meaning of the term ‘probable’ has been defined as ‘more likely than not’, i.e. having a probability of greater than 50 per cent. Assuming that considerable thought has been given to the use of this term here, it appears that the use of ‘likely to’ aims to impose a reasonably high threshold of accessibility.

As already set out, sites and services operated by GNM are not targeted at children and they are only occasionally or incidentally accessed by children.

GMG does not, therefore, consider that its sites and services qualify as being ‘likely to be accessed by children’ as defined under the Code. Furthermore, GMG submits that sites and services operated by GNM would not fall within existing rules for services ‘likely to be accessed by children’, such as those set out by Ofcom.<sup>7</sup> However, the classification of sites and services provided by GMG as an ISS likely to be accessed by children would have

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<sup>5</sup> Ibid.

<sup>6</sup> <https://www.theguardian.com/news/datablog/2015/aug/14/how-probable-is-probable>

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extremely serious implications for the ability for adults and children to access our independent public interest journalism.

Under a strict interpretation of the Code, the ICO appears to envisage that an ISS operated site or service accessed by even a single child must put in place extensive restrictions and an extensive verification procedure. If news publishers are forced to consider the appropriateness of news content for narrow age ranges, this would have a chilling effect on the range of news sources that are available for children, with news publishers under pressure to block children's access to public interest journalism, and the ICO as arbiter of those decisions. This would have huge implications for the practical operation of news publishers, and the rights of children to access news.

The Code should make much clearer that the phrase 'likely to be accessed by children' must be considered in the round, and that questions of proportionality should be taken into account when considering what sites are 'likely to be accessed by children'. The safeguarding and verifications measures that are proportionate to safeguard under-18s on a site or service operated by a news organisation, will be different to those that are proportionate in relation to a social media site that is aimed at 16 year olds. Yet taking such a proportionate approach to different sites and services is not outlined in the current Code consultation.

Moreover, the limitations, set out in the Code, in relation to how sites and services could commercialise products and services aimed at children, could disincentive the commercial provision of news and information to children at all. Below, in the section on advertising, we set out the potential impact that a disproportionate approach to age verification could have on news publishers ability to commercialise their news products. The combination of an effective bar on advertising (see below) along with costly obligations to implement verification processes to enable assess content, could leave many publishers with a strong incentive to block any reader under 18.

If news publishers are unable to offer access to sites and services on a commercial basis, some businesses may decide to block access to children completely, rather than going through the cost and expense of designing products and services in ways that prevent those users accessing editorial content that might later be deemed unfit by the ICO. There is therefore a danger that this could lead to a reduction in the plurality of news sources available for children to discover online.

We note that the independent Cairncross review<sup>8</sup> on the sustainability of journalism noted that many local news publishers are struggling and sometimes closing - and also that there is *"a clear link between the reduction in the numbers of local journalists and the closure of local newspapers on the one hand, and declines in democratic and civic engagement and negative impacts on the management of public finances on the other"*. The Code in its current form represents a significant disruption to the business models of publishers

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779882/021919\\_DCMS\\_Cairncross\\_Review\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf)

including local news publishers - it would be of deep concern if the Code resulted in a reduction in local news and local democratic participation.

The effects of this Code could be so significant in relation to inhibiting access to sites and services - and so detrimental to UK publishers of news and information - that we cannot believe that it is the intention of the Code. We do not believe that it is the role of the ICO to effectively regulate UK publishers of news and information via this Code.

## **5. Open journalism**

The Guardian's business model relies on its ease of access on the open internet - users are free to easily access our site by coming straight to our homepage or by clicking a link to a specific piece of journalism and easily viewing that journalism, without a paywall.

Unlike site and services that sit behind a paywall, publications with an open business model rely on the fact that readers are able to gain seamless access to journalism. Remaining open and reaching as many readers as possible is an important element of our business model, and approach to distribution, ensuring that a broad, global audience can access high quality liberal journalism in the public interest.

A disproportionate verification procedure would fundamentally threaten the continuance of an open business model when compared to the ease of implementation for either news businesses that already implement a verification procedure in relation to a paywall, or a social or search related platform business, that already requires sign-in, and the submission of personal data, before those services can be accessed.

Similarly, a disproportionate age verification procedure could negatively impact the usage of commercial news sites, versus the websites of news organisations that do not have a need to rely on advertising in order to generate revenues for investment in public interest journalism. Unlike the BBC, GMG does not receive any public funding for journalism in which it invests, yet it competes directly with a BBC News website that benefits from that public funding, and is therefore able to operate free of commercial advertising. The imposition of a disproportionate age verification process on commercially funded sites and services, could mean that users are deterred from using those services, versus publicly funded products and services, that may not have to push users through an age verification process.

Again, GMG reiterates that its reading of the definitions in the Code, mean that we do not believe that its sites and services fall within the scope of the Code. However, if they did, it would be important for the ICO to conduct a full impact assessment of the impact that age verification measures would have on the decision of *any* UK user to complete those measures, or the degree to which those users would likely switch to other sources of news and information, including those that do not host digital advertising, or that are not captured by the Code due to their jurisdiction.

It would be entirely disproportionate and would distort of competition, if the Code were to force publishers to give up a strategy of open journalism in favour of a paywall or a barrier to access for the site. It could lead to a situation where only those who are able to pay to access news, could access news sites other than those provided by the BBC. If the intention of the Code is to force a change in business model, then this is a very serious and significant step that we do not believe was created to achieve.

## **6. Editorial codes and content about children**

News publishers already have an extensive set of editorial obligations around featuring children in editorial content as contained within various internal and external editorial codes.

By way of example, the Guardian's current editorial guidance provides that special care should be taken when dealing with children under the age of 16. Heads of departments must be informed when children have been photographed or interviewed without parental consent.

Articles that include significant intrusions into children's private lives without their understanding and consent need a strong public interest justification. In view of the longevity of online material, editors should consider whether children's identities should be obscured to protect them from embarrassment or harm as they grow older.

These provisions extend to writers who are considering making their own children the subject of an article. Consent to publication should be sought where the child is reasonably considered able to make an informed decision.

See too sections 6 and 7 of the Editorial Code. In cases involving children under 16, editors must demonstrate an exceptional public interest to override the normally paramount interest of the child.

## **7. Mitigations in respect of accessing editorial content**

As stated above, industry data suggests that products and services published by GNM are not 'likely to be accessed by children', with data showing that access to those services is incidental. Therefore we do not believe that age verification procedures should apply in a blanket policy across all websites accessed by UK based users. However *if* the ICO believes that the final Code does apply to news websites, it is vital that the ICO outlines express safeguards to ensure that this Code is not used as a way to age rate editorial content. A revised Code should state that it is not the intention of the Code to create any new obligations on news providers in respect of news content - including clarifying that news providers do not have obligations to (a) verify readers' ages or (b) block or restrict access to news content on the basis of the age of the reader or user.

## **8. The difficulty in verifying age**

As a matter of technical capability, it is currently not clear what verification procedures could meet the criteria set out in the draft Code. In our discussions and research on this topic, we cannot find a potential technical solution - including a third party solution - that would meet the criteria set out in the Code. For example, while there are systems that use bank cards to prove that a person's age is over 18, the same would not be possible for children, who do not have bank accounts in the same way.

## **9. Advertising and profiling - a disproportionate impact on publishers**

GMG welcomes increased protections for children in relation to their privacy and the way that they are served advertising. GMG has led the debate in calling for digital advertising to be transparent, fair, and to protect privacy. Investigations by the Guardian and Observer - including the Cambridge Analytica scandal - have shone a light on the need for better protections in the advertising market, and that includes protections for children.

GMG has high advertising standards and employs a number of processes to ensure that our advertising is appropriate for its audience - including that we do not take any advertising that is aimed at children.

Where we consider that one of our services is not suitable for some or all children, those services have a higher age restriction and this will be shown at the point of registration, for example with our mobile app, marketing emails, and dating site Guardian Soulmates.

If the Code were to apply to news publishers such as the Guardian, then its impact would be felt on our our ability to deliver advertising in at least three ways:

### **a. Reduced access to our journalism**

The Guardian's advertising model relies on ease of access for readers, and ensuring that the widest possible audience has access to our journalism. The imposition of a verification check would create a barrier to access that would deter users from our journalism, and the advertising that sits within our sites and services. The imposition of an age verification process would sit on top of the existing safeguards that we have in place, and a continuing commitment to review standards of commercial practice.

The Government and politicians have stated their commitment to supporting the sustainability of news publishers, including through the Cairncross review and associated workstreams. These include commitments in relation to reviewing practices in relation to online advertising. We do not believe that by creating the Code, MPs intended to introduce measures that would severely and detrimentally affect news publishers' advertising revenues, in the way that the Code has the potential to do.

A disproportionate approach to age verification would also represent much more stringent approach to advertising than is the case in relation to mediums such as television or print advertising, putting publishers who publish online at a disproportionate disadvantage.

**b. Ban on most advertising practices**

The ICO's draft Code has the effect of severely restricting or banning activities that are required for most kinds of advertising to under-18s, such as data sharing and profiling.

We are not clear if the draft Code intends to prevent *any* form of online advertising to children. Such a policy shift would not seem to fit with other policy objectives of government such as moves to further regulate - but not ban - advertising of foods to children online.

GMG believes that a longer period of public consultation and additional parliamentary scrutiny are required on this aspect of the Code, in order to fully assess the commercial impact of these measures on the UK digital economy, and the direct impact of this approach on news publishers.

**c. The interconnectedness of the advertising ecosystem**

Even if news publishers are *not* obliged by the Code to verify the age of readers in order to serve them programmatic advertising, the Code could lead to knock-on effects that could limit GMG's advertising and investment in journalism.

The digital advertising ecosystem is highly integrated and works according to industry standards. Often, the standards of the largest companies end up being adopted by others in the ecosystem, for better or for worse. Therefore it is likely that even if news publishers were excluded from the full requirement to age verify end users, they would be forced to adopt the same form of age verification as platforms and apps that are within the scope of the Code. This would be necessary in order for news website to demonstrate to other partners in the advertising ecosystem that the user is *not* a child.

## **10. Jurisdiction**

We understand that the draft Code applies to UK-regulated companies in respect of all of their users, but only to overseas-regulated companies in respect of their UK users.

This means that restrictions on advertising will impact UK publishers much more aggressively than global tech firms, or overseas providers of news and information websites. We do not believe that UK-based publishers of news and information were the intended target of this Code - in fact global tech firms are often named as those platforms that have allowed harms to children that the Code would act to counter. Therefore it is important to ensure that UK publishers of news and information are not disproportionately impacted by the Code.



## **11. Consultation method**

The significance of this Code for the operation of the digital economy in the UK should not be understated. Although GMG believes that the wording of the Code means that we are not captured in its scope, the potential implications for sites and services that are captured by the Code are potentially very significant. The ICO should seek to set out a full impact assessment of the Code on different sectors of the digital economy and consult much more fully before a second draft of the Code is attempted. We would be very happy to meet to discuss.

**Guardian Media Group**

**May 2019**