

Age appropriate design: an ICO code of practice for online services.

Consultation response from DMG Media

1. This response to the ICO's Age appropriate design consultation is made on behalf of DMG Media, publishers of the Daily Mail, Mail on Sunday, MailOnline, Metro and Metro.co.uk, and the largest commercial publisher of news online in the UK.

Executive Summary

2. The draft Code poses an existential threat to every news website in Britain, apart from the BBC.
3. No one would argue with its purpose, which is to ensure children are not encouraged to share information which would make them vulnerable to stalking, abuse, bullying, or commercial exploitation.
4. However the scope of this Code has been drawn far too widely. It specifically includes news websites and demands that cookies – which all commercial news sites use to sell advertising - are switched off by default.
5. This would mean we are unable to sell any advertising unless we erect an age wall to exclude children. But no one is going to give passport or driving licence details to a website, and log in every time they visit, in order to read news which will still be freely available on the BBC website - not covered by the Code because it sells no advertising.
6. Without wishing to be melodramatic, this will cause the collapse of the online news industry. DMG Media's digital arm employs almost 500 people in the UK, and nearly 350 more in the US and Australia, all jobs created in the last decade. Those jobs will go, as will thousands more at other news websites. And as advertising shifts remorselessly online, thousands more jobs will be at risk on print titles that will not be viable without a digital presence.

7. In an age of growing concern over fake news and disinformation, when the public tire of the BBC the only news on their smartphones will come from rumour-mongers, conspiracy theorists, services funded by foreign governments, like Russia Today, or from US rivals who will be able to use their US profits to take over UK news. It is hard to see how that would help children.
8. Perversely, the organisations that would find it easiest to impose an age-wall, because of the functional services they offer, would be the US internet giants Facebook and Google. Thus the children's code would only cement the digital domination of the companies held most responsible for spreading online harms.
9. The evidence base for the ICO's Code is alarmingly slim – no more than a set of focus groups and opinion polls of children and parents/carers. The research document makes clear the answers supplied by children cannot be relied on at all. Nor does the Code show any evidence – unreliable or otherwise - that children have been harmed by using news websites.
10. This is not surprising. In common with other news websites we do not carry content aimed at children, nor do we target advertising at children. The youngest market segment we offer to programmatic advertisers is 18-24. All our advertising complies with the Code of Advertising Practice, which specifically protects children, and is regulated by the Advertising Standards Authority.
11. Yet, bizarrely, the Code does **not** apply to broadcast television, which includes programming specifically aimed at children, funded by advertising which also targets children. What is the logic of this?
12. The Code contains no reference to the European Convention on Human Rights. This is an extraordinary omission. The Information Commissioner must be aware that both the Data Protection Act 2018 and any Code stemming from it must comply with the Convention. As the Code specifically covers news websites that means it must meet the requirements of ECHR Article 10, which guarantees the public's fundamental right to receive information and the news media's right to impart it. By denying the news media the means to fund its journalism the Code is clearly in breach of Article 10 and therefore legally unsound.
13. In a final irony the Code claims to be based on the United Nations Convention on the Rights of the Child. This includes the '*right to seek, receive and impart information and ideas of all kinds... in writing or in print, in the form of art, or through any other media of the child's choice*'. Destroying the British online news industry is hardly the way to secure that right.

14. As drafted the Code will have disastrous consequences, not just for our industry and its employees, but for society at large.

15. The Code must be redrafted:

- to include a specific and total exemption for news publishers, and
- to make clear that profiling for the purpose of delivering advertising which meets the standards of the Code of Advertising Practice is not detrimental to children's health and well-being and is therefore permitted under the Code.
- To ensure compliance with ECHR Article 10.

Evidential basis for the Code

16. We understand that devising this Code is an obligation placed on the ICO by the Data Protection Act 2018, which in turn was an obligation placed on Parliament by the EU General Data Protection Regulation.

17. The DPA is actually even vaguer than the recital 38 of the GDPR, which it imports into British law. Recital 38 says:

Children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data.

Such specific protection should, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child.

18. The DPA translates that as:

The Commissioner must prepare a code of practice which contains such guidance as the Commissioner considers appropriate on standards of age appropriate design of relevant information society services which are likely to be accessed by children'

The DPA widens the boundaries from 'services offered directly to a child' to 'services which are likely to be accessed by children'. At the same time it gives the ICO enormous latitude: 'The Commissioner must prepare a code of

practice which contains such guidance as the Commissioner considers appropriate [our emphasis]”¹

19. In other words, the DPA requires the Commissioner to work across a very broad landscape, but gives her a free hand to decide what guidance is appropriate and to whom it should apply.
20. We find it puzzling, therefore, that the ICO seem to have conducted so little research to discover where the harms they are required to address take place, and what might be the economic and social effects of the restrictions they propose.
21. ‘Towards a better digital future’, the research released with the draft Code, is flimsy in the extreme. It is based entirely on opinion polls and focus groups. Anyone who observed the last two general elections and the EU referendum could have warned the ICO about the danger of relying on which boxes people tick in opinion polls.
22. Relying on what children say in focus groups is even more questionable. Revealing Reality, the company which carried out the research, issue very clear health warnings. They make interesting reading:
 - *This research did not examine children’s actual behaviour, so we are reporting on what they say rather than what they do*
 - *Children were interviewed in groups, in which they may have tended to agree with what others were saying rather than stating their own opinion*
 - *Children were interviewed in school and often repeated things that their teachers/parents had told them, which they knew to be the ‘right’ answer, but may not have necessarily done or believed*
 - *Children tend not to have a clear world view, which meant that there could be a different response depending on how the question was asked. As a result, there were often contradictions in what children were saying, depending on the framing of the question²*
23. It seems pretty clear that it would be unwise to base any Code of Practice on this research, let alone a Code which has the potential to threaten the future of entire sectors of industry.

¹ Age appropriate design p.7-8

² Towards a better digital future p.8

24. But even if we suppose the research does paint an accurate picture of children’s online experience and concerns, it does not justify some of the draconian measures proposed in the Code.
25. The research found that children are rightly concerned about compromising their physical safety online. They are very wary about the danger of sharing online personal data which would identify them as individuals, in particular their home address.
26. Their views on the use of cookies and targeted advertising are much more nuanced. True, some children said they didn’t like advertising, saying it made them feel used – an opinion shared by many adults – but at the same time they recognised that without advertising services they valued could not be funded:

“Sometimes I feel a bit used for my money, but I know companies might need them to survive” 13–15-year old, Swansea

“Well that’s how they make money – the internet’s free so they have to find some way” 13–15-year old, Edinburgh³

27. Interestingly most children preferred targeting advertising, because it was tailored to their interests:

‘...children also tended to perceive targeted advertising more positively when the researchers positioned the idea in opposition to ‘random’, unpersonalised advertising; when children were presented with the scenario of having to choose between the two, most preferred to see content that was relevant to their interests. Personal recommendations for further online content (such as music or videos) was also widely considered to be a good thing among older age-groups.’⁴

28. We refer to these research findings not because selling advertising targeted at children is a significant element of our news websites’ business model. It isn’t. But what they show is that whereas there may be a fair case for draconian measures to prevent children revealing online data which would threaten their physical safety, the case for applying the same measures to prevent even the possibility of exposure to advertising tailored to their interests is far weaker – and must be balanced against the hugely damaging economic and social consequences of effectively banning targeted advertising.

³ Ibid p.23,41

⁴ Towards a better digital future p.42

Services covered by the Code

29. As we made clear at paragraphs 16-17, the DPA gives the Information Commissioner enormous latitude in deciding the scope of this Code, and the ICO appears to have decided to apply it as broadly as possible. There is no attempt to restrict it to services where children might be expected to encounter online hazards, such as social media platforms, messaging, video streaming, or gaming services.
30. Instead every form of commercial activity on the internet appears to be included, whether it involves the direct sale of goods or services, or is a free service which is funded by advertising.
31. Definitions are unhelpfully vague. *'The Code applies if children are likely to use your service'*. But the meaning of 'likely' is not defined. Instead businesses are told they must conduct market research to find out whether children are likely to use their services. Even if a business is aimed squarely at adults it is not safe, because children might use it:

The important point is that even if the service is aimed at adults, you must be able to point to specific documented evidence to demonstrate that children are not likely to access the service in practice.

If you initially judge that the service is not likely to be accessed by children, but evidence later emerges that a significant number of children are in fact accessing your service – even if this is only a small proportion of your overall user base - you need to comply with the code.⁵

32. Online retailers such as Tesco or Marks & Spencer generally sell to adults, but they also stock items such as clothing specifically aimed at children and teenagers, and electronic goods which will appeal to them. Banks routinely offer debit cards to children as young as 11, so there can be no doubt children have the means to buy these goods online. Will they and their competitors be covered by the Code? Faced with fines of 20m Euro or 4p.c. of turnover if they are found in breach, they will have to assume they are.

33. The Code is equally unhelpful to small businesses:

If you are a small business with a website, your website will only be an ISS [information society service] if you sell your products online, or offer a type of service which is transacted solely or mainly via your website without you needing to spend time with the customer in person.

⁵ Age appropriate design p.14

If you are uncertain whether your service is an ISS or not then we recommend you take your own legal advice.

Very few small businesses can expect to succeed these days without an online presence. How many can afford legal advice and market research to establish they are not covered by this Code? Again, faced with the prospect of draconian fines, they will have to assume they are. They then face the additional burden of carry out a Data Protection Impact Assessment:

We will expect you to do some form of consultation in most cases. For example, you could choose to get feedback from existing users, carry out a general public consultation, conduct market research, conduct user testing, or contact relevant children's rights groups for their views.⁶

How many small businesses and start-ups will have the resources to carry out a public consultation and debate with children's rights groups?

34. As far as news websites like ours are concerned, we are left in no doubt: 'news and education websites' are specifically included. Why? We do not publish any content specifically aimed at children, nor directly sell any advertising targeting them – the youngest demographic segment we offer advertisers is 18-24.
35. Clearly children under 18 can access our website if they wish to. This is their right under the United Nations Convention on the Rights of the Child, which forms part of the basis for the Code:

*The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, **or through any other media of the child's choice** [our emphasis].⁷*

36. Although we do not publish any content specifically aimed at children, Comscore figures show that 5.3 per cent of our users are under 18. Is 5.3 per cent a 'significant number' under the Code? Presumably, as news websites are specifically covered, the ICO believes it is, which should be a warning to other businesses with an online presence.
37. However, bizarrely, one class of publisher which does offer content which specifically targets children, and funds it with advertising also targeted at children, is exempt. Broadcasters are not covered even if their service is supplied over the internet, so long as they are broadcast to a general audience rather than at the

⁶ Ibid p.85

⁷ United Nations Convention on the Rights of the Child, Article 13

request of an individual. MailOnline also supplies news to a general audience over the internet, sometimes with the same video content as broadcast television. What is the difference between an individual using a computer to access ITV News and to access MailOnline? There is no explanation.

Profiling

38. Profiling – by which we assume the draft Code means the use of cookies – is at the core of any commercial news website’s business model. No news website in the UK, apart from the FT, which occupies a unique niche market, has been able to build a sustainable business on the basis of subscriptions. News UK had to abandon subscriptions for the Sun, and while The Times, which retains a paywall, reported just £9.6m profit last year, that was based on print as well as digital revenue.
39. Paywalls have not been made to work for mass market news websites - MailOnline and Metro.co.uk are both free-to-air, and 100 per cent of their revenues come from advertising. Both are currently profitable.
40. Cookies are essential to selling advertising online. The vast majority of online advertising is sold programmatically: when a user opens a web page a digital auction takes place, and by the time the page loads the user’s cookies, which infer his/her demographics and interests from their browsing history, have been matched to advertisers wishing to reach that market segment. In a space of milliseconds a digital auction takes place in which they bid to serve their ads on that user’s page.
41. There is nothing sinister about this. It is the digital equivalent of a market stallholder looking a customer up and down, and on the basis of his/her knowledge of past sales, offering the fruit and veg which appears most suited to that particular customer’s means and tastes.
42. The information we supply to advertisers is all anonymised: there is nothing to identify individuals, only demographic groups. Geolocation on our websites is extremely broad; it goes no deeper than delivering groups of users who live in a county or city. It certainly doesn’t provide addresses, postcodes or GPS co-ordinates.
43. The same applies to nudge techniques. Like virtually all news websites we use continuously scrolling pages, but only to suggest other stories the user might like to read. This is no different to the techniques newspapers have used for more than 100 years – puffs, blurbs and cross-references that draw the reader into the newspaper to ensure they get a chance to sample everything which is on offer. Notifications are used to inform regular users when a big story breaks, just as

newspapers have always used billboards. In fact notifications are less intrusive because users have to opt in to receive them.

44. Not only do children have a right to know what is going on in the world, it is part of their education. It would be very hard to argue that drawing children's attention to news stories damages their health or well-being. No one has ever suggested newspapers should not be sold to children.
45. Lord Leverhulme, the founder of Unilever, famously (and probably apocryphally) once said: 'Half the money I spend on advertising is wasted, the trouble is I don't know which half'. Cookies solve that problem, bringing down the cost of products to the advertiser and consumer alike. Therefore even advertisers who do not use the programmatic route, but buy their ads with us direct, still want to use cookies to ensure their message is reaching the right audience.
46. GDPR has forced us to test this. The vast majority of users happily accept the use of cookies. However some don't, which means we can't sell them targeted advertising. Instead we sell ads based on the content of the pages they choose to read – so when they read a page about motoring they see ads for cars, as you might in a newspaper. Ads sold this way typically yield just 15 per cent of the revenue received for the same ads sold via profiling by cookies. We could not possibly sustain our business if we were to lose 85 per cent of our ad revenue.
47. As already explained, unlike TV broadcasters we do not publish content which is specifically aimed at children, nor do we sell children to advertisers as a market segment – the youngest demographic we offer is 18-24. Nevertheless we have two very popular websites, aimed at the broadest possible audience, and inevitably children will find content that interests them.
48. If, as research shows, 5.3 per cent of our users are under the age of 18 it is possible, given that the programmatic process is opaque, that advertisers will reach audiences under the age of 18 by using our cookies to find users with an interest in products enjoyed by young people, such as music, clothes or electronic devices.
49. The wording of the Code on this point is imprecise, perhaps deliberately so. We would therefore have to assume that the two tests it sets out - (a) 'are our services likely to be accessed by children under 18?', and (b) 'do a significant number of children access our service, even if it is only a small proportion of our user base?' – would be met.
50. Where the Code is in no doubt is that we must apply its standards to all children, which means applying it to all users – *'unless you have robust age checks in place to distinguish children from adults'*.

51. This is spelled out very clearly:

In practice, you can choose whether to apply the standards in this code to:

- *all users;*
- *all users by default, but offer robust age-verification mechanisms to allow adults who can prove their age to opt out of some or all of those safeguards;*
- *only users who are children (and not to users who are adults), if you use robust age-verification mechanisms upfront to confirm the age of each user.*

We recommend that you give your users a choice over the use of age verification wherever possible. In other words, we recommend that you provide a child-appropriate service to all users by default, with the option of age-verification mechanisms to allow adults to opt out of the protections in this code and activate more privacy-intrusive options if they wish.⁸

52. The ICO's preferred option will not work for us. If we offer all our content without advertising, no one is going to prove their age by uploading personal data which could put themselves at risk – such as passport or driver's licence details – just so they can see advertising. In any case the audience behind an age-wall would be so small it would not be viable for advertisers.

53. Nor will the alternative option work. People wanting to access news will not be prepared to prove their age and log in every time they visit a commercial news website if they can find news without those restrictions on the BBC website, which as far we can establish will not be covered by the Code because it does not carry advertising.

54. Either option would be catastrophic for our business. Our audience will disappear and so will our advertising. Without advertising revenue our websites would have to close – at the cost of almost 500 jobs here and nearly another 350 at our parallel websites in the USA and Australia. The same would apply to every other news website in the UK, with the possible exception of the FT and the Times, with the loss of thousands more jobs.

⁸ Age appropriate design p23-24

55. It would also strike a fatal blow to newspapers. The reason newspaper publishers have moved online is that print advertising is dying. Without the prospect of a digital future, newspapers will no longer be viable and the thousands more they employ will lose their jobs as well.
56. This would be an appalling act of vandalism. Online news is a British digital success story – two of the ten largest news websites in the US (MailOnline and the Guardian) are British-owned. Our US operations, though growing fast, would be unsustainable without the solid base we have established in our home market.
57. There would also be serious social and political consequences if this was to happen. The BBC is innately cautious and without commercial news publishers breaking controversial stories that engage public interest and currently provide much of the its news agenda, the BBC would relapse into a dull state broadcaster. The gap would be filled by news sources which do not rely on advertising – rumour-mongers, conspiracy theorists, and propaganda outlets funded by foreign powers or wealthy individuals. Large parts of the country would have no reliable news coverage at all. Disinformation would run riot, and children would be the most vulnerable.
58. The Government is well aware of these risks, and has launched two major initiatives to try to address the problems of the news industry, struggling to maintain quality journalism in a digital marketplace dominated by two monopolistic tech giants, Google and Facebook.
59. It would be extraordinarily counter-productive if all the good work being done through the Government’s Cairncross⁹ and Furman¹⁰ reviews were to be undone by the unintended consequences of an ill-considered digital intervention by another state agency – the ICO.
60. And in a final irony it would also have the effect of preventing children from accessing the wide range of news sources available to them at present, in direct contravention of Article 13 of the UNCRC, on which the Code is supposed to be based, and Article 10 of the European Convention on Human Rights, which does not appear to have been considered at all.

⁹ <https://www.gov.uk/government/publications/the-cairncross-review-a-sustainable-future-for-journalism>

¹⁰ <https://www.gov.uk/government/publications/unlocking-digital-competition-report-of-the-digital-competition-expert-panel>

Age Verification

61. Chapter 2 of the Code (Age-appropriate application) appears to make it clear that any website which is likely to be accessed by children must be protected by age verification.

62. However Chapter 11 (Profiling) introduces possible limits to this rule. The Code's definition of profiling is wide-ranging:

Profiling can be used for a wide range of purposes. It can be used extensively in an online context to suggest or feed content to users, to determine where, when and how frequently that content should be served, to encourage users towards particular behaviours, or to identify users as belonging to particular groups.

Profiles are usually based upon a user's past online activity or browsing history. They can be created using directly collected personal data or by drawing inferences (eg preferences or characteristics inferred from associations with other users or past online choices)

63. It would seem clear this is intended to include advertising sold against data gathered by the use of cookies:

Content feeds based upon profiling can include advertising content, content provided by other websites, downloads, content generated by other internet users, written, audio or visual content. Profiling may also be used to suggest other users to 'connect with' or 'follow'¹¹

64. The Code then demands that features that rely on profiling are switched off by default unless there is a compelling reason to do otherwise, and explains:

In practice it is likely to mean that any features that rely upon profiling and that you provide for commercial purposes are subject to a privacy setting which is switched off by default.¹²

65. This would seem to support the Code's earlier insistence that cookies must be switched off by default, and therefore advertising cannot be presented except behind an age wall. However the Code goes on to say that if profiling is on there must be 'appropriate measures in place to safeguard the child (in particular from inappropriate content)'

¹¹ Age appropriate design p.61

¹² Ibid p.64

66. This is then explained:

In practice this means that if you profile children in order to suggest content to them then you need suitable measures in place to make sure that children aren't 'fed' or presented with content which is detrimental to their physical or mental health or wellbeing, taking into account their age.¹³

67. Types of content which may be detrimental to children's health and well-being are listed. Top of the list is advertising content, but with a very important qualification:

- *advertising or marketing content that is contrary to CAP [Committee of Advertising Practice] guidelines on marketing to children.*

68. Does this mean that despite the apparently unequivocal requirement in Chapter 2 that age verification is put in place, in fact it is possible to use profiling (cookies) and sell advertising, so long as any advertising meets CAP guidelines?

69. The answer to that question is not clear, but CAP guidelines on advertising to children are very comprehensive – they run to 23 clauses – and the Advertising Standards Authority, which enforces the CAP, is one of Britain's longest-standing and most-respected regulators. All advertising on MailOnline is regulated by the ASA and meets the standards of the CAP.

70. It would seem perverse for the ICO to prevent the use of advertising which the ASA regards as perfectly suitable for children. This apparent contradiction needs to be resolved as a matter of urgency.

European Convention on Human Rights

71. The Information Commissioner will be aware that EU member states must comply with the European Convention on Human Rights [ECHR] when transposing community law into national law. This applies to the Data Protection Act 2018 and to the proposed draft Code, which must also comply with and be compatible with Convention rights and obligations.

72. The European Court of Human Rights has recognised that any restriction upon Convention Rights, including the right to freedom of expression, must be "convincingly established and narrowly interpreted". In consequence, any measures which will interfere with or restrict the right to receive or impart information must be:

¹³ Age appropriate design p.65

- prescribed by law; this includes a requirement that the restriction is not arbitrary, irrational or ineffective;
- in pursuit of one or more particular legitimate aims;
- ‘necessary in a democratic society’ - a response to a ‘pressing social need’,
- and proportionate to the legitimate aim/s pursued.

73. Thus, an assessment of proportionality will ask whether a less restrictive approach could have been pursued in any given circumstance.

74. The regime proposed by this draft code is neither a legitimate, necessary, justifiable or proportionate interference with journalism (and news websites in particular), nor with the public’s right to receive information. It is incompatible with Article 10 of the ECHR.

75. For the reasons developed in this submission, the profound consequences for the independent media of the measures in the proposed Code will interfere not only with a child’s Article 10 convention rights, but will also impact on the ability of everyone to access the widest possible range of information. The media’s central purpose is providing the public with information. This role is protected by law and benefits from wide ranging statutory and common law exemptions to protect the public’s right to information and the legal right to impart it. An economically viable media is essential for this purpose.

76. Data Protection is a part of the law of privacy. It does not trump other convention rights. Freedom of expression and information is a fundamental right, against which the data protection rights of individuals must be appropriately balanced, importantly including those of children, even though their rights have been accorded ‘primacy’ by the UNCRC and GDPR. Data Protection rights apply to personal data, namely data which contains specific information which is related to an identifiable living person. If it does not, the data falls outside the data protection regime.

77. It is extraordinary that the proposed Code fails to refer at any point to these Convention rights, a clear indication that they were not been taken into account when this draft was prepared. It is a clear failure for a Regulator to fail to observe a Convention as important and significant as the ECHR and so obviously to have failed

to reflect on the impact of its proposals on the vital public importance of a diverse and thriving media. This is a serious omission.

78. The effect of this Code on our digital news publications, if promulgated as drafted, would be so catastrophic that we would have no option but to defend our Convention Rights in the courts, both here and in Strasbourg.

Other unintended consequences

79. The companies which will find it easiest to persuade users to submit to age verification will be the tech giants: Google (which owns YouTube and Android), Facebook (which owns Instagram and WhatsApp), Amazon, Apple and Netflix. This is because they already have contractual relationships with users, and offer a range of functional services – email, social media, shopping etc, without which most people would find their day-to-day lives seriously disrupted. Disturbingly, in many cases these are also the companies most responsible for spreading online harms.
80. This will give these big five players yet more dominant market power, to the detriment of smaller businesses and start-ups, a situation which the Government is trying to remedy through the Furman Review.
81. As detailed earlier, the vague definitions of the Code will mean smaller businesses will be unsure whether they are covered and, faced with potentially draconian penalties, take precautions which may not be necessary. Notoriously this happened on a large scale with GDPR.
82. Children, especially 16-17 year olds who are most likely to use online services, are very familiar with age restrictions and adept at avoiding them. There is already a thriving market in fake ID cards. Children may also be tempted to use VPNs – virtual private networks – which disguise the user’s identity. VPNs are widely used in China to access censored content.
83. Age verification will put adults at risk by obliging them to provide documents such as passports and driver’s licences which contain data that can be used by criminals to gain access to users’ bank accounts, medical records, and other sensitive personal information.
84. And there can be no doubt that if age verification becomes widespread bad actors will set up enticing-looking websites purely for the purpose of luring the public into supplying personal data, in order to use it for fraudulent purposes.

Recommendations

85. As far as news websites are concerned the potential outcomes of this Code are totally disproportionate to the risks it attempts to address. The Code presents no evidence of children being harmed by visiting news websites, or viewing advertising on them. Indeed the public would not be aware of the problem of online harms had it not been drawn to their attention by news reports. Against that, erecting age walls to eliminate this unproven risk will have a catastrophic effect, potentially causing the closure of the online news industry.
- 86. Recommendation 1. The remedy is simple – online news websites must be granted complete exemption from the Code. Exemption has been given to TV and radio broadcasters, which present content and advertising specifically aimed at children, and it is very difficult to see why it is not extended to news websites, which do neither.**
87. The Code is structured in a way which gives far greater emphasis to failsafe protective measures than to what the ICO regards as practices and content suitable for child users. If our analysis of Chapter 5 is correct, and the Code does permit the use of cookies to serve CAP-compliant advertising to children it should say so clearly. If that is not the case, the Code should be changed so that is the position. If that were the case there would be no need for age verification and the catastrophic consequences that would follow.
- 88. Recommendation 2. The Committee of Advertising Practice has strict rules for advertising aimed at children, enforced rigorously by the Advertising Standards Authority. It would be perverse if one regulator, the ICO, were to ban content passed as fit for purpose by another regulator, the ASA. The Code should make clear that advertising for children which meets CAP rules is permissible, as is the use of profiling (cookies) to ensure it reaches the right audience, and that in those circumstances age verification is not necessary.**
- 89. Recommendation 3. When the Code is redrafted proper consideration must be given to European Convention on Human Rights Article 10, and steps taken to ensure compliance. The simplest way to ensure this would be to give a total exemption to news publishers.**

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