

ICO Evaluation of Children's Code: Responses submitted 19 December 2022

Have you seen changes to online services in scope of the code following the implementation of the Children's code?

Yes.

Changes to websites aimed at children are visible but inconsistent. Cookie default settings are improving but parental consent functions are still basic and easily bypassed, and there is little evidence of age-appropriate privacy policies. Nudging techniques (especially colours to prompt acceptance of non-essential cookies) are prevalent. One major website asks children to disclose their first name, not a nickname. We have also noticed websites that force the use of pseudonymised usernames.

How far do you agree that the guidance and support from the Information Commissioner's Office is helpful?

Strongly agree

The guidance and support is well written, clear and comprehensive.

Have you seen any evidence of conformance with the Children's code imposing additional costs to organisations?

Yes

Inconsistent conformance is indirect evidence of the high cost of compliance. It is expensive to establish the age of users in the first place. The code acknowledges this (section 3) but does not yet offer realistic solutions. 'Age-gate' features are costly at several levels: blocking content behind a gate means it is not indexed on Google, leading to loss of visitors and revenue; individuals are dissuaded from using the website by the age-gate; age-appropriate (multi-layered) content is expensive.

Has the implementation of the Children's code affected your organisation?

Unsure

Only indirectly as Shoosmiths does not offer services to children and is unlikely to be of interest or relevance to anyone under the age of 18. Our interest in the code and consultation is based on our experience of advising client organisations.

How helpful have you found the guidance and support from the Information Commissioner's Office for your conformance with the Children's code?

Unsure

Not relevant, as explained above.

Is there anything else about the impact of the Children's code that you would like to tell us not covered elsewhere in this survey?

The code is clearly well-intentioned and supports important principles of child protection and well-being. However, we are concerned that, to date, the lack of compliance even from large and well-funded organisations demonstrates that the code is not yet being viewed as an important driver of website design. Experience of advising on the Children's Online Privacy Protection Act in the US shows that even quite substantial fines may not be enough to deter businesses aimed at children from carrying on non-compliant practices, which may view the associated fines and costs as the accepted cost of "business as usual" – and, importantly, less expensive than the cost of developing compliant systems. We would respectfully suggest that a more pragmatic and cost-aware approach, combined with purposeful enforcement activity where risks are high, including accountability for individuals, is in our view, the best way of achieving the code's objectives.