

31<sup>st</sup> May 2019

## **Information Commissioner's Consultation on "Age Appropriate Design: A Code of Practice for on-line services."**

### **Response from Mobile UK**

1. Mobile UK, which is the trade body in the UK for EE, O2, Three and Vodafone, welcomes the opportunity to respond to the Information Commissioner's consultation on the Code of Practice for age appropriate design.
2. Mobile UK agrees with the Information Commissioner (ICO) that it is very important for service providers across the digital sector to behave responsibly in relation to their dealings with minors.
3. Our response, however, focuses on the key issue of scope, in particular whether or not the mobile operators' core services fall within 'relevant information society services'. Our interpretation is that these services are out of scope for the reasons set out below. We feel the Code of Practice is not clear on this central point, though, and should they be regarded by the ICO as within scope, the Code, as it stands, would present operators with significant practical difficulties and potentially present contradictions with other regulatory requirements and practices. It could also impact on the universality of mobile services.
4. In the absence of clarity on this point, we have refrained from commenting in detail on the Information Commissioner's draft at this stage. We nevertheless make some broader points about the overall principles, approach and timescales.
5. By way of context, the mobile operators have very long established child protection measures in place and take their responsibilities to customers who are children very seriously. For example, if customers enter a consumer contract or purchase a prepaid phone, the filter on the internet access service is set to 'default on' so that customers cannot access adult content until he or she has been through a process of age-verification.
6. Mobile is very important for providing near universal access to telephony and Internet services. 95% of people use a mobile and 18% of households are regarded by Ofcom as 'mobile only'. Almost no-one is excluded from a mobile service on the basis of cost (with the entry level acquisition cost being perhaps less than £20). Many people rely on mobile connectivity for access to the internet.
7. Groups of customers who may not have access to appropriate documentation or wish to divulge personal identity information – have benefited hugely from the accessibility of mobile. Mobile UK would be extremely concerned if this universality were to be compromised. There could material unintended consequences, particularly for vulnerable groups if measures to identify and age check all customers were introduced.

8. There could be very significant implications for industry, customers and wider public policy on access to basic digital services.

## **Scope**

9. The mobile operators' (MNOs) core connectivity services consist of voice telephony (both traditional circuit switched telephony and 'calling over wi-fi'), text messaging, and internet access, supported by value added services such as Apps for customer account self-management.
10. Mobile operators sell and provision their services through many different channels: directly or through third parties, through retail outlets, through call centres (incl. web chat), or online (where customers can go to get information and advice about our products and services, and/or take out a contract with or without a device.)
11. If customers decide to take out a service or device online, the transaction will be carried out at a distance, at the individual request of the customers, and it will be requested via electronic means. However, this service is not received by the customer via electronic means. In order to start using the services, a customer will need to receive a SIM card, and potentially a device, if they buy a service including equipment. The SIM card and/or device are typically delivered to the customer via mail, or a customer can collect them in store.
12. The consultation document provides additional examples of services it proposes to be captured by the code: apps, programs, websites, games or community environments, and connected toys or devices with or without a screen.
13. Devices, such as mobile phones, are a means to access ISS and are not in themselves ISS. Mobile UK considers this is an important distinction. Where companies only provide the means (whether that is through a mobile phone, a laptop, a watch, a SIM card, or smart TV, sent in the post) through which customers can access ISS, the means should fall outside the scope of an ISS and should not be captured in the scope of the code.
14. The scope of the code would hugely expand if companies providing the means to access ISS are included (included the retailers of such devices). This seems to be disproportionate, and very costly for companies that do not provide ISS.
15. The guidance is clear [on Page 13] that the CoP does not apply to telephone services, including VOIP services. It is silent on other points, such as the Internet Access Service, as distinct from services provided across the access service.
16. Mobile UK would like the CoP to be clear that the selling of and provisioning of telephony and internet access services, including any relevant customer supporting applications, are out of scope. We feel that the very broad base of customers have benefited immeasurably from accessible mobile services. These services are already regulated by Ofcom as electronic communications networks and services

17. Moreover, mobile operators have a good record of protecting customers' data and processing it fairly in the conduct of their operations.
18. On a risk based approach – and Mobile UK strongly believes that proportionality requires that ICO takes a risk based approach – the ICO would be justified in excluding these connectivity services from scope.

#### **Other related matters**

19. The ICO would also be justified in excluding other on-line services that are adequately covered – for example video-on-demand services - that are already regulated by Ofcom.
20. The implementation time for any final code of practice should be at least 12 months, as many of the actions envisaged could have complex knock-on effects for processes, IT design and architecture. Mobile operators have wide experience in implementing new processes – such as the implementation of filters to protect minors from inappropriate content and can bear witness to the time and effort it takes to implement projects successfully and without risk to day to day service.
21. Mobile UK will seek an early meeting with the ICO to discuss these fundamental points and may add further comments to its response following that meeting.