

By email only: [S.Livingstone@lse.ac.uk](mailto:S.Livingstone@lse.ac.uk)

17 December 2021

**RE: The best interests of children**

Dear Professor Livingstone, and fellow signatories,

Thank you for the thoughtful and constructive feedback on our best interests of the child framework. Throughout the transition period we've stressed that the Children's code requires an ongoing commitment (from online services, the ICO and civil society) to reflect on what upholding the best interests of children means in practice. We appreciate you honouring this shared commitment by taking the time to consider how we can make our guidance better.

I've discussed your letter with colleagues leading the development of the framework, Julia Cooke, Principal Policy Adviser, and Jacob Ohrvik-Stott, Head of Regulatory Futures, and they've provided more detail which I have outlined below. They are very happy to continue the conversation with you should you have any follow-up questions or further feedback and are happy to set up a meeting to discuss these matters in more detail in the New Year – their email addresses are [julia.cooke@ico.org.uk](mailto:julia.cooke@ico.org.uk) and [jacob.ohrvik-stott@ico.org.uk](mailto:jacob.ohrvik-stott@ico.org.uk).

As you've highlighted, this is a ground breaking code that creates a better internet for children. Children's rights must be respected and we expect organisations to prove that children's best interests are a primary concern. We want to see organisations consider how their use of personal data impacts on the rights held by children under the United Nations Convention on the Rights of the Child (UNCRC). To support organisations with these considerations we have developed [a range of guidance to support Standard One](#). The [best interests framework](#) is just one part of this suite of guidance and only makes up one part of the assessment we expect organisations to undertake.

**The right to education**

The framework seeks to do deeper dives into the UNCRC rights that are most relevant to a majority of the range of services covered by the code, to keep content relevant to users and succinct (which guidance testing has previously identified as an important user need).

Whilst we wholeheartedly agree that the right to education must be a consideration for some digital services using children's data, including edtech providers in particular, our view is that it is not directly relevant to many services in-scope of the code.

We've highlighted in the framework introduction that the rights listed are non-exhaustive and that ISS will need to consider other rights as appropriate. Having reviewed the framework in light of your suggestion, we will update the introductory text to highlight the right to education as an explicit example of a right not mentioned in the framework, that organisations may still need to consider.

More broadly edtech providers are in-scope of the second phase of our code supervision. [This blog](#) provides more information on our supervision approach. We've also launched a suite of general and code-specific [school resources](#) aimed to support primary and secondary school pupils to engage with their privacy online.

### **Applying the best interests concept holistically**

We've complemented the core framework represented in the excel version with accompanying [best interests assessment guidance](#), that talks users through how to apply the framework to their context, and fulfil their code obligations.

The "Assessing likelihood and severity of impacts" stage emphasises that organisations must balance different benefits and risks across different rights, for each notable service feature and as a whole, to make an overall holistic assessment. We have reviewed the remainder of the guidance, and will be making additions elsewhere to further emphasise the need for a holistic assessment in other parts of the guidance. Similarly we will also flag in more places that the framework rights are non-exhaustive and interlinked. This will include additional contextual information within the excel version (which was highlighted by industry stakeholders as an important format for the guidance to be available).

### **Practical assessment of best interests**

The [best interests assessment guidance](#) accompanying the framework articulates how the best interests standard can be translated into practical steps, to make a balanced best interests assessment and act upon it to meet the code's standards. This includes information on how the best interests assessment links to the DPIA process, and a recommendation to engage with children and parents

directly in the design of their services, as outlined in the code's DPIA standard. In the DPIA organisations must document their decisions, and we recommend in both the code and the best interests guidance that it is good practice to be fully transparent with this process.

As a statutory code we cannot amend the content within it without parliamentary approval. This includes the annex containing the template DPIA, so we are not able to add in additional content on best interests to that at this stage. We will however look to update our code sample DPIAs for [mobile gaming](#), [online retail](#) and [connected toys](#) to more explicitly link to the best interests standard, guidance, and framework.

A child's rights impact assessment beyond data protection strays beyond the ICO's remit, but we will consider the idea in the context of our cooperation with other regulators whose laws also require online services to conduct impact assessments.

### **Provision of remedy**

The framework content on UNCRC Article 12 "Respect for the views of the child" highlights the importance of giving children and parents avenues of redress for exercising their data rights. We will update that framework section to reference remedy mechanisms relating to broader non-conformance with the code, and feeding back on areas where their data may not be being used in their best interests.

We are in the process of developing more resources targeted at children and parents to support them to know their rights in the context of the code. We expect to launch these early in 2022 and are working with the education sector to ensure these are disseminated and used as widely as possible across England, Scotland, Wales and Northern Ireland. We would value your support in helping us promote and review these resources.

Finally, it may be useful to note that we are in the process of developing an engaging explainer product in order to ensure the variety of best interests guidance we've produced is as clear as possible and organisations know how to use these products together as part of a substantive, holistic assessment.

Thanks again for your invaluable feedback, we look forward to continuing the conversation.

Best wishes,

*S Bonner*

Stephen Bonner  
Executive Director of Regulatory Futures and Innovation