

Data protection and journalism code impact assessment



<p>Title: Data protection and journalism code impact assessment</p> <p>Lead department or agency: Information Commissioner's Office</p>	Impact Assessment (IA)
	Date: 28/06/2023
	Stage: Final
	Source of intervention: Legislation
Type of measure: Statutory code of practice	
<p>What is the problem under consideration? Why is regulatory action or intervention necessary?</p> <p>The Information Commissioner was required to prepare the Data protection and journalism code under section 124 (s124) of the Data Protection Act 2018 (DPA 2018) to provide practical guidance about processing personal data for the purposes of journalism in accordance with the requirements of the data protection legislation; and other guidance, as considered appropriate to promote good practice when processing personal data for the purposes of journalism.</p>	
<p>What regulatory policy options have been considered, including any alternatives to regulation? Please justify preferred option</p> <p>As the code and its remit was mandated by Parliament in s124 DPA 2018, it was not appropriate for the Commissioner to consider any alternative course of action. This is described in more detail in the body of this assessment.</p>	
<p>Summary of Impacts</p> <p>The majority of impacts assessed are found to be not attributable to the code. This is primarily because of the terms of the statutory requirement to produce the code and the need for controllers to comply with the existing legislation. There are likely to be some additional beneficial impacts driven by increased regulatory certainty, confidence, and a reduction in the risk and severity of harms in the context of data protection and journalism. Although it's not possible to accurately estimate the scale of impacts, any costs associated with the code are likely to be outweighed by these beneficial impacts.</p>	
<p>Will the intervention be reviewed?</p> <p>The code will be kept under review in line with good regulatory practice, with s124 (2) of the DPA 2018 allowing the Commissioner to make amendments or lay a replacement code.</p>	

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Executive summary

This impact assessment sets out the benefits and costs associated with the Data protection and journalism code of practice (the code). It draws on evidence including desk-based research, responses to an initial call for evidence, and responses to our consultation.

Overall assessment

The code has a strong rationale and aligns well with relevant policy. Our overall assessment of the code is illustrated in Table 1. The costs assessed are found to be not attributable to the code. This is primarily because of the terms of the statutory requirement to produce the code and the need for controllers to comply with the legislation. There are likely to be some additional beneficial impacts driven by increased regulatory certainty, confidence, and a reduction in the risk and severity of harms in the context of data protection and journalism. Although it's not possible to accurately estimate the scale of impacts, any costs associated with the code are likely to be outweighed by these beneficial impacts.

Table 1: Summary of impacts

Impact	Positive, neutral or negative	Attributable to the code
Familiarisation costs	Negative	Not attributable to the code
Reduced data protection harms	Positive	Attributable
Increased business and organisational confidence	Positive	Attributable
Overall assessment	Positive	Attributable

Source: ICO Economic Analysis.

Context

The Data Protection Act 2018 (DPA 2018) requires the Information Commissioner's Office (ICO) to prepare a statutory code of practice. The code's purpose is to help those processing personal data for journalism understand what data protection law says and how to comply with it. In preparing the code, the ICO must specifically consider the special public interest in protecting freedom of expression and information.

We consider that the code is well-aligned with current published policy that the Government and industry bodies are pursuing and work is ongoing to strengthen alignment with policy under development. The policies reviewed include:

- The Leveson inquiry;
- the National data strategy;

- the draft Online Safety bill;
- the draft Data Protection and Digital Information bill; and
- relevant industry codes.

As well as delivering an important service to society, journalism also plays an important role in the economy with around 107,000 professional journalists and editors in the UK. The media eco-system has been transformed by increased digitalisation of the economy which has presented challenges to media business models. The COVID-19 pandemic led to an increase in reach for major news outlets but this has subsided more recently with a fall in consumption across all formats in 2022.

Although a lot of journalism, especially on a day-to-day basis, does not raise data protection concerns, there are some occasions when it could. When this does occur, the power and influence of the press means that processing personal data for the purposes of journalism has the potential to cause substantial harm to people.

In addition, an overarching societal harm that may occur is harm to the important public interest that journalism serves. Journalism has a special role in supporting the free flow of communication and holding the powerful to account. This may be undermined by a lack of public trust arising from, for example, inaccurate news.

This impact assessment identifies instances of harm caused by personal data being processed for journalism. This includes physical harm, material harm (such as financial harm) and non-material harm (such as distress).¹ Specific harms covered in this impact assessment are:

- bodily or emotional harm;
- financial loss and damage to reputation;
- stereotyping, racism and discrimination;
- unlawful privacy intrusion; and
- confidentiality and prejudice to the course of justice.

The rationale for the code is provided by the statutory duty to produce it under s124 DPA 2018. Looking beyond this, the potential to reduce the risk of data protection harms and alignment with industry and published government policy objectives provide further evidence for its need.

¹ For more information on data protection harms, see [Data protection harms | ICO](#).

1. Introduction

This document sets out the findings from our assessment of the impact of the data protection and journalism code. The purpose of the impact assessment is to:

- provide an objective view of the costs and benefits of the code,
- guide and inform the design of the code and potential mitigation measures, and
- set a baseline for future review activity.

The remaining sections of the report are:

- **2: Our approach to the impact assessment:** explains the approach taken to assessing the impacts of the code.
- **3: Context and rationale:** sets out the economic, social and political context for the code as well as the rationale for producing it.
- **4: Detail of proposed intervention:** provides an overview of the proposed data protection and journalism code and the affected groups.
- **5: Costs and benefits of the code:** presents the findings of the cost benefit analysis for the code.
- **6: Monitoring and review:** outlines future monitoring considerations.
- Finally, **Annex A** gives more detail on how familiarisation costs are estimated to support the assessment of costs and benefits.

2. Our approach to the impact assessment

We have assessed the impacts of the code using cost-benefit analysis, which aims to identify the full range of impacts by assessing both the costs and benefits of the code. Our approach follows HM Treasury's Green Book,² Regulatory Policy Committee,³ and Business Impact Target⁴ guidance on best practice for impact assessments. However, it is not practical nor necessary to consider in detail all the code's implications, in line with proportionality principles.

As the code is a statutory requirement, the Commissioner did not have an option to consider any alternative actions or regulatory intervention. For this reason, we have only considered the impact of the code in our assessment. This is consistent with our proportionate approach to impact assessments for statutory codes, see the Data sharing code of practice⁵ and the Age-appropriate design code of practice.⁶

2.1. Theory of change

Our analysis is based on a theory of change, which is a systematic approach used in intervention design and evaluation that provides a visual or narrative representation of how and why an intervention is expected to work, outlining the causal pathways and linkages between inputs, activities, outputs, outcomes and impacts.

We consider the activities carried out by the ICO, UK organisations and people in the UK and then consider how immediate, intermediate and long-term outcomes contribute to impact. This framework also guides the structure of this report, and the remaining chapters are colour coded according to the relevant section of the theory of change that they refer to. For example, the discussion around costs and benefits of the guidance is purple to match this section in the theory of change, as illustrated in Figure 1.

² HM Treasury (2022) *The Green Book: appraisal and evaluation in central government*. Available at: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government> (Accessed 19 April 2023).

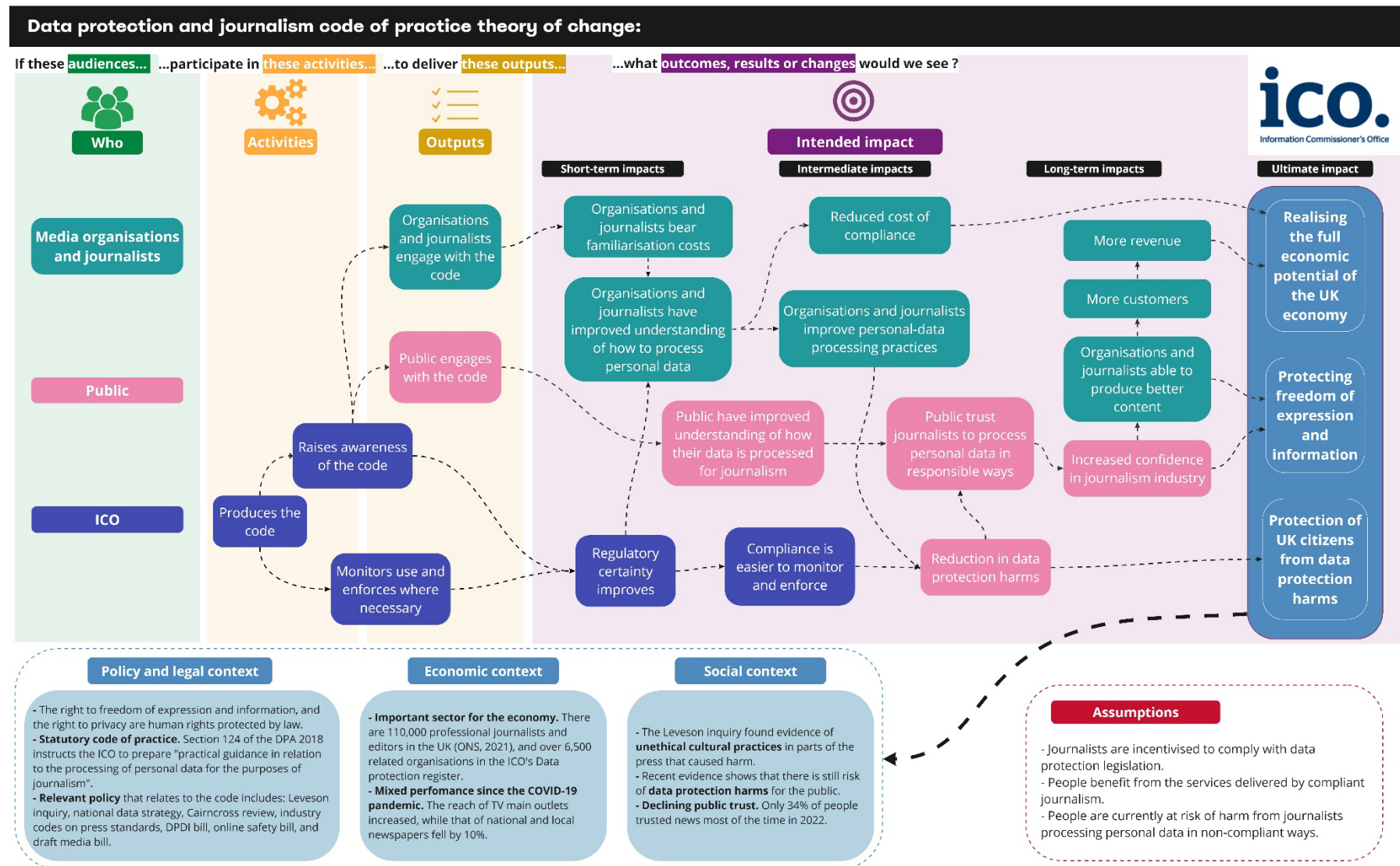
³ Regulatory Policy Committee (2019) *RPC guidance for Departments and Regulators*. Available at: <https://www.gov.uk/government/collections/rpc-guidance-for-departments-and-regulators> (Accessed 19 April 2023).

⁴ BEIS (2019) *Business impact target statutory guidance*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/776507/Business_Impact_Target_Statutory_Guidance_January_2019.pdf (Accessed 19 April 2023).

⁵ ICO (2021) *Data sharing code of practice – Impact assessment*. Available at: <https://ico.org.uk/media/2619796/ds-code-impact-assessment-202105.pdf> (Accessed 19 April 2023).

⁶ ICO (2020) *Age appropriate design: a code of practice for online services – Impact assessment*. Available at: https://ico.org.uk/media/2617988/aadc-impact-assessment-v1_3.pdf (Accessed 19 April 2023).

Figure 1: Theory of change



Source: ICO Economic Analysis.

2.2. Approach

We collected evidence for the impact assessment using the following methods and sources:

- desk-based research, and
- responses to the public consultations on the code.

Consideration of options

As the code and its remit was mandated by Parliament in s124 DPA 2018,⁷ it was not appropriate for the Commissioner to consider any alternative courses of action.

Counterfactual

To help us measure the impact of the code, we have taken as our starting point what the situation is now, known as the counterfactual. The counterfactual is the baseline against which we estimate the additional impacts of introducing the code. If the code was not introduced, then the underlying data protection legislation and existing guidance would continue to apply and form the counterfactual for the purposes of this assessment.

In line with impact assessment guidance,⁸ we assume compliance both with existing legislation and guidance within the code, in the absence of specific evidence to suggest otherwise. This simplifies the assessment, but it is not intended to suggest that there is total compliance. If we did identify any specific lack of compliance, the code would help controllers to improve.

As a statutory code of practice, the code does not impose any additional legal obligations. This limits the code's additional impacts over and above that of the counterfactual.

Monetising impacts

Quantified analysis of the impacts is particularly challenging for the code because of its wide-ranging scope and the difficulty in quantifying the affected groups.

Calculating the additional cost to controllers is also complex because the nature of these costs varies considerably depending on different factors, for example:

- how sophisticated and mature the controller's existing data protection systems and processes are,
- the nature of the activities,

⁷ *Data Protection Act 2018*. Available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/124/enacted> (Accessed 19 April 2023).

⁸ BEIS (2017) *Business impact target*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609201/business-impact-target-guidance-appraisal.pdf (Accessed 19 April 2023).

- the processing associated with those activities, and
- the level of risk to people.

It is similarly challenging to quantify many of the code's benefits because of their intangible nature, such as:

- reductions in harm,
- increased controller understanding, or
- increased trust amongst the public.

Our analysis therefore focuses primarily on non-monetised impacts. However, where possible, we have provided high level quantitative analysis to indicate scale.

Uncertainty, risk and optimism bias

As set out in the Treasury's Green Book, it is necessary to consider the significant levels of uncertainty surrounding the impacts of the code. Although optimism bias is typically only considered in capital projects,⁹ we understand that there can be a tendency to overestimate engagement with guidance. To account for and demonstrate the implications of any potential bias, we have provided sensitivity analysis for the impacts we have been able to quantify.¹⁰ This tests the sensitivity of impact estimates to changes in assumptions and is provided in Annex A.

⁹ Department for Finance of Northern Ireland. *Step six: assess risk and adjust for optimism bias – section 2.6.27*. Available at: <https://www.finance-ni.gov.uk/articles/step-six-assess-risks-and-adjust-optimism-bias> (Accessed 19 April 2023).

¹⁰ See para 5.59 of HM Treasury's Green Book for more information on sensitivity analysis. HM Treasury (2022) *The Green Book: appraisal and evaluation in central government*. Available at: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government> (Accessed 19 April 2023).

3. Context and rationale

This section sets out the problem the guidance is attempting to solve, the economic, social and political context, the policy context, and the data protection harms related to processing personal data for journalism.

3.1. Problem Definition

We have a statutory duty to produce the code under s124 of the DPA 2018. However, beyond this, the code is likely to reduce the risk (in terms of likelihood and severity) of data protection harms, such as those identified below. It is also well-aligned with published government policy and industry codes. Taken together, there are strong reasons for this policy intervention.

3.2. Social and economic context

3.2.1. Freedom of Expression

The code's purpose is to help those processing personal data for journalism understand what data protection law says and how to comply with it. The code takes into account the importance of the right to freedom of expression and information.

As set out in the code, freedom of expression and information is a fundamental right that makes a vital contribution to our democracy. The right to freedom of expression and information concerns the right to exchange information, debate ideas and express opinion.¹¹ A free press is clearly vital to this. Generally, a free press informs, entertains, and increases citizen debate and participation in society. It also acts as a public watchdog to hold the powerful to account and uncover wrongdoing.¹²

The right to freedom of expression is balanced with other areas that are also considered fundamental in a democracy, including the right to privacy.¹³ A degree of privacy, and limits on intrusion, is needed to protect citizens' private and family life, their home and correspondence.¹⁴

¹¹ Equality and Human Rights Commission (2021) *Article 10: Freedom of expression*. Available at: <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression> (Accessed 02 June 2023).

¹² Human Rights Careers (n.d.) *Why is freedom of the press important in a democracy?* Available at: <https://www.humanrightscareers.com/issues/why-is-freedom-of-the-press-important-in-a-democracy/> (Accessed 02 June 2023).

¹³ Equality and Human Rights Commission (2021) *Article 10: Freedom of expression*. Available at: <https://www.equalityhumanrights.com/en/human-rights-act/article-10-freedom-expression> (Accessed 02 June 2023).

¹⁴ Equality and Human Rights Commission (2021) *Article 8: Respect for our private and family life*. Available at: <https://www.equalityhumanrights.com/en/human-rights-act/article-8-respect-your-private-and-family-life> (Accessed 02 June 2023).

There is also a strong public interest in data protection. Data protection enables people to understand what happens to their personal data, and exercise proportionate control over this process. Sometimes the data may be private, in which case it also involves the right to privacy.

“Each and every day we are reminded of how vital the information [the press, journalists and media workers] provides is for democracy, the promotion and protection of human rights, fighting corruption, sustainable development and preserving international peace and security.”

United Nations General Assembly, UNESCO General Conference and the Human Rights Council¹⁵

The importance of both freedom of expression and privacy is recognised by the UK courts¹⁶ and the European Court of Human Rights.¹⁷ More broadly, privacy and data protection are two rights enshrined in the EU Charter of Fundamental Rights, which is reflected in the UK GDPR¹⁸ and the DPA 2018.¹⁹

3.2.2. Economic Context

As well as delivering an important service to society, journalism also plays an important role in the economy. The ONS estimates that there are around 107,000 professional journalists and editors in the UK, equivalent to 0.3% of all employment nationally.²⁰

Employment in the journalism industry is not evenly distributed across UK regions. Approximately half (48%) of these jobs are based in London, with another 19% in the East of England and South East of England. Figure 2 shows that jobs in the sector make up a relatively significant percentage of all jobs in London (1.1%), the East of England (0.3%) and the South West of England (0.3%). This suggests these regions are more sensitive to changes in the sector and impacts are unlikely to be evenly distributed across the UK.

¹⁵ United Nations (2022) *Joint statement on the safety of journalists on the occasion of the world press freedom day 2022*, Available at: <https://www.ohchr.org/en/statements/2022/05/joint-statement-safety-journalists-occasion-world-press-freedom-day-2022> (Accessed 24 April 2023).

¹⁶ *Human Rights Act 1998*. Available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents> (Accessed 02 June 2023).

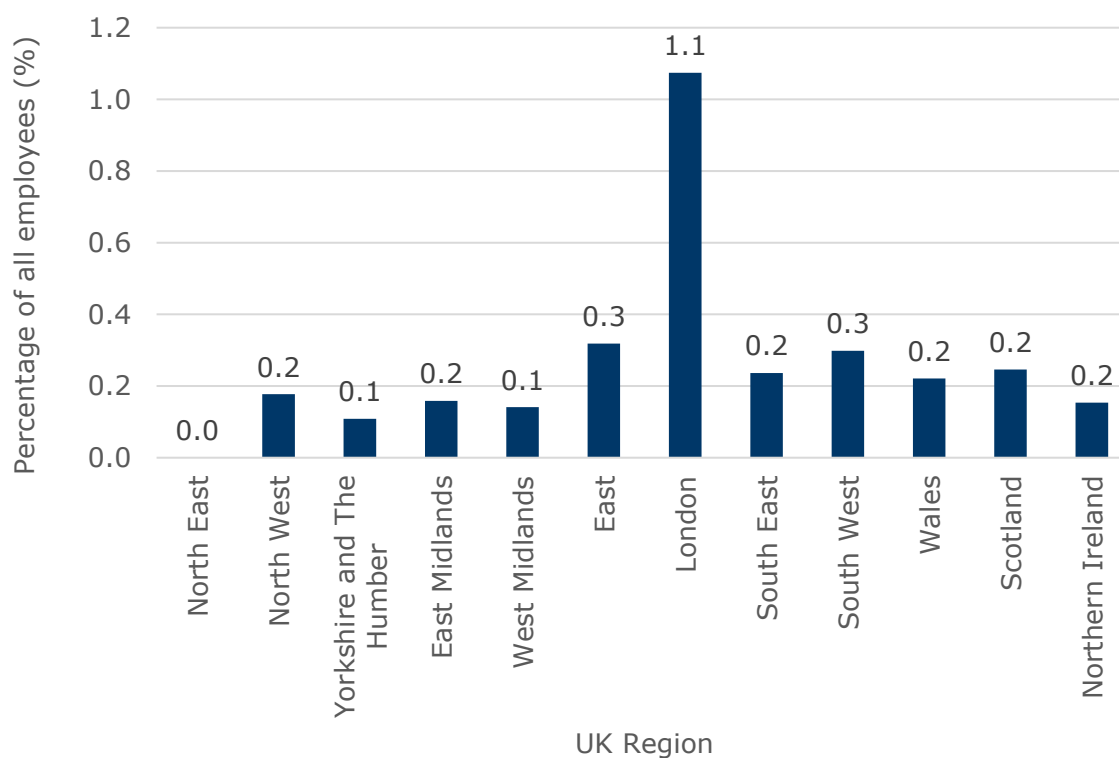
¹⁷ *European Convention of Human Rights*. Available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=005> (Accessed 02 June 2023).

¹⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council. Available at: <https://www.legislation.gov.uk/eur/2016/679/contents> (Accessed 24 April 2023).

¹⁹ *Data Protection Act 2018*. Available at: <https://www.legislation.gov.uk/ukpga/2018/12/section/124/enacted> (Accessed 19 April 2023).

²⁰ ONS (2023) *Annual Population Survey – regional – occupation (SOC2020)*. Available at: <https://www.nomisweb.co.uk/datasets/aps218> (Accessed 30 May 2023).

Figure 2: Journalists as a proportion of employment by region, December 2022



Source: ONS (2023) *Annual Population Survey – regional – employment by occupation (SOC2020)*; Journalists defined as SOC 2491 (Newspaper and periodical editors) and SOC 2492 (Newspaper and periodical journalists and reporters).

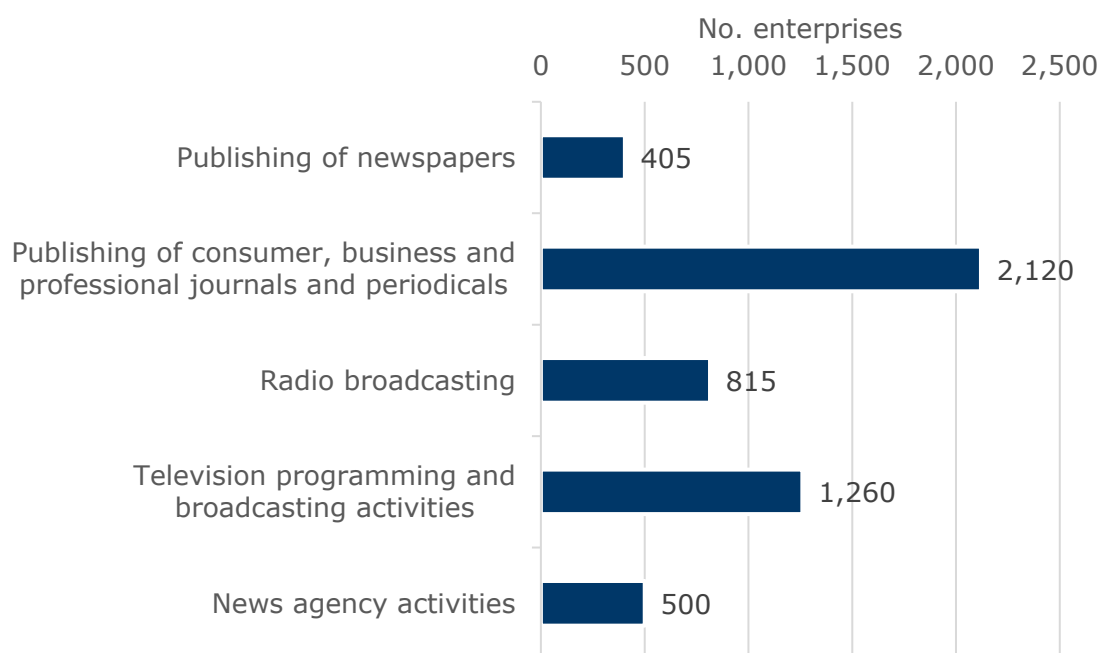
It is difficult to accurately estimate the number of organisations whose main purpose is journalism. The ICO’s Data protection register has approximately 7,690 organisations registered under ‘Journalist’ and ‘TV and radio station’. This provides some indication but could underestimate the true scale as some organisations are exempt from paying the data protection fee.²¹

Business count data from the ONS,²² gives an estimate of around 5,300 enterprises operating across the sector. As Figure 3 shows, the majority (42%) of enterprises belong to the ‘Publishing of consumer, business and professional journals and periodicals’ industrial category. The figure estimated using ONS data is lower than the ICO’s data protection register. There could be a number of reasons for this, such as certain organisations like citizen journalists not being picked up in national statistics.

²¹ See: <https://ico.org.uk/for-organisations/data-protection-fee/data-protection-fee/exemptions/> for more information.

²² ONS (2022) *UK business; activity, size and location*. Available at: <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/bulletins/ukbusinessactivitysizeandlocation/2022> (Accessed 02 June 2023).

Figure 3: Enterprises by sub-sector, December 2022



Source: ONS (2022) *UK business; activity, size and location*.

The media eco-system in the UK and globally has been transformed by the increased digitalisation of the economy and through a series of highly impactful events in recent years. During the COVID-19 pandemic, the main television journalism outlets (ie BBC, ITV and Sky News) all increased their weekly reach. This was however temporary, and overall news consumption fell across all formats in 2022. In particular, the reach of national and local newspapers has fallen from 36% in 2019 to 17% in 2022. While digital subscriptions have continued to rise, only a small minority of users (9%) regularly pay for online news.²³

3.2.3. Data protection harms related to processing personal data for the purposes of journalism

Although a lot of journalism, especially on a day-to-day basis, does not raise data protection concerns, there are occasions when it does. When this does occur, the power and influence of the sector means that processing personal data for the purposes of journalism has the potential to cause substantial harm to people. This is due in part to its access to large audiences.

Part 1 of the Leveson inquiry in 2012 found evidence of unethical cultural practices in parts of the press that caused harm (see section 3.3). The harm to people's rights and freedoms can vary in degree and type. In line with damages, as described in Article 82 of the UK GDPR, harms can include:

²³ Reuters Institute for the Study of Journalism (2022) *2022 Digital News Report*. Available at: <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/united-kingdom> (Accessed 20 April 2023).

- **physical harm:** physical injury or other harms to physical health,
- **material harm:** harms that are more easily monetised such as financial harm, or
- **non-material harm:** less tangible harms such as distress.

This means that harm can arise from actual damage and more intangible harm, including any significant economic or social disadvantage. Of course, harms may also fall into more than one of these categories.²⁴

There may be a harmful impact on wider society. For example, unfair processing or use of inaccurate personal data for the purposes of journalism may lead to a loss of public trust. Ultimately, this undermines the important public interest role that journalism serves in our democracy.

The recent Digital News Report by the Reuters Institute for the Study of Journalism states that in the UK only 34% of people trust news most of the time in 2022 (down from 36% in 2021, and down 17 percentage points on 2015).²⁵ A global survey on trust in professions ranked journalists 26th out of 30 professions, with only 29% of people generally trusting journalists to tell the truth.²⁶

While the specific causes of this reported lack of trust are unclear, and there is disparity between trust in different news brands, the 2022 Digital News Report²⁷ states that:

“...we find that indifference to news and its value, along with widespread perception of political and other biases by the media, are two of the main reasons for low trust”.

Of course, there are numerous positive examples of journalism serving the public interest by holding public figures to account and exposing wrong-doing. Specific examples include:

- an investigation by 17 media organisations revealing widespread and continuing abuse of hacking spyware, Pegasus, to target politicians, activists and others;²⁸

²⁴ ICO – Data protection harms. Available at: <https://ico.org.uk/about-the-ico/research-and-reports/data-protection-harms/> (Accessed 24 April 2023).

²⁵ Reuters Institute for the Study of Journalism (2022) *2022 Digital News Report*. Available at: <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/united-kingdom> (Accessed 20 April 2023).

²⁶ Ipsos (2022) *Ipsos veracity index 2022*. Available at: <https://www.ipsos.com/en-uk/ipsos-veracity-index-2022> (Accessed 23 May 2023).

²⁷ Reuters Institute for the Study of Journalism (2022) *2022 Digital News Report*. Available at: <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/united-kingdom> (Accessed 20 April 2023).

²⁸ News Media UK (2022) *The Pegasus project*. Available at: <https://newsmediauk.org/blog/case-studies/the-pegasus-project/> (Accessed: 25 May 2023).

- publication of information on secret offshore bank accounts of 35 world leaders, billionaires, celebrities and leaders – shining a spotlight on the offshore industry and democratic accountability;²⁹ and
- an exclusive on deaths at the Rochdale Freehold Estate, leading to a review of living conditions at the homes as well as fostering a wider debate on housing conditions.³⁰

To aid understanding of some of the harms the code seeks to address, we have provided some examples below. This list is not exhaustive or hierarchical.

Unlawful privacy intrusion

Unlawful privacy intrusion occurs when private personal data is processed in a way that is not in line with the key data protection principles. For example, when private personal data is processed in a way that was outside someone's reasonable expectations and which cannot be justified in the circumstances.

Harm to someone's privacy may vary significantly in severity depending on different factors, such as the nature of the private information and who it is about. For example, there is likely to be a greater risk of harm generally when using special category data or criminal offence data, which is given specific extra protection under data protection law. Children are also given extra protection.

Some intrusive activities are criminal offences under the DPA 2018.³¹ For example, legal actions concerning phone-hacking of public figures by parts of the press in the past are still ongoing.

Unlawful privacy intrusion violates the right to privacy that is a protected human right. It may cause a person to feel a loss of control over their personal data and interfere with their right to autonomy, integrity, dignity and respect. There are likely to be other harmful consequences as well, such as distress or reputational damage.

Example: Naomi Campbell

In *Naomi Campbell v MGN Ltd.*,³² photographs were taken of Miss Campbell in a public street leaving a Narcotics Anonymous meeting.

The judge said that the mere fact of covert photography is not sufficient to make information private, but he found that the newspaper had misused private information in this case. He said that, in context, the picture added to the information conveyed by the story and the potential harm, by making Miss

²⁹ News Media UK (2022) *Pandora papers*. Available at: <https://newsmediauk.org/blog/case-studies/pandora-papers/> (Accessed: 25 May 2023).

³⁰ News Media UK (2022) *Rochdale Freehold Estate*. Available at: <https://newsmediauk.org/blog/case-studies/rochdale-freehold-estate/> (Accessed: 25 May 2023).

³¹ See [sections 170 to 173 of the DPA 2018](#) for some specific examples of offences under the act.

³² *Naomi Campbell v MGN Ltd.* [2004] UKHL 22. Available at: <https://www.bailii.org/uk/cases/UKHL/2004/22.html> (Accessed 24 April 2023).

Campbell think she was being followed or betrayed, and deterring her from going back to the same place for treatment.

Bodily or emotional harm

In some cases, processing personal data for the purposes of journalism poses risks to people's physical or emotional health, or both. For public figures or people with a role in public life, the harm may accumulate over time because of persistent or frequent invasions of privacy. This may put people's mental health under significant strain.

Example: Can't pay? We'll take it away!

Channel 5 filmed and broadcast two claimants being evicted from their home in a programme called 'Can't Pay? We'll take it away!'.

The programme disclosed private information, including personal data, to millions of viewers, without sufficient justification. A judge found that the footage showed the claimants at their lowest ebb, being evicted without prior notice, in a state of shock and very distressed. The court awarded damages for the privacy intrusion.³³

Financial loss and damage to reputation

This includes loss of employment or income. This material harm is commonly linked to reputational harm. Financial loss may also occur because of steps taken to mitigate harm, such as pursuing expensive legal action.

Example: Sir Cliff Richard

Sir Cliff Richard was awarded damages following the BBC's decision to name him as a suspect in an ongoing police investigation and to broadcast a search of his home. Sir Richard was not charged at the time or subsequently for any offence relating to this investigation.

Sir Richard's evidence included reference to a planned album being put on hold, cancelled public appearances, shelved book deals, retailers refusing to stock merchandise, as well as significant legal costs. His evidence also made it clear that these events seriously affected him physically and mentally.³⁴

³³ Ali and Aslam v Channel 5 Broadcast Ltd [2018] EWHC 298 (Ch).

³⁴ Sir Cliff Richard OBE v the BBC [2018] EWHC 1837 (Ch). Available at: <https://www.judiciary.uk/wp-content/uploads/2018/07/cliff-richard-v-bbc-judgment.pdf> (Accessed 30 May 2023).

Example: Bloomberg LP

In this case, the Supreme Court considered the publication of information identifying a suspect pre-charge in a state investigation concerning a criminal allegation. The court said:

"...publication of such information ordinarily causes damage to the person's reputation together with harm to multiple aspects of the person's physical and social identify such as the right to personal development, and the right to establish and develop relationships with other human beings and the outside world...The harm and damage can on occasions be irremediable and profound".³⁵

Stereotyping, racism, and discrimination

The inclusion of specific types of personal data in stories may contribute to stereotyping, racism and discrimination.

A key principle of the UK GDPR is to minimise processing of personal data. This includes not processing irrelevant or excessive personal data. Personal data must also be accurate. Processing of personal data must be fair and lawful. Special category data includes personal data revealing or concerning information about racial or ethnic origin, or religious or philosophical beliefs. This type of data needs more protection because it is often particularly sensitive.

Confidentiality and prejudice to the course of justice

There is a strong public interest in ensuring that the process of justice is fair, and that legitimate duties of confidence are respected. For example, a duty of confidence may arise in the context of a state investigation regarding material relating to the investigation. If there is a breach of confidence, that in turn may prejudice the course of justice by interfering with an ongoing investigation. A breach of confidence in this context may also undermine confidence in the justice process which may deter people from reporting crimes.

³⁵ Bloomberg LP v ZXC [2022] UKSC 5, [71]. Available at: <https://www.bailii.org/uk/cases/UKSC/2022/5.html> (Accessed 30 May 2023).

Example: Bloomberg LP

This case concerned Bloomberg's publication of an article based on information from a confidential letter of request sent by a UK law enforcement body to a foreign state.

The court acknowledged the strong public interest in observing duties of confidence generally and, more specifically, when it could prejudice an ongoing state investigation.³⁶

Example: Sand Van Roy

Associated Newspapers paid substantial damages to actor Sand Van Roy for revealing her identity as a complainant in a rape case against the French film director Luc Besson, following unlawful coverage in the French press. Sand Van Roy said that she hoped victims of crime would not be deterred by fear of their identity being publicised.³⁷

3.3. Policy Context

An important part of the context for the code and its objectives is its alignment with specific areas of policy that the government is pursuing at the time of preparing this impact assessment.

The Leveson inquiry

The Leveson inquiry³⁸ was a judicial public inquiry into the culture and ethics of the UK press following evidence of phone hacking by News International and other media organisations. It ran from 2011-2012 and was chaired by Lord Justice Leveson.

The inquiry considered the harm caused by the press to ordinary members of the public, people with a public profile and victims of crime, amongst others. The inquiry found evidence of unethical cultural practices in parts of the UK press. In particular, it found inaccuracy in press reporting and a lack of respect for individual privacy in circumstances where there was no, or insufficient, public interest justification.

³⁶ Ali and Aslam v Channel 5 Broadcast Ltd [2018] EWHC 298 (Ch). Available at: <https://www.judiciary.uk/wp-content/uploads/2018/02/ali-v-channel5-judgment.pdf> (Accessed 30 May 2023).

³⁷ The Guardian (2021) *Associated Newspapers pays damages for revealing Sand Van Roy as Luc Besson accuser*. Available at: <https://www.theguardian.com/media/2021/may/21/associated-newspapers-pays-damages-for-revealing-sand-van-roy-as-luc-besson-accuser> (Accessed 24 April 2023).

³⁸ DCMS (2012) *Leveson Inquiry - Report into the culture, practices and ethics of the press*. Available at: <https://www.gov.uk/government/publications/leveson-inquiry-report-into-the-culture-practices-and-ethics-of-the-press> (Accessed 24 April 2023).

In January 2013 we published our response to the inquiry³⁹ and in September 2014 we published a guide on data protection and journalism for the media.⁴⁰ The guidance was produced in response to a formal recommendation to the inquiry.

Part II of the inquiry did not proceed as government judged that the terms of the second part had largely been met through changes made in response to Part I,⁴¹ both by journalists and through measures such as the Crime and Courts Act⁴² and the creation of the Press Recognition Panel.⁴³

However, requirements to support future compliance and review were introduced, including requirements for the ICO to: produce a data protection journalism code of practice under section 124 of the DPA 2018; and review the processing of personal data for the purposes of journalism under section 178 of DPA 2018.

National data strategy

The National data strategy⁴⁴ is the Government's pro-growth strategy for data. It focuses on the UK building a world-leading data economy, whilst making sure that the public trust how data is used.

The code particularly complements pillar 4 of the strategy, 'Responsible data'. This involves making sure that data is used responsibly, in a way that is lawful, secure, fair, ethical, sustainable, and accountable. These are key considerations in data protection law, which are discussed in the context of journalism in the code.

One of the code's key objectives is to build and sustain public trust in the processing of personal data for the purposes of journalism, which makes an extremely valuable contribution to democracy and society.

The Cairncross review

In February 2019, the Government published an independent report, the Cairncross review,⁴⁵ about securing a sustainable future for journalism. This

³⁹ ICO (2013) *The Information Commissioner's Response to the Leveson Report on the Culture, Practices and Ethics of the Press*. Available at: <https://ico.org.uk/media/about-the-ico/documents/1042562/ico-response-to-leveson-report-012013.pdf> (Accessed 24 April 2023).

⁴⁰ ICO (2014) *Data protection and journalism: a guide for the media*. Available at: <https://ico.org.uk/media/for-organisations/documents/1552/data-protection-and-journalism-media-guidance.pdf> (Accessed 24 April 2023).

⁴¹ DCMS (2018) *Leveson consultation response*. Available at: <https://www.gov.uk/government/speeches/leveson-consultation-response> (Accessed 24 April 2023).

⁴² Crime and Courts Act 2013. Available at: <https://www.legislation.gov.uk/ukpga/2013/22/contents/enacted> (Accessed 24 April 2023).

⁴³ See: <https://pressrecognitionpanel.org.uk/the-royal-charter/> (Accessed 24 April 2023).

⁴⁴ DCMS (2020) *National data strategy*. Available at: <https://www.gov.uk/government/publications/uk-national-data-strategy/national-data-strategy> (Accessed 24 April 2023).

⁴⁵ DCMS (2019) *The Cairncross Review: A sustainable future for journalism*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf (Accessed 24 April 2023).

acknowledged the economic pressures on journalism operating in a competitive and evolving digital environment.

The code helps people to comply with data protection law, reflecting the introduction of the GDPR and the changing realities of the digital world, which the law is a response to. The code also reflects the special public interest in freedom of expression and information, whilst providing practical guidance that is mindful of the context in which journalists generally operate. The ICO will continue to engage with industry stakeholders about the practicalities of the code in this context.

Industry codes on press standards

Press standards more generally are dealt with by a number of industry codes of practice and guidelines, including:

- Independent Press Standards Organisation (IPSO) Editors' Code of Practice,⁴⁶
- IMPRESS Standards Code,⁴⁷
- BBC Editorial Guidelines,⁴⁸ and
- Ofcom Broadcasting Code.⁴⁹

These should be distinguished from the ICO code, which does not concern general media standards. Rather it is limited to journalism in the context of data protection law, as explained above.

The industry codes include considerations about data protection. For example, IPSO's Editor's code covers accuracy and the public interest generally. The ICO code complements industry codes, providing more detail about the specific application of data protection in these areas and others which are not covered by industry codes.

Generally, we consider the industry codes and the ICO's code to be well-aligned. Speaking to the organisations responsible for industry codes and involving them in the public consultation exercise has allowed us to enhance the code's alignment further.

Policy in development

There are various bills at different stages of development which relate to the media and journalism. We have highlighted some of the main ones below, and

⁴⁶ IPSO (2021) *Editors' Code of Practice*. Available at: <https://www.ipso.co.uk/editors-code-of-practice/> (Accessed 24 April 2023).

⁴⁷ IMPRESS (n.d.) *Know your code*. Available at: <https://www.impress.press/standards/impress-standards-code/our-standards-code> (Accessed 24 April 2023).

⁴⁸ BBC (n.d.) *Editorial Guidelines*. Available at: <https://www.bbc.co.uk/editorialguidelines/guidelines/> (Accessed 24 April 2023).

⁴⁹ Ofcom (2020) *The Ofcom Broadcasting Code*. Available at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code> (Accessed 24 April 2023).

have indicated briefly at a high-level how the code would be likely to align with current plans.

The Data Protection and Digital Information (DPDI) bill

The DPDI bill was re-introduced to Parliament earlier this year.⁵⁰ The ICO supports the bill's ambition to enable organisations to grow and innovate whilst maintaining high standards of data protection rights. Data protection law needs to give people confidence to share their information to use the products and services that power our economy and society. The code contributes to this, providing practical guidance reflecting the importance of the public interest in freedom of expression and information, and a free press. It also helps to build and sustain public trust in journalism.

The ICO is continuing to work constructively with the government to monitor how these reforms are expressed in the Bill, as it continues its journey through Parliament. We will update the code accordingly to reflect changes to data protection law.

Online Safety bill

The Online Safety bill⁵¹ aims to respond to the risks posed by harmful activity and content online, particularly the increased risks to children. The bill aims to increase the accountability of technology companies, in line with the significant role they play in people's lives, by introducing a new duty of care. Managing online harms needs to be balanced against the contribution to economic growth made by digital technology and the importance of protecting freedom of expression. The bill therefore proposes protections for journalism.

The ICO is actively engaging with DSIT and Ofcom to share knowledge and ensure consistency where appropriate. The ICO has also responded to the call for evidence.⁵²

Draft Media bill

The government has published a draft Media bill⁵³ which it says will help public service broadcasters better compete with streaming giants. It is part of government plans to modernise broadcasting laws. The draft Media bill proposes to increase competition by ensuring that streaming giants meet the same high

⁵⁰ DSIT (2023) *British businesses to save billions under new UK version of GDPR*. Available at: <https://www.gov.uk/government/news/british-businesses-to-save-billions-under-new-uk-version-of-gdpr> (Accessed 23 May 2023).

⁵¹ DCMS and DSIT (2021) *Draft Online Safety Bill*. Available at: <https://www.gov.uk/government/publications/draft-online-safety-bill> (Accessed 24 April 2023).

⁵² ICO (2021) *The Information Commissioner's response to the Draft Online Safety Bill (Joint Committee) Call for Evidence*. Available at: <https://ico.org.uk/media/about-the-ico/consultation-responses/4018386/draft-online-safety-bill-ico-response-to-joint-committee-call-for-evidence.pdf> (Accessed 24 April 2023).

⁵³ DCMS (2023) *New laws to help bring more great shows to British screens and airwaves*. Available at: <https://www.gov.uk/government/news/new-laws-to-help-bring-more-great-shows-to-british-screens-and-airwaves> (Accessed 23 May 2023).

standards expected of public service broadcasters, bringing them under Ofcom's remit.

The bill includes provisions to repeal Section 40 of the Crime and Courts Act.⁵⁴ Section 40 was written in response to the Levenson Inquiry, which recommended legal remedies should be more easily available to ordinary members of the public. Many organisations in the media industry oppose section 40.⁵⁵ More specifically, they oppose its condition to pass on the legal costs of claimants even in unsuccessful cases when publishers are not members of a regulator approved by the Press Recognition Panel created after the Levenson Inquiry. Currently, only one regulator has been approved via this route, IMPRESS.

The code applies to anyone falling within the scope of the UK GDPR and processing personal data for journalism. Data protection law applies to organisations using personal data that operate within the UK, as well as organisations outside the UK offering goods or services to people in the UK. By helping people to understand data protection law and good practice, the code would generally complement the bill's stated aims to increase standards.

Digital Markets and Consumer bill

The government has proposed to introduce a new digital regime which will protect consumers and boost competition in digital markets. As part of the bill, a Digital Markets Unit (DMU) within the Competition and Markets Authority (CMA) will be given new powers to tackle what the government says is the excessive dominance of a small number of tech companies, which is considered to stifle innovation and economic growth.⁵⁶

A news media bargaining code is proposed to level the playing field between news publishers and platforms by ensuring that platforms are compelled to negotiate to use news publisher content fairly. A scheme with similar objectives operates in Australia.⁵⁷

This would be relevant to the data protection and journalism code as the news media bargaining code would apply to in-scope online platforms who process personal data for journalism.

⁵⁴ *Crime and Court Act 2013*. Available at: <https://www.legislation.gov.uk/ukpga/2013/22/contents> (Accessed 9 June 2023)

⁵⁵ News Media UK (2023) *NMA Welcomes Repeal of Section 40 In Draft Media Bill*. Available at: <https://newsmediauk.org/blog/2023/03/29/nma-welcomes-repeal-of-section-40-in-draft-media-bill/> (Accessed 26 May 2023).

⁵⁶ House of Commons (2023) *Digital Markets, Competition and Consumer Bill*. Available at: <https://bills.parliament.uk/bills/3453> (Accessed 30 May 2023).

⁵⁷ ACCC (n.d.) *Digital platforms and services*. Available at: <https://www.accc.gov.au/by-industry/digital-platforms-and-services> (Accessed 30 May 2023).

Strategic litigation against public participation (SLAPP)

Following a public consultation, government committed in 2022 to introducing a law aimed at curbing the use of strategic litigation against public participation, known as SLAPPs.⁵⁸ This term is generally used to describe situations when it is considered that a person, particularly a wealthy person, is seeking to abuse the legal system in a way that is regarded as undermining legitimate scrutiny and posing a threat to press freedom. There is currently no timeline set for legislation relating to SLAPPs.

The code aligns with the general spirit of these proposals in explaining how to apply the journalism exemption. It explains that there is a way to refuse requests to exercise data protection rights if they are manifestly unfounded or excessive. The code's supporting reference notes also highlight more detailed ICO guidance explaining how to apply these parts of data protection law.

⁵⁸ MoJ (2022) *Consultation outcome: Strategic Lawsuits Against Public Participation*. Available at: <https://www.gov.uk/government/consultations/strategic-lawsuits-against-public-participation-slapps> (Accessed 9 June 2023)



4. Detail of proposed intervention

This section provides an overview of the proposed intervention, the code, including its associated activities and outputs. It outlines the objectives of the code, how it was developed, and the groups we expect to be affected by it (affected groups).

4.1. The code

The data protection and journalism code is a statutory code of practice prepared under section 124 of the DPA 2018. The Information Commissioner was required to prepare a code providing:

- practical guidance about processing personal data for the purposes of journalism in accordance with the requirements of the data protection legislation, and
- other guidance to promote good practice in processing personal data for the purposes of journalism, where appropriate.

The code does not impose any legal requirements beyond those already in the legislation. It will help controllers to understand their legal obligations under the UK GDPR and the DPA 2018, and to comply effectively.

High level objectives of the code

Bearing in mind the requirements set out above, the key objectives of the code are to:

- Provide practical guidance to help controllers comply with data protection legislative requirements and good practice when processing personal data for the purposes of journalism.
- Build on and update the guidance for the media we published in 2014⁵⁹ to reflect changes to legislation, case law and other developments.
- Make sure the code reflects the importance of the right to freedom of expression and information, and the media freedom which is vital to this. The code must also protect personal data and the right to privacy, when applying data protection law. In particular, the code has to help people to understand how the journalism exemption applies.
- Promote accountability in line with the key data protection principle which requires accountability under the UK GDPR, particularly concerning justifying publication in the public interest and accuracy.
- Help build and sustain public trust in processing personal data for the purposes of journalism. Ultimately, this supports the crucial public interest

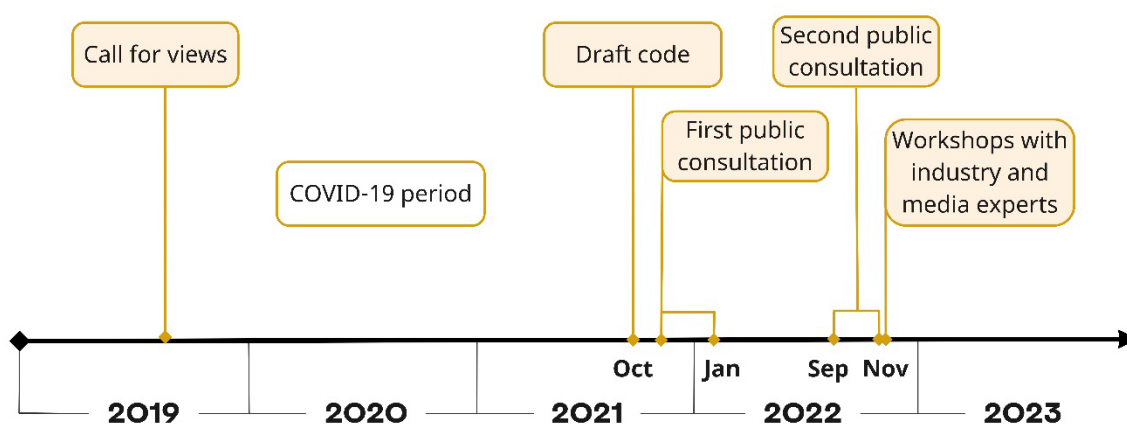
⁵⁹ ICO (2014) *Data protection and journalism: a guide for the media*. Available at: <https://ico.org.uk/media/for-organisations/documents/1552/data-protection-and-journalism-media-guidance.pdf> (Accessed 26 May 2023).

role journalism plays in contributing to the free flow of communication and acting as the 'public's watch dog'.

4.2. Development of the code

The primary activity delivered by the ICO was the development of the code. This will be supported by awareness and engagement activities. The ICO will also need to provide advice, promote good practice, and assess compliance with the code. In line with the theory of change for the code (see Figure 1), this is expected to deliver outputs including organisations, journalists and wider society engaging with the code that then lead to impacts.

Figure 4: Code development timeline



Source: ICO Economic Analysis.

Figure 4 shows some of the key milestones in the development of the code, which include:

- initial call for views: the ICO ran the call (ending in May 2019) to gather views from stakeholders and inform the initial stages of the code's development,⁶⁰
- COVID-19 period: the COVID-19 pandemic meant the ICO had to focus more of its resources on responding to the pandemic,
- initial draft code: the initial draft of the code was published in October 2021 alongside a summary of the responses to the initial call for views,
- first public consultation: the ICO ran a public consultation over a 12 week period (ending January 2022) on a revised draft of the code,⁶¹
- second public consultation: key representative groups (including the Media Lawyers Association) requested reconsideration of the draft code

⁶⁰ ICO (2019) *Responses to the call for views on a data protection and journalism code of practice*. Available at: <https://ico.org.uk/about-the-ico/ico-and-stakeholder-consultations/responses-to-the-call-for-views-on-a-data-protection-and-journalism-code-of-practice/> (Accessed 23 May 2023).

⁶¹ ICO (2022) *First consultation: draft Data protection and journalism code of practice*. Available at: <https://ico.org.uk/media/about-the-ico/consultation-responses/journalism-code/4021594/ico-first-consultation-draft-journalism-code-responses-summary.pdf> (Accessed 23 May 2023).

and a second consultation was ran over an eight week period ending in November 2022,⁶²

- workshops with industry and media experts: there were three workshops tailored to different stakeholder groups – November 2022,
- the code: the code was updated in response to feedback from the consultation and workshops and published in summer 2023.

A draft impact assessment was provided to support the first and second public consultations. Only a small number of responses referred to the impact assessment. These focused on requesting clarity on the assumptions used rather than highlighting significant gaps in the analysis. Where clarity was sought, we have addressed this within the assessment. For example, we have included sensitivity analysis in Annex A to evidence the sensitivity of impact estimates to changes in assumptions.

4.3. Scope of the code

The code contains guidance for those processing personal data for journalism who must comply with the UK GDPR and DPA 2018. Data protection law applies to organisations processing personal data that operate within the UK. It also applies to organisations outside the UK that offer goods or services to people in the UK.

Data protection law does not define journalism, so the code takes an appropriately broad and flexible approach in accordance with its everyday meaning and purpose and key case law set out in the code's supporting reference notes.

The code also acknowledges that personal data can be used for journalism as well as other purposes. For example, a campaign group can use data for journalism and to campaign for a particular cause.

⁶² ICO (2022) *ICO launches second consultation on the draft Data protection and journalism code*. Available at: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/09/ico-launches-second-consultation-on-the-draft-data-protection-and-journalism-code> (Accessed 23 May 2023).



4.4. Affected groups

Groups affected by the code are wide and varied, reflecting the broad definition of journalism outlined above.

The code is mainly for media organisations and journalists employed by them who use personal data for journalism. For example, those producing newspapers and magazines, in print or online, and broadcasting on television or radio.

However, the code acknowledges that journalism is not limited to professional and media organisations. It also covers others who may sometimes use personal data for journalism. For example, members of the public may carry out journalism, typically online, which is sometimes referred to as 'citizen journalism'.

The code affects people whose personal data is processed for journalism, the ICO as the regulator of the data protection legislation, and courts and tribunals, that are required to take account of the code, where relevant.

The code may also impact people and organisations indirectly. This includes the impact of society-wide harms and benefits, as well as impacts on organisations that supply or interact with journalists.

Figure 5: Affected groups



Source: ICO Economic Analysis.

Professional journalists and media organisations

It is estimated that there are 107,000 professional journalists and editors in the UK, equivalent to 0.3% of all people employed nationally.⁶³ Employment in journalism related industries is not evenly distributed across UK regions. Around

⁶³ ONS (2023) *Annual Population Survey – regional – employment by occupation (SOC2020)*. Available at: <https://www.nomisweb.co.uk/datasets/aps218> (Accessed 30 May 2023).

half (48%) of these jobs are based in London, with another 19% in the East and South East.

As already highlighted in section 3.2.2, it is not possible to estimate the total number of media organisations in the UK, as their structures and activities are often complex.

- The ICO data protection register has 3,082 people or organisations registered under 'Journalist' as well as 4,609 under 'TV and radio station'.⁶⁴
- Business count data from the ONS,⁶⁵ gives an estimate of around 5,300 enterprises operating across the sector.

This affected group has been under significant economic pressure⁶⁶ and the assessment recognises that the sector is particularly sensitive to additional costs or burdens.

Other organisations or people involved in processing personal data for the purposes of journalism

It is not possible to quantify the size of this group given how wide and varied these people and organisations are, and that journalism is not necessarily their only or main purpose. This group includes some online services and citizen journalists, for example.

People whose data is processed for the purposes of journalism

As with the group above, it is not possible to quantify the size of this group of people given the very broad scope of journalism. We have no way of estimating how many people's data has been processed for the purposes of journalism or will be processed in the future.

The Information Commissioner's Office

The ICO will be affected, as the regulator of data protection legislation. In accordance with section 127(4) of the DPA 2018, the Commissioner must take the provisions of this code into account in determining a question arising in legal proceedings where relevant.

The ICO will also need to provide advice, promote good practice, and assess compliance with the code. There are some limited enforcement provisions for journalism under the DPA 2018. However, in recognition of the special public

⁶⁴ ICO, Analysis of the Data protection register for the financial year 2023/24.

⁶⁵ ONS (2022) *UK business; activity, size and location*. Available at: <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/bulletins/ukbusinessactivitysizeandlocation/2022> (Accessed 02 June 2023).

⁶⁶ The Cairncross Review (2019) *A sustainable future for journalism*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779882/021919_DCMS_Cairncross_Review_.pdf (Accessed 24 April 2023).

interest in freedom of expression, the ICO's powers are significantly restricted in this respect.

The DPA 2018 includes a statutory requirement for a review of processing of personal data for the purposes of journalism under section 178. The code sets out the standards against which we will review processing for journalism in practice, once it comes into force. The ICO must report to the Secretary of State about this.

Justice system

The justice system will be affected because, in accordance with section 127(3) of the DPA 2018, a court or tribunal must take the provisions of the code into account in legal proceedings, where relevant.

Wider society

There could be wider impacts on people whose personal data is not processed for the purposes of journalism. These may arise either as a result of the impact on people who consume journalism or because of broader societal impacts, such as trust in journalism or prejudice to the course of justice.

There could also be impacts on organisations and businesses that are not journalists but whose activities are connected to them, for example, businesses that supply journalism organisations. This could include law firms, website hosting providers or freelancers, such as photographers, who serve organisations involved in processing personal data for the purposes of journalism.



5. Costs and benefits of the code

In this section of the report, we consider the code's potential costs and benefits. Our aim is to understand whether there are likely to be significant impacts on affected groups (both positive and negative) and to judge the code's overall impact on society.

We draw on a mixture of quantitative and qualitative evidence but, as noted above, our analysis is limited by the evidence available.

The analysis of impacts is split into three parts:

- familiarisation costs,
- reduction in data protection harms, and
- impact of greater organisational confidence in processing personal data.

In identifying the potential impacts of the code, it is important to distinguish between:

- Additional impacts that can be attributed to the code: these impacts are affected by how the ICO chooses to develop the code; and
- Additional impacts that are not attributed to the code: these impacts are not affected by how the ICO chooses to develop the code. They simply arise from the legislative requirements. This includes the requirements under section 124 of the DPA 2018, including to create the code, and the general requirements of the UK GDPR and the DPA 2018. Controllers are already expected to comply with these requirements.

Our analysis considers the impacts of the code that are additional to those of the legislation. The analysis excludes impacts that cannot be attributed to the code and instead result from existing legislation, as these would exist regardless of the code.

Impacts may be direct or indirect:⁶⁷

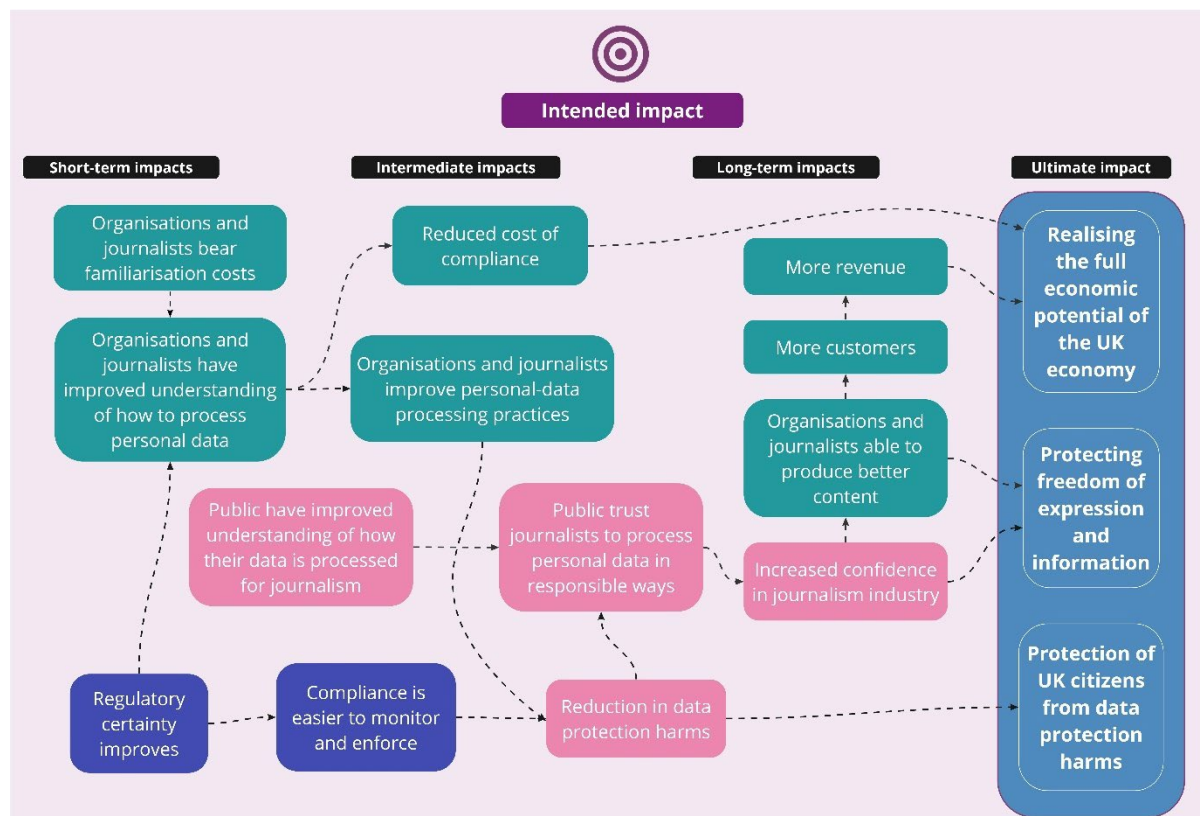
- Direct impacts: these are 'first round' impacts that are generally immediate and unavoidable, with relatively few steps in the chain of logic between the introduction of the measure and the impact taking place.
- Indirect impacts: these are 'second round' impacts that are often the result of changes in behaviour or reallocations of resources following the immediate impact of the introduction of the measure.

The impacts are assessed under the following headings, which then feed into our conclusion on the code's overall impact on society:

⁶⁷ Regulatory Policy Committee (2019) *RPC case histories – direct and indirect impacts*. Available at: <https://www.gov.uk/government/publications/rpc-case-histories-direct-and-indirect-impacts-march-2019> (Accessed 30 May 2023).

- **Cost:** a discussion of the related costs that could bring about significant impacts to affected groups.
- **Benefits:** as with costs.
- **Categorisation of impact:** where possible, additional impacts are categorised as negative (a net cost), positive (a net benefit), or neutral and either attributable or not attributable to the code.

Figure 6: Intended impacts



Source: ICO Economic Analysis.

5.1. Cost benefit analysis

The analysis and assessment of impacts is covered in the sections below.

5.1.1. Costs

Potential costs of the code are set out below.

Familiarisation costs

Controllers will incur a direct cost as a result of the code because of the time taken to read and become familiar with it. These are referred to as familiarisation costs.⁶⁸ The code contains guidance for all controllers processing personal data for the purposes of journalism. However, it may not be necessary

⁶⁸ BEIS (2017) *Business impact target: appraisal of guidance assessments for regulator-issued guidance*. Available at: <https://www.bl.uk/collection-items/beisc-business-impact-target-appraisal-of-guidance-assessments-for-regulator-issued-guidance-2017> (Accessed 24 April 2023).

for all controllers to familiarise themselves with the whole code. For example, this may be the case for smaller organisations that undertake lower risk processing. It should also be acknowledged that there is already existing data protection guidance for media organisations, produced in 2014.⁶⁹ However, this does not hold the status of a code of practice under the DPA 2018 and is therefore not directly comparable to the code. For this reason, we have not considered it further as part of the assessment or the counterfactual.

The indicative familiarisation costs are estimated to be between £220,000 to £410,000, with an individual cost of about £50 per organisation or person. However, this is only to indicate the scale of this impact in aggregate. The costs are estimated using the best available information on the number of organisations in the media industry and the likely time taken to read it. These estimates can change significantly depending on the estimated number of organisations in scope. See Annex A for more detail on the implications of our estimates.

We recognise that the level of engagement with the code will vary significantly across different media organisations. For example, large organisations may engage multiple professionals and organise staff training to become familiar with the code; other smaller organisations may devote significantly less time.

It is not possible to accurately estimate the number of organisations or people that will need to familiarise themselves with the code, and as such the figures provided are an indicative estimate only.

There are further details of the method used to estimate familiarisation costs in Annex A.

Categorisation of impact

The impact on controllers of needing to become familiar with the code is a natural consequence of the requirement to produce a statutory code of practice under section 124 of the DPA 2018.

Section 124 is not explicit about the precise content and length of the code and enables some judgement on what the Commissioner considers appropriate. However, this discretion does not necessarily imply that there is an additional impact. A similar assessment was also made for the impacts of familiarisation of the data sharing code⁷⁰ and age-appropriate design code.⁷¹

Our assessment acknowledges that the issue of attribution here is complex. However, we have assumed that even if elements of the code could be perceived

⁶⁹ ICO (2014) *Data protection and journalism: a guide for the media*. Available at: <https://ico.org.uk/media/for-organisations/documents/1552/data-protection-and-journalism-media-guidance.pdf> (Accessed 26 May 2023).

⁷⁰ ICO (2021) *Data sharing: a code of practice*. Available at: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/data-sharing/data-sharing-a-code-of-practice/> (Accessed 30 May 2023).

⁷¹ ICO (2020) *Age appropriate design: a code of practice for online services – Impact assessment*. Available at: https://ico.org.uk/media/2617988/aadc-impact-assessment-v1_3.pdf (Accessed 19 April 2023).

to be additional, these are not attributable to the code itself. In the absence of further evidence, the impacts are assessed as **negative** but **not attributable to the code**.

5.1.2. Benefits

The potential benefits are set out below.

Reduction of data protection harms related to the processing of personal data for journalism

As illustrated in section 3.2.3, data protection harms may occur when personal data is processed for the purposes of journalism. Although the harms presented do not necessarily point to specific areas of non-compliance, the examples provided do correlate to key principles of data protection law. The code also includes guidance on key areas that are relevant to journalism, such as considering the public interest and making sure that personal data is accurate.

The guidance is likely to contribute to reducing the risk and severity of the types of harms we have identified in this assessment. Even a small contribution to minimising harms would be helpful in view of the potentially very damaging consequences for people.

The code encourages controllers to demonstrate accountability throughout, which is a key data protection principle introduced by the UK GDPR. There are benefits to putting in place appropriate, risk-based data protection measures and being able to demonstrate this. These are that controllers manage risks and harms associated with the processing of personal data. In turn, this increases confidence, both within and outside the industry.

Increased confidence for those processing personal data for the purposes of journalism

There is a high degree of uncertainty around impacts related to increased confidence. It is not possible to make a robust estimate of how additional these impacts are.

The code will provide greater regulatory certainty and clarity because it is tailored specifically to the context of journalism. It is therefore likely to increase confidence within the industry generally. This will support the freedom of the press, particularly in circumstances where there may be more uncertainty about how to balance freedom of expression and privacy rights. This may increase efficiency, which is particularly important in the context of journalism given its competitive nature and the increased challenges of digital publication.

Increased accountability may result in higher public trust levels, which are reported to be comparatively low.⁷² This may increase public engagement with

⁷² Reuters Institute for the Study of Journalism (2022) *2022 Digital News Report*. Available at: <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/united-kingdom> (Accessed 20 April 2023).

journalism. This indirectly improves the public interest benefits that journalism aims to serve that are fundamental to our democracy. For example, the free flow of communications and public accountability of people in powerful positions.

Increased regulatory certainty and confidence may result in more consistent understanding and application of the law across organisations. The code is a free-to-use resource by the data protection regulator that is tailored specifically to the needs of this sector. It may increase competition and may also support smaller organisations with more limited access to other resources, such as legal advice, to participate more fully. Additional confidence may also enable innovation and economic growth.

Where organisations are not aware that they are processing personal data for the purposes of journalism, they may benefit from the code's guidance and knowledge of data protection provisions which protect freedom of expression.

Categorisation of impact

The code is likely to offer significant benefits to society. This is because it is likely to provide greater regulatory certainty, increase confidence, and reduce harms. The discretion given to the Commissioner under Section 124 means that some of these impacts can be attributed to the code itself rather than the statutory duty. The impacts in these areas are assessed as **positive** and **attributable to the code**.

It is difficult to draw firm conclusions about the likelihood and scale of the code's benefits. This is because these benefits are often intangible, vary according to the circumstances, and depend on behaviour change.

5.2. Overall assessment of impacts

We summarise our assessment of impacts in the table below:

Table 2: Costs and benefits

Impact	Positive, neutral or negative	Attributable to the code
Familiarisation costs	Negative	Not attributable to the code
Reduced data protection harms	Positive	Attributable
Increased business and organisational confidence	Positive	Attributable
Overall assessment	Positive	Attributable

Source: ICO Economic Analysis.

The extent to which impacts are attributable to the code varies across the types of impact. This is primarily because of the terms of the existing statutory

requirement to produce the code and the need for controllers to comply with the legislation.

Where there may be some discretion, we have considered:

- responses to the call for views and public consultation,
- the special public interest in freedom of expression and information, and
- the circumstances in which journalists often operate.

There is limited potential for additional costs that would be attributable to the code. This is in view of the legislative background to the code and the steps taken by the ICO to produce it.

We consider that the code is likely to have some significant additional beneficial impacts. This is due to increased regulatory certainty, confidence, and reducing the risk and severity of harms in the context of data protection and journalism. However, it is difficult to draw firm conclusions about the likelihood and scale of these benefits, which largely depend on behaviour change.

There was not enough evidence to assess how impacts would be distributed amongst different groups and as such we were not able to specifically identify any distributional impacts.

Overall, any costs associated with the code are considered to be significantly outweighed by the additional societal benefits that the code may produce. These benefits align strongly with specific policies and complement existing industry codes.

6. Monitoring and review

The code will be kept under review in line with good regulatory practice, with s124 (2) DPA 2018 allowing the Commissioner to make amendments or lay a replacement code.

There is also an ongoing statutory review of journalism as per s177 of DPA2018. Although this does not constitute a review of the code itself, it will be helpful in informing ongoing compliance and conformance monitoring and the effectiveness of the code.

Annex A: Estimating familiarisation costs

This annex sets out the approach taken to estimate familiarisation costs for the code, which follows a standard approach used to appraise regulator-issued guidance or provisions.⁷³

Organisations or people in scope

As with identifying affected groups in section 4.41.1, it is not possible to produce a robust estimate of the organisations that would be expected to familiarise themselves with the code. However, we can provide an indicative range to demonstrate the type of costs related to familiarisation.

In the absence of more robust data on those in scope of the code, we have used the total number of organisations or people on the data protection register related to journalism, and television and radio broadcasting. As of April 2023, this was approximately 7,690. We use this as our high-end estimate, as this is a scenario where all of these organisations or people read the code.

Government guidance on appraisal of regulator-issued guidance⁷⁴ states that not all organisations engage with and use guidance, as a source of information on how to comply with regulation. Across sectors, the share of businesses that use guidance is estimated at 54%.⁷⁵ In the absence of specific evidence, we use this to calculate our low-end estimate, reflecting a scenario where only 54% of the relevant organisations on the ICO's data protection register use the code.

This results in a range of **4,153 to 7,691** organisations or people being affected by the code.

Familiarisation costs

Drawing on impact assessment guidance,⁷⁶ we have estimated the total time for reading the code at one hour and 52 minutes. This is based on a word count of around 8,400 words and a Fleisch reading ease score of 37.

⁷³ BEIS (2017) *Business impact target - appraisal of guidance: assessments for regulator-issued guidance*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609201/business-impact-target-guidance-appraisal.pdf (Accessed 24 April 2023).

⁷⁴ BEIS (2017) *Business impact target - appraisal of guidance: assessments for regulator-issued guidance* - sections 2.3 and 2.4. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609201/business-impact-target-guidance-appraisal.pdf (Accessed 24 April 2023).

⁷⁵ Department for Business Innovation & Skills (2014) *Business Perceptions Survey 2014*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/314378/14-p145-business-survey-2014.pdf (Accessed 02 June 2023).

⁷⁶ BEIS (2017) *Business impact target: appraisal of guidance assessments for regulator-issued guidance*. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609201/business-impact-target-guidance-appraisal.pdf (Accessed 24 April 2023).

For the purposes of this assessment, we have made the simplifying and conservative assumption that each organisation or person will read the code once in its entirety. However, this is only intended to provide an indicative average for the assessment of familiarisation costs. It is not a recommendation on how organisations or people should familiarise themselves with the code, as this will differ on a case-by-case basis. Some will need to read significantly less, and a small subset may need multiple people to read it. This assumption is tested under sensitivity analysis below.

The impact of familiarisation can be monetised using data on wages from the ONS Annual Survey of Hours and Earnings (ASHE).⁷⁷ Assuming that the relevant occupational group is 'Managers, Directors and Senior Officials', the 2022 median hourly earnings (excluding overtime) for this group is £23.25.

This hourly cost is up-rated for non-wage costs using the latest figures from Eurostat⁷⁸ and in line with Regulatory Policy Committee guidance,⁷⁹ resulting in an uplift of 22% and an hourly cost of £28.35.

Using this hourly cost, and making the simplifying assumption of one person being responsible for familiarisation for each of the relevant organisations or people,⁸⁰ we estimate the cost of familiarisation per organisation or person to be around £50. The total estimated familiarisation costs for the code ranges from £220,000 to £410,000.

Sensitivity analysis

There are two variables in our model that are subject to sensitivity analysis:

- 1) The number of times that an organisation or person reads the code

Table 3: Sensitivity test – number of reads

No. of companies affected	Number of reads			
	0.5	1	2	5
Low estimate	£110,000	£220,000	£440,000	£1,100,000
High estimate	£205,000	£410,000	£820,000	£2,050,000

⁷⁷ ONS (2022) *Employee earnings in the UK*. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/annualsurveyofhoursandearnings/latest> (Accessed 24 April 2023).

⁷⁸ Eurostat (2023) *Labour cost levels by NACE Rev. 2 activity*. Available at: https://ec.europa.eu/eurostat/databrowser/view/lc_lci_lev/default/table?lang=en (Accessed 30 May 2023).

⁷⁹ RPC (2019) *RPC guidance note on 'implementation costs'*. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/827926/RPC_short_guidance_note_-_Implementation_costs_August_2019.pdf (Accessed 24 April 2023).

⁸⁰ In reality there may be one person responsible for understanding the code for multiple organisations or multiple people in one organisation, but in the absence of data to make a precise estimate, the simplifying assumption is deemed appropriate. This is tested below under Sensitivity Analysis.

Source: ICO Economic Analysis.

2) The time taken for one person to read the code

Table 4: Sensitivity test – reading time

No. of companies affected	Time		
	-10%	1h 52m	+10%
Low estimate	£198,000	£220,000	£242,000
High estimate	£369,000	£410,000	£451,000

Source: ICO Economic Analysis.

The impact estimates are linearly related to the two assumptions tested above. This means an increase or decrease in one of the assumptions leads to a proportionate increase or decrease in the impact estimate. Using the indicative increases or decreases shown above to produce sensible upper and lower bounds, familiarisation costs could be as low as £110k or as high as £2.05m.