

## **Direction under section 106(3) of the Communications Act 2003 applying the electronic communications code**

### **Background**

- 1.** Kustom Konsulting Limited, whose registered company number is SC276730, has applied to Ofcom for a direction applying the Code to it.
- 2.** The date on which Ofcom received a completed application that meets the statutory requirements with respect to the content of an application for a direction applying the Code and the manner in which such an application is to be made was 26 October 2022.
- 3.** By virtue of regulation 3 of the Electronic Communications and Wireless Telegraphy Regulations 2011 (SI 2011 No. 1210), except in cases of expropriation, Ofcom must make its decision within 6 months of receiving the completed application.
- 4.** Prior to giving a decision under section 106(3) of the Act to apply the Code to Kustom Konsulting Limited, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.
- 5.** On 8 December 2022, Ofcom published a notification in accordance with section 107(6) of the Act of its proposal to give a direction applying the Code to Kustom Konsulting Limited. That notification invited representations to Ofcom by no later than 5pm on 12 January 2023.
- 6.** Ofcom received one representation objecting to the proposal. The response included concerns about the potential impacts arising from electromagnetic fields (EMFs) that might be generated by communications equipment deployed. These included potentially negative impacts on human health and biodiversity. The response also included concerns that the proposals circumvented local planning protections and were potentially undemocratic.
- 7.** Having considered the objections to the proposal, it is Ofcom's view that in this case, these issues concern Government policy relating to the rollout of advanced communications networks and the technology they employ. Firstly, the Government's assessment of the safety of non-ionising radiation. Secondly, Government policy concerning the planning regime which facilitates the rollout of those networks. Ofcom has no power to alter these policies or the statutory framework that sets out the Code. It is therefore unable to include consideration of the issues raised by the respondents as part of its assessment of the application under the Code. Ofcom has published an advice page on its website, which explains the regulation of EMFs and identifies the organisations responsible for ensuring that communications providers comply with the relevant regulations.<sup>1</sup>
- 8.** For the reasons set out in the explanatory statement accompanying Ofcom's consultation, Ofcom has had regard, in particular, to each of the matters set out in section 107(4) of the Act. Furthermore, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six requirements in section 4 of the Act.

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<sup>1</sup> <https://www.ofcom.org.uk/spectrum/emf/policy>

## Decision

7. Ofcom hereby directs, in accordance with section 106 of the Act, as follows—

- (a) the Code shall apply to Kustom Consulting Limited (whose registered company number is SC276730) for the purposes of the provision by it of an electronic communications network; and
- (b) that application of the Code shall have effect throughout the United Kingdom.

8. This Direction shall take effect on the day it is published.

## Interpretation

9. In this Direction—

- (a) “**Act**” means the Communications Act 2003;
- (b) “**Code**” means the electronic communications code set out in Schedule 3A to the Communications Act 2003;
- (c) “**Ofcom**” means the Office of Communications.

10. For the purpose of interpreting this Direction—

- (a) headings and titles shall be disregarded;
- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

Signed



**Brian Potterill**

**Director of Mobile Network Strategy**

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

15 February 2023