

Online Safety Group
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Consultation Response

Which? response to Ofcom's consultation: Draft guidance for super-complaints under the Online Safety Act 2023

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Summary

Which? welcomes this opportunity to respond to [Ofcom's consultation on draft guidance for super-complaints under the Online Safety Act 2023](#). Ofcom's draft guidance outlines which entities are eligible to make super-complaints, explains how super-complaints should be made, and outlines how Ofcom will respond to super-complaints.

We strongly support the super-complaints regime, and believe that Ofcom has in many places taken an overly restrictive interpretation of the [super-complaints regulations](#). Ofcom's guidance, if implemented unchanged, will make it very challenging for organisations with robust evidence of harm to raise super-complaints.

To achieve the objective of the super-complaints regime, Ofcom must lower some of the requirements in its guidance. We have suggested a number of changes to Ofcom's guidance, all of which are designed to make the regime more accessible for organisations with crucial evidence of systemic harms to participate.

We are particularly concerned about the lack of detail around Ofcom's ability to reject a super-complaint if some or all of the matter is being considered by a UK court or by another UK regulator. In our view, if this power is interpreted too broadly, Ofcom could end up rejecting important and legitimate super-complaints simply because some tangential aspect of the complaint is already being considered by a court or another regulator. We believe Ofcom should update the guidance to clarify that it will only exercise this power if there is genuinely no public interest in it considering the super-complaint.

1. Introduction

[The Online Safety Act 2023](#) ('the Act' or 'OSA' - [Part 8, Chapter 2](#) in particular) allows expert organisations representing users or the public to raise a 'super-complaint' with Ofcom. The purpose of super-complaints is to allow organisations to bring robust evidence and facts to Ofcom's attention about the most significant online harms and restrictions on free expression arising on regulated online services. Ofcom has a fixed period to consider each super-complaint and publish a response.

Ahead of the super-complaints regime coming into effect on 31 December 2025, Ofcom is consulting on a draft version of its super-complaints guidance. The guidance explains: what super-complaints are; the role of super-complaints in Ofcom's regulatory approach to online safety; which organisations are eligible to bring a super-complaint; how organisations can demonstrate their eligibility; the rules and procedures for making a super-complaint; and the steps Ofcom will typically take in relation to a super-complaint.

The consultation asks: do you have any comments on our draft super-complaints guidance? Our response is broken down into three sections: Who can make a super-complaint; making a super-complaint; and how will super complaints be handled by Ofcom?

2. Who can make a super-complaint?

In order to be eligible to make a super-complaint, an organisation must represent people in the UK, operate independently from regulated sites and apps, regularly take part in public discussions about online safety as an expert, and follow Ofcom's guidance about making super-complaints (see [The Online Safety Act Super-Complaints \(Eligibility and Procedural Matters\) Regulations 2025 'the Super-Complaints Regulations'](#)). Which? has three main comments in relation to who can make a super-complaint.

2.1 The importance of an accessible regime

As a general point, we believe that Ofcom should interpret the legislation with regards to who can make a super complaint in a way that allows organisations with genuine expertise in online harms to participate in the regime, and we welcome the statement in the draft Guidance at para. 1.2 that it is primarily intended to help organisations that intend to do so.

2.2 Allowing organisations to clarify evidence submitted in support of their eligibility

Ofcom should reword its guidance to make it clear that the regulator will give potentially eligible entities the opportunity to provide further information or clarification before making a refusal for eligibility reasons. In order to submit a super-complaint to Ofcom, organisations must first prove that they meet the four eligibility criteria set out in Regulation 2 of the super-complaint regulations. This is different from other super-complaints regimes, where the relevant Secretary of State designates certain bodies on an ongoing basis as being able to launch super-complaints. Eligible bodies are entitled to the chance to clarify or add any evidence submitted in relation to super-complaints under the regimes of the [Financial Conduct Authority](#), the [Office for Fair Trading](#) (now the Competition and Markets Authority), and the [Payment Systems Regulator](#). The ability to add or clarify information in relation to eligibility is, in our view, an essential component of creating an accessible regime that enables genuinely expert organisations to bring robust super-complaints to Ofcom's attention. If organisations are not explicitly given the ability to add or clarify information, there is a risk that genuinely knowledgeable organisations which represent consumers might not have the opportunity to launch super-complaints.

2.3 Ensuring that genuine experts are always able to contribute

The third statutory eligibility criterion (Regulation 2(5) of the Super-Complaints Regulations) states that eligible entities should be “contributing significantly, as an expert, to public discussions about online safety matters.” In order to meet this criterion, the organisation must provide evidence of regular contributions to public discussions of online safety matters. **We are concerned about this criterion for two reasons.**

The fast-moving nature of the online world and the harms it entails means that new harms (for instance, harms related to artificial intelligence) will emerge, alongside new organisations dedicated to tackling those harms. Such organisations may not have an extensive history of publicly commenting on the harms which they study, not least because the harms themselves might be new. It seems counter-intuitive that such an organisation would have to wait several years to build up expertise in a harm simply to be eligible to file a super-complaint while the harm which they study is ongoing.

Moreover, a group which represents the interests of a certain group in general (e.g., older people) might become aware of a way in which the people it represents are being negatively affected by the practices of one or more services regulated under the Act, but might not have published previous reports on the Act itself or specifically on the issue of online safety. It would seem strange if this organisation, which has relevant expertise and which represents the interests of a specific group, would first have to make several contributions to public discussions of online safety matters before being eligible to submit a super-complaint.

The examples given by Ofcom on page 33 of the draft Guidance are a useful starting point, but **we believe that the guidance should clarify that organisations with expertise and evidence of harm relating to online safety should be able to bring super-complaints and that being an expert as to how digital services affect particular groups would in principle be sufficient to meet this criterion.**

3. Making a super-complaint

We have a number of concerns in relation to this part of Ofcom's guidance. In general, we feel that Ofcom's draft guidance is unnecessarily restrictive and goes beyond what is set out in the regulations in several areas, all in ways which will make it more difficult for organisations to launch super-complaints. We believe it is especially important that Ofcom provide greater clarity on occasions where some or all of the matter is already under consideration. We address each of these in turn below.

3.1 Providing greater clarity on occasions where some or all of the matter is already under consideration

The legislation permits Ofcom to reject a super-complaint if some or all of the matter is being considered by a UK court or by another UK regulator. Ofcom's guidance merely reiterates this position, without providing any further indication as to how it might interpret this power. This is an issue, since there are many areas where the online safety regime intersects with other regulatory regimes overseen by other regulators. For example, while potentially fraudulent listings on online marketplaces are likely user-generated content subject to the Online Safety Act, fake reviews associated with those listings are governed by the Digital Markets, Competition and Consumers Act. Similarly, investment scams occupy a space of regulatory overlap between Ofcom and the Financial Conduct Authority. **There is a risk that an overly broad interpretation of this power might see a super-complaint alleging serious wrongdoing by a regulated service rejected because another regulator is looking into the matter from a perspective that will not address the online harms aspect.** We do not think this is in the interests of UK citizens.

For this reason, it would be very helpful if Ofcom could indicate in the guidance that it intends only to exercise its discretion to reject super-complaints if another regulator or a court is considering some or all of the matters involved if there is genuinely no public interest in Ofcom (with its particular expertise in online safety) considering the issue. This is particularly important to indicate as the interpretation of whether there is any overlap in subject-matter in a super-complaint could be quite subjective and contentious. In any event, it is unreasonable to expect super-complainants to answer the questions on this issue in the standard form provided in the guidance as they will not necessarily be aware of potential overlap points. On receipt of a super-complaint, if there is any suggestion of jurisdictional overlap points, Ofcom should immediately consult the super-complainant and allow them to make further representations.

3.2 Clarifying the meaning of ‘regulated services’

Ofcom should set out an explanation based on the definitions in the Act, as to which internet services are in fact regarded as ‘regulated services’, as it is likely that there could be some misunderstandings on this point due to the complexity of the definition of ‘regulated services’ within the Act, for example not including certain social media services that only allow for comments on the provider’s own content, or one that does not have links with the UK. However, obviously the final view of the interpretation of ‘regulated services’ would be one for the courts.

3.3 Aligning requirements around feature and conduct of regulated services to other super-complaints regimes

In order to submit an eligible super-complaint, [Ofcom’s guidance](#) states that “organisations should focus on setting out a well-reasoned explanation that links a feature or conduct to a demonstrable risk of significant harm or adverse impact on users or members of the public.” We believe that the guidance should be amended to read: “organisations should focus on setting out a well-reasoned explanation that, **where feasible**, links a feature or conduct to a demonstrable risk of significant harm or adverse impact on users or members of the public.” We believe it is important to add “where feasible” because, in some cases, the harm could be caused by a feature of the online service to which the complainant does not have access. We do not believe that such an approach is inconsistent with the statutory definition regarding evidence in Regulation 4 of the Super-Complaints Regulations.

For instance, it might be the case that a service’s recommender system is targeting specific kinds of content, such as fraud content, at specific people. The complainant might be able to see that specific kinds of people were more likely to be recommended such content, but without ready access to the recommender system it would not be possible to prove conclusively that the recommender system itself was to blame. Adding “where feasible” would enable complainants to argue that a feature of a system is likely causing harm and that Ofcom should investigate further without having to demonstrate conclusively that such a feature is the cause of the harm. Adding “where feasible” would also bring Ofcom’s guidance into line with the [PSR’s super-complaints guidance](#), which states that complainants should provide the regulator with various kinds of evidence “where relevant and feasible.”

3.4 Removing unnecessarily restrictive requirements on evidence being ‘current’

[Ofcom's guidance](#) also states that evidence provided to explain the link between the feature or conduct of the regulated service(s) and the significant harm or adverse impact should “ideally have been collected in the 12 months prior to submission.” We understand this to be Ofcom's interpretation of the regulations' requirement that evidence is “current.” However, **we believe that this stipulation is unnecessarily restrictive.** While we will often prioritise the most recent evidence, the process of collecting extensive amounts of data and presenting rigorous evidence can be time consuming. Civil society organisations often conduct an initial evidence gathering exercise, before undertaking further work to refine their theories of harm. This process may well take more than 12 months.

Moreover, if the data collected which relates to a specific feature or functionality of an online service is more than twelve months old, but the service has not fundamentally changed the feature or functionality since that data was collected, it is not clear why that data would not be considered relevant or current, given that it relates to a feature or functionality which is still ongoing. **We therefore recommend that Ofcom removes this stipulation from its guidance, and that it merely states that evidence should be “current” as per the legislation.**

3.5 Lowering an unnecessarily high barrier to entry vis a vis research methods and evidence

[Ofcom's guidance](#) cites a number of research methodologies in which it is interested, including longitudinal surveys, randomised control trials, machine learning, and ethnographic research, among others. We are concerned that the list, as presented by Ofcom, appears exhaustive, and will deter organisations which do not have the funding to conduct these kinds of research, many of which are very expensive and resource intensive.

We feel that Ofcom has stepped beyond what is in the legislation here. The regulations state merely that a super-complaint must be accompanied by evidence and that Ofcom must be satisfied that such evidence is relevant to the complaint, objective, and current. Guidance issued by the [FCA](#), [PSR](#), and [OFT](#) (now the CMA) all make no mention of specific research methodologies, so it is not clear why Ofcom's guidance does so. **We suggest that Ofcom removes this section from its guidance.**

3.6 Aligning guidance with the Act vis a vis ‘significant harm’

We also note that in para. 2.3 of the draft guidance, there is a reference to ‘serious’ harm rather than ‘significant’ harm. **This is not in line with the statutory test in the Online Safety Act and should be changed.** We are concerned in particular that ‘serious’ might be interpreted by Ofcom as pertaining to certain kinds of online harm. By contrast, we feel that ‘significant’ is better able to capture harms which at the individual level might not be considered ‘serious’, but which at the aggregate level constitute a major threat to the wellbeing and safety of UK citizens.

4. How will super-complaints be handled by Ofcom?

We have a number of comments in relation to Ofcom’s handling of super-complaints. In general, we feel that the guidance can be strengthened to allow for better communication between Ofcom and super-complainants.

4.1 Pledging to keep super-complainants informed of the progress of a super-complaint

Currently, Ofcom only promises to contact the complainant if it has any specific questions and to let them know the outcome of the complaint. By contrast, the [FCA](#), [PSR](#), and [OFT](#) (now CMA) all state clearly in their super-complaints guidance that they will keep the complainant informed of the complaint’s progress and that the complainant may contact them for clarification of any issues or for further information as appropriate. **We believe that Ofcom’s guidance should state explicitly that the regulator will keep the super-complainant informed of the progress of a super-complaint and that the complainant may contact Ofcom for clarification on any issues.** This will allow for a more open dialogue between complainants and the regulator.

4.2 Aligning guidance around speed of acknowledgement with other regimes

The Super-Complaints Regulations require that Ofcom must acknowledge receipt of a super-complaint as soon as practicable. In its guidance, Ofcom has not stated any kind of ambition as to how quickly it will respond to super-complaints, merely stating that it will do so “as soon as possible.” This stands in contrast to other regulators’ guidance. Both the [FCA](#) and the [CMA](#) state that they will acknowledge receipt of a super-complaint within five working days, while the [PSR](#) promises to acknowledge receipt of super-complaints submitted electronically within one working day. **We believe that Ofcom should promise to acknowledge receipt within five working days wherever possible,** thereby bringing its guidance into line with that of other regulators. Moreover, **we believe that Ofcom should let the complainant know which individual within Ofcom will be handling their case.** This would bring Ofcom’s guidance into alignment with that of the [CMA](#).

4.3 Ensuring as much transparency as possible around super-complaints processes

[Ofcom's guidance](#) states that it may be limited in some instances in what it can share with a super-complainant and make public, "such as information relating to an ongoing enforcement investigation, confidential business information or confidential information shared with us by partners." **However, we would argue that it is in the public interest for as much transparency as possible to be attached to super-complaint processes, especially since online safety is a matter of intense public interest. We therefore recommend that Ofcom super-complaint reports should only exclude confidential information if strictly necessary to do so.** Correspondingly, the draft guidance should also recognise that complainants may themselves want to share confidential information with Ofcom, and that should be respected unless there is a conflict with Ofcom's statutory responsibilities.

4.4 Enabling better communication between Ofcom and super-complainants

Under Ofcom's current [guidance](#), the regulator will only contact the complainant when considering the admissibility of a super-complaint if it requires clarification or finds that a reasoned case has not been made. **We believe that complainants should have the opportunity to have at least one meeting with Ofcom to discuss their complaint.** This would allow both sides to clarify any areas of uncertainty concerning the complaint and ensure that Ofcom is in the best position to respond. Such a meeting could help Ofcom to ascertain whether or not it wishes to exercise its information gathering powers under section 100 of the Act. It would also allow the complainant to provide further information where it would be helpful.

4.5 Amending guidance to ensure consent of super-complainant for 'stop-the-clock' mechanism

Finally, the current [draft guidance](#) (reflecting the position in the Super-Complaint Regulations) states that Ofcom may 'stop-the-clock' and extend the 90 day window within which it considers the admissibility of a super-complaint if it wants to request further information. While we agree that this may be helpful for smaller organisations who are struggling to obtain material that Ofcom has asked for, **we believe that Ofcom should state in the guidance that they will generally exercise their discretion to 'stop-the-clock' only subject to the agreement of the organisation concerned in writing.**

About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that works with politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

For more information contact:

Matthew Niblett
Senior Policy Advisor
matt.niblett@which.co.uk

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