
Children's Commissioner's response to Ofcom's Draft Transparency reporting guidance

Full set of recommendations:

1. The CCo recommends that, where a service meets the Child Access Assessment set out in the regulator's Children's Codes, the information provided by a service following an information notice about the experiences of children on that service is checked by children through the established framework of child consultation set up by the regulator in the Children's Codes.
2. The regulator should also draw on the evidence and insights provided by children in the regular consultations the regulator will hold with them in monitoring the implementation of the Act and the adequacy of the safety measures being deployed by online services to mitigate risks on their platforms.
3. The CCo strongly recommends that, when determining whether or not it is appropriate or proportionate to exercise an information gathering power (3.13), the regulator does not give undue weight to the costs to corporations of providing information for a regulatory purpose.
4. The CCo strongly recommends that the regulator extends the requirement for online services to name a senior manager (4.80) to all services in receipt of an information notice.
5. The CCo recommends that all transparency reports – produced both by the regulator and by online services – should be presented in child-friendly documents that facilitate children to make informed decisions about how they use the online world.

The CCo strongly recommends that, when choosing what information to gather in the fulfilment of its duties under the Act, the regulator chooses to use the power that will lead to the gathering of the most accurate and useful information for the execution of their regulatory duties under the Act, as opposed to that which will result in activities that are the least burdensome for stakeholders.

7. **The CCO recommends that the regulator adjusts their stated position in this guidance to clarify that access to full information is key to their function as a regulator**
8. **The Office recommends that the regulator includes the timeliness and urgency of the receipt of the relevant information to be added to the instances for when the regulator may choose not to submit a draft information notice.**
9. **The CCo strongly recommends the regulator puts resource into mapping the online services that function in the UK, and develop a Register of Services active in the UK**
1. Are there any aspects in the draft guidance where it would be helpful for additional detail or clarity to be provided?

The CCo notes the regulator's desire to minimise the possibility of duplicating information when exercising their information gathering powers. However, the Office considers the value of these powers to not only be limited to deepening the knowledge base on a certain issue, but to act as a checking device to ensure that the information third parties use in other parts of the online safety regime, is accurate and provides the full picture of the impact a service has on its users. The CCo considers the regulator's desire to draw on existing information – likely to be information put in the public domain by online services, as detailed in point 2.6 - as opposed to always pursuing full disclosure, a limitation to the regulation of third-party corporations. **The CCO therefore recommends that the regulator adjusts their stated position in this guidance to inform services in scope that access to full and timely information is key to their function as a regulator (3.6).**

When faced with the choice of which information gathering powers to use, **the CCo strongly recommends that the regulator chooses the power that will lead to the gathering of the most accurate and useful information for the execution of their regulatory duties under the Act, as opposed to those that are the least burdensome for stakeholders (3.11).**

The CCo strongly recommends that, when determining whether or not it is appropriate or proportionate to exercise an information gathering power (3.13), the regulator does not give undue weight to the costs to corporations of providing information for a regulatory purpose. The CCo does not consider costs alone to determine a provider's capacity to provide information that is necessary to keep children safe online, and strongly recommends the regulator clarifies in this guidance that cost will not be a valid reason for determining the appropriateness of information gathering. For the avoidance of doubt, the regulator should state here that the safety of service users and the fulfilment of the purpose of the Online Safety Act is the primary concern of the regulator.

The regulator should also draw on the evidence and insights provided by children in the regular consultations the regulator will hold with them in monitoring the implementation of the Act and the adequacy of the safety measures being deployed by online services to mitigate risks on their platforms. The CCo outlined this consultation framework in our response to the 'protecting children from online harms' consultation and strongly recommends such a framework becomes part of the transparency guidance. As described in that response, children have asked for the regulator and technology companies to have "a youth board, one that is not a PR stunt. The tech company can consult with young people actually using their products. One that's representative of all their users and something where you where they can truly listen and take into account and where these people have the power to kind of give their voices and actually see change happen on the platform". This comment was made during a roundtable held with the Children's Commissioner's Young Ambassadors in July 2024.

The CCo does not support the regulator's decision to obtain information for general or monitoring purposes on an informal or voluntary basis (3.17). Where the Office recognises that the regulator intends to verify any voluntary evidence using its statutory powers, we do not consider the potential of the regulator's information gathering powers to be limited to investigating a stated case – the Office instead considers the information gathering powers to be tools that will provide a framework for online services to reassure the public of the safety of their platforms. The Office considers transparency on all aspects of the function of a service to be essential to a safeguarding approach that seeks to first verify something is safe, rather than that something is harmful, before a decision is taken regarding its compliance with the duties under the Online Safety Act.

2. Are the suggested engagement activities set out in the draft guidance sufficient for providers to understand their duties and Ofcom's expectations?

The Children's Commissioner's Office will not be responding to this question.

On the proposed information gathering process:

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3. Are there any other factors that Ofcom might consider in our approach to determining the contents of notices that are not set out in the draft guidance?

The CCo supports the persons in scope of section 100, in particular the inclusion of ancillary services and persons not listed who nonetheless appears to hold information relevant to the regulator.

The CCo supports the commission of Ofcom's Information Registry in the gathering and storing of information requests (4.18). The Office considers centralisation of information an important aspect of building a safe online world.

The CCo agrees that there are instances where draft information notices are inappropriate and support the regulator's discretion in deciding when that might be the case. However, the Office is concerned that the process of submitting draft information requests for commentary by stakeholders will delay the investigation of what might be a serious and escalating issue. **The Office recommends that the regulator includes the timeliness and urgency of the receipt of the relevant information to be added to the instances for when the regulator may choose not to submit a draft information notice.**

The CCo supports the specifications for information notices (4.26) but would recommend that a further point of a minimum standard for the quality of the information – or an explanation why a particular service cannot provide information to that standard - is added to the criteria. This might look like providing the most recent information available that has been verified by the most senior internal checking processes. This would ensure that services provide the most accurate information from the outset and will also demonstrate where a services' monitoring mechanisms are lacking.

4. Is there anything that Ofcom should have regard to (other than the factors discussed in the draft guidance) that may be relevant to the production of provider transparency reports? This might include factors that we should consider when deciding how much time to give providers to publish their transparency reports.

The CCo recommends that, where a service meets the Child Access Assessment set out in the regulator's Children's Codes, the information provided by a service following an information notice about the experiences of children on that service is checked by children through the established framework of child consultation set up by the regulator in the Children's Codes. This would provide the regulator with an experiential index against which the veracity and usefulness of information provided by a service could be assessed.

The CCo strongly recommends that the regulator extends the requirement for online services to name a senior manager (4.80) to all services in receipt of an information notice. The CCo considers such a provision necessary for the service to provide accurate and thorough information, and considers it proportionate to the fact that the provision of such information is necessary under the law. Furthermore, the CCo considers the

naming of a senior manager to be conducive to the prioritisation of children's safety and compliance with the law.

The CCo considers the regulator's proposed approach (5.3) to appointing skilled persons under section 104 to be limited and unambitious when considered against the record of some online services in disclosing information that might be relevant to a particular public interest. **The CCo recommends that section 104 is used to maintain consistent monitoring of all services' compliance with relevant requirements as set out in the Act.** The independent monitoring of a services' compliance will provide wraparound coverage to ensure that services comply to the best of their abilities, and that any hazards to transparency are made known to the regulator.

The Office does not consider the use of section 104, above, to be eligible for use of section 100. Instead, the Office regards the oversight each mechanism will give to be conducive to a well-informed regulatory regime.

5. What are the anticipated dependencies for producing transparency reports including in relation to any internal administrative processes and governance which may affect the timelines for producing reports?

The Children's Commissioner's Office will not be responding to this question.

6. What information would be most useful for Ofcom to consider when assessing a provider's "capacity", by which we mean, the financial resources of the provider, and the level of technical expertise which is available to the service provider given its size and financial resources?

As detailed in our response to the Children's Code consultation, the CCo does not consider the financial resources of the provider to be a determinant of a service provider's capacity. The CCo considers the weight given to costs-to-business disproportionate to the pursuit of the objective of the Act.

Lord Parkinson of Whitley Bay set out that costs can be cited as a reason for choosing different types of measures in the pursuit of effectiveness at achieving the objective of the Act, but that costs themselves cannot exempt services from being required to comply with their duties under the Act:

"While the size and capacity of providers is included as part of a consideration of proportionality, let me be clear that this does not mean that smaller providers or those with less capacity do not need to meet the child safety duties and other duties in the Bill, such as the illegal content safety duties. These duties set out clear requirements for providers. If providers do not meet these duties, they will face enforcement action." (Column 1575, [House of Lords](#) 10th July 2023).

For the avoidance of doubt, **the regulator should state here that the fulfilment of the purpose of the Online Safety Act is the primary concern of the regulator.**

The regulator should also draw on the evidence and insights provided by children in

the regular consultations the regulator will hold with them in monitoring the implementation of the Act and the adequacy of the safety measures being deployed by online services to mitigate risks on their platforms. The CCo outlined this consultation framework in our response to the ‘protecting children from online harms’ consultation and strongly recommends such a framework becomes part of the transparency guidance.

7. Are there any matters within Schedule 8, Parts 1 and 2 of Act that may pose risks relating to confidentiality or commercial sensitivity as regards service providers, services or service users if published?

The Children’s Commissioner’s Office will not be responding to this question.

8. Beyond the requirements of the Act, are there any forms of insight that it would be useful for Ofcom to include in our own transparency reports? Why would that information be useful and how could you or a third party use it?

The regulator should draw on the evidence and insights provided by children in the regular consultations the regulator will hold with them in monitoring the implementation of the Act and the adequacy of the safety measures being deployed by online services to mitigate risks on their platforms. The CCo outlined this consultation framework in our response to the ‘protecting children from online harms’ consultation and strongly recommends such a framework becomes part of the transparency guidance. The regulator must establish this consultation framework swiftly, and publish the findings in child-friendly documents.

Finally, the CCo strongly recommends the regulator puts resource into mapping the online services that function in the UK, and develop a Register of Services active in the UK. This will ensure the regulator has full oversight of all parties in scope of the Act and will facilitate them establish longitudinal trends in the use, size and risk profiles of these services.

9. Do you have any comment on the most useful format(s) of services' transparency reports or Ofcom's transparency reports? How can Ofcom ensure that its own transparency reports are accessible? Provide specific evidence if possible of which formats are particularly effective for which audiences;

The CCo recommends that all transparency reports – produced both by the regulator and by online services – should be presented in child-friendly formats that facilitate children to make informed decisions about how they use the online world.

All information gathered from online services should be checked against the experiences of children for accuracy and veracity. This will ensure that any gaps in disclosure are identified and that a full picture of the state of online services is presented to the regulator to facilitate the best execution of their duties. The experiences of children would be sought through the child consultation framework set out above.