About the Expert Panel | Age Restrictions

 The [Office for Product Safety and Standards](#) (OPSS) is part of the Department for Business, Energy and Industrial Strategy (BEIS). The role of OPSS is to make regulation work, so that it protects people and enables businesses to understand their obligations. It has responsibility for trading standards policy locally and nationally, local better regulation, primary authority, business guidance and the UK's Quality Infrastructure (UKAS, BSI, etc).

As a part of its role, OPSS facilitates a series of Expert Panels. These are independently chaired, but subject focussed and include subjects like food standards, product safety, etc. One of those panels is related to Age Restrictions. OPSS leads on enforcement policy for age restrictions and the Expert Panel supports OPSS and other government departments to implement age restriction laws, policy and guidance that will work well in practice to protect children and young people.

The **Panel is not a campaigning voice**. It is a matter for Ministers and Parliament to determine what products, content and services should be age restricted and at what age. However, the Panel does have a role in helping government departments to implement age restriction policies in a way that works well. We take a practical and detailed approach. So, for instance, our response to this consultation exercise may, in places, venture into some very specific but, we hope, helpful detail.

Our aim is to draw on the collective expertise of around 50 participants in the Panel. These participants include local and national regulators, retail trade associations, the primary authority network, age verification providers, lawyers and those that work in this regulatory field. Our Panel includes senior staff from major retailers as well.

Your response

Question	Your response
Question 1: Do you have any comments on Section 3 of the draft guidance on harmful material and related definitions?	Confidential? – Y / N Not Applicable
Question 2: Do you have any comments on the draft guidance about measures which relate to terms and conditions, including how they can be implemented?	Confidential? – Y / N Not Applicable
Question 3: Regarding terms and conditions which prohibit relevant harmful material, do you have any comments on Ofcom's view that effective protection of users is unlikely to be achieved without having this measure in place and it being implemented effectively?	Confidential? – Y / N Not Applicable
Question 4: Do you have any comments on Ofcom's view that, where providers have terms and conditions requiring uploaders to notify them if a video contains restricted material, additional steps will need be taken in response to this notification to achieve effective protection of under-18s, such as applying a rating or restricting access?	Confidential? – Y / N Not Applicable
Question 5: Do you have any comments on the draft guidance about reporting or flagging mechanisms, including on Ofcom's view that reports and flagging mechanisms are central to protecting users?	Confidential? – Y / N Not Applicable
Question 6: Do you have any comments on the draft guidance about systems for viewers to rate harmful material, or on other tagging or rating mechanisms?	Confidential? – Y / N Not Applicable

Question 7: Do you have any comments on the draft guidance about age assurance and age verification, including Ofcom's interpretation of the VSP Framework that VSPs containing pornographic material and material unsuitable for classification must have robust age verification in place?	Confidential? – N
	We welcome the investment of the guidance in providing clarity around the terminology involved in checking the ages of users online. The Verification of Children Online project, DCMS and the ICO have all contributed to this evolution but there is not yet a stable and widespread and accepted understanding of each term.
	The current position may be summed up as: **"Age Assurance = Age Estimation + Age Verification"** where age verification provides age assurance to a higher level of assurance than age estimation. This is inherently confusing due to the dual use of the term "assurance".
	There is also ambiguity around some age assurance techniques which maybe thought of as estimation but can deliver levels of assurance that approach the highest levels achieved by techniques usually considered to be age verification. The primary example of this, is biometric facial estimation, which with a sufficiently wide margin for error – or buffer – can deliver with 99.9% certainty confirmation that the user is older than X, because the software has determined they appear to be at least X + 5 years (for example). For this reason, we prefer to use "age verification" as the general term for a

process that delivers results to differing levels of assurance. Age estimation techniques provide age verification, just to a lower level of assurance.

This is not a critical consideration for the guidance on which you are consulting, but as we move forward towards wider regulation to promote online safety, it will become more of an issue to work with confusing terminology.
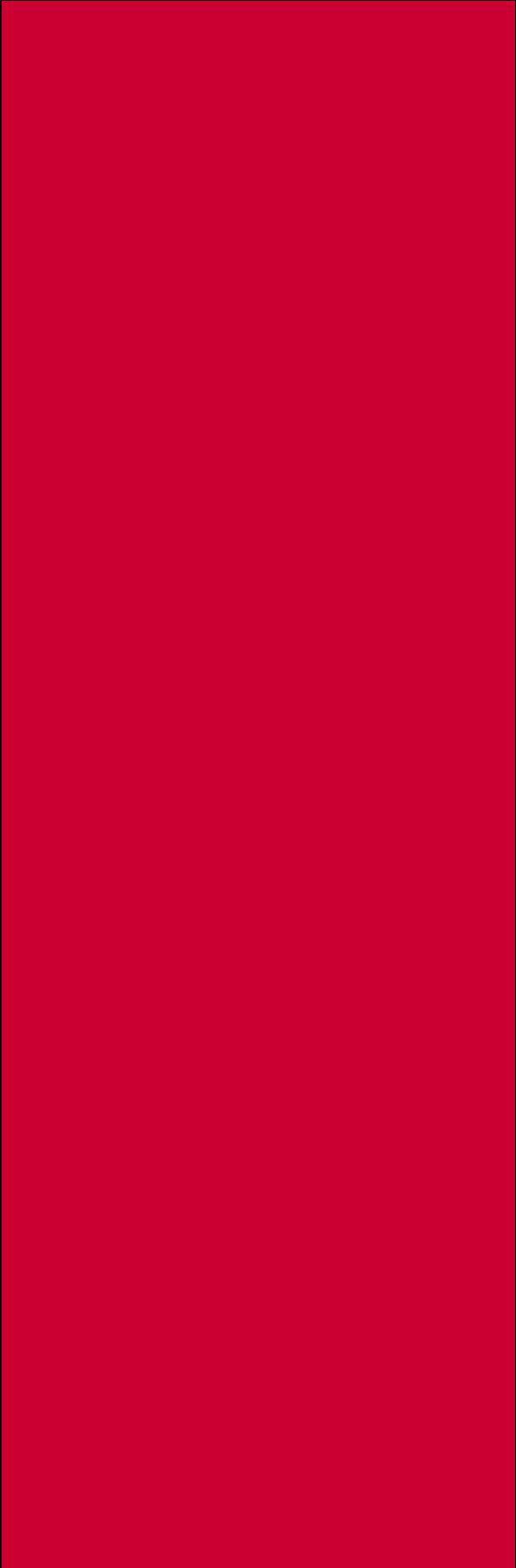
We should also consider that internationally, the term age-verification is more widely understood to include all forms of age checks, even including self-asserted 18+ tick boxes or entry of a date of birth which is not then validated. For the purposes of this response, we will adopt the "current position" **(AA = AV + AE)**

The Expert Panel urges a risk-based approach which puts the risks and potential harms that could be caused at the front and centre of the guidance, going beyond pornographic content, when it comes to restrictive and protective measures of access by under 18s. Ofcom should therefore position itself pragmatically by looking ahead, being decisive about the specific levels of age assurance that ought to be set and what the guidance hopes to

become common practice by providers, even if it will take providers time to get to that level, given the challenges and emerging nature of online age assurance/verification technologies. Whilst there is certainly a role for age estimation to play in some situations such as filtering out content for mid to lower teens, age estimation cannot be enabled as the default standard in the guidance if the aim is to have robust age verification practices.

The guidance could also provide more clarity on how Ofcom intends to measure effectiveness of age assurance by providers since providers are to determine what they deem to be appropriate measures based on their risk assessments. A minimum threshold should be set by the regulator, which should not be less than verification, when it comes to pornographic content that is rated R18 or otherwise.

Both Ofcom and VSPs will wish to consider the potential reputational impact of adopting a lower level of assurance by allowing for age estimation in a situation where content is not rated R18 but could still lead to serious harm or death of children. We have seen a recent tragic situation in Italy where a 10-year-old died after opening

an account with TikTok and then responding to a "blackout challenge". The perceived wisdom may have been that age estimation techniques, perhaps by applying algorithmic analysis of the content a user uploads over time and flagging those who fall outside acceptable tolerance levels, is severely challenged by such incidents. When the risk that a 10-year-old who successfully opens an account by claiming to be 13 will be thought to be an adult by the time they have only, in fact, reached the age of 15, and the scope for further harm increases yet further.

There is clearly a place for age estimation in this field, but it should only be sufficient after a rigorous and well-informed risk-assessment, and Ofcom can play an important role in highlighting the kinds of situation described above so VSPs make reasonable decisions about what level of assurance is appropriate.

The consequences and implications of restricted or unsuitable material not rated R18 must be considered in their entirety, Ofcom in their role as regulator is presented with a unique opportunity to drive the most pragmatic yet stringent baseline for age assurance and verification standards with it being the key protective measure that

	providers should use though in tandem with other measures to demonstrate their compliance. A baseline of tiered age assurance that goes beyond age estimation will drive industry adoption of age verification and lead to higher levels of assurance overall.
Question 8: Do you have any views on the practicalities or costs relating to the implementation of robust age verification systems to prevent under-18s from accessing pornographic material and material unsuitable for classification? Please provide evidence to support your answer wherever possible.	Confidential? – N

For the implementation of robust age verification systems to prevent under-18s from accessing pornographic material, cost need not be a barrier for video service providers as an emerging suite of options continues to become available. There is also a broad, open and competitive market with growing and easier interoperability capabilities from third party age assurance providers.

VSP providers are not isolated or alone in the journey to age verification and it should continue to be advocated as an ambition for all organisations with children engaging on their digital platforms to put in place appropriate safeguards for online harms.

Opportunities for continuous engagement with providers and industry stakeholders should be supported and encouraged, if not led, by Ofcom, to ensure continued |

	discourse on best market practices, standards and age verification thresholds as they evolve to ensure consistency, relevance as well as having a laser focus back to achieving the principle aims of the guidance in application and enforcement.
Question 9: Do you have any comments on the draft guidance about parental control systems?	Confidential? – N Parental controls systems have not proven to be the most effective protective measure at scale when it comes to protection of under 18's from harmful material. It is the failure of parental controls that has driven the creation of more legislative and regulatory measures, such as the AVMSD/VSP regime, to ensure more robust protection and duty of care is implemented by providers. Parental controls place reliance on the responsible adult for the child. This has proven to be circumventable and non-inclusive e.g., children in the care system or with parents with limited digital literacy. It does not ensure that a whole system approach is taken and whilst parental awareness raising about potential harms should continue, a safety-by-design measure by providers, complemented by additional measures like parental controls as one of the options for multi-authentication approach where required, is likely to be more effective. Parental control systems are far more effective as a measure for lower risk content.

Question 10: Do you have any comments on the draft guidance about the measure regarding complaints processes or on the regulatory requirement to provide for an impartial dispute resolution procedure?	Confidential? – Y / N Not applicable
Question 11: Do you have any comments on the draft guidance about media literacy tools and information?	Confidential? – Y / N Not applicable
Question 12: Do you have any comments on the with the draft guidance provided about the practicable and proportionate criteria VSP providers must have regard to when determining which measures are appropriate to protect users from harm?	Confidential? – Y / N Not applicable
Question 13: Do you have any comments on the draft guidance about assessing and managing risk?	Confidential? – Y / N Not applicable
Question 14: Do you have any comments on the impact assessment in Annex 1, including the potential impacts to VSPs outlined in tables 1 and 2, and any of the potential costs incurred (including any we have not identified)?	Confidential? – Y / N Not applicable
Question 15: Do you have any comments on our provisional assessment that the potential costs for providers are proportionate to achieve the regulatory requirements of the regime?	Confidential? – Y / N Not applicable
Question 16: Do you have any comments on any other part of the draft guidance?	Confidential? – Y / N