



Consultation response form

Please complete this form in full and return to protectingchildren@ofcom.org.uk.

Consultation title	Consultation: Protecting children from harms online
Organisation name	Global Network Initiative



Your response

Question	Your response
<p>Volume 2: Identifying the services children are using Children’s Access Assessments (Section 4).</p>	
<p>Do you agree with our proposals in relation to children’s access assessments, in particular the aspects below. Please provide evidence to support your view.</p> <p>1. Our proposal that service providers should only conclude that children are not normally able to access a service where they are using highly effective age assurance?</p> <p>2. Our proposed approach to the child user condition, including our proposed interpretation of “significant number of users who are children” and the factors that service providers consider in assessing whether the child user condition is met?</p> <p>3. Our proposed approach to the process for children’s access assessments?</p>	<p>Confidential? – No</p> <p>The Global Network Initiative (GNI) appreciates Ofcom’s continued emphasis on a systems-and-processes approach in the draft guidelines to children’s online safety, which is consistent with our previous recommendations related to the design and implementation of the Online Safety Act (the Act). We believe this is the most appropriate approach to achieving the Online Safety Act’s objectives in a manner consistent with Ofcom’s obligations to “further the interests of citizens in relation to communication matters and ... the interests of consumers in relevant markets, where appropriate by promoting competition” and with the United Kingdom’s broader commitments to human rights, including freedom of expression and privacy.</p> <p>We are nevertheless concerned that the detailed approach set out in the consultation documents is likely to impose a very broad set of potentially unnecessary obligations on an extremely wide range of services, and in doing so contravene those same obligations and commitments.</p> <p>In theory, a “children’s access assessment” that allows services that have put in place effective age assurance measures or do not have a “significant number of users who are children” to avoid undertaking potentially burdensome children’s risk assessments and safety duties makes sense. However, the approach set out in the consultation documents makes it highly unlikely that any services will be able to take advantage of this affordance unless they are willing to rely on costly and uncertain approaches age assurance (more on this point below). This is because the approach set out to determining what constitutes “a significant number” of children makes it very difficult, if not impossible, to credibly determine that the “child user condition” is not met.</p>

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	<p>As Ofcom acknowledges, the Act states that in this context “significant” could be a number that is “significant in proportion to the total number of United Kingdom users of a service,” or an absolute number. Ofcom quickly dismisses the second option by asserting that it has “no robust basis for setting numerical thresholds.” Then, without engaging in an analysis of what a proportional assessment might entail, Ofcom asserts contrary to the plain English meaning of the word that “it cannot be the intention of Parliament” for “significant” to mean “a large or substantial number” of users of a service. Instead, Ofcom proposes that this crucial term “should be understood as indicating that the number of children on the service is material in the context of the service in question (i.e. not insignificant in that context).” However, no additional clarification is provided as to how this novel concept of “material in the context of the service” should be understood and applied in practice.</p> <p>The draft guidance goes on to set out a “broad list of factors that could mean a service meets one or both limbs of the child user condition.” Indeed, this list is so broad that it is difficult to imagine services of any size that could plausibly assert that they do not meet the child user condition.</p> <p>While this approach may indeed “help providers complete this assessment swiftly,” it does so by encouraging them to forgo any meaningful analysis and resign themselves to either implementing “highly effective age assurance” or conducting a children’s risk assessment. As such, this approach is inconsistent with the principle of necessity, which places the burden on States (in this case, Ofcom) to establish that a regulatory approach that limits freedom of expression constitutes “the least restrictive means” of achieving a legitimate objective (in this case, child safety).</p> <p>GNI encourages Ofcom to reconsider this approach and provide greater clarity as to how a service can determine whether a “significant number of children” are accessing or are likely to be attracted to a service. In so doing, Ofcom should recognize that the burdens of meeting the child user condition are significant, especially for smaller or not-for-profit services. In line with its commitment to</p>

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	<p>proportionality and competition, it should ensure that services - or parts thereof - that only attract a relatively small number of children are allowed to address related risks in ways that are less burdensome than the obligations that apply to services that do in fact attract significant numbers of children.</p> <p>GNI suggests that the "significant number" test be replaced by the UN Guiding Principles' criteria to test risk, which includes consideration of scale, scope and remediability. This seems to be the outcome that Ofcom is seeking where it mentions a small number of children potentially being significantly harmed. It would be better to explicitly include these three criteria of scale, scope, and remediability, so that the assessment is not just numerical but rather based on potential adverse child rights impacts.</p> <p>Ofcom's proposed guidance also further develops the other safe harbour offered to providers under the Act, which applies "if age verification or age estimation is used on the service with the result that children are not normally able to access the service or that part of it." Ofcom proposes an interpretation that defines such approaches to age assurances as those that are "highly effective at correctly determining whether or not a particular user is a child." This approach also encourages services to go straight to the blunt risk mitigation measure of denying children access to their services through age-gating tools, rather than taking more considered measures to provide an inclusive service that children can also participate in. Further, highly effective age assurance tools are by definition the most privacy invasive, as there is currently an inverse relationship between privacy and effectiveness for age assurance products currently available on the market. See further report prepared for the European Parliament for an up to date review of the age assurance market from both an effectiveness and human rights perspective.</p> <p>We appreciate the differentiated approach that Ofcom proposes to distinct services based on their purpose and risk, as well as the decision to refrain from requiring age assurance for search services. Notwithstanding Ofcom's commendable acknowledgment of and attempts to address the human rights risks associated with the</p>

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	<p>implementation of age assurance, we remain concerned that the ability of existing methods and approaches to meet the criteria for HLAA is, at best, uncertain. Putting aside questions of effectiveness, provisions such as photo-ID matching and reusable digital ID services, which, by definition, would require users to share sensitive personal identification information with service providers, introducing significant privacy and data protection risks.</p> <p>Until better, proven, rights-protecting age assurance methods are available, we recommend Ofcom allow a more flexible approach to age assurance and to children's access assessments.</p>
<p>Volume 3: The causes and impacts of online harm to children</p> <p>Draft Children's Register of Risk (Section 7)</p>	
<p>Proposed approach:</p> <p>4. Do you have any views on Ofcom's assessment of the causes and impacts of online harms? Please provide evidence to support your answer.</p> <p>a. Do you think we have missed anything important in our analysis?</p> <p>5. Do you have any views about our interpretation of the links between risk factors and different kinds of content harmful to children? Please provide evidence to support your answer.</p> <p>6. Do you have any views on the age groups we recommended for assessing risk by age? Please provide evidence to support your answer.</p> <p>7. Do you have any views on our interpretation of non-designated content or our approach to identifying non-designated content? Please</p>	<p>Confidential? – No</p> <p>Broadly, GNI agrees with Ofcom's assessment that the various risks of online harms are associated with a service's size and composition of user base, their governance systems, business models, and use of features and functionalities that affect the amount of time spent on it by users. GNI appreciates the analysis and assessment on Ofcom's part to present a general overview of the user age groups that are at greater risk of being affected by specific online harms to services.</p> <p>However, GNI has concerns with the proposed governance and accountability measures to address online harms. Please see our response to Question 15 where we address this in detail.</p> <p>GNI appreciates Ofcom's decision not to directly regulate encrypted services. We understand Ofcom's concerns with children encountering harmful content in private and encrypted settings, but reiterate the need for Ofcom to articulate clearer guidelines for risk mitigation that do not undermine the effectiveness of encrypted technologies and allow services to maintain the benefits of those functionalities while complying with regulation.</p>

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<p>provide evidence to support your answer.</p> <p>Evidence gathering for future work:</p> <p>8. Do you have any evidence relating to kinds of content that increase the risk of harm from Primary Priority, Priority or Non-designated Content, when viewed in combination (to be considered as part of cumulative harm)?</p> <p>9. Have you identified risks to children from GenAI content or applications on U2U or Search services?</p> <p>a) Please Provide any information about any risks identified</p> <p>10. Do you have any specific evidence relevant to our assessment of body image content and depressive content as kinds of non-designated content? Specifically, we are interested in:</p> <p>a) (i) specific examples of body image or depressive content linked to significant harms to children,</p> <p>b. (ii) evidence distinguishing body image or depressive content from existing categories of priority or primary priority content.</p> <p>11. Do you propose any other category of content that could meet the definition of NDC under the Act at this stage? Please provide evidence to support your answer.</p>	
<p>Draft Guidance on Content Harmful to Children (Section 8)</p>	

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<p>12. Do you agree with our proposed approach, including the level of specificity of examples given and the proposal to include contextual information for services to consider?</p> <p>13. Do you have further evidence that can support the guidance provided on different kinds of content harmful to children?</p> <p>14. For each of the harms discussed, are there additional categories of content that Ofcom</p> <p>a) should consider to be harmful or</p> <p>b) consider not to be harmful or</p> <p>c) where our current proposals should be reconsidered?</p>	
<p>Volume 4: How should services assess the risk of online harms?</p> <p>Governance and Accountability (Section 11)</p>	
<p>15. Do you agree with the proposed governance measures to be included in the Children’s Safety Codes?</p> <p>a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.</p> <p>b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.</p> <p>16. Do you agree with our assumption that the proposed governance measures for Children's Safety Codes could be implemented through the</p>	<p>Confidential? – No</p> <p>In general, Ofcom’s focus on “governance and accountability” to address and mitigate the risk of online harms to children is consistent with the approaches set out in the GNI framework, the UN Guiding Principles on Business and Human Rights (“UNGPs”), and the OECD Guidelines for Multinational Enterprises (“OECD Guidelines”). However, GNI continues to have concerns with the introduction of direct and personal liability for company personnel in the event of a breach or failure to respect the Children’s Safety Codes. We noted this in our response to the Illegal Harms Consultation, notably to Question 3(i):</p> <p>“Ofcom also requires all services to name a person accountable to the most senior governance body for compliance with illegal content duties and reporting and complaints duties. GNI has responded to the growing trend of potential liability for company personnel under content regulation in various jurisdictions, noting that</p>

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<p>same process as the equivalent draft Illegal Content Codes?</p>	<p>without sufficient safeguards and protections, such requirements make it less likely that companies will push back on overbroad government demands or restrictions. Under certain circumstances, senior managers could face administrative or criminal prosecution under the OSA if they fail to comply with an Ofcom information notice. Ofcom should carefully consider what consequences in this context are necessary and proportionate, given the variety of tools that the UK government already has at its disposal to compel compliance.”</p>
<p>Children’s Risk Assessment Guidance and Children’s Risk Profiles’ (Section 12)</p>	
<p>17. What do you think about our proposals in relation to the Children’s Risk Assessment Guidance?</p> <p>a) Please provide underlying arguments and evidence of efficacy or risks that support your view.</p> <p>18. What do you think about our proposals in relation to the Children’s Risk Profiles for Content Harmful to Children?</p> <p>a) Please provide underlying arguments and evidence of efficacy or risks that support your view.</p> <p>Specifically, we welcome evidence from regulated services on the following:</p> <p>19. Do you think the four-step risk assessment process and the Children’s Risk Profiles are useful models to help services understand the risks that their services pose to children and comply with their child risk assessment obligations under the Act?</p> <p>20. Are there any specific aspects of the children’s risk assessment duties that you consider need additional</p>	<p>Confidential? – No</p> <p>Drawing on GNI’s response to Ofcom’s Illegal Harms Consultation, we recommend that Ofcom explicitly acknowledge and endorse international frameworks on business and human rights, which include the GNI Principles on Freedom of Expression and Privacy and its detailed Implementation Guidelines. The GNI framework is complementary with the approaches outlined in the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises, and provides robust guidance for how companies should conduct due diligence and assess risks associated with human rights. Where such assessments unveil actual or potential human rights impacts, the GNI framework helps companies identify steps that they may take to prevent, mitigate, and remedy adverse impacts. These approaches have guided tech company approaches to due diligence and impact assessment for decades and have, in many cases, been deeply woven into the internal governance, systems, and processes of these companies. As such, Ofcom may encourage services subject to the Online Safety Act to refer to them and related, authoritative guidance as they work to implement the OSA’s requirements.</p> <p>By and large, GNI supports Ofcom’s efforts to delineate a systems-and-processes approach to risk assessment. In particular, GNI appreciates the possibility for service providers to supplement their risk assessment processes with <i>enhanced input</i> from various relevant stakeholder groups to determine more challenging cases on children’s</p>

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<p>guidance beyond what we have proposed in our draft?</p> <p>21. Are the Children’s Risk Profiles sufficiently clear and do you think the information provided on risk factors will help you understand the risks on your service?</p> <p>a) If you have comments or input related to the links between different kinds of content harmful to children and risk factors, please refer to Volume 3: Causes and Impacts of Harms to Children Online which includes the draft Children’s Register of Risks.</p>	<p>online safety. Recent evolution and innovations in technology have resulted in human rights issues becoming a lot more complex to regulate, including when it comes to the question of balancing rights. This is especially true when service providers try to maintain a safe environment for children online without compromising the free expression and privacy of their users. In this context, GNI believes that Ofcom’s guidelines for service providers to review their risk assessment processes at least every twelve months are a useful mechanism to ensure their online safety measures remain up-to-date. However, such risk assessments should be made transparent as part of Ofcom’s regulatory obligations to users and relevant stakeholders. See our response to Question 31 where we touch upon this in more detail.</p>
<p>Volume 5 – What should services do to mitigate the risk of online harms</p> <p>Our proposals for the Children’s Safety Codes (Section 13)</p>	
<p>Proposed measures</p> <p>22. Do you agree with our proposed package of measures for the first Children’s Safety Codes?</p> <p>a) If not, please explain why.</p> <p>Evidence gathering for future work.</p> <p>23. Do you currently employ measures or have additional evidence in the areas we have set out for future consideration?</p> <p>a) If so, please provide evidence of the impact, effectiveness and cost of such measures, including any results from trialling or testing of measures.</p> <p>24. Are there other areas in which we should consider potential future measures for the Children’s Safety Codes?</p>	<p>Confidential? – No</p> <p>In part; please see our concerns noted in response to Question 15.</p>

Question	Your response
a) If so, please explain why and provide supporting evidence.	

Developing the Children’s Safety Codes: Our framework (Section 14)

25. Do you agree with our approach to developing the proposed measures for the

Children’s Safety Codes?

a) If not, please explain why.

26. Do you agree with our approach and proposed changes to the draft Illegal Content Codes to further protect children and accommodate for potential synergies in how systems and processes manage both content harmful to children and illegal content?

a) Please explain your views.

27. Do you agree that most measures should apply to services that are either large services or smaller services that present a medium or high level of risk to children?

28. Do you agree with our definition of ‘large’ and with how we apply this in our recommendations?

29. Do you agree with our definition of ‘multi-risk’ and with how we apply this in our recommendations?

30. Do you agree with the proposed measures that we recommend for all services, even those that are small and low-risk?

Age assurance measures (Section 15)

31. Do you agree with our proposal to recommend the use of highly effective age assurance to support Measures AA1-6? Please provide any information or evidence to support your views.

a) Are there any cases in which HEAA may not be appropriate and proportionate?

b) In this case, are there alternative approaches to age assurance which would be better suited?

32. Do you agree with the scope of the services captured by AA1-6?

33. Do you have any information or evidence on different ways that services could use highly effective age assurance to meet the outcome that children are prevented from encountering identified PPC, or protected from encountering identified PC under Measures AA3 and AA4, respectively?

34. Do you have any comments on our assessment of the implications of the proposed Measures AA1-6 on children, adults or services?

a) Please provide any supporting information or evidence in support of your views.

35. Do you have any information or evidence on other ways that services could consider different age groups when using age assurance to protect children in age groups judged to be at risk of harm from encountering PC?

Confidential? – No

As noted above, GNI generally has concerns about the application of age assurance methods for online safety. GNI recommends Ofcom develop and incorporate an assessment process to identify and mitigate risks associated with age assurance systems. In addition, it would be important to exercise transparency with such assessments to help academics, civil society organisations, and users better understand how services are addressing risks, and allow them to hold Ofcom accountable for its regulatory obligations. GNI looks forward to the publication of Ofcom’s accompanying guidance to assist services in implementing highly effective age assurance methods, and the opportunity to provide our input on them.

In the meantime, GNI notes that Ofcom’s reliability and fairness criteria for highly effective age assurance methods requires service providers to undertake “steps to ensure that any data relied upon as part of the age assurance process comes from a reliable source.” Overall, we appreciate Ofcom’s efforts to craft a balanced and practical approach to determining effective age assurance methods. However, we believe it would be useful for Ofcom to clearly articulate what would constitute as a “reliable source” for data, to guide service providers with their obligations and help ensure the appropriate and non-discriminatory use of AI and machine learning in age assurance methods.

Content moderation U2U (Section 16)

<p>36. Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.</p> <p>37. Do you agree with the proposed addition of Measure 4G to the Illegal Content Codes?</p> <p>a) Please provide any arguments and supporting evidence.</p>	<p>Confidential? – No</p> <p>GNI appreciates Ofcom’s assessment of its content moderation policies (CM1-CM7) for actual or potential impacts on privacy, freedom of expression, and impacts on services, as well as its transparency in communicating them with stakeholders. In addition, Ofcom’s focus on the development of systems and processes for effective content moderation, rather than an attempt to regulate individual pieces of content, allows different types of companies in the technological stack to develop moderation practices that complement their own unique services.</p> <p>However, as noted in our response to the Illegal Harms Consultation, companies may struggle in the absence of appropriate legal benchmarks to measure their compliance of moderation requirements against. This is especially prominent for non-designated content (NDC) that may be considered as harmful. The process that Ofcom laid out for companies to identify harmful NDC and mitigate the risks they pose is very broad in scope and is likely to place a disproportionate amount of burden on smaller services working with limited resources.</p>
<p>Search moderation (Section 17)</p>	
<p>38. Do you agree with our proposals? Please provide the underlying arguments and evidence that support your views.</p> <p>39. Are there additional steps that services take to protect children from the harms set out in the Act?</p> <p>a) If so, how effective are they?</p> <p>40. Regarding Measure SM2, do you agree that it is proportionate to preclude users believed to be a child from turning the safe search settings off?</p> <p>The use of Generative AI (GenAI), see Introduction to Volume 5, to facilitate search is an emerging development,</p>	

which may include where search services have integrated GenAI into their functionalities, as well as where standalone GenAI services perform search functions. There is currently limited evidence on how the use of GenAI in search services may affect the implementation of the safety measures as set out in this code. We welcome further evidence from stakeholders on the following questions and please provide arguments and evidence to support your views:

41. Do you consider that it is technically feasible to apply the proposed code measures in respect of GenAI functionalities which are likely to perform or be integrated into search functions?

42. What additional search moderation measures might be applicable where GenAI performs or is integrated into search functions?

User reporting and complaints (Section 18)

43. Do you agree with the proposed user reporting measures to be included in the draft Children's Safety Codes?

a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.

b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

44. Do you agree with our proposals to apply each of Measures UR2 (e) and UR3 (b) to all services likely to be accessed by children for all types of complaints?

a) Please confirm which proposed measure your views relate to and explain your views and provide any arguments and supporting evidence.

b) If you responded to our Illegal Harms Consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

45. Do you agree with the inclusion of the proposed changes to Measures UR2 and UR3 in the Illegal Content Codes (Measures 5B and 5C)?

a) Please provide any arguments and supporting evidence.

Terms of service and publicly available statements (Section 19)

46. Do you agree with the proposed Terms of Service / Publicly Available Statements measures to be included in the Children’s Safety Codes?

a) Please confirm which proposed measures your views relate to and provide any arguments and supporting evidence.

b) If you responded to our illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.

47. Can you identify any further characteristics that may improve the clarity and accessibility of terms and statements for children?

48. Do you agree with the proposed addition of Measure 6AA to the Illegal Content Codes?

a) Please provide any arguments and supporting evidence.

Recommender systems (Section 20)

49. Do you agree with the proposed recommender systems measures to be included in the Children’s Safety Codes?

a) Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

b) If you responded to our illegal harms consultation and this is relevant to your response here, please signpost

<p>to the relevant parts of your prior response.</p> <p>50. Are there any intervention points in the design of recommender systems that we have not considered here that could effectively prevent children from being recommended primary priority content and protect children from encountering priority and non-designated content?</p> <p>51. Is there any evidence that suggests recommender systems are a risk factor associated with bullying? If so, please provide this in response to Measures RS2 and RS3 proposed in this chapter.</p> <p>52. We plan to include in our RS2 and RS3, that services limit the prominence of content that we are proposing to be classified as non-designated content (NDC), namely depressive content and body image content. This is subject to our consultation on the classification of these content categories as NDC. Do you agree with this proposal? Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3.</p> <ul style="list-style-type: none"> • Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3. 	
<p>User support (Section 21)</p>	
<p>53. Do you agree with the proposed user support measures to be included in the Children’s Safety Codes?</p> <p>a) Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.</p>	

<p>b) If you responded to our Illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.</p>	
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Search features, functionalities and user support (Section 22)	
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<p>54. Do you agree with our proposals? Please provide underlying arguments and evidence to support your views.</p> <p>55. Do you have additional evidence relating to children’s use of search services and the impact of search functionalities on children’s behaviour?</p> <p>56. Are there additional steps that you take to protect children from harms as set out in the Act?</p> <p>a) If so, how effective are they?</p> <p>As referenced in the Overview of Codes, Section 13 and Section 17, the use of GenAI to facilitate search is an emerging development and there is currently limited evidence on how the use of GenAI in search services may affect the implementation of the safety measures as set out in this section. We welcome further evidence from stakeholders on the following questions and please provide arguments and evidence to support your views:</p> <p>57. Do you consider that it is technically feasible to apply the proposed codes measures in respect of GenAI functionalities which are likely to perform or be integrated into search functions? Please provide arguments and evidence to support your views.</p>	
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Combined Impact Assessment (Section 23)

58. Do you agree that our package of proposed measures is proportionate, taking into account the impact on children’s safety online as well as the implications on different kinds of services?

Statutory tests (Section 24)

59. Do you agree that our proposals, in particular our proposed recommendations for the draft Children’s Safety Codes, are appropriate in the light of the matters to which we must have regard?

a) If not, please explain why.

Annexes

Impact Assessments (Annex A14)

60. In relation to our equality impact assessment, do you agree that some of our proposals would have a positive impact on certain groups?

61. In relation to our Welsh language assessment, do you agree that our proposals are likely to have positive, or more positive impacts on opportunities to use Welsh and treating Welsh no less favourably than English?

a) If you disagree, please explain why, including how you consider these proposals could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to

use Welsh and treating Welsh no less favourably than English.	
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