

Question	Your response
<p>Question 1: Ofcom’s general approach to information gathering (Section 3 of the draft guidance)</p> <p>Do you have any comments on Ofcom’s proposed general approach to information gathering, as outlined in Section 3 of the draft guidance?</p>	<p><i>Confidential? – N</i></p> <p>We support Ofcom’s general approach to information gathering. The suggested approach is logical, and we welcome that Ofcom has been clear that they may adapt this process depending on circumstance and need, which will be particularly important depending on how efficiently services comply with requests.</p> <p>It is positive that Ofcom have noted that they may use many of their information gathering powers for reasons not linked to enforcement functions. Information gathering will play a vital role in informing Ofcom’s work, through providing greater insight into the efficacy of service’s harm prevention methods and identifying good practice which can be promoted through the Codes. Ofcom must consider how they can create a culture that demonstrates this in practice and ensure they consistently use of these powers to strengthen the regime.</p> <p>We recognise Ofcom’s decision not to publish each information notice, noting that they do not take this approach in other areas. We also recognise legal limitations to what Ofcom can disclose following information requests. However, along with the separate transparency guidance, this element of the regime is going to be crucial in addressing the longstanding information-asymmetry which exists in the online world. It is vital that those outside of Ofcom are able to gain a better understanding of the way tech companies are operating and complying with the regulation, including civil society, researchers, and the wider public.</p> <p>While there will be limitations on what Ofcom can legally or practically share, we would urge them to consider how they will take a transparent approach to explaining how they are using information-gathering powers and what decisions it has informed. For example, it will be helpful for Ofcom to detail how information-gathering powers have informed future Codes of Practice.</p>

Question	Your response
<p>Question 2: Information notices (Section 4 of the draft guidance)</p> <p>a) Information notices</p> <p>Do you have any comments on Ofcom’s proposed approach to the process for issuing and responding to information notices.</p> <p>b) Requiring a test</p> <p>Do you have any comments on our proposed approach to information notices that require recipients to perform a test?</p> <p>c) Remote viewing</p> <p>Do you have any comments on our proposed approach to Remote Viewing Information Notices? For example, to the factors that we may take into account when considering whether to issue a Remote Viewing Information Notice.</p> <p>d) Coroner Information Notices</p> <p>Do you have any comments on our proposed approach to issuing Coroner Information Notices for the purpose of responding to requests for information by investigating authorities in connection with an investigation or inquest into the death of a child?</p> <p>e) Naming a senior manager</p> <p>Do you have any comments on the section relating to naming a senior manager who is in a position to ensure compliance with an information notice?</p>	<p><i>Confidential? – N</i></p> <p>d) Coroner Information Notices: Do you have any comments on our proposed approach to issuing Coroner Information Notices for the purpose of responding to requests for information by investigating authorities in connection with an investigation or inquest into the death of a child?</p> <p>We support this approach. We welcome that Ofcom has already been taking a proactive approach to working with relevant authorities across the UK to ensure this power can be utilised where necessary. When meeting with the NSPCC and 5Rights, some members of the Bereaved Families for Online Safety have raised concerns that this power will be under-utilised and not work effectively because of a lack of awareness about the system. Whilst we recognise it is not Ofcom’s responsibility to promote this, making the process clear and accessible, and engaging with relevant bodies, will support effective use.</p> <p>Ofcom are right to recognise the importance of ensuring more personal data than is needed is not shared as part of these requests. As these cases will be focused on children, it is reasonable to expect that their online activity will have involved significant interaction with other children, potentially on sensitive subjects. It is vital that the data and privacy rights of these children are upheld and protected throughout this process, and Ofcom must ensure this is a priority consideration when handling these requests.</p> <p>e) Naming a senior manager: Do you have any comments on the section relating to naming a senior manager who is in a position to ensure compliance with an information notice?</p> <p>The senior manager liability provisions are a crucial element of Ofcom’s enforcement powers. Alongside the senior manager liability provisions for failing to comply with requests relating to children’s safety, it is vital that the enforcement regime Ofcom builds clearly sets out the importance of compliance from the start.</p> <p>We question Ofcom’s decision not to consistently ensure this power is available by always requiring service providers to name a senior manager. Many services have</p>

Question	Your response
	<p>consistently shown an unwillingness to share internal data and information, and there is a risk that some platforms will be resistant to cooperating with the regulator.¹ We recommend that, as a minimum, any significant request relating to compliance or enforcement matters requires services to name a senior manager to ensure compliance.</p>
<p>Question 3: Skilled persons' reports (Section 5 of the draft guidance)</p> <p>Do you have any comments on our approach to skilled persons' reports? This might include when we might decide to require a skilled person's report, and the typical process that we propose to follow.</p>	<p><i>Confidential? – N</i></p> <p>It is helpful to understand that for skilled person reports relating to notices to deal with CSEA content, that Ofcom will be responsible for appointing this person. We remain concerned, however, that for other reports tech companies will be able to appoint the skilled person.</p> <p>It seems likely that the only reason Ofcom would need to pass this responsibility to tech companies is if Ofcom was regularly using these powers, it would place a burden on them. However, as Ofcom have stated this is not their aim, this seems unlikely and so it is unnecessary to remove this responsibility from Ofcom.</p> <p>Whilst we recognise Ofcom's point that they will ensure there is no conflict of interest in the person selected, there remains a significant risk of bias or manipulation of this process, in the interest of services. In this guidance, Ofcom has set out a number of examples of when they may consider obtaining a skilled person's report – we suggest that there are some examples where it would be particularly inappropriate for a service to select the skilled person used. For example, in cases where there are compliance risks, it is vital that Ofcom maintains independence in this process by selecting the skilled person. In contrast when they are seeking a subject matter / technical expert, there is less risk in the service selecting a relevant skilled person. We therefore recommend that, along with notices to deal with terrorism and/or CSEA content, Ofcom commits to selecting the skilled person for any report relating to any compliance risks.</p> <p>It would also be helpful for Ofcom to clarify if the skilled person reports will be published. It is important that</p>

¹ Clayton, J. (2021) [Frances Haugen: Facebook whistleblower reveals identity](#). BBC News; Kleinman, Z., Gerken, T. and McMahon, L. (2023) ['I blew the whistle on Meta, now I won't work again'](#). BBC News.

Question	Your response
	<p>these documents can be scrutinised publicly – to ensure relevant learnings can be shared with other providers, and so that the objectivity of these reports can be checked by others. This is particularly important in cases where providers are selecting the skilled person. Aside from exceptional cases, we recommend that the default position is for these reports to be publicly available.</p>
<p>Question 4: Interviews (Section 6 of the draft guidance)</p> <p>Do you have any comments on the section of guidance dealing with the power to require an individual to attend an interview?</p>	<p>Confidential? – Y / N</p>
<p>Question 5: Entry with or without a warrant (Section 7 of the draft guidance)</p> <p>Do you have any comments on our proposed approach to entry either with or without a warrant? This might include the typical process and our interpretation of the requirement to have regard to the Home Office’s code of practice on powers of entry.</p>	<p>Confidential? – Y / N</p>
<p>Question 6: Audit (Section 7 of the draft guidance)</p> <p>Do you have any comments on our proposed approach to the power for Ofcom to carry out an audit to assess compliance?</p>	<p>Confidential? – Y / N</p>
<p>Question 7: Consequences of failure to comply with an information power (Section 8 of the draft guidance)</p> <p>Do you have any comments on the potential consequences of a failure to comply with any of the information gathering powers covered in the draft guidance? This might be either on</p>	<p>Confidential? – Y / N</p>

Question	Your response
breaches that may be subject to enforcement action by Ofcom, or those that may constitute criminal offences.	
Question 8: Additional comments Do you have any other comments on the draft guidance? Please provide any information or evidence in support of your views.	Confidential? – Y / N