

Internet Watch Foundation response to the Department for Science, Innovation, and Technology consultation:

Super-complaints eligible entry criteria and procedural requirements

Name, position, and contact details of person responding:

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About the Internet Watch Foundation:

The Internet Watch Foundation (IWF) is a charity that works in partnership with the internet industry, law enforcement and government to remove (with the co-operation of industry) from the internet child sexual abuse images and videos wherever they are hosted in the world and non-photographic images hosted in the UK.

The IWF exists for public benefit and performs two unique functions in the UK:

1. We provide a secure and anonymous place for the public to report suspected online child sexual abuse images and videos and;
2. Use the latest technology to search the internet proactively for child sexual abuse images and videos.

The IWF has a Memorandum of Understanding between the National Police Chiefs' Council (NPCC) and Crown Prosecution Service (CPS) that governs our operations. This ensures immunity from prosecution for our analysts and recognises our role as the “appropriate authority” for the issuing of Notice and Takedown in the UK. Operationally, the IWF is independent of UK government and law enforcement.

The IWF also plays a vital role in providing the internet industry with several quality-assured technical services to prevent the spread of known child sexual abuse images and videos online and to stop the uploading of new images in the first place. These include image hashing utilising Microsoft's PhotoDNA, a URL blocking list of live webpages, keywords list, domain alerts, payment brand alerts, newsgroup alerts and simultaneous alerts (for US companies only). Key to this is our trusted relationship with the internet industry which enables us to act as a broker between them and government and law enforcement.

Our work is funded almost entirely by the internet industry: 60% of our funding comes from our 200 global Members which include Internet Service Providers (ISPs), search engines, Mobile Network Operators and manufacturers (MNOs), social media platforms, content service providers, telecommunications companies, software providers, domain name registries and registrars and those that join the IWF for CSR reasons. Our members include some of the biggest companies in the world – Amazon, Apple, Google, Meta, Microsoft – as well as the

largest ISPs and mobile operators in the UK as well as some of the smaller operators within the internet ecosystem who pay as little as £1,040 per annum yet still access everything we have to offer.

The IWF is a charity registered in England & Wales with an 11-person Board of Trustees of which, eight are independent members and three are industry representatives. The IWF Hotline is audited by an independent team, led by a judge, every two years and the report published in full.

Question 1: To what extent do you agree or disagree that the following criteria should be used to assess which organisations can submit super-complaints?

Criterion 1: That they must demonstrate integrity and impartiality and must not represent the interests of regulated services. This criterion is aimed at ensuring that organisations demonstrate that they can be expected to act with integrity and impartiality, and that they are genuinely representative of the interests of users/members of the public rather than regulated companies. This will ensure that those involved in the super-complaints process can command the trust and respect of the public and users of regulated services.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Criterion 2: That they have considerable experience and competence in representing the interests of people of any description in, or within, the UK. This criterion is aimed at ensuring that organisations demonstrate that they have the necessary experience to submit a super-complaint, reducing the risk of super-complaints which are ineffectively delivered. Organisations would need to show what activities they had engaged in that demonstrate quality work in representing the public interest. This may be through the production of reports, the raising of important issues through the correct channels, or simply through the everyday work of the body.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Criterion 3: That they have expertise in, and experience of, issues relating to online safety covered by and in scope of the regulations. This criterion is aimed at ensuring that organisations demonstrate that they have specific expertise in issues related to online harms, and that they can demonstrate experience of working on such issues. This may take the form of a website evidencing expertise in issues related to online safety, relevant publications and research or examples of operational programmes related to online safety. This will ensure that super-complaints are informed by genuine expertise.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Criterion 4: That they are willing to cooperate, and work with OFCOM throughout the super complaints process. This includes that OFCOM will have no reason to believe that the relevant guidance it produces in relation to the handling of super-complaints will not be followed accordingly. This criterion is aimed at ensuring that organisations demonstrate that they would collaborate with OFCOM through the super-complaints process. This is necessary because super complaints may involve ongoing communication between the regulator and the super complainant to determine the appropriate response, making it essential that an organisation is willing to continue engaging with the regulator following their initial complaint.

The second Online Safety super-complaints eligible entity criteria and procedural requirements: Consultation 13 sentence clarifies one means by which this will be assessed and aims to ensure that organisations will comply effectively with OFCOM's guidance.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
		X			

Criterion 5: That they have a strong track record of publishing high quality research and analysis. This criterion is aimed at ensuring that organisations have a demonstrable record of publishing research and analysis. This would ensure that the quality of writing, evidence and analysis is high. Organisations which do not have experience publishing research and analysis are unlikely to be able to prepare sufficiently high-quality super-complaints, as they are unlikely to have access to the necessary analytical and research skills.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
			X		

Criterion 6: That they have a strong track record of working effectively and collaborating with other civil society groups. This criterion is aimed at ensuring that organisations can evidence experience of collaboration with other civil society organisations. If an organisation does not have a strong track record of working with other civil society groups, it is unlikely to be able to submit a high quality super complaint, as it is unlikely to have the necessary resources or expertise and/or a sufficiently broad understanding of the issues involved. This criterion will also encourage collaboration amongst organisations, which will lead to higher quality super-complaints. This criterion does not mean that groups must cooperate with groups who disagree with them, or with groups from across the political spectrum. For example, we anticipate that it could be fulfilled by a group demonstrating experience of effective cooperation with other civil

society groups with a similar political outlook or campaigning priorities, but with greater technical expertise in issues covered by the super-complaint.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
			X		

Question 2: To what extent do you consider that the current draft criteria are fair?

Optional Text Box- upto 300 words to explain reasoning.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
		X			

IWF Response: It is important that Ofcom can draw upon a wide range of evidence and experiences in relation to super-complaints against regulated services. Just because an individual or organisation does not have sufficient experience of publishing reports or working with others in the online safety space, does not mean that they do not have significant evidence of harm occurring on a regulated service. We must ensure that bereaved parents for example, are able to bring complaints of systemic failings, or victims of child sexual abuse are heard during this process. We have seen in the past the harm that can be done when these individuals are not listened to.

We do, however, recognise that Ofcom will not want to be inundated with individual complaints, and we recognise the need for clear criteria on which charities and organisations can bring super-complaints. Broadly speaking, these principles are acceptable, but much more guidance will be required on what "impartiality" from regulated services means. For example, is it acceptable to be in receipt of funding from a regulated service, but that funding not be linked or influence in any way to operational decision to bring a super complaint against a regulated service?

Question 3: To what extent do you consider that the requirement to meet all criteria (1-6 included in previous questions) could exclude bodies that would otherwise bring legitimate super-complaints?

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
					X

Optional text box up-to 300 words to explain reasoning.

IWF Response: As set out in response to Question 1, these broad criteria appear to be acceptable to us at IWF, but at this stage, they are principles, rather than final guidance of which charities, law enforcement agencies etc can bring super complaints. Without seeing final guidance on issues such as independence from regulated entities or what

standards will be applied to what constitutes “research” and “reports” for example, it is difficult to assess to what extent this would exclude organisations from bringing super-complaints, that may hold relevant information.

As mentioned above, we would also ask that DSIT considers how to get complaints from bereaved families or victims of CSE/A to ensure they are properly represented in this process.

Question 4: Do you agree pre-notification should be included in the procedural regulations?

Yes	No	Don't Know
	X	

Question 5: If you have answered ‘no’ to question 4 please explain your reasons below. Free text box up to 300 words.

IWF Response: If an organisation holds relevant information related to a systemic harm of a regulated service or of a conduct failing or a combination of the two, the matter should be brought to the attention of both Ofcom and the company in question as soon as possible, with a suitable amount of information supporting that claim.

By introducing a 30-day notification period, before the complaint is made, could potentially slow-down the process of investigation. Whilst I appreciated Ofcom would want to have time to prepare sufficient resources to investigate the super-complaint, there is no reason why these resources could not be allocated at the time of receiving the complaint.

We would also hope that organisations meeting the six criteria as set out in response to question 1, would have a sufficient working relationship with Ofcom, where warning could be given to Ofcom informally of a possible super-complaint heading their way for investigation. This does not necessarily need to be formalised through a pre-notification process via secondary legislation.

Question 6: If you agree with a pre-notification requirement, do you agree that 30 days is an appropriate length of time? If not, what do you think the appropriate amount of time would be? Free text box up to 300 words

Yes	No	Don't Know
		X

Question 7: To what extent do you agree with the following procedural requirements?

Requirement 1: Super-complaints must be in writing.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
X					

Requirement 2: A complaint must set out the feature or conduct (or combination) to which the complaint relates. This requirement is aimed at ensuring that OFCOM has key information required in relation to the prospective super-complaint (s.169 (1)).

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
X					

Requirement 3: A complaint must set out the regulated service(s) and provider(s) of such service(s) to which the complaint relates. This requirement is aimed at ensuring that OFCOM has the key information required in relation to the relevant provider(s) of such services for the prospective super-complaint (s.169 (1) and (2)).

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
X					

Requirement 4: A complaint must outline why the eligible entity considers that either s.169 (1)(a),(b) or (c) has been met. This provision states that a complaint may be about any feature of one or more regulated services, or any conduct of one or more providers of such services, or any combination of such features and such conduct is, appears to be, or presents a material risk of (a) causing significant harm to users of the services or members of the public, or a particular group of such users or members of the public; (b) significantly adversely affecting the right to freedom of expression within the law of users of the services or members of the public, or of a particular group of such users or members of the public; or (c) otherwise having a significant adverse impact on users of the services or members of the public, or on a particular group of such users or members of the public.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
X					

Requirement 5: If a complaint is in relation to a particular provider, a complaint must outline why the eligible entity considers that either s.169 (2)(a) or (b) has been met. This provision states that where a complaint relates to a single regulated service or relates to a single provider of one or more regulated services, it is only admissible if OFCOM consider that (a) the complaint is of particular importance, or (b) the complaint relates to the impacts on a particularly large number of users of the service or members of the public.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Requirement 6: A complaint must provide an explanation of how the super-complainant has assessed the current or potential harm caused to users or members of the public.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Requirement 7: A complaint must give the name of an individual representing the eligible entity who may be contacted about the complaint. This requirement is aimed at ensuring that OFCOM has the contact details of the individual representing the “eligible entity” as OFCOM may need to seek further information from a complainant (and/or other parties).

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Question 8: To what extent do you consider that these requirements would provide clarity on what should be included in a super-complaint, and would ensure that super complaints include the necessary information for OFCOM to assess what the super complaint relates to? **Optional text box up to 300 words**

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

These requirements aim to ensure that super-complaints are supported by sufficient high-quality evidence to effectively assist OFCOM in identifying systemic issues. We are proposing the following procedural requirements related to evidence:

- **Requirement 1:** Super-complaints must demonstrate that the super-complainant has consulted with a range of bodies, industry experts or academics on the matters concerned in the complaint.
- **Requirement 2:** Super-complaints must be supported by substantial high-quality evidence, including documented facts and evidence.

Question 9: To what extent do you assess that these requirements would effectively ensure that super-complaints are well-evidenced? If not, how do you think they could be improved? **Optional text box of 300 words**

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
		X			

IWF Response: Clearly super-complaints will need to have a level of rigour to them and both consultation with expert bodies, academics, industry experts and the best available evidence will be important to documenting and proving the basis of a complaint. It would be helpful for Ofcom and DSIT to provide clear guidance on the types of organisations, academics and evidence it expects to rely upon. If DSIT and Ofcom are expecting wide consultation, it may be the case that not just one entity, is responsible for submitting the super-complaint, but the complaints become a result of collaboration between multiple entities, all of whom have access to different information and or perspectives to help inform the complaint. This section sounds very much like obtaining a “skilled persons” report about a platforms design features or functionality or the conduct being presented on a platform.

In some cases of super-complaints, it may be that evidence of an issue is difficult to obtain. For example, in the case of child sexual abuse circulating in End-to-End Encrypted environments, it will be very difficult to produce evidence unless an end user in receipt of those images, brings it to the attention of law enforcement or an organisation dealing with this material.

Question 10: To what extent do you agree with the following procedural requirements?

Requirement 1: A complaint that repeats the substance of a super-complaint that is already being assessed may not be eligible for consideration, if the regulator deems that it is merely duplicative of the existing complaint.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
			X		

Requirement 2: A complaint that merely repeats the substance of a complaint that has already been assessed by OFCOM is not eligible for consideration unless there has been a material change of circumstances since the previous complaint was made.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Requirement 3: Super-complaints must not be under consideration by another UK regulator (statutory or self-regulatory) or by the courts.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
			X		

Question 11: To what extent do you consider that these requirements are necessary to prevent OFCOM undertaking duplicative work when responding to super-complaints?

Free text box upto 300 words to feedback

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
		X			

Question 12: To what extent do you agree with the following procedural requirement?

Requirement 1: The super-complainant should not have another active super-complaint under consideration by OFCOM (except under exceptional circumstances).

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
			X		

Requirement 2: The super-complainant should not have submitted a super-complaint within the past six months (except under exceptional circumstances).

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
			X		

Requirement 3: The super-complaint should not raise substantially similar concerns to supercomplaints or other investigations which OFCOM has considered in the previous 2 years (except under exceptional circumstances).

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Question 13: To what extent do you consider that these requirements are necessary to ensure that OFCOM's super-complaints caseload remains manageable **Free text box upto 300 words also available for feedback**

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
		X			

These requirements aim to place clear requirements on OFCOM regarding how they must assess complaints, and to clarify for potential super-complainants the steps that OFCOM must

take in response to a super-complaint. We propose the following requirements should be placed on the regulator in this regard:

- **Requirement 1:** Where a super-complaint is submitted in line with requirements set out in OFCOM’s guidance, OFCOM must acknowledge receipt of the super-complaint.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don’t Know
X					

- **Requirement 2:** If OFCOM decides that a complaint is eligible for consideration, they must inform the body in writing that the complaint will be investigated.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don’t Know
X					

- **Requirement 3:** If OFCOM decides that the complaint is not eligible for consideration, they must inform the body in writing of that decision and the reasons for it.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don’t Know
X					

Question 14: To what extent do you consider that these requirements would support the effective functioning of a super-complaints system? If not, please explain how you would revise these requirements. Optional free text box of 300 words

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don’t Know
	X				

These requirements aim to set clear expectations regarding what must be published following OFCOM’s assessment of a super-complaint. This will ensure that there is transparency regarding OFCOM’s handling of super-complaints, and will protect confidence in the functioning of the super-complaints process. We propose the following requirements:

- **Requirement 1:** OFCOM must publish its response to all super-complaints, and send a copy to the complainant body.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don’t Know
X					

- **Requirement 2:** OFCOM may exclude information from the report if its inclusion would be contrary to the interests of national security, might jeopardise the safety of any person, may be commercially sensitive, or would be in conflict with any other legislation or rights (including, but not limited to, GDPR etc).

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Question 15: To what extent do you consider that these requirements would ensure that super-complaints are dealt with transparently? If not, please explain how you would revise these requirements.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Question 16: To what extent do you consider that 120 days would enable OFCOM to make a full assessment and provide a response to super-complaints while maintaining public confidence? Please provide details.

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Question 17: To what extent do you consider that the eligibility assessment should be split from the rest of the super-complaints process? **Optional free-text box of 300 words**

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Question 18: To what extent do you agree with the following procedural requirement? **Optional free text box of 300 words**

Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Disagree Strongly	Don't Know
	X				

Requirement 1: Where OFCOM is waiting for a response from a super-complainant, OFCOM may 'stop-the-clock' such that each day until they receive a response does not count towards the time-limit prescribed in regulations.

Question 19: Do you think that the stop-the-clock mechanism should be limited in any way (i.e. how long it can be used for and/or how many times in the same supercomplaints process it can be used)? **Free text box of 300 words**