

The Information Commissioner's response to the Department for Science, Innovation and Technology's consultation on the Online Safety Act's super-complaints function: eligible entity criteria and procedural requirements.

About the Information Commissioner

1. The Information Commissioner has responsibility for promoting and enforcing data protection and information rights. This includes responsibilities under the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000 (FOIA), the Network and Information Systems Regulations 2018 (NIS), the Environmental Information Regulations 2004 (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR).
2. The Information Commissioner is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner provides guidance and support to individuals and organisations, aimed at helping organisations to comply, and takes appropriate action where the law is broken. People can complain to the Information Commissioner's Office (the ICO) about the way an organisation has handled personal information. Additionally, Article 80(1) of the UK GDPR allows people to appoint properly constituted not-for-profit bodies to exercise their right to bring a complaint to the ICO.

Our Response

3. The ICO welcomes the opportunity to respond to the above consultation. Our response focuses on consultation questions 10 and 11 which are about proposed requirements to prevent OFCOM undertaking duplicative work when responding to super-complaints. In particular we are providing our views on Requirement 3 which is the proposal that a super-complaint must not be under consideration by another UK regulator.

4. We support the objective of avoiding regulatory duplication. We also strongly agree with proposed Requirement 3 in principle (**question 10 of the consultation**). Online safety and data protection can interact in a variety of ways, as we outlined with OFCOM in our [joint statement on online safety and data protection](#). Although section 169(1) of the Online Safety Act 2023 does not list data protection and privacy as grounds for making a super-complaint, systemic data privacy issues could arise indirectly as part of a super-complaint. This would give rise to regulatory duplication if the issues in question are already under consideration by the ICO.
5. We would welcome greater clarity about the scope of the requirement that a super-complaint must not be under consideration by another UK regulator. It is not clear what “under consideration” means. We are also unclear whether the requirement applies only to super-complaints to other regulators or whether the intention is that the substance of a super-complaint to OFCOM must not be under consideration by another regulator.
6. The UK data protection regime does not provide for super-complaints. If the requirement were to apply only to super-complaints made to another regulator, it would not in itself prevent duplication with matters under consideration by the ICO. If this is the case, we would welcome further engagement with government to consider how the risk of duplication with the ICO could be mitigated.
7. The ICO does not have further comments on the specific questions the consultation asks at this time. We stand ready to engage further with government as it finalises the requirements.

11 January 2024



Information Commissioner's Office