



Consultation Response: Online Safety Information Guidance

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Representing 300 firms, we're a centre of trust, expertise and collaboration at the heart of financial services. Championing a thriving sector and building a better society. This includes helping lead the industry's collective fight against economic crime in the UK, including combatting fraud and cybercrime. This response is representative of our diverse membership and follows a series of member-led engagements.

Executive Summary

We are pleased to respond to Ofcom's consultation on Online Safety Information guidance. The consultation helps to further clarify how Ofcom will use its powers to ensure best practices are being met and ensure providers are compliant with Online Safety laws. However, there is an area where Ofcom's approach could be enhanced:

- The focus of the guidance has been on size and resource capabilities; however, we would like there to also be a factor of harm to UK citizens to allow Ofcom to respond to new and emergent threats. This should include rate of harms, to capture sporadic but scaled criminal attacks/ misuse of the platforms.

Consultation question 1: Ofcom's general approach to information gathering (Section 3 of the draft guidance)

Do you have any comments on Ofcom's proposed general approach to information gathering, as outlined in Section 3 of the draft guidance?

The consultation states that in deciding whether to exercise its information gathering powers, Ofcom will consider the size and capacity of the stakeholder. Our concern is that there is too great an emphasis on a provider's capacity, rather than the scale of illegal content or consumer harm that exists on each platform. In deciding whether to exercise its information gathering powers, Ofcom should place greater focus on the level of harm to UK citizens, rather than deciding whether to use its power based on the size of the firm. The FS sector operates under a Risk Base Approach (RBA) regime, this is irrespective of the size of firm. Controls are tightened dependent on the risk profiles identified by the FS firm, and there is threat landscape monitoring to understand the migration of criminals and fraud types, with horizon scanning to increase or develop controls. A similar approach to online services should be replicated by Ofcom.

Consultation question 2: Information notices (Section 4 of the draft guidance)**a) Information notices: Do you have any comments on Ofcom's proposed approach to the process for issuing and responding to information notices.**

UK Finance and its members welcome the requirement to name a senior manager, that is a nominated person responsible for responding to information notices irrespective of size is welcome. This ensures appropriately accountability for Online platforms to ensure compliance and provide appropriate information

Information gathering powers for serious/complex cases: Given that fraud makes up 40% of all crime, and the majority of APP fraud (76%) originates online, Ofcom should ensure that the removal of fraudulent advertisements and User Generated purchase scams should be regarded as serious or complex cases.

Whilst APP fraud has fallen in the first half of 2023 (down one per cent to £239.3 million) yet is still 27 per cent higher than the total reported for the same period in 2020. Confirmed case volumes totalled over 116,000 (up 22 per cent compared with H1 2022) and this therefore remains a focus for the financial services sector. The main driver behind the increase in confirmed cases is purchase scams which continued to rise, totalling just under 77,000 cases in the first six months of 2023 a 43 per cent increase compared to the same period in 2022. Losses increased by 31 per cent to £40.9 million during the same period.

The nature of how fraudsters operate online is inherently complex, and therefore information gathering powers such as requiring the test notice and remote viewing notice, which allows Ofcom to observe online service process are necessary to ensure the systems of service providers are sufficient to remove illegal/fraudulent content. However, we believe that best practices within online service and other sectors need to be promoted and encouraged by Ofcom to raise the level or proactive mitigations by online services.

Consultation question 3: Skilled persons' reports (Section 5 of the draft guidance) 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.

These could mirror the [Senior Managers Regime | FCA](#)

Consultation question 6: Audit (Section 7 of the draft guidance)

Do you have any comments on our proposed approach to Ofcom's power to carry out an audit? Please provide any information or evidence in support of your comments.

We welcome Ofcom's requirement for an independent audit that is outlined within this consultation. However, this power should not be reserved only for serious or complex cases. Rather, large and multi risk firms should have annual audit requirements to help them drive consistent approaches and further understand best practices in place across multiple industries or ecosystems where consumer protection controls are required. Within the FS sector the second payments service directive includes annual audits requirements, which has helped significantly improved the implementation of the regulations.

Consultation question 7: Consequences of failure to comply with an information power (Section 8 of the draft guidance)

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 breaches that may be subject to enforcement action by Ofcom, or those that may constitute criminal offences.

We believe that it is important for Ofcom to incentivise compliance and encourage prompt rectification through either a quick settlement or a reduction in fine.

3.14: Ofcom's response to UK Finance regarding publishing contents of information notices.

We accept that with regards to the publishing of the content of information notices it may not be possible to be fully transparent due to privacy laws. However, some aspects of information notices including transparency regarding algorithms performance and the level of illegal content that is exposed on online platforms should be published for public awareness.