A2. Impact Assessments

Impact assessments

A2.1 Impact assessments provide a valuable way of assessing the options for regulation and showing why the chosen option was preferred. They form part of best practice policy making. As a matter of policy, Ofcom is committed to carrying out impact assessments for the large majority of our policy decisions and has discretion as to the substance and form of an impact assessment. Our impact assessment guidance sets out our general approach to how we assess and present the impact of our proposed decisions.[1]

A2.2 Our draft Guidance aims to advise providers of relevant services how they can comply with their duties under the Act. The draft Guidance also provides good practice steps they should consider taking to further increase transparency and reduce uncertainty for bereaved parents seeking information about their child's use of an online service. In this annex, we present our assessment of the expected impact on providers of relevant services of following these recommendations for compliance and the suggested good practice steps. In line with Ofcom's general approach, we assess the impact of the recommendations in the draft Guidance over which we have discretion and not what is required to comply with the duties in the Act.

A2.3 Overall, we do not think the recommended steps for compliance or the good practice steps in the draft Guidance will impose any significant burdens on providers of relevant services. This is because they are closely aligned with the duties in the Act and do not mandate any new requirements. Rather they advise providers of relevant services on practical steps to comply with the duties or, where the recommendations extend beyond the duties in the Act, they are expected to involve minimal incremental costs.

Benefits of the guidance including steps for good practice

A2.4 We expect that by following the Guidance, including the good practice steps, providers of relevant services will provide meaningful benefits for bereaved parents, including:

- The Guidance will help providers of relevant services ensure clarity and transparency for bereaved parents from the earliest point they seek to request information, so parents can understand what they can expect throughout the process.
- The Guidance will support providers of relevant services in ensuring that bereaved parents are treated with dignity and respect throughout their engagement, and that providers adopt a humane and sensitive approach to these interactions.
- The Guidance sets out ways providers of relevant services can alleviate the burden on bereaved parents by making the process of requesting information as straightforward and supportive as possible.

[1] Ofcom, 2023. Impact assessment guidance.

Impacts and costs of recommended steps for compliance with the duties

A2.5 In our consultation and draft Guidance, we outline the practical steps providers of relevant services can take to comply with the duties in section 75 of the Act. These recommended steps for compliance are closely aligned with the duties and therefore we believe that the incremental costs for providers of relevant services to follow them are limited.

A2.6 Providers of relevant services will incur some small costs in familiarising themselves with the contents of the draft Guidance and considering how they will implement its recommendations for compliance with the duties. These costs are likely to vary across providers of relevant services, depending on the extent to which they engage with the Guidance.

A2.7 As set out in the Act, section 75(1) requires that the disclosure policy must be 'clear' in the terms of service. For the purposes of complying with this duty, we recommend that providers of relevant services also make their policy about dealing with requests from bereaved parents for information about their child's use of the service accessible in their terms of service.[2] We consider this recommended step for compliance to be proportionate as it is aligned with established practices set out in our existing Codes. We therefore expect that the incremental cost for providers of relevant services of enacting this will be minimal.

A2.8 Specifically, we consider that providers of relevant services are also in scope of the Illegal Content Codes and the Protection of Children Codes to make their terms of service clear and accessible.[3] We expect that providers of relevant services will be able to adapt this approach to their terms of service to comply with the deceased child user duties with minimal incremental cost.

Impacts and costs of good practice steps

A2.9 Providers of relevant services that implement the good practice steps, which we recommend they take in addition to complying with their legal duties, will likely incur additional costs, although we still expect that these will be small in absolute amounts. In Table 1, we provide some consideration of what these costs could involve. Overall, we expect that the costs of implementing the good practice steps to providers of relevant services will be proportionate to the benefits they provide for bereaved parents.

[2] See paragraph 3.55 of our Consultation.

[3] Our proposed approach is based on the Illegal Harm codes ICU G3 p.48, ICS G3 p.35-36 and Protection of Children codes PCU G3 p.59 and PCS G3 p.40.

Table 1: Potential costs for providers of relevant services to implement good practice

Service duties	Good practice steps	Potential costs of good practice steps
Ensure their terms of service clearly and accessibly specify the procedure for a bereaved parent to request information about their child's use of the service	Providers of relevant services should consider including additional procedural steps in their terms of service, illustrative examples of which include: • specifying whether information requests will be acknowledged and details of the acknowledgment; • stating who will communicate with parents including whether a dedicated point of contact will be appointed, and any other appropriate case-handling processes; • setting out the next steps if the evidence submitted by bereaved parents is incomplete or unclear; • setting out an overview of the types of internal steps which would be undertaken by the provider such as the initial review of a request; and • providing indicative processing timelines for a response to a request, including a non-exhaustive list of factors which may impact the timescale for a response.	• Minimal one-off staff costs to draft an update to the terms of service outlining the request procedure.
Ensure their terms of service clearly and accessibly specify what evidence (if any) the provider will require about the parent's identity or relationship to the child	Providers of relevant services should consider following the good practice steps including accepting a number of different forms of identification, bearing in mind accessibility requirements and the diversity of users on the platform.	• Minimal one-off staff costs to research and then draft an update to their terms of service detailing the different forms of identification that they would accept.

Ensure their terms of service clearly and accessibly give sufficient detail to enable child users and their parents to be reasonably certain about what kinds of information would be disclosed, and how the information would be disclosed	Providers of relevant services should consider following the good practice steps including setting out in their terms of service: • the types of information they would not disclose under any circumstances; • whether special software might be required to access any disclosed information and whether they offer support to bereaved parents to access this; and • further information on the method through which the information will be delivered.	• Minimal one-off staff costs to update the terms of service, outlining the type of information they will not disclose under any circumstances, the software access and support process and further details regarding the disclosure delivery method.

Respond in a timely manner to requests from bereaved parents for information about their child's use of the service or for updates about the progress of such requests	Providers of relevant services should consider following the good practice steps, including: • promptly acknowledging a bereaved parent's request for information and including information regarding the procedure, next steps, expected timescales and how a bereaved parent can request an update; • wherever possible, avoiding asking bereaved parents unnecessarily to repeat details or resubmit evidence that has already been provided; • providing the rationale for any policy for non-disclosure (if applicable); and • setting performance targets for the time it takes to respond to a bereaved parent's request for information and effectively measure and monitor their performance against these targets.	• Minimal ongoing staff costs to support prompt acknowledgement to information requests and to inform bereaved parents of key information and the expected next steps. We expect these costs to rise in proportion with the number of bereaved parents submitting requests for information, as each acknowledgement will incur a corresponding cost. • Ongoing costs may be negligible if the communication process is automated. • For providers of relevant services with a non-disclosure policy, minimal ongoing staff costs associated with communicating the rationale for this policy to bereaved parents. • Minimal one-off staff costs to create performance targets. • Minimal ongoing staff costs to measure and monitor performance against these targets.
Ensure that their disclosure policy is set out clearly, and that other provisions are set out clearly and accessibly in their terms of service	Providers of relevant services should consider following the good practice steps, including using sensitive language and wording in the relevant parts of their terms of service which are underpinned by the principles of trauma informed practice.	• Minimal one-off cost to research optimal trauma informed practice. • Minimal one-off staff cost to draft the updated sections of the terms of service, so they are trauma informed and sensitive to the subject matter.

Operate a dedicated helpline or section of the service, or some similar means ('support function') by which bereaved parents can easily find out what they need to do to obtain information and updates	Providers of relevant services should consider using the support function to inform bereaved parents of further information, for example: • the kinds of information that would be disclosed; • how information would be disclosed; • the anticipated timescale for providing a response to the request; • relevant factors that could affect this timescale; and • details of how bereaved parents can complain if they are not satisfied with how their request has been handled. Additionally, providers of relevant services should consider ensuring that details of the support function are clear and accessible in their terms of service.	• Minimal one-off costs associated with creating training material and training staff to communicate the additional information. • Minimal ongoing staff costs to account for the extra time needed to communicate the additional information to bereaved parents. These costs would be expected to scale with the benefits to bereaved parents as higher ongoing costs would arise with increased use of the support function. • Minimal one-off staff and system infrastructure costs associated with incorporating the additional information into any system or process underlying an automated support function. • Minimal ongoing costs if the process is automated. • Minimal one-off staff costs to draft the terms of service to ensure that details of the support function are clear and accessible.

Operate an easy to access, easy to use and transparent complaints procedure in relation to the service that allows for complaints to be made by bereaved parents who consider that the provider is not complying with the duties and which provides for appropriate action to be taken	Providers of relevant services should consider following the good practice steps, including: • training individuals or teams responsible for handling complaints to respond with appropriate sensitivity to ensure the process allows for bereaved parents to be treated with respect and dignity; and • when responding to bereaved parents' requests for information, directing parents to the complaint's procedure, for example by using a hyperlink.	• Minimal one-off staff costs associated with creating training material and training staff on how to handle complaints sensitively. • Minimal ongoing staff costs to direct bereaved parents to the complaint's procedure when responding to requests.
Include in their terms of service provisions which are easily accessible specifying their policies and processes which govern the handling and resolution of such complaints	Providers of relevant services should consider following the good practice steps including setting out in their terms of service details of the appeals process in relation to the outcome of complaints.	• Minimal one-off staff costs to update the terms of service setting out details of their complaints policy to also include details of the appeals process.

Rights impact assessments

A2.10 In Annex [A1] of this consultation, we have set out Ofcom's duties under the European Convention of Human Rights ('ECHR'). In carrying out our rights impact assessment of our proposals, we have addressed the relevant rights impacts on users, services and other persons and have considered the extent to which our proposals may interfere with certain rights in the ECHR as set out in Schedule 1 to the Human Rights Act 1998. Where a right is engaged, the interference may be justified where it is:

- in accordance with the law;
- the law in question pursues a legitimate aim and it is proportionate to that aim; and
- there is a pressing social need.

A2.11 We note the specific obligations on Ofcom under the Act in relation to protecting the right of individuals to freedom of expression within the law and protecting the privacy of users when setting out measures in a code of practice.[4] We are not proposing new codes

[4] Paragraph 10(1) of Schedule 4 to the Act states that '*Measures described in a code of practice which are recommended for the purpose of compliance with any of the relevant duties must be designed in the light of the principles...and (where appropriate) incorporate safeguards for the protection of the matters mentioned in those principles*.' Paragraph 10(2) sets out that those principles are the importance of protecting the right of

measures, and insofar as the draft Guidance draws upon some measures already set out in the Illegal Content Codes and Protection of Children Codes, those obligations have been considered in detail in our Illegal Harms and Protection of Children Statements, and we do not separately consider any relevant impacts here.

Freedom of expression

A2.12 The duties imposed on providers of regulated services under section 75 of the Act, relate to the clarity and transparency of their policy and procedure for dealing with requests from bereaved parents for information about their child's use of the service, and for dealing with complaints from bereaved parents. The duties also ensure that providers of relevant services respond in a timely manner to requests for information and updates about the progress of requests, and that they have a support function for parents to find out what they need to do to obtain information and updates. The purpose of our Guidance is to assist providers of relevant services in complying with these duties, and covers both the operational requirements – for example, to respond in a timely manner – and requirements for terms of service in respect of substance, clarity and accessibility.

A2.13 The duties do not require providers of relevant services to take any specific actions in relation to users' content, and we do not make any recommendations in the draft Guidance that restrict what users do or share online. We therefore do not consider that our approach to the draft Guidance will result in any interference with individuals' or services' rights to freedom of expression.

Privacy

A2.14 Article 8 of the ECHR sets out the right to respect for an individual's private and family life. The duties in section 75 of the Act do not require providers of relevant services to take any specific action in relation to personal data, and we do not consider that our approach to the draft Guidance will result in any interference with users' privacy rights. Our proposals focus on promoting clarity and transparency, and on ensuring bereaved parents receive timely responses to their requests for information and updates. We do not make recommendations on how information about a child's use of the service is stored, processed, or shared, as these decisions remain at the discretion of providers.

A2.15 Our proposals relating to the provision of specific information in the terms of service and support function, as mandated by the duties, may have positive impacts on users' rights to privacy. By clearly setting out the policies and procedures for handling requests relating to a deceased child user's use of a service, providers enable users and bereaved parents to understand what information may be disclosed, under what conditions, and through which mechanisms. This transparency reduces uncertainty and helps ensure that any disclosure of information occurs within a predictable framework, thereby supporting trust in the service. Providers that are required to process personal data in complying with the duties and implementing any good practice steps set out in the draft Guidance will need to comply with relevant data protection legislation and should refer to relevant guidance from the Information Commissioner's Office.

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users and (in the case of search services or combined services) interested persons to freedom of expression within the law, and (b)the importance of protecting the privacy of users.

Equality impact assessment

Legal Context

A2.16 Section 149 of the Equality Act 2010 ('the 2010 Act') imposes a duty on Ofcom, when carrying out its functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and other prohibited conduct related to the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The 2010 Act also requires Ofcom to have due regard to the need to advance equality of opportunity and foster good relations between persons who share specified protected characteristics and persons who do not.

A2.17 Section 75 of the Northern Ireland Act 1998 ('the 1998 Act') also imposes a duty on Ofcom, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations across a range of categories outlined in the 1998 Act. Ofcom's Revised Northern Ireland Equality Scheme explains how we comply with our statutory duties under the 1998 Act.[5]

A2.18 To help us comply with our duties under the 2010 Act and the 1998 Act, we assess the impact of our proposals on persons sharing protected characteristics and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations.

A2.19 When thinking about equality we consider the potential impacts more broadly and not just in relation to those groups of persons that share protected characteristics identified in equalities legislation (see paragraph 4.7 of our impact assessment guidance[6]).

A2.20 In particular, section 3(4) of the CA 2003 also requires us to have regard to the needs and interests of specific groups of persons when performing our duties, as appear to us to be relevant in the circumstances. These include:

- the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection;
- the needs of persons with disabilities, older persons and persons on low incomes; and
- the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas.

A2.21 We examine the potential impact our policy is likely to have on people, depending on their personal circumstances. This also assists us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers.

Equality impact assessment

A2.22 We have carefully considered the impacts of our proposals on individuals with protected characteristics and any potential risks of discrimination, as well as impacts on equality of

[5] Ofcom, 2014. Revised Northern Ireland Equality Scheme for Ofcom.
[6] Ofcom, 2023. Impact assessment guidance.

opportunity and fostering good relations. We have also considered wider impacts on other groups, such as people from different socio-economic groups and vulnerable groups, including children.

A2.23 We have assessed our recommendations for compliance and good practice outlined in the draft Guidance and do not envisage that they would have a detrimental impact on any particular group of people. The recommendations in the draft Guidance which reflect Code measures have undergone previous Equality Impact Assessments, which concluded that they are likely to have a positive impact on persons sharing protected characteristics. We did not consider any to have a detrimental impact on those groups.

A2.24 Taken together, we expect our recommendations for compliance and good practice to improve transparency and reduce uncertainty for all bereaved parents who wish to seek information about their child's use of a relevant service, including those with protected characteristics, in line with the broader aims of the Act.

A2.25 Our proposals aim to ensure that bereaved parents experience clarity, dignity and support throughout their interactions with providers of relevant services. We consider this will have a positive impact on individuals with protected characteristics. For example, our proposal for good practice to accept a number of different forms of identification, bearing in mind accessibility requirements and the diversity of users on a platform, helps to ensure that parents who may face administrative barriers are not excluded from accessing information about their child's use of a service. We consider that this proposal will benefit people who may not have English as a first language or who have a non-British nationality (which can be associated with race), and people with relevant disabilities.

A2.26 Our proposal for good practice to avoid asking bereaved parents to unnecessarily repeat details or resubmit evidence that has already been provided is intended to reduce the administrative burden for bereaved parents. This could increase accessibility for older users and those with disabilities by reducing complexity. It also supports parents who may not have English as a first language by reducing the need to re-interpret instructions.

A2.27 Other proposals requiring the support function to be easily locatable, including for those not registered with the service, helps to ensure that bereaved parents can quickly access support without unnecessary barriers. Designing the support function for compatibility with assistive technologies and making it retrievable via search functions promotes accessibility for people with disabilities and older users. Overall, we expect a wide range of users and parents to benefit from implementing our proposals. We expect our evidence base and understanding to improve over time, and we will continue to assess the potential impacts of our good practice proposals.

Welsh language impact assessment

Legal context

A2.28 The Welsh Language (Wales) Measure 2011 made the Welsh language an officially recognised language in Wales. This legislation also led to the establishment of the office of the Welsh Language Commissioner who regulates and monitors our work. Ofcom is required to take Welsh language considerations into account when formulating, reviewing

or revising policies which are relevant to Wales (including proposals which are not targeted at Wales specifically but are of interest across the UK).[7]

A2.29 Where the Welsh Language Standards are engaged, we consider the potential impact of a policy proposal on (i) opportunities for persons to use the Welsh language; and (ii) treating the Welsh language no less favourably than the English language. We also consider how a proposal could be formulated so as to have, or increase, a positive impact, or not to have adverse effects or to decrease any adverse effects. The following sections provide our Welsh language impact assessment.

Welsh language Impact Assessment

A2.30 The Welsh language has official status in Wales. To give effect to this, certain public bodies, including Ofcom, are required to comply with Welsh language standards.[8] Accordingly, we have considered:

- the potential impact of our policy proposals on opportunities for persons to use the Welsh language;
- the potential impact of our policy proposals on treating the Welsh language no less favourably than the English language; and
- how our proposals could be formulated so as to have, or increase, a positive impact; or not to have adverse effects or to decrease any adverse effects.

A2.31 Ofcom's powers and duties in relation to online safety regulation are set out in the Act and must be exercised in accordance with our general duties under section 3 of the CA 2003. In formulating our proposals in this draft Guidance, where relevant and to the extent we have discretion to do so in the exercise of our functions, we have considered the potential impacts on opportunities to use Welsh and treating Welsh no less favourably than English.

A2.32 We have assessed our recommendations for compliance and good practice in the draft Guidance. In line with our November 2023 consultation[9] where we stated that it would not be proportionate to recommend that terms of service or public statements be made available in specific languages, we have taken the same view in relation to these duties.

A2.33 Some of our recommendations in the draft Guidance reflect Codes measures we have already set for service providers (in statement or consultation) elsewhere. These recommendations have undergone previous Welsh Impact Assessments, as part of previous consultations and statements on implementing those aspects of the regime, which have concluded that our proposals are likely to have positive effects or increased positive effects on opportunities to use Welsh, and treating Welsh no less favourably than English, with no known adverse effects.

Question A1: Do you have any comments on the:

- impact assessment;
- rights assessments;

[7] See Standards 84-89 of Hysbysiad cydymffurfio (in Welsh) and compliance notice (in English). Section 7 of the Welsh Language Commissioner's Good Practice Advice Document provides further advice and information on how bodies must comply with the Welsh Language Standards.

[8] The Welsh language standards with which Ofcom is required to comply are available on our website here.

[9] Our November 2023 Consultation on Protecting People from Illegal Harms Online: Volume 4, p.225.

- equality impact assessment; and
- Welsh language impact assessment.

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