
Ofcom's approach to enforcement

Statement on revising the Regulatory Enforcement Guidelines

[Ofcom's approach to enforcement](#) – Welsh overview

STATEMENT:

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Overview

Ofcom is the independent regulator, competition authority and designated enforcer of consumer protection law for the UK communications sector. In this role we may need to take enforcement action in the interests of citizens and consumers, and where appropriate to promote competition.

Our Regulatory Enforcement Guidelines set out how Ofcom will approach the enforcement of regulatory requirements and consumer protection law relating to the industries for which we are responsible. Following our consultation on proposed changes to the guidelines in May 2022, we have decided to make some changes to update and simplify the guidelines.

What we are have decided – in brief

Expanding the Regulatory Enforcement Guidelines to cover new enforcement powers. We have amended the guidelines to cover Ofcom’s enforcement activity in three new areas:

- obligations placed on video sharing platforms under Part 4B of the Communications Act 2003;
- requirements imposed on operators of essential services for the digital infrastructure subsector under the Network and Information Systems Regulations 2018; and
- the revised framework for protecting the security and resilience of telecoms networks and services in the UK as set out in the Telecommunications (Security) Act 2021.

Restructuring the Regulatory Enforcement Guidelines to make them easier to follow. We have moved much of the material previously contained in technical and legal supporting footnotes to regime-specific annexes, to make it easier to understand the application of the range of Ofcom’s different enforcement powers. The section on settlement has also been simplified.

Updating and clarifying the text of the Regulatory Enforcement Guidelines to reflect our experience of running investigations in practice. The breadth of our regulatory duties means that the appropriate procedural approach can vary from case to case. We have made amendments to the guidelines intended to:

- recognise where the wider range of regulatory powers places different procedural obligations on Ofcom;
- reflect our day-to-day experience of enforcement investigations; and
- remove repetition and clarify the procedural steps we intend to follow.

Including information about civil liability for a breach of regulatory requirements. In certain circumstances, persons who sustain loss or damage as a result of a breach of regulatory requirements imposed by Ofcom may bring proceedings directly against the relevant company, but must first gain Ofcom’s consent to do so. The Regulatory Enforcement Guidelines include an explanation of the process for applying for consent and how Ofcom will approach such requests.

1. Introduction

Our proposed revisions

- 1.1 Between 24 May and 19 July 2022 Ofcom consulted on proposed revisions to our Regulatory Enforcement Guidelines,¹ which explain how Ofcom will approach enforcement investigations concerning compliance with regulatory requirements and consumer protection legislation. The Regulatory Enforcement Guidelines were last updated in 2017 to include new enforcement powers at that time and other matters.
- 1.2 In our consultation, we proposed to:
- a) expand the Regulatory Enforcement Guidelines to cover our new and amended enforcement powers with respect to video sharing platforms and operators of essential services for the digital infrastructure subsector, and to reflect changes introduced by the Telecommunications (Security) Act 2021;
 - b) restructure the Regulatory Enforcement Guidelines to make them easier to follow by simplifying the text where appropriate, removing repetition, refining the explanation of the settlement process, and creating regime-specific annexes that apply to different statutory powers within their scope;
 - c) update some of the text to reflect our experience of how we usually run investigations in practice, and allow for the different circumstances of the range of investigations that we carry out; and
 - d) include an explanation of the process for applying to Ofcom for consent to bring a civil procedure against a company that we regulate, and how we will approach such applications.
- 1.3 We received four responses to our consultation, with all respondents broadly in support of our proposed revisions, although some also expressed views on a small number of our proposals. These specific comments are discussed in sections 2 and 3 of this document. The full non-confidential responses can be found on Ofcom's website.²
- 1.4 The responses came from:
- BT;
 - the Federation of Communication Services (FCS);
 - BUUK; and
 - Zzoomm.

¹ Ofcom's approach to enforcement: Consultation on revising the Regulatory Enforcement Guidelines.

https://www.ofcom.org.uk/data/assets/pdf_file/0017/238031/consultation-revising-enforcement-guidelines.pdf.

² See <https://www.ofcom.org.uk/consultations-and-statements/category-2/revising-regulatory-enforcement-guidelines>

Equality impact assessment

- 1.5 Ofcom is required to consider any potential impact our proposals might have on particular groups. In light of this requirement, we considered whether our proposals would have a particular impact on persons sharing protected characteristics (broadly including race, age, disability, sex, sexual orientation, gender reassignment, pregnancy and maternity, marriage and civil partnership and religion or belief in the UK and also dependents and political opinion in Northern Ireland), and in particular whether they may discriminate against such persons or impact on equality of opportunity or good relations. This assessment helps us comply with our duties under section 149 of the Equality Act 2010 and section 75 of the Northern Ireland Act 1998.
- 1.6 We do not consider that any of the changes we have made to the Regulatory Enforcement Guidelines would result in any equality impacts (whether in Northern Ireland or the rest of the UK). This is because we consider that the revised Regulatory Enforcement Guidelines are likely to affect all citizens and consumers in the same way, and would not have any particular implications for the different equality groups.
- 1.7 Further, we consider the revised Regulatory Enforcement Guidelines will either have no additional impact, or will tend to reduce the costs of our enforcement action by streamlining our administrative processes (and therefore reducing the level of our administrative fees overall) and/or by making it easier for our stakeholders and other interested persons to find information without having to ask us.

About this document

- 1.8 In the next sections, we summarise the comments that we received and explain our decisions in response to them. The concluding section provides an overview of our decision to proceed with most of the proposed revisions, indicating where we have made changes to our proposals.
- 1.9 Section 2 covers comments received relating to our consultation questions:
- Expanding the Regulatory Enforcement Guidelines to cover new enforcement powers;
 - Restructuring the Regulatory Enforcement Guidelines;
 - Updating and clarifying text; and
 - The process for obtaining Ofcom consent to bring civil proceedings.
- 1.10 Section 3 covers other comments received on:
- Access to file;
 - Information gathering;
 - Procedural officer;
 - Oral hearings;
 - The review process; and
 - How Ofcom assesses complaints about regulatory requirements.

Next steps

- 1.11 The updated Regulatory Enforcement Guidelines will take effect from 12 December 2022.
- 1.12 The Regulatory Enforcement Guidelines set out Ofcom's general approach to enforcement in the areas covered and are designed to be flexible. Were Ofcom to gain further new enforcement powers in the future, we would likely refer to these Regulatory Enforcement Guidelines and may also consider whether they need to be reviewed and/or amended.

2. Consultation responses and Ofcom decisions

2.1 In this section we summarise the changes we proposed to make as set out in our consultation, as relevant to the consultation responses we received, and our responses to these comments, including our decisions on the changes we have made to the Regulatory Enforcement Guidelines.

Expanding the Regulatory Enforcement Guidelines to cover new enforcement powers

2.2 In our consultation, we proposed to clarify the scope of the Regulatory Enforcement Guidelines to include new enforcement powers that we have gained since the last time these were reviewed. For each new regulatory power, we proposed to:

- a) include the relevant regulatory requirements in the section ‘What do these Guidelines cover?’; and
- b) provide a separate annex setting out the legislative provisions supporting key parts of the enforcement process for each of these powers, highlighting notable additional points or exceptions relating to that process.

2.3 We intend to follow the same approach when proposing to amend the Regulatory Enforcement Guidelines in the future to reflect further changes to Ofcom’s regulatory powers. We also proposed to apply this approach to the existing regulatory powers already covered in the Regulatory Enforcement Guidelines.

2.4 In the current instance, we proposed to amend the Regulatory Enforcement Guidelines to cover Ofcom’s new powers relating to:

- a) Video Sharing Platforms (‘VSPs’);
- b) Operators of Essential Services (‘OESs’); and
- c) the Telecommunications (Security) Act 2021 (the ‘TSA’).

2.5 In the event that Ofcom gains any further new enforcement powers in the future, we would generally expect to follow the Regulatory Enforcement Guidelines unless otherwise stated. We may choose to make amendments in the light of any such changes, or issue supplementary guidance where appropriate.

Stakeholder views

2.6 Overall, stakeholders welcomed the inclusion of the VSP framework, OES obligations and the TSA in the Regulatory Enforcement Guidelines. BT, BUUK and Zzoomm all noted this made the document more comprehensive.

2.7 We received one comment on Annex 3 of the draft Regulatory Enforcement Guidelines, which sets out the powers Ofcom has under the TSA to monitor and enforce how providers

comply with their new duties and requirements. BT asked for clarity on how Ofcom will use its powers, including those relating to forced entry, under section 105O of the Communications Act 2003. Annex 3 references Ofcom's general statement of policy under section 105Y of the Communications Act 2003 (Ofcom's 'Procedural guidance'), which provides general guidance with respect to the exercise of Ofcom's functions including in relation to powers of entry.

Ofcom response

- 2.8 We welcome the comments made about our inclusion of new powers in the Regulatory Enforcement Guidelines.
- 2.9 In relation to BT's point regarding Annex 3, we have considered our approach on this and we continue to consider it appropriate to reference the powers but not include the requested level of detail in the Regulatory Enforcement Guidelines. This is due to the broad nature of the Regulatory Enforcement Guidelines, and because more detailed information on Ofcom's powers under the TSA regime is provided in Ofcom's Procedural guidance, which has now been published.³

Restructuring the Regulatory Enforcement Guidelines

- 2.10 In our consultation, we proposed to restructure the Regulatory Enforcement Guidelines to remove repetition, improve readability and generally streamline the document. The key changes we proposed were:
- a) the creation of separate regime-specific annexes for our different regulatory powers; and
 - b) streamlining the section on the settlement procedure and improving clarity.
- 2.11 In respect of the latter, the Regulatory Enforcement Guidelines already detailed requirements of the settlement process including, in most cases, that the subject of the investigation must agree not to challenge the statement of facts nor make representations on a provisional breach notification (other than for manifest factual inaccuracies). We proposed to expand this wording to make clear that, in order to benefit from a settlement discount, the subject of the investigation will not challenge or appeal against any final decision. This further reflects how the process works in practice.

Stakeholder views

- 2.12 Regarding the creation of regime-specific annexes (paragraph 2.10 (a) above), BUUK, FCS and Zzoomm welcomed how these improved the organisation and accessibility of the Regulatory Enforcement Guidelines.
- 2.13 BT also welcomed Ofcom's intention to clarify and update the settlement process. However, it considered that the addition of the requirement not to challenge or appeal

³ https://www.ofcom.org.uk/_data/assets/pdf_file/0032/249089/Annex-1-General-statement-of-policy-under-section-105Y-of-the-Communications-Act-2003.pdf

against the infringement decision ‘goes further than in other regimes where parties are not required to accept they will not challenge or appeal against the final decision to enter into settlement.’ BT noted that further information can come to light in the final infringement decision which calls into question the basis for settlement, and that it should be sufficient for parties to make a clear and unequivocal written admission of liability in order to benefit from settlement savings.

Ofcom response

- 2.14 We welcome the comments made about the restructuring of the Regulatory Enforcement Guidelines.
- 2.15 We have considered the points BT raised about settlement, but we disagree. As the Regulatory Enforcement Guidelines continue to state, settlement ‘is a voluntary process which leads to a formal, legally binding regulatory decision’ if completed successfully. The decision as to whether or not Ofcom or the subject of an investigation want to enter into a settlement process in the first place is one for each party to consider individually and voluntarily (Ofcom having a broad discretion to decide whether a case is appropriate for settlement or not). Either party may withdraw from the settlement process at any point, including where further information comes to light in the final infringement decision which calls into question the basis for settlement.
- 2.16 The Regulatory Enforcement Guidelines further state that entering into the settlement process involves the subject of the investigation admitting it has contravened a relevant regulatory requirement(s) and accepting that the remainder of the investigation will follow a streamlined administrative procedure to achieve resource savings. This streamlined procedure includes an accelerated representations process where the subject of the investigation is only expected to identify manifest factual inaccuracies on provisional decisions. It has always been the expectation of both Ofcom and the subject of the investigation that no subsequent challenge or appeal to the final decision would follow. The new provision at paragraph 6.6c)v) confirms this approach.
- 2.17 We note that this position is consistent with other regulators’ settlement procedures.⁴

Updating and clarifying text

- 2.18 We proposed to update and clarify some of the text of the Regulatory Enforcement Guidelines in our consultation, including to reorder some paragraphs, and remove the process flowcharts. These proposed changes were intended to:
- a) recognise where the wider range of regulatory powers place different procedural obligations on Ofcom, and allow flexibility to reflect the nuances of different regimes;

⁴ See for example, Ofgem Enforcement Guidance at paragraph 6.7 ([The Enforcement Guidelines | Ofgem](#)), CMA Investigation procedures for competition investigations at paragraph 14.8 ([Guidance on the CMA's investigation procedures in Competition Act 1998 cases: CMA8 - GOV.UK \(www.gov.uk\)](#)).

- b) reflect our practical day to day experience of enforcement investigations, e.g. how we approach initial assessments. While there are procedures we would expect to follow in the majority of cases, we have clarified that there are some circumstances in which it may not be appropriate to follow the standard process; and
- c) remove repetition and clarify the procedural steps we intend to follow.

Stakeholder views

2.19 Stakeholder broadly welcomed these changes:

- a) BUUK considered that the revisions would ensure that there is a common understanding of the way that Ofcom will apply its enforcement powers, recognising lessons learned from experience to date.
- b) FCS supported this Ofcom initiative to clarify its regulatory powers and the differing procedural obligations.
- c) BT welcomed the developments, highlighting in particular 'Ofcom's recognition that resolution via means other than an enforcement action can be most effective. Indeed, there may be many circumstances where a solution to an issue can be determined more adequately when discussed with the subject of a complaint and/or in the context of industry discussions.'

2.20 BT also made a number of comments on specific topics that it considers would improve the process. These are covered in section 3 below.

Process for obtaining Ofcom's consent to bring civil proceedings

2.21 Our consultation on the draft Regulatory Enforcement Guidelines noted our proposal to include a new section covering how, in certain circumstances, persons who sustain loss or damage as a result of a breach of regulatory requirements imposed by Ofcom may bring proceedings directly against the relevant company, but must first gain Ofcom's consent to do so. Although this is not part of the enforcement process itself, we must take care to ensure such proceedings would not adversely impact our work to make communications services work well for consumers. We proposed the inclusion of an explanation of the process for applying for consent and how Ofcom will approach such requests, including the factors we would take into account.

Stakeholder views

2.22 FCS, BUUK and BT welcomed the inclusion of civil proceedings in the Regulatory Enforcement Guidelines.

2.23 However, BT raised concerns with our stated expectation that we would generally grant such consent 'except if [Ofcom has] any good reasons not to do so' and that 'it cannot have been the intention of the legislator that Ofcom should provide its consent on a systematic (and virtually default) basis.'

- 2.24 In addition, BT pointed to the consent process set out in section 104 of the Communications Act and section 105W of the TSA, arguing that ‘Ofcom should conduct a review of the request based on a number of criteria’. BT did not consider that Ofcom had ‘sufficiently set out these criteria’, nor that we sufficiently explained the circumstances where we would consider it is inappropriate to grant consent.

Ofcom response

- 2.25 We have considered the points made and note that stakeholders generally supported this proposed additional section of the Regulatory Enforcement Guidelines. While we do not agree with BT’s characterisation that the approval would be provided on a ‘virtually default basis,’ our expectation is that the circumstances where we would refuse permission would be limited. Our approach is to generally grant such consent, as we do not want to put unnecessary obstacles in the way of persons seeking to exercise their individual rights. However, we balance this with making clear that Ofcom will not grant such consent if we have any good reasons not to do so. Our Regulatory Enforcement Guidelines explain that where we are minded not to grant consent, we will consult with the person requesting consent before making a final decision.
- 2.26 In response to BT’s comment that Ofcom does not sufficiently set out the criteria on when Ofcom will consider a case appropriate to grant consent, we consider that this information is provided in the Regulatory Enforcement Guidelines. The relevant legislation refers only to the need to request consent and the consequences of this being provided or withheld. The Regulatory Enforcement Guidelines explain our approach to assessing such requests, including the information we would expect the requestor to provide.

3. Other comments

- 3.1 We received a number of other comments on the Regulatory Enforcement Guidelines. In this section we deal with each of those comments. These cover:
- a) access to file;
 - b) information gathering;
 - c) the role of the Procedural Officer;
 - d) oral hearings; and
 - e) how our decisions are reviewed.
- 3.2 Zzoomm took the opportunity to raise concerns about how Ofcom had considered a complaint that it had submitted.

Access to file

- 3.3 The entitlement of the subject of an investigation to have copies of, or access to, the evidence that Ofcom relies on in reaching our provisional view, was covered under the heading 'Provisional Decision' in the 'Outcomes of regulatory investigations and the decision-making process' section of the draft Regulatory Enforcement Guidelines.

Stakeholder views

- 3.4 BT said that the draft Regulatory Enforcement Guidelines did not sufficiently cover the right of the subject of an investigation to have access to Ofcom's file; an important procedural guarantee intended to protect the rights of defence. BT argued that the subject of an investigation should have access to Ofcom's file in its entirety 'as there could be exculpatory evidence which Ofcom may not have used or that the subject considers to be key evidence to support an appeal.'

Ofcom response

- 3.5 We agree with BT that it is essential that the subject of a formal investigation has access to evidence relied on and that their rights of defence must be respected at all times.
- 3.6 we note the importance of ensuring a regulatory investigation follows the principle of fairness, and we are mindful of the subject's rights of defence. As part of the investigatory process, the subject of an investigation has the opportunity to make representations on the provisional findings and any relevant evidence. The subject of an investigation would be provided with copies of, or access to, evidence we have considered, or relied on, in reaching our provisional decision.
- 3.7 We have amended the Regulatory Enforcement Guidelines at paragraph 5.10 to make it clearer that the subject will be provided with access to the evidence considered.

Information gathering

- 3.8 The 'Investigating' section of the draft Regulatory Enforcement Guidelines included 'Information gathering', noting Ofcom's statutory powers, their importance to the investigatory process and how we exercise them. The section also covered Ofcom's expectations about how recipients would deal with requests and the consequences of failing to comply with the requirements of a statutory information request.

Stakeholder views

- 3.9 BT said there would be 'real benefit for Ofcom to send draft information requests to the subject of an investigation. This would help Ofcom ensure that: (i) the questions are sufficiently clear, (ii) adequately focused and (iii) sufficiently narrow to ensure the search that the recipient is asked to do is proportionate and that the recipient is reasonably in a position to provide a complete and accurate response.'

Ofcom response

- 3.10 We agree that in some circumstances it may be of benefit for Ofcom to send a formal information request in draft form first.
- 3.11 For some requests, for example, shorter and less complex information requests, repeated information requests, or a formal information request for the exact same questions that have been asked informally previously, it is likely to be appropriate to send the information request in final form only. This is by no means an exhaustive list – there may be other circumstances where Ofcom considers a draft is not needed in advance of a formal information request.
- 3.12 We do not consider it necessary to amend the guidelines to reflect this point. The Regulatory Enforcement Guidelines continue to state that, when exercising its statutory information gathering powers, Ofcom must ensure:
- a) requests are proportionate to the uses to which the information is to be put; and
 - b) persons to whom requests are made are given a reasonable period to provide the information.

Procedural officer

- 3.13 Section 9 of the draft Regulatory Enforcement Guidelines included a proposed explanation of how the subject of an investigation, or any complainant or third party (where relevant), could raise procedural concerns about an investigation in writing with the case leader, and further escalate their concerns with the case supervisor. Ultimately they could raise certain procedural complaints with Ofcom's Procedural Officer, if they remained unsatisfied.

Stakeholder views

- 3.14 BT said that it would be helpful to understand the process followed by the procedural officer to conduct their review and ensure an independent assessment of the matter, and the extent to which a decision of the procedural officer against the parties could be used by Ofcom in their final decision e.g. as aggravating circumstances in the setting of the fines.

Ofcom response

- 3.15 We consider that section 9 of the draft Regulatory Enforcement Guidelines clearly set out the role and remit of the Procedural Officer. The purpose of the procedural officer is to ensure cases run properly. They will only assess procedural aspects of a case and they are independent from the matter under investigation including the making of the final decision. The draft Regulatory Enforcement Guidelines noted that the Procedural Officer will aim to reach a decision in most cases within 10 working days from receipt of complaint. Given that each assessment and decision will be unique to the complaint, we do not consider it necessary nor possible to provide any further information on how the procedural officer conducts its review. We have therefore made no changes to the text.
- 3.16 The Procedural Officer is an important procedural safeguard and we generally do not seek to 'use' their decisions within an investigation. The only exception to this would be where the subject of an investigation made vexatious complaint/s to the Procedural Officer in order to frustrate or undermine the investigative process.
- 3.17 Procedural Officer decisions are published in the Enforcement Bulletin on Ofcom's website.

Oral hearings

- 3.18 The draft Regulatory Enforcement Guidelines included a section on oral hearings, explaining Ofcom's approach and when they are offered during the investigatory process.

Stakeholder views

- 3.19 BT commented that before issuing a provisional decision under section 96A of the Communications Act 2003, Ofcom could give a last chance to the subject of the investigation to present their arguments in a meeting, noting that such a meeting could also be used by Ofcom to ask final questions of the subject of the investigation.

Ofcom response

- 3.20 We agree that it is important to maintain communication channels with the subject of an investigation and Ofcom meets with stakeholders regularly throughout the investigatory process at times when we consider it appropriate to do so, which may include close to the issuing of a provisional decision. However, in order to ensure that Ofcom is able to progress investigations in a way that is flexible and appropriately paced, we do not consider it necessary to build a pre-provisional decision stakeholder meeting into the

enforcement process. There may be times where we would not do this, for instance, where we consider it appropriate to proceed to issue a provisional decision under section 96A of the Communications Act 2003 on the day of opening an investigation. However, where we consider it appropriate to offer a meeting to a subject prior to issuing a provisional decision, we will do so.

Review process

- 3.21 The draft Regulatory Enforcement Guidelines set out the decision-making process for regulatory investigations, including how decision makers for provisional and final decision are selected. For a final decision, it notes that ‘This will be a senior member of Ofcom’s staff with appropriate Board-delegated authority, who will not have been involved in the investigation or the preparation of the provisional decision.’

Stakeholder views

- 3.22 BT said that the Regulatory Enforcement Guidelines would benefit from describing the review process Ofcom will conduct to ensure that its actions and decisions are well-founded, fair and robust. In particular, BT suggested that Ofcom could include in its process a review of the draft decision by a member of a team separate from the investigation team, to ensure that the decision adopted by Ofcom is sufficiently balanced and supported by the required robust evidence.

Ofcom response

- 3.23 We consider that the current process outlined in the Regulatory Enforcement Guidelines ensures that our action and decisions are well-founded, fair and robust. The process has also been designed to ensure that these decisions are reached in a way that is administratively efficient and uses an appropriate level of resource. This includes, for example, prior to issuing a provisional decision, the provisional decision maker gives due regard to and consideration of the evidence and proposed decision in order to ensure it is robust and balanced. Furthermore, prior to issue a legally binding final decision, the decision will have been reviewed and taken by an independent decision maker with no prior involvement in the case. We have therefore made no further changes to the text.

How Ofcom assesses complaints about regulatory requirements

- 3.24 The section ‘initial assessment’ within ‘Why and how Ofcom opens cases’ in our proposed draft Regulatory Enforcement Guidelines, explained how Ofcom assesses complaints about regulatory requirements. Regulatory requirements include those relating to electronic communications networks and services, essential services in the digital infrastructure subsector, postal services and consumer protection legislation.

Stakeholder views

3.25 In its response to our consultation on the Regulatory Enforcement Guidelines, Zzoomm raised concerns about Ofcom's procedures for carrying out initial assessments, referring to its experiences of submitting a complaint about competition in the communications sector to Ofcom in August 2021 (after careful consideration of the complaint, Ofcom informed Zzoomm that it did not intend to pursue any further action). Zzoomm questioned the accountability and transparency in how Ofcom had evaluated its complaint. It was dissatisfied that Ofcom asked it to provide additional data and analysis (which it considered caused delay and cost) which it said Ofcom did not refer to in its subsequent decision not to open an investigation.

Ofcom response

- 3.26 Ofcom has addressed the concerns raised by Zzoomm with it directly. We note that those concerns arose under the process set out in Ofcom's 'Enforcement guidelines for Competition Act investigations'⁵ rather than the Regulatory Enforcement Guidelines. However, given both documents cover how Ofcom considers complaints, we have taken the opportunity to review relevant text under the 'initial assessment' section of the proposed Regulatory Enforcement Guidelines.
- 3.27 The level of information Ofcom deems sufficient in order for it to carry out an initial assessment will vary on a case-by-case basis, depending upon the nature of the complaint and the complexity of issues involved. For this reason, the Regulatory Enforcement Guidelines continue to allow us 'to ask complainants to provide further information beyond that which they have provided in their complaint as part of our initial assessment'. In each case, Ofcom will only seek information it considers to be relevant and proportionate to its consideration of the complaint. The complainant is open to query or challenge what has been requested or indeed decide not to provide such additional information.
- 3.28 Ofcom will continue to inform complainants of the outcome of our initial assessments in an appropriate manner, whether that decision is to take no further action, open a formal investigation or resolve the complaint through other means. It is necessary for Ofcom to retain discretion to set out such reasoning to the complainant as it deems appropriate. In many cases, this is likely to take the form of a summary approach, rather than replicating the level or complexity of detail submitted by the complainant. This should not be taken to mean Ofcom has overlooked such detail in making its assessment.
- 3.29 Ofcom considers the Regulatory Enforcement Guidelines contain appropriate mechanisms to allow Ofcom to seek information it needs to assess a complaint and sufficient safeguards to keep complainants updated in a manner which is suitable for each case.

⁵ [Consultation \(ofcom.org.uk\)](https://www.ofcom.org.uk/consult/condocs/comp/comp21/comp21.pdf).

4. Our decision on changes to the Regulatory Enforcement Guidelines

- 4.1 Overall, consultation respondents welcomed the proposed revisions to the Regulatory Enforcement Guidelines. We have decided to proceed with most of the proposals unchanged as stated in our 24 May 2022 consultation, and the updated Regulatory Enforcement Guidelines have been published alongside this document, as explained in sections 2 and 3.
- 4.2 We have made a small number of other changes to our proposed amendments for reasons other than the consultation responses. These are:
- a) Updating the references to Ofcom's Procedural guidance for the TSA in Annex 3 following the publication of the final guidance;⁶
 - b) Two minor changes to Annex 3 page 52 to make it clearer the type of notices we are referring to in the context of the Operators of Essential Services under the Network and Information Systems Regulations 2018;
 - c) Update to Annex 8 referring to Net Neutrality, to signpost to our published consultation and proposed new guidance published in October 2022; and,
 - d) Minor change to Annex 9 making it clear that Ofcom has powers to enforce the Electronic Communications Code (Conditions and Restrictions) Regulations 2003.

⁶ https://www.ofcom.org.uk/_data/assets/pdf_file/0032/249089/Annex-1-General-statement-of-policy-under-section-105Y-of-the-Communications-Act-2003.pdf

A1. Annex A: Consultation questions

- A1.1 Do you have any comments on our proposed approach to including the enforcement of the VSP framework, OES obligations and the TSA in the Regulatory Enforcement Guidelines?
- A1.2 Do you have any comments on the proposed addition of regime-specific annexes?
- A1.3 Do you have any comments on the proposed redrafting of the settlement section of the Regulatory Enforcement Guidelines?
- A1.4 Do you have any comments on the proposed updates and clarifications to the text in the Regulatory Enforcement Guidelines?
- A1.5 Do you have any comments on Ofcom's proposed guidance on how to apply for consent to bring civil proceedings against companies in breach of relevant regulatory requirements?
- A1.6 Do you have any other comments on the proposed changes to the Regulatory Enforcement Guidelines?