



Department for
Science, Innovation
& Technology

Super-complaints eligible entity criteria and procedural requirements

Consultation

Closing date: 11 January 2024

November 2023



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Introduction

The Department for Science, Innovation and Technology (DSIT) is seeking views on the prospective regulations that are to be made that relate to the super-complaints process which will be established by the Online Safety Act 2023 (the Act).

The Act will tackle criminal activity online, protect children from illegal or harmful content and increase platforms' transparency and accountability. It also contains important safeguards for freedom of expression and privacy.

Super-complaints will play an important function in ensuring that the regulatory framework remains up to date, as they will allow for concerns about systemic issues to be raised with the regulator. As set out in s.169(1) a complaint may be made to the regulator if the feature(s) or conduct (or combination) of one or more of the regulated services risks causing significant harm, significantly adversely affecting freedom of expression, or otherwise significantly adversely impacting users, the public or a particular group. S.169(2) provides that if a complaint is in relation to a single provider, the complaint is only admissible where the complaint is of particular importance, or if the complaint relates to the impacts on a particularly large number of users of the service or members of the public.

As such, super-complaints will help to ensure that OFCOM is made aware of systemic issues users are facing which it may not be aware of otherwise.

The super-complaints process is designed to cover systemic issues across services, or in exceptional circumstances on one service. They are not about raising individual complaints or services' actions with regard to individual pieces of content. It is "eligible entities" that will be able to make a super-complaint to OFCOM.

The Secretary of State is required by the Act to make regulations setting out:

- the "eligible entity" criteria s.169(3) - the criteria a body must meet in order to be eligible to submit a super-complaint to OFCOM;
- the procedure for super-complaints s.170(1) and (2) - provision about procedural matters related to super-complaints.

The aim of this consultation is to gather views to inform the development of these regulations to ensure they are workable, proportionate and fit for purpose.

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General information

Why we are consulting

The Online Safety Act requires that the Secretary of State must consult with OFCOM and such other persons that the Secretary of State considers appropriate before making the regulations setting out the criteria a body must meet in order to be eligible to submit a super-complaint to OFCOM, and regulations about procedural matters relating to super-complaints (s.169(5) and s.170(3)). Due to the importance of the super-complaints process in the operation of the regulatory framework, the Secretary of State has decided to undertake a public consultation on both issues, as this will ensure that the regulations are informed by a strong evidence base.

Issued: 16 November 2023

Respond by: 11 January 2024

Enquiries to:

Regulatory Functions Team
Department for Science, Innovation and Technology
5th Floor
100 Parliament Street
London
SW1A 2BQ

Email: super-complaints.consultation@dsit.gov.uk

Consultation reference: Eligible entity criteria and procedural requirements for super-complaints under the Online Safety Act regulatory framework

Audiences:

OFCOM, campaign organisations, industry bodies, charities, and the general public.

Territorial extent:

The whole of the UK.

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How to respond

Responses should be provided by the Qualtrics survey tool. If you would like to provide a response in an alternative format, please contact us.

Respond online at: https://dsit.qualtrics.com/jfe/form/SV_bvB8paLUvhc0H5k

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

The proposals

Part 1. Background

The Online Safety Act will make the UK the safest place in the world to be online. It will tackle criminal activity online to ensure that if content is illegal offline, it's illegal online. Platforms will be required to take action to prevent the proliferation of illegal content online and ensure that their services are not used for offending. This means companies will need to proactively mitigate the risk that their services are used for illegal activity or to share illegal content, and to design their services to mitigate the risk of this occurring. Further, the Act will protect children from illegal or harmful content such as grooming, bullying, pornography and the promotion of self-harm and eating disorders, and increase platforms' transparency and accountability, ensuring they keep their promises to their users. At the same time, the Act contains important safeguards for freedom of expression.

Super-complaints will play an essential role within the regulatory framework as they will allow for complaints about systemic issues to be raised with the regulator. They will work alongside OFCOM's ongoing research and horizon scanning to ensure that the regulatory framework stays up to date. The government expects super-complaints to enable "eligible entities" to raise systemic issues that arise across services, or in exceptional circumstances on one service, to the attention of the regulator. This will ensure that OFCOM's resource is focused on issues which will have a significant effect on users.

The criteria against which a super-complaint is assessed is set out in the Act. A super-complaint may be made where the features or conduct (or combination) of one or more of the regulated services risks causing significant harm, significantly adversely affecting freedom of expression, or otherwise significantly adversely impacting users, the public or a particular group. If a complaint is in relation to a single provider, the complaint is only admissible where the complaint is of particular importance, or if the complaint relates to impacts on a particularly large number of users of the service or members of the public (s.169(1) and s.169(2)).

The Secretary of State will set out eligible entity criteria and the procedure for super-complaints in secondary legislation.

- **Eligible entity criteria (s.169(3)):** Entities will need to meet the eligible entity criteria in order to be eligible for submitting a super-complaint to the regulator. This criteria will provide a robust and future-proofed way of enabling an appropriate range of organisations to access the super-complaints mechanism.
- **Procedure for super-complaints (s.170(1) and (2)):** The Act requires that the Secretary of State makes regulations setting out the procedure for super-complaints. Further, the Act sets out that such regulations may, in particular, include provisions setting out how OFCOM may be notified of an intention to make a complaint, the form

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and manner of such a complaint (including evidential requirements), steps that OFCOM must take in relation to it (including publishing responses), and time limits for each step.

This consultation seeks views on the design of these regulations. Part 2 of this consultation relates to the eligible entity criteria for bodies to meet to make a super-complaint and Part 3 relates to the procedural requirements for the super-complaints process. Respondents are invited to respond to some of the questions or all.

Part 2. Eligible entity criteria

The Secretary of State must make regulations setting out the eligible entity criteria for super-complainant bodies. Any entity that meets the eligible entity criteria set out in secondary legislation will be able to submit a super-complaint to OFCOM. As set out in the Act at s.170 (1) and (2) the procedure for complaints will be set out in regulations, which may in particular include provisions about evidential requirements in relation to the eligible entity criteria and steps that OFCOM must take. We anticipate that organisations will need to meet all the criteria to be found to be eligible.

The eligible entity criteria is intended to ensure that groups representing users can effectively raise concerns through super-complaints, while ensuring that those super-complaints are high-quality and evidence-based such that OFCOM's resource is focused on genuine problems.

One super-compliant eligible entity criterion is specified in the Online Safety Act, at s.169(4). This is: "That the entity must be a body representing the interests of users of regulated services, or members of the public, or a particular group of such users or members of the public". This will ensure that bodies which are eligible to make super-complaints are working to represent users of regulated services, members of the public or a particular group of such users or members of the public.

In order to ensure the further criteria deliver an effective super-complaints system, the government is seeking your views on the following proposed criteria.

Section 1 – Proposed Criteria

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 nor disagree	Disagree	Disagree strongly	Don't know

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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 nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

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

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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 nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

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SECTION 2 - Wider questions

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

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

[Optional text box to explain reasoning - 300 words]

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 nor disagree	Disagree	Disagree strongly	Don't know

[Optional text box to explain reasoning - 300 words]

Part 3. Procedural requirements

The Secretary of State will be required to make regulations containing provisions about the procedural matters relating to a super-complaint. The Act sets out that the regulations may, in particular, include provisions setting out how OFCOM may be notified of an intention to make a complaint, the form and manner of such a complaint (including evidential requirements), steps that OFCOM must take in relation to it (including publishing responses), and time limits for each step.

In the proposed procedural requirements below, we are seeking to develop a super-complaints process which is clear, fair and effective in ensuring that systemic issues can be raised with the regulator, such that the super-complaints can be made and dealt with in an efficient and straight-forward manner. At the same time, it is important that the process is not excessively prescriptive and does not undermine the ability of the regulator to operate efficiently and proportionately. OFCOM will produce guidance about super-complaints (s.171), and this will be the appropriate place for the granular detail of the process to be set out.

The government is seeking your views on the following issues:

SECTION 1 - Pre-notification requirements

Requirement 1: Complainants must pre-notify OFCOM of their **intention to make a super-complaint** at least 30 days before making a complaint, except in exceptional circumstances.

A pre-notification requirement would provide OFCOM with early warning of any systemic issues that they may be unsighted on. It would also help OFCOM to prioritise and, if necessary, redeploy resources to meet super-complaint obligations. The provision that this requirement will not need to be met in exceptional circumstances would seek to enable super-complaints to be made more quickly when circumstances require it.

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

Yes	No	Don't know

Question 5: If you have answered 'no' to question 4 please explain your reasons below.

[Free text box - 300 words]

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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?

Yes	No	Don't know

[Free text box - 300 words]

SECTION 2 - Requirements related to the form and manner of complaints

These requirements aim to ensure that there is clarity of process for super-complaints, and that super-complaints provide information of a kind, and in such a way, that OFCOM is able to easily assess what the super-complaint relates to.

We are proposing the following procedural requirements.

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 nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

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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 nor disagree	Disagree	Disagree strongly

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 nor disagree	Disagree	Disagree strongly	Don't know

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.

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Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

Wider questions:

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?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

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[Optional text box to explain reasoning - 300 words]

SECTION 3 - Evidential requirements

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?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

[Optional text box to explain reasoning - 300 words]

SECTION 4 - Requirements to avoid duplication of OFCOM's work

These requirements aim to ensure that work by the regulator is not duplicated.

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 nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

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

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

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[Free text box - 300 words maximum]

SECTION 5 - Requirements to limit super-complaints by bodies which meet the eligible entity criteria

These requirements aim to ensure that OFCOM is not overwhelmed by multiple complaints from bodies which are eligible to make super-complaints. The proposed requirements will further ensure that such bodies develop detailed, thoroughly evidenced complaints, rather than incentivising multiple complaints in sequence. At the same time, the sections in parentheses will ensure that in exceptional circumstances further complaints can be made.

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 nor disagree	Disagree	Disagree strongly	Don't know

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 nor disagree	Disagree	Disagree strongly	Don't know

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

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

Question 13: To what extent do you consider that these requirements are necessary to ensure that OFCOM’s super-complaints caseload remains manageable?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

[Optional text box to explain reasoning - 300 words]

SECTION 6 - Requirements on OFCOM on receipt of a super-complaint

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.
- **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.
- **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.

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.

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

[Optional text box to explain reasoning - 300 words]

SECTION 7 - Requirements related to OFCOM's response

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.
- **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).

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 nor disagree	Disagree	Disagree strongly	Don't know

SECTION 8 - Requirements related to the timing of super-complaints process

The super-complaints process will involve a series of different steps:

- **Eligibility assessment.** OFCOM will assess the complainant against the eligible entity criteria set out in secondary legislation.
- **Admissibility assessment.** OFCOM will assess whether the super-complaint meets the criteria at s.169 (1) or 169 (2), and the procedural and evidential requirements set out in secondary legislation.
- **Assess and respond to the complaint.** OFCOM must assess the complaint and then provide a response to it.

It is important that OFCOM has sufficient time to make accurate assessments at each stage and, in cases where a super-complaint is eligible to be considered, to undertake a thorough analysis of the super-complaint and provide a considered response. Such complaints may be complex and require extensive resources. As such, the expectations placed on OFCOM must be reasonable.

At the same time, in order to retain confidence in the super-complaints process and to ensure complaints highlighting serious harm are treated with the importance which they deserve, it is important that super-complaints are dealt with and responded to in a timely manner.

Time limits:

In other super-complaints systems, for example the super-complaints procedures used by the Financial Conduct Authority (FCA), the respective regulators are required to examine super-complaints within 90 days. This provides a guide as to a proportionate quantity of time for this process to take place.

However, such systems are not directly comparable to that set out in the Online Safety Act, as they do not require the regulator to make an assessment of the complainant's eligibility in each case.

As such, we propose mandating a slightly longer period of time for the entirety of the super-complaints process, specifically that the entirety of the super-complaints process should be completed within 120 days. This will allow sufficient time for the process of eligibility assessment, admissibility assessment and the assessment and response to the complaint itself to be effectively completed, while ensuring there is a clear and reasonable deadline which OFCOM must work to.

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.

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Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

[Optional text box to explain reasoning - 300 words]

Splitting up different parts of the process

Within the time period set by regulations for the completion of the process, it would be possible to require the full process to be completed within the 120 day deadline, or to split this process out.

Two alternative approaches are set out below:

Process options	
Option 1	Option 2 (Proposed)
<p>Step 1</p> <p>N/A</p>	<p>Step 1</p> <p>30 day countdown</p> <p>1. Eligibility assessment</p>
<p>Step 2</p> <p>120 day countdown</p> <p>1. Eligibility assessment</p> <p>2. Admissibility assessment</p> <p>3. Assess and respond to the complaint</p>	<p>Step 2</p> <p>90 day countdown begins</p> <p>2. Admissibility assessment</p> <p>3. Assess and respond to the complaint</p>

In option 1, OFCOM would be required to carry out the eligibility assessment, admissibility assessment and assess and respond to the complaint within 120 days. In Option 2, OFCOM would be required to undertake an eligibility assessment within 30 days, and then complete the rest of the process within the following 90 days.

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We propose using option 2. This will provide clarity to organisations on whether they have met the super-complaints eligible entity criteria within a specific, relatively short window. It further creates a process which, following the completion of the eligibility assessment, is similar to other super-complaints systems in allowing 90 days for completion of the admissibility assessment and the review and response to the complaint. As such, it draws on established precedent and good-practice used in other regulatory systems. At the same time, it will ensure that OFCOM has sufficient time to complete each stage of the process.

Question 17: To what extent do you consider that the eligibility assessment should be split from the rest of the super-complaints process?

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

[Optional text box to explain reasoning - 300 words]

Questions related to ‘stop-the-clock’ provisions

In each of the different alternatives set out above, there is a risk that the relevant time-periods could be too narrow if there are delays in, for example, super-complainants, or any other third party, responding promptly to a request from OFCOM for further information to support their consideration of the super-complaint. To avoid this we are considering creating a ‘stop-the-clock’ mechanism which would pause the count-down of days in any period which regulations prescribe as time-limited.

Question 18: To what extent do you agree with the following procedural requirement?

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.

Strongly agree	Agree	Neither agree nor disagree	Disagree	Disagree strongly	Don't know

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[Optional text box to explain reasoning - 300 words]

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 super-complaints process it can be used)?

[Free text box - 300 words maximum]

Consultation questions

Part 2: Eligibility entity criteria

Part 2, Section 1: Proposed criteria

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? [For each criterion, respondents may choose between the following six options: ‘Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don’t know’]

- **Criterion 1:** That they must demonstrate integrity and impartiality, and must not represent the interests of regulated services.
- **Criterion 2:** That they have considerable experience and competence in representing the interests of people of any description in the UK (this may include the UK as a whole, or in individual nations within the UK).
- **Criterion 3:** That they have expertise in, and experience of, issues relating to online safety covered by and in scope of the regulations.
- **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.
- **Criterion 5:** That they have a strong track record of publishing high quality research and analysis.
- **Criterion 6:** That they have a strong track record of working effectively and collaborating with other civil society groups.

Part 2, Section 2: Wider questions

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

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?

Part 3: Procedural requirements

Part 3, Section 1: Pre-notification requirements

Question 4: Do you agree pre-notification should be included in the procedural regulations? [respondents are provided with the following options: ‘Yes; No; Don’t know’]

Question 5: If you have answered ‘no’ to the above, please explain your reasons below.

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

Part 3, Section 2: Requirements related to the form and manner of complaints

Question 7: To what extent do you agree with the following procedural requirements? [For each requirement, respondents may choose between the following six options: ‘Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don’t know’]

- **Requirement 1:** Super-complaints must be in writing.
- **Requirement 2:** A complaint must set out the feature or conduct (or combination) to which the complaint relates.
- **Requirement 3:** A complaint must set out the regulated service(s) and provider(s) of such service(s) to which the complaint relates.
- **Requirement 4:** A complaint must outline why the eligible entity considers that either s. 169(1)(a), (b) or (c) has been met.
- **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.
- **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.
- **Requirement 7:** A complaint must give the name of an individual representing the eligible entity who may be contacted about the complaint.

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? [Respondents may choose between the following six options: ‘Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don’t know’, and may also provide further reasoning in an optional text box]

Part 3, Section 3, Evidential requirements

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? [Respondents may choose between the following six options: ‘Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don’t know’, and may also provide further reasoning in an optional text box]

Part 3, Section 4, Requirements to avoid duplication of OFCOM's work

Question 10: To what extent do you agree with the following procedural requirements? [For each requirement, respondents may choose between the following six options: ‘Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don’t know’]

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

Question 11: To what extent do you consider that these requirements are necessary to prevent OFCOM undertaking duplicative work when responding to super-complaints? [Respondents may choose between the following six options: ‘Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don’t know’, and may also provide further reasoning in an optional text box]

Part 3, Section 5, Requirements to limit super-complaints by bodies which meet the eligible entity criteria

Question 12: To what extent do you agree with the following procedural requirements? [For each requirement, respondents may choose between the following six options: ‘Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don’t know’]

- **Requirement 1:** The super-complainant should not have another active super-complaint under consideration by OFCOM (except under exceptional circumstances).
- **Requirement 2:** The super-complainant should not have submitted a super-complaint within the past six months (except under exceptional circumstances).

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

Question 13: To what extent do you consider that these requirements are necessary to ensure that OFCOM's super-complaints caseload remains manageable? [Respondents may choose between the following six options: 'Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don't know', and may also provide further reasoning in an optional text box]

Part 3, Section 6, Requirements on OFCOM on receipt of a super-complaint

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. [Respondents may choose between the following six options: 'Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don't know', and may also provide further reasoning in an optional text box]

Part 3, Section 7, Requirements related to OFCOM's response

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. [Respondents may choose between the following six options: 'Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don't know', and may also provide further reasoning in an optional text box]

Part 3, Section 8, Requirements related to the timing of the super-complaints process

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. [Respondents may choose between the following six options: 'Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don't know', and may also provide further reasoning in an optional text box]

Question 17: To what extent do you consider that the eligibility assessment should be split from the rest of the super-complaints process? [Respondents may choose between the following six options: 'Strongly agree; agree; neither agree nor disagree; disagree; strongly disagree; don't know', and may also provide further reasoning in an optional text box]

Question 18: To what extent do you agree with the following procedural requirement? [Respondents may choose between the following six options: 'Strongly agree; agree; neither

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agree nor disagree; disagree; strongly disagree; don't know', and may also provide further reasoning in an optional text box]

- **Requirement 1:** Where OFCOM is awaiting 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.

About you

The information requested below will help the government analyse and make best use of the feedback it receives from this public consultation and inform further discussions with the public and partners.

Are you responding on behalf of an organisation or in a personal capacity?

On behalf of an organisation	
In a personal capacity	

If you are responding on behalf of an organisation, please state the name of the organisation below, alongside any relevant information on your organisation's expertise and/or interest in matters covered in this consultation:

[Free text box]

If you are responding in a personal capacity, which of the following applies to you:

An employee of a regulated service	
A professional who has contact with regulated services in the course of their work	
A campaigner on issues related to online safety or an employee of a campaigning organisation working on issues related to online safety	
A member of the public	
None of the above	

If you are responding in a personal capacity, please provide your name and contact details, alongside any relevant information on your interest in matters covered in this consultation:

[Free text box]

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Would you like the information you have provided to this consultation to be treated as confidential?

Yes	No

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Consultation

Next steps

Responses to this consultation will be reviewed and we will publish a response.

Our proposals for design of the Regulations will be revised appropriately before drafting them.

This consultation is available from: www.gov.uk/government/organisations/department-for-science-innovation-and-technology

If you need a version of this document in a more accessible format, please email alt.formats@dsit.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.