

DRCF



Digital Regulation Cooperation Forum



Online Safety and Data Protection

**A Joint Statement by Ofcom and the Information Commissioner's
Office on Collaboration on the Regulation of Online Services**

1 May 2024

1. Introduction

As the bodies responsible for regulating data protection and online safety in the UK, the Information Commissioner's Office (ICO) and Ofcom are committed to protecting online users. We seek to promote compliance and support innovation, improve regulatory clarity, and enable continued growth via the removal of undue regulatory burdens.

We published a joint statement in 2022¹ setting out our shared vision for a clear and coherent regulatory landscape for online services, ensuring compliance with both our regimes. This latest statement builds upon that vision by setting out in more detail how we will collaborate where we identify cross-cutting online safety and data protection issues and opportunities in our regulation of specific services. We will regularly review this approach to collaboration to ensure its continued effectiveness.

The new ways of working described in this statement are being used by operational colleagues from teams across the ICO and Ofcom who supervise and engage with services.²

This statement outlines several areas of enhanced collaboration:

- (i) **Collaboration Themes** – we will identify issues of common interest and relevance to both regulators, hereafter referred to as 'Collaboration Themes' (explained in Section 2)
- (ii) **Companies of mutual interest** – we will identify where we are supervising the same services or considering issues related to the same services (see Section 3)
- (iii) **New ways of working** – we will use regular staff meetings to share information in relation to Collaboration Themes and companies of mutual interest, where appropriate (explained in Section 5)

In some instances, our approach to collaboration will involve the disclosure of relevant information held by Ofcom and the ICO relating to services. Where relevant, any such disclosure will only be made in accordance with the disclosure gateways that apply to each of Ofcom and the ICO. Our approach to this is explained further below.

Below, we set out our processes for collaboration and provide improved clarity to services about how we work together operationally.

2. Collaboration Themes

To improve collaboration on issues of common interest, Ofcom and ICO colleagues will identify and continuously monitor the emergence of 'Collaboration Themes'.

Collaboration Themes are issues of common interest to both the ICO and Ofcom because of their thematic and substantive relevance to the online safety and data protection regimes. Identification of

¹ [Online safety and data protection: a joint statement by Ofcom and the Information Commissioner's Office \(drcf.org.uk\)](https://www.drcf.org.uk)

² [Ofcom Illegal Harms Consultation \(Volume 6\)](#)

a Collaboration Theme will trigger discussion about how our teams intend to collaborate (see Section 5, 'Ways of Working'), which could include joint engagement with services to ensure clarity and coherence between our requirements.

The ICO and Ofcom have identified an initial set of Collaboration Themes derived from relevant online safety and data protection legislation and guidance (see box below).

These Collaboration Themes will be periodically reviewed and may change as new priorities emerge and in response to any future legislative changes. ICO and Ofcom colleagues will meet regularly, bringing together relevant members of staff to discuss existing Collaboration Themes and to consider whether any emerging themes may need to be monitored in future.

Illustrative examples of Collaboration Themes

- **Age assurance** – this refers collectively to approaches, including age estimation and verification, used to estimate or establish the age of a user so services can be tailored to their needs and protections put in place appropriate to their age, or to mitigate the risk of harms arising from the processing of the personal data of children.
- **Recommender systems** - recommender systems use algorithms to curate and determine the ranking of content that is suggested to users of online services based on data about their characteristics, inferred interests, and behaviour. The ICO's Children's code states that services should not use children's personal data in ways that have been shown to be detrimental to their well being
- **Proactive tech and relevant AI tools** – under the Online Safety Act (OSA), 'proactive technology' refers to: (i) content identification technology, which analyses content to assess whether it is content of a particular kind; (ii) user profiling technology, which analyses relevant content, user data or metadata relating to relevant content or user data for the purposes of building a profile of a user to assess characteristics such as age; or (iii) behaviour identification technology, which analyses relevant content, user data or metadata relating to relevant content or user data to assess a user's online behaviour or patterns of online behaviour.
- **Default settings and geolocation settings for child users** – this refers to services' implementation of default settings for child users, to mitigate risks of harm. Under the ICO's Children's code settings must be high privacy by default and geolocation options must be switched off by default unless a service demonstrates a compelling reason for a different setting, taking account of the best interests of the child.
- **Online safety privacy duties** – this refers to the duty imposed by the OSA for services to have regard to the importance of protecting users from a breach of any statutory provision or rule of law concerning privacy when deciding on safety measures and policies.
- **Upholding terms, policies and community standards** –the OSA requires services to publish clear and accessible terms of service. The ICO Children's code requires services to uphold their published terms, policies and community standards (including but not limited to privacy policies, age restriction, behaviour rules and content policies).

Note: it is envisaged these themes will evolve over time. The above themes are limited to the measures which Ofcom have consulted onto date in relation to the Online Safety Act.

3. Companies of mutual interest

To identify opportunities for more effective joint regulatory collaboration, our colleagues responsible for supervising online services will consider whether regulated entities are ‘companies of mutual interest’.

These are companies, or services, that are subject to both the online safety and data protection regimes, and of current regulatory interest to both the ICO and Ofcom (due to potential intersections between online safety and data protection compliance). If a company is of interest to one regulator only, this will not be considered a company of mutual interest. If a company of mutual interest is identified, we will consider how we may be able to collaborate (see Section 5, ‘New ways of Working’).

4. Information disclosure

We set out in this statement our proposed approach to collaboration, including the information that Ofcom and the ICO intend to disclose to each other. As described below, in some instances this will comprise the disclosure of a limited amount of information held by Ofcom and the ICO relating to services (e.g., the company name and the Collaboration Theme associated with that company).

The disclosure of some of that service information may engage the statutory frameworks which govern the disclosure of information by each of Ofcom and the ICO:

- For Ofcom – section 393 of the Communications Act 2003 prohibits the disclosure of certain information about a business without consent unless a statutory gateway applies. One such gateway is where disclosure is made for the purpose of facilitating the carrying out by Ofcom of any of its functions;
- For the ICO – section 132 of the Data Protection Act 2018 prohibits the disclosure of confidential information about an individual or business unless the disclosure is made with lawful authority. Lawful authority is defined in s132(2) and includes where the disclosure is made for the purposes of, and is necessary for, the discharge of one or more of the Information Commissioner’s functions and disclosures made in the public interest having regard to the rights, freedoms and legitimate interests of any person (it is envisaged that, in many cases, the sharing of information with Ofcom for the purposes of discharging its functions is likely to be in the public interest). There are other grounds in s132(2) which may be applicable in a particular case.

To the extent that section 393 and section 132 are engaged by the disclosure of any service information, each of Ofcom and the ICO considers that the approach we have set out is consistent with the provisions that apply to them.

Ofcom and the ICO have functions under the Online Safety Act 2023, and Articles 57 and 58 of the UK GDPR and sections 115-116 of the Data Protection Act 2018 respectively. Given the cross-cutting nature of online safety and data protection we consider that it is necessary to engage in the joint

collaboration and engagement set out in this document, including the information sharing described, to exercise our functions. We expect to make the type of disclosure referred to in this statement without prior notification to the relevant service whose information is to be disclosed.

It may also be necessary in certain circumstances for Ofcom and the ICO to share information beyond that described in this statement where this is permitted under the respective information sharing gateways. The extent of disclosure and the applicable process will be considered on a case-by-case basis. **There may be occasions where such information is disclosed without prior notification to the relevant service.**

5. New ways of working

Our teams will adapt approaches to collaboration depending on the extent to which Collaboration Themes are present in our supervision of companies of mutual interest.

Where information concerns a **company of mutual interest and it is of one of the specific types listed below**, ICO and Ofcom colleagues will routinely share information as follows:

- Generic information concerning information requests on online safety matters – the ICO may share generic information about information requests, including Information Notices, that concern matters of potential intersection between online safety and data protection. Ofcom may share generic information about information requests, including Information Notices, that are relevant to online safety. For both regulators generic information includes the date of the request, expected response time/deadline, and the company name or names. **It does not include information about the content of the request.**
- Stakeholder meeting information related to online safety matters – the ICO may share information that concerns matters of potential intersection between online safety and data protection. Ofcom may share information that is relevant to online safety. For both regulators the information that can be routinely shared is limited to dates of meetings, any relevant Collaboration Theme(s) and the names of the company or companies.
- Publicly available information which may be of interest to the other regulator e.g., information about a company that is currently of mutual interest that has been reported in the press.

Where information concerns a **Collaboration Theme without a specific company being identified**, this information can be shared between ICO and Ofcom colleagues. Hypothetical examples would include ‘Ofcom’s supervision team are currently looking into recommender systems and how services reduce the risk of recommending harmful content to children’ or ‘In the next quarter, the ICO plans to look at data protection issues arising from use of automated content moderation across a number of social media platforms.’

Where information concerns a **Collaboration Theme and a specific company of mutual interest**, ICO and Ofcom colleagues can share the name of the company and the theme. Hypothetical examples would include ‘Ofcom is talking to company A about content moderation’ or ‘The ICO has a meeting next week with company B about child user default privacy settings.’

Where information concerns a **Collaboration Theme and a specific company which is not a company of mutual interest**, this information would **not** be routinely shared but will be subject to a case-by-case assessment. **NB** Where **other and / or more detailed** information sharing is required in order for each regulator to undertake its functions (Ofcom and the ICO), or in the public interest (ICO), nothing

within the new ways of working will prevent such sharing from taking place in line with each regulator's legislative framework.

6. Next steps

This joint statement outlines our current approach to collaboration and engagement with services. We will periodically evaluate the effectiveness of these methods and identify opportunities to improve them.

ICO and Ofcom colleagues will discuss at their regular meetings whether there are any Collaboration Themes, companies of mutual interest and opportunities for regulatory collaboration. As noted above, our Collaboration Themes will be added to over time.,

We will regularly inform stakeholders about updates to our joint ways of working, to provide clarity regarding our collaboration methods, as appropriate.