



Online Safety Act 2023

2023 CHAPTER 50

PART 8

APPEALS AND SUPER-COMPLAINTS

CHAPTER 1

APPEALS

167 Appeals against OFCOM decisions relating to the register under section 95

- (1) This section applies to the following decisions of OFCOM—
 - (a) a decision to include a regulated user-to-user service in the part of the register referred to in section 95(2)(a) (Category 1 services);
 - (b) a decision not to remove a regulated user-to-user service from that part of the register;
 - (c) a decision to include a regulated search service or a combined service in the part of the register referred to in section 95(2)(b) (Category 2A services);
 - (d) a decision not to remove a regulated search service or a combined service from that part of the register;
 - (e) a decision to include a regulated user-to-user service in the part of the register referred to in section 95(2)(c) (Category 2B services);
 - (f) a decision not to remove a regulated user-to-user service from that part of the register.
- (2) The provider of the service to which the decision relates may appeal to the Upper Tribunal against the decision.
- (3) Where an appeal is made under subsection (1)(a), (c) or (e), any special requirements need not be complied with until the determination or withdrawal of the appeal.
- (4) “Special requirement” means—
 - (a) in the case of an appeal against a decision mentioned in subsection (1)(a)—

Status: This is the original version (as it was originally enacted).

- (i) any duty or requirement of this Act that applies in relation to Category 1 services but not in relation to any other regulated services, or
 - (ii) any duty or requirement of this Act that applies in relation to Category 1 services, Category 2A services and Category 2B services but not in relation to any other regulated services;
 - (b) in the case of an appeal against a decision mentioned in subsection (1)(c)—
 - (i) any duty or requirement of this Act that applies in relation to Category 2A services but not in relation to any other regulated services, or
 - (ii) any duty or requirement of this Act that applies in relation to Category 1 services, Category 2A services and Category 2B services but not in relation to any other regulated services;
 - (c) in the case of an appeal against a decision mentioned in subsection (1)(e), any duty or requirement of this Act that applies in relation to Category 1 services, Category 2A services and Category 2B services but not in relation to any other regulated services.
- (5) The Upper Tribunal must decide the appeal by applying the same principles as would be applied—
- (a) by the High Court on an application for judicial review, or
 - (b) in Scotland, on an application to the supervisory jurisdiction of the Court of Session.
- (6) On an appeal under this section, the Upper Tribunal may—
- (a) dismiss the appeal, or
 - (b) quash the decision being challenged.
- (7) Where a decision is quashed, the Upper Tribunal must remit the decision to OFCOM for reconsideration with such directions (if any) as the Tribunal considers appropriate.

168 Appeals against OFCOM notices

- (1) An appeal to the Upper Tribunal against OFCOM’s decision to give to a person—
- (a) a notice under section 121(1) (notices to deal with terrorism content and CSEA content),
 - (b) a confirmation decision, or
 - (c) a penalty notice,
- may be brought by any person with a sufficient interest in the decision.
- (2) An appeal under subsection (1) by a person other than the person given the notice or decision in question may be brought only with the permission (or leave) of the Upper Tribunal.
- (3) The Upper Tribunal must decide the appeal by applying the same principles as would be applied—
- (a) by the High Court on an application for judicial review, or
 - (b) in Scotland, on an application to the supervisory jurisdiction of the Court of Session.
- (4) On an appeal under this section, the Upper Tribunal may—
- (a) dismiss the appeal, or
 - (b) quash the decision being challenged.

- (5) Where a decision is quashed, the Upper Tribunal must remit the decision to OFCOM for reconsideration with such directions (if any) as the Tribunal considers appropriate.
- (6) In this section “penalty notice” means a penalty notice under section 139, 140(5) or 141(6).

CHAPTER 2

SUPER-COMPLAINTS

169 Power to make super-complaints

- (1) An eligible entity may make a complaint to OFCOM that 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.
- (2) But a complaint under subsection (1) that relates to a single regulated service or that relates to a single provider of one or more regulated services 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.
- (3) An entity is an “eligible entity” if the entity meets criteria specified in regulations made by the Secretary of State.
- (4) Regulations under subsection (3) must specify as one of the criteria 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.
- (5) Before making regulations under subsection (3), the Secretary of State must consult—
 - (a) OFCOM, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (6) In this section—
 - “conduct” includes acts and omissions;
 - “users” means United Kingdom users (see section 227), except in subsection (1)(a) where “users” means individuals in the United Kingdom who are users of a service.

170 Procedure for super-complaints

- (1) The Secretary of State must make regulations containing provision about procedural matters relating to complaints under section 169.
- (2) Such regulations may, in particular, include provision about the following matters—
 - (a) notification to OFCOM of an intention to make a complaint under section 169;
 - (b) the form and manner of such a complaint, including requirements for supporting evidence in relation to—
 - (i) matters mentioned in subsections (1) and (2) of section 169, and
 - (ii) criteria specified in regulations under subsection (3) of that section;
 - (c) steps that OFCOM must take in relation to such a complaint, including requirements for publication of responses;
 - (d) time limits for taking steps in relation to such a complaint (or provision about how such time limits are to be determined) including time limits in relation to the determination of—
 - (i) whether a complaint is a complaint that is within section 169(1),
 - (ii) where applicable, whether a complaint is admissible under section 169(2), and
 - (iii) whether an entity is an eligible entity (see section 169(3)).
- (3) Before making regulations under subsection (1), the Secretary of State must consult—
 - (a) OFCOM, and
 - (b) such other persons as the Secretary of State considers appropriate.

171 OFCOM's guidance about super-complaints

- (1) OFCOM must produce guidance about complaints under section 169, which must include guidance about—
 - (a) the criteria specified in regulations under section 169(3),
 - (b) procedural matters relating to such complaints, and
 - (c) any other aspect of such complaints that OFCOM consider it appropriate to include.
- (2) OFCOM must publish the guidance (and any revised or replacement guidance).