



GUIDANCE No.46

OBTAINING INFORMATION REGARDING SOCIAL MEDIA USE

Introduction

1. It is the coroner's responsibility to determine the scope of any death investigation and to gather evidence that is relevant, sufficient and proportionate to the scope of that investigation.
2. The purpose of this guidance is to help coroners understand their options when it comes to obtaining evidence relating to the use of social media, should such information fall within the scope of an investigation.

Schedule 5 Notices

3. Coroners have wide-ranging powers under Schedule 5 Coroners and Justice Act 2009 (CJA), including the power to require a person or organisation to provide a written statement about such matters as are specified by the coroner, and to provide the coroner with any documents in their possession or control that relate to an investigation. Such notices can be sent directly to social media providers, or to the Office of Communications (Ofcom), and can be issued in connection with the death of an adult or child.
4. Coroners may, however, have difficulty establishing to whom Schedule 5 notices should be sent to obtain information about social media use. Coroners may also struggle to frame notices in a way that elicits the most useful information, unless they are advised by someone with an in-depth knowledge of how the technology works and how social media trends are evolving. Although Schedule 5 notices can be sent to Ofcom as well as to social media providers, Ofcom can only provide information that it holds or controls, and such information is currently limited.
5. To help coroners to access social media information that is relevant to an investigation into the death of a child, the Online Safety Act 2023 (OSA) includes new provisions that will come into force on 1 April 2024, extending the information that can be obtained and disclosed to coroners by Ofcom.

Section 101 powers

6. When a coroner who is investigating the death of a child sends a Schedule 5 notice to Ofcom in relation to services that Ofcom regulates, section 101 OSA will enable Ofcom to obtain relevant information from service providers to enable Ofcom to respond.

7. Ofcom's powers under section 101 OSA can be exercised in respect of either a living person's use of a regulated service that is linked with an investigation into a child's death (e.g. someone's social media account that evidences bullying of a deceased child), or the use of a regulated service by the child whose death is under investigation (e.g. where a child has been exposed to harmful content via a social media platform's algorithms).
8. Section 101 sets out the following examples of information that Ofcom can obtain from regulated services:
 - a) content encountered by the child;
 - b) how the content came to be encountered by the child (including the role of algorithms or particular functionalities);
 - c) how the child interacted with the content (for example, by viewing, sharing or storing it or enlarging or pausing on it); and
 - d) content generated, uploaded or shared by the child.

Section 163 reports

9. Section 163 OSA allows Ofcom to prepare a report in relation to a death investigation following the receipt of a Schedule 5 notice from a coroner. This power is not limited to the death of a child and took effect on 10 January 2024.
10. Before s163 took effect, coroners already had the power under Schedule 5 to require Ofcom to provide a written statement. However, if a report from Ofcom is required from a coroner in connection with the death of a child, Ofcom can now use its s101 powers to require regulated services to provide information to Ofcom that may assist with Ofcom's report.

Practical considerations

11. Coroners have previously been advised that unless there are exceptional circumstances, they should attempt to obtain disclosure by agreement before issuing a formal notice under Schedule 5 CJA. To enable Ofcom to exercise their s101 OSA powers, coroners will have to issue a formal Schedule 5 notice, but informal engagement with Ofcom beforehand is advisable. This will enable Ofcom to discuss with the coroner the reasonableness of the request and the coroner's proposed timeframe, as well as how best to structure requests to elicit the information the coroner is trying to obtain based on Ofcom's knowledge and experience of the sector.
12. It will be for the coroner in each individual case to decide whether it is preferable to seek information from services directly or to approach Ofcom. In some investigations, coroners or Interested Persons might already have a contact within a regulated service, making it possible to obtain information directly without difficulty. However, in some cases, the following factors might make it advantageous for a coroner to issue a Schedule 5 notice to Ofcom:
 - a) Ofcom might be able to assist the coroner to formulate the notice in a way that enables the coroner to obtain relevant, sufficient and

proportionate information from services rather than being overwhelmed by irrelevant data.

- b) Where appropriate, Ofcom could advise the coroner on how to frame a request so as to obtain data in a format that can be understood without the need for specialist analysis. For example, instead of requesting the code for a social media company's recommender system¹, it might be preferable in the circumstances of a particular case to seek a description of how the recommender system operates.
 - c) It is possible for Ofcom to contact multiple providers on a coroner's behalf, which could reduce the administrative work for the coroner's office.
 - d) Ofcom might be able to advise on any limits to Ofcom's power to obtain information relating to a request (for example, where Ofcom's information gathering powers are limited because of barriers imposed by foreign law). An understanding of any barriers could help coroners to formulate requests in the most effective way.
 - e) Ofcom has enforcement powers relating to the s101 OSA notices that it issues to regulated services².
13. It is important that coroners bear in mind that social media companies are likely to hold extensive material about any relevant individual and that requests could return large volumes of information. For a Schedule 5 notice to be effective, coroners are advised to:
- a) Identify the child in connection with whose death a notice relates;
 - b) Identify a particular service or various services of interest (this information is likely to be available to coroners through discussions with the family and/or other Interested Persons);
 - c) Describe the information sought, including what personal information is needed. If there is personal information that is likely to be returned in the context of the request that is not relevant, confirm that such information can be omitted or redacted;
 - d) Describe the timeframe within which the information is sought to enable a proportionate search to be conducted and to prevent the coroner from being overwhelmed with irrelevant information;
 - e) Set a reasonable deadline for Ofcom to respond, which takes into account the time it will take for Ofcom to provide their own notice to the relevant services and obtain the information.
14. To discuss with Ofcom the content of any proposed Schedule 5 notice, coroners should contact CoronersSupport@ofcom.org.uk.

¹ A recommender system is system that suggests products, services or information that might suit the user based on their previous interactions with the site or data collated about them.

² See chapter 6 OSA.

15. Ofcom will need to be sure that requests from coroners are genuine before disclosing information, so coroners should include their name and coroner area in all communications.
16. After receiving information from Ofcom, coroners will need to decide which documents to disclose to Interested Persons and ensure that any necessary redactions are made (see Guidance No. 44 for further information regarding Disclosure³).

HHJ Thomas Teague KC
Chief Coroner

27 March 2024

³ <https://www.judiciary.uk/guidance-and-resources/guidance-no44-disclosure/>