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Case No: AC-2026-LON-002160
AC-2026-LON-002053
AC-2026-LON-001872

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/10/2026

Before :

LORD JUSTICE SINGH
MRS JUSTICE COLLINS RICE

BETWEEN:

THE KING	
(on the application of (1) Meta Platforms Inc. and (2)	
WhatsApp LLC)	<u>Claimants</u>
- and -	
THE OFFICE OF COMMUNICATIONS	<u>Defendant</u>

BETWEEN:

THE KING	
(on the application of X Internet Unlimited	
Company)	<u>Claimant</u>
- and -	
THE OFFICE OF COMMUNICATIONS	<u>Defendant</u>

BETWEEN:

THE KING	
(on the application of TikTok Information	
Technologies UK Ltd)	<u>Claimant</u>
- and -	
THE OFFICE OF COMMUNICATIONS	<u>Defendant</u>

Christopher Knight KC and Hannah Slarks (instructed by White & Case LLP) for the First Claimants

Amy Rogers KC and Rupert Paines (instructed by **Herbert Smith Freehills Kramer LLP**)
for the **Second Claimant**
Marie Demetriou KC and Richard Howell (instructed by **Linklaters LLP**) for the **Third**
Claimant
Javan Herberg KC, Tristan Jones KC, George Molyneaux, Rowan Stennett, and Aislinn
Kelly-Lyth (instructed by **The Office of Communications**) for the **Defendant**

Hearing dates: 5th, 6th & 9th October 2026

Approved Judgment

This judgment was handed down remotely at 10.00am on 30th October by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Singh and Mrs Justice Collins Rice:

Introduction

1. There are before the court three applications for permission to bring claims for judicial review against OFCOM to challenge information notices issued on 10th February 2026, requiring each of the Claimants to provide certain data. The applications have been listed before the court on a “rolled-up” basis, with the claims to be considered immediately should the court grant permission to advance any of the grounds of challenge.
2. There is considerable overlap between the three applications, which is why they have been listed together. The Claimants are all well known providers of internet services: TikTok UK, X and Meta/WhatsApp.
3. The parties have placed a large amount of material before the court, including witness statements and exhibits. The court has considered all of that material even if it is not expressly referred to in this judgment. We are grateful to the parties’ representatives for the careful way in which the material has been prepared and placed before the court to make it manageable. We are also grateful for the co-operative attitude which has been shown in presenting the submissions to the court, so as to avoid unnecessary duplication and enable the hearing to proceed in an efficient manner. In particular, we welcome the way in which counsel divided up the oral submissions, to take the lead on distinct issues. We are grateful not only to the advocates from whom we heard at the hearing but to everyone who has contributed to the preparation and presentation of these cases for the quality of the written and oral submissions.
4. The court has been provided with confidential bundles, which contain material of a commercially sensitive nature. On the first day of the hearing the court made an order imposing restrictions on who can have access to the confidential bundles, with liberty to apply if, for example, any representative of the media wished to vary or discharge that order. No such application has been made. In the result the court has been able to prepare and promulgate this judgment without the need to refer to any confidential material. We are satisfied that the public, including the media, can understand the issues which arise in these cases without the need to refer to any confidential material.

Legislative Framework

(a) The Communications Act 2003

5. OFCOM is the UK’s statutory independent regulator for the broadcasting, internet and telecoms sectors. It was set up by the Office of Communications Act 2002, and given its core functions by the Communications Act 2003 (“the CA”). The CA transferred to OFCOM certain functions of predecessor regulators in the

broadcasting and telecoms field, and, in addition, conferred a range of new specific regulatory powers and duties.

6. Section 1 of the CA makes general provision (as relevant) as follows:

1. Functions and general powers of OFCOM

(1) The Office of Communications (“OFCOM”) shall have the following functions—

(a) the functions transferred to OFCOM under section 2; and

(b) such other functions as may be conferred on OFCOM by or under any enactment (including this Act).

(2)

(3) OFCOM may do anything which appears to them to be incidental or conducive to the carrying out of their functions, including borrow money.

(4)

(5) OFCOM’s powers under subsection (3) include, in particular—

(a) power to undertake research and development work in connection with any matter in relation to which they have functions;

(b) power to promote the carrying out of such research and development by others, or otherwise to arrange for it to be carried out by others;

(c) ...

...

7. Section 3 of the CA includes the following:

3. General duties of OFCOM

(1) It shall be the principal duty of OFCOM, in carrying out their functions—

(a) to further the interests of citizens in relation to communications matters; and

(b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

(2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following—

...

(b) the availability throughout the United Kingdom of a wide range of electronic communications services;

...

(g) the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm.

(3) In performing their duties under subsection (1), OFCOM must have regard, in all cases, to—

(a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and

(b) any other principles appearing to OFCOM to represent the best regulatory practice.

(4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances—

...

(h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;

...

(k) the opinions of consumers in relevant markets and of members of the public generally;

...

(m) the extent to which, in the circumstances of the case, the furthering or securing of the matters mentioned in subsections (1) and (2) is reasonably practicable.

(4A) In performing their duties under subsection (1) in relation to matters to which subsection (2)(g) is relevant, OFCOM must have regard to such of the following as appear to them to be relevant in the circumstances—

- (a) the risk of harm to citizens presented by regulated services;
- (b) the need for a higher level of protection for children than for adults;
- (c) the need for it to be clear to providers of regulated services how they may comply with their duties set out in Chapter 2, 3, 4 or 5 of Part 3, Chapter 1, 3 or 4 of Part 4, or Part 5 of the Online Safety Act 2023;
- (d) the need to exercise their functions so as to secure that providers of regulated services may comply with such duties by taking measures, or using measures, systems or processes, which are (where relevant) proportionate to—
 - (i) the size or capacity of the provider in question, and
 - (ii) the level of risk of harm presented by the service in question, and the severity of the potential harm;
- (e) the desirability of promoting the use by providers of regulated services of technologies which are designed to reduce the risk of harm to citizens presented by content on regulated services;
- (f) the extent to which providers of regulated services demonstrate, in a way that is transparent and accountable, that they are complying with their duties set out in Chapter 2, 3, 4 or 5 of Part 3, Chapter 1, 3 or 4 of Part 4, or Part 5 of the Online Safety Act 2023.

...

8. The more specific strategic functions conferred on OFCOM by the CA include duties to review regulatory burdens (section 6) and a duty to carry out ‘impact assessments’ (section 7). A challenge is made in the present case to the discharge of that latter duty. Section 7 provides as follows:

7. Duty to carry out impact assessments

- (1) This section applies where—

- (a) OFCOM are proposing to do anything for the purposes of, or in connection with, the carrying out of their functions; and
- (b) it appears to them that the proposal is important;

but this section does not apply if it appears to OFCOM that the urgency of the matter makes it impracticable or inappropriate for them to comply with the requirements of this section.

(2) Subject to subsection (2A), a proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following—

- (a) to involve a major change in the activities carried on by OFCOM;
- (b) to have a significant impact on persons carrying on businesses in the markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions; or
- (c) to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.

(2A) A proposal to do any of the following is important for the purposes of this section—

- (a) to prepare a code of practice under section 41 of the Online Safety Act 2023;
- (b) to prepare amendments of such a code of practice; or
- (c) to prepare a code of practice as a replacement for such a code of practice.

(3) Before implementing their proposal, OFCOM must either—

- (a) carry out and publish an assessment of the likely impact of implementing the proposal; or
- (b) publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out an assessment.

(4) An assessment under subsection (3)(a) must set out how, in OFCOM's opinion, the performance of their general duties (within the meaning of section 3) is secured or furthered by or in relation to what they propose.

(4A) An assessment under subsection (3)(a) that relates to a proposal mentioned in subsection (2A) must include an assessment of the likely impact of implementing the proposal on small businesses and micro businesses.

(4B) An assessment under subsection (3)(a) that relates to a proposal to do anything else for the purposes of, or in connection with, the carrying out of OFCOM's online safety functions (within the meaning of section 235 of the Online Safety Act 2023) must, so far as the proposal relates to such functions, include an assessment of the likely impact of implementing the proposal on small businesses and micro businesses.

(5) An assessment carried out under this section—

- (a) may take such form, and
- (b) must relate to such matters,

as OFCOM consider appropriate.

(6) In determining the matters to which an assessment under this section should relate, OFCOM must have regard to such general guidance relating to the carrying out of impact assessments as they consider appropriate.

(7) Where OFCOM publish an assessment under this section—

- (a) they must provide an opportunity of making representations to them about their proposal to members of the public and other persons who, in OFCOM's opinion, are likely to be affected to a significant extent by its implementation;
- (b) the published assessment must be accompanied by a statement setting out how representations may be made; and
- (c) OFCOM are not to implement their proposal unless the period for making representations about it has expired and they have considered all the representations that were made in that period.

(8) Where OFCOM are required (apart from this section)—

- (a) to consult about a proposal to which this section applies, or
- (b) to give a person an opportunity of making representations about it,

the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.

(9) Every report under paragraph 12 of the Schedule to the Office of Communications Act 2002 (c. 11) (OFCOM's annual report) must set out—

- (a) a list of the assessments under this section carried out during the financial year to which the report relates; and
- (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.

(10) The publication of anything under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in OFCOM's opinion, are likely to be affected if their proposal is implemented.

(b) The Online Safety Act 2023

9. The Online Safety Act 2023 ("the OSA") was a substantial new piece of legislation which, according to its section 1, "*provides for a new regulatory framework which has the general purpose of making the use of internet services regulated by this Act safer for individuals in the United Kingdom*". Section 1 continues:

(2) To achieve that purpose, this Act (among other things)—

(a) imposes duties which, in broad terms, require providers of services regulated by this Act to identify, mitigate and manage the risks of harm (including risks which particularly affect individuals with a certain characteristic) from—

(i) illegal content and activity, and

(ii) content and activity that is harmful to children, and

(b) confers new functions and powers on the regulator, OFCOM.

(3) Duties imposed on providers by this Act seek to secure (among other things) that services regulated by this Act are—

(a) safe by design, and

(b) designed and operated in such a way that—

(i) a higher standard of protection is provided for children than for adults,

(ii) users' rights to freedom of expression and privacy are protected, and

(iii) transparency and accountability are provided in relation to those services.

10. In broad overview, the OSA imposes a substantial suite of duties on regulated providers of services such as the present Claimants' user-to-user platforms, including duties of care to users, and children in particular; content safety and risk assessment duties; duties to protect certain forms of content such as news and journalism (and privacy and freedom of expression more generally); and duties about complaints and reporting procedures, record keeping, and transparency by way of requirements to publish certain information. Chapter 6 of Part 3 identifies

some of these duties as importing a specific obligation on OFCOM to prepare, consult on and issue codes of practice and guidance to support compliance with them. It is under a duty to keep these codes under review (section 47).

11. Part 7 of the OSA deals more generally with OFCOM's powers and duties in relation to regulated (internet) services. Chapter 4 of Part 7 deals specifically with OFCOM's information functions. It opens with the provision with which these proceedings are principally concerned – section 100, which provides in full as follows (the reference to OFCOM's 'online safety functions' has to be read in conjunction with section 235: it includes functions under the OSA itself and *some* functions under the CA):

100. Power to require information

(1) OFCOM may by notice under this subsection require a person within subsection (5) to provide them with any information that they require for the purpose of exercising, or deciding whether to exercise, any of their online safety functions.

(2) The power conferred by subsection (1) includes power to require a person within subsection (5) to—

(a) obtain or generate information;

(b) provide information about the use of a service by a named individual.

(3) The power conferred by subsection (1) also includes power to require a person within any of paragraphs (a) to (d) of subsection (5) to take steps so that a person authorised by OFCOM is able to view remotely—

(a) information demonstrating in real time the operation of systems, processes or features, including functionalities and algorithms, used by a service;

(b) information generated by a service in real time by the performance of a test or demonstration of a kind required by a notice under subsection (1).

(4) But the power conferred by subsection (1) must be exercised in a way that is proportionate to the use to which the information is to be put in the exercise of OFCOM's functions.

(5) The persons within this subsection are—

(a) a provider of a user-to-user service or a search service,

(b) a provider of an internet service on which regulated provider pornographic content is published or displayed,

(c) a person who provides an ancillary service (within the meaning of section 144) in relation to a regulated service (see subsections (11) and (12) of that section),

(d) a person who provides an access facility (within the meaning of section 146) in relation to a regulated service (see subsections (10) and (11) of that section),

(e) a person who was within any of paragraphs (a) to (d) at a time to which the required information relates, and

(f) a person not within any of paragraphs (a) to (e) who appears to OFCOM to have, or to be able to generate or obtain, information required by them as mentioned in subsection (1).

(6) The information that may be required by OFCOM under subsection (1) includes, in particular, information that they require for any one or more of the following purposes—

(a) the purpose of assessing compliance with—

(i) any duty or requirement set out in Chapter 2, 3, 4 or 5 of Part 3,

(ii) any duty set out in section 64 (user identity verification),

(iii) any requirement under section 66 (reporting CSEA content),

(iv) any duty set out in section 71 or 72 (terms of service),

(v) any duty set out in section 75 (deceased child users),

(vi) any requirement relating to transparency reporting (see section 77(3) and (4)), or

(vii) any duty set out in section 81 (provider pornographic content);

(b) the purpose of assessing compliance with a requirement under section 83 (duty to notify OFCOM in relation to the charging of fees);

(c) the purpose of a consultation about a threshold figure as mentioned in section 86 (threshold figure for the purposes of charging fees);

(d) the purpose of ascertaining the amount of a person's qualifying worldwide revenue for the purposes of—

- (i) Part 6 (fees), or
 - (ii) paragraph 4 or 5 of Schedule 13 (amount of penalties etc);
- (e) the purpose of assessing compliance with any requirements imposed on a person by—
- (i) a notice under section 121(1) (notices to deal with terrorism content and CSEA content), or
 - (ii) a confirmation decision;
- (f) the purpose of assessing the accuracy and effectiveness of technology required to be used by—
- (i) a notice under section 121(1), or
 - (ii) a confirmation decision;
- (g) the purpose of assessing whether to give a notice under section 121(1) relating to the development or sourcing of technology (see subsections (2)(b) and (3)(b) of that section);
- (h) the purpose of dealing with complaints made to OFCOM under section 169 (super-complaints);
- (i) the purpose of OFCOM's advice to the Secretary of State about provision to be made by regulations under paragraph 1 of Schedule 11 (threshold conditions for categories of Part 3 services);
- (j) the purpose of determining whether a Part 3 service meets threshold conditions specified in regulations under paragraph 1 of Schedule 11;
- (k) the purpose of preparing a code of practice under section 41;
- (l) the purpose of preparing guidance in relation to online safety matters;
- (m) the purpose of carrying out research, or preparing a report, in relation to online safety matters;
- (n) the purpose of complying with OFCOM's duties under section 11 of the Communications Act, so far as relating to regulated services (media literacy).
- (8) The reference in subsection (3) to a person authorised by OFCOM is to a person authorised by OFCOM in writing for the purposes of notices that impose requirements of a kind

mentioned in that subsection, and such a person must produce evidence of their identity if requested to do so by a person in receipt of such a notice.

(8A) The power to give a notice conferred by subsection (1) does not include power to require processing of personal data that would contravene the data protection legislation (but in determining whether processing of personal data would do so, the duty imposed by the notice is to be taken into account).

(9) The power conferred by subsection (1) does not include power to require the provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings.

(10) In this section—

“information” includes documents, and any reference to providing information includes a reference to producing a document (and see also section 102(11));

“regulated provider pornographic content” and “published or displayed” have the same meaning as in Part 5 (see section 79).

12. These proceedings challenge information notices issued to each of the Claimants in (purported) exercise of the functions conferred by section 100. Section 102 makes further provision about information notices, including (section 102(3)) requiring such notices to specify or describe the information to be provided, the form and manner in which it is to be provided and to what timetable, and, in para (b), to “*specify why OFCOM require the information*”. Failure to comply with a duly issued information notice is an offence, but it is a defence to show that it was not reasonably practicable to comply at the time required and the person has since taken all reasonably practicable steps to comply (section 109).
13. Chapter 6 of Part 7 deals with OFCOM’s regulatory enforcement powers. These include powers to impose financial and other penalties and sanctions. Part 10 of the OSA creates new regulatory offences.

(c) The Human Rights Act 1998

14. Section 6(1) of the Human Rights Act 1998 (“the HRA”) imposes a duty on public authorities such as OFCOM to act in a way which is compatible with the Convention rights, which are set out in Schedule 1. The Convention rights are the main rights which are set out in the European Convention on Human Rights (“the ECHR”).
15. Those rights include the right to respect for private life in Article 8 of the ECHR and the right to peaceful enjoyment of possessions in Article 1 of Protocol No. 1

to the ECHR (“A1P1”). As those provisions are very familiar, it is unnecessary to set them out here in full.

(d) The Senior Courts Act 1981

16. Section 31 of the Senior Courts Act 1981 (“the 1981 Act”), as amended in 2015, imposes certain duties on the court when considering applications for permission to bring a claim for judicial review and, if that stage is reached, remedies. The 1981 Act still uses the terminology of “leave” and “*applications for judicial review*”, although, since the Civil Procedure Rules were introduced in 1998, the court’s practice has been to use the terms “*permission*” and “*claims for judicial review*”. Nothing turns on this difference in wording.
17. Section 31(3C) of the 1981 Act provides:

When considering whether to grant leave to make an application for judicial review, the High Court –

(a) may of its own motion consider whether the outcome for the applicant would have been substantially different if the conduct complained of had not occurred, and

(b) must consider that question if the defendant asks it to do so.
18. Section 31(3D) provides:

If, on considering that question, it appears to the High Court to be highly likely that the outcome for the applicant would not have been substantially different, the court must refuse to grant leave.
19. The court may disregard that requirement “*if it considers that it is appropriate to do so for reasons of exceptional public interest*”: see subsection (3E).
20. There are similar provisions in relation to the grant of relief in subsection (2A).

Factual Background

(a) The information notices

21. The decisions challenged in these judicial review proceedings are expressed in an information notice or notices issued to each Claimant (and to other regulated service providers) on 10th February 2026. The notices are expressed in substantially identical structural terms, with a degree of variation in the detail of the information sought. Each notice contains the following introductory text:

Ofcom’s functions

Section 100 of the Act gives Ofcom broad powers to gather information, including requiring a person to obtain or generate information, provided

it is required for the purpose of exercising, or deciding whether to exercise, any of Ofcom's online safety functions.

Ofcom's online safety functions are further elaborated in section 235(1) of the Act and include in this context: Ofcom's functions under the Act; its functions under section 3 of the Communications Act 2003, so far as the duties under that section relate to a function under the Act; and anything appearing to Ofcom to be incidental or conducive to the carrying out of any of their functions under the Act.

The information requested under this Notice is required as part of our Monitoring and Evaluation ('M&E') programme for the purpose of exercising, or deciding whether to exercise, the following functions, and/or taking steps appearing to us to be incidental or conducive to the carrying out of those functions:

- producing and keeping under review codes of practice for providers, setting out the recommended steps to be carried out in order to comply with their legal duties, including to take proportionate measures to prevent users from encountering priority illegal content, and to mitigate and manage the risks of harm to children (pursuant to sections 41 to 51, and as referenced under section 100(6)(k) of the Act). This function includes keeping under review existing codes of practice: section 47(1);
- carrying out research and preparing reports in relation to online safety matters (e.g. as referenced under section 100(6)(m), and including Ofcom's obligation pursuant to section 63, to produce and publish reports on content harmful to children);
- assessing providers' compliance with the duties and requirements imposed on them under the Act (per section 100(6)(a)); and
- Ofcom's general duty to secure the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm, insofar as this duty relates to Ofcom's functions conferred under the Act (such as those set out in the three preceding bullet points) (pursuant to section 235(1)(a)(iii) of the Act and section 3(2)(g) Communications Act 2003).

We require information on outcomes of content moderation processes for the purpose of assessing the scale of risks to users and how many people are seeing different kinds of priority

content, and whether these increase or reduce over time, which are key measures of whether online safety is improving or worsening.

Tracking changes over time.

To effectively monitor trends and assess progress over time, Ofcom needs to collect data covering different periods of time, including a defined period prior to when the duties under the Act commenced, which will serve as a reference point for tracking change. We are requesting information from 1 January 2024. The information we are requesting will provide an indication of the absolute and relative scale of risk of harm to users, including children, and the effectiveness of content moderation processes on your service. Together with other pieces of information, this will enable us in future to gauge the extent to which some of our regulatory interventions remain proportionate, consistent and targeted where needed. We are requesting this information now to capture data from the time period prior to duties under the Act commencing.

For reasons including all of the above, we therefore consider that our request is proportionate for the purpose(s) for which we intend to use the information.

We expect to request this information under the M&E programme on a regular basis, we therefore ask you to consider this as part of any data retention policies you have.

22. Each information notice then goes on to identify six categories of information requested. Each category contains a series of questions to be answered. The information sought covers: (a) an explanation of the definitions each provider uses; (b) data on the total volume of user activity taking place on each internet service provided, disaggregated by age groups; (c) data on the volume of content and accounts which have been subject to content moderation action by each service, the time involved in taking such action, and the extent to which content harmful to children was the object of the action; (d) data on the exposure of UK users (including children) to actioned content; (e) data on the outcomes of, and time taken to process, appeals against actions taken in relation to content; and (f) data about the volumes and outcomes of 'reports' filed by UK users. Content moderation reporting tools are recommended by OFCOM codes of practice, and the questions in this category ask for information about their use, particularly in relation to reports about categories of harm relevant to the OSA.
23. The information notices request the supply of the information sought in tranches, by reference to the period to which each tranche relates. The deadline for tranche 1 (data for the period 1st January 2024 to 31st December 2025) was 15th June 2026; for tranche 2 (first six months of 2026) was 22nd September 2026; and for tranche 3 (second six months of 2026) was 25th March 2027.

(b) Decision-making history and context

24. Other than as addressed below, there is no material factual dispute between the parties about the antecedent and subsequent history of these information notices. The following account is drawn from the parties' agreed chronology, the contemporaneous documentation, and the witness evidence of Mr Robin Finer, a Director in the Economics and Analytics Group of OFCOM and the decision-maker responsible for the information notices, to the extent to which his evidence is not directly challenged in these proceedings.
25. The OSA conferred on OFCOM a substantial new regulatory function in connection with online safety, which itself had emerged from a context of acute public and political concern to make the online environment, and specifically the use of search and social media functions, a safer space for individuals in the UK, particularly children. In preparing to implement the new legislative regime, OFCOM explains that it had long been aware it would inevitably need to make strategic choices about its priorities within what was a conspicuously wide remit, and that it would have to make those choices on the basis of demonstrably relevant and robust evidence and data. That data needed to be both sufficient and proportionate. Systems would have to be put in place for its tailored and efficient collection and analytical use. OFCOM was unlikely to be able to rely on publicly available information alone; it was probable some of the necessary data could be obtained only from regulated service providers themselves. The largest providers of the most used services could be expected to be the source of the most relevant and robust longitudinal evidence. That would enable OFCOM to understand the nature and scale of the online safety problem it needed to address, make choices about strategies for responding to it, and understand and adjust the effects of those choices over time.
26. This evolutionary exercise in thinking about its information requirements – starting from the highest strategic levels, working through developing policies and approaches, down to a detailed granular articulation of OFCOM's statutory information requirements in information notices – came to be referred to internally in OFCOM by the shorthand '*M&E*' or monitoring and evaluation. It was a process that had been under way at least since the Government White Paper heralding the new legislation.
27. A key milestone in the M&E exercise, following the conclusion of the legislative process, was OFCOM's publication of a guidance document setting out its general approach to information-gathering under the OSA ('*Online Safety Information Powers Guidance*' – "the Guidance"). This had been preceded by a public consultation exercise running between July and October 2024; the Guidance was first published on 26th February 2025 and subsequently updated (the version most relevant to these proceedings is dated 15th December 2025). As well as giving an overview of OFCOM's information powers, the Guidance explained why and how it proposed to use those powers, how it intended to engage with the providers from whom it would be seeking information, and the internal governance it was putting in place for decision-making about the issue of information notices. No direct challenge to the Guidance itself is made in these proceedings.

28. In parallel with the development of the Guidance, OFCOM was continuing to crystallise the detail of its assessed information needs and proposed systems for meeting them, whether by mandation or otherwise. Having regard to the Guidance, it embarked on what it describes as an intense period of informal engagement with leading regulated UK social media platform providers, including each of the Claimants, beginning in February/March 2025, and featuring at the outset a first draft of the information notices it had begun to formulate as being the key mandatory components of the M&E process.
29. Records and correspondence from the period over the ensuing year indicate that the Claimants were afforded opportunities in writing and at meetings to respond to their draft notice, and to OFCOM's approach more generally, and that they did so – by way of engaging constructively with the compliance task OFCOM was proposing to impose through the information notices, and also by way, variously, of (a) expressing high level concerns as to the burdensomeness of the task envisaged and potential alternative means of meeting OFCOM's stated need, (b) challenging the extent of the operational and regulatory case OFCOM was making for its needs in the first place, (c) point-by-point engagement with the granular detail of what was being asked for, and (d) explaining specific features of each respondent's individual business model which were said to cause particular problems with complying with the information requests. The records also indicate OFCOM's range of responses – whether by way of amplified explanations for its need, reasoned rejection of some objections, and/or changes to the notices evidently intended to reflect acceptance of some points of criticism and alternative suggestions, and to go some way towards accommodating the notices to each Claimant's specific ways of working and data management systems.
30. While this period of consultation was progressing, OFCOM undertook in August 2025 a relatively detailed analytical assessment of the latest iteration of the notices, which it described as a 'proportionality assessment'. This recorded, in tabular form, in relation to each question asked in the notices, (a) what insights OFCOM intended to derive from the answer, (b) why it considered that information to be necessary, (c) why these insights were not obtainable from other data sources and (d) any comments received from the providers, during the consultation period, about that particular question. This exercise itself prompted OFCOM to reflect further and revisit the notices to make revisions designed to simplify, focus and limit the responsive task required.
31. Fresh versions of the notices were issued in November 2025. OFCOM had intended these to be the final versions, but TikTok UK wrote on 5th December 2025 to challenge its notice. That prompted OFCOM to reflect on whether Mr Finan, its purported decision-maker, had had the requisite delegated authority to issue the notices. It transpired he had not. The notices were withdrawn, Mr Finan was subsequently appropriately authorised, and the final versions were (re-)issued the following February.
32. Both before and after the finalisation of the notices, OFCOM held itself out as remaining open and receptive to accommodating any practical implementation challenges arising. The notices themselves each set out, including in a Q&A section, the flexibility OFCOM could offer, if given sufficient reason to do so, by

way of, for example, accepting alternative information or estimates, or information on a phased basis, or extending deadlines. The records show that it exercised that flexibility on a number of occasions to modify the requirements of the notices in individual cases.

33. No *general* public law challenge is made in these proceedings to OFCOM's conduct in consulting and engaging with the Claimants in relation to the issue of the information notices complained of.

The Claimants' challenges and the agreed issues

34. These judicial review proceedings challenge the lawfulness of OFCOM's conduct in relation to the information notices issued to the Claimants from a number of angles. Although the grounds in each case are not identical, there is considerable overlap. The parties' agreed list of issues sets out the following:

A. *Ultra vires* / improper purpose

Issue 1a

Were the information notices issued by Ofcom to the Claimants *ultra vires* by virtue of circumventing ss.77-78 and 159 of the Online Safety Act 2023 ('the Transparency Regime') and/or other OSA statutory provisions requiring the supply/publication of information?

Issue 1b (TikTok UK only)

Were the information notices vitiated by an improper purpose of circumventing the Transparency Regime and/or other OSA statutory provisions requiring the supply/publication of information?

Issue 2

For the purposes of section 100(1) of the OSA, did Ofcom '*require*' all the information requested in each notice '*for the purpose of exercising, or deciding whether to exercise, any of their online safety functions*'?

B. Breach of statutory duty (impact assessments)

Issue 3

Did Ofcom act unlawfully (in contravention of section 7 of the Communications Act 2003) by failing to (i) consider whether to undertake, or (ii) undertake, or (iii) publish a statement setting out their reasons for thinking it unnecessary to undertake, an impact assessment in respect of:

- a. its 'M&E Programme' as a whole, and/or
- b. all of the notices issued to providers on 10th February 2026, considered together, and/or

- c. (*Meta/WhatsApp & X only*) each individual notice?

Issue 4

If so, should permission/relief be refused pursuant to section 31(2A)(a) or (3D) of the Senior Courts Act 1981?

C. Apparent pre-determination

Issue 5 (*TikTok UK only*)

Was the notice issued to TikTok UK vitiated by apparent predetermination on the part of Mr Robin Finer, in issuing or purporting to issue it on behalf of Ofcom?

D. Failure to comply with published policy

Issue 6

Did Ofcom unlawfully fail to follow [3.12] of its *Online Safety Information Powers Guidance* when deciding to issue each of the notices?

Issue 7

If so, should permission/relief be refused pursuant to section 31(2A)(a) or (3D) of the Senior Courts Act 1981?

E. Proportionality

Issue 8 (*Meta/WhatsApp & X only*)

For the purposes of section 100(4) of the Online Safety Act, in issuing the notices to Meta/WhatsApp and X, was the power in section 100(1) ‘*exercised in a way that is proportionate to the use to which the information is to be put in the exercise of OFCOM’s functions*’?

Issue 9 (*X & TikTok UK only*)

For the purposes of section 6(1) of the Human Rights Act 1998:

- a. Do the notices issued to X and TikTok UK constitute an interference with their rights under Article 1 Protocol 1 ECHR *as well as* under Article 8 (conceded by Ofcom)?
- b. Was any interference with the ECHR rights of X and TikTok UK in accordance with the law?
- c. If so, did it comply with the principle of proportionality?

F. Permission and Relief

Issue 10

Should the Claimants be granted permission to proceed, and, if so, on which ground(s)?

Issue 11

What, if any, relief should be granted?

A: Ultra vires and improper purpose

Issue 1

35. Issue 1a is: were the notices *ultra vires* by virtue of circumventing sections 77-78 and 159 of the Online Safety Act (the “transparency regime”) and/or other provisions in that Act requiring the supply/publication of information (sections 9, 11, 14, 23, 24, 26, 28 and 34) together with the transparency regime (the “reporting framework”)?
36. In the case of TikTok UK only, there is a further, related, issue 1b: were the notices vitiated by an improper purpose of circumventing the transparency regime and/or the reporting framework?
37. At the hearing the lead on Issue 1 was taken by Ms Marie Demetriou KC, leading counsel for TikTok UK.
38. The Claimants rely on the following well-established legal principles. First, they submit, a “*power conferred in very general terms plainly cannot be relied on to defeat the intention of clear and particular statutory provisions*”: see *R v Liverpool City Council, ex parte Baby Products Association* [2000] LGR 171, at 178 (Lord Bingham CJ, sitting as a single judge at first instance). In this context, Ms Demetriou KC emphasises, as Lord Bingham CJ did in that case, that failure to comply with the relevant decision may lead to criminal liability.
39. Secondly, TikTok UK submits that, even if conduct is within a public authority’s powers, an authority that “*exercises a statutory power with the intention and effect of achieving a result which is regulated by clear and particular procedures of another statutory power so as to circumvent the provisions of the legislation*” will act for an unlawful and improper purpose: see *Financial Conduct Authority v BlueCrest Capital Management (UK)* [2024] EWCA Civ 1125, [2025] 1 WLR 746, at [77] (Popplewell LJ); and *Credit Suisse v Allerdale BC* [1997] QB 306, at 333-334 (Neill LJ).
40. In *BlueCrest*, Popplewell LJ cited *Baby Products Association* with approval but appears to have regarded it as an application of the improper purpose doctrine, i.e. the *Padfield* principle (see *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997), rather than an example of the *ultra vires* doctrine in the strict sense. It seems to us to be immaterial which precise legal route is used to get to the destination, because it is clear that a public authority cannot lawfully use an apparently general power to circumvent safeguards which attach to the exercise of another, more specific power. The question in each case is whether that is in truth what the authority is seeking to do.
41. Ms Demetriou KC submits that one of the purposes of the transparency regime is to require certain providers to supply OFCOM with information so it can monitor and

evaluate the impact of the OSA. She drew our attention to documents to this effect: e.g. the Government response to the Internet Safety Green Paper (May 2018), pp. 22 and 25; and the Online Harms White Paper (April 2019, CP 57), at [3.16]. She submits it is therefore improbable that Parliament intended that the general power in s.100 could be used to make recurrent compulsory demands for information for the same purpose of monitoring and evaluation.

42. On behalf of the Claimants it is submitted that the transparency regime has several important limitations and safeguards. The category of persons subject to that regime is limited. Its temporal scope is limited, as it could not come into operation until OFCOM published the categorisation register, which occurred on 30 June 2026. There is a limitation on the frequency of transparency reports, once a year: s.77(1). There is a limit to the type of information which can be required under Part 1 of Schedule 8. OFCOM must then produce its own annual transparency reports based on those provided by providers.
43. The short, but fundamental, answer to the first issue (whether it is analysed as an example of the *ultra vires* doctrine in the strict sense or the *Padfield* principle) is that the transparency regime serves a different purpose from the information notices issued by OFCOM. It is about the *publication* of certain information, whereas the notices are not, or at least not primarily, concerned to secure publication of the information sought. Rather the information is sought for OFCOM's own purposes and it may well be that it could not lawfully be published.
44. There is a second answer too. The transparency regime is not yet available to OFCOM. Although the relevant legislation is in force, that regime is not yet in operation. The process to make it operational was always envisaged to be a lengthy one, for example because regulations had to be made by the Secretary of State and laid before Parliament, there had to be appropriate consultation and so on. When Parliament enacted the transparency and reporting provisions in the same Act as the power to require information under s.100, it cannot have intended that the latter should be delayed until the former was operational. To the contrary, it is clear from the legislative history of the OSA that Parliament intended OFCOM to implement a new and ambitious scheme for regulating online safety.
45. The applicable legal principles are not in dispute. Ultimately, however, the task of the court is the conventional one of statutory interpretation: what is the true effect of what Parliament has enacted, having regard to its context and purpose? The OSA must be read as a whole. In some contexts, it will be Parliament's intention that a general provision should not be used where exactly the same thing could be achieved by another, more specific provision. To that extent, it can be said that the general power is impliedly cut down in its scope by the more specific power.
46. But, in the present context, the power in s.100 is not impliedly cut down by the transparency regime. They have different purposes. Where information is obtained so that it can be made public, one can readily understand why the safeguards associated with the transparency regime should have to be complied with. But those publicity concerns are not the same with the power under s.100.
47. Furthermore, it is not right to say that Parliament has not laid down any safeguards in relation to the s.100 power. They are different safeguards but there are safeguards. For

example, the proportionality requirement in section 100(4) is an important element in the regime created by that section. Indeed, this could be relevant to the potential overlap between the s.100 regime and the transparency regime (when the latter regime is operational in the future). To the extent that information has been made available and published in accordance with the transparency regime, it would be difficult if not impossible for OFCOM to suggest that it would be proportionate for it to require that information under s.100. But that is not the factual position at present, and the reality is that, if s.100 is not currently available to OFCOM, nothing is.

48. We reject the submission that this is a temporal limitation on the transparency regime which OFCOM is improperly trying to circumvent. To the contrary, it seems to us to be a statutory indicator that Parliament did not intend the use of s.100 to be unavailable to OFCOM in circumstances where it was the clear intention of Parliament that the novel and ambitious online safety scheme it was creating should be implemented in an effective way.
49. The Claimants' reliance on *Credit Suisse* does not take their case further. That decision is distinguishable, in any event, as it was primarily concerned with the scope of the implied powers provision in section 111 of the Local Government Act 1972. As the Court of Appeal held, that implied power cannot be used to borrow money in a way which circumvents the "*comprehensive code*" for local government finance, as Neill LJ put it at page 332; see also page 347 (Peter Gibson LJ). It could also be said that the local authority in that case had acted for an improper purpose in trying to circumvent that carefully controlled regime for local government borrowing and expenditure: see page 334 (Neill LJ).
50. In our view, the submissions for the Claimants under the first issue are not reasonably arguable. Accordingly, we refuse permission to advance these grounds by way of judicial review.

Issue 2

51. Issue 2 is: for the purpose of s.100(1) of the OSA, did OFCOM "*require*" all the information requested in each notice "*for the purpose of exercising, or deciding whether to exercise, any of their online safety functions*"?
52. On behalf of the Claimants it is submitted that the notices cannot be lawful unless they specify a particular regulatory purpose for which the information is required. It is submitted that OFCOM's evidence shows that the desire was to gather a bank of data which would be "helpful" and "nice to have" for the purposes of "horizon scanning" and assessing its "strategic priorities" but that OFCOM would only later determine retrospectively the precise statutory purpose for gathering the specific information it had collected.
53. It is further submitted that s.100 requires that each piece of information requested in a notice must be objectively "*required*" in order for OFCOM to exercise identifiable statutory functions or consider whether to exercise them. The evidence shows that OFCOM considered it only desirable, not required, to build a broad catalogue of information from routine monitoring that could prove useful in future for vague and

undetermined purposes. It is also submitted that OFCOM failed throughout to ask itself the relevant statutory question by reference to each piece of information requested.

54. In this context, on behalf of Meta and WhatsApp, Mr Knight KC makes two further submissions. First, he submits that the language used by Parliament in s.100, which can be contrasted with other statutory provisions, requires that the information must in fact be required in the assessment of the court. Mr Knight KC does not go so far as to suggest that the question of whether a piece of information is required is a precedent fact, as can be the case in certain statutory contexts, for example whether a person is an “illegal entrant” so as to be amenable to detention under the Immigration Act 1971, or the age of a child for certain statutory purposes. He does, however, submit that the question imposes a “jurisdictional precondition” to the exercise of the discretionary power conferred by s.100 and therefore is one for the court itself to decide. He submits that the question for the court is not simply whether there was a rational basis for OFCOM’s assessment that it required the information.
55. Secondly, he submits that, even if the test is not an objective one for the court itself to decide, OFCOM acted irrationally because it failed to ask itself the proper statutory question, by not identifying which pieces of information are required for which particular functions.
56. For his part, Mr Herberg KC, leading counsel for OFCOM, accepts that the word “require” imports something more than simply “ask for” or “demand”. It does therefore mean “necessary” but he makes two further points by way of qualification or nuance. First, the purpose is that of OFCOM: it is OFCOM that “requires” the information, not the court. He observes that the statutory language used is not, for example, “is required”, which might suggest an objective question for the court to determine. Secondly, Mr Herberg KC submits that the general approach to statutory interpretation of such provisions applies in this context: that the court does not usually ask whether a question of fact or evaluation has been proved to its own satisfaction but rather asks whether the public authority whose decision is under review by the court could rationally have arrived at that assessment. He submits that the authorities which have held that certain questions are indeed objective ones for the court itself to determine represent the exception to the general rule: for example, where a person is subject to executive detention as in the immigration context, one can readily see why Parliament should not be taken to have permitted such a draconian interference with personal liberty without the clearest possible language. In the present context, in contrast, he submits, there is no reason to attribute such an intention to Parliament. Rather it is more likely that Parliament recognised that the expert regulatory body here is OFCOM and it is what that body “requires” which is the relevant question, subject to judicial review on conventional grounds, in particular the principle of rationality.
57. We accept Mr Herberg KC’s submissions. First, we do not consider that the question is an objective one for the court itself to determine. The starting point is that it is OFCOM which sets out the relevant purpose for which it requires the information. That then shapes what is required: the question for the court is whether the assessment by OFCOM that it does need the information is a rational one.
58. Both Mr Knight KC and Mr Herberg KC relied on *R (Assurant General Insurance Ltd) v Financial Ombudsman Service Ltd* [2023] EWCA Civ 1049, [2024] 1 All ER 795, for its summary of the principles established by authority at the highest level at [38]-[60]

(Singh LJ). In particular, Mr Knight KC relied on the endorsement given, at [57], of what had been said by Ouseley J in *R (TenetConnect Services Ltd) v Financial Services Ombudsman* [2018] EWHC 459 (Admin), [2018] 1 BCLC 726 about the respective roles of the Financial Services Ombudsman and the court on judicial review. In *TenetConnect*, at [44], Ouseley J said that, while the Ombudsman had to interpret the law correctly and reach rational findings of fact, “*it was for the court to decide whether his application of the law to the facts was wrong, and not whether it was reasonable*”. We are not persuaded by the suggested analogy: the context was very different (“application of the law to the facts” is akin to an adjudicatory function) and, in the present context, we must construe the particular legislation which applies here (s.100 of the OSA).

59. Although Mr Knight KC is able to point to certain differences of language from other provisions, we consider that the correct approach to the interpretation of s.100 is the conventional one where a question of evaluation arises. As Singh LJ explained in *Assurant* at [45], by reference to the decision of the House of Lords in *South Yorkshire Transport Ltd v Monopolies and Mergers Commission* [1993] 1 WLR 23, at 32 (Lord Mustill), where a question is not “hard-edged” but calls for evaluation, the general approach of the courts is to regard that as being a task for the primary decision-maker to which Parliament has entrusted the function, subject to judicial review on conventional public law principles.
60. In this particular statutory context, it is also important to note the presence of the proportionality requirement in s.100(4). This is significant, because it is a relatively unusual provision in that it expressly imposes the requirement of proportionality onto the exercise of a discretionary power. This provides a powerful control mechanism to avoid overreach by OFCOM. If what OFCOM requires by way of information is disproportionate, the court will be able to intervene. But this does not mean that a statutory precondition for the exercise of the power has not been met at all: OFCOM does require the information for a proper statutory purpose, but what it requires may be disproportionate.
61. Secondly, we reject the submission that OFCOM’s assessment in these individual cases was irrational.
62. It is important to bear in mind that what is under challenge in these proceedings is the final notices, not, for example, what may have been said at earlier stages by officials at OFCOM. The question for the court is whether the purposes set out in the notices are lawful under s.100 and the information is reasonably required to achieve those purposes.
63. When we consider the notices in this case, we are satisfied that they do specify the particular statutory purposes for which the information is required by OFCOM; and that that assessment by OFCOM is a rational one.
64. Although the background may be one where OFCOM wished to build up a databank, we do not accept the submission that it has failed to particularise the statutory purposes for which it requires the information. In fact, it has done so, in terms. This is plain from the face of the notices themselves.

65. As we have mentioned above, each notice contained the following statement of the purposes for which it was issued:

The information requested under this Notice is required as part of our Monitoring & Evaluation ('M&E') programme for the purpose of exercising, or deciding whether to exercise, the following functions, and/or taking steps appearing to us to be incidental or conducive to the carrying out of those functions:

- producing and keeping under review codes of practice for providers, setting out the recommended steps to be carried out in order to comply with their legal duties, including to take proportionate measures to prevent users from encountering priority illegal content, and to mitigate and manage the risks of harm to children (pursuant to sections 41 to 51, and as referenced under section 100(6)(k) of the Act). This function includes keeping under review existing codes of practice: section 47(1);
- carrying out research and preparing reports in relation to online safety matters (e.g. as referenced under section 100(6)(m), and including Ofcom's obligation pursuant to section 63, to produce and publish reports on content harmful to children);
- assessing providers' compliance with the duties and requirements imposed on them under the Act (per section 100(6)(a)); and
- Ofcom's general duty to secure the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm, insofar as this duty relates to Ofcom's functions conferred under the Act (such as those set out in the three preceding bullet points) (pursuant to section 235(1)(a)(iii) of the Act and section 3(2)(g) Communications Act 2003).

66. Annex 1 to each notice also set out the purposes, more briefly, as follows:

We have clarified how we describe our functions for which we are requesting information in the Notice, which now include:

- producing and keeping under review codes of practice;
- carrying out research and preparing reports in relation to online safety matters;
- assessing providers' compliance with the duties and requirements imposed on them under the **Act**; and
- **Ofcom's** general duty to secure the adequate protection of citizens from harm presented by content on regulated services, in so far as this duty relates to **Ofcom's** functions conferred under the **Act**.

67. Mr Knight KC complains that the last of those purposes has now been expressly abandoned by OFCOM: see the Amended Detailed Grounds of Resistance, at [50]. He also complains that the third purpose mentioned there cannot properly be relied upon, since some of the data required related to a period before the OSA came into force, and therefore there was no question of non-compliance at that time. Mr Knight KC also complains that, to the extent that reliance is now placed on Annex 1 to Mr Finer's witness statement, the court should not accept retrospective evidence of reasoning which was created for the purposes of this litigation and, he submits, contradicts the contemporaneous records: see *Nash v Chelsea College of Art and Design* [2001]

EWHC 538 (Admin), at [34] (Stanley Burnton J). In this context, Mr Knight KC relies on the express duty on OFCOM to “*specify*” in the information notice “*why [they] require the information*” (section 102(3)(b) of the OSA).

68. It has to be recalled that this ground of challenge goes to whether there was power to issue the notices under s.100 and is not directly about a breach of the duty to give reasons in s.102(3)(b). In our judgment, the power to issue the notices existed so long as the notices were issued for one or more of the statutory purposes. OFCOM maintains that they were issued for such purposes, in particular for the purposes specified in s.100(6)(k) – to do with codes of practice – and s.100(6)(m) – to do with research. We accept that those were lawful purposes for which the notices could be issued.
69. But, in any event, if there has been a breach of s.102(3)(b), it is obvious that the outcome would not be substantially different for the Claimants if the notices were reissued with the wrong or superfluous purposes deleted. Annex 1 to Mr Finer’s first witness statement explains in comprehensive detail why each question in the notices is required and for which purpose set out in s.100(6). Accordingly, the provisions of s.31(3D) of the 1981 Act would apply and this court would be under a duty to refuse permission to bring a claim for judicial review on this ground.
70. We reject the submission as to the interpretation of s.100, that, for example, OFCOM may only require information for the purpose of considering the preparation or revision of a code of practice once it has reached the stage where it has already decided to exercise a specific statutory power, such as that in s.41 of the OSA. This is to ignore the wording of s.100(1), which expressly states that OFCOM may require the information “*for the purpose of ... deciding **whether** to exercise*” any of their online safety functions.
71. Furthermore, we reject the submission that there has to be a specific task that OFCOM has in mind before it can require information under s.100. The list of specific functions set out in s.100(6) is in terms a non-exhaustive one: Parliament has stated expressly that the purposes for which information may be required under s.100(1) “includes” those which are then listed.
72. In any event, as Mr Herberg KC submits, some of the particular functions listed in s.100(6) are themselves couched in language which is very broad. For example, para (m) is “*the purpose of carrying out research, or preparing a report, in relation to online safety matters.*” That provision does not say, as it might have done, “the purpose of carrying out a particular, specified research project ...”. The language is more general and broader.
73. This is also where the requirement of proportionality in s.100(4) again becomes relevant. In our view, the *vires* to issue a notice exists by virtue of section 100(1), because a lawful purpose has been given by OFCOM for requiring the information. But a separate and different question may arise: given that the power exists, is the particular exercise of that power “*proportionate to the use to which the information is to be put ...*”?
74. We do not accept Mr Knight KC’s submission that, in the absence of particular purposes being specified, the proportionality exercise required by s.100(4) cannot be meaningfully performed. It can and, as will be apparent later in this judgment, has been

performed by this court. It may be that the more general and broad the stated purposes for which a notice is issued, the more the court may require to be persuaded that it is proportionate but that does not mean that the exercise cannot be meaningfully performed at all.

75. For the reasons we have given, we have reached the conclusion that the grounds under Issue 2 are not reasonably arguable. Accordingly, we refuse permission to advance these grounds for judicial review.

B: Breach of statutory duty (impact assessments)

Issues 3 and 4

76. Issue 3 is: did OFCOM act unlawfully by failing to (i) consider whether to undertake; or (ii) undertake; or (iii) publish a statement setting out their reasons for thinking it unnecessary to undertake an impact assessment pursuant to s.7 of the CA, in respect of:
- (a) the M&E programme as a whole; and/or
 - (b) all of the notices issued to providers on 10th February 2026, considered together; and/or
 - (c) (in the case of the Meta Claimants and X) each notice?
77. It is common ground that OFCOM did not consider whether to undertake a s.7 impact assessment in relation to any of the above matters. Accordingly, the main issue that arises in this context is whether the duty in s.7 arose in the circumstances of these cases.
78. Issue 4 is: if OFCOM did act unlawfully in one or more of the ways set out in issue 3, should permission/relief be refused pursuant to section 31(2A)(a) or (3D) of the 1981 Act?
79. Section 7(1) of the CA applies where (a) OFCOM are proposing to do anything for the purposes of, or in connection with, the carrying out of their functions; and (b) it appears to them that the proposal is “important”.
80. Subsection (2) defines a proposal as being “*important*” for the purposes of this section only if its implementation would be likely to do one or more of the following: (a) to involve a major change in the activities carried on by OFCOM; (b) to have a significant impact on persons carrying on businesses in the markets for any of the services, facilities, apparatus or directories in relation to which OFCOM have functions; or (c) to have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom.
81. Subsection (3) provides that, before implementing the proposal, OFCOM must either (a) carry out and publish an assessment of the likely impact of implementing the proposal; or (b) publish a statement setting out their reasons for thinking that it is unnecessary for them to carry out an assessment.

82. Subsection (7) provides that, where OFCOM publish an assessment under s.7, they must provide an opportunity of making representations to them about their proposal to members of the public and other persons who, in their opinion, are likely to be affected to a significant extent by its implementation.
83. Subsection (8) provides that, where OFCOM are required (apart from this section) to consult about a proposal to which this section applies, or to give a person an opportunity of making representations about it, the requirements of s.7 are in addition to, but may be performed contemporaneously with, the other requirements.
84. Subsection (10) provides that the publication of anything under this section must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected if their proposal is implemented.
85. The lead on these issues was taken at the hearing by Ms Amy Rogers KC. She submits that, whichever way the “*proposal*” is defined, the duty in s.7 arose in these cases. She notes that OFCOM itself has publicly stated that it recognises that the s.7 obligation is “wide-ranging” and that it expects to carry out impact assessments in relation to a large majority of its proposals (including new or amended policies and processes): see [3.5] of the ‘Impact assessment guidance’ (published 19 July 2023). We would observe, however, that, consistent with the submissions made on behalf of OFCOM, that guidance gives a flavour of what it had in mind as being “important” proposals when it talks of “policies or processes”.
86. Ms Rogers KC submits that an analogy can be drawn with the public law principle that a public body almost always has a duty in public law to consider whether it should exercise its discretionary powers: see *Stovin v Wise* [1996] AC 923, at 950 (Lord Hoffmann). In our judgment, the analogy is not exact, because strictly s.7 does not confer a discretion but rather imposes a duty. That duty arises only if the statutory preconditions for it are present and those preconditions include that something is a “*proposal*” and, of particular significance, that it is considered by OFCOM to be “important”.
87. Ms Rogers KC submits that, on any view, what was envisaged in these cases entailed a major change in OFCOM’s approach to regulation under the OSA. Ms Rogers relied also (and firstly) on the ‘significant impact on providers’ limb, i.e. s. 7(2)(b) CA 2003. She submits that it is unrealistic to view what happened here as a set of individual decisions in respect of particular providers. Accordingly, she submits, there was a clear breach of OFCOM’s public law duties.
88. The lead on these issues for OFCOM was taken by Mr Molyneaux. He submits that the duty in s.7 simply did not arise in the circumstances of these cases. He accepts that, taken by itself, the intended issue of a notice pursuant to section 100 amounts to a “*proposal*”. He points out that the CA does not say that OFCOM must consider whether a matter which does not appear to be important to it is nonetheless an important proposal. He submits that the contrary construction of s.7 would have the absurd and impractical consequence that every OFCOM employee would have to turn their mind to s.7 every time that they proposed to do anything at all in the course of their work.

89. Mr Molyneaux's fundamental response to the argument about s.7 is that there was no proposal which appeared to OFCOM to be important in any relevant sense and the fact that OFCOM did not identify any proposal as important was not irrational.
90. Mr Molyneaux submits that it was not irrational for OFCOM to consider the proposal at issue here to be an exercise of particular statutory powers in respect of particular persons on a particular occasion, in other words the exercise of statutory powers to make individual decisions, rather than an 'important' proposal.
91. Further, and in any event, Mr Molyneaux submits that, on the facts of the present cases, there was an opportunity given to each of the Claimants to engage with OFCOM and their representations were taken into account. Accordingly, he submits, this court can be confident that the outcome would not be substantially different for any of these Claimants even if there has been a breach of s.7.
92. Our attention was drawn on both sides to a document published by the Better Regulation Task Force in July 2001: 'Economic Regulators'. This was concerned in particular with regulators that had been established in the formerly nationalised industries to facilitate competition and to regulate where competition did not exist or was unlikely to do so: see the first paragraph of the Executive Summary. Recommendation 2 was that: *"Economic regulators should be required to produce assessments of costs and benefits for proposals with a significant impact on business activity"* (page 6). Paragraph 7.2 noted that all *"government departments and agencies which exercise statutory powers and make rules with a general effect on others"* were required to produce such impact assessments but that the economic regulators did not consider themselves to be subject to this requirement. But, the document continued, *"guidance and standards established by the regulators can impose significant costs which were not identified in the original legislation."* It was noted that there was *"widespread agreement"* that *"the regulatory system would be more robust if regulators produced analyses of costs and benefits for new proposals, including social and environmental ones, where these would have a direct impact on business."* It was also observed that full analysis *"would ... improve the quality of consultation"* (page 32).
93. The then Government agreed with Recommendation 2 and, in May 2002, presented the Communications Bill to Parliament. The Bill included clauses *"to place OFCOM under a statutory obligation to carry out, and consult on, an analysis of the burdens and benefits of any proposals that impose a significant regulatory burden"* ([5.2.3] of Cm 5508-III).
94. We were informed at the hearing that those clauses became s.7 of the CA.
95. In our judgment, Mr Molyneaux is correct in the essence of both of the main submissions that he advances. First, the duty in s.7 only arises if it appears to OFCOM that a proposal is *"important"* in one or more of the statutory senses. If it makes a positive assessment that it is important, then the duty arises. This does not mean that, if it fails to address its mind to that question, it errs in public law: if that were so, there would be an error of public law each and every time an individual working for OFCOM proposes to make any decision under any of its statutory functions without considering s.7 specifically. Rather, the true principle is that of rationality: if the only reasonable conclusion could be that a proposal was important in the statutory sense, then OFCOM will have erred as a matter of public law.

96. We accept Mr Molyneaux’s suggested analogy with the *Tameside* duty of inquiry (see *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014, at 1064 (Lord Diplock)). Although it is an established requirement of public law that a public authority must take reasonable steps to inform itself of relevant matters, the principle which the court applies in assessing whether the authority has breached that duty is that of rationality: see the judgment of the Divisional Court in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662 (Admin), [2015] 3 All ER 261, at [100], approved by the Court of Appeal in *R (Balajigari) v Secretary of State for the Home Department* [2019] EWCA Civ 673, [2019] 1 WLR 4647, at [70].
97. In the circumstances of the present cases, we do not accept that OFCOM acted irrationally in not undertaking, or considering undertaking, an impact assessment. We have reached the conclusion that it was reasonably open to OFCOM to take the view that what it was doing was taking individual decisions under s.100 of the OSA, and that there was therefore no “important” proposal such as to trigger the s.7 duty.
98. Furthermore, it is clear that, in s.7(8), Parliament itself envisaged that there is a distinction to be drawn between consultation with the public more widely and a process for giving an individual person who is affected by a particular decision the opportunity to make representations to OFCOM. The latter was done by OFCOM in these cases even if the former was not. That distinction between consultation in the strict sense, that is consultation of third parties and the wider public, and the duty to act fairly in respect of an individual who is affected by a particular decision, was made by the Court of Appeal in *R (Kebbell Development Ltd) v Leeds City Council* [2018] EWCA Civ 450, [2018] 1 WLR 4625, at [62] and [66]-[69] (Singh LJ, with whose judgment Underhill LJ agreed at [79]).
99. Secondly, and in any event, we are satisfied that the terms of s.31 of the 1981 Act apply to these cases. It is important to appreciate that, where the terms of s.31 are met, the court has a duty to refuse permission (and, if it arises later, relief). The court does not have a discretion, as it did in the regime that applied before the 1981 Act was amended in 2015. In particular, it is clear on the evidence that it is highly likely that the outcome for these Claimants would not have been substantially different if s.7 had been complied with. It is the outcome for the particular claimants before the court to which section 31 draws express attention.
100. Accordingly, we do not accept that what was said about s.31 by the Court of Appeal in cases such as *R (Hippolyte) v Secretary of State for the Home Department* [2025] EWCA Civ 1493, at [69]-[80] (Singh LJ), important as those statements are, should lead the court to grant permission or, if that stage were reached, any remedy in these cases. It is clear that the court has a duty not to do so in the circumstances of these cases.
101. It was not suggested that, if we reached this conclusion, we should nonetheless conclude that the Court should “disregard the requirement in subsection (3D) if it considers that it is appropriate to do so for reasons of exceptional public interest”: see s.31(3E) of the 1981 Act. In any event, we would not have been prepared to do so.
102. For those reasons we refuse permission to advance the grounds under Issues 3 and 4 by way of judicial review.

C: Apparent predetermination

Issue 5

(a) Legal principles

103. The public law decision-making vice of apparent predetermination is closely related in law to the adjudicative defect of apparent bias; a sustainable *perception* that a decision has been made otherwise than transparently, by way of the application of an open mind to the weighing and balancing of the matters properly before a decision-maker, will damage the public confidence that can be placed in that decision, irrespective of whether that has *actually* been the case.

104. There is no dispute in the present case about the legal principles applicable to this form of challenge. The relevant authorities were recently reviewed and the principles summarised, in a regulatory context, by Dove J in *R (Nobel Oil E&P North Sea Ltd) v The Oil and Gas Authority* [2025] EWHC 2139 (Admin) at [66]-[71]. He put the overarching principle this way at [67]:

It is well settled that a decision-maker will act unlawfully if it predetermines a matter which it must decide by having either actually or apparently a closed mind, with the effect that it is unable to apply its judgment properly to the decision at hand, or it acts in such a way that it gives rise to the appearance of predetermination. The court should have regard to all of the facts bearing upon any suggestion of predetermination and then ask whether in those circumstances a reasonable fair minded and well-informed observer, having considered all of those facts, would conclude that there was a real possibility of predetermination.

105. A decision-maker's mind may appear closed if, for example, the decision, or the decision-making process, appears to proceed from result to reasoning – '*in reverse order*' – so that the reasons given for it cannot be relied on to be the true reasons for making it. An example of that could be a decision-maker giving an appearance of attempting to cloak a fixed decision in more respectable outward garb to try to insulate it against judicial review, perhaps by outsourcing the reasoning to lawyers.

106. But there is a distinction between predetermination and predisposition, even strong predisposition. Dove J put it this way at [71] in *Nobel Oil*:

As a regulator it was necessary for the defendant to have an open mind but it was not necessary for them to have an empty mind. They were entitled to have a clear strategic view of the kind set out above and to use it to inform their approach to their day to day regulatory activity as well as the prioritisation of the resources at their disposal. They were also required to be open to evaluate and carefully consider matters properly raised with

them in relation to both their strategic endeavours and their day to day regulation and keep these activities under review. However, the need to retain an open mind and act fairly did not include a requirement to forget or ignore the strategic context of their regulatory supervision and resource allocation.

107. The reasonable, fair minded and well-informed observer is “*not unduly sensitive or suspicious, but neither is he or she complacent*”. This observer is not to be confused with a complainant: the test ensures there is a measure of detachment. The court must put itself in the shoes of the observer and make its own assessment of whether there is a real possibility of predetermination – a real risk that a decision-maker’s mind was closed. The exercise requires the court to look at the evidence, and particularly the contemporary evidence, in the round and make an assessment of the appearance on the facts as it finds them; it is an intensely fact-sensitive exercise.

(b) TikTok UK’s challenge

108. A predetermination challenge is advanced in the present case by the Third Claimant alone. Save as set out below, the challenge is not made by reference to any matters said to be exclusive to TikTok UK.
109. Ms Demetriou KC advanced a case that a “*real possibility of predetermination*” should fairly be inferred from what she proposed was an evidenced narrative giving an *appearance* that OFCOM had decided, from at least late 2024, that it would be desirable for it to have available an in-house database, including information obtained from leading regulated service providers, for unspecified purposes other than for policy interest and possible future utility. It *appeared* to have prepared information notices in furtherance of that fixed intention, and then latterly *apparently* attempted to advance an *ex post facto* rationale for the notices in an effort to reconcile a predetermined outcome with public law requirements of proper decision-making – working *in reverse*, in other words.
110. The evidence base on which she relies for this inference is said by Ms Demetriou KC to have the following principal features:
- a) contemporaneous documentation from the end of 2024 indicating that OFCOM had formed an intention, subsequently manifested in the draft notices circulated shortly afterwards, to collect data from service providers, but without reference to the framework of s.100 OSA or anything other than generalised M&E purposes;
 - b) documentation from its ensuing consultation with the providers, suggesting the exercise excluded the point of principle that data provision was to be mandated, its scope being limited to points of detail only;
 - c) OFCOM’s responses to being pressed by the providers in these circumstances to identify the functions to which its s.100 request was said to be ancillary – criticised as either wholly vague or

legally unsustainable – and which then changed and evolved over time;

- d) the contemporaneous records around the decision-taking by Mr Finan to issue the notices in November 2025, which were (i) problematically incomplete and (ii) capable of being read as being a rubber-stamping exercise only, with Mr Finan recorded as ‘*happy to take the decision*’ – that is, the very decision which had already been collectively determined and which lacked only execution;
- e) the fact that Mr Finan, rather than another officer with a fresh mind, re-took effectively the same decisions in February 2026 once the November notices had been withdrawn for lack of appropriate delegated authority;
- f) the fact that the final information notice included an annex in the form of a document prepared by external counsel in response to a letter before action from TikTok UK challenging the November notice; this was capable of being understood as the *ex post facto* appropriation of a lawyer’s advocacy document to clothe an otherwise nakedly predetermined position with public law compliant reasoning.

(c) Analysis

111. This challenge does not need to, and does not, allege *actual* predetermination. Nor does it oblige, or indeed permit, a court to review the evidence through the lens of a suspicious, dissatisfied or partial complainant. It requires instead a dispassionate and objective review of *all* the facts bearing upon the possibility of predetermination; and an assessment of whether a reasonable and fair minded observer, in possession of all of that information, would conclude it to be a *real possibility* that the decision-maker’s mind had been made up all along.
112. The volume of evidence having a potential bearing on the possibility or otherwise of predetermination in the present case is potentially vast. At least at a contextual level, it encompasses the entire process of OFCOM’s preparations for the introduction, passage and implementation of the OSA legislation, and its developing thinking of the place of information and data within that exercise. It includes the fact that, Parliament having conferred a substantial new regulatory function on OFCOM, with ancillary information-gathering powers, OFCOM was obliged to address its mind to the exercise of those powers for the purposes for which they were conferred. It includes the context that the newly regulated sector was dominated by a small number of service providers whose social media platforms had been identified at the front and centre of the concerns the OSA was designed to address.
113. The evidence also includes OFCOM’s published (and unchallenged) Guidance on the use of its powers, which sets the scene, and identifies the strategic issue of ‘*information asymmetry*’ between regulator and regulated, thus:

3.2 In order to exercise our functions in a way that is effective and proportionate, we need to ensure that our regulatory decisions are founded on a robust evidence base. Information held by stakeholders is often fundamental to a proper appreciation of the factual, economic and legal context within which we exercise our regulatory functions.

3.3 The statutory information gathering powers conferred on Ofcom by Parliament pursuant to the Act are an important tool by which we can obtain information from stakeholders in support of our online safety functions.

3.4 These powers enable us to address the information asymmetry that may exist between Ofcom and stakeholders active in the sectors we regulate and to discover, obtain and use information from stakeholders to take what we consider to be the best possible decisions. Our information gathering powers also allow us to compel the provision of certain information that stakeholders might not otherwise wish to provide, for instance when considering the case for regulation in the interests of citizens and consumers, monitoring and understanding market developments, supervising regulated services, and investigating suspected compliance failures.

114. The documentation from late 2024 on which Ms Demetriou particularly relies cannot be read in isolation from this context. Within that context, put at its highest, the documentation can fairly be read as disclosing that a stage had been reached in OFCOM's analysis and planning such that it expected to, or was minded to, or was disposed towards, issuing information notices along the lines indicated. That such a stage had been reached cannot properly be characterised as fairly indicative of a real possibility of predetermination. On the contrary, the scale and sophistication of the antecedent analysis is straightforwardly indicative only of conscientious implementation planning within the four corners of the strategic statutory task being demanded of OFCOM.
115. Far from indicating any fixity of mind suggestive of predetermination, what happened next was that OFCOM undertook a consultation exercise with providers about the terms of the proposed notices without any obvious sign that that consultation was limited in scope. Ms Demetriou KC's suggestion that the consultation itself should be read as indicative of a closed mind on the *principle* of issuing information notices is not easy to follow. The Court was not taken to any contemporaneous *in principle* objection from any of the providers to the *possibility* of issuing information notices in the areas of compliance to which the notices were ultimately addressed. No such challenge is made in the present proceedings. No-one was saying at the time or since that no such notices could or should be issued at all. The consultation exercise in these circumstances can only fairly be understood accordingly as having moved in the process to the stage of engagement on the content rather than the principle. No inference of predetermination is properly available from that.

116. The contemporary documentation arising out of the consultation exercise indicates clearly that OFCOM actively considered the representations received and was responsive to them; it did not always agree with them, but it was not obliged to, and explained where it did not. An objection is raised to the ‘evolutionary’ way in which OFCOM identified or specified the functions on which it would ultimately expect to rely to comply with the framing of the s.100 power in the context of the consultation exercise. No fair-minded and informed observer would infer an unprincipled attempt to clothe fixity of determination with a legal excuse from that. The obvious inference to be drawn was that OFCOM was actively consulting its stakeholders, in an extended dialogue, about precisely the issues of need, purpose, function and proportionality on which it would ultimately have to make (and, if necessary, defend) its decisions about the terms of the notices.
117. The final decision point to issue the notices in February 2026 is suggested to be indicative of apparent predetermination on the grounds that it is ambiguously documented, that such documentation as there is can be read as Mr Finan simply putting his name to a decision already taken, and that Mr Finan was an inappropriate (re-)taker of the decision in any event. We remind ourselves, however, of the need to avoid the pitfalls of decontextualisation and of undue suspicion. Mr Finan’s role as decision-maker was executive, not quasi-judicial. He was properly able formally to sign off a set of decisions which had been long and careful in preparation. That act did not need an empty mind; it needed a decision-maker fully versed in the antecedent policy and consultative history, carefully legally advised, and confident (or ‘happy’) to proceed. The defect of delegated authorisation which had caused the withdrawal of the notices at the end of 2025 had been addressed, and Mr Finan was in a proper position to sign off the notices. Careful consideration was given to whether it was appropriate for Mr Finan to be the person who should re-take the decision and, for understandable reasons, it was decided that it was. No inference of apparent predetermination is properly available from this material.
118. Nor is it properly available from the fact that Mr Finan annexed to TikTok UK’s information notice as finally issued a document responsive to the legal challenge the Third Claimant had made to the information notice as issued in November 2025. That cannot fairly be read in context as any sort of *ex post facto* dressing up of an otherwise naked decision that had already been taken, nor as an outsourcing to a lawyer of the reasoning for a decision. TikTok UK’s pre-action letter had levelled a number of challenges to the lawfulness of the notice, including to its *vires* and by raising other public law issues which have featured in the present judicial review proceedings. In withdrawing the November notice for lack of due authority, OFCOM had not responded on a point by point basis to the pre-action letter. That it needed to engage with and respond to the letter was plain. It did so as an annex to the February decision rather than in a separate letter from its legal department. No fair inference of apparent pre-determination can be made from that formal choice.
119. Even taken at its highest, and collectively, the evidence on which Ms Demetriou KC relied in advancing TikTok UK’s challenge on this ground does not come close to supporting a case that a reasonable, fair and informed objective observer

would consider there was a real risk of predetermination here. This challenge relies on a wholly decontextualised and determinedly over-suspicious reading of selective facts. That is not the test a court, standing in the shoes of such an observer, can properly apply. It also requires the substantial rejection of Mr Finan's own evidence, without opportunity for cross-examination. No good reason apart from this challenge itself is advanced to justify doing that; it is an otherwise wholly unsupported invitation. Mr Finan's evidence on its face can and does merit the acceptance of the court as being a clear and straightforward account of an easily recognisable strategic process of preparing carefully, thoughtfully and transparently for a first use of new statutory information-gathering powers in the precise regulatory context for which they had been conferred.

120. This ground of challenge does not, for these reasons, cross the threshold of arguability. The possibility of predetermination that it sets out is unreal. We refuse permission to advance this ground for judicial review accordingly.

D: Failure to comply with published policy

Issues 6 and 7

121. Issue 6 is: did OFCOM unlawfully fail to follow para 3.12 of its 'Online Safety Information Powers Guidance' when deciding to issue each of the notices?
122. Issue 7 is: if so, should permission/relief be refused pursuant to s.31(2A)(a) or (3D) of the 1981 Act?
123. OFCOM published the 'Online Safety Information Powers Guidance' on 15 December 2025. Para 3.12 of the Guidance states:
- 3.12 In reaching our decision about whether to exercise an information gathering power, we will generally take account of a range of factors in the round including:
- a) the regulatory purpose for which we need the information;
 - b) the feasibility and cost to the stakeholder involved in collating the information, including the size or capacity of that stakeholder and the resources required to provide the information;
 - c) the use for which we intend to rely on the information and *the extent to which we need to be able to rely on robust and reliable evidence*;
 - d) the resources Ofcom will need to gather and process the information;
 - e) whether the information is available from other sources or could be provided voluntarily (including whether the information may already be held by Ofcom, and if so, whether we consider we need it in a different format);
 - f) any other potential costs or other impacts on the person who would be subject to the power or other relevant persons, for example, the cost of appointing a skilled person or carrying out an audit or impacts on a person's right to privacy in relation to the information we are seeking.
 - g) where relevant, and taking into account relevant factors above, whether it may be appropriate to:

- i) send the same statutory information notice to all stakeholders of a particular type;
- ii) only send a statutory information notice to a sub-set of those stakeholders; and/or
- iii) send a smaller or adapted set of questions to some stakeholders.
(Emphasis added)

124. It is submitted by Mr Knight KC that OFCOM was required as a matter of public law to follow its published policy unless it identified a good reason not to do so at the time: *R (Duke of Sussex) v Secretary of State for the Home Department* [2025] EWCA Civ 548, [2025] 4 WLR 66. Although that case did not in fact lay down that proposition, since there was no dispute in that case about it (see [50] in the judgment of Sir Geoffrey Vos MR), the principle is well-established in authority at the highest level, which was summarised in that case.
125. Mr Knight KC submits that the purpose of the express list of criteria in para 3.12 is to ensure that OFCOM has properly turned its mind to all relevant matters before deploying a coercive power. He observes that the witness evidence of Mr Finer is clear that he did not work through each and every factor in para 3.12; instead OFCOM relies on the substance of the proportionality assessments produced in support of the notices.
126. It is submitted by Mr Knight KC that each assessment undertakes only a high level review and does not expressly go through the criteria in para 3.12. The particular criticism that is made is that there was never any express consideration of “*the extent to which we need to be able to rely on robust and reliable evidence*” in sub-para (c).
127. We do not accept those arguments. In our view, it is clear that, as a matter of substance, the notices followed consideration of all relevant factors. As Mr Herberg KC submits, the whole point about the consultation exercise which took place and the material which was taken into account by OFCOM was that it wished to have “*robust and reliable evidence*”.
128. Further and in any event, even if there were otherwise any merit to this argument, we are satisfied that the court is required to refuse permission on this ground, because it is highly likely that the outcome for the Claimants would not have been substantially different if the error had not occurred, in accordance with s.31(3D) of the 1981 Act.
129. Reliance was placed on the decision of the Court of Appeal in *Hippolyte* as to why section 31 does not avail OFCOM in this context but we do not accept that submission. Each case turns on its own facts and, in the circumstances of the present case and on the evidence before this court, we are satisfied that it is clear beyond argument that the outcome would have been the same for the Claimants even if OFCOM had followed para 3.12 of the Guidance to the letter.
130. Accordingly, we refuse permission, as we must in accordance with statute, to advance the grounds of judicial review under Issues 6 and 7.

E: Proportionality

Issue 8

(a) Legal principles

131. At the hearing before us two things were common ground. First, the principle of proportionality in s.100(4) of the OSA requires the same four-limb test to be applied that is familiar from the exercise to be performed when the issue of proportionality arises under the HRA. That test is often described nowadays as the “*Bank Mellat*” test, although its origins are older than that, as the Supreme Court explained in that case: see *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39, [2014] AC 700, in particular at [74] (Lord Reed JSC) and [20] (Lord Sumption JSC). Although Lord Reed dissented in the result, there is no material difference in the formulations of the principle of proportionality. As Lord Reed explained, it is necessary to determine (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure’s effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.
132. Secondly, it is common ground that the determination of the issue of proportionality is, again as under the HRA, a task that the court must itself perform. The court is not confined to asking whether the assessment of proportionality made by the decision-maker was reasonable: see *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30, [2026] AC 607, at [120]-[125] (Lord Sales and Lady Rose JJSC).

(b) Analysis

(i) The Claimants’ challenge and the court’s task

133. The proportionality challenge lies at the heart of these judicial review proceedings. The Claimants complain that the information notices impose an undue overhead on their businesses. Turning then to the application of the *Bank Mellat* proportionality test to the facts of the case, there is no challenge made here to the importance of the aims and objectives pursued by OFCOM in approaching the exercise of its s.100 powers (and in view of our conclusions on the question of *vires* no challenge stands as to their legitimacy). That is acknowledged not only in relation to the high level objectives of regulating the risk of online harms and OFCOM’s strategic prioritisation of its functions. It is also accepted that the more proximate objectives of using information-gathering powers to help monitor and evaluate the risks of and responses to online harms are important, and that the decision to issue the notices under challenge is rationally connected to those objectives.
134. The challenge, therefore, is made on the basis that less onerous notices could satisfactorily have achieved those objectives, and that the overall balance of

benefit and burden is not in all the circumstances fair and proportionate. The parties are agreed in asking the court to make its own assessment of that balance on the evidence before it, although the extent to which proper weight may be given to the professional view of OFCOM in that assessment is disputed.

135. In her oral submissions to us, Ms Rogers KC directed our attention to the parties' witness statements as to the extent of the burden the notices are said to impose, highlighting also (a) that the data requests are absolute, rather than made on any best efforts basis, (b) they are retroactive in operating on pre-commencement data sets (that is before the OSA came into force), which were not configured with the present data demands in view, (c) OFCOM has said it will repeat the requests in future on an unpredictable basis, and (d) they are backed by penal sanctions.
136. Ms Rogers KC also pointed out that it is common ground that the compliance task imposed is turning out in practice to be significantly greater than that understood (including by OFCOM) when the notices were issued. That is a point about there being something of a moving target here, which both sides urge on the court, although to diametrically opposite purpose. The Claimants say it shows that OFCOM did not itself make a sufficiently thorough assessment of the burden in the first place, that the court should accordingly place little weight on such assessment as OFCOM did make, and that OFCOM is unjustified in these circumstances in now maintaining the notices in full. OFCOM says, however, that the key information as to burden has always been uniquely within the knowledge of the Claimants themselves, that it worked with such limited information as the Claimants provided when consulted on the question of burden, that the evidence now being advanced by them is radically different from, and in some respects contradicts, what they had said when consulted, and in any event is vague, insubstantial and largely irrelevant to the task now before the court.
137. An evaluation of the evidence of burden *now* before the court is clearly a key component of its task, and that exercise, and the issue of '*deference*' to OFCOM's own assessment in the context of a developing picture, are addressed below. There remains one point of preliminary clarification of the court's task which it is important to register at the outset however.
138. That is the need for some precision as to what exactly it is about these notices that should properly be placed in the balance. The court's task is to assess the proportionality of the balance of burden and benefit of *each* individual notice. That in turn requires clear focus on factual evidence of the specific and differential impact of a notice on (a) the relevant Claimant's resources, systems and business model and (b) the Claimant's systems (and prospective systems) for discharging more generally the complete range of regulatory and self-regulatory duties imposed by the legislation as a whole.
139. The OSA imposes extensive new duties on regulated providers. The direct burden of those new duties is itself an important baseline, together with the baseline of the Claimants' overall default business model. The Act potentially makes extensive direct demands on the operational and data management systems necessary to underpin compliance across the board, no doubt at some measurable cost. But the burden of a *notice* lies in its additional *specific* impact – exactly what difference it makes to a Claimant's total overheads, over and above the other

demands of the OSA regime. That is a comparative measure. It requires answers to the questions *what is the scale of the marginal business overhead imposed by the notice?* and *how far is that attributable specifically to the notice, rather than to changes to its ways of working that a Claimant would have had to make in any event to comply with its other new regulatory obligations?*

(ii) *The Claimants' evidence*

140. We do give weight to the *opinion* evidence and background context provided by the Claimants. But the court's principal focus must be on the factual evidence of differential burden imposed by each notice. Ms Rogers KC led the oral advocacy on the proportionality issue, and the witness evidence supplied on behalf of X, the Second Claimant, is a convenient starting point because it is in some respects the most developed of the three.
141. The relevant context to that evidence is, however, the contemporary documentation of OFCOM's engagement with X in the course of its extensive consultation exercises on the notice drafting process. That process had begun with the sharing of an early draft in March 2025, followed by a meeting in April. The note of that meeting records X's position then as being that it did not see anything unduly concerning about the draft notice nor any major issues in compliance, including because it significantly replicated the sorts of requests to which X was already subject in the equivalent EU regime. But it reserved its position, on the basis that the devil was likely to be in the detail and that remained to be seen.
142. As the consultation progressed into the detail in the following months, the contemporary papers show X raising a 'proportionality' concern, flagging the undesirability of being asked for duplicate data under both the s.100 and the transparency regimes. X also raised a number of points of detail, which were addressed as such in OFCOM's response, including by agreeing an extension of the notice's timetable.
143. The witness evidence now advanced by X registers "extreme" concern that compliance with the final notice would constitute a very onerous, impracticable and disproportionate burden at a level described as extraordinary. More specifically, it identifies a burden which would not otherwise be incurred in the course of X's business costed at "*millions of pounds*", demanding three or four months of work by specialist staff. The first stage of work had already required "*hundreds of hours of work across a group of ten people*". None of these figures is, however, materially further quantified, explained or contextualised in terms of X's wider resources, systems or wider regulatory obligations.
144. Meta's engagement with OFCOM's consultative exercise was perhaps at a more granular level, and the contemporary records indicate an equivalent attention to detail in OFCOM's response, with a range of modifications being made to the draft notice accordingly. Meta's witness evidence fairly acknowledges an overall reduction in the compliance burden as a result. It states, however, that even its partial response to its notice so far has taken "*a considerable amount of time and resources with involvement of up to 20 different teams*". WhatsApp's evidence is in terms of multiple teams having to be engaged on what amounted to a "*major*

project management undertaking” requiring significant work by some of those teams. Again, this evidence is not significantly further explained, particularised or contextualised.

145. TikTok UK can perhaps fairly be said to have reserved its position more fully throughout, and offered more limited engagement at a detailed level during the consultation process. It did, however, acknowledge that such detailed responses as OFCOM had been invited to make, and had made, resulted in an appreciable reduction to the overhead. Interestingly, its witness evidence does provide some contextual insight with baseline figures that it already had a dedicated resource of more than a thousand employees across 80 teams working on UK compliance. But it acknowledges that detailed work to assess the additional resource required by the information notice had not yet been undertaken. TikTok UK’s evidence is, however, that the notice represents one of the largest *single* regulatory information requests it has faced in the UK or EU.
146. Ms Rogers KC’s advocacy expanded on this picture in terms of the prodigious quantity of information being generated in real time by users of X’s platform, and hence the size of the task demanded by the information notices. But arguments from absolutes of scale or volume raise as many questions as they answer for a proportionality assessment. It is precisely the sheer scale of traffic on each Claimant’s platform that creates the commensurate levels of risk that OFCOM seeks to measure, address and monitor – and in relation to which the OSA places direct duties on providers themselves to identify and manage risk, including where appropriate by adapting their systems and models to the task. A proportionality assessment is concerned with comparative relativities, not isolated absolutes. Large-scale data (and risk) generation might, all else being equal, be *expected* to raise a commensurate regulatory burden in accounting for it by the provision of quantitative measurements. A new regulatory regime with a stated objective to create a world-leading standard of online safety could be *expected* to ask commensurately more of the industry than it had previously been used to. The court has been given relatively little in the way of evidence that the burdens in fact being imposed by the notices challenged are out of kilter with fair expected commensuration.
147. The present proportionality assessment is an exercise in gauging commensuration – comparing the relative scale of an increased resource overhead for a business, which is demonstrably attributable to the specific decisions challenged, with the relative scale of OFCOM’s new regulatory objectives, to which they are accepted to be rationally connected. These relativities are hard to gauge from the evidence provided by the Claimants, whether in OFCOM’s consultation exercises or in these judicial review proceedings. Their evidence does not sufficiently provide the sort of differential factual information against a clear baseline which is capable of demonstrating an identifiable resource impact specifically attributable to compliance with an individual notice.
148. It provides, instead, a clear illustration of the problem of ‘information asymmetry’ with which OFCOM has been contending. The Claimants have had every opportunity to assist both OFCOM and the court with clear, contextualised and transparent differential costings, capable of being weighed substantively in the balance on the side of burden. No-one else can do that. The court can only act

on such evidence as it is given. It cannot give significant weight to generalised and allusive objections to scale of burden insufficiently tethered to business and regulatory resource baselines.

(iii) OFCOM's evidence, and the issue of deference

149. On the question of general approach, Mr Herberg KC took the court to the principles set out at [131] of the judgment of Freedman J in *NPower Direct v Gas and Electricity Markets Authority* [2018] EWHC 3576 (Admin). These include (a) that the proportionality of a measure taken by a regulator must be evaluated in its full context; (b) that a wide margin of appreciation should be allowed to a regulator and a court should be slow to displace its expert views; (c) that the margin of appreciation extends not only to the decision challenged but also to the assessment of its proportionality (both the methodology underpinning the decision and the balancing of its aims against any adverse effects); (d) the intrusiveness of the measure is simply one factor to be taken into account; and (e) *“in assessing the adequacy of the regulator’s analysis, a court should read that analysis generously and not every perceived deficiency in that analysis requires or permits that the measure be quashed: there is a question of materiality”*.
150. Mr Herberg KC further took the Court to the endorsement of that approach by the Court of Appeal in *JT v First Tier Tribunal* [2018] EWCA Civ 1735, [2019] 1 WLR 1313 at [90]. An *important* factor will be the extent to which the values or interests relevant to the proportionality assessment were actually considered by the decision-maker; the weight given by a court to that assessment will vary accordingly.
151. The evidence of the decision-maker, Mr Finer, sets out OFCOM’s own approach to and assessment of proportionality at some length, and the court was taken to the tabular ‘proportionality assessment’ undertaken before the notices were issued in November 2025 and again in February 2026 referred to above. The table sets out against each question asked in the notices an assessment of the necessity and sufficiency of the information sought for OFCOM’s regulatory purposes, noting the feedback provided by each platform provider, including as to any problems about data availability, the effort needed to provide it and what OFCOM had been told about the burdens involved.
152. OFCOM’s tabular proportionality assessment is criticised by the Claimants for a lack of rigour, or completeness, or specificity. On its face, it reads to the court as a record of a conscientious exercise in addressing proportionality with such material as had been made available. That material was limited. OFCOM’s perspective is that any deficiency on that score was wholly a function of the shortcomings in the Claimants’ engagement with the consultation exercises.
153. The evidence is that OFCOM, in other words, had been proactively pursuing information from the Claimants about the extent of the burden imposed by the notices. It was inevitably reliant on the Claimants for that information. The information they provided varied both as to its specificity and its relevance. OFCOM sought to respond to the most specific and relevant, including by way of revising the draft notices with a focus on reducing their burdensomeness where

it assessed that to be consistent with pursuing its objective by less intrusive (resource-intensive) means.

154. There is also the ‘moving target’ point noted above. Mr Herberg KC took the Court to [632] of the judgment of Green J in *R (British American Tobacco) v Secretary of State for Health* [2016] EWHC 1169 (Admin), [2016] ETMR 38 on the reconciliation of due deference with the assessment of new evidence postdating the decision to which deference is owed. The relevant factors should be re-tested by a court against all the evidence as it subsequently appears, and any appropriate adjustments made.
155. Here, the evidence before the court is that OFCOM not only gave its professional mind to the assessment of proportionality at the time, insofar as it was put in a position to do so, but has continued *itself* to keep that assessment actively under review. Mr Finer’s evidence is that OFCOM stands ready to engage on a continuing basis with any provider that encounters compliance difficulties and provides evidence of unexpected resource or other overheads. It accepts that its own evaluation of proportionality has to be an ongoing, iterative and responsive process. The novelty of the exercise inevitably makes it to some degree unpredictable and adaptive, requiring an irreducible amount of learning by both sides in real time along the way. This is evidence of a pragmatic and constructive approach by OFCOM that the court can and does accept and give weight to in the overall balance.

(iv) Proportionality - conclusions

156. The court’s task on this challenge is to form a view, based on the materials the parties have placed before it, of whether the notices challenged strike a fair balance between the burden they place on a Claimant as against the importance of the objective OFCOM was pursuing and the extent to which the notices contributed to it.
157. We accept OFCOM’s evidence as to the importance of the objective it pursued. It is not materially disputed, and the legislative context and history speaks for itself. Although an argument was advanced that less burdensome notices could have been issued without compromising those objectives, that proposition was not developed in any detail in evidence or submissions. The challenge made in these proceedings is not squarely based on taking issue with the detail of OFCOM’s responses to such issues of onerousness as were specifically put to it on a reasoned and evidenced basis in the course of the consultation exercise. That would have been a different kind of challenge, focusing on the processes by which OFCOM reached its decision on the detail of the notices. A general assertion that less burdensome notices could have been issued without unduly detracting from their usefulness will not do.
158. We note, and give some weight to, the features of the notices to which Ms Rogers KC particularly drew our attention. They are mandatory and contain a degree of retroactivity. We consider, however, that the relevance of the matters of potential future repetition of requests, and sanction for non-compliance, to proportionality are for another day, to be considered in context if and when they arise.

159. The court is entitled to, and does, accept and give weight to the contemporary and witness evidence that OFCOM actively sought information from each Claimant about the potential burden on its business of each information notice, and that it worked attentively and professionally with the information it was provided with. We agree that such deficiencies as appeared in that information at the time were matters the Claimants themselves had the opportunity and responsibility to address and of which they cannot fairly complain in all the circumstances.
160. We accept that a wide margin of appreciation is due to OFCOM as an independent professional regulator in this matter, and that the evidence of its engagement with a process of continuous and responsive review of proportionality enhances the deference due to its conduct of that function.
161. However, we do not in the end consider it necessary to rely on any significant degree of deference to OFCOM's own decision-making. Standing back and considering the overall fairness of the balance struck in these notices simply from the viewpoint of proportionality between the evidence of benefit and of burden before us, what stands out is the relative lack of pertinent substance in the Claimants' evidence. It does not get sufficiently to grips with the demands of a proportionality exercise. It does not sufficiently identify the necessary baselines or differential resource impact. We do not assess it as capable of bringing the overall balance down on the side of the disproportionality of any of the notices. No finding of a lack of overall fairness is therefore sustainable on the materials before the court.
162. In these circumstances, and for these reasons, although we grant permission to advance this ground of judicial review, we reject the proportionality challenge on its merits.

Issue 9

163. For the purposes of section 6(1) of the HRA:
 - (a) Do the notices constitute an interference with X and TikTok UK's rights under A1P1 of the ECHR? It is common ground that the notices constitute an interference with Article 8(1) of the ECHR.
 - (b) Was the interference with X and TikTok UK's rights under Article 8(1), and any interference with their rights under A1P1, in accordance with the law?
 - (c) If any such interference was in accordance with the law, did it comply with the principle of proportionality?
164. It is unnecessary to address these issues at length, just as the parties' written and oral submissions did not do so. This is because, first, it is common ground that there was an interference with Article 8(1) and it will therefore make no material difference if there was also an interference with A1P1; secondly, the argument that any interference was not in accordance with the law depends entirely on the purely domestic law arguments, which we have already considered above – there is no suggestion, as there is in some cases, that, even if there was compliance with domestic law, there was

nevertheless a distinct breach of the autonomous Convention concept relating to the “quality” of domestic law; and, thirdly, it is common ground that the concept of proportionality under the HRA is not materially different from the statutory concept of proportionality in s.100(4) of the OSA. Accordingly, the outcome of these cases will not turn on any of the issues specifically raised under the HRA. For the reasons we have set out above, we do not accept that there was a breach of the principle of proportionality. There was therefore no breach of the HRA.

165. Nevertheless, since X and TikTok UK have raised an issue which has not been addressed above, namely whether there has been an interference with their rights under A1P1, we will briefly address that issue.
166. As is well established, A1P1 has three limbs: first, it creates what is in essence a right to private property (“the peaceful enjoyment of possessions”); secondly, it governs the “deprivation” of property; and, thirdly, it regulates the “control of use” of property.
167. In our view, the notices certainly do not constitute a deprivation of any property. As Mr Herberg KC submits, X and TikTok UK continue to have the information which belongs to them, it continues to retain its confidential character and they are not (pursuant to the notices) required to publish it. Although OFCOM submits that there is no control of use of the information either, we can see force in the argument that there is. This is because the notices do require the owner of the information to do something with it: this inevitably takes time and involves some cost, as the information has to be gathered and provided to OFCOM. Furthermore, the owner of information would otherwise be at liberty to destroy the information. Nevertheless, we accept OFCOM’s alternative submission that any control of use of property in this context is “minimal”. This is relevant to the assessment of proportionality.
168. Further, and in any event, we are satisfied that any control of use of property in this context is in the general interest and is proportionate, for the reasons already set out above.
169. For those reasons, although we grant permission to advance the grounds of judicial review under Issues 8 and 9, we reject them on their merits.

F: Permission and relief: conclusions

170. For the reasons set out above, and turning specifically to Issue 10, we refuse permission to advance the grounds which arise under Issues 1, 2, 3, 4, 5, 6 and 7. We grant permission to advance the grounds which arise under Issues 8 and 9 but dismiss the claims for judicial review on those grounds.
171. In the light of those conclusions, Issue 11 does not arise.