Consultation response form

Please complete this form in full and return to OS-Transparency@Ofcom.org.uk

Consultation title	Consultation: Transparency Guidance
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Confidentiality

We ask for your contact details along with your response so that we can engage with you on this consultation. For further information about how Ofcom handles your personal information and your corresponding rights, see Ofcom general privacy statement

Your details: We will keep your contact number and email address confidential. Is there anything else you want to keep confidential? Delete as appropriate.	Nothing
We will publish responses to this consultation on our website. Please indicate how much of your response you want to keep confidential (i.e. not published by Ofcom). Delete as appropriate.	None
We may want to reference your response in future publications (including our statement). For confidential responses, can Ofcom publish a reference to the contents of your response?	N/A

Your response

Question	Your response

We welcome input from industry on the areas listed below. We encourage stakeholders to respond with feedback so that we can ensure that the guidance helps providers and other stakeholders understand:	
A) Ofcom's powers and providers' duties for transparency reporting, as well as Ofcom's approach to implementing the transparency regime. B) Ofcom's approach for determining what information service providers should produce in their transparency reports. C) Ofcom's plans to engage with providers prior to issuing transparency notices, and on what matters, and whether the proposed engagement plan will be sufficient for helping services to comply with their duties. D) Ofcom's plans to use the information in providers' transparency reports in Ofcom's own transparency reports.	(B) Ofcom's approach does not provide sufficient clarity over the reporting required and this could unnecessarily raise the overall cost of compliance (ultimately borne by consumers in the form of higher quality-adjusted prices). Its priorities should be for reporting that is (as far as possible) consistent across services; repeatable from year to year; predictable such that organisations can ensure they have the required data in advance; and avoiding requirements to disclose commercially sensitive information. (D) To the extent that Ofcom either names a specific company in its transparency reporting or produces results based closely on that company's submissions, it should commit to consult ahead of publication with that company to avoid any unnecessary misunderstandings around the information disclosed or wider context (e.g. reasons for any changes over time) and enable companies to support the identification of information that should be redacted.
Are there any aspects in the draft guidance where it would be helpful for additional detail or clarity to be provided?	Ofcom should aim to match or better the clarity provided in the EU Digital Services Act, where there are set timeframes and relatively clear descriptions of the content required (with ongoing efforts to ensure the templates being set up by secondary legislation are sufficiently clear). This would not necessarily imply a lack of flexibility for Ofcom if it does need to adapt requirements over time, but any changes should be: ● consistent across regulated companies with similar business models (this will also lower costs for Ofcom, avoiding the need to develop specific requirements for multiple services); and

	● communicated well in advance (particularly to the extent that data might be required which is challenging to reconstruct from historical records).
Are the suggested engagement activities set out in the draft guidance sufficient for providers to understand their duties and Ofcom's expectations?	As noted above, to the extent that Ofcom either names a specific company in its transparency reporting or produces results based closely on its results, it should commit to consult ahead of publication with that company to avoid any unnecessary misunderstandings around the information disclosed or wider context (e.g. reasons for any changes over time).

Question	Your response
We are also seeking input that will help us understand if there are other matters that Ofcom should consider in our approach to determining the notices, beyond those that we set out in the guidance. The questions below seek input about any additional factors Ofcom should take into account in various stages of the process, including: to inform the content of transparency notices; in determining the format of providers' transparency reports; and how the capacity of a provider can be best determined and evidenced.	
Are there any other factors that Ofcom might consider in our approach to determining the contents of notices that are not set out in the draft guidance?	Ofcom should consider the context for certain functionalities. Recommender algorithms, for example, cover a very broad range of content, goods and services that might be recommended with diverse risks and benefits. Related to this, Ofcom should consider the extent to which organisations are fulfilling similar roles to offline businesses and it might inadvertently create an unwarranted disparity in regulation between "digital" and legacy businesses.
Is there anything that Ofcom should have regard to (other than the factors discussed in the draft guidance) that may be relevant to the production of provider transparency reports? This might include factors that we should consider when deciding how much time to give providers to publish their transparency reports.	Providers are likely to require more time to the extent that: ● the information required is fundamentally challenging, not reflecting information gathered in the course of normal commercial or trust and safety activity; ● the information required is novel, not required under similar regulatory regimes internationally or in previous years in the UK; and particularly

	● to the extent the information required is historical, requiring companies to establish information about previous years

The latter case is also where misleading results are most likely, as information not collected for this purpose may not be recorded consistently over time). Backward-looking requests should therefore generally be avoided where possible. |
| What are the anticipated dependencies for producing transparency reports including in relation to any internal administrative processes and governance which may affect the timelines for producing reports? What information would be most useful for Ofcom to consider when assessing a provider's "capacity", by which we mean, the financial resources of the provider, and the level of technical expertise which is available to the service provider given its size and financial resources? | While Ofcom should be conscious of not imposing a regulatory cost burden that is impractical for smaller respondents, this should not be seen as a rationale to impose open-ended regulatory requirements on platforms with more sophisticated trust and safety capabilities. Regulatory information gathering will still complicate and compete with innovation and other valuable activity at larger companies.

The capacity of some companies to respond may reflect investments in trust and safety and/or genuine efficiencies which should not be penalised. Otherwise, there is a risk that Ofcom inadvertently deters investment in effective governance infrastructure for trust and safety within companies. |
| Are there any matters within Schedule 8, Parts 1 and 2 of Act that may pose risks relating to confidentiality or commercial sensitivity as regards service providers, services or service users if published? | Yes.
● Information about users could create risks relating to confidentiality particularly to the extent some reporting might address relatively rare events, making anonymisation challenging. This is best addressed through consultation with affected platforms (including after information has been requested but before any publication).

● Information about recommendation algorithms or how platforms moderate content is sensitive both as an asset many businesses have invested to develop, often a basis for competition between services, and because revealing how those algorithms |

	function can make it easier for commercial and/or malicious actors to manipulate those algorithms (undermining their function).

Question	Your response
Finally, we are also seeking input into any matter that may be helpful for ensuring Ofcom's transparency reports are useful and accessible.	
Beyond the requirements of the Act, are there any forms of insight that it would be useful for Ofcom to include in our own transparency reports? Why would that information be useful and how could you or a third party use it?	No response.
Do you have any comment on the most useful format(s) of services' transparency reports or Ofcom's transparency reports? How can Ofcom ensure that its own transparency reports are accessible? Provide specific evidence, if possible, of which formats are particularly effective for which audiences.	No response.

Question	Your response
Please provide any other comments you may have.	
General comments	No response.

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