

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.	N/A
Are there any aspects in the draft guidance where it would be helpful for additional detail or clarity to be provided?	N/A
Are the suggested engagement activities set out in the draft guidance sufficient for providers to understand their duties and Ofcom's expectations?	N/A

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factors that Ofcom might consider in our approach to determining the contents of notices that are not set out in the draft guidance?	Confidential? – N The requirement for services to produce an annual transparency report is a crucial feature of the new online safety regime. As Ofcom

	recognises,¹ these powers have the potential to benefit many stakeholders – from the public wishing to learn more about the services they use, to researchers investigating a specific aspect of a service, and civil society organisations using this information to better represent the citizens they seek to represent. However as currently drafted, these proposals risk limiting transparency and provide tech companies – who have form for withholding or obfuscating information from the public² – a means to reduce the content of their disclosures to the regulator. As currently constituted, these notices will not go far enough to rebalance the asymmetry of information between tech companies, regulators, users and the public. To ensure that transparency reports are effective tools for not only understanding how services operate, but holding them to account, Ofcom must address the following gaps in its proposals: General approach and outcomes In setting out its approach to transparency reports, Ofcom highlights four key outcomes for these proposals, which is reflective of its wider online safety strategy:³ stronger safety governance; designing and operating services with safety in mind; giving users more meaningful choice/control over their online experiences; and greater transparency of safety measures. Although this is Ofcom’s state aim, the guidance limits Ofcom’s ability to ambitiously and expansively achieve these outcomes. This includes where it states Ofcom will:
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¹ See: Ofcom (2024) [Consultation on transparency guidance](#), pp. 8-9

² [Testimony from Frances Haugen](#) (p. 2) reveals Facebook leadership “keeps vital information from the public, U.S. government, its shareholders and governments around the world” and “has repeatedly misled us about what its own research reveals about the safety of children.” Tech companies were also obstructive in the [Molly Russell inquest](#), which concluded she had died from “an act of self-harm whilst suffering from depression and the negative effects of on-line content” and took five years to conclude.

³ [Consultation on transparency guidance](#), p.7

	• “Only consider requesting information necessary for the purpose of helping us meet our aims and policy objectives”; • Ensure requirements are not “unduly onerous” on services; • Use risk profiles to “narrow the topics of information” required by services to report on; and • Not require services to report on “information about duties is not required to comply with.”⁴ These caveats risk restricting the efficacy of the wider transparency programme. Harm reduction is a central principle that should apply to Ofcom’s approach to transparency reporting. This was a key recommendation from Meta whistleblower Arturo Bejar, who has said companies “need to be compelled by regulators and policymakers to be transparent about these harms and what they are doing to address them.”⁵ The transparency reporting powers are a key lever for Ofcom, and these must be used drive positive changes for children and young people in the digital world. Small, high-risk services Ofcom’s approach to proportionality must also make clear how transparency reporting applies to small, high-risk services. In its draft guidance, Ofcom notes that the functionalities of the service, the number of users of the service and the capacity of the provider are all factors it will consider in issuing its transparency reports. It also notes that “while we may place more or less weight on any of these factors in a given case, none of the above takes precedence over others listed.”⁶ Ofcom must be clear in its guidance that, where the presence of a small user base interacting
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⁴ See: Ofcom (2024) 3.11 & 3.14, [Annex A: Transparency Guidance](#)

⁵ [Written Testimony of Arturo Bejar before the Subcommittee on Privacy, Technology, and the Law](#) (7 November 2023)

⁶ [Annex A](#), 3.13

	with certain features and functionalities demonstrates an appreciable risk to children, that this is given more weight than the capacity of the service. This is crucial for ensuring that services are held accountable, and that Ofcom can draw to attention the immediate and pressing nature of risks on these services. Specificity of responses The questions forming the basis for a transparency report, listed in Schedule 8 of the Act,⁷ are relatively broad – as is what Ofcom can ask companies to provide in a report. Yet, the guidance does not specify the extent of detail which it will expect to receive from services. This risks broad questions being met with broad responses, which ultimately offers very little transparency for stakeholders, nor does it assist Ofcom in its work. Further, it is unclear if material requested under the transparency reporting powers will be specific enough to understand the effectiveness of safety measures and harm reduction action being taken by service providers. There is emerging evidence about current limitations in transparency reporting, both voluntary and in other jurisdictions, in which companies have been able to deem themselves “transparent” despite not providing full or accurate detail – including in the increasing volume of cases from the US. A full list of this evidence is provided in the response submitted by the Online Safety Act Network.⁸ It is important that responses include not just numerical data on the incidence of content covered by the Act,⁹ but also additional context or granular information to understand the factors driving incidences. This is crucial also to understanding how service design drives harm, in particular to children.
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⁷ [Schedule 8, Online Safety Act](#)

⁸ See: Online Safety Act Network (2024) Response to Ofcom Consultation on Draft Transparency Guidance

⁹ Schedule 8(1), Online Safety Act 2023 requires services to report “The incidence of illegal content, content that is harmful to children, relevant content and content to which section 15(2) applies on a service.”

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.

Confidential? – N

It is important that the process for issuing notices for reports is also transparent and that all relevant stakeholders can meaningfully feed into the process.

Pre-engagement with service providers

We are concerned that the process for issuing transparency notices could be used to obfuscate or limit disclosures by tech companies.

Step 2 of the process, whereby providers of regulated services may make written representations based on the draft transparency notice, allows companies to make “evidence-based written representations” about what proposed information will be included in the report. This allows tech companies an opportunity to water down or remove disclosures in its transparency requirements which, paradoxically, will make the process less transparent.

We recommend that where a tech company deems that a request pertaining to a transparency report is not considered technically feasible, this is disclosed publicly. This will ensure that requests are transparent as possible to stakeholders outside of this process, including civil society organisations, researchers and the public.

The role of civil society, researchers, subject matter specialists and users

We welcome that Ofcom has signalled its intention to engage more widely with academics, civil society organisations, experts and users during the transparency reporting process.

To maximise the utility of transparency reports, establishing a collaborative approach that consults as many relevant stakeholders as possible is essential. Ofcom has the ability to engage in different ways with stakeholders,¹⁰ and the outcomes of these engagements

¹⁰ See: Consultation document, 3.38

	should inform the transparency work. For example, roundtables can provide civil society organisations an effective means to communicate key concerns and offer solutions. However, more widely it is also important to consider the limited resources available to civil society organisations. It may be most effective to hold these sessions prior to Ofcom's issuing of transparency notices each year, in order to gauge priorities for researchers and civil society organisations.
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?	Confidential? – N While small providers may need more support from Ofcom in responding to transparency notices, it is important that the primary consideration for reporting timelines is based on the immediate level of risk a service poses to children's safety.
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?	Confidential? – N Matters relating to confidentiality or commercial sensitivity should not constrain Ofcom from being able to reflect on relevant findings that emerge from transparency reports. Ofcom notes that, in issuing a draft notice, it "will typically have to balance the provider's concerns around publication, including possible harm to legitimate business interests."¹¹ We do not think, where there is a public interest incentive, or where companies have repeatedly failed to keep children safe, that business interests should be the overwhelming priority.

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.	

¹¹ 4.14, [Annex A](#)

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?	Confidential? – N We welcome Ofcom’s commitment for its own transparency report to “shine a light” on good practice and poor practice. This is a crucial element of the transparency reporting guidance in ensuring tech companies can be held to account. On this note, we wish to emphasise the importance of highlighting bad practice in a meaningful way so that this information can then be used to further inform the online safety regime, such as in future codes of practice or guidance.
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.	N/A

Question	Your response
Please provide any other comments you may have.	
General comments	N/A

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