| Question | Your response |
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| **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.<br><br>B) Ofcom's approach for determining what information service providers should produce in their transparency reports.<br><br>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.<br><br>D) Ofcom's plans to use the information in providers' transparency reports in Ofcom's own transparency reports. | Confidential? – /N<br><br>A). 1.. There are 36 areas of a Provider's operation that can be called upon to be in a Transparency Report. It is so wide-ranging and broad most providers will give up and it will take an excessive amount of Ofcom time to nurture the response they want. The design and implementation of the Transparency Reporting requirements would benefit from testing first with some providers to find out what could work. Not sure this Transparency Reporting regime as currently configured will deliver much practical response from Providers.<br><br>2.. There is no definition of 'safe' or 'safety' in this guidance or in OSA2023. Which means there is no meaningful criteria to report against. Thus all the time and effort expended by all parties will likely be unproductive and may even increase confusion and risks.<br><br>B). See response at A). |
| Are there any aspects in the draft guidance where it would be helpful for additional detail or clarity to be provided? | Confidential? – /N<br><br>3.. What are/were the Design, Manufacture and distribution [of algorithm] approaches used? Have these been documented? |
| Are the suggested engagement activities set out in the draft guidance sufficient for providers to understand their duties and Ofcom's expectations? | Confidential? – /N<br><br>4.. There are 32 occurrences of the word 'engagement' in the two consultation documents. Engagement is discussed in general terms and apart from gleaning that it might involve draft notices, the reader is not left with a clear insight as to what engagement is, nor why it is so important that it be included in consultation questions. |

| Question | Your response |
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| **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 |
| | 5.. The guidance does not have anything to say on what a good machine (the Platform's or Service's system of algorithms) needs to have attention paid to, in order to be good. (Good ultimately means the machine is Fit for Purpose and Safe when in use). |
| | Note1: it is of concern that 35 out of 36 items in Schedule 8 (Item 27 is excepted) are only about what people do, in isolation to what the machine is doing. It seems people's action is at arms length to the machine(s) they are meant to be managing or using. This means that risks and harms will not receive the full attention they need. |
| | Note2: Item 27 is the only item out of 36 with any focus on the machine's action. Sadly this item is only interested in the machine's action in the case(s) where there is harm to children. i.e. the Failure condition. There is no request for input on the Success condition of the machine anywhere in Schedule 8. Ofcom is asked to consider how Platforms could be incentivised to achieve success and not just to avoid failure. The absence of failure is not the same as securing success. Or to quote Aisha Tyler (American actress and talk show host) "Success is not the absence of failure; it's the persistence through failure." |
| 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? – Y/N |
| What are the anticipated dependencies for producing transparency reports including in | Confidential? – Y/N |

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| 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? | |
| 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? | |

| 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? | Confidential? – Y/N |
| 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. | Confidential? – Y/N |

| Question | Your response |
|---|---|
| **Please provide any other comments you may have.** | |
| General comments | Confidential? – /N

6.. The whole of the Ofcom approach is stated as including: "*we are committed to an approach that, so far as possible: (ii) ensures online services are designed and operated with safety in mind …*" (Annex A: Transparency Guidance Para 3.6) This is considered laudable yet ineffective if the service is not required to first |

| | be Fit for Purpose(FFP). This guidance does not have fitness for purpose of services as its most important objective; without this being defined, safety performance cannot be measured or assessed as having been achieved or not. Thus, whilst 'safety can be held in mind' this is no guarantee any reporting or follow on action will improve the safety of users. Para 3.17 encourages platforms to respond to safety according to the size of their user base. This is a completely erroneous metric. A platform is either safe or it is not. Its size should not be a factor as far as the regulator is concerned; that should be a matter for the platform, balancing commercial and other risks vs reward in the process. |
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| | 7.. Main doc para 3.15. This [analysis] mechanism proposed by Ofcom is unlikely to work without at least some of the Platforms achieving a Fit for Purpose and Safe status, that could be considered good. |
| | 8.. Para 3.28 refers to "specific issue" which seems in conflict with para 2.11 reference to Schedule 8 "matters are broad" in respect of safety. |
| | 9.. Para 3.31 and Fig 3 is all Lagging, i.e. action or conclusions after harm has occurred. The regulator and the platform need to be tackling the 'algorithmic machine' action itself as it is this that is yielding the bad outcomes or not. |
| | 10.. Para 3.38d, implies the 'waiting for harm experiences' to provide a basis for action. Again this is Lagging and not what the public wants. |
| | 11.. Para A1-A18 on Impact Assessments appears to be incomplete as it does not contain any financial information or metrics. Therefore the resultant conclusions necessarily must be subjective and not objective; something the platforms could use as a basis to object to the whole of this proposal. There is no reference to Government Procedures for Impact Assessments, which were established back in 1992. Impact Assessments at this level are also |

| | known as Regulatory Impact Assessments. Ofcom is asked here whether the Regulatory Policy Committee (RPC) [which oversees regulatory proposals] has approved this Impact Assessment? |
| | 12.. Our concluding thought is that, while we greatly appreciate the effort which Ofcom has put into the Draft Transparency Guidance, and we recognise that Ofcom has been given the vast task of making the online realm safe for users, we consider it unlikely that UK users will be safer as a result of the proposed Transparency Reporting regime. |
| | The offline realm of workplace regulation (under the Health and Safety at Work etc Act 1974) has been similarly challenged for the last 50 years to address issues of product manufacturing and safety of users and workers. |
| | Schedule 8 of OSA2023 does not provide for sufficient enforcement to correct dangerous platforms, services and their algorithms. Risks and harms to operators and users are likely to rise largely unchecked.  Whilst attention to policies by platform operators is needed [as indicated by Schedule 8], we consider that attention must also be given to their design and manufacturing responsibilities. |
| | Ofcom's Transparency Reporting regime provides an ideal engagement opportunity for service providers to clearly articulate what it is about their design and manufacture processes [as well as final product] that makes their service fit for purpose and good for users, as well as how safe users are from experiencing bad outcomes.  Platform suitability for users is not just about 'harm reduction'; it needs to include the primary feature of 'user benefit amplification'. |

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