

## Your response

Question	Your response
<p><b>Question 1:</b> Do you agree with our proposals in this section? Please explain your reasons and provide any relevant supporting evidence.</p>	<p>Confidential? – Y / N</p> <p>We welcome the opportunity to respond to Ofcom’s consultation on the regulator’s three-year media literacy strategy. Like Ofcom, we believe that media literacy is one of the best ways to ensure people are able to navigate the internet in the modern age and we share Ofcom’s desire to make this a part of our UK online safety strategy. However, we have taken the opportunity to respond to this consultation in a way which raises potential threats to human rights, including freedom of expression and civil liberties, in keeping with our responses to other Ofcom consultations on the new Online Safety regulatory framework. Our response signposts our concerns with the consultation document where they arise.</p> <p>We are concerned about the proposal to test what messaging is most effective at challenging mis/disinformation among vulnerable cohorts (paragraph 2.6).</p> <p>The strategy is drawn vaguely in a way that makes it unclear whether it is envisaged that such “tests” will be covert and conducted in real-life online settings or in simulated research settings. This raises a number of questions which Ofcom must answer. In particular,</p>

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	<p>we have fundamental concerns about the potential covert targeting of individuals to “navigate the challenges of mis and disinformation.” The proposal also raises questions about who will carry out this targeted messaging, the content of any messages and which individuals will be targeted on the basis that they belong to a ‘vulnerable cohort.’</p> <p>Last year, Big Brother Watch published a report into a number of opaque government units, tasked with combatting disinformation online. One such body, the Research Information and Communications Unit (RICU) was tasked with combatting extremism online. Big Brother Watch’s research into RICU revealed that the unit contracted PR companies to create front social media outlets that posted Home Office-approved content targeting minority communities.<sup>1</sup> These front organisations coordinated with ostensibly independent community organisations and civil society groups to push their messaging online, often without disclosing their government connection. RICU’s covert practices, which sought to influence and manipulate users’ online experience, interfered with the democratic free expression rights of those targeted. The unit’s commissioning of community groups to artificially elevate certain narratives, whilst maintaining the veneer of authenticity, only</p>

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<sup>1</sup> Big Brother Watch, Ministry of Truth Report, January 2023, <https://bigbrotherwatch.org.uk/wp-content/uploads/2023/01/Ministry-of-Truth-Big-Brother-Watch-290123.pdf> .

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	<p>served to damage trust and weaken the influence of these organisations in the long-term. If conducted in secret, Ofcom’s proposals regarding message testing and disinformation could engage the right to free expression in a similar way and therefore more information about what is proposed is needed.</p> <p>Should the range of “robust and innovative methods” used by Ofcom include producing its own content or commissioning third parties to “test what messages might work best” this would give rise to concerns similar to those we have previously raised with regard to RICU’s output. Similarly, proposals to test “from whom those messages come” indicates that Ofcom is open to partnering with community groups to amplify their messaging. If this is conducted in the absence of transparency, there is a risk that such collaborations would result in a loss of faith in the independence of the groups commissioned. Though the proposal is couched in the language of “help[ing] vulnerable cohorts,” excessive targeting and manipulation of marginalised and minority demographics could, in our view, result in disproportionate profiling of vulnerable groups and perpetuate further distrust.</p> <p>Alternatively, if the testing is conducted in simulated settings for research purposes, this nonetheless</p>

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	<p>raises questions about how its findings will be applied in real-life online settings. Ofcom must give further detail regarding how this would work.</p> <p>Set out elsewhere in Ofcom’s media literacy strategy, is a focus on offering resources and educational initiatives to provide users with the ability to decide for themselves how to engage with material online. If the proposals set out at paragraph 2.6 are intended to be applied in an online context in order to both monitor and directly impact upon the online information environment, this could have a bearing on the trust and digital rights of those involved. Ofcom must give greater clarity over the proposals set out in paragraph 2.6 and the proposal should be narrowed in scope to exclude any of these adverse scenarios.</p> <p>Paragraph 2.8 states that Ofcom will explore “how to best signpost potential technology solutions (such as watermarking or third-party plug-ins such as NewsGuard) in [their] suite of resources.”</p> <p>Whilst fact-checking services can play a role in combatting mis and disinformation online with less so-called “friction” than other more direct content moderation solutions, fact-checking can give rise to freedom of expression considerations. The promotion of</p>

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	<p>third-party fact-checking and disinformation regulated plug-ins engages issues about who conducts the fact-checking, based on what evidence, and whom they are funded by. Fact-checking labels can be editorial in nature or discredit otherwise trustworthy voices. For example, fact-checking services have made pronouncements on the veracity of information which have actively contradicted the perspectives of experts.</p> <p>One such example is an article published in the Spectator in November 2020, in which Oxford University Professor of Evidenced-Based Medicine, Carl Heneghan, queried the efficacy of face masks during the COVID-19 pandemic.<sup>2</sup> Independent fact-checkers working for Facebook determined it was “false information” in a decision which has clear ramifications for free expression and academic freedom. In a House of Lords Communications and Digital Committee, the then Chair of the Committee, Lord Gilbert, noted that a fact-checker would have to be highly qualified in order to determine the view of other experts on important matters of public health.<sup>3</sup></p> <p>Similarly, in February 2021, an article published by award-winning investigative reporter, Ian Birrell</p>

<sup>2</sup> Big Brother Watch, The State of Free Speech Online Report, September 2021, <https://bigbrotherwatch.org.uk/wp-content/uploads/2021/09/The-State-of-Free-Speech-Online-1.pdf>.

<sup>3</sup> House of Lords Communications and Digital Committee, Parliament TV, 27 April 2021, <https://parliament-live.tv/event/index/cdcfad9-6594-4e3a-99d5-37645b55c935>.

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	<p>which criticised the WHO's investigation into the origins of COVID-19 was flagged by Facebook fact-checkers as "false information."<sup>4</sup> Such examples clearly discredit the notion that fact-checking is neutral and demonstrate its potential to repress journalistic activity, which services are under a duty to take into account under section 19 of the Online Safety Act 2023.</p> <p>Private for-profit companies – with their own agendas and biases – should not be formally tasked by Ofcom with assessing the veracity or reliability of information.</p> <p>It is our position that internet users themselves should be responsible for managing the highly subjective task of evaluating the reliability and veracity of information that they encounter online. This may be through conducting further research or by accessing sources of reliable information online which platforms often choose to promote.</p> <p>Any signposting of third-party resources should therefore be characterised as entirely optional and come with warnings about their limitations.</p>

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<sup>4</sup> Big Brother Watch, (n 2), p29.

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<p><b>Question 2:</b> Do you agree with our proposals in this section for working with platforms? Please explain your reasons and provide any relevant supporting evidence</p>	<p>Confidential? – Y / N</p> <p>We are concerned about the proposals at paragraph 3.3 which cite the current use of “pop-ups and notifications” by some platforms and online services as examples of good practice of media literacy support for users.</p> <p>This gives rise to similar concerns as set out above. Given that following Ofcom’s codes of practice is a prescribed method of achieving compliance with the Online Safety Act 2023, online services and platforms will be minded to take its recommendations seriously. Ofcom’s commendation of making use of “pop-ups and notifications” is therefore likely to be adopted, whether managed in-house by those platforms themselves or outsourced to third-parties.</p> <p>It is our view that neither tech companies, nor third party “fact-checkers” are best placed to evaluate the reliability of information. Information which is flagged and considered false may later turn out to be not so contestable or even true as a result of the development of knowledge. Meanwhile, online information can even be labelled as mis or disinformation for political reasons. Big Brother Watch’s 2021 report on the State of Free Speech Online examined the restriction of lawful content on Facebook which was al-</p>

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	<p>leged to be misleading. On 8 February 2021, the platform announced that it would remove “debunked claims about the coronavirus and vaccines.”<sup>5</sup> This included the claim that COVID-19 was man-made or manufactured and resulted in the removal and censorship of online expression that considered the origins of COVID-19. Only once The White House announced an investigation into the origins of the virus, which legitimised the theory, were these rules lifted by Facebook demonstrating that moderation and “fact-checking” can be impacted by political influence. Making tech companies and private third party companies the arbiters of fact clearly threatens to restrict debate and politicise what constitutes false or harmful information.</p> <p>Additionally, it is often difficult to label information online with simplistic warnings given that the information landscape is rarely black and white. Information may be true in part, or based on truth, rather than blatantly false. We propose that a more appropriate solution would be to counter certain viewpoints with more speech.</p> <p>For these reasons we caution the prescription of fact-checking interventions which may have some bear-</p>

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<sup>5</sup>Big Brother Watch, (n 4), pp24-25

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	<p>ing on free expression and the free flow of information online.</p> <p>Paragraph 3.7 of the strategy encourages online services to adopt Ofcom’s Best Practice Principles for Media Literacy by Design<sup>6</sup> (“Best Practice Principles”). Paragraph 1 of the Best Practice Principles recommends “on-platform interventions... as part of preventative strategies in addressing potential harms.” For the reasons stated above, we oppose the adoption of an approach which could have some bearing on the right to freedom of expression or the free flow of information.</p> <p>The suggestion at paragraph 3.9 that Ofcom will “encourag[e] online services to fund third-party interventions direct to users in a range of settings” creates further problems. This proposal would increase tech companies’ influence over fact-checking measures that are, ostensibly, independent.</p> <p>While Ofcom’s committent to transparency in the course of their work is important, the proposal at paragraph 3.10 that “online services measure the impact of their interventions on-platform and share their learnings” raises concerns about how platforms</p>

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<sup>6</sup>Ofcom, Media Literacy by Design: Best Practice Principles for On-Platform Interventions to Promote Media Literacy, 19 April 2024, <https://www.ofcom.org.uk/siteassets/resources/documents/research-and-data/media-literacy-research/making-sense-of-media/best-practice-design-principles/best-practice-principles-media-literacy.pdf>

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	<p>will measure the success of their interventions. The practical impact of this could mean a high-level of prolonged surveillance of user content and behaviour – not only at the point of publication, but as a tracking tool to measure responses to certain content.</p> <p>The proposal derives from the premise that considers content-related interventions as the litmus test for success in improving media literacy. We would challenge this assumption, particularly because of the fallibility of fact-checking systems, their inherent biases and the fact that they can perpetuate distrust amongst users online which does nothing to benefit media literacy.</p>
<p><b>Question 3:</b> Do you agree with our proposals in this section? Please explain your reasons and provide any relevant supporting evidence. We are particularly interested in any views and evidence about whether a Media Literacy Week would be impactful.</p>	<p>Confidential? – Y / N</p> <p>The approach to media literacy interventions by “trusted voices” from the “same community or with similar life experiences as the participants” is one which raises similar concerns to the proposals set out in paragraph 2.6.</p> <p>We have no objections to a community-based approach to media literacy which includes engagement with local organisations and groups. However, as aforementioned, we have fundamental concerns</p>

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	<p>about the rights implications of “interventions” involving RICU-style amplification of state-sponsored messaging, which falsely poses itself as being community led and is conducted in the absence of meaningful transparency.</p> <p>At paragraphs 4.3 and 4.5, Ofcom signals its intention to “target [its] work and resources” towards those with “particular media literacy needs. The strategy identifies, “communities experiencing financial disadvantage, older people and children” in addition to “children with special educational needs and disabilities, communication difficulties, experience of care, mental health difficulties and/or physical impairments.”</p> <p>Whilst we support educational initiatives, we reiterate our concerns that excessive targeting and “testing of messaging” on marginalised and minority demographics risks subjecting these groups to invasive profiling and risks perpetuating distrust further. The media literacy challenges facing these individual demographics will vastly differ. Ofcom should be mindful of these considerations when executing aspects of this strategy.</p> <p>Paragraph 4.14 proposes “Setting up a future technology trend ad-hoc working group of experts from</p>

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	<p>the media literacy sector and beyond who will identify the media literacy... challenges related to key elements of life online and explore how emerging and future technology may influence users' experience. The group will develop and publish policy and programme recommendations.”</p> <p>Any such working group should include or, at the very least, consult human rights organisations. Section 152 of the Online Safety Act 2023 mandates that an Advisory Committee on disinformation and misinformation must include experts on online disinformation and misinformation. Consultation with expert groups should extend to include equality and human rights issues relating to regulating and restricting online speech.</p>
<p><b>Question 4:</b> Do you agree with our assessment of the potential impact on specific groups of persons?</p>	<p>Confidential? – Y / N</p> <p>As aforementioned, we have concerns about the nature of targeting, “testing” and evaluating the impact of certain interventions set out in this strategy document on vulnerable groups, without transparency or consent as set out in A1.8, A1.9 and A.10.</p> <p>Ofcom’s equality impact assessment should consider whether targeting specific groups with certain interventions in an online context could inadvertently have a negative impact, particularly if these groups are then subject to additional profiling or are targeted with messaging in a way which could threaten</p>

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	to perpetuate distrust.
<b>Question 5:</b> Do you agree with our assessment of the potential impact of our proposals on the Welsh language?	Confidential? – Y/ N