

Your response

Question	Your response
Do you have any comments on our proposals?	<p>Confidential? – N</p> <p>Getting everyone connected</p> <p>The Trust supports Ofcom’s role in monitoring the broadband Universal Service Obligation and the continued, regular sharing of progress to inform ours and others understanding, particularly regarding challenges in connecting the “hardest to reach” locations.</p> <p>As an adequate broadband service is still not available to all individuals in the UK (from a physical access and affordability perspective), we believe Ofcom should also review its role and position in supporting the development of a ‘digital safety net’. By this we mean protecting, to a reasonable extent, the public provision of digital access through libraries, health and welfare services and community organisations. This will provide vital access to those who need it.</p> <p>Furthermore, we also believe Ofcom should consider its role in proactively offering data, research expertise and advice to researchers currently taking forward the development of a digital inclusion baseline - or a ‘minimum digital standard’. A new Minimum Digital Living Standard would create a deeper, more comprehensive, universally recognised baseline for what it means to be digitally included in the UK. This Standard should be informed by in-depth consultation with the public, including those with lived experience of digital exclusion and we believe Ofcom has significant insight and influence to contribute.</p> <p>Fairness for customers</p> <p>Ofcom data has been invaluable in developing our understanding of digital inclusion and exclusion and tracking its progression over time.</p> <p>We fully support Ofcom’s data and market research programme, particularly extending the research base regarding vulnerable customers. We hope this will include both the content covered and how data is collected, as we believe there is more that can be done to expand our understanding through increasing the number of research participants, to get a better understanding of demographic and jurisdictional differences and similarities. We believe this is particularly significant where these voices have been historically deemed “lesser heard”. To develop these</p>

approaches we also promote Ofcom's ambition to create new partnerships and encourage Ofcom to learn from existing good practice already established by organisations working with these groups, and work with these organisations wherever possible and appropriate.

More timely, robust and accurate data will enable commercial, public and third sector organisations to create better more tailored services, required to meet the needs of different groups, including: children and young people; people who face additional barriers related to disability and lack of accessible content or assistive technology; and those with low literacy or English language skills. Timely releases to develop understanding of changes over time.

With regards to affordability specifically, we encourage and use its regulatory powers to continue to work together to explore market innovations that reduce the cost of digital access and enhance protection for those on low incomes.

Preparing to regulate online harms

We welcome the confirmation from the UK Government (in its full response to the Online Harms White Paper consultation in December 2020) that Ofcom is to be appointed as the regulator for Online Harms. In our detailed work on a public policy proposal for a statutory duty of care enforced by an independent regulator, we have consistently argued for the role to be given to Ofcom.

Now that its appointment has been confirmed, we are encouraged by the greater latitude and openness that Ofcom will have to help the Government shape the legislative framework. The Plan sets out that Ofcom "will continue to provide technical advice to the UK Government on its policy development process, and we will engage with Parliament as it considers legislative proposals" (para 3.27). This approach was also described by Kevin Bakhurst, in his overview at a recent Plan of Work stakeholder event, in terms that Ofcom will work with Government and Parliament to "define the scope of the legislation" and help "inform" its development. We note too, that Mr Bakhurst was careful to state that Ofcom would take on its new powers "once the legislation has received Royal Assent."

We believe that Ofcom should take a much more active role in influencing the shape and structure of the Online Harms regime, beyond just providing technical assistance or definitional input. We are concerned that, even on the most optimistic timescales for legislative progress, Royal Assent and the active adoption of its new powers will be pushed well into 2022. We do not think it is tenable for Ofcom to purely

undertake a behind-the-scenes advisory role until that point, particularly given the length of time the Online Harms policy has already been in development and the urgent need for action, as evidenced by Ofcom's own extensive body of research.

There are ways in which the Government can enable Ofcom to do this and we would encourage Ofcom to push for one of these approaches:

- Building on its existing expertise and codes of practices from other areas of its work, or via its relationship with other sectoral regulators, to start consulting on and testing the direction of travel for the online harms regime. Legislation is not required for this and Ofcom could make a virtue of being open about this approach, to engage the broadest number of stakeholders upfront. This approach will give Ofcom a much stronger body of evidence and good practice with which to influence the shape of the Government's proposals, rather than taking what risks being a more passive approach in waiting to collaborate and support the Government on their terms and timescales.
- With regard to the published "voluntary" codes of practice, Ofcom could propose that it chairs meetings to oversee action on CSEA and terrorist content before they become statutory codes.
- Building on this, a broader form of "practice regulation" might see Ofcom start rolling out and testing the regime before statutory powers are in place. This could be modelled on the approach taken by the Medical Research Council in response to the major review of human embryology led by Mary Warnock in the 1980s¹. Priority areas for this approach might in-

¹ "In March 1985, the Medical Research Council (MRC) and Royal College of Obstetricians and Gynaecologists (RCOG), recognising that the introduction of a statutory body would take time, founded the Voluntary Licensing Authority for Human in vitro Fertilisation and Embryology (VLA) under the Chairmanship of Dame Mary Donaldson. The VLA consisted of people drawn from both the scientific and medical professions but was balanced by the inclusion of lay people. The VLA comprised members who carried out the licence inspections and issued licences to centres as appropriate and a secretariat. All potential centres had to make a written application to the VLA describing the particulars of the treatment services or research that they wished to undertake or were already providing". This was then followed by a Government White Paper in 1987 which committed to legislation and the Human Fertilisation and Embryology Act came into law in 1990, with the HFEA taking up its full statutory responsibilities in August 1991. From

clude the development of draft codes on risk assessment or transparency, as well as interim steps towards the high-level principles in annex A of the Government's full response.

- Putting the case to the Government for advance powers to be granted to them to more actively "prepare" for the incoming regime, which could further formalise the approaches above and give Ofcom more authority to seek evidence of action from the companies in scope. For example, in our paving Bill – published in January 2020 and awaiting Second Reading in the Lords² – we set out how the Government, through the introduction of a short Bill, could give Ofcom interim powers to prepare, including consulting with civil society and industry to draft the necessary codes of practice that would underpin the full regulatory framework.

Whatever approach is taken, we would recommend that Ofcom makes a statement to the DCMS Select Committee – as soon as practicable, once this consultation has closed – on its work programme to begin preparations for the role, including priority areas of work, external engagement, publication/consultation schedule and resources (both money and people).

Intersection with the Video-Sharing Platform regulations

We welcome the fact that in both Ofcom's Plan of Work and the Government's Full Response to the Online Harms White Paper, the intersection between the Video-Sharing Platform (VSP) regulations, which Ofcom has already taken on, and the Online Harms regime is flagged and that Ofcom will use this new responsibility as a means to inform its future role (para 3.29). We would, however, recommend that Ofcom make a full statement on how this intersection will work: will it, for

² <https://www.carnegieuktrust.org.uk/news/online-harms-paving-bill-introduced/>

example, in the first instance only prioritise the most harmful content in the Online Harms regime, as it intends to do in the VSP regime?³ What does this mean: is it just, for example, harms to children? How will this affect the design of the codes of practice, transparency reporting requirements and information gathering?

Relationship with other regulators

We welcome Ofcom's commitment to build on its relationship and co-operation with other regulators, and look forward to seeing the impact of the Digital Regulation Co-operation Forum across the sectors and remits for which Ofcom, the ICO and the CMA are responsible (para 3.29). We do not, however, think that Ofcom's regulatory relationships on Online Harms should be limited to those regulators with an interest in digital markets and data protection. Many sectors are experiencing significant adverse financial impacts from large scale online fraud, while consumers are being harmed by the prevalence of online scams and the sale of unsafe products. While we recognise that the Government has been minded to limit the scope of the harms in the Online Harms regime to avoid the risk of overburdening Ofcom or introducing duplicatory or overlapping regulatory processes, we strongly believe that a system of "regulatory interlock" is necessary to reduce the impact of harms that occur online but fall beyond the proposed remit of the regime. This would enable Ofcom to accept evidence from other sectoral regulators of the nature of the harm, which would then be addressed through its specific powers in relation to the in-scope companies: for example, seeing evidence of effective risk assessment to reduce the risk of online fraud and appropriate changes to platforms' systems and processes, such as "know your customer" checks to verify the identity of online sellers. Further detail is set out in our published blog from September 2020.⁴

Evaluating the impact of our work

³ "While Ofcom will have the power to take formal enforcement action from 1 November 2020, we expect to prioritise only the most serious potential breaches for formal enforcement action until our full guidance is published next year". (Ofcom: "Regulating Video-Sharing Platforms" (October 2020)

⁴ <https://www.carnegieuktrust.org.uk/blog/online-harms-interlocking-regulation/>



We support Ofcom's commitment to undertaking and sharing evaluations of its work. Programmes should regularly publish and promote their impact and outcomes data, to support shared learning and contribute to better longitudinal tracking and understanding of progress against key metrics.