



Department for
Digital, Culture,
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Rt Hon Harriet Harman MP
Chair
Joint Committee on Human Rights
House of Commons
London SW1A 0AA

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Dear Chair,

Many thanks for your letter to the DCMS Secretary of State regarding the Online Safety Bill. I am replying in my capacity as Minister for Tech and the Digital Economy.

I am very grateful for your interest and scrutiny of the Online Safety Bill, in particular regarding users' rights to free expression online. Defending freedom of expression online and protecting the invaluable role of a free press are key objectives of the Bill.

Alongside publication of the Online Safety Bill, the Government also published a memorandum addressing the ECHR in relation to the Bill. I have included this memorandum as an annex to this letter.

Illegal content

I am pleased that your Committee welcomes the measures in the Bill to protect users from criminal activity online. The prevalence of illegal content online causes significant harm to individuals, damages users' trust in digital services, and hinders the ability of some of the most vulnerable and marginalised in our society to express themselves freely due to fear of harassment.

Your letter asks whether the legislation could result in companies taking an "overly cautious" approach, particularly if content is not easily identified as illegal. The Online Safety Bill creates strong safeguards to protect freedom of expression and to mitigate the risk of over-removal. Under the legislation, all services will need to consider and incorporate safeguards for freedom of expression when implementing the safety duties. Companies that fail to put appropriate safeguards in place will face regulatory sanctions.

This approach ensures that the new regulatory regime is focused on safety by design and on content moderation systems as a whole, rather than on the quality of individual content decisions. This also reduces the risk of companies taking an overly cautious approach to compliance and protects freedom of expression, particularly when compared to an approach which mandates removal of individual pieces of illegal content in a certain timeframe.

Your letter poses specific questions about Section 5 of the Public Order Act 1986 being added as a priority offence under the Bill, and how companies will make judgments about this content. In-scope services must use proportionate systems and processes designed to prevent users



from encountering illegal content, and to minimise the length of time that any priority illegal content is present on the service. We are not requiring providers to ensure that users never encounter illegal content. Companies will have a duty to ensure they have effective and accessible reporting and redress mechanisms that enable users and affected persons to challenge wrongful content takedown. Furthermore, providers will not be penalised for making the ‘wrong calls’ on pieces of illegal content. Instead, OFCOM will judge on the systems and processes that providers have in place when making these decisions.

You also ask about the risks associated with automated content moderation systems leading to over-removal of legal content. As set out above, the Bill includes requirements on companies to consider safeguards for free expression when complying with their safety duties. OFCOM will set out how companies can comply with this requirement in relation to automated decision making in its codes of practice. In addition, the Bill includes strong safeguards around the use of proactive technology, such as automated content moderation. Providers must include information about the use of any such technology in its terms of service, which will improve transparency for users. There are also constraints on OFCOM’s power to require the use of such technology, including consideration of the risk of interference with users’ rights and whether any less intrusive measures would be sufficient.

You ask why details on how providers will be expected to comply with the duties imposed by the Bill will be set out in OFCOM’s codes of practice rather than on the face of the legislation. OFCOM’s codes of practice will only set out the recommended measures that companies could take or use to fulfil their duties to protect users. The codes do not alter the nature of the duties imposed under the Bill. Setting out the detail in the codes ensures that companies can take a proportionate and risk-based approach, rather than having to comply with prescriptive rules.

With regard to your question about scrutiny of draft codes, the codes and any subsequent material amendments to them will be laid in Parliament and will be subject to the negative resolution procedure. When drawing up the draft codes, OFCOM is required to consult a number of groups, including persons whom OFCOM consider to have relevant expertise in equality issues and human rights. As a public body, OFCOM is required to exercise its functions in a way that is compatible with Article 10 of the ECHR.

Legal but harmful content

I am pleased that the Committee welcomes the approach to protecting children from legal but harmful content online. Your letter raises concerns about the level of detail in the Bill, and asks questions about the definition of content that is legal but harmful to both children and adults.

For the first time, tech companies will be held accountable for the content that appears on their services. For content that is legal, but could cause harm to adults, companies will not be required to remove or moderate this content. Instead, the focus will be on ensuring that Category 1 companies (those with the highest risk and reach) are held to account for the consistent enforcement of their terms of service. They will need to be clear about what content and activity is and is not acceptable on their service and how they will treat such content.

Categories of priority legal but harmful content will be drawn up on the basis of evidence and stakeholder views and will be subject to parliamentary oversight and democratic debate. This list is informed by expert advice from OFCOM, which is why the list will be set out in secondary legislation.

Finally, you ask why the Bill does not provide a “neutral” option for providers. The Bill does provide for this option. Providers must tell users if they are taking one of the four actions listed in legislation, but they are not limited to these four actions. Companies will be free to decide what legal but harmful content to tolerate on their services. As set out above, no providers will

be required to remove legal content, and all services will need to have regard to freedom of expression when implementing their safety duties.

The child safety duties in the Bill will not require companies to remove or prevent adults' access to legal content, but seek to ensure that children receive proportionate protections from content and activity that is harmful to them, such as online pornography and bullying. The Bill aims to provide protections for children online which align with similar protections that exist for children from these harms offline.

Protections for freedom of expression

Protecting free expression is an obligation that the government takes extremely seriously. The Bill contains strong safeguards to protect free expression. In your letter, you raise questions about the definitions of content that is of democratic importance and journalistic content. To clarify, I have set out the definitions we have used.

- **Content of democratic importance** is content which seeks to contribute to democratic political debate in the UK at a national and local level. This includes, but is not limited to, content promoting or opposing Government policy and content promoting or opposing any political party or their policies. This will be broad enough to cover all political debates, including grassroots campaigns and smaller parties.
- The Bill includes criteria which stipulate what a '**recognised news publisher**' is. Such publishers will have to meet the specified criteria in order for their content to be exempted from the scope of the legislation. In addition, the words '**journalistic content**' will have their ordinary English meaning. Category 1 platforms will be required to specify how they identify content as being journalistic in their terms of service.

You raised concerns about the term "freedom of expression within the law." This term is intended to include common law rights to freedom of expression, European Convention on Human Rights (ECHR) rights and wider freedom of expression law. Freedom of expression protections within the Bill, such as those included in clause 19, are designed to mitigate the risk that providers over-remove legal content when carrying out their safety duties. Category 1 services will need to specifically assess their impact on users' rights and to take steps to mitigate this impact. They will need to assess their impact on users' rights both when deciding on, and after they have adopted, their safety policies. These freedom of expression protections, in addition to the framework's focus on transparency and user reporting and redress mechanisms, will also enable users to more effectively appeal content removal.

Finally, your letter asks what content falls into scope of the heightened protections for democratic and journalistic content. The duties to protect this content are important to safeguard pluralism and ensure internet users can continue to engage in robust debate online. In practice, many of the major platforms already have in place policies that make exceptions for these types of content when applying their terms of service. However, the policies are often vague and lack transparency, and are not applied consistently.

Under the proposed legislation, platforms must use proportionate systems and processes to take into account the importance of democratic and journalistic content when deciding how to treat different types of content. They will need to set clear policies up front for how they will treat such content and enforce these consistently. For journalistic content, Category 1 service providers will need to set out how they will identify journalistic content and they must also make a dedicated and expedited complaints procedure which will act as an additional safeguard to the freedom of expression.

I welcome further engagement with the Committee on free expression and the protections afforded by the Online Safety Bill throughout passage of the legislation.

With best wishes,

A handwritten signature in black ink, appearing to read 'Chris Philp', written in a cursive style.

Chris Philp MP
Minister for Tech and the Digital Economy