Written evidence submitted by the Personal Investment Management & Financial Advice Association (PIMFA) (OSB0102)

PIMFA is the UK's the trade association for wealth management, investment services and the investment and financial advice industry. Our membership helps millions of people access retail financial services helping them achieve financial goals which range from buying their first home to planning their retirement. As you would therefore expect, our focus on this draft bill concerns itself with the recognition and prevention of financial harms contained within the Bill.

While we are critical of elements of the Bill which directly affect our concerns – e.g. around financial services – we are absolutely clear that the intention behind the Bill and the broader societal harms that it aims to address are sound and right. However, it is our view that the inclusion of financial harms within the Bill does not sufficiently address the specific financial harms, which drove an extensive campaign for initial inclusion within the Bill in the first instance.

As you will be aware, online platforms play an ever-increasing role in allowing individuals to access legitimate retail financial services. The continuation of the COVID-19 pandemic means that it is likely that individuals will continue to transact, manage and plan their finances online. However, it is equally the case that these platforms provide virtual routes to market by enabling criminals to reach and defraud internet users through the hosting, promotion and targeting of fake and fraudulent content[1]. This has been exacerbated, in part, by the onset of the COVID-19 pandemic and enforced social distancing, which has separated individuals and, in particular, those who are vulnerable, from their immediate support circle[2].

It is therefore disappointing that the financial harm included in this Bill only extends to fraud carried out through user generated content and fake profiles. We accept that there is significant merit in pursuing these forms of scams – in particular, we have raised our concern around the prevalence of romance scams and assorted direct-to-user scams. However, it is our view that this will only address a very small proportion of the totality of online financial harms currently being perpetuated.

This view is supported by the FCA, Bank of England, City of London Police, the Work and Pensions Select Committee and Treasury Select Committee, who have all commented that the scope of the Online Safety Bill should be expanded to include fraud carried out via paid for online advertising. This is a view shared by a group of at least 17 consumer groups, charities and financial services trade bodies, of which we are a member, who have come together to campaign for a further widening of the scope of the Bill to include paid for online advertising. Our united view is that failing to include paid for online advertising in the Bill leaves too much room for criminals to exploit online systems.

[1] ONS data shows that there were 3.7m incidents of fraud between March 2019 and March 2020

[2] UK Finance data found that there had been a 32% increase in investment scam cases in 2020.

We do agree with the Government that the impact of these frauds is often devastating, not just financially but also emotionally. That's why we urge ministers to reconsider their current plan, and make sure the Bill protects as many consumers as possible from the full extent of the devastation caused by scams.

Of particular concern to us, is a failure to address the following issues:

1. **A failure to directly address individuals who are using social media with the express purpose to commit fraud**. Under the current proposals individuals who perpetuate scams such as romance fraud would not be caught under the proposed Bill.
2. **A failure to include online advertising within the scope of the Bill.** The provenance of industry wide concerns around the initial failure to include financial harms at all is still sadly absent in the draft legislation. Under the current proposals, fraudulent and highly speculative adverts for investment vehicles targeted at potentially vulnerable consumers will still be permissible. Under the current legislative framework, online platforms would not have to identify, remove and prevent these harmful advertisements from being hosted on their sites.
3. **A failure to address the use of search engine optimisation/dissemination of fake news geared towards fraudulent or highly speculative products.** To the point we made above, individuals are increasingly spending their lives online and rely on search engines as a source of knowledge. Whilst this clearly has benefits, scammers are increasingly able to use SEO optimisation to divert individuals towards fraudulent investment schemes. It is equally the case that 'news sites' will feature in effect product placement for investment opportunities, which are either deeply flawed or fraudulent. This should be of particular concern to the Government in the context of rising consumer interest in and availability of cryptocurrencies and assets.

As a priority, we would urge the Committee to look closely at the Government's failure to include online advertising within the scope of the Bill. In our view, the promise to include it within the forthcoming Online Advertising Review is insufficient. In the first instance, it is not clear to us how this would extend to paid for fraudulent adverts with the express intention of criminally investing an individual's savings, as well as our broader concerns around the prevalence of 'cloning'. Secondly, it is indicative of a legislative and regulatory approach which is insufficiently holistic. The Online Safety Bill providers Government with the opportunity to put forward a singular, coherent regulatory approach to tackling online scams rather than relying on ancillary pieces of legislation and regulation, which will lead to a complex and muddled regulatory approach.

Finally, we believe that it is right to comment on the application of the Bill as is currently drafted rather than identify the issues where it is lacking. We understand this Bill to be a framework bill in that it will provide the context for secondary legislation from which OFCOM can drive regulation. In this context, it is currently unclear to us whether, or not, OFCOM will actually derive sufficient power from this Bill to address the (limited) financial harms that the Government identifies. While the enforcement powers set out in the Bill seem logical, they are predicated on the ability of OFCOM to gather information efficiently and act on harm being perpetuated in a proactive manner.

Our own experience of how the FCA – a much better resourced regulator – is able to do this leads to some concern on our part that OFCOM may be overwhelmed by its new powers and unable to discharge its duties in the way in which Government envisages. This is particular the case with the limited financial harms as outlined in the Bill given the absence of expertise which OFCOM understandably has in financial services.

Ultimately, any approach which is designed to confer powers onto a Regulator to potentially intervene, as opposed to an approach which seeks to address the sources of harm, will only ever be reactive and likely lead to a regulatory approach where the Regulator is having to act on harm long after it has crystallised. It is for this reason, across the entire consideration of the Bill, that we would urge the Committee to consider whether or not the powers within the Bill place enough responsibility on online platforms to take due care and consideration for the end users of their services. Placing such a responsibility onto the providers would, in our view, address many of the concerns we have raised in our response around financial services but more broadly, address a number of concerns outside of it with respect to child safety and online radicalisation.

We would be very happy to meet with the Committee and discuss our concerns and how they apply to our industry more broadly should that be of interest.

Best regards,

Simon Harrington, senior policy adviser, PIMFA

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