

Written evidence submitted by the British Retail Consortium (BRC) (COR0176)

1. The British Retail Consortium (BRC) represents the large majority of retailers trading face to face, online and omnichannel as well as online marketplaces. We have also welcomed many new members during the crisis. Many members have their own websites from which consumers can purchase legally available goods. Where such goods have age restrictions, members use age verification processes to prevent such products being sold or delivered to, under-age consumers.

Online harms and the retail sector

2. The BRC has noted the initial response to the Online Harms White Paper consultation and also the interest in the topic in both the EU with its proposed Digital Services Act and the UK.

3. We fully support the aim of ensuring the safety and security of those online not least during the coronavirus crisis where the need to stay at home and subsequently to limit social contact has resulted in far greater exposure of young and older people, including the vulnerable, to the internet. More and more people have been shopping online and also browsing for entertainment and to stay connected with friends and family. As a result the potential for harm has grown especially among those who have been less accustomed to using the internet and to recognising more readily when things are not right.

4. Retailers take their obligations seriously and want to ensure their customers have a safe experience when they use their services. In this AI can have a role to play.

5. The BRC supports the risk-based and proportionate approach proposed by the Government in its initial response to the online harms White Paper. In particular we support expeditious action where there is a threat of child abuse; effective user redress mechanisms where online harms are notified; and clear guidance on what is expected.

Scope

6. When the online harms White Paper was launched, the then Home Secretary, Sajid Javid, said plainly that 'we cannot turn a blind eye to the darker side of social media'. In other words the aim of any regulation was to ensure the safety of users accessing social media platforms. We were therefore surprised to see subsequently that the Government was minded to apply the upcoming legislation to retailers that allow users to review the products they sell online. Indeed online reviews are already regulated by EU legislation applied in the UK under consumer protection legislation. The BRC does not think they should fall into the scope of online harms regulation as well.

7. Many BRC members have their own websites with a customer review function. Customer reviews provide a useful benefit for consumers by providing feedback on a company, brand or product thereby increasing transparency and informed choice.

8. BRC members already have clear review guidelines in place and have mechanisms for addressing any attempted abuse of customer review features including through the opportunity to flag and directly report inappropriate content; through independent checks; or through proactive measures such as machine learning.

9. We have noted, and agree with, the assessment of the Secretary of State, Oliver Dowden in a recent evidence session to another Parliamentary Committee:

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‘In respect of legal online harms for adults, if you are an SME retailer and you have a review site on your website for your product and people can put comments underneath that, that is a form of social media. Notionally, that would be covered by the online harms regime as it stands. The response to that is they will go through this quick test and then they will find it does not apply to them.

My whole experience of that for SMEs and others is that it is all very well saying that when you are sat in Whitehall, but when you are running a three-man operation and you have no idea what this online harms thing is, this potentially puts a big administrative burden on you.

Are there ways in which we can carve out those sorts of areas so we focus on where we need to do it? Those kinds of arguments pertain less to illegal harms and harms to children. I hope that gives you a flavour of it.’

10. We are concerned that any additional regulation in this area could have an adverse impact on retail, not least the smaller retailers and therefore support the statement that the Government will pay particular attention to minimise the regulatory burden on small businesses and where there is a lower risk of harm occurring’ – and therefore urge the removal of customer reviews from the scope of any legislative proposals.

11. As the Government response has stated, the new regulatory framework will not require the removal of specific pieces of legal content but focus on the wider systems and processes that platforms have in place to deal with online harms. The BRC believes this is a proportionate and practical approach.

The nature, prevalence and scale of online harms during the Covid-19 period

12. As indicated above, many people are relying on online products and services more than ever – and the sector has worked hard to keep providing and delivering essential products and ensure that customers are able to access the goods and services they need during this exceptional time.

13. In doing this the sector is already subject to a range of regulation including Data protection, Consumer Rights, Sale of Goods, e-privacy – all designed to protect the consumer from misleading information; to ensure the provision of accurate and necessary information about products and services and charges; to enable consumers to return products they do not like; to ensure products are as described; to protect the data a consumer provides; and to ensure the cost of the goods and the delivery charges are clear and accurate upfront. For example, on customer reviews we note that there is already a consumer protection requirement to ensure that reviews are genuine as evidenced by recent CMA action on this matter.

14. Unfortunately there is a very small minority of sellers both online and offline who have tried to exploit the crisis – and the vulnerable - such as by charging excessive prices for products that are in scarce supply or by selling illegal or unsafe products such as masks. The BRC has condemned such behaviour and has noted that there are regulations in place that can be used if necessary. Platforms themselves have also taken action to take down specific material and ban some sellers from their sites.

15. The aim of the upcoming online harms legislation is to tackle illegal and harmful user generated content. This is no mean task given that on You Tube alone over 300 hours of video are uploaded every minute. Against that background the Online Harms regulator will already face a formidable challenge to develop a framework that is practical and that will efficiently and effectively regulate

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the scope of online harms against the objectives set out. To ensure the proportionate and effective regulation of such harms and to meet the objectives set out we do not believe that it is helpful to extend the remit to areas including economic areas where there is already legislation and regulation in place to deal with any offensive or harmful behaviour.

16. The BRC never believes that duplication of rules and requirements to meet the same objectives is desirable or efficient. Where legislation already exists that should be the primary route for dealing with any problems arising from covid-19 or any other cause – and if any evidence based assessment shows that current legislation or regulation is not sufficiently effective, the aim should be to amend that legislation or improve its enforcement rather than trying to duplicate it in legislation primarily designed for other, mainly non economic, purposes. The BRC does not believe that had the online harms regulations been in place they would have been necessary to deal with any issues arising from online reviews or excessive prices and nor would they have been any better than utilising current legislation if it were used effectively.

17. Online harms should thus remain focused on the priorities set out – tackling online terrorist content and tackling online child sexual exploitation and abuse and not diluted by attempts to wrap up other issues already covered elsewhere in regulations more targeted to dealing with those other issues enforced by agencies more experienced in dealing with those type of practices.

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