Your response

Question 1: To assist us in categorising responses, please provide a description of your organisation, service or interest in protection of children online.
Is this a confidential response? (select as appropriate)   *No*
Open Rights Group (ORG) is the leading UK-based digital campaigning organisation. We work to protect fundamental rights to privacy and free speech online, including data protection, the impacts of the use of data on vulnerable groups, and online surveillance. With over 20,000 active supporters, we are a grassroots organisation with local groups across the UK. We have worked in this policy field throughout the 'online harms' processes and consultations, and both Digital Economy Acts (2010 and 2017), accurately highlighting which parts of both DEAs would prove extraordinarily difficult to implement practically or fairly. Our interest is in protecting the rights of all citizens, including the rights of children.

Question 2: Can you identify factors which might indicate that a service is likely to attract child users?
Is this a confidential response? (select as appropriate)   *[Please select]*

Question 3: What information do services have about the age of users on different platforms (including children)?
Is this a confidential response? (select as appropriate)   *[Please select]*

Question 3: What information do services have about the age of users on different platforms (including children)?

Question 4: How can services ensure that children cannot access a service, or a part of it?

Is this a confidential response? (select as appropriate)

No

We believe that Ofcom should start from a different premise, namely that children have rights. On this basis, we believe that before Ofcom begins to consider how to lock children out of services, there are some fundamental issues that should be addressed.

Ofcom has a duty in public law to protect the rights of British citizens, which includes children. Freedom of expression, and a consideration of how to balance it against other rights, would be the appropriate starting point for regulation.

The implication of this question that children's rights of access to information and knowledge should be restricted. When restricting rights to access content, Ofcom should be clear that there is a legitimate policy aim, and this must be carried out for each type of content to be restricted. In addition, the definition of the content to be restricted is sufficiently clear and precise.

The question raises a number of other questions that Ofcom will need to address. It is widely acknowledged that the Bill lacks definition and that it's over-broad language will lead to many problems arising in implementation.

There is no definition of what is a child? Is it someone below the age of 18, or is it a more nuanced concept? The government suggests that providers should be able to know the age of their users for the purpose of restricting content. The Bill specifically asks for children to be categorised by age, for example in S11 (3)(b) it calls for them to be categorised << in age groups judged to be at risk of harm>> This needs to be reflected in order to obtain meaningful responses to the requirements in the Bill.

A further concern is that restricting access to children will result in restrictions on access to adults. This could be where an 18 year old is deemed by an age verification system to be 17. It could also be because the service providers, incentivised by large fines and threats of imprisonment, sanitise their platforms to the level of child, and in doing so, they remove access for adults to lawful content which they would be entitled to access.

Question 4: How can services ensure that children cannot access a service, or a part of it?

Another concern is the likely fragmentation of standards across different platforms, unless Ofcom is able to draft clear and precise guidelines.

Question 5: What age assurance and age verification or related technologies are currently available to platforms to protect children from harmful content, and what is the impact and cost of using them?

Is this a confidential response? (select as appropriate)

No

An issue that concerns us with regard to the impact of age assurance and age verification technologies is the protection of personal data and the potential for interference with privacy and free expression rights.

These systems should of course be governed by the GDPR. A specific concern is the use of biometric data to guess or estimate the age of a person, whether child or adult. Such data may include hand or head measurements, or voice. This is a very new area of technology. Its effectiveness or the ability to implement it at scale has not been proven. The governance structures are not in place and the likelihood of abusive or unlawful practices is high. We urge Ofcom not to mandate the implementation of these systems, even though they are on the face of the Bill, at least until the governance and regulatory issues have stabilised.

Where age assurance is use to restrict access to content, we are concerned that it could have the unintended consequence of locking both child and adult users out of content that they have a legitimate right to access. If this were to happen, it would be a direct interference with their right to freedom of expression. This could happen on search engines, where age assurance is used to determine rights to visit a web platform. It could also be a restriction on engagement with specific pieces of content.

Question 6: Can you provide any evidence relating to the presence of content that is harmful to children on user-to-user and search services?

Is this a confidential response? (select as appropriate)

[Please select]

Question 6: Can you provide any evidence relating to the presence of content that is harmful to children on user-to-user and search services?

Question 7: Can you provide any evidence relating to the impact on children from accessing content that is harmful to them?

Is this a confidential response? (select as appropriate)

[Please select]

Question 8: How do services currently assess the risk of harm to children in the UK from content that is harmful to them?

Is this a confidential response? (select as appropriate)

No

It is difficult to see how services can accurately assess the risk of harm to children. Once again, we note the issue of the lack of definition of "harm" in the Bill. There is no expansion of the concept in the Ofcom consultation document of 10 January 2023.

The current version of the Bill as brought from the Commons to the Lords, has an over-broad definition of "harm" (s.205). The interpretation of "harm" in the policy discourse is generally whatever individuals choose to believe, and it encompasses a range of policy issues.

The notion of "harmful to children" will have to be defined by the Secretary of State in Secondary Legislation. There has been little indication from the government as to how it is thinking about it, with the exception of a Ministerial Statement last June.

Question 8: How do services currently assess the risk of harm to children in the UK from content that is harmful to them?

In order to be able to assess the risk of "harm", services will need detailed definitions and guidance from Ofcom as to what is "harm".

Question 9: What are the exacerbating risk factors services do or should consider which may have an impact on the risk of harm to children in the UK?

Is this a confidential response? (select as appropriate)

[Please select]

Question 10: What are the governance, accountability and decision-making structures for child user and platform safety?

Is this a confidential response? (select as appropriate)

[Please select]

Question 11: What can providers of online services do to enhance the clarity and accessibility of terms of service and public policy statements for children (including children of different ages)?

Is this a confidential response? (select as appropriate)

[Please select]

Question 12: How do terms of service or public policy statements treat 'primary priority' and 'priority' harmful content?[1]

Is this a confidential response? (select as appropriate)

[Please select]

Question 13: What can providers of online services do to enhance children's accessibility and awareness of reporting and complaints mechanisms?

Is this a confidential response? (select as appropriate)

[Please select]

---

[1] See A1.2 to A1.3 of the call for evidence for more information on the indicative list of harms to children.

Question 14: Can you provide any evidence or information about the best practices for accurate reporting and/or complaints mechanisms in place for legal content that is harmful to children, or users who post this content, and how these processes are designed and maintained?

Is this a confidential response? (select as appropriate)

No

We respectfully refer you to our response to the previous call for evidence: the Ofcom Online Safety Call for evidence: First phase of online safety regulation 12 September 2022, Q 7.

We outline best practice for complaints processes, in respect of content that has been taken down, or otherwise restricted. We comment on what Ofcom has a duty to do. Our focus is on the users' experience and our comments apply regardless of the type of user, whether registered or not, or whether child or adult.

We would also draw your attention to the Digital Services Act, that was adopted by the European Union last year. It incorporates best practice for user appeals, including judicial redress.

Question 15: What actions do or should services take in response to reports or complaints about online content harmful to children (including complaints from children)?

Is this a confidential response? (select as appropriate)

No

We assume this question refers to actions that may be taken by service providers against users who have posted the content deemed harmful to children. In this regard, we respectfully refer you to our response to the previous call for evidence: the Ofcom Online Safety Call for evidence: First phase of online safety regulation 12 September 2022, Q 14. which addresses sanctions and restrictions applied by service providers.

Question 16: What functionalities or features currently exist that are designed to prevent or mitigate the risk or impact of content that is harmful to children? A1.21 in the call for evidence provides some examples of functionalities.

Is this a confidential response? (select as appropriate)

No

Once again, the broad language used here is likely to lead to confused outcomes. We note that in A1.21 there is a reference to limiting discoverability. Whilst we understand that the may be a rationale for limiting discoverability of certain content for children, we also feel obliged to highlight that this is a form of restriction on access to content, and as such, it is a restriction on the child's right to freedom of expression and access to knowledge. Ofcom should act with care, in framing the questions and responses and be mindful of its public interest duties.

Question 17: To what extent does or can a service adopt functionalities or features, designed to mitigate the risk or impact of content that is harmful to children on that service?

Is this a confidential response? (select as appropriate)

[Please select]

Question 18: How can services support the safety and wellbeing of UK child users as regards to content that is harmful to them?

Is this a confidential response? (select as appropriate)

[Please select]

Question 18: How can services support the safety and wellbeing of UK child users as regards to content that is harmful to them?

Question 19: With reference to content that is harmful to children, how can a service mitigate any risks to children posed by the design of algorithms that support the function of the service (e.g. search engines, or social and content recommender systems)?

Is this a confidential response? (select as appropriate)

[Please select]

Question 20: Could improvements be made to content moderation to deliver greater protection for children, without unduly restricting user activity? If so, what?

Is this a confidential response? (select as appropriate)

No

In our response to the Ofcom Online Safety Call for evidence: First phase of online safety regulation 12 September 2022, Q 11, which was exactly the same question asked in the context of all users, we set out extensive evidence of the concerns raised by automated content moderation systems. We respectfully refer you to that response. We also refer you to our answer to Q 14 of that response, which addresses the issues around content moderation systems and the imposition of sanctions.

Question 21: What automated, or partially automated, moderation systems are currently available (or in development) for content that is harmful to children?

Is this a confidential response? (select as appropriate)

[Please select]

Question 22: How are human moderators used to identify and assess content that is harmful to children?

Is this a confidential response? (select as appropriate)

[Please select]

Question 23: What training and support is or should be provided to moderators?

Is this a confidential response? (select as appropriate)

[Please select]

Question 24: How do human moderators and automated systems work together, and what is their relative scale? How should services guard against automation bias?

Is this a confidential response? (select as appropriate)

[Please select]

Question 25: In what instances is content that is harmful to children, that is in contravention of terms and conditions, removed from a service or the part of a service that children can access?

Is this a confidential response? (select as appropriate)

No

We have commented on the way that services currently remove or restrict content under their terms of service in our response to the Ofcom Online Safety Call for evidence: First phase of online safety regulation 12 September 2022, Q 14.

Our concern here is that Ofcom has included in the same sentence "content harmful to children" and "content in contravention of terms and conditions". These are two separate issues and should not be conflated. The former is to be defined by the Secretary of State; the latter is defined by private companies who provide the services. With regard to the latter, there is a need for greater clarity as to Ofcom's role in enforcing them.

Question 26: What other mitigations do services currently have to protect children from harmful content?

Is this a confidential response? (select as appropriate)

[Please select]

Question 26: What other mitigations do services currently have to protect children from harmful content?

Question 27: Where children attempt to circumvent mitigations in place on a service, what further systems and processes can a service put in place to protect children?

Is this a confidential response? (select as appropriate)

[Please select]

Question 28: Other than those covered above in this document (the call for evidence), are you aware of other measures available for mitigating the risk, and impact of, harm from content that is harmful to children?

Is this a confidential response? (select as appropriate)

No

We respectfully refer you to our response to the previous call for evidence: the Ofcom Online Safety Call for evidence: First phase of online safety regulation 12 September 2022, Q 28. The question is exactly the same as posed in that consultation. Our response has not changed in the intervening time.