Our response

Executive summary

Google recognises and is supportive of the need to design an effective fees regime to cover the cost of Ofcom's regulatory oversight under the Online Safety Act (**OSA**). This is fundamental to ensuring the online safety regime operates effectively, and we are grateful for the opportunity to engage constructively on Ofcom's proposals for the fees regime. We are also supportive of the overarching principles set by the Secretary of State that apply to the fees regime,[1] including that the regime should be proportionate and fair across industry, as well as transparent and consistent, so that regulated services have clarity and certainty over anticipated costs.

While we agree with many aspects of the approach outlined by Ofcom in its consultation, we consider that other aspects of the proposals are misaligned with the purpose and scope of the OSA and risk having a disproportionate and arbitrary adverse impact on certain services. The fees required from each service provider must be justified, proportionate, and the way in which they are calculated must be transparent. We set out below our comments and hope they will assist Ofcom in designing a regime that achieves this aim.

Our suggestions focus on the following points, among others:

The definition of Qualifying Worldwide Revenue (QWR) should be calculated by reference to revenue referable to the UK

Under the "worldwide revenue" approach, the calculation of QWR is not connected with the provision of the service to UK users, or to the operation of the service in the UK. Given the scope of the Act's obligations on service providers and the purpose for which Ofcom was given its powers – and therefore the reason for which the fees will be spent – it is inappropriate for fees to be calculated by reference to revenue generated by non-UK users.

This approach also appears disproportionately to penalise service providers who offer a single, consolidated worldwide service (as against those that separate their offering by country), as well as providers that have a relatively small UK revenue compared to their worldwide revenue. The use of the worldwide revenue approach therefore risks stifling UK

[1] Department for Science, Innovation and Technology, Guidance to the regulator about fees relating to the Online Safety Act 2023, 24 May 2024.

growth, and consequently affecting the quality and variety of services offered to UK users, by potentially driving services with low UK revenue out of the UK, or stopping companies from launching services in the UK. Ofcom's justification that this approach is administratively simpler for providers is not only inapplicable to all providers, but is also insufficient justification given the potentially material impact this could have on service providers.

The only proportionate, rational approach that operates in accordance with the scope of the OSA is therefore to calculate QWR by reference to UK referable revenue.

Ofcom should be required to set out, in advance of each charging year, a detailed breakdown of their proposed spend for the year, and the associated predicted overall cost

In order to comply with its requirements under s.88(2) OSA, including that fees required are justifiable, proportionate and transparently calculated, as well as the Secretary of State's guidance to Ofcom about the calculation of fees, Ofcom should publish a detailed breakdown of its estimated costs for the year in advance, and allow providers to comment on these proposals. Without these guardrails built into the system, there is no protection against Ofcom over-estimating its potential spend, and subsequently spending a greater amount than may be necessary.

Ofcom should impose a cap on the total fee a service provider is required to pay, by reference to its income

Further to our recommendation that Ofcom sets out an estimate of its proposed spend for the upcoming charging year, to ensure the fees payable by a service are foreseeable and manageable for service providers, the Statement of Charging Principles should set a cap on the maximum amount of fees that a service provider can be required to pay, expressed as a percentage of a service's income. Without the safeguard of a cap, providers are not able to foresee the maximum extent of upcoming costs, which makes financial planning difficult. Our proposed solution to this aligns with the approach taken under the Digital Services Act (**DSA**) in the EU, and supports a pro-innovation approach in the industry.

QWR of a service provider should only include those of its regulated services which meet the QWR threshold

Ofcom's proposed approach to calculating QWR by reference to the aggregate QWR of all regulated services provided by a service provider means the QWR of services with a small UK revenue are unfairly brought into scope of the fees regime, only in respect of service providers that have multiple regulated services. This undermines the QWR threshold, as it artificially inflates the QWR of providers who offer multiple regulated services, some or all of which individually would not have met the relevant threshold. This is inappropriate given the

use of the QWR threshold is required by the Act, and as such QWR should be calculated in relation to only those regulated services that meet the threshold.

The only revenue taken into account when calculating QWR for penalties should be that generated by the regulated service in respect of which there is a breach

As in relation to fees, the only revenue that should be taken into account when calculating QWR for penalties in the event of a breach is the revenue referable to the relevant regulated service. It is unfair to impose a penalty on a service provider based on revenue attributable to a regulated service that has no connection with the breach, in particular given the potentially significant scale of penalties that can be imposed under the OSA.

Revenue that is not referable to regulated services should be excluded from QWR where there is joint and several liability for a breach

Ofcom's proposal to include revenue that is not referable to regulated services, when calculating penalties where there is joint and several liability for a breach, is an irrelevant basis on which to calculate penalties, and we do not consider that Ofcom is permitted to take this revenue into account. This is because Ofcom's regulatory oversight under the Act extends only to regulated services and the purpose of the fees regime is to fund the cost of that regulation. Ofcom's aims of generating a deterrent effect, ensuring consistency and taking a straightforward approach to the calculation can all be achieved without needing to take this irrelevant revenue into account: as such, it is also disproportionate to consider this revenue. QWR in this instance should therefore be calculated by reference to regulated services only.

Question	Your response

Chapter 3.1 **Consultation question 1:** Do you agree with our proposed approach to determining QWR? We would welcome comments in particular on: a) Our proposal to define QWR by reference to worldwide revenues. b) Our proposals in relation to apportioning revenue to the regulated service. c) Our proposed approach to requiring QWR to be aggregated across all regulated services provided by the provider. d) Our proposal to take account of revenues received by another group undertaking in the determination of QWR. **Consultation question 2:** Do you agree with our proposed definition of 'qualifying period'? **Consultation question 3:** Do you have any views on our proposal not to issue a statement to Part 4B services (VSPs) (under	**Proposal to define QWR for fees by reference to worldwide revenues** In para 5(2) of the draft QWR regulations, Ofcom sets out its proposal to define the term QWR as the "*total amount of revenue the provider receives during the qualifying period that is referable to the regulated service*". Ofcom proposes that referable revenue is that which "*arises in connection with provision of the service*" (para 3(2) of the draft QWR regulations). Reference to provision of the service includes reference to its provision comprising **all** parts, **anywhere in the world** (that is, rather than just revenue directly attributable to the UK) (para 3.1.1, consultation document)**.** The use of worldwide revenues arising in connection with the regulated service is referred to as the "worldwide revenue" approach. Ofcom states that it did consider, but decided against, using the "UK referable revenue" approach, which would have only accounted for the revenues a provider generates from the provision of the service to UK users (para 3.1.2 consultation document). We consider that this decision is disproportionate and irrational for Ofcom to adopt, and is not sufficiently justified. **First,** we note that the purpose of the OSA is to make the use of internet services "*regulated by [the OSA] safer for individuals in the United Kingdom*" (s.1(1) OSA). The Act confers new functions and powers on Ofcom specifically to achieve that purpose (s.1(2) OSA). It also imposes duties on regulated providers in relation to the design, operation and use of the service in the UK, and the design, operation and use of the service as it affects UK users (s.8(3), s.25(1) OSA). The regulated services to which those duties apply are clearly defined in s.4 OSA as those with "*links to the United Kingdom*". Under the worldwide revenue approach, the calculation of fees is not connected with the provision of the service to UK users, or to the operation of the service in the UK. Given the purpose for which Ofcom was given its powers – and therefore the reason for which the fees will be spent – it is inappropriate for fees to be calculated by reference to revenue generated by non-UK users. We also note that the largest 5 providers represent around 90% of total QWR, whether it is calculated using a worldwide revenue approach or a UK referable revenue approach (para 3.1.13 and Figure A6.1), meaning that the use of UK referable revenue would not create anomalous results. The OSA is

Question	Your response
paragraph 21 of Schedule 17 to the Act)? Please provide evidence to support your responses.	designed to mitigate the risk of harm to UK users of regulated services: calculating fees by reference to non-UK users is at odds with the purpose of the regime. It is therefore disproportionate and irrational to request fees based on this irrelevant factor. It could also lead to services significantly over-paying or double-counting for the cost of regulation. This is particularly the case given that services may be required to pay for similar regulation in other jurisdictions. For example, the supervisory fees charged under the DSA are calculated by reference to the average monthly recipients in the European Union. Under Ofcom's proposed regime, services are required to essentially also pay fees by reference to the revenue generated by these users, which is not only inappropriate given the scope of the UK OSA, but will also lead to such services being charged twice. **Second**, use of the "worldwide revenue" approach disproportionately penalises entities with a relatively small UK revenue as compared to their worldwide revenue, with associated negative consequences for the UK market. Under the current proposals, the provider of a regulated service with a worldwide revenue of, for example, £800m and a UK presence of £11m is required to pay significant fees, while a service with a UK presence of £240m and no worldwide revenue is not required to pay any fees at all. This is nonsensical in the context of a regime that, as described above, exists to mitigate the risk of harm to UK users of regulated services. It may also, as Ofcom recognises at para 3.1.12 of the consultation document, "*dampen the incentive for large global providers to enter and invest in the UK market, or to remain in the UK market if they are already present*". This is likely to impact levels of competition and innovation, and as such affect the quality and variety of service that UK users receive. Ofcom does not seem to place sufficient weight on this consideration, but dismisses it (it appears solely) by indicating that it is mitigated by the UK revenue-based exemption, whereby providers whose revenue is under £10m are exempted from the fees regime. This approach fails to address the issue that providers who have revenue larger than £10m, but are still comparatively small as against their worldwide revenue, are excessively penalised.

Question	Your response
	Third, Ofcom's argument that this approach would simplify the administrative process for providers is not sufficient justification given the significant disadvantages to this approach set out above. Ofcom states that providers "*may not account separately for revenues attributable to use of the service by users in the UK and users in the rest of the world*" (para 3.1.11 consultation document). However, given the defects in the "worldwide revenue" approach as compared to the "UK revenue" approach, we do not consider this a proportionate measure. Ofcom recognises in relation to the £10m UK revenue exemption that it is possible and reasonable for providers to use a just and reasonable approach to apportion UK and worldwide revenue. We therefore consider that Ofcom should permit providers who do not separate revenue by country-base to apportion their worldwide revenue on a just and reasonable basis between revenue that is referable to UK and non-UK users. **Finally,** we would also welcome a risk-based model being introduced to the fee regime, to ensure that the payment of fees does not result in some services being forced to reduce investment in mitigation measures due to the cost of the fees. We note that compliance with the regulatory regime will involve significant investment in risk mitigation measures for many services in the industry, so a risk-based model could ensure that companies are not disincentivised from further investment due to this increased regulatory cost. In order to align with principles of proportionality, it might be helpful to allow services that successfully reduce the risk of harm to 'low' to benefit from reductions in fees. For the reasons set out above, the only proportionate, rational approach to the calculation of QWR that operates in accordance with the scope of the OSA is therefore by reference to UK referable revenue. The QWR regulations should therefore state that "*in amount of revenue counts as referable to a regulated service only if, and so far as, it arises in connection with provision of the service* ***to users in the United Kingdom***". **Definition of referable revenue** The draft QWR regulations currently set out that revenue is "*referable to a regulated service only if, and so far as, it arises in connection with provision of the service*": examples of advertising and the supply of

Question	Your response
	goods and services are given as circumstances where this may occur (para 3(2)-(3)). Ofcom notes further in the consultation document that referable revenue is that which a provider "*receives in respect of a regulated service*", but not from "*activities not connected with the provision of the regulated service(s)*", including where providers "*operate in-scope online services which contribute only a small amount to the provider's total revenues*" (para 3.1.7 and footnote 30, consultation document). This definition could lead to ambiguity in the way in which service providers calculate relevant revenue, so we would suggest that a clearer definition is used, such as "*revenue that arises in connection with the provision of the regulated part of the service… the only revenue that is not 'referrable' to a service is revenue which you would still generate if you were not providing that service.*" This definition provides greater clarity as to the types of revenue that should be included, and which should be excluded. To the extent that Ofcom intends to exclude *de minimis* revenues (by suggesting that small proportions of total revenue should be excluded), further guidance should be given on this, for example, by explaining that where services have ancillary or minor features that are in scope of the OSA that have little or no revenue attributable to them, such revenue should be out of scope. Ofcom's current proposed definition may lead different service providers to exclude different types of revenue streams, leading to inconsistency between the total QWR figure provided by different providers. This risks resulting in providers who have taken a more expansive view of the definition of referable revenue paying too high an amount of fees, while those interpreting the definition more narrowly paying too little. We therefore recommend that, to ensure consistency between providers, the definition of referable revenue that should be included in the final version of the regulations is clarified in the manner set out above, in place of Ofcom's current proposal. **Proposals in relation to apportioning revenue to the regulated service** Ofcom's draft QWR Regulations currently set out that where it is not possible to separate revenue arising in connection with the provision of a regulated service and other revenue, services should apportion

Question	Your response
	revenue on a just and reasonable basis (para 3(5) draft QWR Regulations). Paragraph 3(3) draft QWR Regulations states that referable revenue means revenue arising in connection with the provision of the service, "*comprising all of its parts*". We agree with Ofcom's conclusion that, given there may be a number of just and reasonable approaches that could be taken depending on the provider, Ofcom should not mandate how this calculation is carried out, but should leave it to providers to determine what is just and reasonable in the context of their service and specific revenue streams. However, the current approach leaves ambiguity as to the way in which services should decide what revenue arises in connection with the provision of the service, and what does not. In order to rectify this lack of clarity and avoid providers taking inconsistent approaches to the calculation of referable revenue, Ofcom should make clear that providers should be required to take into account only the proportion of the revenue that arises in connection with the user-to-user part of the service. Providers should therefore be able to apportion revenue between the user-to-user part of the service, and all remaining revenue, on a just and reasonable basis. We consider that this approach already appears to be reflected in Case Study 1, however this should be clarified in the final version of the regulations to avoid disparities between the way in which providers apportion revenue. **Proposed approach to requiring QWR to be aggregated across all regulated services provided by the provider** Paragraph 3.1.24 of Ofcom's consultation document states that where "*a provider provides two or more regulated services in the qualifying period, we propose that their QWR is determined by adding together the referable revenue for each regulated service*". For providers of multiple regulated services, this means that all revenue referable to their regulated services are brought within the scope of the fees regime regardless of how much revenue is referable to each individual service, as long as the total aggregate amount is greater than the threshold amount. This approach is manifestly unfair because it means the total QWR of such providers is artificially increased, solely by virtue of the fact that

Question	Your response
	the provider offers multiple regulated services. This has a direct impact on the amount of fees that a service provider will pay: for example, if a provider has two regulated services, one of which has referable revenue of £251m (Service A), and the other has referable revenue of £20m (Service B), under the current approach the provider will have to pay the relevant percentage (for example, 0.02%) on £271m. If each service was provided by a different provider, Service B would not fall above the relevant threshold and therefore would not be required to pay fees. The provider of Service A would only have to pay fees on £251m, rather than £271m. This approach results in a situation whereby a provider with a large number of services, many of which are small or not generating significant revenue, are required to pay a greater level of fees than is proportionate: this is an arbitrary and inappropriate approach to take. It could also incentivise services to create complex corporate structures, with different service providers for different products, which is unhelpful and confusing for consumers. The effect of this is to call into question the value of the QWR threshold. This is because providers of multiple regulated services are more likely to exceed the QWR threshold than providers of individual services, in particular in relation to services that would not have met the threshold if they were not provided by a particular company. The use of a threshold figure is a requirement of the OSA (s.83(2)): the current approach inappropriately devalues the use of this threshold, and leads to inequity in the way in which different types of providers are charged fees. Ofcom sets out that there are two main reasons why it has taken this approach: (a) Providers with comparable total QWR will pay similar fees, regardless of how many regulated services they provide (para 3.1.25, consultation document); and (b) This approach would simplify the administrative process for providers and make it easier for Ofcom to calculate fees (para 3.1.25, consultation document). Neither of these arguments justify taking the proposed approach. In relation to point (a), we consider that this does not account for the fact that the purpose of the QWR threshold is to exclude services that do not make sufficient revenue from the fees regime. The current

Question	Your response
	approach has the effect of unfairly and inappropriately including services with low revenue, just because they have the same provider as a service with high revenue. We recommend that the QWR threshold is modified to reflect the fact that each regulated service should be considered independently, and as long as this is done proportionately we anticipate that providers with comparable QWR in relation to the relevant services will still pay the same amount of fees. Point (b) is also not sufficient justification for the approach Ofcom proposes to take given the potential impact on providers: Ofcom does not appear to have accounted for the potentially material increase in fees that providers may have to pay as a result of this approach being taken, and as such has not appropriately considered whether the simplicity justifies the material adverse consequences on certain providers. We therefore recommend that QWR is calculated in relation to each regulated service which meets the QWR threshold independently, and where that individual service does not meet the threshold, it is exempt from the fees regime regardless of the other services provided by the same provider. **Proposal for calculating penalties where the service provider alone is found liable for the breach** Ofcom currently proposes to use the same definitions for QWR and qualifying thresholds in relation to fees and penalties for providers that are found singularly liable for a breach in respect of a particular service or services. We set out above the reasons why Ofcom should define QWR by reference to UK referable revenue, and consider that the same arguments apply in relation to penalties where a single service provider is found liable for the breach. We therefore do not repeat these arguments here. Furthermore, the only revenue taken into account when calculating QWR, and the potential penalty owed in the event of a breach, should be the revenue generated by the regulated service in respect of which there is a breach. It is unfair to impose a penalty on a service provider based on revenue attributable to a regulated service that has no connection with the breach. Given the potentially material level of

Question	Your response
	penalties that can be charged under the OSA, it would be disproportionate and unfair to impose a penalty on one regulated service based on revenue referable to a potentially wide range of other regulated services with no liability for, or involvement in, the breach. As above, this approach incentivises organisations to create complex corporate structures, with different service providers for each product, which is contrary to consumer interests. This is particularly important in the context of penalties given the potentially very significant scale of penalties that can be charged under the OSA. Ofcom should therefore calculate QWR and associated penalties in this circumstance by reference to each regulated service. **Ofcom should clarify that it will allow service providers sufficient time to generate information requested to enable Ofcom to calculate the QWR** In relation to the procedural steps that Ofcom will take when requesting information from services to enable it to determine QWR, Ofcom should ensure that it provides respondents with sufficient time to provide the requested information. This is critical given the importance of providing accurate and fulsome information. We anticipate that gathering the requested information will require providers to obtain information from multiple different teams, spanning various geographies and business functions, and the potential need to apportion the revenue based on service and/or country-base. We are conscious of the need to respond expeditiously to information notices, but in order to recognise the complexities of gathering such information in large, international businesses Ofcom should explicitly recognise in guidance that it will work with service providers to generate appropriate deadlines.

Chapter 3.2 **Consultation question 4:** Do you agree with our proposal for determining the QWR of a group, when calculating the maximum penalty that may be imposed on a provider and one or more group undertakings which are jointly and severally liable for a breach under the Act, i.e. that it is determined as the sum of the worldwide revenues of the provider and each of its group undertakings, whether or not attributable to the provision of a regulated service? Please provide evidence in support of your response.	**Calculation of QWR where the provider and one or more group undertakings are jointly and severally liable for a breach** Ofcom sets out that where group undertakings are jointly and severally liable for a breach, it proposes to define QWR as the total worldwide revenues of all the undertakings in the provider's group, not restricted to revenues generated by regulated services. As set out above, the purpose of the OSA is to make the use of internet services "*regulated by [the OSA] safer for individuals in the United Kingdom*" (s.1(1) OSA). Those regulated services are clearly defined in s.4 OSA. Ofcom's regulatory functions are to assess and enforce providers' compliance with this framework, and as such its regulatory spend – and the fees it requests in relation to this – will be generated as a result of its work overseeing and enforcing against regulated services. We consider that the revenue of non-regulated services is irrelevant to the calculation of QWR in any aspect of the fees and penalties regime, and it is irrational for Ofcom to take this revenue into account. Including revenue attributable to services that are entirely out of scope of the regime is wholly unfair, and risks undermining principles of corporate separateness. Ofcom sets out the following reasons in support of its approach: a) This approach will "*enhance the deterrent effect of the maximum penalty*", by incentivising the parent undertakings to exercise control over the provider to ensure it complies with its regulatory obligations, and by deterring subsidiary and sister undertakings from playing a role in a contravention by the provider (para 3.2.7 – 3.2.8, consultation document); b) The proposed approach "*has the advantage of consistency…in that it takes the same approach to all groups to the calculation of the penalty maximum"* (para 3.2.9 consultation document); and c) The calculation of QWR in this way is a straightforward exercise (para 3.2.10, consultation document). We consider that these points do not provide sufficient justification for Ofcom's approach, for the following reasons: a) It is not necessary for Ofcom to take into account irrelevant revenue when calculating QWR in these circumstances, in

Question	Your response
	order to generate a "*deterrent effect*" that could be reached in a way that is more consistent with the purpose of the OSA. By taking into account revenue attributable to the provision of the regulated service generated by all group entities, such entities will still be encouraged to ensure compliance by all members of the group. Ofcom does not need to take the revenue of non-regulated services into account in order to achieve this. b) Ofcom indicates that consistency is important here because it takes the global revenues of all undertakings in the group into account, regardless of the nature of their business activities. However, this is a flawed foundation on which to promote consistency, as the nature of a service's business activities (and therefore whether or not it is regulated), is clearly central to whether this revenue is relevant for the purposes of the penalties regime. Furthermore, this approach does not ensure consistency with the way in which QWR is calculated in other areas of the fees and penalties regime. c) It is even more straightforward, and would lessen the administrative burden on both the provider and Ofcom even further, to calculate QWR in a consistent manner throughout the fees and penalties regime. There is no reasonable justification for treating these situations differently within the same regime. We therefore recommend that, for Ofcom's approach to be proportionate and in accordance with the purpose of the OSA, QWR for fees and penalties where group undertakings are jointly and severally liable for a breach should be calculated by reference to regulated services only.

Question	Your response
Chapter 3.3 **Consultation question 5:** Do you have any comments on our proposed advice to the Secretary of State to set a QWR threshold figure within the range of £200m to £500m, with a preferred figure of £250m, for all types of regulated services? **Consultation question 6:** Do you have any comments on our proposed exemption for providers with UK revenue less than £10m in a qualifying period? **Consultation question 7:** Do you agree that an exemption for services contributing to the public interest is not required at this time given the proposed QWR threshold and UK revenue exemption? Please provide evidence to support your responses.	Confidential? – Y / N

Chapter 3.4 **Consultation question 8:** Do you agree with our proposed approach to setting the amount of fees payable by providers above the QWR threshold? Please provide evidence to support your response.	**Ofcom should be required to set out, in advance of each charging year, a detailed breakdown of their proposed spend for the year, and the associated predicted overall cost** Ofcom's current proposed approach to determining the overall amount of fees that service providers will be required to pay requires Ofcom to send invoices to providers before the full amount of such costs has been incurred, based on estimates of the likely cost of exercising their online safety functions. Under s.88(2) OSA, Ofcom is bound to ensure that: (a) "*the aggregate amount of fees payable to Ofcom is sufficient to meet but does not exceed the annual cost to Ofcom of the exercise of their online safety functions*"; (b) "*the fees required are justifiable and proportionate having regard to the functions in respect of which they are imposed"; and* (c) *"that the relationship between meeting the cost of the exercise of those functions and the amounts of the fees is transparent"*. The Secretary of State (**SoS**) has also identified three overarching principles that Ofcom should have regard to when developing principles to include in the SoCP, and carrying out other functions in relation to fees etc (Guidance to the regulator about fees relating to the Online Safety Act 2023 - GOV.UK). These are the principles of proportionality, transparency and stability. There are currently minimal (if any) protections built in to Ofcom's proposed approach to achieve these requirements, and to ensure that the proposed mechanism ensures Ofcom provides a fair estimate of its expected spend for the relevant year. In order to mitigate this problem, and in accordance with the requirements of s.88(2) OSA and the principles set out by the SoS that Ofcom must have regard to, Ofcom should publish a detailed breakdown of their estimated costs for the relevant year, including (as set out by s.88(2)(b) OSA) why these costs are justified and proportionate having regard to the functions that Ofcom must carry out. Providers who will be incurring such costs should be permitted to scrutinise and challenge Ofcom's estimates. The principles set out by the SoS in its published guidance require that Ofcom acts

Question	Your response
	transparently: it must be clear to firms what fees they are paying and why they are paying them. The SoS's guidance indicates that this is "*integral to the overall success of the regulatory regime*". In order to ensure that the relationship between the cost of Ofcom exercising its regulatory functions and the amount of fees it is charging is transparent, Ofcom should commit to providing a detailed breakdown of its costs, and to engage with service providers over a sufficiently long time period to discuss those costs. Service providers should have the opportunity to ask questions and challenge Ofcom's estimates, in order to ensure that fees are being calculated fairly and realistically. This is also necessary to ensure stability: providers should be able to see at a granular level how Ofcom is setting fees, to ensure they are consistent over time. This is not a novel approach: for example, Ofgem not only sets out the basic formulation of how fees will be calculated in the Ofgem Principles (which are analogous to Ofcom's SoCP), it also sets out an annual "Forward Work Plan" of its total estimated costs for the upcoming year. This sets out what Ofgem proposes to spend for the following year. Similarly, the DSA requires the Commission's fee estimation to be accompanied by an overview prepared by the Commission indicating the elements accounted for such estimation in accordance with different categories of costs.[2] In addition to the above, Ofcom should set out in the SoCP that it will operate a rebate system, whereby if Ofcom recovers more fees than it spends in the relevant year, it is required to either (a) refund services the excess funds it has received, or (b) to hold the excess funds as credit towards subsequent charging years. We note that there is precedent for such an approach across other UK regulatory frameworks – for example, under the Bank of England's fees regime for the supervision of financial market infrastructure, the Bank will issue a refund if the cost of the work required is lower than the application fees charged. The same is true of Ofgem's licence fee regime, where any licence fee saving identified at year-end is returned by Ofgem to those who funded it. Under the EU DSA, the overall

[2] Art 6(1) Commission Delegated Regulation (EU) 2023/1127 of 2 March 2023 supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council with the detailed methodologies and procedures regarding the supervisory fees charged by the Commission on providers of very large online platforms and very large online search engines

Question	Your response
	annual costs for a charging year will be reduced by the amount of any surplus recovered in the previous year. **Ofcom should impose a cap on the total fee that a service provider is required to pay** In addition to publishing a detailed breakdown of their spending and operating a rebate system, Ofcom should set a cap on the maximum amount of fees payable by a provider. This is necessary in order to ensure that the fees payable by a service are proportionate, foreseeable, and manageable for service providers. Under the current approach, providers are not able to foresee the extent of upcoming costs. There is no predictability about the maximum amount of fees providers may have to pay, which makes it difficult for them to make financial plans for subsequent accounting years. Without the safeguard of a cap, providers are left to estimate the amount of fees they will be subject to, which may vary drastically based on Ofcom's spend and the number / revenue of other providers who have to pay fees. This is necessary in order to accord with the stability principle that Ofcom is required by the SoS to adhere to: the SoS noted in its guidance that "*for the online safety fee regime to be fit for purpose, regulated service providers need to be able to incorporate fee paying into their long-term plans*". Without any guidance as to the upper limit that providers could be required to pay, service providers are unable to consider their financial position for the long term, which is likely to act as a disincentive for companies to enter the tech sector. This aligns with the approach taken by other regulators: under the DSA in the EU, fees are capped as 0.05% of a platform's annual global net income from the previous year (that is, a provider's overall revenues less costs).[3] Where the basic amount calculated for the specific provider exceeds the limit, the fee is reduced to this limit. Under this approach, any residual amount not charged to a provider due to having reached the maximum limit, will be paid by the other designated

[3] Commission Delegated Regulation supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council with the detailed methodologies and procedures regarding the supervisory fees charged by the Commission on providers of very large online platforms and very large online search engines.

Question	Your response
	services that have not reached their limit in the calculation of their fees, using a calculation set out in the regulation. Ofcom should therefore include a cap in the SoCP, expressed as a percentage of a service provider's **income**, that sets out the maximum amount of fees that a single provider should be expected to pay. The cap should be set out by reference to income rather than revenue, as this provides a more appropriate indication of how much is manageable for a service provider to pay. This supports a pro-innovation approach in the tech sector, as it will provide comfort to companies that the amount of fees they will be charged will be proportionate to the amount they are actually making. **Ofcom's proposed approach of requiring all qualifying providers to pay an amount equal to a single percentage of QWR is appropriate in the interests of fairness** Ofcom sets out that it proposes to calculate fees using a single percentage approach, so that in a charging year each provider liable to pay fees would pay the same percentage of their QWR. Subject to our recommendations above about the way in which QWR is calculated, we consider that this approach will ensure the greatest consistency between providers, and is appropriate in the interests of fairness. We agree that this approach allows fees to be calculated proportionately and in alignment with the financial resources available to each provider. It is therefore consistent with the SoS's guidance that the SoCP are proportionate, as well as ensuring stability. **Responses to Ofcom's information requests regarding fees and penalties should be kept confidential** We understand that, in order to calculate QWR, Ofcom will issue information requests to providers. We anticipate that the responses to these information requests will require providers to share highly sensitive financial information. Under Ofcom's statutory duty in respect of confidential information disclosed to it under the Communications Act 2003, Ofcom cannot disclose confidential information we provide unless we consent or

Question	Your response
	Ofcom considers it necessary or appropriate to do so to carry out its regulatory functions. We consider that, given the extremely sensitive nature of the information that will be included in the responses to fees information requests, Ofcom should explicitly recognise in the SoCP that its intention is not to publish commercially sensitive information, and that where publication is absolutely necessary, it will only publish the minimum amount of information required to carry out its functions, and only with prior consent from the service provider. Furthermore, we recommend that Ofcom should commit to, where possible, aggregate or summarise information so as to publish the information in an anonymised form. This is a proportionate commitment for Ofcom to make in circumstances where the relevant information is likely to be sensitive financial information, and where it is unlikely that publication of such information would facilitate Ofcom's functions.
Chapter 4 **Consultation question 9:** Do you agree with our proposals relating to supporting evidence, documentation and other information, and manner of notification, as reflected in our Notification Regulations (Annex 10)? **Consultation question 10:** Do you have any comments on the proposed Manner of Notification document in Annex 11 accompanying the Notification Regulations?	Confidential? – Y / N

Question	Your response
Chapter 5 **Consultation question 11:** Do you agree with our assessment of the potential impact of our proposals? If you disagree, please explain why.	Confidential? – Y / N
Overall **Consultation question 12:** Do you have further views / comments that you wish to make in respect of this consultation? Please provide evidence in support of your responses.	Confidential? – Y / N
Annex A7 questions	

Question	Your response
Consultation question A1: In relation to our equality impact assessment, do you agree with our assessment of the potential impact of our proposals on equality groups? If you disagree, please explain why. **Consultation question A2:** Are you currently aware of any providers of regulated services targeting or providing support in any way to specific equality groups that are likely to generate a QWR that meets or exceeds the proposed threshold? **Consultation question A3:** In relation to our Welsh language assessment, do you agree that our proposals are likely to have positive, or more positive impacts on opportunities to use Welsh and treating Welsh no less favourably than English? If you disagree, please explain why, including how you consider these proposals could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh	Confidential? – Y / N

Question	Your response
and treating Welsh no less favourably than English.	

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