

Your response

Question	Your response
<p>Chapter 3.1</p> <p>Consultation question 1: Do you agree with our proposed approach to determining QWR? We would welcome comments in particular on:</p> <p>a) Our proposal to define QWR by reference to worldwide revenues.</p> <p>b) Our proposals in relation to apportioning revenue to the regulated service.</p> <p>c) Our proposed approach to requiring QWR to be aggregated across all regulated services provided by the provider.</p> <p>d) Our proposal to take account of revenues received by another group undertaking in the determination of QWR.</p> <p>Consultation question 2: Do you agree with our proposed definition of ‘qualifying period’?</p> <p>Consultation question 3: Do you have any views on our proposal not to issue a statement to Part 4B services (VSPs) (under paragraph 21 of Schedule 17 to the Act)?</p> <p>Please provide evidence to support your responses.</p>	<p>Confidential? – N</p> <p>As an introductory and general point, we note that we are aligned with TechUK’s response to this consultation and as such reiterate its key points in our own response further below.</p> <p>Note that while we address certain of Ofcom’s proposals below, to the extent we do not comment on a proposal, this should not be construed as an agreement with such.</p> <p>In summary for this question, no, we do not agree with Ofcom’s proposed approach to determining QWR.</p> <p><u>QWR - disagree with ‘worldwide’ related proposals:</u></p> <ul style="list-style-type: none"> - Ofcom should not be calculating fees or determining the penalty cap on the basis of the operation of the regulated service worldwide but instead confine the regimes to assessing the UK and UK revenue; - Although we recognise that the QWR concept is part of the OSA itself, we note that Ofcom has discretion in respect of calculating the QWR; - The OSA’s relevant duties only apply insofar as the service affects the UK / UK users (s.8(3), 25(1) OSA). - As such, defining QWR beyond the UK-facing service risks, and including revenue generated from non-UK users, means the regime may be disproportionate in nature, and goes beyond the purpose of the OSA to make regulated services safer for individuals in the UK - Indeed, Ofcom states that the fees are to meet the costs of regulating services within scope of the OSA; but those services are, insofar as the OSA is concerned and as stated above, confined to the UK /UK users; therefore it cannot be proportionate for Ofcom to look beyond the UK.

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	<ul style="list-style-type: none"> - Ofcom appears to recognise the disproportionality of its approach by introducing the exemption where that provider's UK referable revenue is less than £10m in a qualifying period; Ofcom should consider other relevant exemptions in line with the above, and as set out further below. - We consider that Ofcom is essentially inappropriately attempting to recover revenue generated by use of the service by non-UK users. - In doing so, there is a risk that providers will face duplicate charges from multiple regulators, many of whom are establishing similar fee regimes; separation of regimes is crucial to ensure fair and accurate compliance with regulatory frameworks across multiple jurisdictions. - Further, aggregating worldwide revenues for the calculation of QWR may disincentivise global providers from introducing new regulated services into the UK - Given the scope of the OSA, it is unreasonable for Ofcom to take irrelevant considerations, such as revenue that is referable to, for example, the use of the regulated service by non-UK users, into account when determining QWR. - We would welcome clarity from Ofcom on whether its intention is for the definition of 'UK referable revenue' to include revenue derived from non-UK users <p><u>QWR - disagree with 'revenue' related proposals:</u></p> <ul style="list-style-type: none"> - We disagree that the QWR revenue metric should be used as the deciding metric rather than profit. - This approach could disproportionately affect high revenue, low profit services under the current proposals.

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	<ul style="list-style-type: none"> - Ofcom should not assume that providers that meet the the required threshold of £250m QWR “would have the means to pay” - There may also be commercial sensitivities for some providers around publishing country-specific revenue figures. - We encourage Ofcom to consider further exemptions based on scenarios where providers of regulated services may have high revenue, but low profitability. - In particular, we encourage Ofcom to look to the EU’s Digital Services Act regime that takes into account providers’ profit not gross revenue as the basis for the fees regime.’ <p><u>QWR - further points including inappropriateness of including revenue from parent company and group entities</u></p> <ul style="list-style-type: none"> - Ofcom should confirm that B2B revenue derived from purely B2B services—i.e., services purchased exclusively by enterprise customers—are excluded from Ofcom's definition of QWR. - Each regulated service should be assessed based on its own revenue, rather than the revenue of a parent company or group entities. Including non-referable revenue from parent companies or group entities in the fee calculation could unfairly inflate fees or penalties, particularly in circumstances where these may not be UK facing or have UK referable revenue and/or indeed be providers of regulated services. - Providers should be allowed to exclude ancillary features that generate minimal revenue from calculations if their impact on the regulated service is negligible. This would help prevent unnecessary complexity and ensure the fees reflect the core services subject to regulation.

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	<ul style="list-style-type: none"> - Ofcom should align the definition of QWR across both fees and penalties. Including non-referable revenue is disproportionate and inconsistent with the Online Safety Act's focus on regulating the safety of only the regulated services, and it introduces unnecessary complexity for businesses. We request that Ofcom consider adopting a more streamlined and consistent approach.
<p>Chapter 3.2</p> <p>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.</p>	<p>Confidential? – N</p> <p>No, we do not agree; we repeat the relevant points made above, namely that we disagree that QWR should take into account revenue of a parent company or group entities, particularly in circumstances where these may not be UK facing or have UK referable revenue and/or indeed be providers of regulated services. As stated above, we disagree that revenue should be used as the deciding metric at all; rather, the provider's profit should be.</p>
<p>Chapter 3.3</p> <p>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?</p> <p>Consultation question 6: Do you have any comments on our proposed exemption for providers with UK</p>	<p>Confidential? – N</p> <p>No further specific response; we repeat the relevant points made above, namely that we disagree that QWR - namely reference to revenue - should be used as the deciding metric rather than profit, that this approach could disproportionately affect high revenue, low profit services under the current proposals, and that Ofcom should not assume that providers that meet the required threshold of £250m QWR "would have the means to pay". If revenue is maintained as the metric then we request that Ofcom consider an exemption based on low or no profit i.e. profitability below a certain threshold</p>

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<p>revenue less than £10m in a qualifying period?</p> <p>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?</p> <p>Please provide evidence to support your responses.</p>	<p>should allow a relevant provider to benefit from an exemption in relation to fees.</p>
<p>Chapter 3.4</p> <p>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.</p>	<p>Confidential? – N</p> <p>No further specific response; we repeat the relevant points made above, namely that we disagree that QWR - namely reference to revenue - should be used as the deciding metric rather than profit, that this approach could disproportionately affect high revenue, low profit services under the current proposals, and that Ofcom should not assume that providers that meet the required threshold of £250m QWR “would have the means to pay”.</p>
<p>Chapter 4</p> <p>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)?</p> <p>Consultation question 10: Do you have any comments on the proposed Manner of Notification document in Annex 11 accompanying the Notification Regulations?</p>	<p>Confidential? – N</p> <p>We note that Ofcom acknowledges that confidential information may be included in the fees regime notification or in response to any statutory information requests Ofcom makes relating to verifying QWR.</p> <p>Ofcom should confirm its intention not to publish or disclose confidential information provided by providers, and adopt a fair and transparent approach in relation to its treatment of confidential information. Confidential information provided for verifying QWR should not be shared, disclosed or utilized for other purposes.</p>

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<p>Chapter 5</p> <p>Consultation question 11: Do you agree with our assessment of the potential impact of our proposals? If you disagree, please explain why.</p>	<p>Confidential? – N</p> <p>No specific response; we repeat the relevant points made above, namely that Ofcom’s proposals could have negative and unintended consequences insofar as the purpose of the OSA and the fees and penalty regimes are concerned.</p>
<p>Overall</p> <p>Consultation question 12: Do you have further views / comments that you wish to make in respect of this consultation?</p> <p>Please provide evidence in support of your responses.</p>	<p>Confidential? – N</p> <p><u>Broader transparency and purpose of fees regime:</u></p> <ul style="list-style-type: none"> - Using worldwide revenue thresholds to determine routine fees may disproportionately burden compliant services. We ask that Ofcom revisit this approach to ensure fees are more proportionate and reflective of the services' actual regulatory impact. - Compliance with the regulatory regime places a significant financial burden on online service providers, particularly in legal, compliance, and accounting areas, which could divert resources away from other critical business investments. We request that Ofcom take this into account when determining the appropriate fee structure. - The proposed fee rates appear likely to generate amounts significantly exceeding Ofcom's stated operational requirements. On this basis, we would request that Ofcom reduce the proposed rates to align more closely with its operational needs. - To provide commercial certainty, we request that Ofcom clarify the maximum amount of fees a service provider may be subject to, ensuring businesses can plan and budget effectively. - A provisional determination on the fee to be charged to each provider should be communicated before sending invoices, in order to allow providers the opportunity to submit observations which would be taken into account in the final invoice. For this purpose, we request

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	that Ofcom provide all relevant figures and facts relied upon to calculate the relevant fee.
Annex A7 questions	
<p>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.</p> <p>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?</p> <p>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 and treating Welsh no less favourably than English.</p>	<p>Confidential? – N</p> <p>A1: No response</p> <p>A2: No response</p> <p>A3: No response</p>