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Chris Philp MP  
Minister for Tech and Digital Economy  
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Dear Minister

I am writing to follow up as requested on a few of the areas we discussed in the oral evidence session on 30th May and to provide you with our draft amendments that seek to address the issues we raised. Thank you for constructively engaging with the issues I raised.

Which? welcomes the news that you have listened to our concerns on the duties applying to search engines in relation to fraudulent advertising and have tabled an amendment to address this. This is an important step to ensure that consumers are protected from fraudulent advertisements across all platforms.

As mentioned in the evidence session, Which? also believes that it is critical that the Bill is updated to ensure that the intelligence gathering elements of risk assessments and transparency reporting apply to fraudulent advertising in the same way as they do for priority illegal content through clauses 8, 23 and Schedule 8. This will ensure that Ofcom has the information it needs to tackle fraudulent advertisements and protect consumers.

We also discussed the issue of user complaints and content reporting. You raised clause 18 of the Bill as requiring large social media firms to have effective complaints procedures. However, these complaints procedures only apply to duties set out in sections 9, 17 and 19 of the Bill. They do not cover section 35 and therefore do not include the ability for user complaints in relation to fraudulent advertising. Which? would like to see clause 17 and 18 amended to ensure that users can report fraudulent advertising when they encounter it and complain when firms fail to take adequate action.

You also raised clauses 140 and 141 which establish the procedure for super-complaints. Which? believes that super-complaints are an important mechanism to protect consumers and welcomes the suggestion that an organisation like Which? could be designated as an appropriate body to submit a super-complaint in this Bill. We have extensive experience of using super-complaint powers in other areas and would be happy to discuss the development of the super-complaints process with officials. In particular Which? believes that it is important for super-complaints to have a deadline established in legislation for the regulator's response.

I have attached our detailed amendments on each of these points and would welcome the opportunity to discuss these further with you and your officials.

Yours sincerely  
Rocio Concha

**Amendment 1:** Risk assessment and transparency reporting: Risk assessments

New clause

To move the following Clause—

**“Risk assessment duties about fraudulent advertisements: Category 1 services**

(1) This section sets out the duties about risk assessments about “fraudulent advertisements” within the meaning of section 34 which apply in relation to Category 1 services (in addition to the duties about risk assessments set out in section 8, section 10 and section 12).

(2) A duty to carry out a suitable and sufficient risk assessment about fraudulent advertisements at time set out in, or as provided by, Schedule 3.

(3) A duty to take appropriate steps to keep a fraudulent advertisements risk assessment up to date, including when OFCOM make any significant change to a risk profile that relates to services of the kind in question.

(4) Before making any significant change to any aspect of a service’s design or operation, a duty to carry out a further suitable and sufficient fraudulent advertisements risk assessment relating to the impacts of that proposed change.

(5) A “fraudulent advertisements risk assessment” of a service of a particular kind means an assessment of the following matters, taking into account the risk profile that relates to services of that kind—

(a) the user base;

(b) the level of risk of individuals who are users of the service encountering content consisting of fraudulent advertisements by means of the service, taking into account (in particular) algorithms, platforms and technologies used by the service including options of promoting pre-existing content for payment, and how easily, quickly and widely content may be disseminated by means of the service;

(c) the level of risk of harm to individuals presented by fraudulent advertisements of different kinds;

(d) the level of risk of functionalities of the service facilitating the presence or dissemination of fraudulent advertisements, identifying and assessing those functionalities that present higher levels of risk;

(e) the different ways in which the service is used, and the impact of such use on the level of risk of harm that might be suffered by individuals;

(f) the nature, and severity, of the harm that might be suffered by individuals from the matters identified in accordance with paragraphs (b) to (e);

(a) how the design and operation of the service (including the business model, governance, use of proactive technology, measures to promote users' media literacy and safe use of the service, and other systems and processes) may reduce or increase the risks identified.

(6) In this section references to risk profiles are to the risk profiles for the time being published under section 83 which relate to the risk of harm to individuals presented by fraudulent advertisements.

(7) See also—

(a) section 20(2) (records of risk assessments), and

(b) Schedule 3 (timing of providers' assessments)."

#### Clause 20

Page 20, line 42, after "12", insert ", (**Risk assessment duties about fraudulent advertisements: Category 1 services**)"

Page 21, line 19, after "(3)" insert "or 34(1) or (2)"

Page 21, line 45, at end insert ", and

(i) section 34 (fraudulent advertisements)."

#### New clause

To move the following Clause—

#### **"Risk assessment duties about fraudulent advertisements: Category 2A services**

(1) This section sets out the duties about risk assessments about "fraudulent advertisements" within the meaning of section 35 which apply in relation to Category 2A services (in addition to the duties about risk assessments set out in section 23 and section 25).

(2) A duty to carry out a suitable and sufficient risk assessment about fraudulent advertisements at time set out in, or as provided by, Schedule 3.

(3) A duty to take appropriate steps to keep a fraudulent advertisements risk assessment

up to date, including when OFCOM make any significant change to a risk profile that relates to services of the kind in question.

(4) Before making any significant change to any aspect of a service's design or operation, a duty to carry out a further suitable and sufficient fraudulent advertisements risk assessment relating to the impacts of that proposed change.

(5) A "fraudulent advertisements risk assessment" of a service of a particular kind means an assessment of the following matters, taking into account the risk profile that relates to services of that kind—

(a) the user base;

(b) the level of risk of individuals who are users of the service encountering content consisting of fraudulent advertisements in or via search results of the service, taking into account (in particular) algorithms, platforms and technologies used by the service, and how easily, quickly and widely content may be disseminated by means of the service;

(c) the level of risk of harm to individuals presented by fraudulent advertisements of different kinds;

(d) the level of risk of functionalities of the service facilitating the presence or dissemination of fraudulent advertisements, identifying and assessing those functionalities that present higher levels of risk;

(e) the different ways in which the service is used, and the impact of such use on the level of risk of harm that might be suffered by individuals;

(f) the nature, and severity, of the harm that might be suffered by individuals from the matters identified in accordance with paragraphs (b) to (e);

(a) how the design and operation of the service (including the business model, governance, use of proactive technology, measures to promote users' media literacy and safe use of the service, and other systems and processes) may reduce or increase the risks identified.

(6) In this section references to risk profiles are to the risk profiles for the time being published under section 83 which relate to the risk of harm to individuals presented by fraudulent advertisements.

(7) See also—

(a) section 30(2) (records of risk assessments), and

(b) Schedule 3 (timing of providers' assessments)."

Clause 30

Page 30, line 6, after "25", insert ", (**Risk assessment duties about fraudulent advertisements: Category 2A services**)"

Page 30, line 26, after "(3), insert "or 35(1) or (2)"

Page 31, line 45, at end insert ", and

(i) section 35 (fraudulent advertisements)."

Schedule 3

Page 172, line 12, after "content" insert "or fraudulent advertisements"

Page 172, line 14, after "content" insert "or fraudulent advertisements"

Page 172, line 21, after "content" insert "*or fraudulent advertisements*"

Page 172, line 28, after "content" insert "or fraudulent advertisements"

Page 172, line 31, after "content" insert "or fraudulent advertisements"

Page 172, line 36, after "content" insert "*or fraudulent advertisements*"

Page 173, line 1, after "content" insert "or fraudulent advertisements"

Page 173, line 4, after "content" insert "or fraudulent advertisements"

Page 173, line 6, after "content" insert "*or fraudulent advertisements*"

Page 173, line 11, after "content" insert "or fraudulent advertisements"

Page 173, line 14, after "content" insert "or fraudulent advertisements"

Page 174, line 24, at end insert ";

"fraudulent advertisements risk assessment guidance" means OFCOM's guidance under section 84(2A)."

Page 174, line 29, at end insert—

"(ab) references to a fraudulent advertisements risk assessment are to a fraudulent advertisements risk assessment as defined by (**Risk assessment duties about fraudulent advertisements: Category 1 services**);"

Page 174, line 30, after "content", insert "or to a fraudulent advertisements, as applicable,"

Page 174, line 31, leave out "illegal content"

Page 174, line 35, at end insert—

"(ab) references to a fraudulent advertisements risk assessment are to a fraudulent advertisements risk assessment as defined by (**Risk assessment duties about fraudulent advertisements: Category 2A services**);"

Page 174, line 34, after "content", insert "or to a fraudulent advertisements, as applicable,"

Page 174, line 37, leave out "illegal content"

#### Clause 83

Page 72, line 8, at end insert—

"(ab) the risk of harm to individuals in the UK presented by fraudulent advertisements;"

Page 73, line 13, at end insert—

"fraudulent advertisements" has the same meaning as in Part 3 (see sections 34 and 35);"

#### Clause 84

Page 73, line 20, at end insert—

"(2A) As soon as reasonably practicable after OFCOM have published the first risk profiles relating to the risk of harm from fraudulent advertisements, OFCOM must produce

guidance to assist providers of Category 1 and Category 2A services in complying with their duties to carry out fraudulent advertisements risk assessments under sections “**(Risk assessment duties about fraudulent advertisements: Category 1 services)**” or “**(Risk assessment duties about fraudulent advertisements: Category 2A services)**” as applicable.”

Page 73, line 43, at end insert—

““risk of harm from fraudulent advertisements” means the risk of harm mentioned in section 83(1)(ab);”

**Amendment 2:** Risk assessment and transparency reporting: Transparency reporting

Schedule 8

Page 186, line 15, after first “content” insert “, fraudulent advertisements”

Page 186, line 17, after first “content” insert “, fraudulent advertisements”

Page 186, line 19, after “content” insert “, fraudulent advertisements”

Page 186, line 24, after first “content” insert “, fraudulent advertisements”

Page 186, line 28, after first “content” insert “, fraudulent advertisements”

Page 186, line 30, after “content” insert “or fraudulent advertisements”

Page 187, line 4, after first “content” insert “, fraudulent advertisements”

Page 187, line 12, after first “content” insert “, fraudulent advertisements”

Page 187, line 16, after first “content” insert “, fraudulent advertisements”

Page 187, line 32, after first “content” insert “, (for Category 2A only) fraudulent advertisements”

Page 187, line 36, after first “content” insert “, (for Category 2A only) fraudulent advertisements”

Page 187, line 41, after first “content” insert “, (for Category 2A only) fraudulent advertisements”

Page 188, line 11, after first “content” insert “, (for Category 2A only) fraudulent advertisements”

Page 188, line 19, after “content” insert “, (for Category 2A only) fraudulent advertisements”

Page 188, line 22, after first "content" insert ", (for Category 2A only) fraudulent advertisements"

Page 188, line 36, after first "content" insert ", (for Category 2A only) fraudulent advertisements"

Page 188, line 40, leave out "Chapter 2 or 3 of"

Page 189, line 15, at end insert—

"“fraudulent advertisements” has the same meaning as in Part 3 (see sections 34 and 35);”

**Amendment 3:** Different obligations for search and social platforms

Clause 35

Page 34, line 3, after "to" leave out to end of line 5 and insert—

- (a) prevent individuals from encountering content consisting of fraudulent advertisements in or via search results of the service;
- (b) minimise the length of time for which any such content consisting of fraudulent advertisements is accessible in or via search results of the service;
- (c) where the provider is alerted by a person to the presence of such content, or becomes aware of it in any other way, swiftly take down such content."

Page 34, line 31, after "has" insert "or may reasonably be expected to have"

**Amendment 4:** Clarifying user reporting and user complaints for fraudulent advertising: user reporting

Clause 17

Page 17, line 15, at end insert—

"(5A) Content that constitutes a "fraudulent advertisement" within the meaning of section 34."

Clause 27

Page 17, line 15, at end insert—

"(3A) Content that constitutes a "fraudulent advertisement" within the meaning of section 35."

**Amendment 5:** Clarifying user reporting and user complaints for fraudulent advertising: user complaints



Clause 18

Page 19, line 9, at end insert—

“(ab) complaints by users and affected persons about content present on a service which they consider to be content that constitutes a “fraudulent advertisement” within the meaning of section 34;”

Page 19, line 16, at end insert “, and

(vi) section 34 (duties about fraudulent advertising: Category 1 services).”

Clause 28

Page 29, line 3, at end insert—

“(4A) complaints by users and affected persons about content present on a service which they consider to be content that constitutes a “fraudulent advertisement” within the meaning of section 35.

**Amendment 6: Super complaints**

Clause 140

Page 121, line 1, after “services” insert “, consumers”

Page 121, line 2, after “users” insert “, consumers”

Page 121, line 4, after “services” insert “, consumers”

Page 121, line 5, after “users” insert “, consumers”

Page 121, line 6, at end insert “, consumers”

Page 121, line 7, after “users” insert “, consumers”

Page 121, line 14, after “service” insert “, consumers”

Page 121, line 18, at end insert " consumers"

Page 121, line 19, after "users" insert ", consumers"

Page 121, line 29 at end insert ";

"consumers" means individuals in the United Kingdom acting for purposes that are wholly or mainly outside the trade, business, craft or profession of the individuals concerned."

Clause 141

Page 121, line 32, after "140" insert ", which must include the requirement that OFCOM must respond to such complaints within 90 days"