

Mencap Evidence to Public Bill Committee on Online Safety Bill

About Royal Mencap Society and learning disability

Our vision is for the UK to be the best place in the world for people with a learning disability to live happy and healthy lives. We do this by supporting the 1.5 million people with a learning disability in the UK and their families, improving health and care services as well as access to education and employment. We also directly support over 4,000 people with a learning disability to live their lives the way they want. A learning disability is caused by the way the brain develops before, during or shortly after birth. It is always lifelong and affects intellectual and social development.

Amendments 8-17 (Clause 14)

Tackling legal but harmful content was an important piece of the puzzle in tackling Online Harms. The original proposals were to create a list of ‘priority content’, defined by the Secretary of State, of content which would have to be removed by services from their platforms or sites. We expected this list to include ‘disability’ and amendment 41 would remove this duty entirely from the Bill.

The set of amendments to Clause 14 remove this original proposal and replace it with a system which would only provide protections to particular groups. Amendment 15 sets out a list of content which services would be required to remove from their platforms. We welcome the inclusion of disability in new subclauses 8(c) and 8(d). However, there are still a number of questions about how this would work in practice as the responsibility on deciding what is “abusive” or “incites hatred” towards disability (as well as the other characteristics or groups mentioned) would rest with services. This is to some degree the status quo which we know has led to inconsistent approaches to moderating harmful content depending on the operation of algorithms or the discretion of human moderators.

The Government’s amendments become even more opaque when taking into consideration amendment 31 which places a duty on services to “consider freedom of expression and privacy issues when deciding on measures and policies to comply with clause 14”. When combined with the proposed appeals process, as well as the duty set out in amendment NC3, this creates the potential for services to become trapped between two users, one claiming abuse based on a characteristic and the other arguing against a stifling of freedom of expression.

While the Government’s amendment 61 may require social media companies to include information on how they are meeting this new requirement in their transparency reports, there is too little detail on the enforcement process resulting from this or whether OFCOM will use these powers. It also raises concerns that platforms may simply alter, change or broaden their terms of service to get around these new requirements.

Alongside this, we do not support amendment 6 which removes Clause 12 that sets out duties about adults’ risk assessments.

User Empowerment Filter

Any filter system (user empowerment) must be accessible to people with a learning disability to ensure this group is able to make an informed decision on what content they wish to filter out. Ofcom should provide statutory guidance on how the filters should work to ensure consistency and accessibility. As the Government's proposal stands, this system leaves many unanswered questions as to how each service will define and categorise content.

We also support amendment 101 from Kirsty Blackman MP which would create a duty for the user empowerment functions to be accessible to people with a learning disability.

Suggested amendments

We suggest an amended filter system for which OFCOM (or the Secretary of State) would provide statutory guidance to services on the operation of a filter (user empowerment) system. This would create a standardised and accessible system to ensure that users can benefit from a filter as well as providers provided with clarity on the operation and outcomes of the system.

Page 13, leave out Clause 14 and replace with –

User empowerment duties

- (1) This section sets out the duties to empower adult users which apply in relation to Category 1 services.*
- (2) A duty to include in a service features which adult users may use or apply if they wish to increase their control over harmful content.*
- (3) The services must follow the guidance set out by Ofcom as set out in Clause 15*
- (4) A duty to ensure that all features included in a service in compliance with the duty set out in subsection (2) are made available to all adult users.*
- (5) A duty to include clear and accessible provisions in the terms of service specifying which features are offered in compliance with the duty set out in subsection (2), and how users may take advantage of them.*
- (6) A duty to include in a service features which adult users may use or apply if they wish to filter out non-verified users.*
- (7) The features referred to in subsection (6) are those which, if used or applied by a verified user, result in the use by the service of systems or processes designed to—
 - (a) prevent non-verified users from interacting with content which a verified user generates, uploads or shares on the service, and*
 - (b) reduce the likelihood of that verified user encountering content which nonverified users generate, upload or share on the service.**
- (8) In determining what is proportionate for the purposes of subsection (2), the following factors, in particular, are relevant—
 - (a) all the findings of the most recent adults' risk assessment (including as to levels of risk and as to nature, and severity, of potential harm to adults), and*
 - (b) the size and capacity of the provider of a service.**

(9) In this section “non-verified user” means a user who has not verified their identity to the provider of a service (see section 57(1)).

(10) In this section references to features include references to functionalities and settings.

Members explanation

This amendment places a duty on Category 1 companies to follow the guidance set out in amendment XXXXX (the following one).

(New Clause 15)

To move new Clause -

OFCOM’s guidance about User Empowerment Duties

(1) In this section “duty” means duty under section 14.

(2) OFCOM must produce guidance for Category 1 companies to assist them in complying with duties set out in clause 14(2)

(3) The guidance must give information about how Category 1 companies can meet their duties under clause 14(2), including -

- (a) how to reduce the likelihood of the user encountering priority content that is harmful to adults, or particular kinds of such content, by means of the service
- (b) the provision of clear and accessible processes and information

(4) For so long as regulations are in force, OFCOM must carry out a review of—

- (a) the effectiveness of the guidance set out in subsection (3)
- (b) the accessibility of the features provided by services as set out in clause 14(2)

(5) Before producing the guidance (including revised or replacement guidance), OFCOM must consult such of the following as they consider appropriate -

- (a) providers of regulated user-to-user services, and of regulated search services,
- (b) persons who appear to OFCOM to represent such providers,
- (c) persons who appear to OFCOM to represent the interests of children (generally or with particular reference to online safety matters),
- (d) persons whom OFCOM consider to have expertise in equality issues and human rights, in particular—
 - (i) the right to freedom of expression set out in Article 10 of the Convention, and
 - (ii) the right to respect for a person’s private and family life, home and correspondence set out in Article 8 of the Convention,
- (e) the Information Commissioner,
- (f) persons who appear to OFCOM to represent the interests of those with protected characteristics (within the meaning of Part 2 of the Equality Act 2010), and
- (g) other such persons as OFCOM consider appropriate.

(6) OFCOM must publish a report on the outcome of each review.

(7) The report must include advice as to whether, in OFCOM’s opinion, it is appropriate to make changes to the regulations, specifying the changes that OFCOM recommend.

(8) The reports must be published not more than three years apart.

(9) The first report must be published before the end of the period of three years beginning with the day on which the first statutory instrument containing regulations is made.

(10) OFCOM must send a copy of each report to the Secretary of State.

Members explanation

This amendment places a duty on OFCOM to produce guidance on the operation of duties set out in amendment XXX (previous amendment).

Accessibility

Presently, there is a lack of easy read information in the reporting system and it is often difficult in reaching someone to speak with from the social media platform over the phone. Easy read information is a way of communicating, using jargon free, simple to understand text and accompanying images.

The Bill states that the terms of service must be “clear and accessible” but this wording is vague and provides no indication as to what would constitute accessible and clear information. Ensuring the accessibility of terms of service is crucial given the requirement in clause 13(2) for platforms to provide information from their latest risk assessment on levels of risk and harm as well as reporting mechanisms clause 13(4).