

# **Parliamentary briefing: Second Reading (Lords) of the Online Safety Bill, 01/02/23**

This briefing sets out the key challenges that Full Fact finds with the Online Safety Bill.

We are calling on Peers to raise the Bill's failure to tackle harmful misinformation. We believe the Bill needs to be changed to support an open society approach to tackling misinformation, with transparency and risk assessments required from internet companies; effective media literacy measures; and 'content neutral' interventions to reduce the harm from misinformation.

Full Fact can support you with briefings, amendments and advice. Please contact Alison Trew, Policy and Parliamentary Relations Manager, [alison.trew@fullfact.org](mailto:alison.trew@fullfact.org).

**Despite the experiences of the pandemic and the invasion of Ukraine, the Online Safety Bill does not effectively tackle harmful misinformation and disinformation.** This risks continued harm to individuals, the undermining of public health, and long-term damage to public debate. Full Fact's overarching concerns with the Bill are:

- **Adult risk assessments and transparent reporting requirements for Category 1 services must be put back into the Bill.** Both are essential for identifying harm on their platforms and setting out clear policies on those risks in their terms of service.
- **The Government has reneged on its promise to include protections for health misinformation in the Bill.** This must be addressed so that platforms are required to have a clear policy on harmful health misinformation in their terms of service.
- **The Bill should be amended so that Ofcom has a new statutory duty on media literacy,** a strategy for delivering on it, and reports on progress made. The largest platforms must be required to promote media literacy and the safe use of the service to their users.
- **The Advisory Committee on Disinformation and Misinformation must be enhanced,** to oversee Ofcom's research, produce reports, and advise Ofcom on Codes of Practice.
- **The Bill should be strengthened to protect freedom of expression online,** by prioritising the promotion of good information over restricting content, and by introducing a transparent framework for Government efforts to influence platforms' content moderation decisions.

## Addressing harmful content whilst protecting freedom of expression

In Clauses 64 and 65, the Government sets out its approach to deal with content that is harmful to adults. Companies will now have to decide what content is not allowed on their platforms, display this in their terms of service, and apply a consistent approach in how they manage content that is in breach of their terms of service.

**The Government's approach leaves it totally up to platforms what their terms of service cover.**

This approach will not protect users or freedom of expression because:

- It leaves unaccountable power in the hands of platforms rather than Parliament and the independent regulator. Companies based in the US, or China, or backed by Saudi money, will be making decisions that shape UK democracy without oversight.
- Companies will continue to remove and restrict content that should be tackled through 'content neutral' approaches that protect freedom of expression, such as adding information labels or friction.
- It could incentivise a 'race to the bottom' on company terms of service as platforms seek to give themselves maximum flexibility and minimise their risk of breach.

Misinformation will continue to spread widely online. **But the lack of regulatory oversight of how companies deal with misinformation is a threat to freedom of expression** as it will do nothing to address the way platforms censor legal content at scale.

There are a growing number of 'content neutral' methods for reducing harm from misinformation that mean that restricting or removing content should rarely be necessary. Internet companies can promote good information (such as the Covid-19 information centres Facebook), have friction-introducing initiatives (such as read-before-you-share prompts introduced by Twitter), or highlighting independent fact checking.

**The principle of preferring content neutral approaches over removing or restricting content should be integrated into the regulatory regime through a legal requirement in the Bill** (supported by an Ofcom Code of Practice).

## Oversight of government influence on content moderation decisions

An absence of adequate regulation of how platforms deal with misinformation and disinformation will leave us with the status quo - under which initiatives such as the Government's Counter Disinformation Unit regularly lobby internet companies about content on their platforms, including asking them to remove content. Something that was a marked feature of the Government's response to the Covid-19 pandemic.

The Government undertakes valuable work on misinformation and disinformation, but with little parliamentary or legal scrutiny of their work, this is a threat to freedom of expression. Continued silence from Government on how it seeks to influence platforms creates a form of 'censorship-by-proxy' as the new normal.

**The Online Safety Bill should introduce a transparent framework for Government initiatives to influence internet companies' content moderation decisions.** This should include a requirement for the Government to publish details of its attempts to influence platform decisions about specific items of content, user accounts, or terms of service. Full Fact recognises that some information, including matters of national security, may need protecting, but appropriate mechanisms of oversight could be identified.

## Adult risk assessments and transparency

The Government has scrapped the requirement for platforms to do an adult risk assessment or transparently explain the findings of those risk assessments to their users, as they do for children in Clauses 10 and 11.

This means the regulator will be unaware of the extent of harmful content online, including misinformation, and the impact it has on adult users. It will be very unclear how platforms are responding to this harm or protecting or empowering their users. Transparent access to this information will enable Ofcom, and civil society, to better advocate for changes to reduce the impact harmful content can have.

**The Government must reinstate the requirement for companies to do adult risk assessments to identify potential harm on their platform.** They must explain those risks, and then set out

transparently what their policy on those risks are in their terms of service. It is essential that these risk assessments include harmful false and misleading health information.

## Access to data

Access to good data about the operation of social media platforms is vital in holding internet companies to account and tracking the extent of online harms, building understanding of them and how they might be addressed.

Currently, access to this data is very limited, and companies can remove or restrict access at their discretion. Too often it has taken a whistleblower or a tragedy to expose safety critical issues in the operation of these platforms. The Online Safety Bill will do nothing to change this situation.

It must not be left to the companies to decide whether information about the risks on their platforms are made available for public interest focussed research. **The Bill should require companies to allow independently verified researchers and civil society organisations access to their data.** This could be supported by Ofcom guidance.

## Health misinformation

Health-related misinformation and disinformation undermines public health, and the Government has not learned lessons from the last two years, where misinformation and disinformation had a devastating impact during the Covid-19 pandemic.

The changes made when the Online Safety Bill was recommitted to the Public Bill Committee in the Commons mean that **the Government has reneged on its promise to protect the public from health misinformation in the Bill.** Harmful and demonstrably false health content had previously been included in the Government's [indicative list of priority harmful content](#) that companies would have been required to address in their terms of service under the now removed adult safety duties.

This has now been dropped. There are now very limited protections for the public on harmful health misinformation and disinformation in the Online Safety Bill. **It is vital that platforms are**

required to have a clear policy on dealing with harmful, false and misleading health information in their terms of service. Not only will this protect people's health, it will also protect freedom of expression.

The false communication offence in Clause 160 is not the answer as it only covers a user sending a knowingly false communication with the intention of causing harm. The need to establish both knowledge of falsehood and intent to cause harm to a criminal standard, means both that it will likely exclude most [health misinformation Full Fact sees online](#), and is unsuitable to be applied at internet scale without significant risks of over moderation.

## **The Advisory Committee on Misinformation and Disinformation**

The only direct reference to misinformation in the Online Safety Bill is to set up a committee to advise Ofcom in Clause 139. However, this Advisory Committee has no identifiable powers or active role in tackling harmful misinformation and disinformation.

It is unclear how this Committee will fit with Ofcom's wider regulatory functions - which are currently very limited when it comes to addressing harmful misinformation and disinformation. At present there are no guarantees about when the Committee will even be up and running.

**The Advisory Committee should be established within six months of Royal Assent and its remit enhanced to effectively tackle harmful misinformation and disinformation.** It should oversee Ofcom's research on the harms caused by bad information, as well as producing its own reports on emerging patterns of behaviour, effects, and proportionate responses. We also want Ofcom to be required to consult the Committee when drafting Codes of Practice. Parliament should ensure that the Committee is not at risk of 'regulatory capture' by the platforms, and that it has an independent Chair.

## **Media literacy**

The UK has a vast literacy skills and knowledge gap. Last year [Ofcom](#) found that a third of internet users are unaware of the potential for inaccurate or biased information online. Good media literacy is the first line of defence and can make the difference between decisions based on sound evidence, and decisions based on poorly informed opinions, that can harm health and

wellbeing, social cohesion, and democracy. Strengthening media literacy strengthens freedom of expression.

The draft Bill presented for pre-legislative scrutiny proposed a new media literacy duty for Ofcom (replacing the one in section 11 of the Communications Act - which dates back to 2003). Unfortunately the Government then scrapped that duty from the version introduced to Parliament.

Media literacy initiatives in the Online Safety Bill are now obliquely mentioned in the safety duties in the context of the risk assessments, but there are no active requirements for internet companies to promote media literacy. The draft Bill's media literacy provision needed to be strengthened, not cut.

**The Government must amend the Bill to introduce a new, stronger media literacy duty on Ofcom with specific objectives.** It should also require the regulator to produce a strategy on media literacy, and then report on progress made towards increasing media literacy under the strategy. **The largest platforms (Category 1 services) must be required to promote media literacy and the safe use of the service to their users.**

For more information or advice, please contact Alison Trew, Policy and Parliamentary Relations Manager, [alison.trew@fullfact.org](mailto:alison.trew@fullfact.org).