The Online Harms White Paper

Doteveryone's Response

1st July 2019

Executive Summary

Doteveryone is an independent think tank that champions responsible technology.[1] We research how technology is changing society, create products and prototypes that show what responsible technology looks like, and catalyse communities to create change.

Responsible technology promotes a fair, inclusive and thriving democratic society. It works in the best interests of the individual and of the public as a whole, safeguards against harm and is founded on fair and transparent value exchange between people and technology.

The development of the government's Online Harms White Paper is a welcome recognition of the need to put these values at the heart of online services, and of the need for new approaches to regulation that will shape the impacts of technology. We appreciate the engagement we have had with government and are pleased our research[2] has contributed to the policy development.

We applaud the government's ambition in trying to address these urgent issues, and in particular for adopting a duty of care that has the potential to create a holistic and preventative approach to addressing online harms. However, we caution that the White Paper currently falls short in a number of areas, which we describe in detail in the consultation responses, and requires significant further consultation and development. We look forward to continuing to engage with government in this process.

Overall we find the White Paper must address the following, broader issues:

1. The new regulatory approach must sit within an **overarching and co-ordinated vision for a fair, inclusive and thriving democratic society in the digital age.** The Online Harms White Paper sits alongside a proliferation of overlapping initiatives including the forthcoming Consumer Markets White Paper, ICO's age-appropriate design-code, and the Furman Review into digital competition. Without a clear, unifying narrative these are almost impossible to navigate and often in potential

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[1] https://doteveryone.org.uk/
[2] People, Power and Technology: The Tech Workers' View (May 2019): https://doteveryone.org.uk/wp-content/uploads/2019/04/PeoplePowerTech_Doteveryone_May2019.pdf
Regulating for Responsible Technology (Oct 2018): https://doteveryone.org.uk/wp-content/uploads/2018/10/Doteveryone-Regulating-for-Responsible-Tech-Report.pdf
A Digital Duty of Care: Doteveryone's Perspective (Feb 2019): https://doteveryone.org.uk/wp-content/uploads/2019/02/Doteveryone-briefing-a-digital-duty-of-care.pdf
People, Power and Technology 2018: https://doteveryone.org.uk/project/peoplepowertech/

conflict. Doteveryone recommends an Office for Responsible Technology to sit above the regulatory landscape and create coherence.

2. Regulation will not work alone. It must be accompanied by a **comprehensive innovation strategy** that promotes the UK as a world leader in responsible technology. These regulatory proposals must operate in tandem with the industrial strategy and we recommend a coordinated system of incentives for responsible innovation.

3. The **new regulator must balance protecting fundamental rights alongside harm prevention and be honest about the challenges this poses**. The regulator will require true independence, must be open to public, civil society and industry engagement, and must not be subject to government or parliamentary interference. We recommend the regulator uses the established UN human rights frameworks to set out public interest objectives for online services to meet.

4. **The regulator must take a systemic approach, focusing on promoting safety and responsibility by design.** All online harms to individuals or society should be within scope, including consumer detriment and economic harms. The codes of practice in the White Paper as currently drafted undermine the duty of care principle and draw the emphasis towards after-the-fact take down of content, penalties and enforcement actions. These should be a last resort, not core regulatory activities and it must be recognised that all harms will not be eradicated.

5. **The regulator must be forward-looking and anticipatory**. Digital technologies move too fast for reactive and retrospective regulation to be effective. The regulator will need to embrace the approaches set out in the Department for Business, Energy and Industrial Strategy's *Regulating the Fourth Industrial Revolution* White Paper and emulate forward-looking regulators such as the Financial Conduct Authority. An effective risk-based approach will also depend on developing a more rigorous evidence-base around online harms.

6. The regulator must **demonstrate tangible change in the public's experience** of online services. The role of the regulator is not just to provide technocratic fixes. The regulator must prioritise practical interventions and engage with the public to understand their concerns and communicate the remedies so that people recognise a perceptible rebalancing of power between tech companies and the public.

Consultation Question Responses

Question 1: This government has committed to annual transparency reporting. Beyond the measures set out in this White Paper, should the government do more to build a culture of transparency, trust and accountability across industry and, if so, what?

Creating a common vision for industry and the regulator

Successful implementation of the duty of care requires clarity of purpose from government and an articulation of a positive, shared vision of the public interest for companies to aspire to. We are concerned that the current White Paper has an overemphasis on ill-defined individual harms which will be quibbled over by companies and are likely to quickly become outdated.

We propose using the United Nations Guiding Principles on Business and Human Rights to set out the public interest objectives that companies should pursue and that the regulator should work to. Centred around the responsibilities to "protect, respect and remedy",[3] these principles are compatible with the duty of care's emphasis on preventative measures, recognition of users' rights and systems of redress. In addition:

- A rights framework recognises the need to balance competing rights, for example, freedom from harm and abuse must be weighed against freedom of speech, and provides parameters for the regulator to do that.
- A rights framework acknowledges the positive contributions many online services and products make to the rights of individuals, communities and societies such as the way social media platforms support freedom of expression and assembly.
- Human rights are protected by existing legislation, legal structures and oversight bodies, including the 1984 Human Rights Act, the European Court of Human Rights and the Human Rights and Equalities Commission in the UK. A duty of care could be grounded in these trusted institutions and laws.
- The UN human rights frameworks are internationally recognised, meaning a British duty of care approach can be readily adopted by other states, promoting international collaboration and supporting enforceable transnational obligations.

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[3] https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf

- The use of a recognised UN framework mitigates the risk that UK internet regulation will set a precedent for authoritarian states to regulate to restrict online free speech.[4]

The forthcoming age-appropriate design code, which is based around the UN Convention on the Rights of a Child, offers an example of what this could look like in practice.

Building a culture of upstream responsibility

For a duty of care to be effective, **the regulator's focus and resources must be directed to promoting safety and responsibility by design**, encouraging preventative measures at an early stage before any harm has been felt. Placing too much onus on transparency reporting of specific issues prioritises policing harms after they've occurred over preventing them upstream. To foster a collaborative, forward-looking regulatory approach, we recommend:

- **All online harms to individuals or society should be within scope**, including those that cause consumer detriment. This will make the statutory duty of care simple, broad and future-proofed and encourage services to design their services holistically to mitigate all potential negative consequences whether societal or individual, physical, emotional or economic.
- The current White Paper's exclusion of economic harms will add confusion to an already fragmented landscape and fail to address one of the public's greatest concerns in using online services. More than two-fifths (43%) of older people – almost 5 million people aged 65 and over – believe they have been targeted by scammers[5]. Some economic harms such as cyber scams and phishing are also heavily interconnected with content harms; separating these is an artificial distrincion and online service providers should be encouraged to mitigate for both kinds of outcomes throughout their design and development processes.
- **Codes of Practice should focus on company processes, not types of harms.** This will ensure regulation remains flexible to emerging issues, and does not burden the regulator with a constantly expanding list of codes of practice as new harms inevitably emerge. Processes subject to a code might include:
  - Responsible design
  - Harm identification and mitigation
  - Evidence-gathering and reporting of online harms
  - User redress and mediation systems
  - Protection of vulnerable users
  - Development and communication of responsible terms and conditions
- **The regulator and government should share tools and best practice for anticipating and mitigating harms at an early stage,** as well as supporting the

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[4] https://www.hrw.org/news/2018/02/14/germany-flawed-social-media-law

[5] https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/reports-and-briefings/safe-at-home/rb_mar18_applying_the_brakes.pdf

development of open-source, free-to-use standards and pattern libraries. We recommend these go beyond the narrow definition of safety by design to include broader responsibility and human-rights centred design. Doteveryone's *TechTransformed*[6] tools help innovators embed responsibility into the development process. We provide further detail on this in our answers to questions 15 and 16, as well as recommendations for further support to business in question 9.

- **The government must improve coordination and dissemination of horizon scanning activity.** The Regulatory Horizons Council proposed in BEIS' Regulating the Fourth Industrial Revolution paper[7] along with the Centre for Data Ethics and Innovation, the Council for Science and Technology, Government Office for Science and other regulators all have functions to anticipate emerging issues. These must be brought together as a network that fosters a community of practice, develops tools and shares insights. Crucially this network must publish regular bulletins so industry and the public can understand the future landscape and companies can act promptly to anticipate the actions required under the duty of care. Doteveryone recommends an Office for Responsible Technology that can coordinate this function.

Ensuring accountability

To ensure organisations are held accountable for the responsible design of their products, we recommend:

- **The regulator should have powers to audit the measures companies have developed to anticipate and mitigate harm**. This mandate should be broad to allow for changing practice, new technologies and unforeseen issues. As first priorities it could include, for example, the power to audit services' content moderation practices, advertising practices and algorithmic decision making, as well as the auditing of complaints and redress mentioned in question 2 of the consultation response.
- **All services under the scope of the duty of care should be required to conduct and publish online harms impact assessments**, setting out potential risks to users and societies and detailing the measures they have taken to prevent and mitigate them. These should be framed by the UN human rights obligations mentioned above.
- **The regulator should consider organisations' adherence to the codes of practice around process when assessing their compliance with their duty of care.**
- **The regulator should issue public notices where breaches of the duty of care have occurred and share learnings within industry.** The regulator should maintain a library of publicly available case studies of examples of good and bad practice,

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[6] https://www.tech-transformed.com/
[7] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807805/regulation-fourth-industrial-strategy-white-paper-print.pdf

and publish a monthly bulletin, learning from similar initiatives by the Financial Conduct Authority.[8]

Trust

The White Paper is right to point to the deficit of trust in online services: 83% of Brits have "little or no trust" in platforms, whilst only 12% trust information from social media. [9] The drive to regulate is motivated by a drip-feed of malpractice and obfuscation on the part of tech companies. In Doteveryone's research, online services are often described by the public as 'sneaky'.[10]

The only true remedy for this is trustworthy behaviour on the part of the companies and our recommendation to focus on responsible practice, rather than levels of harm, aims to meet this need.

In demanding a culture change from industry, the regulator must also show itself to be worthy of trust. The regulator must be an honest broker and not subject to political interference. The regulator must arbitrate on novel and highly contentious issues that sit at the heart of the public's democratic rights; its independence must be unimpeachable.

We therefore strongly disagree with the proposal to give ministerial sign off to certain codes of practice. All codes of practice should sit within the regulator. The publication of draft codes initiated by government within the White Paper has unhelpfully muddied the waters. We set out further views on the governance required by the regulator in questions 4 and 10.

Making tangible improvements to people's online experience

We welcome the intention set out in the White Paper for the regulator to define standards for terms and conditions**.** Doteveryone's *People, Power and Technology* research found 43% of people feel there's no point reading terms and conditions "companies will do what they want anyway" and 47% "feel like they have no choice but to sign up to services, even if I have concerns over their practices".[11]

Consent, community standards and terms and conditions are currently largely meaningless. Improving them would be a tangible indication that a regulator is changing the balance of power between the public and tech companies.

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[8] https://www.fca.org.uk/news/newsletters/regulation-round-march-2019
[9]https://www.theguardian.com/world/2019/may/03/britons-less-trusting-of-social-media-than-other-major-nations-facebook-twitter
[10] https://doteveryone.org.uk/project/peoplepowertech/
[11] https://doteveryone.org.uk/project/peoplepowertech/

The regulator should work with online services and civil society to develop new governance models for users to help shape the terms and conditions, community guidelines and norms for the online services they use. For systemically important online services - which we outline in our response to question 5 - the regulator should have powers to proactively scrutinise these processes.

Our response to consultation question 17 outlines our recommendations for engagement approaches that give the public genuine and informed choices online, which should inform the development of these standards.

Question 2: Should designated bodies be able to bring 'super complaints' to the regulator in specific and clearly evidenced circumstances?

Yes - please see details below.

Question 2a: If your answer to question 2 is 'yes', in what circumstances should this happen?

It is vital that the regulatory framework contains the opportunity for collective redress - up to 87% of UK consumers would be more willing to defend their rights if collective redress was available to them.[12]

The scale of online services, where even small platforms have millions of user, gives rise to two separate issues - accountability for harms that have a societal impact; and accountability for groups of individuals who have experienced a similar harm, often occurring on multiple separate services.

Redress for societal harms

Online harms can often be imperceptible to the individual. A single person may not be aware for example that political content has been specifically targeted at them with the intention of shifting their voting intention, or that they've been unable to access a service based on inferred demographic characteristics. But when such experiences are replicated, the impact on social cohesion, functioning of democratic debate or equality can be profound.

As individual users will not raise these societal harms through the proposed systems of redress, **we recommend the regulator establish a societal harms unit to proactively identify and prevent these issues.**

This unit should be staffed with specialists in areas including social sciences, software engineering and data science, to develop an interdisciplinary approach to tackle online societal harms. They would also lead the adoption of approaches to prevent societal harms such as toolkits to audit databases used to train algorithms for discrimination.

Similar to the Competition and Market Authority, **the unit should have the power to instigate studies into online services and sectors of interest when it suspects these harms are present**.

The regulator should also have statutory powers to direct online services to correct design features that have contributed to societal harms - for example changing

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[12] http://ec.europa.eu/commfrontoffice/publicopinion/ flash/fl_299_en.pdf

recommendation systems that have been shown to promote harmful content disproportionately to certain demographics, with the penalties laid out for a breach of duty of care enforced where services fail to act. It should also make relevant information available, with the appropriate privacy safeguards, to researchers and civil society to improve the evidence base around societal harms.

Redress for harms replicated across large groups

Online services should be required to inform the regulator when they suspect a harm has affected large groups of users, in the same way data controllers must notify the ICO when there has been a data breach. If a collective harm is suspected, **the regulator must have powers to access live data on complaints made to online services** including where harms migrate across many different online services, such as misinformation and child grooming.

The existing consumer super complaints landscape in the UK is founded on a strong civil society infrastructure, with advocacy bodies including Which and Citizens Advice commanding high levels of public awareness and trust. Bodies with similar capacity to administer super complaints for non-economic online harms do not yet exist, and as we set out in our response to consultation question 3, the majority of the public do not know where to turn to defend their digital rights.

Instead of relying on designated advocacy organisations, **the regulator should issue a de-facto super complaint by increasing the severity of their enforcement measures, sanctions and fines** where groups of people are affected by a similar harm. In these circumstances **online services should be required to issue public warning notices to all users** clearly explaining the nature of the harm, the remedial action taken and the steps users can take to protect themselves. Online services must set out to the regulator how they will alter their practices to stop similar harms in the future, and how they will provide support and redress to affected users where appropriate.

Question 3: What, if any, other measures should the government consider for users who wish to raise concerns about specific pieces of harmful content or activity, and/or breaches of the duty of care?

Raising public awareness of new rights under a duty of care

We welcome the commitment of the White Paper to provide avenues for users to protect their rights held under a duty of care. However users cannot defend their rights if they don't know they exist. For the redress function to succeed, the regulator will need to help create an ecosystem that changes people's norms and expectations.

Our *People, Power and Technology* research shows this is a significant blind-spot: 92% of the public would find it useful to have a single place to find out their rights and responsibilities online, but only 28% know where to go to find this information.[13]

The regulator must have a statutory duty to engage the public around their new rights under a duty of care, backed up with significant resources. The White Paper cites the ICO's initiatives to raise awareness of new rights under the GDPR as a positive example to follow.

The public needs help to navigate a fragmented landscape of rights which are overseen by a range of different regulators. **The government should also establish a one-stop shop for the public to understand all of their digital rights** including data use,[14] eCommerce,[15] internet safety[16] and other key areas.

Championing standards for complaints and redress systems

The regulator must have powers to ensure online services' complaints procedures are meeting the standards they set out.

Their investigations should include:

- Reviews of the quality and prominence of information provided to users, ensuring that design patterns encourage rather than discourage access to the complaints system
- Reviews of the user journeys, benchmarked, including qualitative, outcome-focused surveys of complainants.
- Patterns of harm and flaws in current policies. The insight from this should feed into the regulator's horizon scanning function and into reviews of its

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[13] https://understanding.doteveryone.org.uk/
[14] https://ico.org.uk/your-data-matters/
[15] https://www.citizensadvice.org.uk/about-us/our-campaigns/all-our-current-campaigns/NCW/what-are-your-rights/
[16] https://www.gov.uk/government/news/new-council-for-internet-safety-in-the-uk

own regulatory approach for example through changes to transparency reporting requirements or codes of practice.

- Spot-checking and auditing of the systems used by digital services to manage user complaints - including technical measures such as chatbots and offline systems such as response time and decision-making of human content moderators

Online service's complaints systems data will also be a rich seam of evidence, and **the regulator should develop common standards and frameworks for reporting complaints data and redress outcomes.**

This will promote:

- Better comparison of complaints handling between online services, to indicate relative effectiveness of online services' harm mitigation methods
- Easier analysis of cumulative levels of complaints across online services
- A chronological timeline of complaint levels across different areas of the digital ecosystem, to gain a better understanding of how harms travel between online platforms and services

These standards and frameworks **should require online services to create a complaints archive,** that can be accessed by the regulator and approved civil society organisations and research groups.

Unresolved disputes

The White Paper is not clear on what should happen in the case of unresolved disputes between individuals and companies. It's essential that people have a place to turn when they are not satisfied with the outcome of the process administered by the company.

In other spheres, this function is performed by ombudsman services. However this model should not be replicated given current ombudsman services are disproportionately accessed by those with money, time and social capital and have low levels of satisfaction.[17] The speed and volume of online complaints make them unsuitable to the cumbersome procedures that ombudsman services operate.

The new regulatory framework presents an opportunity for bold rethinking of mediation for the digital age, taking advantage of the opportunities that technology presents to innovate and improve ways of working.   Given the scant detail on this aspect in the White Paper **we recommend that this issue is the focus of further consultation before proposals are published**, drawing on the emerging models such as Australia's Office of the eSafety Commissioner and the independent Social Media Councils proposed by Article19, Stanford's Global Digital Policy Incubator and the UN Special Rapporteur David Kaye.[18]

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[17] https://images6.moneysavingexpert.com/images/documents/Ombudsman%20report.pdf
[18] https://cyber.fsi.stanford.edu/gdpi/content/social-media-councils-concept-reality-conference-report

Doteveryone has been working with the online complaints platform Resolver to convene a coalition of civil society organisations to explore these questions. This work is at an early stage and we look forward to sharing our findings with government as this develops and we prototype different approaches to the issue.

Question 4: What role should Parliament play in scrutinising the work of the regulator, including the development of codes of practice?

The proposed regulator will adjudicate contentious issues that lie at the heart of the UK's fundamental values. It is vital therefore that this body sits in relationship with parliament as the sovereign body in our democracy.

Parliamentary scrutiny of the regulator should focus on scrutinising the regulator's overall performance, and ensuring it has the resources and legislative flexibility to be effective. In particular, parliament should weigh the regulator's actions against the United Nations Guiding Principles on Business and Human Rights which we recommend as the foundation for its work in our answer to question 1.

Beyond the Online Harms White Paper, there is a proliferation of government and regulatory initiatives. Parliamentary scrutiny of the regulator should include consideration of where the regulator's work is in conflict with or inhibited by the activities of other bodies.

As mentioned in question 1, the regulator will only win trust if its independence is unquestionable. We strongly disagree with the proposal to give ministerial sign off to certain codes of practice. We also do not see a role for parliament in developing the codes as it risks introducing political influence as well as creating a brake to regulating in a fast moving environment.

Question 5: Are proposals for the online platforms and services in scope of the regulatory framework a suitable basis for an effective and proportionate approach?

Defining scope

The broad scope outlined in the paper (*enabling hosting, sharing and discovery of user-generated content, or facilitating public and private online interaction between service users*) is welcome in focusing on responsibility not service. We support the Secretary of State's comment that *"the reason I've shied away from publisher-platform distinction, is that it's unhelpful. The real issue is responsibility, and whether you should be obligated to take it".*[19]

However this scope still needs clarification and refinement and **it should be the job of the regulator - through dialogue with industry and establishment of legal precedent - to iteratively define the responsibilities of different online services under a duty of care.**

Defining the scope through prescriptive legislation risks creating loopholes and the regulator must be flexible to respond to new technologies and the evolution of design and business models.

We believe the implementation of GDPR provides a useful precedent. The regulator will be a horizontal body sitting across a vast range of sectors and companies. **Companies whose activities are likely to fall under a duty of care should be required to notify the online harms regulator and submit an online harms impact assessment.** The assessment will outline the risks of potential harms and measures online services are taking to address them whilst safeguarding human rights. The regulator would provide guidance to companies unsure of their obligations and have discretion to provide exemptions.

Members of the public should be able to easily notify the regulator if they believe an online service has not acted in their best interests (described in our response to consultation question 1) or fulfilled their duty of care, to bring nascent online services to the regulator's attention.

Ensuring proportionality

The new regulator must not inadvertently cement the existing problematic dominance of the major tech companies by making excessively onerous demands of start-ups and SMEs. We believe many services' obligations to the new regulator would be light-touch where their impact assessment identified a low risk. We propose drawing inspiration from proportional regulation in other sectors such as banking[20] to set thresholds for regulatory supervision and obligations.

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[19] https://www.parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/news/disinformation-government-response-published/
[20] https://www.bis.org/speeches/sp190508.htm

In this approach **the regulator should designate some online services as systemically important,** to be proactively supervised and face stronger, mandatory obligations under the duty of care, in line with the White Paper's proposal that "*the regulator's initial focus will be on those companies that pose the biggest and clearest risk of harm to users, either because of the scale of the platforms or because of known issues with serious harms.*" (p.8).

The criteria for systemic importance should be set by the regulator in consultation with industry and others and grounded in online services' user-base size, risk profile, degree of interconnectedness with other services, availability of alternatives, ownership structures and global presence[21]. Technical complexity and transparency could also be considered - companies that are unable to explain their algorithms and technical structures may require more stringent observation, for example. The criteria will iterate and be subject to review.

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[21] A recent report submitted by an interministerial working group team to the French Secretary of State for Digital Affairs outlines proposals for an EU-level governance framework for social media platforms, and illustrates this thinking.
http://www.iicom.org/images/iic/themes/news/Reports/French-social-media-framework---May-2019.pdf

Question 7a: What specific requirements might be appropriate to apply to private channels and forums in order to tackle online harms?

The White Paper currently fails to acknowledge the difficulty in distinguishing private and public communications online. This distinction will be fundamental to the work of the regulator and requires engagement with human rights and privacy expertise as well as understanding of public norms and expectations. We urge the regulator to conduct careful and open consultation on this question before further action.

Once defined, privacy must be sovereign. Online services must not be required to access encrypted communications and private channels under a duty of care.

Online services should however be encouraged to provide reporting tools and systems that allow users to flag when they have been subjected to, or at risk of, harm within a private communication. If the issue flagged by the user relates to illegal harms, online services should provide information on how they can report the issue to the relevant authority and seek support for its impact. **These measures should be mandatory for systemically important online services** (as outlined in our response to consultation question 5)**.**

Question 8: What further steps could be taken to ensure the regulator will act in a targeted and proportionate manner?

The ambition in the White Paper is for the regulator to take a "risk-based and proportionate" approach. However it is difficult to assess risk given the limited evidence base for the new regulator's work. We welcome the recent evidence reviews by DCMS[22] but note that these have been published well after the release of the White Paper and late in the consultation period and serve only to underline the limited quantity and quality of the available research.

Given the speed and complexity of technological change, definitive evidence is always going to be hard to achieve so we reiterate that **the regulator should be primarily focused on promoting responsible design of services and good practice in preventing harm and fostering positive impacts.**

However, the establishment of the regulator and the powers to demand information as well as the insights gathered from complaints create an opportunity to deepen the understanding of the ways that technologies - particularly major platforms - work and the impacts they have on society. The regulator should be responsible for coordinating access to this information to approved researchers and working with UKRI and others to foster timely research.

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[22]https://www.gov.uk/government/publications/research-into-online-platforms-operating-models-and-management-of-online-harms
https://www.gov.uk/government/publications/adult-online-hate-harassment-and-abuse-a-rapid-evidence-assessment
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/811449/DCMS_REA_Online_trolling_.pdf

Question 9: What, if any, advice or support could the regulator provide to businesses, particularly start-ups and SMEs, comply with the regulatory framework?

Our response to consultation question 1 sets out our recommendations for helping businesses understand their new responsibilities under a duty of care, including:

- The regulator establish a one-stop shop for advice around responsible design and regulatory compliance, including a library of case studies for SMEs to learn from
- The regulator establish an online harms sandbox for disruptive innovations that bring risks of harm, as mentioned on page 55 of the White Paper
- The Department for Digital Culture Media and Sport to lead the development of open-source, free-to-use standards and design patterns for responsible technology design and online harm mitigation approaches.

The government should also go beyond helping SMEs to comply with regulation and incentivise responsible innovation. Our response to questions 15 and 16 outline our proposals for an online harms innovation strategy.

Question 10: Should an online harms regulator be: (i) a new public body, or (ii) an existing public body?

Our *Regulating for Responsible Technology: Capacity, Evidence and Redress*[23] research outlines the challenges and opportunities facing regulators in an era of ubiquitous, fast-moving and complex digital technologies. This work finds that effective digital regulation needs:

- **Technical understanding and capacity.** The regulator must have the resources and salary flexibility to bring in staff with high levels of digital expertise, and establish a strong dialogue with industry to ensure their understand current practice.
- **Trust.** With a digital duty of care unfamiliar to both industry and the public, the regulator will need to drive engagement and have strong governance structures to establish its legitimacy and give assurances.
- **Influence.** The regulator must have the statutory powers and credibility needed to promote responsible practices
- **An anticipatory ethos**. Nesta's *Reviewing Regulation: anticipatory regulation in an era of disruption*[24] paper outlines tools and approaches regulators can use to regulate disruptive technologies.
- **Culture**. The regulator must be comfortable operating in uncertainty, and embrace the anticipatory ethos outlined above. They must lead regulatory diplomacy to build partnerships with other international regulators and influence global online services[25]

We believe a body operating at the level of the Financial Conduct Authority - a globally respected body regulating multinational financial institutions using anticipatory methods - is needed to deliver a duty of care.

Decisions around whether the regulator should be a new or existing body must consider these criteria. We recognise the implications for cost and speed in setting up a new public body and the advantages of the existing trust and credibility that Ofcom holds. We are concerned however that Ofcom would struggle to establish the anticipatory ethos, culture and technical capacity required. Instead we suggest operating a 'garage' model where the existing infrastructure of Ofcom is used to speed up the establishment of a new body, but the regulator operates as an independent satellite with its own ways of working and culture.

Given the ambition and challenge of the new regulator, visible, courageous and relatable leadership will be necessary to drive its work forward. We stress that there are very few

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[23]https://doteveryone.org.uk/wp-content/uploads/2018/10/Doteveryone-Regulating-for-Responsible-Tech-Report.pdf

[24] https://www.nesta.org.uk/report/renewing-regulation-anticipatory-regulation-in-an-age-of-disruption/

[25] https://www.nesta.org.uk/report/renewing-regulation-anticipatory-regulation-in-an-age-of-disruption/

people with the right experience and skills and competition for this limited pool among a growing number of institutions as well as from the industry itself.

We referred in Question 4 to the need for parliament to have oversight of the regulator. Additionally we believe the White Paper does not give sufficient consideration to the governance of the regulator itself. In creating an innovative regulatory framework with the intention of setting a world-leading precedent, it's vital that there is scrutiny of the regulator's decision making.

We recommend the establishment of a Citizens' Council, supported with resources, to provide oversight of the regulator's work and advocate for the public interest. As well as individual members of the public, this panel will encompass statutory consumer advocacy groups, human rights organisations and civil society organisations who are respected independent representatives of the public voice. Bodies including the Legal Services Consumer Panel[26] offer an example of how this Citizen's Council may work in practice.

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[26] https://www.legalservicesconsumerpanel.org.uk/

Question 13: Should the regulator have the power to require a company based outside the UK and EEA to appoint a nominated representative in the UK or EEA in certain circumstances?

In our response to consultation question 5 we outline our recommendations for the regulator to adopt a notification model. **The regulator must have the power to require a company based outside the UK to appoint a nominated representative for this system to be effective.**

Question 14: In addition to judicial review should there be a statutory mechanism for companies to appeal against a decision of the regulator, as exists in relation to Ofcom under sections 192-196 of the Communications Act 2003?

The regulator must have flexibility to make judgements. **This approach must have checks-and-balances to ensure the regulator is applying judgments fairly and inspire trust in industry, public and civil society**.

A duty of care will also cover potentially contentious areas such as regulation of speech and ambiguous legal harms, and is an unprecedented approach to the regulation of online services. In the early stages of a duty of care coming into force, it is unreasonable to expect the regulator to make universally correct decisions with no precedent to refer to and the margins of error so small. **There must therefore be a statutory mechanism for companies to appeal against a decision of the regulator.**

Question 15: What are the greatest opportunities and barriers for (i) innovation and (ii) adoption of safety technologies by UK organisations, and what role should government play in addressing these? **Question 16:** What, if any, are the most significant areas in which organisations need practical guidance to build products that are safe by design?

We do not subscribe to the idea that regulation will stifle innovation. 45% of tech workers and the 50% of the UK public[27] believe the sector is regulated too little.

But regulation will not work alone. Government must offer carrots as well as sticks. We are disappointed by the level of consideration given to incentives for good practice and the piecemeal measures proposed in the White Paper.

Alongside the establishment of the regulator, we recommend the development of a **comprehensive innovation strategy to sit within the industrial strategy that will promote the UK as a world leader in responsible technology.**

This must prioritise the development of upstream, holistic, responsible practice as opposed to the more narrowly defined 'safety by design'. This must also be applied across all technologies, not the development of a specific safety technology sector.

People, Power and Technology: The Tech Workers' View

Doteveryone's survey of UK tech workers[28] found 79% agree it's important to consider potential consequences for people and society when designing new technologies. But more than a quarter (28%) have seen decisions made about a technology that they felt could have negative consequences for people or society. Nearly one in five (18%) of those went on to leave their companies as a result, posing a significant talent and retention issue for industry.

Two-thirds of tech workers in the UK want more opportunities to assess the potential impacts of their products and 78% want practical tools to do so. These findings point to the strong appetite for responsible practice among tech workers as well as the clear business imperative to adopt better ways of working.

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[27] https://doteveryone.org.uk/wp-content/uploads/2019/04/PeoplePowerTech_Doteveryone_May2019.pdf
[28] https://doteveryone.org.uk/wp-content/uploads/2019/04/PeoplePowerTech_Doteveryone_May2019.pdf

Despite this, considering the impact of products for people and society ranks as the lowest priority in their work. Key barriers to this are a reliance on informal methods such as individuals' personal moral compass to navigate dilemmas and organisations' focus on revenue and growth at the expense of wider issues as well as a lack of time and resource to address these questions. Based on this research we made a number of recommendations to business:

- Implement transparent processes for staff to raise ethical and moral concerns in a supportive environment
- Invest in training and resources that help workers understand and anticipate the social impact of their work
- Use industry-wide standards and support the responsible innovation standard being developed by the BSI – 78% of workers favour such a framework
- Engage with the UK government to share best practice and support the development of technology literate policymaking and regulation
- Rethink professional development, so workers in emerging fields can draw on a wider skills and knowledge base — not just their own ingenuity and resources

We urge the government to support business to adopt these recommendations by working with the BSI, the relevant industry bodies and professional associations to share learning and best practice.

Our recommendation to government was to provide incentives for responsible innovation and embed this into the industrial strategy. Our subsequent engagement with industry leaders has highlighted the need for commercial measures to incentivise responsible practice, including tax credits and accreditation schemes that demonstrate tangible benefit to business.

The recent publication of the Government Technology Innovation Strategy provides another opportunity for government to foster a thriving responsible technology industry by including requirements for responsible practice in the creation, commissioning and procurement of technology by government. We recommend greater coordination between the White Paper and Government Technology Innovation Strategy to align the government's goals.

Responsible by Design

We welcome the White Paper's reference to practical guidance but encourage the government to think beyond a narrow definition of safety to a wider framing of responsibility to ensure that the full impact of technologies on people and society is taken into account.

Doteveryone's TechTransformed[29] resources for strategy, product development, and product design help organisations consider the impact of their products and navigate

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[29] https://tech-transformed.com

dilemmas at a practical level. It sits within an organisation's normal working patterns so products can still iterate at speed and responsibility can be embedded at every stage of the development process. The resources are quick to get started and easy to understand. They are free to use and are supported by training programmes and workshops.

TechTransformed is based on wide-ranging research into the issues businesses face and the needs of the public[30]. We urge government to consider this work before creating an additional framework and believe government could more usefully help convene and disseminate existing best practice.

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[30] https://doteveryone.org.uk/project/techtransformed/

Question 17: Should the government be doing more to help people manage their own and their children's online safety and, if so, what?

Any strategy for empowering people to manage their safety must first recognise that the public must not be made responsible for solving systemic problems that are created by technologies. The focus of efforts must lie on driving improvements to the design and operation of platforms so that they foster positive impacts on society.

However, we recognise that the public should be an active participant in shaping the future role of technology in society and in particular welcome the framing of the White Paper around empowerment. The proposed online media literacy strategy must look beyond safety and support the public's digital understanding[31] - knowing the implications of using technologies - and give people agency to exert their rights and thrive in a digital society.

There is however currently little evaluation of the success of awareness campaigns: only 1% of peer-reviewed papers looking at the impact of public health marketing campaigns assess behavioural, rather than attitudinal, change.[32] Corporate awareness campaigns have been accused of "empower-washing" [33]—creating a semblance of user empowerment, while leaving underlying structures unchanged and there is a danger that over time well-intended campaigns will lead to the public feeling even more disengaged.

Finding new approaches to public engagement

It is positive that the White Paper paper acknowledges the lack of evaluation and coordination of current activities and the failure to address the needs of adults, particularly those without children.

The proposed mapping exercise must include the evaluation of real-world outcomes of initiatives (not just self-reporting surveys) and address whether the high level of corporate sponsorship and involvement in this space is giving major companies undue influence over the information the public receives.

In developing its engagement strategy for online harms we strongly encourage the government to draw on the recommendations of the Behavioural Insights Team's recent excellent paper on online harm and behavioural science.[34]

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https://understanding.doteveryone.org.uk/files/Doteveryone_PeoplePowerTechDigitalUnderstanding2018.pdf
32 https://www.bmj.com/content/350/bmj.h514.full
33 https://www.longviewoneducation.org/empowerwashing-education/
34https://www.bi.team/publications/the-behavioural-science-of-online-harm-and-manipulation-and-what-to-do-about-it/

Doteveryone is currently researching the most current and effective methods for building public awareness and creating behaviour change around technologies, through desk research, stakeholder convening and primary qualitative research.

Initial findings point to the lack of evidence base for public campaigns leading to behaviour change in practice and the lack of available avenues for the public to have effective agency in relation to technology. Qualitative research strongly indicates a level of confusion about what issues people face alongside an appetite from the public to have a greater role in shaping their own experience of technology.

However participants identified that they had few opportunities to exert choice and control over technology and that any behaviour change would entail disproportionate trade-offs around convenience. The first phase of this will be completed in July, and we look forward to engaging with the government following its publication.

Question 18: What, if any, role should the regulator have in relation to education and awareness activity?

The regulator must **demonstrate tangible change in the public's experience** of online services. This requires looking beyond technocratic fixes and putting the public at the heart of the regulator's work. It must prioritise practical interventions, engage with the public to understand their concerns and communicate the remedies so that people recognise a perceptible rebalancing of power between tech companies and the public.

The regulator must make its work clear, accessible and relatable to the public it serves. There should be a presumption to be open and publish, while respecting privacy rights and commercial sensitivity. Criteria for the regulator's leadership team should include the ability to communicate and a willingness to engage openly in debate and with the media.

We reiterate that the regulator should have a statutory duty to engage the public with their new rights under a duty of care, backed up with significant resources. We provide further detail on this in our answer to question 3 around supporting people with complaints.

The regulator should work with online services and civil society to develop new governance models for users to help shape the terms and conditions, community guidelines and norms for the online services they use. We provide further detail on this in our answer to question 1.

The regulator must also understand the public's expectations around their online experiences to help calibrate its judgements in line with public values. This work can draw upon approaches from other sectors, such as the British Board of Film Classification's public research to set age classification guidelines.[35]

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[35] https://bbfc.co.uk/what-classification/research