

# Fraudulent Advertising Codes Consultation

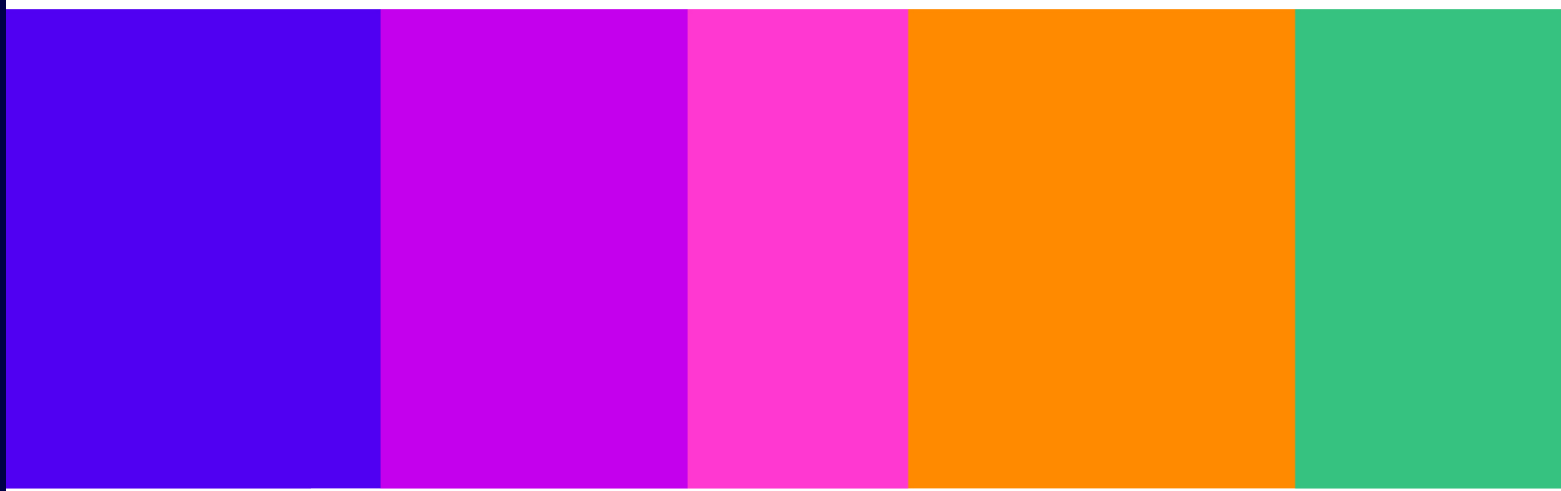
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## Annex 3: Statutory tests

### Consultation

Published 10 July 2026

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## A3. Statutory tests

- A3.1 In designing the draft Fraudulent Advertising Codes of Practice for Category 1 and 2A services (Codes), the Online Safety Act 2023 (Act) requires Ofcom to have regard to a number of principles and objectives, set out in Schedule 4 to the Act. The Communications Act 2003 (the 2003 Act) also places a number of duties on Ofcom in carrying out our functions.
- A3.2 In this annex, we set out matters to which we must have regard under the Act and the 2003 Act and explain the reasons why we think the proposed recommendations in the Codes meet them. We provide further information regarding Ofcom’s duties relating to the preparation of the Codes in Volume 1, Section 2 ‘Introduction’, Volume 1, Section 5 ‘Approach to Codes’, A2, ‘Legal framework’ and A6, ‘Equality Impact Assessment and Welsh language assessment’.

### Background

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- A3.3 In designing the Codes, the Act requires us to have regard to a number of principles and objectives, set out in Schedule 4 to the Act. The 2003 Act also places a number of duties on Ofcom in carrying out our functions, including requiring us to have regard to the risk of harm to citizens presented by content on regulated services.
- A3.4 In Volumes 2 to 4, we set out our proposed recommendations. An overview of those recommendations can be found in Volume 1, Section 1 ‘Overview’, and our combined impact assessment of the recommendations can be found in Volume 1, Section 6, ‘Combined impact assessment’. The draft Codes measures themselves can be found in full in Annexes A4, ‘Draft Code for user-to-user services’ and A5, ‘Draft Code for search services’.
- A3.5 We consider that our proposals meet the requirements set out in Schedule 4 to the Act and section 3 of the 2003 Act. In this annex, we take each of the relevant requirements in turn and set out how we have met them in reaching our set of proposed recommendations.

### Duties and principles

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#### The Communications Act 2003

- A3.6 As required by section 3 of the 2003 Act, in making the recommendations in the Codes, Ofcom has had regard to the matters set out from paragraphs A3.6 to A3.28, and to the risk of harm to citizens presented by content on regulated services.

Section 3(1): It shall be the principal duty of Ofcom, in carrying out their functions: a) to further the interests of citizens in relation to communication matters; and b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.

- A3.7 We have set out throughout this consultation how the proposed Codes measures will address the harm posed by fraudulent advertising online. We explain this under ‘Benefits and effectiveness’ in each section explaining our proposed measures.

- A3.8 We have considered the interests of consumers in relevant markets (particularly users of regulated services) as part of our assessment of the proportionality of our recommendations, including any potential impacts on the provision of services to users.
- A3.9 We have also considered the rights of users, providers, advertisers and others in our rights assessment for each measure, including users' rights to freedom of expression and privacy, as required by the Act.

Section 3(3): In performing their duties under subsection (1), Ofcom must have regard in all cases to (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and (b) any other principles appearing to Ofcom to represent best regulatory practice.

- A3.10 In the interests of transparency, accountability and fairness (and as required by the Act),<sup>1</sup> we are consulting stakeholders on our proposals, and our consultation includes impact assessments for each of the measures we propose to include in the Codes. We are setting out clearly the evidence and assumptions used to arrive at our proposals. In Volume 1, Section 5, 'Approach to Codes', we explain how we approach impact assessments.
- A3.11 Our impact assessments of proposed measures consider effectiveness, costs, rights and other relevant factors and explain why we consider the measures are proportionate to the benefits as relevant. We consider the proportionality of the package of the measures as a whole in Volume 1, Section 6, 'Combined impact assessment'. See our impact assessment guidance for more information on how we approach impact assessments.<sup>2</sup>
- A3.12 Our proposed measures are aimed at stopping fraudsters posting fraudulent advertisements, improving the speed at which fraudulent advertisements are detected, and ensuring swift action, once detected, to remove fraudulent advertisements (all of which are in line with the online safety objectives and fraudulent advertising duties in the Act<sup>3</sup>). As we have said in Volume 1, Section 5, 'Approach to Codes', taking into account the size of services in scope of fraudulent advertising duties, the risk of displacement, the nature and severity of harm posed by fraudulent advertising, and our approach to situations where the provider lacks sufficient control over the placement of paid-for advertisements, we consider that it is appropriate and proportionate to apply our measures to all Category 1 and 2A services<sup>4</sup> on which UK users can encounter paid-for advertisements.

Section 3(2)(g): In carrying out our functions, Ofcom are required to secure the adequate protection of citizens from harm presented by content on regulated services, through the appropriate use by providers of such services of systems and processes designed to reduce the risk of such harm.

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<sup>1</sup> Under section 3(3) of the Act, Ofcom must, in the performance of our duties under subsection (1), have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. Ofcom must also have regard to any other principles appearing to us to represent best regulatory practice. This includes the public law duty to act fairly.

<sup>2</sup> Ofcom, 2023. [Ofcom's approach to impact assessments](#).

<sup>3</sup> See sections 38 and 39 of the Act and paragraphs 3 to 6 of Schedule 4 to the Act.

<sup>4</sup> The proposed generative artificial intelligence (GenAI) testing measure only applies where the service provider makes an advertisement generation tool available. See Volume 2, Section 5, 'Testing advertisement generation tools'.

In relation to matters to which section 3(2)(g) in the 2003 Act is relevant, section 3(4A) sets out that in performing their duties under subsection (1), Ofcom must have regard to such of the following as appear to them to be relevant in the circumstances:

(a) The risk of harm to citizens presented by content on regulated services.<sup>5</sup>

A3.13 We discuss the harm posed by fraudulent advertising in Volume 1, Section 4, ‘Causes and impacts of fraudulent advertising’, and the evidence presented there underpins all our proposed measures. Our proposed Codes measures secure the objectives of the fraudulent advertising duties in the Act which apply to Category 1 and 2A services. These measures therefore focus on preventing individuals from encountering fraudulent advertisements, minimising the length of time for which fraudulent advertisements can be encountered and ensuring that fraudulent advertisements are swiftly addressed once identified.

(b) The need for a higher level of protection for children than for adults.

A3.14 Our proposed Codes measures focus on the fraudulent advertising duties, which do not differentiate between adults and children. Therefore, in line with these duties, our proposed measures do not differentiate between adults and children. Some proposed measures reference consideration that needs to be given to children; for example, we propose to recommend that in designing its advertising complaints systems and processes, a provider should consider the accessibility needs of its UK user base having regard to (among other things) comprehensibility of the complaints procedures, based on the likely reading age of the youngest individual permitted to use the service without the consent of a parent or guardian.

(c) The need for it to be clear to providers of regulated services how they may comply with their duties set out under the Act.

A3.15 Our proposals, and the explanation in this document of how the proposed measures work, aim to provide clarity and tangible steps that services can take to meet their duties in the Act.

A3.16 We have explained in Volume 1, Section 5 ‘Approach to Codes’ and Annex A2, ‘Legal framework’, that the Act provides that providers which choose to implement the measures in the Codes will be considered as complying with the relevant duties. We have also explained that providers may seek to comply with these additional duties by choosing to take alternative measures.

A3.17 We are also proposing to update our Illegal Content Judgements Guidance to assist providers in making judgements about whether a paid-for advertisement is fraudulent.<sup>6</sup>

(d) The need to exercise their functions so as to secure that providers of regulated services may comply with such duties by taking measures, or using measures, systems or processes, which are (where relevant) proportionate to (i) the size or capacity of the provider in question, and (ii) the level of risk of harm presented by the service in question, and the severity of the potential harm.

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<sup>5</sup> Including fraudulent advertisements on regulated services: see section 3(14) of the 2003 Act.

<sup>6</sup> For more information see A9 to A11.

- A3.18 The Act requires us to ensure that measures are proportionate. It also specifies that, in determining what is proportionate for the purpose of the fraudulent advertising duties, the following matters are in particular relevant:
- a) the nature, and severity, of potential harm to individuals presented by different kinds of fraudulent advertisement; and
  - b) the degree of control a provider has in relation to the placement of paid-for advertisements on the service.
- A3.19 In recognition of this, where a Category 1 and Category 2A service provider’s degree of control over the placement of paid-for advertisements means they cannot apply a proposed measure (or part of it), we have proposed a proportionate path through which they can comply and remain in the safe harbour. We set out our expectations for these situations in Volume 2, Section 2, ‘Advertising Intermediaries’.
- A3.20 The Act does not give Ofcom discretion to disapply any of the relevant duties entirely from Category 1 and 2A services (which are some of the most widely used regulated services). As we set out in Volume 1, Section 5 ‘Approach to Codes’, taking into account the size of services in scope of fraudulent advertising duties, the risk of displacement, the nature and severity of harm posed by fraudulent advertising, and our approach to situations where the provider lacks control over the placement of paid-for advertisements, we consider that it is appropriate and proportionate to apply our measures to all Category 1 and 2A services<sup>7</sup> on which UK users can encounter paid-for advertisements.
- A3.21 Lastly, our fraud indicator assessment proposal, (see Volume 2, Section 3 ‘Fraud indicator assessment’) will ensure providers systematically assess how fraudulent advertising manifests, or is likely to manifest, on their services. These assessments should inform how systems and processes are designed and operated, enabling providers to tailor controls, prioritise interventions, and regularly improve their approach based on identified risks and harms.
- (e) The desirability of promoting the use by providers of regulated services of technologies which are designed to reduce the risk of harm to citizens presented by content on regulated services.
- A3.22 Our proposed Codes measures are flexible so that providers can apply these to their services in a way that makes sense in the context of their services. This will also allow providers to use different technological means in applying the proposed recommendations and means that they can opt to use technologies which are the most effective for them. As we noted in Volume 1, Section 5, ‘Approach to Codes’, we have aimed to design the measures to accommodate evolving perpetrator tactics, as well as allowing for advances in technology and best practice.
- A3.23 We are also planning to consult on proactive technology measures in autumn 2026 as noted in Volume 4, Section 2, ‘Advertising moderation’ and Volume 3, Section 3, ‘Preventing fraudulent financial services advertising’.

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<sup>7</sup> The proposed GenAI testing measure only applies where the service provider makes an advertisement generation tool available. See Volume 2, Section 5, ‘Testing advertisement generation tools’.

(f) The extent to which providers demonstrate, in a way that is transparent and accountable, that they are complying with their duties.

A3.24 We are recommending various measures related to governance and accountability. For example, we are recommending that providers' most senior governance body carry out an annual review of the measures the provider has taken to comply with the fraudulent advertising duties and keep a record. We consider that such records should be kept for a minimum of three years (consistent with Ofcom's Record-Keeping and Review Guidance), or in accordance with the organisation's record retention policies, if longer.<sup>8</sup>

Section 3(4): Ofcom must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances [...] (b) the desirability of promoting competition in relevant markets, (d) the desirability of encouraging investment and innovation in relevant markets; (h) the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection; (i) the needs of persons with disabilities, of the elderly and of those on low incomes; (j) the desirability of preventing crime and disorder; (k) the opinions of consumers in relevant markets and of members of the public generally; (l) and the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and urban areas.

A3.25 Where appropriate, in proposing measures, we have had regard to the desirability of promoting competition and encouraging investment and innovation. A number of our proposed measures accordingly provide flexibility for service providers to decide how to achieve compliance. As set out in paragraph A3.8, we have considered the interests of consumers in relevant markets as part of our impact assessments of proposed measures, including any indirect impacts on consumers in cases where our measures could affect competition, investment and innovation in respect of the Category 1 and Category 2A services that they use.

A3.26 In relation to preventing crime, we note that fraud is illegal and this is what the fraudulent advertising duties are intended to help prevent. We consider that our proposed measures will reduce the harm caused by this criminal behaviour.

A3.27 In relation to the opinions of consumers in relevant markets and of members of the public generally, we have taken account of the responses to our March 2024 Call for Evidence: Third Phase of Online Safety Regulation.<sup>9</sup> We will also take account any opinions of consumers in relevant markets that we receive in response to this consultation.

A3.28 In our equality impact assessment, we have considered the needs of persons with protected characteristics, including in relation to highlighting accessibility in the proposed measures related to terms of service and complaints. We have also considered our Welsh language obligations. For more information, see A6, 'Equality Impact Assessment and Welsh language assessment'.

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<sup>8</sup> Ofcom, 2025. [Record-Keeping and Review Guidance](#), p.5.

<sup>9</sup> Ofcom, 2024. [Call for evidence: third phase of online safety regulation](#).

## Schedule 4 to the Act

A3.29 As required by paragraph 1 of Schedule 4 to the Act, Ofcom has considered the appropriateness of provisions of the proposed measures for the draft Codes to different kinds and sizes of Part 3 services and to providers of differing sizes and capacities.<sup>10</sup> We are proposing that our Codes measures apply to Category 1 and 2A services. These services are diverse in scope, and it is possible that the list of Category 1 and 2A services<sup>11</sup> will change over time as the industry evolves. Therefore, we have also looked to build an appropriate level of flexibility into our proposed Codes measures, so that providers are able to implement our recommendations in a way that will be most effective and proportionate for their particular circumstances.

A3.30 We have had regard to the principles in Schedule 4 to the Act, as follows.

Paragraph 2(a): providers of Part 3 services must be able to understand which provisions of the code of practice apply in relation to a particular service they provide.

A3.31 We have clearly identified that our proposed Codes measures apply to Category 1 and 2A services. We have published separate draft Codes for Category 1 and 2A services to make it easier for them to identify which measures apply to them. We note that the proposed generative artificial intelligence (GenAI) testing measure only applies where the service provider makes an advertisement generation tool available.

Paragraph 2(b): the measures described in the code of practice must be sufficiently clear, and at a sufficiently detailed level, that providers understand what those measures entail in practice.

A3.32 Having regard to the need for it to be clear to providers of regulated services how they may comply with their duties, we have aimed to be as clear as possible and to include an appropriate level of detail in this consultation, the draft Codes and the supporting documents, consistent with acting proportionately. We have sought to be sufficiently detailed and precise while ensuring our proposals are technically feasible and proportionate for Category 1 and 2A services. Our approach to the draft Codes strikes the balance between providing certainty about what providers need to do and allowing them flexibility to implement measures in a way that works in the context of their own services and is proportionate.

Paragraph 2(c): the measures described in the code of practice must be proportionate and technically feasible: measures that are proportionate or technically feasible for providers of a certain size or capacity, or for services of a certain kind or size, may not be proportionate or technically feasible for providers of a different size or capacity or for services of a different kind or size.

A3.33 We have clearly identified that our proposed Codes measures apply to Category 1 and 2A services. As also mentioned in paragraph A3.22, our proposals incorporate an appropriate level of flexibility, so that providers are able to implement our proposed Codes measures in

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<sup>10</sup> See also section 3(4A)(d) of the 2003 Act.

<sup>11</sup> See [2026 Additional Duties Consultation](#) and [2026 register of categorised services](#).

a way that will be most effective and proportionate for their particular circumstances. Flexibility is particularly important, given the adversarial nature of fraudulent advertising.

- A3.34 An example of a measure which offers a degree of flexibility is the proposed banning measure. We recommend that providers should take ‘reasonable steps’ to prevent banned people from posting paid-for advertisements (for example, through the use of existing advertising accounts). As we have said in Volume 3, Section 5, ‘Advertising bans’, what is ‘reasonable’ may vary by provider, taking into account matters such as the nature and functionality of the service, its available resources, and what is technically feasible.
- A3.35 Further, as noted in paragraph A3.12, we recognise that some providers may not have the same degree of control over the placement of paid-for advertisements as others, and this may mean they cannot apply a proposed measure (or part of it). In this scenario, and recognising that the Act identifies this matter as particularly relevant for the purpose of determining what is proportionate, we have proposed a proportionate path through which those providers can comply and remain in the safe harbour. We set out our expectations for these situations in Volume 2, Section 2, ‘Advertising Intermediaries’.
- A3.36 We have taken into account evidence of current practice by user-to-user and search service providers who are already taking steps that are similar or related to our proposed Codes measures. We consider effectiveness, costs, rights impacts and other relevant factors in our assessment of proportionality.

## Ofcom’s online safety objectives

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- A3.37 As required by paragraph 3 of Schedule 4 to the Act, we have ensured that the proposed Codes measures are compatible with the pursuit of the applicable online safety objectives. These are different for user-to-user and search services.
- A3.38 All our proposals, in line with paragraph 11 of Schedule 4 to the Act, relate only to the design or operation of a Part 3 service (a) in the UK, or (b) as it affects UK users of the service.

## User-to-user services

Paragraph 4(a)(i): a service should be designed and operated in such a way that the systems and processes for regulatory compliance and risk management are effective and proportionate to the kind and size of service.

- A3.39 We are proposing to recommend that service providers conduct a fraud indicator assessment which will ensure providers systematically assess how fraudulent advertising manifests, or is likely to manifest, on their services. These assessments should inform how systems and processes are designed and operated, enabling providers to tailor controls, prioritise interventions, and continuously improve their approach based on identified risks and harms. We are also proposing governance and accountability measures in respect of fraudulent advertising.

Paragraph 4(a)(ii): a service should be designed and operated in such a way that the systems and processes are appropriate to deal with the number of users of the service and its user base.

A3.40 Our proposed Code for user-to-user services will apply to providers of Category 1 services only, that is, regulated user-to-user services will be in scope where they have been categorised as a Category 1 service, meaning they meet the Category 1 threshold conditions, as set out in the Online Safety Act 2023 (Category 1, Category 2A and Category 2B Threshold Conditions) Regulations 2025, including the applicable user base conditions.<sup>12</sup> We have taken this into account in developing all of our proposed measures.

Paragraph 4(a)(iii): a service should be designed and operated in such a way that United Kingdom users (including children) are made aware of, and can understand, the terms of service.

Paragraph 4(a)(vi): a service should be designed and operated in such a way that the service provides a higher standard of protection for children than for adults.

Paragraph 4(a)(vii): a service should be designed and operated in such a way that the different needs of children at ages are taken into account.

A3.41 As noted in paragraph A3.14, our Codes measures focus on the fraudulent advertising duties, which do not differentiate between adults and children. Therefore, in line with these duties, our proposed measures do not differentiate between adults and children. Some proposed measures reference consideration that needs to be given to children; for example, we propose to recommend that in designing its advertising complaints systems and processes, a provider should consider the accessibility needs of its UK user base having regard to (among other things) comprehensibility of the complaints procedures, based on the likely reading age of the youngest individual permitted to use the service without the consent of a parent or guardian. We are also proposing to recommend that providers include provisions in their terms of service giving information about proactive technology used for the purpose of complying with the fraudulent advertising duties. This should be written to a reading age comprehensible for the youngest individual permitted to use the service without the consent of a parent or guardian.

Paragraph 4(a)(iv): a service should be designed and operated in such a way that there are adequate systems and processes to support United Kingdom users.

A3.42 We are proposing to include measures relating to complaints, which have the aim of supporting UK users. These measures include that providers of Category 1 services have easy to use, easy to access and easy to find complaints procedures for users and affected persons to make complaints where they consider a provider is not complying with its fraudulent advertising duties. We are also proposing to recommend that providers have a dedicated reporting channel for certain organisations to use. Alongside this, we are proposing measures to secure that providers have clear and accessible provisions in their terms of service giving information about any proactive technology used for the purposes of compliance with their fraudulent advertising duties.

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<sup>12</sup> Statutory instrument 2025/226. See regulation 3, which sets out the threshold conditions for Category 1 services. These are that the user-to-user part of the regulated user-to-user service has (a) an average number of monthly active UK users that exceeds 34 million, and uses a content recommender system; or (b) an average number of monthly active UK users that exceeds 7 million, uses a content recommender system, and has a functionality which allows users to forward or share regulated user-generated content on the service with other users of that service.

Paragraph 4(a)(v): (in the case of a Category 1 service) users are offered options to increase their control over the content they encounter and the users they interact with.

Paragraph 4(a)(viii): a service should be designed and operated in such a way that there are adequate controls over access to the service by adults.

Paragraph 4(a)(ix): a service should be designed and operated in such a way that there are adequate controls over access to, and use of, the service by children, taking into account use of the service by, and impact on, children in different age groups.

- A3.43 While the proposed Code measures do not directly pursue these objectives as they focus on advertisers rather than users, they are compatible with these objectives (insofar as they do not undermine them). We note that the proposed account checks and actions, countering account takeover, preventing fraudulent financial services advertising and advertising banning measures all propose placing certain controls on advertisers' ability to access the service.

Paragraph 4(b): a service should be designed and operated so as to protect individuals in the United Kingdom who are users of the service from harm, including with regard to:

- algorithms used by the service,
- functionalities of the service, and
- other features relating to the operation of the service.

- A3.44 We anticipate that the proposed measures will protect UK users from harm from fraudulent advertising. We have taken account of specific features or functionalities that pose a particular risk of harm in relation to fraudulent advertising. For example, we are proposing to recommend the testing of GenAI tools used to generate advertisements, to identify vulnerabilities that mean these tools may be used to generate fraudulent advertising. We are also proposing to recommend the establishment of ad libraries and dedicated reporting channels which we consider will help experts report fraudulent advertising to service providers, thus enabling them to take appropriate action.

## Search services

Paragraph 5(a)(i): a service should be designed and operated in such a way that the systems and processes for regulatory compliance and risk management are effective and proportionate to the kind and size of service

- A3.45 We are proposing to recommend that service providers conduct a fraud indicator assessment which will ensure providers systematically assess how fraudulent advertising manifests, or is likely to manifest, on their services. These assessments should inform how systems and processes are designed and operated, enabling providers to tailor controls, prioritise interventions, and continuously improve their approach based on identified risks and harms. We are also proposing other governance and accountability measures in respect of fraudulent advertising.

Paragraph 5(a)(ii): a service should be designed and operated in such a way that the systems and processes are appropriate to deal with the number of users of the service and its user base

A3.46 Our proposed Code for search services will apply to providers of Category 2A services only, that is, they meet the Category 2A threshold conditions, as set out in the Online Safety Act 2023 (Category 1, Category 2A and Category 2B Threshold Conditions) Regulations 2025, including the applicable user base conditions. We have taken this into account in developing all of our proposed measures.

Paragraph 5(a)(iii): a service should be designed and operated in such a way that United Kingdom users (including children) are made aware of, and can understand, the publicly available statement

Paragraph 5(a)(v): a service should be designed and operated in such a way that the service provides a higher standard of protection for children than for adults

Paragraph 5(a)(vi): a service should be designed and operated in such a way that the different needs of children at different ages are taken into account

A3.47 As noted in paragraph A3.14, our Code measures focus on the fraudulent advertising duties, which do not differentiate between adults and children. Therefore, in line with these duties, our proposed measures do not differentiate between adults and children. Some proposed measures reference consideration that needs to be given to children; for example, we propose to recommend that in designing its advertising complaints systems and processes, a provider should consider the accessibility needs of its UK user base having regard to (among other things) comprehensibility of the complaints procedures, based on the likely reading age of the youngest individual permitted to use the service without the consent of a parent or guardian. We are also proposing to recommend that providers include provisions in their publicly available statements giving information about proactive technology used for the purpose of complying with the fraudulent advertising duties. This should be written to a reading age comprehensible for the youngest individual permitted to use the service without the consent of a parent or guardian.

Paragraph 5(a)(iv): a service should be designed and operated in such a way that there are adequate systems and processes to support United Kingdom users

A3.48 We are proposing to include measures relating to complaints, which have the aim of supporting UK users. These measures include that providers of Category 2A services have easy to use, easy to access and easy to find complaints procedures for users and affected persons to make complaints where they consider a provider is not complying with its fraudulent advertising duties. We are also proposing to recommend that providers have a dedicated reporting channel for certain organisations to use. Alongside this, we are proposing measures to secure that providers have clear and accessible provisions in their publicly available statements giving information about any proactive technology used for the purposes of compliance with their fraudulent advertising duties.

Paragraph 5(b): a service should be assessed to understand its use by, and impact on, children in different age groups

A3.49 As noted in paragraph A3.21, we are proposing to recommend that service providers conduct a fraud indicator assessment which will ensure providers systematically assess how fraudulent advertising manifests, or is likely to manifest, on their services. As part of this, we are proposing to recommend that the provider should assess whether the types of users a paid-for advertisement is targeting, which may include children, indicates a

material risk of fraudulent advertising. More generally, our annual review measure proposes to recommend that service providers review their assessment of how fraudulent advertisements manifest on the service. This includes circumstances in which fraudulent advertising may manifest in particular ways, or have particular impacts, for certain users, potentially including children.

Paragraph 5(c): a search engine should be designed and operated so as to protect individuals in the United Kingdom who are users of the service from harm, including with regard to –

- (i) algorithms used by the search engine,
- (ii) functionalities relating to searches (such as a predictive search functionality), and
- (iii) the indexing, organisation and presentation of search results.

A3.50 We anticipate that the proposed measures will protect UK users from harm from fraudulent advertising. We have taken account of specific features or functionalities that pose a particular risk of harm in relation to fraudulent advertising. For example, we are proposing to recommend the testing of GenAI tools used to generate advertisements, to identify vulnerabilities that mean these tools may be used to generate fraudulent advertising. We are also proposing to recommend the establishment of ad libraries and dedicated reporting channels which we consider will help experts report fraudulent advertising to service providers, thus enabling them to take appropriate action.

## Schedule 4 requirements on content of Codes of Practice

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A3.51 Our draft Codes do not describe measures recommended for the purpose of compliance with duties set out in the illegal content or protection of children duties,<sup>13</sup> and therefore we do not need to include measures in each area of a service.<sup>14</sup>

A3.52 Our proposed Codes measures have been assessed for their impact on users' rights in line with paragraph 10(1) to (3) of Schedule 4 to the Act, which requires measures described in a Code of Practice, which are recommended for the purpose of compliance with certain specified duties (including the fraudulent advertising duties) to be designed in light of the following principles:

- the importance of protecting the rights of users and (in the case of search services or combined services) interested persons to freedom of expression within the law; and;
- the importance of protecting the privacy of users.<sup>15</sup>

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<sup>13</sup> Section 10(2) to (3) and section 12(2) to (3) of the Act.

<sup>14</sup> Paragraph 9(1) to (2) of Schedule 4 to the Act.

<sup>15</sup> See paragraph 10(3) of Schedule 4 to the Act, which explains that the reference to protecting the privacy of users is to protecting users from a breach of any statutory provision or rule of law concerning privacy that is relevant to the use or operation of a user-to-user service (or a search service) (including any provision or rule concerning the processing of personal data).

## Other duties

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A3.53 Under section 92(2) of the Act, Ofcom must have regard to the Secretary of State's statement of strategic priorities for online safety when carrying out online safety functions. We have taken this statement into account in proposing our Codes measures. The most relevant priorities for this consultation, which are also consistent with a number of the matters to which we must have regard, are:

- **transparency and accountability**, ensuring industry transparency and accountability for delivering online safety outcomes and driving trust in services; and
- **safety by design**, particularly "ensuring that there are no safe havens for illegal content and activity, including fraud".