Consultation response

Field	Value
Responder	The Centre for Digital Consumers
Responder Type	organisation
Org Type	Civil society

Volume 1: Context

3. Online advertising ecosystem

Q1: Is there any information or evidence you hold that could enhance our understanding of the online advertising ecosystem?

No response

4. Causes and impacts of fraudulent advertising

Q2: Do you have any comments on Ofcom's assessment of the causes and impacts of fraudulent advertising? Do you think we have missed anything important in our analysis? Please provide evidence to support your answer.

We agree with Ofcom's assessment of the causes and impacts of fraudulent advertising and consider the analysis of under-reporting in Volume 1 to be well evidenced. We think one thing is missing from it.

Ofcom identifies late realisation as a cause of under-reporting
Ofcom finds that fewer than one in seven fraud offences are reported to the police or Action Fraud (Volume 1, 4.14), and that 21% of users took from a few days to more than a month to realise that a paid-for advertisement they engaged with was fraudulent (Volume 1, 4.17). Ofcom concludes that by that point the advertisement is likely to be difficult to track down and report.

Ofcom also cites BILETA's observation that those who report fraudulent advertising tend to be people with consumer awareness or knowledge of the harm, "rather than those who are likely to fall victim to the fraud itself" (Volume 1, 4.15). Taken together, these findings describe a population of people who have already been harmed, do not yet know it, and are least likely to find out in time to act.

No proposed measure addresses it
Where a provider determines that an advertisement is fraudulent, it would take the advertisement down (Volume 4, 2.17) and ban the advertising account holder responsible (Volume 3, 5.6). Nothing in the proposed measures requires the provider to tell the people who saw or engaged with that advertisement while it was live.

We raise it here because Ofcom's own analysis identifies the harm that notification would address, and because the proposals demonstrate that providers hold the information needed to act on it.

Providers would already hold the necessary information
The proposed ad library measure would require providers to publish, for each advertisement, the target audience by demographic and the target or actual reach (Volume 4, 5.9). A provider that can publish who an advertisement was aimed at and how many people it reached is a provider that can identify who to notify.

Recommendation
Ofcom should consult on a measure requiring providers of Category 1 and Category 2A services to notify users who engaged with a paid-for advertisement that the provider subsequently determines to be a fraudulent advertisement, and to include in that notification the steps a person can take if they have lost money.

Q3: Do you agree with the examples of risky characteristics we have provided? Please provide any arguments and supporting evidence.

No response

5. Our approach to developing Codes measures

Q4: Do you agree with our proposed approach? Please provide any arguments and supporting evidence.

No response

6. Combined impact assessment

Q5: Do you consider the overall burden on the service providers in scope of our proposed measures to be proportionate? Please provide any arguments and supporting evidence.

No response

Volume 2: Risk, governance and control

2. Advertising intermediaries

Q6: Do you agree with our proposal? Please provide any arguments and supporting evidence.

We agree with the principle behind the proposed measure. Ofcom is right that the pathway a provider uses to place advertisements "should not result in different safety outcomes" for users (Volume 2, 2.4). We have one concern about how the measure would operate.

The threshold is undefined and self-assessed
The measure applies where a provider cannot implement a measure due to the degree of control it has and requires it instead to use all reasonable endeavours to implement something as similar as possible. Ofcom states that it has not defined sufficient control or insufficient control, because this "will likely be context-dependent and is not static" (Volume 2, 2.5). The measure is then engaged where providers "conclude that they are unable to apply a measure" (Volume 2, 2.6).

A provider therefore assesses itself against a threshold that has not been defined, and a provider that concludes it has insufficient control moves from a specific obligation to a general one. The only check proposed is an internal record of which measures could not be implemented and why (Volume 2, 2.6).

We do not think this is a large gap today
Ofcom's initial analysis is that most providers of Category 1 and Category 2A services use owned-and-operated supply chains, with intermediaries appearing mainly in hybrid arrangements (Volume 2, 2.3). On that evidence the measure would apply to a minority of inventory. Our concern is with how the threshold would behave over time rather than with its scope at the point the Codes come into force.

Recommendation
Ofcom should publish the factors it will consider when assessing whether a provider reasonably concluded that it had insufficient control, so that the conclusion is capable of being reviewed rather than simply

asserted.

Q7: We have included two illustrative examples of when and how this measure may be applied, and what 'all reasonable endeavours' might look like. Do you have any comments on these examples, and do you have any additional examples of how providers could work with or require intermediaries to implement safety measures in circumstances where they have insufficient control? Please provide any arguments and supporting evidence.

No response

3. Fraud indicator assessment

Q8: Do you agree with our proposal? Please provide any arguments and supporting evidence.

No response

Q9: Do you think there are other information sources providers should consider in order to understand how fraudulent advertising manifests on their service? If so, what information and why would they need to consider it?

No response

4. Governance and accountability

Q10: Do you agree with our proposals? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

No response

5. Testing advertisement generation tools

Q11: Do you agree with our proposal? Please provide any arguments and supporting evidence.

No response

Volume 3: Ensuring account integrity

2. Account checks and actions

Q12: Do you agree with our proposal? Please provide any arguments and supporting evidence. Where your feedback relates to a specific check we are proposing providers should carry out, please make this clear. These are :

No response

Q12.A: verification that advertising account holders work for, or on behalf of, the individual or organisation they are advertising

No response

Q12.B: checks and actions to prevent banned advertising account holders returning

No response

Q12.C: checks for accounts with indicators that there is a material risk they will post fraudulent advertising so that restrictions can be applied to them

No response

Q12.D: repeat checks where there are relevant changes identified on an account.

No response

Q13: Are you aware of any other account checks and actions providers could do to protect users from fraudulent advertising? Please provide any arguments and supporting evidence.

No response

3. Preventing fraudulent financial services advertising

Q14: Do you agree with our proposal? Please provide any arguments and supporting evidence.

No response

4. Countering account takeover

Q15: Do you agree with our proposals? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

No response

Q16: Do you have any evidence about account takeover that could inform our assessment, including how frequently it occurs or its impact?

No response

5. Advertising bans

Q17: Do you agree with our proposal? Please provide any arguments and supporting evidence.

No response

Q18: Are you aware of any additional exceptional circumstances in which it may be proportionate for providers to reverse advertising bans?

No response

6. Account appeals

Q19: Do you agree with our proposals? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

No response

Volume 4: Moderation

2. Advertising moderation

Q20: Do you agree with our proposals? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

We agree with the proposed moderation measures. We do not agree with the decision to leave the speed of removal both undefined and unmeasured.

The standard is statutory, but Ofcom declines to define it
Section 38(1) of the Act requires providers of Category 1 services to operate systems and processes designed to minimise the length of time fraudulent advertisements are present, and to swiftly take such content down once aware of it. The draft Code carries that standard through: measure FAU C2 provides for the swift take down of fraudulent advertisements, and states that the provider "should swiftly take down the advertisement" (Annex 4, FAU C2.3).

Ofcom is nonetheless "not proposing to provide detailed guidance on how quickly service providers should act", expecting only that removal happens as quickly as is feasible for the service and the advertisement involved (Volume 4, 2.21). Swiftly is therefore the standard, and it is left undefined.

Nor is it measured
Ofcom describes the purpose of the ad library and complaints measures as supporting the duty to prevent users encountering fraudulent advertising and to "minimise the length of time any such content is present on a service" (Volume 4, 5.13). No proposed measure records that length of time, and none requires a provider to report it.

Why this matters more for advertising than for other content
A paid-for advertisement is bought to reach a chosen audience at a rate the provider sets. A feasibility standard that the provider also defines for itself is therefore not assessable by Ofcom.

We are not asking Ofcom to put a fixed deadline in these Codes, or to define swiftly in hours. We accept the reasoning at Volume 4, 2.20 that providers should retain flexibility over the systems they use. A measurement duty does not constrain that flexibility.

Recommendation
Ofcom should require providers to record the time between determining that a paid-for advertisement is a fraudulent advertisement and removing it, and to report that data to Ofcom, so that compliance with the duty to act swiftly and to minimise the time fraudulent content is present can be assessed against evidence.

3. Terms of service and publicly available statements

Q21: Do you agree with our proposals? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

No response

4. Advertising complaints (including DRC for trusted flaggers)

Q22: Do you agree with our proposals? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence.

No response

5. Ad libraries

Q23: Do you agree with our proposal? Please provide any arguments and supporting evidence.

No response

Q24: Do you agree with the principles, functionalities and information categories which we have included in the proposed measure? Please explain your reasoning and, if possible, provide supporting evidence.

No response

Q25: Do you have any evidence or insights on the process of building an ad library from scratch or adjusting an ad library to align with the proposed measure, and how long that process would take?

No response

Additional questions

Q26: Do you agree with our Equality Impact Assessment? Please provide any arguments and supporting evidence.

No response

Q27: Do you agree with our Welsh language assessment? Please provide any arguments and supporting evidence.

No response

Q28: Do you agree with our proposals? Please provide any arguments and supporting evidence.

No response