

<b>Title:</b> Consultation on reviewing the regulatory framework for online advertising in the UK: The Online Advertising Programme <b>IA No:</b> <b>RPC Reference No:</b> RPC-DCMS-5165(1) <b>Lead department or agency:</b> Department for Digital, Culture, Media and Sport	<b>Impact assessment</b>		
	<b>Date:</b> March 2022		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> online-advertising-consultation@dcms.gov.uk			
<b>Summary: Intervention and Options</b>			<b>RPC Opinion:</b> <sup>1</sup>

**Cost of Preferred (or more likely) Option (in 2019 prices)**

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£m	£m	£m	Qualifying provision

**What is the problem under consideration? Why is government action or intervention necessary?**  
 The online advertising industry has experienced rapid growth as online media consumption has increased. However, the size and growth of the sector has led to concerns about potential harms to consumers, firms and wider society. Evidence indicates user experiences of harm driven by an absence of transparency and accountability in the supply chain. Existing measures are limited and market incentives drive easy access to online audiences, including from those intent to cause harm such as fraud. Anecdotal feedback suggests that the current self-regulatory framework is not sufficiently equipped to tackle this and a range of other harms.

**What are the policy objectives of the action or intervention and the intended effects?**  
 The Online Advertising Programme's (OAP's) objective is to determine whether the current regulatory regime is sufficiently equipped to tackle the challenges posed by the rapid technological developments in online advertising. The OAP will ensure that the regulatory framework for online advertising builds trust and tackles the underlying drivers of harm in online advertising. The OAP will also consider the role and responsibilities of all actors involved in the supply chain of online advertising. The desired outcome is that regulators have the appropriate powers and tools to effectively address issues in the online advertising ecosystem holistically and to take action on specific issues (verticals) without the need for isolated intervention from the government.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
 Part of the regulatory options involves examining whether key players involved in enforcing the current self-regulatory framework for online advertising are sufficiently equipped to tackle the range of harms in online advertising. The consultation considers three options:  
**Option 1:** Self regulation, this is a continuation of the existing regulatory framework which holds advertisers responsible for advert content and placement.  
**Option 2:** Backstop regulator, this would maintain self-regulatory advertising codes with the addition of a backstop regulator for certain codes/harms/actors to enhance enforcement activities.  
**Option 3:** Statutory regulation with the development of new measures for businesses in the supply chain, for example through codes with new enforcement activity.  
 There is no preferred option at this stage.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** To be determined

Is this measure likely to impact on international trade and investment?	Yes			
Are any of these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions?	<b>Traded:</b> N/A		<b>Non-traded:</b>	

<sup>1</sup> [The RPC – how we work with departments](#)

(Million tonnes CO<sub>2</sub> equivalent)

N/A

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible: Chief Economist

Rob Fontana-Reval

Date:

23/02/2022

## Summary: Analysis & Evidence

## Policy Option 2

Description: Statutory backstop

FULL ECONOMIC ASSESSMENT

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition		Average Annual	Total Cost
	(Constant Price)	Years		
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

### Description and scale of key monetised costs by 'main affected groups'

Indicative monetised costs have been provided for option 2, it is anticipated that advertisers and intermediaries could incur the transition costs associated with initial familiarisation of guidance on the regulations, with this estimated to cost £143 million in present value terms over the appraisal period. It is also assumed that costs to market participants for a backstop regulator could be £4 million across the appraisal period with a total cost of option 2 of £147 million.

### Other key non-monetised costs by 'main affected groups'

We do not anticipate non-monetised costs for option 2 as it is implementing an additional enforcement framework to enforce some of the current codes developed through self-regulation. The only business activity that is reduced should be the activities that are classed as harmful within the current codes.

BENEFITS (£m)	Total Transition		Average Annual	Total Benefit
	(Constant Price)	Years		
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

### Description and scale of key monetised benefits by 'main affected groups'

The main benefit considered is fraud reduction, which is the category of harm for which clear evidence is available both in terms of the link with online advertising, the extent of the issue, and the monetary losses associated with it. Two alternative scenarios are considered: under Scenario A it is assumed that the Online Safety Bill (OSB) is in place, but all fraud takes place on platforms out of scope; under Scenario B, the OSB is in place and covers approximately 84% of online fraud. Based on the results of the break even analysis, fraud monetary losses would need to be reduced by 3.62% under scenario A to fully compensate the total costs of introducing option 2. This is 23.15% under scenario B.

### Other key non-monetised benefits by 'main affected groups'

In order to avoid action by the statutory regulator, under option 2 online actors will likely put in place systems allowing greater detection and removal of malicious ads. Under option 2 we therefore expect also a reduction in other types of harm, such as sale of illegal products, harms linked to mistargeting of adverts, exposure to gambling or body image-related content. It is, however, difficult to quantify the extent to which some of these issues are linked to digital advertising, rather than to the use of the internet in general. It is also difficult to predict the effect of the proposed measure on the reduction of these harms, given the lack of previous evidence.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate (%)</b>	3.5%
<p>The key assumptions under Option 2 are the following:          The baseline level of fraud increases yearly by 5%. Two alternative scenarios are considered: under Scenario A it is assumed that the Online Safety Bill (OSB) is in place, but all fraud takes place on platforms out of scope; under Scenario B, the OSB is in place and covers 84% of online fraud.          The main uncertainties of the analysis are summarised in the “uncertainties and risks” section.</p>		

### BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
<b>Costs:</b>	<b>Benefits:</b>	<b>Net:</b>	

## Summary: Analysis & Evidence

## Policy Option 3

Description: Full statutory approach  
**FULL ECONOMIC ASSESSMENT**

Price Base Year 2019	PV Base Year 2020	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition		Average Annual (excl. Transition)(Constant Price)	Total Cost (Present Value)
	(Constant Price)	Years		
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

### Description and scale of key monetised costs by ‘main affected groups’

Indicative monetised costs have been provided for option 3, it is anticipated that advertisers and intermediaries could incur the transition costs associated with initial and secondary familiarisation and dissemination of guidance, with this estimated to cost £165 million over the appraisal period. It is also assumed that costs to market participants for a statutory regulator could be £251.2 million across the appraisal period. Customer Due Diligence (CDD) checks could cost intermediaries £27.4 million, activities relating to CDD checks could cost advertisers £8.5 million in present value terms over the appraisal period.

### Other key non-monetised costs by ‘main affected groups’

Enforcement of new statutory regulations containing content controls could cause a decrease in creative activity if advertisers become more cautious with their advertising strategies.  
 Costs to platforms, publishers and individuals have not been estimated due to a lack of evidence.

BENEFITS (£m)	Total Transition		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
	(Constant Price)	Years		
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

### Description and scale of key monetised benefits by ‘main affected groups’

The main benefit considered for Policy option 3 is fraud reduction. Based on the results of the break-even analysis, fraud monetary losses would need to be reduced by 11.14% under scenario A to fully compensate the total costs of introducing option 3, and before any benefits could be seen. Under scenario B, the break even point is at 71.19%. These figures are, however, indicative, and likely to err on the side of caution. As we know from survey data, only a small fraction of frauds are reported by victims, and while we only consider the monetary loss connected to fraud, being a victim of fraud also leads to some level of emotional distress.

**Other key non-monetised benefits by 'main affected groups'**

Option 3 is also expected to lead to the reduction of other types of harm, such as sale of illegal products, harms linked to mistargeting of adverts, exposure to gambling or body image-related content. It is, however, extremely difficult to quantify the extent to which some of these issues are linked to digital advertising, rather than to the use of the internet in general. It is also difficult to predict the effect of the proposed measure on the reduction of these harms, given its novelty and the lack of previous evidence.

**Key assumptions/sensitivities/risks****Discount rate (%)**

3.5%

The key assumptions under Option 3 are the following:

The baseline level of fraud increases yearly by 5%. Two alternative scenarios are considered: under Scenario A it is assumed that the Online Safety Bill (OSB) is in place, but all fraud takes place on platforms out of scope; under Scenario B, the OSB is in place and covers 84% of online fraud.

The main uncertainties of the analysis are summarised in the "uncertainties and risks" section.

**BUSINESS ASSESSMENT (Option 1)****Direct impact on business (Equivalent Annual) £m:****Score for Business Impact Target (qualifying provisions only) £m:****Costs:****Benefits:****Net:**

# Evidence Base

## Problem under consideration

### Issue to be addressed

1. The Online Advertising Programme was established in 2019 by the Department for Digital, Media, Culture and Sport (DCMS) to consider how online advertising is regulated in the UK. This includes investigating how the online advertising market and its governing self-regulatory regime has responded to a rapid market growth, the impacts of this on individuals, firms and wider society, and whether government intervention is necessary.
2. A call for evidence was published in 2020 to understand if and how online advertising causes harm to consumers, and to consider the effectiveness of the current self-regulatory system in tackling and preventing these harms.<sup>2</sup> It asked ten questions, broadly categorised around the following themes: the extent to which consumers are exposed to harm through the content and placement of online advertising; the effectiveness of the current governance and regulatory framework for online advertising, including in relation to dealing with harms to advertisers and preventing exploitation of vulnerabilities/vulnerable people; and the impact of any disparities between the regulation of broadcast and non-broadcast advertising on individuals, business, and wider society. Alongside evidence from other reviews, the responses indicated, overall, that harm was taking place and suggested the current standards and regulations in place were not doing enough to protect individuals.
3. Building on the call for evidence and research commissioned by DCMS<sup>3</sup> on the online advertising landscape, this impact assessment supports the consultation<sup>4</sup> on online advertising that sets out the Government's understanding of the online advertising ecosystem, highlights some of the priority areas of concern, and sets out a number of options for reform that the Government is considering, while assessing the potential impacts that these options may have on individuals, businesses and government.
4. This impact assessment provides an overview of the current online advertising market, its participating actors across the supply chain, the current governing regulatory architecture and the measures in place to tackle industry harms. The document then focuses on the evidence on where advertising may lead to harm. We then set out options for reform and our framework for assessing impact. At this early stage we have provided examples of the potential costs and benefits of measures that could be put in place to inform consultation responses. Further assessment of the options and preferred way forward will be carried out once more evidence has been gathered.

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<sup>2</sup> DCMS, 2020, [Online Advertising - Call for Evidence](#)

<sup>3</sup> Plum, 2019, [Online Advertising in the UK](#); Plum, 2020, [Mapping Online Advertising Issues, and Industry and Regulatory Initiatives](#)

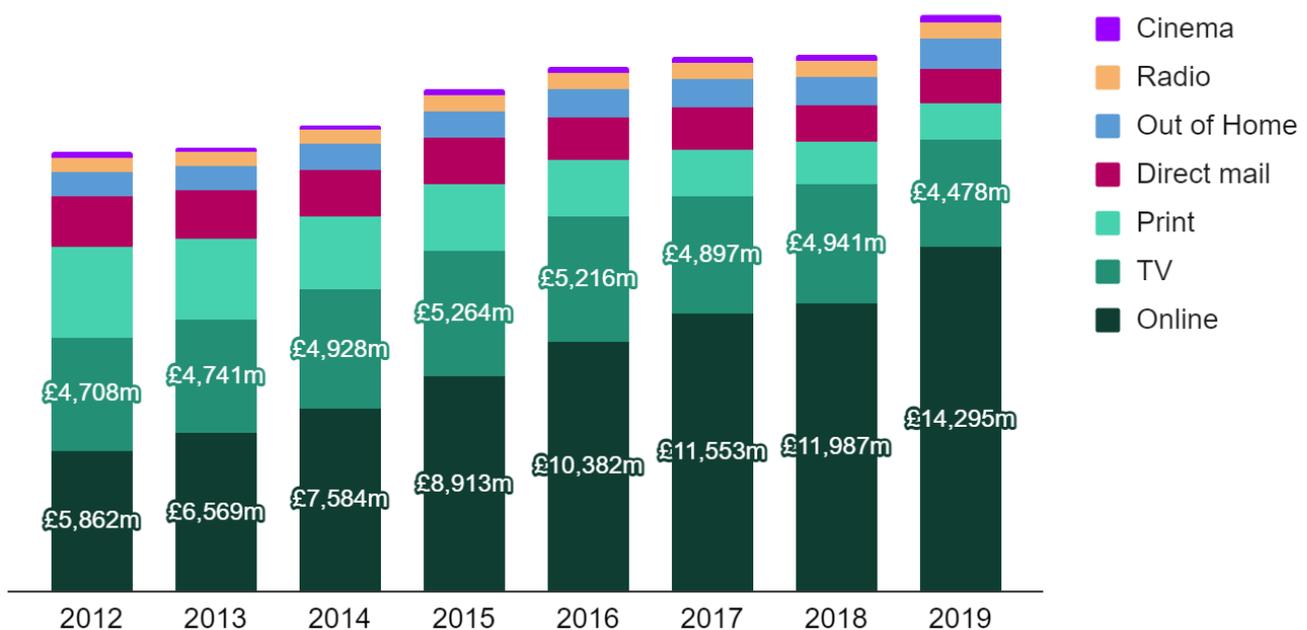
<sup>4</sup> DCMS, 2022, [Online Advertising Programme Consultation](#)

# The online advertising market

## Value of advertising

- Advertising contributes to the economic, social, and cultural life of the UK. The UK has a thriving advertising market, with a total industry turnover of £40 billion in 2019.<sup>5</sup> It generated £17 billion in Gross Value Added (GVA)<sup>6</sup> and exported £4 billion in services in 2019.<sup>7</sup> Whilst initially hit by the COVID-19 pandemic, the industry has bounced back as demand and consumer confidence returned. Direct spending on advertising in the UK is forecast to total £29.3 billion in 2021, a year-on-year increase of 24.8%.<sup>8</sup>
- Aside from the economic contribution of the industry, the sector makes a significant contribution to our social and cultural life, drawing in a wealth of creative talent. Employment in the UK was estimated at around 201,000 in 2020,<sup>9</sup> with the sector bringing in a host of international workers, and many large global agencies headquartered in the UK.
- Advertising spend across all channels in the UK was £23.9 billion in 2019, up 31% from 2012 (Figure 1). Online advertising has come to sit at the heart of the digital economy and spending has steadily grown over the period to reach £14.3 billion in 2019, a huge increase of 144% since 2012. The advertising market is dynamic and businesses have moved towards the channels that are giving them access to large audiences and demonstrating positive returns on investment. This has meant advertising has moved away from some channels with TV, Print, and Direct Mail seeing decreased spending over the period.

**Figure 1: UK Advertising expenditure by channel, 2012-2019**



Source: AA/WARC, Expenditure report, April 2012-2019

<sup>5</sup>ONS, 2021, Annual business survey, [UK non financial business economy](#)

<sup>6</sup>DCMS, 2021, Economic Estimates, [Gross Value Added 2019](#)

<sup>7</sup>DCMS, 2021, Economic Estimates, [Exports of services 2015-2019](#)

<sup>8</sup>WARC, 2021, [Expenditure report press release](#)

<sup>9</sup> DCMS, 2021, [DCMS Sector National Economic Estimates: 2011 to 2020](#)

8. The rise of online advertising to become the dominant modern advertising medium reflects the significant shift seen in consumer consumption habits (and therefore eyeballs) over the last decade from traditional media, such as newspapers and TV, to online formats. Over four fifths of the adult population used the internet in 2021,<sup>10</sup> with the average time spent online per week increasing from 14 hours to just under 25 hours from 2010<sup>11</sup> to 2020.<sup>12</sup>
9. With the growth in internet consumption, advertising has become the primary source of revenue for many online businesses and underpins the provision of online services such as search and social media.<sup>13</sup> These services are positively transforming people's lives, many of which we increasingly find hard to imagine living without. However, access to these services for consumers generally means the acceptance of advertising that is targeted at them, sitting alongside the content they enjoy. For businesses, online advertising offers high levels of personalisation and efficiency in reaching audiences, which is cost effective, as well as convenient to both advertisers and consumers. It can help consumers to discover valuable new goods, interests and services, creating more accessible and low cost routes for businesses to engage with their audiences.
10. This increased share in the advertising market enjoyed by online advertising, coupled with the related revolution in business practices that has accompanied it, has placed increasing pressure on the regulatory framework for advertising - originally designed in the offline era - to remain effective and relevant.

## Market categories and dynamics

11. In the consultation, the Government sets out, and asks for views on, its understanding of the main characteristics of the online advertising market. The market is continually evolving, with fast paced innovation in business practices. An accurate and up-to-date understanding of the market dynamics within online advertising is critical to enabling the Government to effectively assess the relevance, proportionality and impact of any potential interventions that it may seek to introduce to bolster and reform the existing regulatory framework.

## Online Advertising Ecosystem

12. Online advertising involves businesses wishing to advertise first designing a campaign, often working with advertising creative agencies and media buying agencies. **Advertisers**, working with their buyers, form the demand side of the market and will then purchase advertising space in order to reach their desired audiences. Advertising space is provided by **platforms and publishers**, who form the supply side of the market, that can sell access to their audiences in order to fund their businesses. Between these sides of the market, advertising **intermediaries** may operate to facilitate transactions, leverage data, or provide other services. Online advertising can be highly targeted to specific consumer interests using audience data and real-time automated systems provided by these intermediaries or platforms.
13. Online advertising provides a number of different ways for reaching consumers. Each market category (as set out in the table 1 below) provides advertisers with a vehicle to

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<sup>10</sup> Ofcom, 2021, [Online Nation report 2021](#)

<sup>11</sup> Ofcom, 2016, [Adults' Media Use and Attitudes Report 2016. Digital media take up and use slide 10](#)

<sup>12</sup> Ofcom, 2021, [Adults' Media Use and Attitudes Report 2021. Chart pack slide 12](#)

<sup>13</sup> Ofcom, 2021, [Online Nation Report 2021](#)

advertise their services or products with consumers. The two primary channels advertisers can purchase advertising space online includes: (i) buying space directly from ad funded **platforms** who offer an integrated ad buying service - sometimes referred to as 'owned and operated' systems or 'walled gardens', or (ii) through the **open display** market whose supply chain matches advertisers' buying specifications at one end, with advertising space across a range of open display publishers at the other.

## **Programmatic Advertising**

14. Both of these channels predominantly use programmatic advertising to buy and sell inventory. This use of automated systems and processes is widespread across the online advertising ecosystem. Selling advertising programmatically means that the selection, pricing and delivery of adverts to selected audiences are organised through automated computerised algorithms. The selection and targeting of audiences in programmatic systems is heavily reliant on the use of data (this can be a combination of personal and contextual data) by platforms and intermediaries, in order to personalise advertising.
15. Although some businesses and advertisers traditionally choose to make direct deals for display advertising, programmatic technology is used to support a variety of online transactions and continues to be popular given the level of sophistication it can offer. Advertisers want to maximise their return on investment, and targeting specific niches of potential consumers through the use of programmatic technology is one way to make sure that they are efficient. Programmatic technology has opened up advertising markets to SME advertisers in a way that was not available to them before, enabling them to effectively target advertising cheaply and efficiently - offering them an alternative to advertising brought through platforms. At the other end of the supply chain, publishers of any size can also sell inventory programmatically, enabling them to reach a greater range of advertisers.

## **Categories of Online Advertising**

16. We have set out below the market categories of online advertising that we are aware of which advertisers use to reach consumers and that are within scope of this consultation. We have used the CMA's market study into online platforms and digital advertising<sup>14</sup> to inform our understanding of these categories. Broadly, the online advertising market can be broken into the five key market categories outlined in Table 1 below.
17. These market categories do not include unpaid advertising. This is to exclude from scope so-called 'owned media', which is any online property owned and controlled, usually by a brand. For owned media the brand exerts full editorial control and ownership over content; such as a blog, website or social media channels. This is to ensure that brands can continue to talk about their products in the spaces they own.

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<sup>14</sup> Competition and Markets Authority, 2020, [Online platforms and digital advertising market study](#)

**Table 1: Categories of Online Advertising**

Market category	Supply chain	Type of advert	Example hosts of type of advert
<b>Search</b>	Usually purchased directly from search providers through owned and operated environments	<ul style="list-style-type: none"> <li>• Paid-for listings in search results, such as sponsored links or promotional listings.</li> </ul>	Google, Bing
<b>Social Display</b>	Usually purchased directly from social media providers through owned and operated environments	<ul style="list-style-type: none"> <li>• Range of advertising formats on social media platforms.</li> <li>• Paid-for online video advertising, such as video adverts served before, during or after videos on video sharing sites.</li> <li>• Paid-for online social media advertising, such as in-feed advertising on social media.</li> </ul>	Facebook, Instagram, Twitter, LinkedIn, TikTok, Snapchat, Youtube
<b>Open Display</b>	Purchased through open display, or bought directly from publishers. Some platforms also offer services to place advertising on third party publishing sites	<ul style="list-style-type: none"> <li>• Paid-for banner ads on news websites and apps, swipe to buy.</li> <li>• Paid-for in-game advertising, such as banner ads in games apps.</li> <li>• Paid-for newsletter advertising, such as banner ads in a cookery newsletter.</li> <li>• Paid-for advertisements distributed through web widgets, such as those located on the sidebar of websites.</li> <li>• Paid-for advertising on internet served video-on-demand services</li> <li>• Banner and video ads provided as part of the electronic programme guides and home screens of internet enabled TV sets.</li> </ul>	The Guardian, Reach, Mail Online, ITV, Sky, BuzzFeed
<b>Classified</b>	Purchased directly from platform or publisher	<ul style="list-style-type: none"> <li>• Paid-for listings on price comparison or aggregator services, such as sponsored listings on food delivery, recruitment, property, cars and services.</li> </ul>	Gumtree, AutoTrader, Zoopla, Monster.
<b>Content marketing, sponsorship and influencer marketing</b>	Procured through contracts with influencers, or arranged directly with the publisher	<ul style="list-style-type: none"> <li>• Sponsored content on publisher or platform services, including paid promotion on creators' social media posts:</li> <li>• Paid-for influencer marketing, such as influencer posts paid for/sponsored by an advertiser</li> <li>• Paid-for product specific sponsorship</li> <li>• Paid-for advertorials</li> <li>• Paid-for advergames</li> </ul>	Social media influencers publishers or platforms who host sponsored editorial content

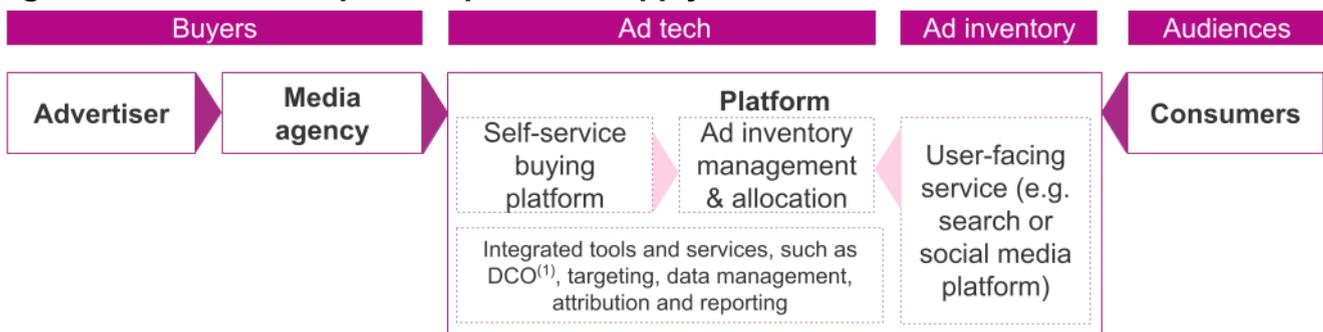
### Online Advertising Supply Chains

18. As mentioned, online advertising space is sold in a range of ways, (i) ad buying services offered by larger ad funded platforms, also referred to as 'owned and operated' or 'walled gardens'; and (ii) the open display market, where advertising space can be purchased across a wide range of smaller online publishers.

## Platforms and the ‘Owned and Operated’ or ‘Walled Garden’ model

19. Platforms own the relationship with both the audience and advertiser, with no other party (other than potentially a media agency) involved in the buying and selling of its advertising inventory. This vertical integration is sometimes referred to as a ‘walled garden’, as data they hold on their users is utilised to target adverts for maximum impact. According to the CMA, in 2019 most of the larger, ad-funded platforms made up around 80% of the online advertising market.<sup>15</sup>
20. Some platforms, including both Google and Facebook/Meta, offer advertiser ‘self-service’ options which means smaller operators can directly purchase advertising with little friction, creating a low bar to entry into this market place. High market share, ownership of key technologies in-house, and strong user data assets, lead to larger platforms such as Google and Facebook/Meta having more bargaining power. The CMA’s market study found that, typically, publishers are unable to negotiate the terms of their relationship with Google and Facebook.<sup>16</sup>
21. Figure 2 offers a simplified view of the process used by platforms to serve advertising to users in a ‘walled garden’ or owned and operated system.

**Figure 2: Owned and operated platform supply chain**



### Examples:

- **Search:** Google, Bing (Microsoft)
- **Social:** Facebook and Instagram (Meta), Snap, Twitter, YouTube (Google), TikTok, LinkedIn (Microsoft), Twitch (Amazon), Pinterest

### Notes:

- (1) DCO = dynamic content optimisation.
- (2) This diagram simplifies the supply chain. In some cases, advertisers interface directly with platforms, without using a media agency. In some cases, advertisers or media agencies use tools such as Smartly.io to manage campaigns on platforms. In some cases, publishers distribute content on platforms in return for a share of advertising revenue and/or the right to sell advertising on their content.
- (3) Buying channels and platforms, and tools and services differ between platforms.

## Open Display Markets

22. The main alternative vehicle for buying online advertising inventory to owned and operated systems is the open display market. Open display is a sector of the market that uses programmatic selling/buying through an intermediated model and is often used to connect advertisers to a range of online publishers, including press and other news publishers. The adtech industry has evolved to meet the needs of these two main groups of actors, advertisers and publishers. Advertisers exist on what is called the demand side where they

<sup>15</sup> Competition and Markets Authority, 2020, [Online platforms and digital advertising market study](#)

<sup>16</sup> Competition and Markets Authority, 2020, [Online platforms and digital advertising market study](#) Appendix H

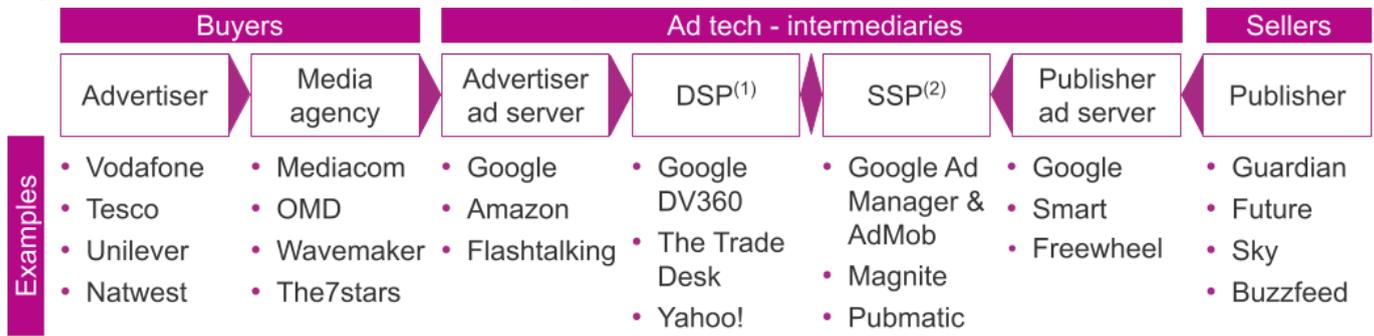
are interested in reaching online audiences with their message. Publishers then exist on the supply side by operating websites or apps and want to monetise their services through selling digital advertising inventory.

23. The open display market is made up of a complex chain of businesses providing specific functions within the advertising supply chain. On the **demand side**, the main participants include media agencies, advertiser ad servers, and demand side platforms (DSPs). Advertiser ad servers are used by advertisers and media agencies to store information about ads and advertising campaigns, as well as to deliver, track and analyse campaigns. A DSP is a platform that allows advertisers and agencies to purchase targeted ad impressions from many different sources through a single interface. Real time bidding is typically used to execute this process.
24. On the **supply side**, the main participants include supply side platforms (SSPs) and publisher ad servers. SSPs provide the technology for publishers to sell ad impressions through a range of external platforms (for example DSPs), allowing them to sell all of their inventory through a single interface. They can also be used for more direct deals between publishers and advertisers. It is worth noting here that SSPs and ad exchanges have largely merged in recent history to the point where these terms are often used interchangeably. Based on the bids received from different SSPs, and the direct deals agreed between publishers and advertisers, publisher ad servers manage publishers' inventory and the final decision on displaying appropriate online advertising content to the appropriate user.
25. The industry also includes further market participants involved in the provision and management of data, targeting practices and analytics in online advertising including data suppliers, data management platforms, and measurement and verification providers.
26. Options for purchasing advertising space range from use of the full programmatic supply chain through to direct contracts between advertisers and some publishers. Some publishers are also expanding their own capability to offer more tailored direct services to advertisers, including more advanced audience targeting. This may in turn be leading, in some cases, to increased use of direct contracts in some circumstances, which can by-pass some of the open display supply chain. The CMA market study concluded that open display comprises around 32% of display expenditure online.<sup>17</sup>
27. Figure 3 provides a simplified illustration of the online open display supply chain, including the intermediaries involved in dissemination through this method.

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<sup>17</sup> Competition and Markets Authority, 2020, [Online platforms and digital advertising market study](#)

**Figure 3: Process to serve advertising from advertisers to users in open display system**



**Notes:**

- (1) DSP = demand-side platform.
- (2) SSP = supply-side platform.
- (3) Some ad tech competitors operate at multiple levels of the supply chain (e.g. Google, Amazon, Yahoo!).
- (4) This diagram simplifies the supply chain. Not all categories of ad tech vendors are shown, such as header bidding solutions and ad networks. In some cases, advertisers interface directly with ad tech vendors, without using a media agency. Some publishers sell ad inventory directly, involving manual orders or the use of an automated buying platform, without DSP and SSP involvement.
- (5) The ad tech ecosystem and roles are rapidly evolving.

**Online advertising buying services, such as media agencies**

- 28. Most larger brands secure the services of media agencies to help them develop and deliver advertising strategies for the products and services that they wish to advertise. Advertising campaigns are generally complex and will involve buying advertising content over a range of channels both on and offline. Whilst it is possible for brands and advertisers to buy advertising space direct from both ad funded platforms and/or publishers, larger brands may use the services of a media buying agency whose job it is to procure relevant advertising space from across the online advertising ecosystem, in line with the agreed buying strategy for the brand’s products and/or services. Some agencies are also starting to provide intermediary functions such as data aggregation, and are becoming more complex and vertically integrated.
- 29. Whilst media agencies play a key role online, in recent years it has also become common for brands to establish direct relationships, particularly with the ad funded platforms, meaning that media buying agencies do not always intermediate all transactions online.

**New developments**

- 30. In recent years, we have seen changes surrounding the use of data online, such as the introduction of new policies by big tech companies to limit the targeting of users. For example, in the place of cookies (which are being phased out on Chrome and have already been removed by default from Safari and Firefox), Google aims to implement replacement technologies, and its Privacy Sandbox is testing approaches. This will still allow websites to show targeted adverts, while reducing the amount of information users share. Apple’s new privacy measures include turning off the “identifier for advertisers” (IDFA) used for tracking by default. This means Apple users will have to grant apps explicit permission to use it and will thus likely significantly reduce the data available to third parties<sup>18</sup> In addition, the Meta group has recently announced that it will be removing some of its controversial targeting

<sup>18</sup> Apple support guidance, 2021, [‘If an app asks to track your activity’](#)

services (such as political affiliation, religion and sexual orientation).<sup>19</sup> Taken together, these changes may have a significant impact on the way online advertising is targeted and are not without considerable competition concerns.<sup>20</sup>

## Context of the current regulatory system

### Existing regulatory framework, including ASA cap code on advertisers, Gambling, and HFSS

31. The current, self-regulatory framework for online advertising (covering advertising content, media placement and audience targeting) primarily applies to advertisers, with secondary responsibility assigned to publishers, agencies, platforms and other intermediaries. This framework has a number of layers, with legal requirements on advertising applying to specific product types incorporated into a predominantly industry-led regulatory approach run by the Advertising Standards Authority (ASA) and to marketing disciplines in general. Alongside this framework for advertisers, there is a suite of industry standards that address other issues in online advertising and apply to other actors in the advertising supply chain. Examples of requirements include ensuring that marketing communications are legal, decent, honest and truthful, do not materially mislead or be likely to do so, and do not contain anything that is likely to cause serious or widespread offence.
32. Advertising specific regulation and standards sit alongside a wider set of legislation and regulation. The most relevant to the online advertising market include consumer, competition and data protection rules.
33. The ASA regulates the content, media placement and audience targeting of adverts in the UK through a self-regulatory system, with statutory regulator backstops operating in certain discrete areas (e.g. by the Gambling Commission for gambling services/products and by Trading Standards for misleading advertising). The ASA is responsible for the day to day enforcement of the UK Code of Non-Broadcast Advertising and Direct & Promotional Marketing ('CAP Code')<sup>21</sup> which sets the standards for non-broadcast (including online) advertising, sales and direct marketing communications; and the UK Code of Broadcast Advertising ('BCAP Code')<sup>22</sup> sets the standards for all advertisements and programme sponsorship credits on radio and tv services licensed by Ofcom.
34. The CAP Code primarily applies to advertisers as the main regulated actors who decide, through their advertising and buying strategies (with help from the services of creative and media buying agencies), both the contents of advertising and the types of audiences they want them to be seen by. The ASA also works with other organisations involved in online advertising, many of whom are represented on CAP, to promote the regulatory regime and encourage engagement with it. Compliance with the ASA's Codes is mandatory: advertisers, agencies, and others that are not members of the trade associations and professional bodies that make up CAP and BCAP are still regulated by the ASA.
35. The main mechanism by which breaches of the CAP Code are managed is through complaints from the public (or other industry players) when they believe Code breaches

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<sup>19</sup> Politico, 2021, [Big Tech scrambles as Europe ramps up crusade against online advertising](#)

<sup>20</sup> CMA, 2022, [Mobile ecosystems market study interim report](#)

<sup>21</sup> ASA, n.d., [Non-broadcast Code](#)

<sup>22</sup> ASA, n.d., [Broadcast Code](#)

have occurred. The ASA has the power to make adjudications and require advertisers to take down advertising that breaches the Code. The ASA often publishes these adjudications which have a reputational impact for brands, most of whom have strong business incentives to remain compliant. In recent years the ASA has supplemented its reactive complaints-based work with more proactive regulatory approaches. The ASA and CAP also review and take action across key advertising segments, where evidence emerges or public concern builds. As an example, the ASA are currently reviewing advertising standards outlined in their codes on body image.<sup>23</sup> The ASA does not have a statutory power of investigation and so is reliant on its own research as well as the voluntary cooperation of other players to provide information.

36. Much of the Code reflects provisions in legislation for particular goods and services (such as tobacco), as well as being responsive to changes in society that have an advertising regulatory dimension. Discretionary areas of the Code, such as gambling and high fat, salt, and sugar (HFSS) restrictions, are backstopped by other regulators. For example, Trading Standards are the backstop regulator in the case of misleading, aggressive or otherwise unfair business to consumer non-broadcast advertising. The CMA, along with Trading Standards Services and other designated UK regulators, are able to enforce consumer protection legislation in relation to advertising, including misleading advertisements and other unfair practices by traders involved in online advertising – in particular, under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The CPRs will apply to any person - including advertisers, intermediaries and online platforms - where they act as a trader and are engaged in a commercial practice (as defined broadly by that legislation). Where they engage in a practice that is misleading, or where they otherwise fail to act in a professionally diligent manner, and this materially distorts or is likely to materially distort the economic behaviour of the average consumer with regards to a product, the trader will infringe the CPRs. Other areas where a regulatory underpinning exists include but are not limited to:
37. Gambling advertising: As a condition of their licence, gambling operators and their affiliates in the GB market must abide by advertising codes issued by the BCAP and CAP, overseen by the ASA. The ASA can - in cases of serious or repeated offence - refer ads, which are found to breach these codes, to the Gambling Commission or Ofcom (in the case of broadcasters). In addition, the gambling industry has its own gambling advertising code - The Gambling Industry Code for Socially Responsible Advertising - which includes additional requirements. The recent Gambling Act Review called for evidence on the potential benefits or harms of allowing licensed gambling operators to advertise, and the effectiveness of existing rules around advertising and marketing, wherever it appears. DCMS is considering the evidence carefully and will publish a White Paper outlining conclusions and next steps in the coming months.
38. High in Fat, Salt, and Sugar (HFSS) restrictions: Obesity is one of the largest public health challenges the UK faces. In conjunction with the Department for Health and Social Care, DCMS is introducing restrictions across TV, on-demand programme services and online for the advertising of less healthy food and drink products. These restrictions are expected to come into force on 1 January 2023. The regulation of these restrictions will fall to Ofcom, who can then appoint a frontline regulator. The intention of these restrictions is to

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<sup>23</sup> ASA, 2021, Body image - call for evidence

significantly reduce the number of adverts children are exposed to for less healthy food and drink products.

39. Video-on-demand (VoD) regulation: Ofcom regulates on-demand programme services (ODPS) under UK jurisdiction, more generally referred to as VoD services, and has designated the ASA as the appropriate regulatory authority in relation to VoD advertising. VoD advertising is considered non-broadcast in the same way as other online ads, despite bearing some similarities to broadcast TV and radio advertising<sup>24</sup> and is therefore subject to ASA's CAP Code. As part of the OAP, we will consider whether wider advertising rules for VoD should align closer with this model or follow the same regulations standards of online adverts.
40. Video-Sharing Platforms (VSPs): In addition to the CAP Code, Ofcom is responsible for the regulation of UK-established VSPs, including ensuring VSPs meet certain standards around advertising. In December 2021, Ofcom published its regulatory framework for VSP advertising.<sup>25</sup> It is the government's intention that the VSP regulations are to be superseded by the forthcoming Online Safety Bill (OSB). The OSB will not include new provisions that apply to advertising for VSPs, but VSPs (as a subset of online platforms) will be considered within scope of the OAP.

## **Enforcement structures, who is involved and how they enforce**

41. The ASA is currently funded by industry through a voluntary levy on advertisers, enabling its regulation to be independent of Government and free of cost to the taxpayer. Whilst the ASA often works informally with advertisers to resolve issues they have a range of sanctions, which largely cause reputational damage to advertisers. These include publicly exposing advertisers who have ignored the rules or caused widespread harm, preventing an advert from appearing in search engine results by agreement with the search engine and issuing Ad Alerts to CAP's members. Persistent or serious offenders can be required to have their marketing material vetted before publication.
42. As mentioned above, responsibilities for advertising content and placement (apart from in the case of video-sharing platforms) currently primarily fall to advertisers. The issue with this is that advertisers do not have full control over this process. It is also the case that bad actors, for example, individuals or enterprises who are looking to disseminate illegal or other purposefully harmful content, will not be motivated to comply with the directions of the ASA or the self-regulatory sanctions it may deploy.
43. In 2018 the ASA published its 'More Impact Online' 2019-2023 strategy.<sup>26</sup> As part of this, the ASA has been increasing its efforts to proactively enforce advertising standards, for example, by investing in new avatar technologies creating avatars that, to an extent, mimic their respective online audiences. The ASA has therefore been able to gain insight into the type of adverts that are being served to different age categories of children and to adults.

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<sup>24</sup> In the UK, TV advertising is co-regulated by the Advertising Standards Agency (ASA) and Ofcom. The Broadcast Committee of Advertising Practice, independently administered by the ASA, sets the advertising standards for television through its UK Code of Broadcast Advertising ('BCAP code'). Nevertheless, most major broadcasters usually adhere to the BCAP code for their VoD services. This includes pre-clearing ads through Clearcast.

<sup>25</sup> Ofcom, 2021, [Statement: The regulation of advertising on video-sharing platforms](#)

<sup>26</sup> ASA, 2018, [More Impact Online](#)

44. Through its Online Platform and Network Standards (OPNS), the ASA is currently exploring, with some of the world's largest companies in the online advertising supply chain, extending the ASA's online advertising regulatory framework. The aim is to put on a formal footing and bring consistency to the ways in which these companies work with the ASA. In particular, such a framework would allow the ASA to hold these companies to account for how they help to promote and secure compliance with the CAP Code online, and is intended to serve as an effective complement to holding advertisers primarily responsible for the creative content and targeting of their ads.

### **Context on the forthcoming Online Safety Bill**

45. The Online Safety Bill will introduce statutory requirements on services that enable users to share content and interact with each other, as well as for search services to protect their users from harm, while protecting freedom of expression. The biggest tech companies (Category 1) will also have duties on legal content that may be harmful to children and adults. This regulation will be enforced by Ofcom.
46. Paid-for advertising is largely out of scope of the Online Safety Bill, which has been designed to regulate user-generated content on user-to-user services and search services. In light of the need for urgent action to address the issue of fraudulent advertising, the government has decided to introduce a standalone duty on platforms in scope of the OSB to tackle fraudulent paid-for advertising. The duty will require the largest platforms and search engines to put in place proportionate systems and processes to prevent (or "minimise", in the case of search services) the publication or hosting of any fraudulent advertising on their service. Additionally, all companies in scope of the Online Safety Bill will need to take action to tackle fraud, where it is facilitated through user-generated content or via search results.
47. The duty is designed as a standalone measure, and paves the way for additional, complementary work through the OAP to look at the role of the entire ecosystem in relation to fraud, as well as other harms caused by online advertising. The OAP will seek to address whether other actors in the supply chain, such as intermediaries, have the power and capability to do more. The programme will focus on the role of AdTech intermediaries in onboarding criminal advertisers and facilitating the dissemination of fraudulent content through using the targeting tools available in the open display market. This will ensure that we close down vulnerabilities and add defences across the supply chain, leaving no space for criminals to profit.

### **Extent to which industry measures address the issues**

48. In addition to the ASA's interventions, there are a range of self-regulatory and wider industry initiatives, which can act as constructive means of addressing harms and drivers of harm in online advertising. These comprise collaborations, industry standards and best practice. Examples of good practice include verification requirements where certain players within the online advertising ecosystem require advertisers to be verified with relevant authorities, and identity transparency in the supply chain by third party intermediaries using publicly accessible files or ledgers to verify key players. There are also a range of consumer tools and campaigns to encourage the tracking and reporting of bad practices.
49. Whilst the government strongly encourages and supports these initiatives, we recognise that not all players have equal capacity and resources to act nor the same market power,

either socially or financially. Nevertheless, it is recognised that advertising supply chain businesses aim to maximise their profits by providing a cost efficient system to match advertisers with users. Any measures to address harmful adverts incur costs and unless all competitors in the market face these costs, there is no incentive for a single business to act further. This is a co-ordination failure which in part stems from the fact that the current ASA regulation primarily holds advertisers to account - who as consumer facing businesses are often driven by reputational incentives - rather than all businesses across the supply chain. This creates a regulatory gap which means that advertisers are effectively currently being held accountable for the role played by other actors in relation to placement and targeting of their adverts to consumers.

50. An opaque supply chain and low barriers to entry allow bad actors to enter the system undetected and unmonitored, meaning there is a lack of visibility over the process to publish harmful adverts. Due to this lack of transparency, advertisers often face hidden information on how their adverts are delivered through the supply chain, and therefore safety and reduction of harm in relation to targeting is not always factored into advertisers decisions, or fully within their control. The supply chain has limited incentive to refer harmful activity to authorities due to the costs, and the lack of an existing mechanism by which to do so.
51. Currently, there is not a central body who collects and disseminates data on the quantity of harms, the type of harms or how they are handled when identified. As a result, platforms and intermediaries are not sharing this information and are not held directly accountable for their role in disseminating harms, and non-statutory regulators currently operating in the system have no formal investigatory powers available to them to better understand the picture. This is a challenge for industry as it is reliant on individual platforms and publishers being forthcoming with this information, which has historically not been the case.
52. On the other side of the coin, when consumers are affected by adverts that are harmful to them, it can be unclear how to raise a complaint, either with the relevant authority, or with the advertiser and/or with actors in the supply chain. The current enforcement system relies reactively on user complaints to take action, but a system is not in place to investigate those that are intentionally causing harm. It is also extremely limited in its ability to address complaints on personalised adverts where they have been served to a restricted group, or those that are more vulnerable to the nature of the content, for example a gambler and gambling advert.

## **Evidence of harm**

53. This section summarises the available evidence on the extent to which internet users are exposed to harm linked to online advertising, the type of harm, and the consequences of it. Information on the incidence and effect of online harm is gathered from a number of sources, including surveys, academic research papers, research reports, reports by relevant authorities such as ASA, commissioned research, and DCMS' Call for Evidence. It is, however, often difficult to measure the extent and the economic and wellbeing implications of online harm experienced by internet users, and evidence related to certain types of harm is quite limited. The government will use the consultation to fill some of the evidence gaps and this will feed into the final stage impact assessment.

54. The empirical evidence suggests that digital adverts can lead to a variety of harms, some of which are connected to the content of the ads itself, but in other cases also to the way it is delivered and and the group it is targeted to.
55. Ofcom ran the first Pilot Online Harms Survey<sup>27</sup> between November 2020 and February 2021, collecting, among other things, exposure and experience of online harm in the four weeks leading to the interview. The survey covers a wide range of harms with the most common being spam emails, reported by 54% of respondents, followed by scams, fraud, or phishing (27%) and then misinformation (23%). In the case of scams, fraud, or phishing, 16% of respondents also report having been exposed to it over ten times per month. Only one response code related directly to advertising, with just under 1 in 10 respondents reporting they had seen harmful or misleading advertising (9%). While this is a small proportion, it is not insignificant with 86% of adults using the internet.<sup>28</sup> No data was provided to understand how often or how many harmful or misleading adverts individuals had seen over the period.
56. Other types of harm identified may have some link to advertising, though there isn't evidence to show this. For example 3% have come across the sale of illegal products and exposure to gambling or body image-related content, potentially but not necessarily through online advertising, is reported by 14% and 6% respectively.
57. There is limited industry information on the identification and removal of potentially harmful adverts. Research by Confiant has recently estimated the incidence of dangerous and malicious adverts to be 1 in 108, based on the analysis of a sample of 150 billion adverts.<sup>29</sup> Their latest results suggest the problem is growing with security violations tripling in Q3 2021 from Q2. The data is from supply side platforms and publishers and it is not clear how many adverts reached internet users.
58. Data from the 2020 call for evidence instead focuses on harms that strictly relate to online advertising. **Offensive adverts** and **scams** are amongst the most reported (by 21% and 18% of respondents), followed by adverts for **illegal/fraudulent** services (16%) and **misinformation** (9%). It should be noted that respondents to the call of evidence cannot be considered a random sample of the population, as such these numbers are affected by self-selection bias, with those hit hardest by their experience of harms being more likely to respond to the call.
59. Fraud is the most common crime type in England and Wales, accounting for around 40% of reported crime<sup>30</sup>. In just over 50% of cases the fraud occurred on the internet.<sup>31</sup> Which? analysis of Action Fraud data found that in the year to April 2021, just over 400,000 instances of fraud were reported to Action Fraud.<sup>32</sup> This is, however, an underestimation of the true extent of the problem. According to survey data from the Crime Survey for England and Wales, 8.6% of adults have been a victim of fraud in the year ending June 2021, with approximately 5 million fraud incidents - a 32% increase compared to 2019.<sup>33</sup> Only about

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<sup>27</sup> Ofcom, 2021, [Ofcom Pilot Online Harms Survey 2020/21](#)

<sup>28</sup> Ofcom, 2021, [Online Nation 2021](#)

<sup>29</sup> Confiant, 2021, [Malvertising & Ad Quality Index Q3 2021](#)

<sup>30</sup> ONS, 2021, [Crime in England and Wales: year ending June 2021](#)

<sup>31</sup> ONS, 2020, [Nature of fraud and computer misuse in England and Wales: year ending March 2019](#)

<sup>32</sup> Which?, 2021, [Devastating spike in scams as fraudsters exploit pandemic and online shopping surge. Which? finds.](#)

<sup>33</sup> ONS, 2021, [Crime in England and Wales: year ending June 2021](#)

10%-15% of total fraud is reported to the police or the national reporting authority<sup>34</sup> (in many cases the accident is reported by the victims directly to their bank).

60. Which? shows a large increase in fraud between 2020 and 2021, also due to the change in purchase and investment habits during the pandemic, with scams linked to online purchases increasing by 65%, and financial scams by 50%.
61. Crime survey data for the year ending in March 2019 show that 76% of fraud is associated with a monetary loss, which was not refunded for 30% of respondents. Median losses are equal to £167. In 15% of cases the loss is over £1,000 and in 2% over £10,000. The overall financial loss associated with frauds are estimated by Which? to total £2.3 billion, with investment scams costing victims £25,000 on average. According to estimates by the Home Office on the overall cost to society in England and Wales, including financial losses and psychological distress, this is at least £4.7 billion.<sup>35</sup> Data from City of London Police / National Fraud Intelligence bureau<sup>36</sup> analysing over 600,000 Action Fraud reports found 35,000 frauds linked to digital advertising from April 2020 to March 2021,<sup>37</sup> which carried an overall cost of £400 million (hence £11,388 on average).
62. The effects of fraud go beyond the financial loss with 24% of victims also lament the waste of time it takes to resolve, while 78% of victims of fraud also experienced some level of emotional distress, with some of them reporting anxiety (9%) and depression (4%).<sup>38</sup>
63. Even where adverts are not being used to intentionally cause harm through fraud, research shows there are adverts for financial investments that can be **misleading**, where for example the characteristics of which, including the level of risk, are often not sufficiently disclosed.<sup>39</sup>
64. Harmful advertising can also be linked to ads posted by **social media influencers**. ASA has for example found that 35% of influencer marketing is not properly disclosed as such<sup>40</sup> (non-identified ads), and it has also used its powers to sanction the most recidivist influencers.<sup>41</sup> The role of influencer marketing on women's purchase of counterfeit products in the UK has been recently investigated in research commissioned by the Intellectual Property Office. Findings on a sample of 1,000 women show that 10% of respondents are induced to buy counterfeit products following influencer marketing, with one third of them not being aware of their non genuine nature.

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<sup>34</sup> ONS, 2020, [Nature of fraud and computer misuse in England and Wales: year ending March 2019](#)

<sup>35</sup> Home Office, 2018, [The economic and social costs of crime](#)

<sup>36</sup> City of London Police / National Fraud Intelligence bureau, 2021, Fraud Enabled by Online Adverts 2020/21 – Dip Sample report

<sup>37</sup> These figures were based on keyword searches across the Action Fraud databases, and a small dip sample of the resulting reports. The following keywords were used: “Ads”, “Advert”, “Pop up”, “Banner”. It should be noted that this could however include non-paid for advertising, such as organic posts promoting counterfeit goods or financial/crypto scams.

<sup>38</sup> ONS, 2020, [Nature of fraud and computer misuse in England and Wales: year ending March 2019](#)

<sup>39</sup> ASA news, 2021, [ASA statement on crypto-assets](#)

<sup>40</sup> ASA, 2021, [Influencer Ad Disclosure on Social Media. A report into Influencers' rate of compliance of ad disclosure on Instagram](#)

<sup>41</sup> ASA news, 2022, [ASA escalates sanctions against influencers who repeatedly break the rules](#)

65. Another type of online harm is linked to **fake celebrity endorsements**, especially related to financial investments. In 2020, over a period of four months, 300,000 fake investment endorsements have been removed by the National Cyber Security Centre.<sup>42</sup>
66. **Inappropriate targeting** of legal products is also an issue in digital marketing, especially when it comes to children. ASA has examined adverts placed on websites and youtube channels dedicated to children in the first quarter of 2021 and has found 41 advertisers posting ads on HFSS (31), alcohol (3), gambling (3) and weight control products (4).<sup>43</sup> Through monitoring technology on a sample of websites visited by children, the ASA found that gambling adverts represented 1.4% of all advertisements served.<sup>44</sup>
67. Digital advertisements can also play a role in issues of **body image**. There is emerging evidence demonstrating the correlation between the amount of time spent online scrolling through photo focused apps (like Instagram) and negative feelings associated with body image.<sup>45</sup> A link between poor body image and poor mental health has also been demonstrated by the academic literature,<sup>46</sup> and this can develop into a range of reactions, from anxiety to depression.
68. Evidence from the Girlguiding 2020 Girls attitudes survey indicates body image concerns as a result of online advertising as a significant issue.<sup>47</sup> More than half (54%) of girls aged 11 to 21 have seen adverts online that have made them feel pressured to change their appearance, and this is higher for girls who identify as LGBTQ (67%). A recent body image survey carried out by the Women and Equalities Committee found that 57% of adults reported to 'rarely' or never seeing themselves or people who look like them regularly reflected in images in media and advertising. The Women and Equalities Select Committee enquiry into body image informs us that 'hundreds of respondents stated that a major driver of negative body image, particularly for young people, is the prevalence of edited and 'filtered' photos in advertising and across social media'.<sup>48</sup> The toll of this bombardment of perfected images every day is indicated by Girlguiding's finding that 45% of 11–16 year olds regularly use apps or filters to make themselves look different.<sup>49</sup>
69. Although a link between digital advertising, body image, and subjective wellbeing clearly exists, it is difficult to quantify this impact, and to isolate the effect of digital advertisement itself, given that body-image related contents pervade the internet. There is, nevertheless, growing public pressure to act on this specific issue and others like it.
70. Not only internet users, but also advertisers experience harm. Plum Consulting estimated that **advertising fraud**, i.e. gaining from the creation of fake digital impressions, may cost

<sup>42</sup> National Cyber Security Centre, 2020, [Celebrity scam alert as criminals use rich and famous to lure online victims](#)

<sup>43</sup> ASA, 2021, [Protecting children online](#)

<sup>44</sup> ASA, 2019, <https://www.asa.org.uk/news/harnessing-new-technology-gambling-ads-children.html>

<sup>45</sup> Grace Holland and Marika Tiggerman, [A systematic review of the impact of the use of social networking sites on body image and disordered eating outcomes](#)

<sup>46</sup> <https://bmcpublichealth.biomedcentral.com/articles/10.1186/1471-2458-13-920>

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3214691/>

<https://www.sciencedirect.com/science/article/abs/pii/S092493381500680X>

<https://pubmed.ncbi.nlm.nih.gov/29053404/>

<sup>47</sup> Girlguiding, 2020, [Girl's attitudes survey](#)

<sup>48</sup> House of Commons Women and Equalities Committee, 2019, [Changing the perfect picture: an inquiry into body image](#)

<sup>49</sup> BBC, Girl Guides: Enhanced photos need labels on social media, 2 September 2020

the UK non-social display market £174 million every year.<sup>50</sup> Legitimate advertisers can also encounter **brand image issues**, when their content is placed next to inappropriate content, linked for example to hate speech and misinformation. Plum reports that 4.5% of ads are published in “risky” environments (so defined either because the website is inappropriate, or because the website publishes on content such as on hate speech, terrorism or drugs). Only less than 0.1% of ads, however, are published in “very risky” environments (i.e. in the case of graphic or illegal content).

71. **Reporting harmful advertisements.** Data from Ofcom Pilot Online Harms Survey show that when coming across harmful online content (either linked to advertisement or not), only 17% of users decide to report it to the webpage, Ofcom, or another relevant authority. The low reporting of harmful content suggests that the reporting mechanism may not be a sufficient measure of removing harmful advertisements. Moreover, Ofcom data suggest that only 27% of the cases reported leads to the removal of the content (in the 4 weeks analysed).
72. In 2020 ASA launched a Scam Ad Alert System, allowing users to report fraudulent ads to the regulator, that in turn submits the alert to the relevant platform. Data published by ASA show that 88%<sup>51</sup> of adverts are then removed within 48 hours as a result of the alert. This is much higher than the Ofcom figure, although the two are not directly comparable, with the latter mainly being related to cryptocurrency scams.
73. **Reasons for non reporting.** When asked the reason for failing to report harmful content, Ofcom survey respondents cited not knowing what to do (12%), not thinking it would lead to a result (25%), not considering the content harmful (9%), or bad enough to act (23%). This is in line with the findings by Plum 2020 report, which points out that internet users often lack awareness of the harm, and even if they do, they often decide not to report it, sometimes due to the absence of a straightforward reporting mechanism.
74. **Media literacy.** Besides the experience of harm, other points of concern relate to internet users’ ability to recognise adverts and misinformation. The issue of media literacy and is addressed in the Ofcom’s Adults’ Media Use and Attitudes report 2021/21,<sup>52</sup> which shows that only three quarters of users in the UK consider whether the information found online can be trusted, compared to 90% in 2019.<sup>53</sup> Only 41% of all internet users believe that only “some is truthful”. This has decreased from 54% of internet users in 2019.<sup>54</sup> Similarly, only 61% of 12-15 years olds visiting new websites or apps take into account the possibility that some of the information may not be reliable (as suggested by Ofcom Children and parents: media use and attitudes reports 2020/21<sup>55</sup>).
75. Along the same lines, 82% of respondents state to be able to recognise online advertising, but only 62% are actually able to do so when shown adverts in Google search results<sup>56</sup>. This is even lower in the case of children aged 8-15 years old (45%)<sup>57</sup>.

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<sup>50</sup> Plum Consulting for DCMS, 2019, [Online advertising in the UK](#)

<sup>51</sup> ASA news, 2021, [Six month review of our Scam Ad Alert system](#)

<sup>52</sup> Ofcom, 2021, [Adults' media use and attitudes report 2020/21](#)

<sup>53</sup> Ofcom, 2019 [Adults' media use and attitudes report 2019](#)

<sup>54</sup> Ofcom, 2019 [Adults' media use and attitudes report 2019](#)

<sup>55</sup> Ofcom, 2021, [Children and parents: media use and attitudes reports 2020/21](#)

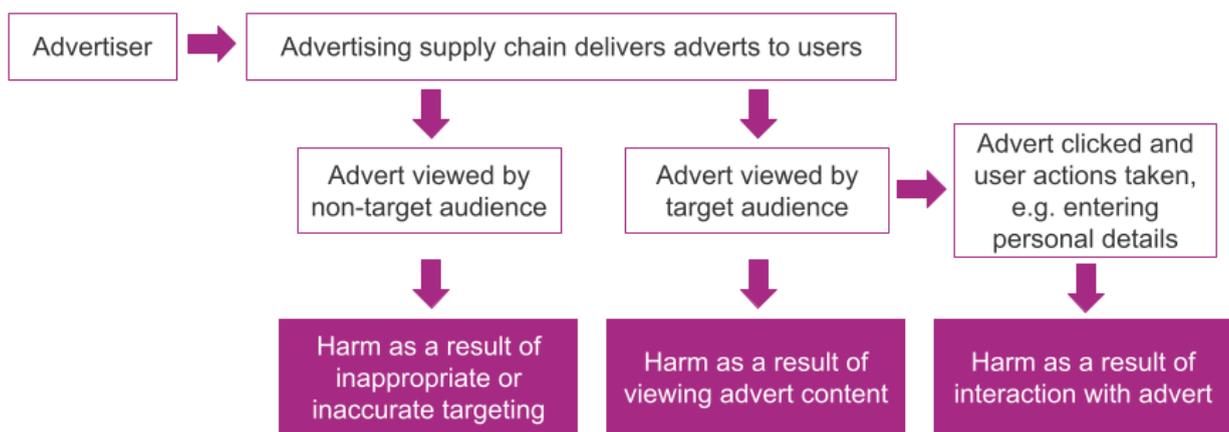
<sup>56</sup> Ofcom, 2021, [Adults' media use and attitudes report 2020/21](#)

<sup>57</sup> Ofcom, 2021, [Children and parents: media use and attitudes reports 2020/21](#)

## Routes to harm

76. Based on the above evidence we identify different routes by which harm to internet users may take place. That is, adverts can be considered to be of two types: harm when viewing advert content and harm as a result of interaction with an advert. (see figure 4). These can be categorised as harmful on sign and harmful after action.
77. A range of advertisement categories are ‘harmful on sight’ and instigate harm to viewers without action needed to be taken by them. These are for example offensive ads; illegal ads; ads for products or services deemed to be harmful, but not illegal; ads targeted to the wrong audience (e.g. children); and ads that are seen to contribute to body image concerns.
78. Other ads can be categorised as ‘harmful after action’, as harm arises after interacting with the advert. Clicking on the advert is the first step that then triggers a series of events, such as inputting personal details and purchasing products or services. Examples of ‘harmful after action’ ads are for example fraud, misleading ads, fake endorsements, and non-identified ads.

**Figure 4: Diagram of the journey to consumer harm in online advertising**



79. **Taxonomy of harm.** In view of the evidence gathered on the different types of online harm as part of our consultation with stakeholders, a taxonomy of online advertising harm has been developed, with harm to consumers (table 2), and to advertisers (table 3).

**Table 2: Taxonomy of harms caused by online advertising to consumers**

Content / placement	Legality / illegality	Category of Harm	Description
Harmful advertising content	Illegal content	<b>Adverts for illegal activities, products or services</b>	Adverts for illegal products such as drugs and weapons. Adverts that are prohibited in law (e.g. prescription medicines). Adverts that facilitate human trafficking and slavery, servitude and forced or compulsory labour.
		<b>Malicious advertising</b>	Adverts that contain Javascript to force redirects or download payloads, enabling scams, cryptojacking or botnets and/or adverts that cloak landing pages. In some cases, these are operated by sophisticated bad actors at a large scale.
		<b>Fraudulent advertising and counterfeiting</b>	Adverts seeking to defraud, such as breaches of the financial promotions regime, including investment frauds and fraudulent products and services such as fake ticketing through scam adverts. Counterfeit fashion, cosmetic and pharmaceutical products are covered by separate legislation.
		<b>Fake Endorsements</b>	Use of celebrity images to promote products or scams without their consent.
		<b>Misleading adverts</b>	Adverts that include false claims or otherwise mislead.
		<b>Non identified adverts</b>	Paid-for influencer marketing that is not clearly identified as such.
	Legal content	<b>Offensive adverts</b>	Adverts that involve harm or create offence but are not illegal, for example, by perpetuating negative stereotypes.
		<b>Adverts for products or services deemed to be harmful, but not illegal</b>	Adverts which have specific restrictions, e.g. adverts for HFSS products, gambling or alcohol, or adverts involving harmful depictions such as glamorising knives.
		<b>Adverts that are seen to contribute to body image concerns</b>	Adverts that may portray or present body types, cosmetic interventions or certain behaviours/lifestyles in an unhealthy way or way that creates undue pressure. Depending on the nature of the underlying issue, the ASA may categorise these as misleading, harmful or otherwise socially irresponsible adverts.
Harmful advertising targeting and placement		<b>Mis-targeting</b>	Age-restricted adverts (such as for alcohol or gambling) delivered to media disproportionately popular with children.  Placement of advertising next to inappropriate or harmful content such as hate speech or digital piracy.
		<b>Discriminatory targeting</b>	Discrimination on the basis of age, ethnicity, gender, race or sexual orientation where this discrimination causes harm.
		<b>Targeting vulnerable people</b>	Targeting vulnerable audiences directly or by proxy, such as gambling adverts targeting individuals through marketing emails who have taken steps to self-exclude from receiving targeted gambling marketing communications.

**Table 3: Taxonomy of industry harms**

Category of Harm	Description
<b>Ad Fraud</b>	Cyber criminals create fake traffic (such as using botnets to mimic real consumers), audience data, context or actions to syphon revenue from the display advertising ecosystem.
<b>Brand safety including mistargeting</b>	Placement of advertising next to illegal, inappropriate or harmful content such as hate speech or digital piracy, or placement of inappropriate or harmful advertising next to legitimate content – damages advertiser and publisher brands and funds harmful content.  Adverts served to unintended or inappropriate audiences in a way that harms the advertiser/brand.
<b>Inaccurate Audience Measurement</b>	There is currently no gold standard of audience measurement meaning advertisers and publishers are not empowered to have full awareness of how and where adverts are being served and whether they are achieving their campaign objectives (high sales of product or improved perception of their brand).  With limited independent verification due to walled garden operation models, advertisers have limited means beyond the data shared with them to understand how successful their campaigns have been, meaning tech companies may oversell figures in order to retain an investment.

## Market incentives and rationale for government intervention

80. Having identified some concerning evidence that potentially harmful adverts are reaching internet users, this section investigates the incentives actors in the market have to prevent this harm. The interactions and influences each actor has on one another are also explored before exploring potential market failures and reasons for government intervention.
81. A lack of transparency in the online advertising supply chain results in a lack of accountability, and combined with the incentives in the market leads to insufficient action to prevent harm, which reduces the trust of internet users. This is broken down in a series of sub-issues below starting with the advertiser, supply chain, and consumers, and also the interactions between them.
82. Online advertising provides a route to reach large numbers of individual internet users with relatively low barriers to entry. This can be exploited by those intent on causing harm or those looking to profit by displaying misleading information. A high level of this activity could result from a low chance of repercussions due to low transparency and the challenges of identification. In addition there may be limited incentives for those in the supply chain to refer such activity to authorities due to the costs, and the lack of an existing mechanism by which to do so.
83. Advertisers that are legitimate businesses are influenced by both their aim to maximise profits but also their reputation. The current regulatory system provides a means of highlighting practices that breach agreed codes, providing at least some incentive for advert content to comply. However, advertisers rely on intermediaries in the supply chain to deliver adverts to the right audience in order to comply with the advertising codes that restrict what can be shown to certain demographics. Advertisers face hidden information on the ability of intermediaries to deliver adverts to the target audience, and while there are measures for engagement, there is limited means of identifying who sees adverts. In any case the ability of advertisers to choose which platforms to use is likely to be limited as each provides access to large audiences with competition for user attention and maximising sales driving the use of online advertising.

84. Advertising intermediary businesses aim to maximise their profits by providing a cost efficient system to match advertisers with users. Any measures to address harmful adverts incur costs and unless all competitors in the market face these costs, there is no incentive for a single business to act further. This is a coordination failure and in part stems from the limited reputational impacts facing the supply chain as consumers, advertisers and regulators face hidden information on how adverts are delivered through the systems. In addition, as the costs of harm do not fall to intermediaries, there is an insufficient incentive for safety to be incorporated into intermediaries' decisions.
85. Advertising platforms being vertically integrated with a customer facing interface, may feel some reputational pressure to implement measures to protect their users. The largest platforms have put in place some measures to prevent harmful adverts reaching users. Their size and ability to influence the entire advertising process means they set their own standards but this appears to be largely aligned to business interests. The evidence suggests measures in place have not prevented harmful or misleading adverts being displayed to users. There are also questions on how adverts are displayed, given findings that internet users can't always identify what is an advert and what is user content<sup>58</sup>. Not knowing what is a paid for promotion increases the potential for consumers to be misled and could result in actions including purchase decisions they would otherwise not have made.
86. It is assumed publishers aim to attract the largest audience possible in order to utilise various means of monetising the content they deliver. Their audience will have some influence on advertising decisions, and publishers have little to gain from harmful adverts if their audience goes elsewhere as a result. However, publishers may only have limited influence on the supply chain. The Competition and Markets Authority's market study found that, typically, publishers are unable to negotiate the terms of their relationship with Google and Facebook.<sup>59</sup>
87. Internet users have limited ability to determine the adverts they are shown. Consumer action takes effort that is often outweighed by the benefits of accessing content immediately. The exception may be those that have experienced harm previously. This overall lack of transparency and consumer ability to influence the market again results in reduced incentives to address harmful adverts.
88. When consumers are affected by adverts that are harmful to them, it can be unclear how to raise a complaint, either with the relevant authority, or with the advertiser and supply chain.<sup>60</sup> The current enforcement system relies on user complaints to take action, but a system is not in place to investigate those that are intentionally causing harm.
89. Any harm experienced by users is a negative externality, with costs to the user, either through financial loss, or harm (physical or emotional), are not reflected in the advertising market. While advertising codes have been developed for advertisers with enforcement curtailing some harmful adverts, the ease of entry for online advertising combined with the lack of an effective market mechanisms due to hidden information, coordination failures,

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<sup>58</sup> Ofcom, 2021, [Adults' media use and attitudes report 2020/21](#) (Ofcom, 2021).

<sup>59</sup> Competition and Markets Authority, 2020, [Online platforms and digital advertising market study final report 2020 - Appendix H](#).

<sup>60</sup> As pointed out in the Plum 2020 report, different reporting mechanisms co-exist and they are not always straightforward to use. Consumers can also be discouraged by the lack of transparency in terms of the effect of their complaints.

and the benefits from scale, means there are gaps that can be exploited and systems that don't prioritise harm prevention.

90. It is therefore necessary to investigate options for intervention in the market to build on those already in place.

## **Policy objective**

### **Objectives target outcomes**

91. Our rationale for intervention sets out the need to address harms in online advertising caused by the key drivers we identify as a lack of transparency and accountability. The aim of the Online Advertising Programme is to develop a coherent, comprehensive advertising regulatory framework for all actors across the advertising supply chain that promotes transparency and accountability across the online ad ecosystem. This focus will complement the Government's reforms on competition, data protection, and user-generated content, ensuring that all aspects of the online advertising market which is at the heart of our digital economy can continue to thrive.
92. In rebuilding trust in online advertising we aim to achieve a more vibrant industry that promotes innovation with increased spend on advertising services. By increasing accountability we seek to minimise harm by creating clear roles and responsibilities for all parties and ensuring actors in the ecosystem take responsibility for advertising content and delivery. This should provide confidence to consumers who will be clear where they can go to report bad actors and harmful advertising in the knowledge that appropriate action will be taken in a timely manner. In fulfilling this aim, our overarching principles for the Online Advertising Programme are to:
- I. Support a thriving online advertising sector by increasing trust and reducing harms to UK internet users
  - II. Tackle and improve the underlying drivers of harm in online advertising, including a lack of transparency and accountability, by considering the role of all actors in the supply chain
  - III. Develop coherent and proportionate regulation that takes the complexity of the online advertising ecosystem into account and enables effective regulation for current as well as new and emerging harms
  - IV. Address the online advertising ecosystem holistically, only taking action in specific verticals in advertising where evidence suggests the current framework alone will not deliver effective protection
  - V. Complement related regulatory action already underway, including the Competition Markets Authority's (CMA) new Digital Markets Unit which will oversee the new pro-competition regime; the Financial Conduct Authority (FCA)'s work in relation to financial promotions; the Information Commissioner's Office (ICO) work on data protection and privacy; and the Gambling Act review.
  - VI. Build on existing industry initiatives designed to address issues in online advertising, where they are delivering effective protections.
93. We are keen, where possible, to build on the existing regulatory framework, which, for advertisers, is focused around the role of the Advertising Standards Authority (ASA) and the codes it oversees. By building on the existing framework, where it meets our objectives to

reduce harm, we can minimise transition costs and ensure any changes to the regulatory framework can take effect sooner.

94. We intend Government interventions to be targeted within the supply chain to achieve the greatest impact and leverage, and for the activities required by different actors to complement each other to ensure we create a coherent overarching framework
95. Designing a sustainable, future proof regulatory framework is vital - we know that the online advertising supply chain is sophisticated and complex, and as such it must be fully equipped and able to keep up with modern technological advancements.
96. Our assessment is that any framework will need to spread accountability across the supply chain, rather than rely on holding advertisers solely responsible for the dissemination of harmful content and potentially harmful use of targeting.

## Scope

97. Online advertising is the use of online services to deliver paid-for marketing content. As described above the market categories that are in scope include search, social display, open display, classified, and other 'in-content' marketing. These market categories do not include unpaid advertising so as to exclude from the scope so-called 'owned media', which is any online property owned and controlled, usually by a brand. For owned media, the brand exerts full editorial control and ownership over content, such as a blog, website or social media channels.
98. The OAP will focus on the harms directed towards or experienced by consumers, both intentionally by bad actors in the system (such as fraudulent adverts, adverts for illegal activities and adverts that cause serious or widespread offence), or unintentionally. We will also be considering harms to advertisers and industry, including brand safety concerns driven by the placement of advertising next to inappropriate or harmful content, as well as the potential for advertising to fund harmful content (such as sites carrying misinformation or disinformation).
99. The OAP will look at the whole online advertising ecosystem in order to capture all the players in the supply chain that have the power and capability to do more to combat harmful advertising. The actors comprise advertisers, intermediaries, online platforms and open display publishers.
100. The following issues are **out of scope** of the OAP:
  - Privacy issues - the Information Commissioner's Office (ICO) is examining the use of ad tech in the targeting of adverts to consumers through programmatic advertising
  - Whilst the use of data is relevant for targeting methods, data policy is out scope for this consultation and will be considered through a separate consultation.
  - User Generated Content (except where it is also paid-for advertising) - this is covered by the Online Safety Bill
  - Political advertising - work on electoral integrity and transparency is being taken forward by the Department for Levelling Up, Housing and Communities. For the purposes of this consultation, we are focusing on commercial advertising

- Competition issues - will be dealt with by the new pro-competition regime for digital markets

101. Throughout the development of the OAP, we will continually examine the interdependencies and overlaps between online advertising and other digital regulatory initiatives. For example, work on the OAP will aim to complement:

- The government's efforts to establish a new pro-competition regime for digital markets, which follows recommendations set out in the CMA's Online Platforms and digital advertising market study<sup>61</sup> and proposals set out in the government's public consultation.<sup>62</sup> The new regime will promote competition and competitive outcomes, and as such competition issues are out of scope for the OAP.
- The government's plans for a new pro-growth, innovation friendly data protection regime, as recently set out in the public consultation Data: A New Direction.<sup>63</sup> The proposals look to build on key elements of the current UK GDPR, such as principles around data processing, people's data rights and mechanisms for supervision and enforcement, but will aim to reduce the burdens on organisations and businesses and ensure better data sharing between public bodies. Given the importance of data in aiding the targeting practices used in online advertising, data protection policy developments will be important to consider as we develop the OAP.

## Description of options considered

102. From the issues identified in the market that mean harmful adverts are not minimised, different measures have been considered for each of the market actors and users. For those producing and supplying adverts to internet users, a limited range of options is presented, with no preferred options. This consultation is taking an open approach and welcomes views on these options, from self-regulatory industry action, through to government intervention and appointment of a statutory regulator to design the rules governing actors across the supply chain. Three options are presented to obtain views on the high-level approaches that could be taken, noting that for options 2 and 3 there are a number of different sub-options for how these could be implemented. These sub-options have not been considered in this impact assessment given the spectrum available, but will be developed at the next stage as the policy is developed.

103. The options under consideration are:

- Option 1: Do nothing, continued self regulation
- Option 2: Introduce a statutory regulator to more fully backstop and sanction non-compliance with existing codes
- Option 3: Introduce a statutory regulator with powers to fully rewrite and enforce codes

104. There are a range of measures that could be put in place under each of these options. Some examples are provided under the following headings but these will be explored further at the next stage.

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<sup>61</sup> CMA, 2020, [Online Platforms and digital advertising market study](#)

<sup>62</sup> CMA, 2021, [A new pro-competition regime for digital markets](#)

<sup>63</sup> DCMS, 2021, [Data: a new direction](#)

105. For internet users where evidence found that adverts are not always recognised, non-regulatory media literacy interventions were considered. The government published the Online Media Literacy Strategy<sup>64</sup> in July 2021 which set out plans to support media literacy organisations to better empower citizens with the key skills and knowledge they need to make safe and informed choices online. The Strategy set out the Media Literacy Framework, which details the skills and knowledge that underpin strong media literacy capabilities. This includes supporting users to: understand how the online environment operates including in relation to advertising, understand how online content is generated and be able to critically analyse the content they consume, and understand the risks of sharing personal data and how that data can be used by others.
106. While the media literacy strategy will aim to address one of the drivers of harm, based on the evidence and understanding of the market, further action is needed from those responsible for advertising and its delivery. Each option is presented in more detail below.

### **Option 1: Do nothing, continued self regulation**

107. Continuing with a self-regulatory approach would involve relying on the ASA's existing regulation through the CAP codes (including in areas where these are already backstopped by legislation), and the ASA's new OPNS proposal. This approach has the benefit of having the lowest transition and regulatory costs. However, this will need to be weighed against whether a self-regulatory approach can deliver the benefits of reducing harm and increasing trust through improving transparency and accountability without statutory powers being available. For advertisers, the approach would largely be in line with the current regulatory system, whilst for intermediaries, publishers and platforms, new requirements are likely to be introduced by the ASA as a result of the OPNS. As the shape of these new obligations are currently unknown it is difficult to assess the costs, risks and benefits to businesses of these new rules. Currently the ASA raises funds for this approach through a voluntary levy on media agencies. Given the complexity, scale and speed of online advertising there are questions as to whether this voluntary approach to funding would be suitable.

### **Option 2: Statutory Backstop**

108. A more comprehensive statutory backstop option is an alternative under which an industry regulator, such as the ASA, would continue as the frontline regulator, backstopped more fully by a newly-appointed statutory regulator to provide stronger powers of enforcement where needed. This could, for example, be necessary to address both the presence of bad actors in the ecosystem and illegal harms, or when reputational sanctions do not go far enough to ensure compliance. Those self-regulatory codes that require stronger powers of enforcement would be signed off by the statutory regulator and underpinned by statute. The statutory regulator would have powers to gather information, ban, or fine, in order to enforce both existing codes placed onto a statutory footing, or any new statutory rules. The ASA would remain the day-to-day regulator for all or most of the actors across the supply chain, using the self-regulatory codes (CAP and OPNS), with the statutory regulator stepping in with regards to specific issues, as required.

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<sup>64</sup> DCMS, 2021, [Online Media Literacy Strategy](#)

## Option 3: full statutory approach

109. A full statutory approach would involve appointing a statutory regulator with code writing powers to introduce measures designed to increase transparency and accountability across some or all actors in the ecosystem. Under full statutory regulation, the statutory regulator, rather than the self-regulator, would be responsible for code writing and enforcement across the online advertising supply chain. This would be funded through a new, statutory levy.

**Table 4: Summary of options and changes by market actor**

	<b>Advertiser</b>	<b>Third party intermediaries</b>	<b>Platforms</b>	<b>Open Display Publishers</b>
<b>Option 1 - Business as usual, self regulatory approach</b>	ASA - CAP Advertisers would continue to be held to account by the self regulator and industry led codes of practice designed to mitigate legal but harmful harms	Possible introduction of industry codes, ASA developing Online Platform and Network Standards (OPNS)		
<b>Option 2 - Statutory regulator to backstop the self regulatory approach</b>	ASA would be the day to day regulator holding advertisers to account for legal but harmful harms via the CAP code. Illegal harms, and those harms that require further powers of enforcement would then be backstopped by a statutory regulator	ASA would be the day to day regulator holding intermediaries to account for legal but harmful harms via the CAP code and the OPNS. Illegal harms, and those harms that require further powers of enforcement would then be backstopped by a statutory regulator		
<b>Option 3 - Full statutory approach</b>	Under statutory regulation, the new statutory regulator would write and enforce codes.	Statutory regulation setting measures to increase accountability and transparency		

## Monetised and non-monetised costs and benefits

### Analytical approach to assessing costs and benefits

110. As per the Regulatory Policy Committee guidance,<sup>65</sup> where policy decisions will not be finalised until a later stage, impacts of the proposal are uncertain, and evidence/data is limited, the analysis of costs and benefits is predominantly qualitative in nature. Where

<sup>65</sup> RPC, (2019), RPC case histories – assessment and scoring of primary legislation measures, scenario 2 in the primary legislation guidance.

possible quantitative examples are provided to illustrate the potential orders of magnitude of costs and benefits, rather than a definitive estimate, and aim to assist in identifying the preferred option through this consultation. There are a range of measures that could be put in place under any of the options considered so our assessment focuses on the likelihood of options in delivering change overall, rather than through specific measures. It is expected decisions on measures would be taken at a later date, either as part of a self regulatory system or the regulatory options proposed.

111. For appraisal purposes, this impact assessment uses a 10-year appraisal period running from 2025 to 2034. GDP Deflators were used to adjust future costs for inflation and were calculated using forecasts from the Office for Budget Responsibility's Economic and fiscal outlook - March 2022.<sup>66</sup> Present values are calculated using a discount rate of 3.5% is applied to future costs and benefits in line with Green Book guidance. All prices are presented in 2019 prices and 2020 present value base year.
112. Cost values presented in this impact assessment are in 2019 prices and 2020 base year, unless specified as over the appraisal period or specified as total present value. Where described as over the appraisal period, HMT GDP deflators have been used to adjust costs for inflation. Total present values are adjusted for inflation using GDP deflators and then also discounted using the Green Book rate.

## Number of Businesses in Scope

113. In assessing the options it is necessary to identify each affected group and estimate their number. Due to a lack of data and information on businesses involved in advertising it has only been possible to provide an estimate on the number of advertisers, advertising agencies, and intermediaries. It has not been possible to provide any reasonable estimate of the business population for platforms or publishers. Our estimates are set out here and under each option it is made clear which groups are affected. The government will use the consultation to refine these estimates and fill evidence gaps for the final stage impact assessment.
114. To calculate the number of **advertisers** in the market, this impact assessment takes a top-down approach. Evidence from a representative survey of SMEs conducted by the Interactive Advertising Bureau (IAB), indicates that on average 60% of SMEs take part in paid-for advertising online.<sup>67</sup> Broken down by business size, this is 52% of micro businesses, 81% of small businesses, and 96% of medium-sized businesses. The IAB's findings - while representative - only included registered micro businesses. It is reasonable to assume that the proportion of unregistered micro businesses - that is businesses too small to be registered for VAT - is likely lower than those that are registered. However, in the absence of specific evidence on this section of the economy, estimates for registered micro businesses are applied to unregistered businesses. The IAB's survey also did not include large businesses. However, it is clear that the proportion of businesses increases with firm size and, therefore, it is estimated that 99% of large businesses participate in paid-for advertising online. The proportion of each size category is then applied to BEIS' Business

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<sup>66</sup> OBR, 2022, Economic and fiscal outlook - March 2022

<sup>67</sup> IAB, 2020, [Powering Up: Helping UK SMEs unlock the value of digital advertising](#)

Population Estimates<sup>68</sup> and the NCVO Civil Society Organisations population estimates<sup>69</sup> to determine the total number of UK businesses likely to advertise online.

115. Within the estimates of the business population used to apportion the number of advertisers an estimate of the number of Civil Society Organisations (CSOs) for 2025 (approximately 183,000)<sup>70</sup> have been included. These have been accounted for under the assumption that CSOs are as likely to use online advertising as other businesses, for example to raise awareness of fundraising.
116. The number of businesses that advertise online is expected to increase over the appraisal period, across all business sizes. As the IAB survey data on the number of advertisers that use digital advertising is only available for a single year, this impact assessment uses the average growth in the proportion of UK businesses with websites at 1.5% per year between 2007 and 2019,<sup>71</sup> as a proxy for the potential growth in the use of online advertising.
117. Within each firm size band, growth in the proportion of businesses advertising online stops when it reaches 99%. This reflects a potential saturation point at which point all potential advertisers are already placing advertisements - both medium sized and large businesses reach the saturation point within the time-period.
118. Using this top down method of estimating, in 2025 it is estimated that there are approximately 3.55 million businesses using online paid advertising.
119. Advertising agencies provide services to advertisers to manage the process of placing online adverts. It is recognised they may cover the familiarisation and compliance work for advertisers. Evidence presented to the CMA suggests that a quarter of advertising revenue is channelled through media agencies.<sup>72</sup> This could potentially reduce the number of businesses that incur costs as agencies provide services to multiple advertisers. However, as we do not have evidence on the proportion of businesses by size that use agencies, we also do not have evidence as to the size of advertising agencies and the distribution of activities between different sizes of advertising agencies. Consequently, it has not been possible to account for this in these estimates. The estimates therefore represent a conservative estimate of the number of businesses affected.
120. To estimate the number of intermediaries the IAB UK website lists 166 members in the category of tech or data.<sup>73</sup> Company descriptions were analysed for key terms related to intermediary services (including, 'ad server', 'DSP', 'SSP' and others). This found around 50 companies matching one or more of the terms. Other companies on this list provide mainly technology or data services which are assumed to be out of scope of the OAP. The IAB list does not include certain major players, such as Google, The Trade Desk, Amazon etc. Based on expert insight we expect the true number of intermediaries in the UK could be higher with an additional 10-20 not captured in the database. Therefore, the total number of intermediaries is estimated to be 70. As the intermediary market is relatively concentrated, this impact assessment assumes the number of intermediary businesses stays the same over the appraisal period.

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<sup>68</sup> BEIS, 2021, [Business population estimates 2021](#)

<sup>69</sup> NCVO, 2021, [UK CIVIL SOCIETY ALMANAC 2021](#)

<sup>70</sup> Uplifted values from: NCVO, 2021, [UK CIVIL SOCIETY ALMANAC 2021](#)

<sup>71</sup> ONS, 2019, [Proportion of UK businesses with a website, by size of business, 2007 to 2019](#)

<sup>72</sup> CMA, 2020, Online platforms and digital advertising - Market study final report

<sup>73</sup> IAB, [Member directory](#), accessed at 20 February 2022

121. It is assumed that all advertisers that operate within the online programmatic display market are within scope of the OAP. It is also assumed that all online advertising intermediaries are within scope, but only platforms that are not within category 1 or 2A of the OSB are considered to be within the scope of the OAP. The regulations, in options 1 and 2 are the CAP codes and statutory regulations in option 3, are assumed to apply to all advertisers, intermediaries, and publishers/platforms that use online advertising and that are not subject to the OSB will fall within the scope of the OAP and will have to follow the regulations set out by the OAP. The government will use the consultation to refine these estimates for the final stage impact assessment.

122. The table below shows the estimated total number of advertisers and intermediaries in scope of the OAP, for both the first and last years of the 10 year appraisal period.

**Table 5. Number of advertisers and intermediaries in scope of the OAP for the first and tenth year of the appraisal period, by business size where available. ('000s<sup>74</sup>)**

<b>Business type/size</b>	<b>Year 1</b>	<b>Year 10</b>
<b>Micro advertisers</b>	3,214	4,794
<b>Small advertisers</b>	249	371
<b>Medium advertisers</b>	68	90
<b>Large advertisers</b>	16	21
<b>Total advertisers</b>	3,546	5,275
<b>Intermediaries</b>	0.07	0.07
<b>Total</b>	3,546	5,275

123. In considering any overlap with compliance costs between the OSB and the OAP, we assess the proportion of the market that does not use social display or search advertising. As mentioned these services are concentrated in the large firms that will be in scope of the OSB. The remaining paid for advertising segment that would be in scope of the OAP is estimated based on the IAB SME survey,<sup>75</sup> that indicates 16% of SME advertisers use Other Display<sup>76</sup> advertising. This IA assumes that 100% of large businesses use Other Display advertising. Where compliance costs are estimated these use 16% of the micro to medium advertiser numbers presented in table 5.

## Costs

124. The following sections set out the assumptions and present our assessment of the costs incurred under the different options. The government will use the consultation to refine these estimates and fill evidence gaps for the final stage impact assessment.

125. For appraisal purposes, it is assumed that legislation enters into force in 2025. The first year is assumed to be a transition year giving platforms time to prepare for compliance

<sup>74</sup> Figures are scaled to thousands and are rounded to the nearest whole number, the number of advertisers do not, therefore, sum to the totals provided in the table. Intermediaries are presented to two decimal places as their impact on the estimation of the costs are significant, despite being a smaller quantity of firms compared to advertisers.

<sup>75</sup> IAB, 2020, Powering Up: Helping UK SME Businesses Unlock the Value of Digital Advertising

<sup>76</sup> Other display is excluding display on social media and search.

based on the specific details set out in codes of practice and secondary legislation. This IA assumes that platforms will incur familiarisation costs and transition costs in the first year but will not incur compliance costs until year two. This is a simplified assumption for analytical purposes only.

126. Familiarisation and dissemination costs are expected to only be incurred within the first year of implementation of the regulations or the first year operating within the market for businesses that enter the market after the implementation of regulations. It is not expected that firms will need to take on an ongoing cost of familiarisation as it is assumed that once familiarisation and dissemination have taken place within firms an understanding of the regulations would have been gained, and firms would not need to conduct another review of guidance to be able to operate in compliance.

## **Option 1**

127. This option covers voluntary industry action and is considered to continue the status quo of no government intervention. For that reason there are no further costs to business or government. It is assumed that the CAP code continues to be applied to advertisers. It is also assumed that no further costs are introduced for intermediaries, platforms and publishers. Enforcement action continues to be funded through the advertising levy.

## **Option 2**

128. Under Option 2 some of the ASA's CAP codes would be reinforced by a statutory backstop regulator, responsible for the enforcement of the codes. If further industry codes are introduced such as OPNS (now known as Intermediary and Platform Principles (IPP)) the backstop function may be different and therefore the cost profile set out here would not apply.
129. As we do not yet know the shape of the OPNS (IPP), we have assumed that under this option, no new regulations will be implemented. However, there are a range of different permutations of this option and there could be a scenario in which some new codes could be drafted by the self-regulator and put into statute, once signed off by the statutory regulator. In our assumption that no new regulations would be implemented, it is expected that firms within scope will not incur increased ongoing compliance costs compared to a 'business as usual' scenario. It is also expected that firms are already compliant and will not require the implementation of new systems or processes to be compliant within the current codes. The costs that are expected under option 2 are therefore those of familiarisation, under the assumption that firms will review the guidance on the current regulatory framework to ensure they are compliant, and the cost of enforcing the current regulations.

## **Cost to business**

130. While we assume all legitimate advertisers are compliant with the existing codes, to be conservative we expect firms facing stricter enforcement of the existing regulations will spend time conducting an initial familiarisation of the rules or guidance and to take decisions on any actions that may be needed to ensure compliance. This also allows for any minor changes to codes as they are reviewed by the backstop regulator as part of implementing enforcement measures.

131. Where advertising content and placement codes move to a statutory footing, advertisers may need to check for any changes, though our current expectation is that the CAP codes would be replicated. It is expected that intermediaries and publishers/platforms will need to review any new measures that are put in place and consider how they apply to their business.
132. This impact assessment assumes that as the regulatory codes are not changing, advertisers and intermediaries will only conduct an initial reading of guidance for the codes, including an initial reading from a legal professional.
133. All of the advertisers within scope of the OAP are expected to incur initial familiarisation costs.
134. To provide an indicative cost for initial familiarisation standard assumptions (used by the FCA in recent publication)<sup>77</sup> have been followed. It is assumed that there will be 8 pages of regulations, with 300 words per page, with staff reading speed at 100 words per minute. For an initial familiarisation it is expected that only 1 member of staff, from each firm at every business size, will review the guidance. The staff wages are adjusted for business size, with micro-business wages assumed to be £25.53 per hour<sup>78</sup>, this is due to micro-businesses requiring higher managerial level of review and lack of specialised staff for this purpose, and all other business sizes assumed to be £21.35 per hour, this has been uplifted to factor in non-wage costs.<sup>79</sup>
135. The assumption of 8 pages of guidance on the regulations is the median value of the number of pages from the current regulatory guidance provided by the ASA<sup>80</sup>. The ASA guidance with the fewest number of pages has 4<sup>81</sup> pages and the largest has 24,<sup>82</sup> ASA guidance documents are used as a proxy due to the ASA being the current primary regulator for advertising in the UK. Facts sheets, infographics, and Q and A documents have not been included as they are not considered a likely example of what would be produced for OAP guidance. For this impact assessment a central estimate of 8 is taken.
136. The use of current ASA guidance to estimate the number of pages of guidance for OAP is based on the current offering from the ASA of guidance, including specific guidance on types of advertisers or types of advertising. Some examples of existing specific guidance provided by the ASA includes: 'Guidance on advertising in-game purchases' (12 pages),<sup>83</sup> 'Guidance for Estate Agents' (2 pages),<sup>84</sup> and 'Guidance on Online Behavioural Advertising (OBA)' (6 pages).<sup>85</sup>

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<sup>77</sup> FCA, 2021, [Changes to the SCA-RTS and to the guidance in 'Payment Services and Electronic Money – Our Approach' and the Perimeter Guidance Manual](#), (FCA consultation paper)

<sup>78</sup> The median hourly wage for Managers, directors and senior officials role extracted from the ONS ASHE data; 4 digit SOC. The corresponding hourly wage was £25.53 in 2020. Uplifted for non-wage costs in accordance with the RPC guidance note on 'implementation costs', August 2019.

<sup>79</sup> The median hourly wage for Sales, marketing and related associate professionals' role extracted from the [ONS ASHE data: 4 digit SOC](#). The corresponding hourly wage was £21.35 in 2020. Uplifted for non-wage costs in accordance with the [RPC guidance note on 'implementation costs'](#), August 2019.

<sup>80</sup> ASA, n.d., [Advertising Guidance](#)

<sup>81</sup> ASA, 2020, [Guidance on alcohol pricing and promotion in Scotland and Wales](#)

<sup>82</sup> ASA, 2019, [Superimposed Text](#)

<sup>83</sup> ASA, 2021, [Guidance on advertising in-game purchases](#)

<sup>84</sup> ASA, 2017, [Guidance for Estate Agents](#)

<sup>85</sup> ASA, 2016, [Guidance on Online Behavioural Advertising \(OBA\)](#)

*(Time spent reading) x (Number of people reading) x (Uplifted hourly wage estimate)*

Example, all non-micro businesses (each):

$((300 \text{ words per page}/100 \text{ words per minute}) \times 8 \text{ pages}) \times (1 \text{ workers}) \times (£21.35/\text{hour}) =$   
**£8.54**

137. Firms may choose to have legal professionals to review the regulations. For initial familiarisation it is assumed that only 1 legal professional is reviewing the guidance. It is also assumed that there are the same quantity of regulations to read, 8 pages with 300 words per page, and a reading speed of 50 words per minute<sup>86</sup>; assuming a more detailed review is conducted. For this impact assessment it is assumed that firms use in-house legal professionals at an uplifted hourly wage of £27.99.

*(Time spent reading) x (Number of people reading) x (Uplifted hourly wage estimate)*

Example, all business sizes (each):

$((300 \text{ words per page}/50 \text{ words per minute}) \times 8 \text{ pages}) \times (1 \text{ workers}) \times (£27.99/\text{hour}) =$   
**£22.39**

138. The estimated cost for initial familiarisation by legal professionals is £22.39 per business for all business sizes.
139. The assumed cost of all advertisers in-scope of the OAP (5,275,232 by 2034<sup>87</sup>) to conduct an initial familiarisation of the regulation guidance is estimated to be £150.3 million across the appraisal period.
140. For the purpose of estimating indicative costs for intermediaries, this impact assessment assumes that all of the 70 intermediaries are large businesses and are therefore subject to the costs of a large business. All of the intermediaries within scope are expected to incur initial familiarisation costs.
141. For intermediaries it is expected that under option 2 only an initial familiarisation will take place, with a single person reviewing the document under the same assumptions as advertisers. The expected cost per business for intermediaries to conduct an initial familiarisation is £30.93, this includes £8.54 for a member of staff to review and £22.39 for a legal professional to review. The estimated cost to intermediaries to review the guidance under option 2 is £1,965.

## **Cost of enforcement**

142. Any public body that is appointed as the backstop regulator is expected to have two main functions. First, to review and agree the advertising codes produced by the primary regulator that it will be enforcing. Second, to carry out enforcement activity where an investigation of non-compliance meets a threshold that requires enhanced oversight and enforcement action.

<sup>86</sup> Assumption is made that a detailed review by legal professionals will be undertaken at a slower reading speed, as the standard estimation of reading speed is 100 words per minute, this impact assessment has reduced the speed by 50% to allow for a slower and more detailed review.

<sup>87</sup> Based on top down calculation of number of businesses using online advertising

143. Cost estimates for reviewing existing codes are not available and this is something that will be explored as part of the consultation. The advertising codes are complex and in reviewing codes any regulator would require an understanding of the advertising market, as well as the subject matter advertising codes relate to.

144. As backstop functions are already in place for some areas of advertising regulation, the costs running the regulatory function from the implementation of High Fat Sugar or Salt advertising restriction on Television and Online are used as an example. The new restrictions on less healthy food will use a regulatory backstop enforcement mechanism with a designated frontline regulator and Ofcom the backstop. If we assume a similar case load to the less healthy food restrictions on TV and Online, which was estimated at 300 cases per year, any backstop regulator for online advertising is therefore assumed to require additional staff, equipment and space. The following table sets out the set up and ongoing costs as presented in the High Fat Sugar Salt Impact assessment.<sup>88</sup>

**Table 8: Indicative costs for enforcement (£'000s)**

<b>Cost type</b>	<b>2025</b>	<b>2026</b>	<b>2027 and onwards</b>
<b>Set-up costs</b>			
Staff costs	470	210	0
Non-staff costs	50	30	0
<b>Total set-up costs</b>	<b>520</b>	<b>240</b>	<b>0</b>
<b>Ongoing costs</b>			
Staff costs	0	340	410
Non-staff costs	50	130	110
<b>Total ongoing costs</b>	<b>50</b>	<b>470</b>	<b>530</b>
<b>Grand total costs</b>	<b>570</b>	<b>710</b>	<b>530</b>

145. The total costs over the 10 year period are therefore estimated to be £4.6 million. These costs will need to be refined depending on the design of any backstop regulatory functions and with any new evidence provided through the consultation on the level of cases that might need reviewing. This will also depend on the enforcement action and the types of breaches of the codes that occur. These could be more complex than the restrictions for less healthy food. It is expected these figures would be an underestimate of the total costs of a backstop regulator, as they do not include reviewing the codes and the greater breadth of codes that apply to online advertising. However, for this open consultation these are presented as an indication of the potential scale to be compared with that of Option 3.

146. It is anticipated that any costs of enforcement will be recovered by regulated businesses.

<sup>88</sup> DCMS, 2021, [High Fat, Salt, and Sugar Impact Assessment](#)

## Option 3

147. Under Option 3 it is assumed that the regulator would write and put into statute codes that would be legally enforceable. New measures would be introduced for intermediaries and platforms. While there are a number of potential measures that could be put in place, information on which measures would be implemented is not known. An example measure has therefore been presented with quantified and monetised costs to aid understanding of the potential scale of costs, against which benefits are compared.

### Cost to Businesses

#### Direct Costs

#### Transition Costs

##### *Reading and understanding the regulations*

148. Under option 3 it is expected that all advertisers and intermediaries within the scope of the OAP would undertake an initial familiarisation, secondary familiarisation, and medium and large businesses would disseminate the regulation guidance across a proportion of their staff where relevant for their work.
149. The basis of the methodology for calculating dissemination costs has been taken from the Online Safety Bill Full Impact Assessment, this is due to the similarity of businesses within scope of both the OSB and OAP.
150. The initial familiarisation costs are expected to be identical to those of option 2, with an estimated cost of £150.3 million to advertisers, and a £1,965 cost to intermediaries, over the 10-year appraisal period.
151. For secondary familiarisation, in-scope advertisers and intermediaries are expected to spend more time reading the regulations. For these (around 481,000 non-micro advertisers by 2034), another 2 members of staff in small platforms (rising to 5, and 10 for medium and large platforms respectively)<sup>89</sup> is expected to read the regulation guidance. Given the employment totals for micro-businesses is 9 employees or fewer,<sup>90</sup> this impact assessment assumes that micro-businesses will not undertake secondary familiarisation by non-legal professionals. These estimations assume the same staff roles to undertake the review of the guidance, and the same per hour costs of £21.35 for small, medium, and large businesses. The in-scope businesses are also expected to have legal professionals spend more time reading the guidance, it is assumed a varying number of legal professionals will conduct the reviews for each business size;<sup>91</sup> 1 for small, 2 for medium, and 4 for large. The legal per hour cost is expected to be identical to that used in the initial familiarisation, an uplifted wage of £27.99. The same considerations are made for number of words per page and both legal and non-legal professional reading speeds (300 words per page, 100 and 50 words per minute respectively) as the initial familiarisation. The total cost to advertisers for secondary familiarisation is estimated to be £23 million for advertisers and £9,692 for intermediaries over the 10-year appraisal period.

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<sup>89</sup> In line with FCA publication, FCA, 2021, [Changes to the SCA-RTS and to the guidance in 'Payment Services and Electronic Money – Our Approach' and the Perimeter Guidance Manual](#)

<sup>90</sup> Definition of micro businesses used by BEIS for the business population statistical release. BEIS, 2021, [Business population estimates 2021](#)

<sup>91</sup> In line with FCA Report assumptions.

152. Finally, for medium and large in-scope platforms or intermediaries, costs are expected to be incurred through disseminating the information across a proportion of their staff. While it is unclear what exact proportion of staff will need to be made aware of the regulations, this IA estimates that between 1% of staff within in-scope medium and large platforms will spend 30 minutes familiarising themselves, this assumption is based upon the expectation that only management staff would need to familiarise themselves with the regulations, as it is expected that not every employee within a marketing role within a firm will require a familiarisation process if they have oversight from managerial staff that have undertaken the familiarisation. This could be through a staff meeting or engaging with a summary email. Dissemination is expected to result in costs of £18,309 for intermediaries over the 10-year appraisal period.
153. Advertisers are not assumed to incur a dissemination cost as it is not expected that advertisers would need to have familiarisation with the regulations beyond the marketing department/team and the relevant legal professionals within the companies.
154. To calculate the number of employees the guidance would be disseminated to, the limits for both medium and large business sizes were taken (50-250 and 250+)<sup>92</sup>. To find an upper limit for large businesses, Facebook and Google as the largest market share holders were examined to find the largest number of employees. Their full accounts, from 2020<sup>93</sup> and the year to June 2020<sup>94</sup> respectively, were reviewed and the larger quantity (Google with 5124) was taken as the upper bound of large businesses in online advertising. It is likely that using Google as a proxy is an overestimate for the upper bound employment count of large businesses, as firms the size of Google are likely to be within the scope of the OSB rather than the OAP and the upper bound for employment in large businesses within scope of the OAP is likely to be lower.
155. Values of 1% were taken for the lower and upper employment bounds of both business sizes (1 and 2 for medium, and 3 and 51 for large) and multiplied by the uplifted cost of half an hour of wages of a 'Sales, marketing and related associate professional' (£21.35). The midpoint of the estimated costs for each business size were taken and used for the estimated cost of dissemination per business, this value was then multiplied by the applicable business population.
156. The table below shows the total estimated costs for familiarisation (both initial and secondary) and dissemination for advertisers and intermediaries.

**Table 9. Total present value familiarisation and dissemination costs for advertisers and intermediaries.**<sup>95</sup>

<b>Business Type</b>	<b>Initial Familiarisation</b>	<b>Secondary Familiarisation</b>	<b>Dissemination</b>	<b>Total</b>
<b>Advertisers</b>	£143 million	£22 million	£0	£165 million
<b>Intermediaries</b>	£1,964	£9,692	£18,309	£29,966
<b>Total</b>	£143 million	£22 million	£18,309	£165 million

<sup>92</sup> Based on BEIS Business Population Estimates

<sup>93</sup> Facebook, 2021, [Full accounts made up to December 2020](#)

<sup>94</sup> Google, 2021, [Full accounts made up to June 2020](#)

<sup>95</sup> Adjusted for inflation using [HMT GDP deflators](#), and discounted by 3.5% as per [The Green Book](#).

157. These estimates will be refined with information gathered through the consultation and if this option is taken forward the government will explore ways to minimise the costs, especially to small and micro businesses.

### **Compliance Costs**

158. Two examples of compliance costs are provided through monitoring and moderation of adverts, verification of advertisers, and record keeping and reporting to the regulator. Estimates have been calculated for indicative costs of verification of advertisers assuming that there are three underlying costs: set up costs, cost to the intermediary for conducting the checks, and costs to advertisers for responding to the checks. The government will use the consultation to refine these estimates and fill evidence gaps for the final stage impact assessment.

#### *Monitoring and Moderation*

159. Under this option firms may be required to put in place systems to identify, assess, and remove advertisements found to be within the scope of the OAP framework of harms. In addition they may also be required to put in place or improve user reporting systems. Some advertising businesses will already have in place similar measures. At this stage it is not possible to account for those with measure in place and how these may be required to change as a result of regulation.

160. Evidence from DCMS' rapid evidence assessment of NetzDG<sup>96</sup> (The German Act to Improve Enforcement of the Law in Social Networks), requiring social media companies to remove 'unlawful' content, highlights that platforms cannot rely solely upon technology for content moderation. This has led to platforms such as Facebook hiring more human content moderators in order to comply with NetzDG, employing 125 additional people. Therefore, it is expected that undertaking additional content moderation (through hiring additional content moderators or using automated moderation) will represent the largest compliance cost faced by in-scope businesses.

161. It is expected that such increases in employees or automated systems will incur a cost to business in scope of the OAP, it is not expected that these costs will be significant as many platforms have in place some content moderation methods.

162. Firms may need to conduct audits of their monitoring methods by taking a sample of advertisements and have employees review them to investigate if automated monitoring methods are detecting potentially harmful adverts at a rate differing that of a human reviewer. This would be a time intensive task and incur expense, but such expenses will be proportional to the number of unique adverts (considered to be the creative content) an advertising intermediate or platform runs. The cost will be highest (as a share of revenue) for intermediaries and platforms that carry a large number of small-scale advertising campaigns versus those that run a smaller number of big campaigns for major brands.

#### *Verification of advertisers*

163. Under Option 3, intermediaries and publishers/platforms may be required to verify their advertiser customers. These could include some form of increased customer due diligence (CDD), such as know your client checks, credit checks, and sharing information on known fraudulent advertisers.

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<sup>96</sup> DCMS, 2019, DCMS rapid evidence assessment of the German NetzDG content moderation regulation, [The Online Safety Bill - Impact Assessment](#)

164. The exact steps businesses could be required to take would be set out by a future regulator if this option is preferred. It is expected measures would be similar to any that are developed for the Online Safety Bill measures to prevent fraudulent advertising but would cover businesses in scope of the OAP. Any regulator would likely work with industry to assess the impact of measures it deems appropriate for compliance, including a full assessment of the impact on small and micro businesses. At this stage, this impact assessment draws on a range of evidence sources to provide an indication of the likely scale of impact.
165. As with monitoring and customer reporting systems, some online advertising businesses have limited customer due diligence measures in place at present though it has not been possible to provide an estimated number of businesses. It is expected there will still be intermediaries and platforms that would need to undertake changes to their systems if verification of advertisers became a requirement under the OAP. This could include adjustments to existing systems, or adding new functionality.
166. While there may be a range of potential approaches to customer due diligence that platforms could be required to introduce, data from other due diligence measures has been used to provide an estimate of the potential scale of any costs to business.
167. The cost of verification is expected to be front-loaded with most advertisers going through the verification process within the first year of implementation and as the market grows over time new advertisers will go through the verification process as they enter the online advertising market. There are three main costs modelled:
- **Set up costs (intermediaries/platforms):** the cost of updating systems and processes to account for new requirements related to CDD
  - **CDD costs (intermediaries/platforms):** the cost of conducting a CDD on an advertiser
  - **Staff time (advertisers):** the cost to advertisers of completing any forms associated with CDD requirements and providing appropriate information
168. Set up costs are proxied from the impact assessment supporting the Money Laundering Regulations 2017,<sup>97</sup> in-line with which the estimated set up costs for each firm are between £109,000 and £438,000 (central estimate = £273,500).<sup>98</sup> The Money Laundering Regulations require a variety of different customer due diligence activities and serve as a reasonable proxy for unit costs for potential verification requirements in the OAP. These costs are incurred in the first year only and cover updating systems and processes. Setup costs are estimated to total £19.1 million (for the 70 intermediaries), this value is calculated using the central estimate of unit cost of £273,500.
169. To estimate the number of due diligence checks undertaken the number of advertisers is used alongside the number of advertising channels each advertiser uses on average. Evidence shows that most businesses advertise on multiple channels, for example using both search advertising and open display. On average, the number of channels used across SMEs overall is 1.3 or 1.1, 2.4, and 3.7 for micro, small, and medium sized advertisers respectively.<sup>99</sup> Large businesses are much more likely to advertise across a range of

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<sup>97</sup> HMT, 2017, [Money Laundering Regulations 2017](#)

<sup>98</sup> Uplifted costs, from 2017 prices to 2019 prices.

<sup>99</sup> IAB, 2020, Powering Up: Helping UK SME Businesses Unlock the Value of Digital Advertising

channels, but in the absence of specific evidence, this impact assessment assumes that these businesses advertise on average across 5 different in scope platforms or intermediaries. The number of advertising businesses within each size category is then uplifted by the average number of channels for the respective size category to give the total number of checks conducted.

170. The unit costs of due diligence on an advertiser to intermediaries and platforms are also proxied from HMT’s Money Laundering Regulations. For this impact assessment the standard CDD is estimated to cost between £3.23 and £16.14 (central estimate = £9.68) and enhanced CDD is estimated to cost between £4.84 and £32.27 (central estimate = £19.36).<sup>100</sup> While the vast majority of CDD resulting from the advertising duty is expected to be automated (at least to some extent), the inclusion of estimates for enhanced CDD allows for the possibility that a small number of cases require additional scrutiny. The total costs for conducting CCD (1,157,930 standard and 60,944 enhanced CDD checks conducted over the 10 year appraisal period) on advertisers is £10.7 million (2019 prices, 2020 present value base year), using the central estimates of costs.

171. In addition to the cost to in-scope intermediaries and Publisher/Platforms, advertisers will also incur costs associated with completing necessary forms and providing appropriate information to in-scope intermediaries and publishers/platforms. It is estimated that this will take between 10 and 30 minutes (central estimate = 20 minutes) for standard CDD and between 30 and 60 minutes (central estimate = 45 minutes) for enhanced CDD to set up an account, or to update an account details with additional information needed for the checks. There is limited evidence on the time taken for an advertiser to complete a process like this, but it is in line with estimates for the time taken to open a bank account in the UK (itself subject to anti-money laundering checks).<sup>101</sup> This impact assessment assumes that this process will be conducted by a Chief Executive in micro businesses and by a marketing associate in small, medium, and large businesses.

172. The total cost over the appraisal period for advertisers, using central estimates of costs, is estimated to be £9.2 million.

173. The government will use the consultation to develop the methodology of estimation and refine these estimates and fill evidence gaps for the final stage impact assessment.

174. Table 10 shows estimations of cost to advertisers for conducting CDD per business for micro businesses and small, medium, and large businesses.

**Table 10: Estimated Customer Due Diligence costs per business for advertisers.**

Business Size	Standard CDD			Enhanced CDD		
	Low	Medium	High	Low	Medium	High
Micro	£4.25	£8.51	£12.76	£12.76	£19.14	£25.53
Small, Medium and Large	£3.56	£7.12	£10.67	£10.67	£16.01	£21.35

<sup>100</sup> Uplifted from the 2017 prices in the Money Laundering Regulations to 2019 prices.

<sup>101</sup> Which?, 2021, [How to open a bank account online](#)

175. This impact assessment assumes that the OSB will be in place by the time of introduction of the Online Advertising Programme, therefore, it is assumed that the OAP will have within its scope the market participants that are not covered by the OSB. It is likely, therefore, that most of the firms covered by the OAP operate within the open display advertising market, and include intermediaries as well as publishers/platforms.

#### *Record Keeping and Reporting to the Regulator*

176. It is expected that under Option 3 firms may need to keep records of transactions for the purpose of providing reports to the regulator on harm mitigation and to facilitate investigations undertaken by the regulator.

177. It is not expected that firms will incur large costs for data storage and processing due to the quantity of data firms collect on transactions for financial report production and data protection purposes. It is not expected that firms will need to keep detailed data on transactions beyond time periods required by other regulations, such as data protection.

178. Intermediaries and platforms may be required to provide reports to a regulator on monitoring and intervention activities conducted and how effective they have been in removing harmful adverts.

179. Reports could contain the following information:

- Number of advisements shown/processed;
- Number of potentially harmful advertisements detected;
- Rate of potentially harmful advertisements detected;
- Rate of potentially harmful advertisements detected in a sample reviewed by human assessors;
- Number of potentially harmful advertisements actioned
- Comparison of the number of potentially harmful advertisements from the year of writing, the year previous, and the first year of implementation of the measures; and
- What steps the firm has taken to reduce the number of harmful advertisements shown to consumers.

180. Reports may be required to be produced on an annual basis, and firms may be required to share data on the specified measurements with the regulator in order to be able to most accurately gain insight on market wide effects of the regulation and ongoing enforcement.

#### **Cost of enforcement**

181. At this early stage it has only been possible to give an indication of the scale of enforcement costs based on similar interventions. Details of the measures that would be enforced and the tools for enforcement will be considered based on the outcomes of the consultation.

182. There are two options for how an enforcement body might be set up. First, as a new independent regulator whose sole purpose would be the implementation and enforcement of the new regulatory framework for online advertising. Second, the regulation of advertising would be subsumed into the responsibilities of an existing regulator. This approach has taken place with the implementation of the Online Safety Bill.

183. An indicative cost is provided for a scenario where an existing regulator's functions were expanded, to provide an indication of scale, but the estimate has been made without further

information on the functions of the regulator. For this scenario the costs provided in the Online Safety Bill impact assessment are used. This is estimated to be on average be £34.9 million per year and total £290.2 million across the appraisal period.<sup>102</sup>

184. The Online Safety Bill covers a similarly extensive range of harms, though the causes are different, the issue of managing digital content is similar. Equally, the advertising landscape is complex and rules may be set for multiple actors in the delivery of advertising. The regulator for online safety will also set the guidelines for businesses to follow and this is the model expected for online advertising.

## **Non-monetised Costs**

185. As a result of enforcement of regulations designed to mitigate harms within the content of adverts, advertisers could operate with increased caution in their advertising strategy, and such caution may cause a decrease in creativity in the creation of adverts. Such decreases could be considered when designing the regulations for full statutory intervention to reduce the effect of greater content control on creativity within the sector.

## **Indirect Costs**

### **Changes in Revenue**

186. In assessing potential revenue changes different actors or segments of the market have been explored.

187. If the price of online advertising increases as a result of intermediaries or platforms passing on the costs of complying with any restrictions, advertisers may have to scale back their campaigns. If they reach a smaller proportion of their target audience, the returns to a campaign could be lower. Adjusting for this, advertisers might be expected to use more targeting options and tools to concentrate on those that will engage and drive sales. This could still lead to lost sales if the adverts had previously reached those with latent demand, that is audiences outside that targeted may still by their product or service. More advanced targeting of adverts generally comes at a higher cost due to the technologies involved and concentration in the market. Overall, any increase in the cost of advertising would result in a reduced return for advertisers.

188. Advertisers often have different goals for different advertising campaigns and these depend on their business, it's size and stage in the business life cycle. Generally it is assumed advertisers seek out the channels that provide the greatest return, but also possibly the greatest ease of use. Ease of use is likely to be especially relevant for micro and small advertisers who do not tend to use advertising agencies. This could result in a shift to platforms or intermediaries that offer easy access to audiences combined with tools to analyse audience data and effectiveness. The largest platforms and intermediaries with access to large user bases may therefore become more attractive. This could reduce revenues for smaller intermediaries and platforms, and in turn increase concentration in the market.

189. Measures may take demand out of the market for other reasons, screening out bad actors, preventing certain types of advertising. Therefore, any reduction in demand would be expected to reduce the price of advertising and reduce the revenues of intermediaries

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<sup>102</sup> DCMS, 2022, The Online Safety Bill Impact Assessment

and platforms and publishers. Publishers could face a greater share of the revenue reduction if intermediaries pass on costs by taking a larger share of advertising revenues than they do now.

190. The sensitivity of demand to changes in the price of online advertising is not known. Therefore the overall effect of demand and supply changes cannot be determined without further data and analysis.
191. The effects of consumers are also not taken into account. If trust in advertising content increases, this may drive increased engagement resulting in higher revenues for all actors in the supply chain. This increased trust could result in lower use of ad blockers, technology that prevents adverts being displayed. This effect may be very small and empirical evidence has not been observed.

## **Costs to Government**

### *Justice Impacts*

192. It is anticipated that under Option 3, the regulator would be able to take enforcement action against any in-scope business that fails to meet its regulatory responsibilities.
193. The expected enforcement powers of a regulatory body responsible for the regulatory framework of the OAP would be to issue warnings, notices, monetary penalties, and business disruption measures. Businesses and the public would, necessarily, be able to seek judicial review of the regulator's actions and decisions through the High Court.
194. The primary objective of the proposal is for more effective action by businesses to respond to harmful content/activity, reducing the damage done by unacceptable or illegal content/activity and providing a safer online environment. The proposal is not primarily intended as a criminal justice solution, but to encourage more effective preventative and remedial action and effective assistance from businesses to law enforcement (where appropriate).

## **Costs to Individuals**

195. In considering any costs to consumers it is assumed that legitimate advertisers continue to advertise their products. However, the level of advertising may change, as discussed above, if the price of reaching the same number of individuals increases. How this would affect prices is unclear, if advertisers face less demand price would be expected to decrease in the short term. But if production can also be scale back, prices may not change overall assuming lower scale production means less economies of scale.
196. Consumers of internet content could also be affected if publishers receive lower advertising revenues due to reduced demand for advertising space, if bad actors are removed from the market. The amount and quality of content may change if publishers have fewer resources to produce the content. If publishers' revenue decreases substantially they may pursue alternative funding models, including but not limited to subscription services. This would depend on the customer base the publisher has and any competition it faces. Often someone is willing to provide content for free and this can erode reliable sources of information, such as news. Overall there is a risk with reduced advertising revenue reaching

publishers that consumers' access to information and culture could reduce, along with the associated value of this content that is not often captured.

## Summary of option costs

**Table 11: Total present value costs<sup>103</sup> (£ million)**

	<b>Option 2: Statutory backstop</b>	<b>Option 3: Full statutory approach</b>
Advertiser familiarisation costs	143	165
Intermediary familiarisation costs	0.002	0.03
<b>Familiarisation costs total</b>	<b>143</b>	<b>165.1</b>
Advertiser compliance costs	0	8.5
Intermediary compliance costs	0	27.4
<b>Compliance costs total</b>	<b>0</b>	<b>35.9</b>
Enforcement costs	4	251.2
<b>Total cost to business</b>	<b>147</b>	<b>452.1</b>

## Benefits

197. This section explores the potential benefits of option 2 and 3 in reducing the level and impact of harms experienced by internet users. Due to the limited evidence available around the causal links between advertising and the range of harms identified we present an indicative break even analysis using the customer due diligence as an example measure. We recognise though this won't capture all of the expected benefits of the options and, therefore, also present a qualitative assessment of the likely changes in harms for each option. This assessment is not conclusive and the consultation is an opportunity for respondents to provide any further evidence on how further measures might reduce harm, as well as where measures have already had an effect on the level of harm experienced.

198. Along with the level of harm we also need to understand how harm impacts users. At present no clear evidence has been identified on the extent of advertisement-related harms and of their monetary and intangible impact beyond the analysis on fraud linked to advertising. It is also difficult to predict the impact of the regulatory options proposed, and the extent to which they will reduce different types of harmful advert reaching individuals, or potentially harmful targeting.

199. One of the main issues in assessing the impact of the proposed options is the lack of comparable data on analyses conducted on similar measures. In 2020 Google introduced new policies to increase internet safety and transparency, including a new advertiser identity verification program and a new business operations verification program. This, together with further investment in automatic detective technologies, has led to a 70% increase in the number of advertisers accounts disabled for policy violations, with 968 million harmful

<sup>103</sup> Adjusted for inflation using HMT GDP deflators, and discounted by 3.5% as per The Green Book.

adverts being blocked before reaching internet users, as reported by Google.<sup>104</sup> No data is available that can disentangle the effects of the different measures or their effect on the different categories of harm. We also do not know what percentage of harmful adverts are able to elude these technologies.

200. Our approach to measuring benefits follows the approach used in the Online Safety Bill Impact Assessment. In particular, we consider the cost of harm caused by online advertisements and, rather than estimating the proportion of harm avoided for each proposed option, we carry out break-even analysis, i.e. we calculate the proportion of harm that needs to be reduced to compensate for the economic cost of introducing the measure.
201. In the following we will set out the current level of harm linked to online advertising by focusing on fraud to internet users (rather than where advertisers are defrauded), as this type of harm has sufficient evidence to assess. The analysis could be updated to include more types of harm, once more data becomes available.
202. The current annual cost of fraud can be quantified using data provided by City of London Police and National Fraud Intelligence bureau and analysing over 600,000 Action Fraud reports.<sup>105</sup> According to this source, 35,115 incidents of frauds linked to digital advertising occurred in the year ending in March 2021, carrying an overall cost of £399,874,241.<sup>106</sup> This represents a baseline figure against which the proposed options will be assessed.
203. However, it should however be noted that fraud facilitated by user-generated content is in scope of the Online Safety Bill. data does not identify which category of advertising was linked to fraud, or where the advert was viewed. Therefore, it's difficult to set apart how much fraud the Online Safety Bill will address compared to the Online Advertising Programme. It is also unknown which measures will be required by the regulator once the Bill becomes law. For these reasons we present a range for the break even point based on the following scenarios:
- A. The Online Safety Bill is implemented but all fraud takes place on platforms out of scope
  - B. The Online Safety Bill is in place and the level of fraud that occurs matches the share of spending of firms in scope
204. Scenario A effectively assumes that all fraudulent advertising is taking place on channels in scope of the Online Advertising Programme. While this is not expected it is used presentationally to indicate a lower bound level of fraud reduction required to meet the cost burden from the OAP.
205. Scenario B reflects that a level of fraudulent adverts is reaching internet users on the platforms in scope of the OSB, and therefore the level of potential fraud reduction under the OAP is reduced. Given the lack of data we use the proportion of spending in the market for

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<sup>104</sup> Google, 2020, [Our annual Ads Safety Report](#)

<sup>105</sup> City of London Police / National Fraud Intelligence bureau, 2021, Fraud Enabled by Online Adverts 2020/21 – Dip Sample report

<sup>106</sup> As stated before, these were captured through the following keywords: “Ads”, “Advert”, “Pop up”, “Banner”. It should be noted that this could however include non-paid for advertising, such as organic posts promoting counterfeit goods or financial/crypto scams

open display as a proxy for advertising that will not be covered by the OSB (around 16% in 2017).<sup>107</sup>

## Baseline level of consumer fraud linked to advertising

206. In this analysis, financial losses linked to online fraud are expected to increase over time in the absence of a policy intervention. Given the lack of data, it is difficult to make assumptions on how the overall cost of fraud changes over time. As reported above, according to CSEW data, incidence of fraud has increased by 32% between 2019-2021. It isn't possible to isolate cases of fraud strictly linked to online advertising in this dataset. The change in fraud linked to online advertising is likely correlated to a number of factors on which data are available, such as the proportion of the population using the internet, time spent online, and spending on online advertisement (a proxy of advertisements seen online). ONS data suggest that the proportion of the population using the internet has increased from 86.2% in 2015 to 92.1% in 2020 (a 1.33% annual increase on average),<sup>108</sup> and it is likely to plateau soon. Time spent online has increased by 4.5% per year over the same period, as reported in the Online Safety Bill final Impact Assessment, based on Ofcom data.<sup>109</sup> Expenditures on digital display advertising have instead grown much faster, with an average 20% annual increase between 2013 and 2019.<sup>110</sup> Given the level of uncertainty and the wide range of these figures, in this analysis a 5% annual increase in the value of financial losses due to advertising related fraud is assumed.
207. The data by City of London Police and National Fraud Intelligence bureau has the clear advantage of focusing only on fraud incidents that were a result of advertising, and that could therefore be tackled to some extent by the proposed regulatory options. They also refer to a time period (April 2020-March 2021) when the COVID-19 pandemic and three national lockdowns substantially increased the UK population internet access, the time spent online,<sup>111</sup> and, therefore, potentially, also the total number of advertisements seen online. Nevertheless, despite the relevance and accuracy of the data provided by City of London Police and National Fraud Intelligence bureau, this figure is with no doubt an underestimation of the true extent of the issue. The government will use the consultation to refine these estimates for the final stage impact assessment.
208. Crime Survey data for England and Wales in fact suggests that only between 1-2 in 10 fraud incidents are reported. A drawback of using crime survey data for our analysis is however the difficulty in understanding the nature of the fraud experienced by respondents. While we know that in over 50% of cases incidents are linked to the use of the internet, it is not possible to know whether these incidents are strictly linked to online advertising, as this information is not collected in the survey.
209. The baseline level of harm is a key element of the break-even analysis. The aim of the break even analysis is to weigh the costs of introducing the proposed options against the anticipated benefits associated with them. The anticipated benefits represent the reduction in harm internet users experience as a result of the proposed measures and are defined as:

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<sup>107</sup> Plum Consulting for DCMS, 2019, [Online advertising in the UK](#)

<sup>108</sup> ONS, 2021, Internet users, UK: 2020.

<sup>109</sup> As per data by Ofcom's Adults' Media use and attitudes report, 2016-2019

<sup>110</sup> Plum Consulting for DCMS, 2019, Online advertising in the UK

<sup>111</sup> Ofcom, 2021, [Online Nation report](#).

Anticipated benefits=Total impact of harm over the analysed period in the absence of policy intervention \* % reduction in harm expected following the introduction of the proposed regulatory options

210. Anticipated benefits depend on the baseline level of harm, and the expected reduction in harm following the introduction of the regulatory options.
211. Given new measures are not expected to be required for the first year in the appraisal period, it can be assumed that reduction in harm will take place from year 2, with a phase-in period expected to last a few years.
212. The proportion of harm reduction (%) needed to achieve the break-even point for each regulatory option is computed by equating costs and benefits:

$$\text{Monetary costs}=\text{anticipated benefits}$$

Although some assumptions are made in terms of the timeline over which benefits arise, the proportion of fraud reduction needed to achieve the break-even point is computed over the whole appraisal period, and it can be either the result of a reduction in the number of fraud incidents and/or in the size of the associated financial loss.

213. For Options 2 and 3 the break even point is assessed against option 1 the baseline, along with expectations for whether this level of reduction in harm is achievable. Further qualitative analysis of the non-monetised benefits is also presented.
214. Under option 1 (self-regulatory approach) ASA' CAP codes will be applied to advertisers as part of a voluntary self-regulatory framework in keeping with the current regulatory framework. This will leave intermediaries and publishers/platforms unregulated as they are within the current framework. Under option 1, no change in the baseline level of harm is therefore expected.

## **Option 2**

215. Under option 2 (backstop scenario), some of ASA's CAP codes would be reinforced by a statutory regulator with legal backstop powers, and responsible for the enforcement of the codes. Incentives for advertisers and advertising agencies to comply with the codes are therefore expected to be higher, though this is from a high level of compliance by legitimate businesses. There may be powers to address bad actors, with referrals to criminal investigatory bodies, for example the FCA in relation to financial services. This approach still relies on user reporting of adverts that may not meet the standards set out in the CAP codes and so it may only have a small impact on the level of harmful adverts. This also depends on knowledge and understanding of the codes, where advertisers or influencers are unaware of the requirements on them there is likely to be higher levels of misleading or hidden advertising.
216. While the codes would be developed by the industry and the ASA, under backstop powers, the backstop regulator may review and sign off the codes, so it is satisfied with what it is enforcing. This may have some improvement in the codes themselves, most likely removing areas of ambiguity, improving clarity for advertisers, though that is not to say the codes are not clear already.

217. A certain level of reduction in fraud and other types of harmful advertisements is therefore expected within this option.
218. Focusing on the fraud example and keeping in mind our baseline level of fraud, in the break-even analysis we calculate by how much this figure has to be reduced for costs and benefits to be equal, for scenario A and B. As shown in table 12, the reduction in harm needed to break even is 3.62% in scenario A. For scenario B, given that only 16% of fraud cases are assumed to be covered by the OAP under scenario B, the break-even point is 23.15%. This is the overall reduction needed over the appraisal period. For fraud this reduction will largely depend on the ability to tackle bad actors. This option does not address the transparency issues in the system identified and so bad actors may still feel like they can avoid sanctions on them.

### **Option 3**

219. Option 3 (full statutory regulation) would introduce a regulatory framework covering all actors in the advertising supply chain (advertisers, intermediaries, and platforms), and within which the regulator would have the power to set the standards and carry out enforcement activities.
220. It is expected the incentives for legitimate businesses that use online advertising will face the same incentives to comply as for Option 2. Intermediaries and platforms are expected to put in place comprehensive measures to prevent harmful adverts from reaching internet users. This would increase the barriers to entry, which while possibly having some cost to business may act as a greater deterrent for those intent on causing harm. There is a question as to how much measures such as advertiser verification could act as a deterrent, however a combination of measures allowing greater transparency in the market and checks on the adverts reaching users is anticipated to have a higher likelihood of delivering larger reductions in harm and therefore higher benefits than option 2. As shown in table 12, the reduction in fraud harm needed to break even is 11.14% under scenario A and 71.19% under scenario B. It should, however, be reiterated that this figure only factors in one type of harm, while we expect that other types of harm will also be prevented. Benefits such as wellbeing benefits from reduction in fraud are also not included in this analysis. It is also possible that some of those intent on causing harm move away from the large platforms regulated in the OSB to other advertising services. Therefore, we expect the level of fraud reduction to be somewhere between the extremes of the scenarios presented.

## Summary

**Table 12: Summary of impacts and break even points.**

	Option 2	Option 3
Total costs (present value)	£147.0m	£452.1m
Reduction in the value of harm from fraud related advertising needed to equal costs	Break even at:	Break even at:
<b>Scenario A:</b> (OSB in place but all fraud takes place on platforms out of scope)	3.62%	23.15%
<b>Scenario B</b> (OSB in place and 16% of fraud not covered by OSB)	11.14%	71.19%

221. It is difficult to give a definite answer on whether the break-even reduction in harms is a realistic figure that is likely to take place under option 2 and 3. As stated above, given the novelty of these measures, it is difficult to predict the extent to which incidents of frauds will be affected, and whether we will be able to see a reduction just in the numbers of frauds, or also in the average financial loss.

222. These figures are indicative. However, they give a sense of the reduction in harm needed before seeing any benefits arising from these measures. It should be noted that, on one side, these figures are likely to err on the side of caution. As suggested by data from the Crime Survey for England and Wales, in fact, only 10%-15% of frauds are reported by victims. Also, we focus in our analysis only on monetary losses, although evidence suggests that being a victim of fraud also leads to some level of emotional distress. The total harm caused by fraud in the absence of an intervention is therefore likely to be much higher than the figure considered in this analysis.

223. While we expect the proposed interventions to influence both the number of incidents of fraud, and the average monetary loss associated with them, research by Confiant highlights the level of sophistication of some bad actors in the market, with some groups being “notable for their persistence, technical prowess, and ability to adapt in a changing environment”.<sup>112</sup>

224. In the break-even examples, we have only focused on fraud. Nevertheless, the proposed measures are expected to also reduce other types of harm, such as harms linked to exposure to gambling or body image-related content when adverts are not reaching their intended audience. It is however extremely challenging, given the lack of evidence, to make a quantitative assessment of the extent to which these issues are linked to digital advertising, rather than to the use of internet and social media platforms in general. Also, these harms are often also associated with negative impacts on individuals’ subjective wellbeing, which, given its intangible nature, is often difficult to identify and to value in monetary terms.

<sup>112</sup> Confiant, 2021, [Malvertising & Ad Quality Index Q3 2021](#)

225. Given the difficulties of measuring the likely reduction in harm, a qualitative assessment of the likelihood of reducing harm for each option and type of harm is provided in Table 13. No change in harm is expected under option 1 (i.e. our baseline). Option 2 and 3 are likely to lead to some reduction in harm, especially in terms of illegal harms and misleading advertising, with option 3 being expected to have the highest impact on harm. Under option 2, only some codes of the self-regulatory codes would be underpinned by statute and enforced by a statutory regulator. These codes would most likely relate to illegal harms/actors, repeat offenders, and certain in-scope firms. Under option 3, all codes would be written and enforced by a statutory regulator. However, it is reasonable to assume that tougher sanctions would apply to illegal harms and actors, than in the case of legal but harmful harms.

**Table 13: Assessment of the likelihood of harm reduction by option**

Note: Higher colour intensity suggests higher likelihood of harm reduction. Dark blue: high reduction; medium blue: medium reduction; light blue: small reduction. Blank cells indicate no change.

	Option 1	Option 2	Option 3
Ads for illegal activities, products or services		Light blue	Dark blue
Malicious advertising		Light blue	Dark blue
Fraudulent advertising and counterfeiting		Light blue	Dark blue
Fake endorsements		Light blue	Dark blue
Misleading ads		Light blue	Dark blue
Non-identified ads		Light blue	Dark blue
Offensive ads			Medium blue
Ads for products or services deemed to be harmful, but not illegal			Medium blue
Ads that are seen to contribute to body image concerns			Medium blue
Mis-targeting			Medium blue
Discriminatory targeting			Medium blue
Targeting vulnerable people			Medium blue

## Uncertainties and risks

226. Given the open consultation and the early stage of development there is some uncertainty about the actual measures that could be introduced. The overall approach has been to indicate some of the key differences in how the options might achieve the objectives.

227. The assessment has been based on the current regulatory system which places all responsibility on advertisers. If the industry through the ASA decides to introduce further standards or codes, such as the OPNS, this would change the baseline and our assumptions about the backstop regulator in option 2. If such codes were introduced it might be expected to reduce the cost burdens as businesses would already be required to implement enhanced measures than under the baseline. This could also reduce the expected benefits.

228. It has not been possible to consider all of the potential changes in individual behaviour, whether that is those seeking to avoid protection measures to continue to defraud or cause other forms of harm, or how consumer media literacy may change over the appraisal period.
229. The advertising market is dynamic and fast changing, adapting to and adopting new technologies, with associated changes in business models. Any measures, whether voluntary or regulatory, will need to consider this pace of change. Our assessment is based on the current market and any changes in how it operates will be incorporated at the next stage

## Wider impacts

### Trade

230. Like the internet the online advertising market sits in an international context, with international advertisers able to reach UK audiences, and likewise UK businesses are able to access international audiences. UK advertising supply chain businesses also provide services to international clients and the UK has a strong position in the development of advertising technology services which have attracted over £1 billion in investment since 2013.<sup>113</sup> International access fosters trade and greater prosperity however it can pose a challenge when ensuring compliance with advertising codes. At present the ASA only regulates UK businesses. Consideration will have to be given to how options 2 and 3 would apply to international businesses and this will be developed depending on the preferred option.
231. Under Option 2, a regulatory backstop set up, there are questions over whether international advertisers would be included and how enforcement decisions are enacted. A need to comply with the UK's advertising codes, which may not align with other country codes, could increase the barriers to advertising in the UK, which in turn may reduce the access to the UK market and affect imports. This will depend on the returns available from the UK market and the ease to tailor adverts to the UK codes. Given the codes focus on protecting all users, this may not create a significant barrier to legitimate businesses. If the UK has strong codes with a good reputation, this may be beneficial for international advertisers in complying with codes in other English speaking countries.
232. For Option 3, full statutory regulation of intermediaries, platforms, and publishers may have more complicated effects on trade depending on the measures put in place. As there are no preferred measures, the example of advertiser verification is used to show some of the implications that should be considered.
233. Where intermediaries are carrying out advertiser verification, means to assess international advertisers may be needed. An international verification system does not exist and large intermediaries may have the ability to set up different systems for different countries. But this comes at a cost and may only be made available for certain markets. This could reduce the ability of international advertisers to reach UK audiences and therefore reduce opportunities to trade. It is not known how a verification system would impact UK businesses ability and costs to advertise outside of the country.

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<sup>113</sup>Advertising Association, n.d., [Powering Up UK Advertising Exports](#)

234. There are also several routes that intermediaries and platforms may take to avoid the regulations depending on their design and the nature of the measure and the international market. Intermediaries and platforms could move their operations overseas, removing their UK presence, though the UK has a strong skills base and has seen inward investment by large platforms despite proposed regulation of online safety. If the UK gets the balance right between supporting business growth and innovation, it may become more attractive for international investment as it develops a market for safety products, as well as demonstrate countries could implement advertising protections. One country's high bar is often a standard that others strive to meet, rather than being denigrated.
235. Regulatory divergence will need to be considered. For example, where the UK has a different set of standards to other regions, technology investment may focus where there is consistency in standards across large regions to avoid additional costs of tailoring technology products.
236. Advertisers might move media buying activity out of the UK where they can use overseas supply chains to reach UK customers if compliance costs are perceived to be high in the UK. This will depend on the design of any regulation to prevent this. Multinational advertisers might move their media-buying activity outside of the UK, that is where the UK is a base for buying adverts across international territories they may move to countries with lighter regulation.
237. The UK may have different content rules which mean international advertisers in categories that face more restrictions may invest less in the UK. While this may reduce business access to a market, the UK system is designed to protect users and this value should be considered in understanding the balance of costs and benefits to trade.
238. At present there is no data quantifying cross-border buying of online advertising. In addition there is not enough data to understand how much reliance the import or export of products or services has on advertising to determine the potential scale of any impacts on trade from online advertising regulation.

## Competition

239. Parts of the online advertising market are already highly concentrated and online platforms benefit from large scale and vertical integration. Advertisers are mostly made up of large businesses with SMEs making up around 45% of all online advertising spending.<sup>114</sup> The Competition and Markets Authority also calculated that 80% of digital advertising was earned by two companies, Google with more than 90% share of the £7.3 billion search market, and Facebook with more than 50% of the £5.5 billion display market.<sup>115</sup>
240. In introducing any new measures competition impacts will need to be considered. Requirements to introduce measures to protect users will incur cost, and this will increase the barriers to new businesses entering the advertising supply chain. Businesses may also use requirements to suppress competition, for example large platforms generally don't share data and have changed what data they do share following the introduction of the General Data Protection Regulations. As data is so important to running effective and

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<sup>114</sup> IAB, 2020, Powering up: helping UK SMEs unlock the value of digital advertising, also at [WARC](#)

<sup>115</sup> CMA, 2020, [Online platforms and digital advertising](#) - Market study final report

efficient advert targeting systems, having limited access to high quality data will be a barrier to delivering competitive services.

241. As set out under potential changes to revenue, ease of use is likely to be especially relevant for micro and small advertisers who do not tend to use advertising agencies. This could result in a shift to platforms or intermediaries that offer easy access to audiences combined with tools to analyse audience data and effectiveness. The largest platforms and intermediaries with access to large user bases may therefore become more attractive. This could reduce revenues for smaller intermediaries and platforms, and in turn increase concentration in the market.
242. Acquisitions in the market have increased concentration, and any intervention should consider both market access barriers and how measures may increase concentration further.

## **Innovation**

243. In July 2021, the government set out its [Plan for Digital Regulation](#) including principles on promoting innovation.<sup>116</sup> At this stage any mix of measures could be used under any other options, whether these are developed through industry codes, or through statutory regulation. It is too early to provide a full assessment and any self-regulatory or regulatory model will need to ensure that interventions, standards, or codes can adapt to a market that continues to develop in response to new technologies and business models. It is essential that while protecting users there is still space for innovative processes and technologies to be introduced to maximise the overall value of the advertising sector, both economic and social.

## **Equality**

244. The proposed options are expected to benefit to a greater extent vulnerable groups, such as children, and less confident internet users, who usually engage in only a handful of activities on the internet, such as receiving and sending emails, and using social media. As found by Ofcom, the so-called “narrow internet users” are more likely to be of older age, and from a more disadvantaged background<sup>117</sup>. These are also the internet users displaying a lower level of media literacy, less likely to be able to recognise adverts (48% versus an average of 62%), and less critical towards the information found online.
245. Depending on the preferred option, work will continue to identify how advertising content and its delivery affects different groups, including those with protected characteristics.

# **Small and micro business assessment**

## **Justification for non-exemption**

246. As explained in guidance from the Regulatory Policy Committee, the default position is to exempt small and micro businesses (SMBs) fully from the requirements of new regulatory

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<sup>116</sup> DCMS, 2021, [Digital Regulation: Driving growth and unlocking innovation](#)

<sup>117</sup> Ofcom, 2021, [Adults' media use and attitudes report 2020/21](#)

measures.<sup>118</sup> However, the evidence suggests that the policy objectives would be compromised by exempting SMBs.

247. There is evidence that even smaller businesses can produce adverts that can mislead viewers and with online advertising presenting an opportunity to reach many users, the scale of harm can be disproportionate to the size of the business. There are ASA rulings against small businesses for non compliance with the existing advertising codes, including adverts that mislead with exaggerated claims.<sup>119</sup> For small intermediaries and platforms the picture is less clear for advertising harm, but it can be expected similar patterns exist as for other online harms. The Internet Watch Foundation (IWF) notes that online harm exists ‘in vast quantities’ on smaller platforms.<sup>120</sup> 87% of the content the IWF removes from the internet is from small and medium size sites including file sharing sites, image hosting boards, and cyberlockers.

248. It is expected that criminal actors will seek out the advertising routes that provide them with the greatest opportunity to reach potential victims. If smaller intermediaries or platforms don’t have sufficient measures in place they could be easy targets. There is also no correlation between the size of an intermediary or platform in terms of turnover and employees and the reach and impact businesses have on users. Further users can migrate between services and as new platforms become popular they can rapidly grow their user base.

## Impact on SMBs

249. As set out above it has not been possible to estimate the number of businesses in all stages of the advertising supply chain, nor the number of publishers. As such an estimate of the number of SMB supply chain businesses is not provided, with the exception of advertising agencies. We would welcome any indicative numbers of businesses to be provided as part of the consultation.

## Advertisers

250. Three in Five SMEs (Small and Medium Enterprises) use paid digital advertising and 63% agreed that this is important to their businesses success.<sup>121</sup> Broken down by business size, this is 52% of micro businesses, 81% of small businesses, and 96% of medium-sized businesses. Micro and Small businesses make up 98.1%<sup>122</sup> of the business population. We can apply the proportion of SMBs that use paid advertising to the business population giving an estimated 2.8 million micro and 171,546 small businesses that may be affected by any future intervention.

251. In assessing the impact of options on SMBs, given there are no specific measures proposed at this stage the examples from the above analysis are used to assess the cost burden. The extent of this will depend on the design of any policy, including in a self regulatory system, and how it considers proportionality and the competition and innovation aspects discussed above.

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<sup>118</sup> [Small and Micro Business Assessments: guidance for departments, with case history examples - RPC \(2019\)](#).

<sup>119</sup> ASA, 2019, [Ruling publication](#)

<sup>120</sup> [Internet Watch Foundation. Online Harms White Paper Response \(2021\)](#)

<sup>121</sup> IAB, 2020, Powering up - Helping UK SMEs unlock the value of digital advertising

<sup>122</sup> Calculated from DCMS economic estimates, UK non-financial business population, 2019. Based on employee size

252. Option 2 is not expected to result in any measurable burden to smaller advertisers as the existing CAP codes would remain in place.

253. Option 3 uses the example of customer due diligence of advertisers where smaller businesses are expected to incur costs as a result of providing information to support anti-fraud checks. This would be the case even if SMB intermediaries and platforms were exempt from any requirements as smaller advertisers benefit from systems with access to large audiences.

254. Table 10 outlines the per business cost to SMBs expected to undergo standard and enhanced CDD which is made up of staff time to provide necessary information:

**Table 14: Customer Due Diligence costs to advertisers**

Business Size	Standard CDD			Enhanced CDD		
	Low	Medium	High	Low	Medium	High
Micro	£7.94	£15.87	£23.81	£23.81	£35.72	£47.62
Small	£3.57	£7.13	£10.70	£10.67	£16.04	£21.39

255. It should be noted that while a significant number of SMBs are expected to undergo CDD, these costs are one-off and once a business is verified to advertise through an intermediary or platform, they are not expected to incur any additional costs in the appraisal period. 95% of these businesses are expected to undergo standard CDD with 5% incurring costs associated with enhanced CDD.

256. While these costs are low, they may be enough to drive changes in smaller business advertising strategies and in how the market operates. While smaller businesses use fewer advertising channels, the number of channels used may decrease to manage the costs of verification measures, possibly increasing the use of free online marketing routes instead. They could also increase their use of offline channels such as direct mail and newspapers. Given the most common form of advertising used is paid social channels, advertising by SMEs, small businesses may concentrate their spending in this area. With high concentration in social advertising and SMEs making up 45% of online advertising revenue, such shifts could make a substantial difference to competition online and the ability to fund free content not hosted on platforms.

## Advertising agencies

257. As set out earlier there are an estimated 16,500 advertising agencies in the UK.<sup>123</sup> No size breakdown is available but we can assume that the distribution is similar to that of the advertising sector as identified in the DCMS Economic Estimates. This gives an estimated 91% micro or 14,975 advertising agencies and 7.5% small equating to 1,238 agencies.

258. It is expected advertising agencies will be impacted in a similar manner to micro and small advertisers, however some agencies do carry out more functions and therefore could face increased costs depending on the measures implemented. It will be important to consider the proportionality of any measures to ensure that the market continues to work

<sup>123</sup> IBIS World, 2021, [Advertising Agencies in the UK - Market Research Report](#)

well. Any evidence on the impact of the proposed options on micro and small advertising agencies is welcomed as part of the consultation.

## **Intermediaries**

259. Data is not available on the number of intermediaries and our estimates are based on investigations of the market. It has therefore not been possible to estimate the number of micro and small intermediaries. Our expectation is that there is a mix of sizes but there are indications the market is concentrated in a small number of large businesses and industry experts indicate this concentration is increasing.

260. Nonetheless the same points above about proportionality still apply and to have a well functioning advertising market any measures need to minimise the costs to enable new entry.

## **Platforms**

261. Many platforms have started as small businesses expanding as they attract larger user bases and as the business focuses on monetising its content. Where a platform is involved in advertising technology, and therefore the delivery of adverts, rather than just providing advertising space, it could be expected to have reached a larger scale. As we don't have evidence on the number of platforms and their scale this will be investigated further through the consultation.

## **Publishers**

262. Publishers are expected to be a vast group of website owners, apps, video games, podcasts, etc. Many of these will be small but there is no data on the number of publishing locations and their business size. As part of the consultation, views on whether measures should apply to publishers are invited and this will help in considering the potential effects, including any benefits. Any cost burden and the balance with the target outcomes will be considered at the next stage.

## **Mitigations**

263. For all business types and sizes measures will be assessed for their proportionality and mitigation measures will be explored. This could include for example sufficient time to introduce new measures, and in this assessment we have currently assumed a 12 month period for implementation. Any guidance could also be tailored to different groups. The level of risk posed by the advertising activities can be considered, in some cases small businesses can still host activities that pose significant risk to users but in other cases the risks may be lower and measures adjusted accordingly. The consultation will allow the government to engage with SMBs to ensure that the regulation is designed taking them into account and that appropriate mitigation measures are considered.

## **Monitoring intended outcomes**

264. The aim of the Online Advertising Program is to develop a coherent and comprehensive advertising regulatory framework for all actors across the advertising supply chain that promotes transparency and accountability across the online ad ecosystem. This is vital for

increasing trust in the system, in both consumers and advertisers, and, in turn, to sustain the growth of the sector and to enable innovation. A more transparent and accountable system, setting clear roles and responsibilities for all parties in play, will also have a positive impact in terms of harm reduction both for consumers (through the reduction in ads on illegal products and services, misleading ads, inappropriate targeting etc.) and advertisers (i.e. greater brand safety).

265. Against any of the options pursued, the government will look to improve the measurement of online advertising to assess the outcomes outlined above. Several sources of data exist for the value of advertising, media use and understanding and other industry reports. However, there is a substantial gap in our understanding of the adverts users are seeing, and how this affects them, including those that are harmful, and what the impacts are as a result. As part of this consultation we are inviting respondents to provide details of any advertising monitoring that is currently taking place. The government will also use the consultation to develop a coherent Monitoring and Evaluation framework for the final stage impact assessment.

## Consultation questions

### Impact Assessment questions

- 1) **Do you have any further evidence of harms experienced by consumers and/or advertisers?** Please can you include any source and provide information on the frequency and severity of harms, trend data, and/or impacts on protected groups.
- 2) **Can you provide any evidence on the costs and effectiveness of measures your organisation has implemented to prevent the harms outlined?**
  - a) Yes
  - b) No
  - c) Don't knowPlease explain your answer and provide relevant evidence.
- 3) **Do you agree with our assumptions on the costs incurred under option 2 and under option 3 (e.g. number of businesses in scope, transition and ongoing costs)?**
  - a) Yes
  - b) No
  - c) Don't knowPlease explain your answer and provide relevant evidence.
- 4) **Do you agree with our assumptions on the benefits of the proposed measures (e.g. an annual baseline cost of fraud of £400m and a 5% annual increase in fraud incidents)?**
  - a) Yes
  - b) No
  - c) Don't knowPlease explain your answer and provide relevant evidence.
- 5) **Can you provide any further evidence to refine the assessment of costs and benefits under option 2 and 3 ?**
  - a) Yes

- b) No
- c) Don't know

Please explain your answer and provide relevant evidence.

**6) Do you agree that the qualitative assessment of the likelihood of harm reduction taking place under option 2 and 3 is a fair assessment?**

- a) Yes
- b) No
- c) Don't know

Please explain your answer.

**7) Which mitigation measures should be considered to support small businesses and to ensure that they will not be affected disproportionately by the new regulatory measures?** Please explain your answer.

**8) Can you provide details of any monitoring system already in place that records the adverts delivered to internet users?**

## How to Respond to the Consultation

We welcome your views. To help us analyse the responses, please use the [Online survey](#) wherever possible.

The closing date for responses is 01/06/22.

If you have any difficulty submitting your response to the consultation through the survey, please email [online-advertising-consultation@dcms.gov.uk](mailto:online-advertising-consultation@dcms.gov.uk).

Hard copy responses can be sent to:

Advertising team

Department for Digital, Culture, Media & Sport  
4th Floor - area 4E/01  
100 Parliament Street  
London  
SW1A 2BQ

## About you

**When you send your response please select from the following list the term that most accurately describes the capacity in which you are responding to this consultation.**

- a. Private individual
- a. Advertiser (including brands)
- b. Advertising creative agency
- c. Media agency
- d. Platform (including Video Sharing Platforms)
- e. Intermediary
- f. News publisher
- g. Other publisher
- h. Consumer group
- i. Civil society organisation / not for profit organisation
- j. Broadcaster
- k. VOD service provider
- l. Academic
- m. Health
- n. Other