



# SAVE ONLINE SPEECH COALITION, JOINT CIVIL SOCIETY BRIEFING FOR ONLINE SAFETY BILL: REPORT STAGE

## Background

This joint briefing has been put together by a coalition of human rights organisations and NGOs, committed to protecting our fundamental rights to freedom of expression and privacy.

The internet has brought about a revolution in the ability of people in the UK and across the world to connect, share information, to organise, and to learn. During the COVID-19 pandemic, the internet kept families and loved ones in touch, helped local communities organise help for neighbours, and kept us entertained. In Ukraine, the internet has enabled vital information on the Russian invasion to be disseminated worldwide, helped record evidence of potential war crimes, and keeps Ukrainians connected to the rest of the world. In short, the internet is a powerful resource to help individuals fully enjoy their human rights, and brings countless benefits to individuals and societies.

We also know that the internet, like society, has a darker side and that it is used for illegal, abusive and hateful purposes. We all agree that more can be done to make people safer on the internet, not least in ensuring that the rule of law is properly upheld online. We also believe that greater transparency over platforms' policies, scrutiny of their use of algorithmic content moderation systems, and empowerment for users to challenge content moderation decisions, would all be beneficial to an individuals' online experience.

However, we do not believe that the Online Safety Bill (the Bill) will effectively address these challenges. On the contrary, we believe that the Bill, as drafted, will lead to censorship of legal speech by platforms, will undermine people's privacy and security putting them at greater risk of harm and will give the Government unacceptable controls over what we can and cannot say online. In this briefing, we set out our major concerns with the Bill.

## Our Key Concerns

**1. It will mean online platforms, not courts, enforcing UK law.** The Bill requires online platforms to determine whether the speech of people in the UK is legal or not and then remove it if they believe it is illegal, undermining the rule of law. Private companies should not be making decisions over the legality of people's behaviour; this is the role of transparent and accountable public authorities such as courts. Also concerning is the fact that online platforms will inevitably turn to machines, not trained people, to make these difficult assessments. At the same time, the Bill does nothing to ensure that the police and courts are properly resourced to prosecute, convict and sentence those who break the law online, depriving victims of justice.

**2. The Bill will lead to the restriction of speech considered “legal but harmful”.**

We are particularly concerned over the provisions of the Bill which will place pressure on the largest platforms to restrict content the government has designated to be “harmful”. This means that forms of speech which are permitted in the offline world could be censored online, creating two different standards of permissible speech. It leaves it to the whim of the government of the day to decide what is subjectively “harmful” in society and to then place pressure on online platforms to remove such content.

**3. The Bill will criminalise “seriously distressing” speech.** The legislation seeks to bring about substantial changes to the UK’s communications offences. Current offences as set out under the Malicious Communications Act 1988 and Communications Act 2003 have often received criticism for criminalising expression which is “grossly offensive”. However, the revisions now proposed under the Bill have received widespread criticism for the threats that they also pose to freedom of expression. In particular, the new harmful communications offence criminalises speech which risks being “seriously distressing” to a hypothetical recipient (a “likely audience”). This is an intolerably low bar for criminal sanction.

**4. It will mean constant surveillance of speech in online spaces.** To comply with their duties in the Bill, online platforms will be forced to take steps to prevent users from coming across illegal or “harmful” content in the first place. In practice, this will mean constant monitoring everything that people say and do. This form of compelled “general monitoring” is banned in many jurisdictions - including the EU’s Digital Services Act approved by the European Parliament on 5 July 2022 - but will now be effectively mandated in the UK. In fact, the Bill allows Ofcom to mandate the use of “proactive technology” to identify and remove any kind of content the platform believes could be illegal or content which is deemed to be harmful to children. These automated systems can only make binary decisions and cannot assess the context of a post. They have high rates of inaccuracy and incorporate a range of systemic biases, making them inappropriate tools for identifying the illegality or harmfulness of content, yet their decisions directly impact individuals’ freedom of expression.

**5. Private messages will no longer be private.** The duties in the Bill will apply not only to public online spaces, but private communication channels, like WhatsApp, Signal and Telegram. There is no way platforms will be able to comply with their duties without pro-actively monitoring these private channels. In the offline world, this would be equivalent to the Royal Mail opening and reading every letter, or telecoms providers listening to every phone call, without a warrant, or any suspicion of wrongdoing. Our ability to communicate privately, something which protects journalists, human rights defenders, and vulnerable and marginalised groups, should not be put at risk like this. Undermining private messaging also risks harming individual users’ security online.

**6. The excessive sanctions will incentivise platforms to over-remove legal content.** The Bill proposes a range of extremely heavy sanctions if an online platform fails to comply with its duties. These range from fines to the shutting down of websites and even the imprisonment of individual members of staff. Penalties such as these are commonplace in authoritarian regimes, not democracies. They would create a strong incentive for online platforms to “play it safe” and remove all content that they ‘reasonably consider’ to be harmful, further exacerbating risks to freedom of expression.

**7. Ofcom will no longer be an independent regulator.** The degree of government control over the UK's supposedly independent regulator, Ofcom, is unprecedented. The Bill gives significant powers to government ministers to determine what is "harmful" content, to set out Ofcom's "strategic priorities", to tell Ofcom how it should carry out its duties, and even to direct Ofcom to modify codes of practice. Together, these provisions wholly undermine any suggestion that Ofcom will be fully independent and impartial as a regulatory body for online platforms, as recognised by the Digital, Culture, Media and Sport Committee and the Joint Committee on the Draft Online Safety Bill.

**8. Users will have very limited means to challenge decisions taken by platforms.** We would like to see a stronger statutory duty on online platforms to follow due process when removing content. They should also offer an effective appeals process. This would allow users and affected persons to easily complain in relation to the removal of content (as well as other content-related matters). These are essential procedural safeguards for freedom of expression.

There are limited parts of the Bill which we do welcome, including the requirement for Ofcom to publish a statement each year setting out the steps it has taken to ensure that the rights to freedom of expression and privacy are protected. We also welcome provisions requiring online platforms to be more transparent.

**However, the threats to freedom of expression and privacy are clear. It is vital that Parliament acts to materially amend this legislation so that these fundamental rights are not seriously damaged.**

In particular, we urge MPs to support the following amendments:

- Amendment 151, laid by David Davis to remove clause 13 which targets free speech designated by the state as "harmful"

- Amendments 152 and 153, laid by David Davis to remove powers to compel intermediaries to scan private messages

- Amendments 45 and 46, laid by Julian Knight to prevent the Secretary of State from being able to modify Ofcom's codes of practice