

Dame Melanie Dawes  
Chief Executive  
Ofcom  
Riverside House  
2a Southwark Bridge Rd  
London  
SE1 9HA

By email

Friday 23rd February 2024

**Re: Ofcom illegal content consultation and violence against women and girls**

Dear Dame Melanie,

As a coalition of specialist women's and children's organisations and internet safety experts, we are writing to you to ask that Ofcom reviews its approach to the illegal content duties consultation as it relates to tackling online violence against women and girls (VAWG). As Ofcom recognises, online VAWG is incredibly prevalent, and has far-reaching effects for both women and girls and wider society. The current draft of the consultation however, does not instil confidence that the subsequent regime will adequately fulfil the potential of the law to mitigate these harms. Given this is the first consultation, and one which carries significant implications for the foundations and framing of the regime going forward, we are also keen to ensure that the current approach does not set a precedent for the way in which issues related to online VAWG are framed and implemented. We set out below our high-level concerns regarding Ofcom's approach to the illegal content duties consultation, and to ask that these issues be reconsidered. We would be pleased to meet with you to discuss these matters further.

*Background: Online VAWG*

As you will know, online VAWG was a significant priority for cross-party MPs and Peers during the passage of the Online Safety Act through Parliament, with government and various committees identifying tackling online VAWG as a major aim of the law. The desire for greater action was also supported by public opinion, with over 100,000+ signatories to our petition calling for the law to adequately protect women and girls.<sup>1</sup> We welcomed your previous interventions in this area, urging tech companies to "take women's online safety concerns seriously" and to "place people's safety at the heart of their services",<sup>2</sup> and look forward to working with the regulator in the development of the statutory guidance on VAWG, which will be an important tool to disseminate standards and best practice to prevent and mitigate VAWG.

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<sup>1</sup> End Violence Against Women Coalition and Glitch (2021) The UK's new Online Safety Law must protect women and girls from online abuse: <https://www.change.org/p/michelledonelan-the-uk-s-new-online-safety-law-must-protect-women-girls-from-online-abuse>

<sup>2</sup> Ofcom (2022) Ofcom urges tech firms to keep women safer online: <https://www.ofcom.org.uk/news-centre/2022/ofcom-urges-tech-firms-to-keep-women-safer-online>

## *Illegal content duties consultation*

The illegal content duties consultation is also a crucial part of this ambition, as it establishes the Codes of Practice that set out expectations and requirements on tech companies. This is particularly important given the fact that many of the priority offences reflect forms of VAWG, including stalking, harassment and coercive and controlling behaviour. Having reviewed the initial draft, we are concerned that, taken as a whole, it falls short of what is required to ensure that tech companies meaningfully and adequately tackle VAWG.

We organise our reflections into four key areas, which will be outlined in full formal written submissions:

### *1. Business-centric*

We are concerned that as drafted, the consultation reflects a business-centric approach. This is reflected in the disproportionate focus on the “costs” and perceived burdens for tech companies, with no equivalent consideration given to the cost and resources associated with the harms to individual women and girls and wider society - including the costs of support needs after harm. The consultation contains references to the “upfront costs” anticipated for business, the impact on “senior management’s time” and so-called “onerous measures”, which in our view, indicate that undue weight has been given to business interests. You will know that in contrast, parliamentary debates sought to highlight the widespread costs incurred to women and girls and wider society, due to the failures and inaction of such companies.

Throughout the document, we also observe statements which rely on optimistic assumptions that companies will comply satisfactorily, e.g. that they will have processes for assessing illegal content that are of a higher benchmark than Ofcom has set out in Volume 5. We suggest that this assumption is in direct contrast with the spirit of the parliamentary debates which underpinned the law, and a backdrop in which there was widespread acknowledgement that business initiatives had not gone far or fast enough, and “without the right incentives, tech companies will not do what is needed to protect their users.”

Relatedly, the approach taken by Ofcom to ask respondents to “evidence the harm, evidence the risks” also assumes that the online environment provided by platforms is currently neutral and/or inherently safe. In our view, this starting point is misguided. The onus should instead shift to businesses to provide evidence that their platforms and services have considered risk and are safe for women and girls.

Aligned with this overall approach, is the fact that the consultation document is largely inaccessible for a huge swathe of civil society. Whilst Ofcom staff have been responsive and engaged with stakeholder meetings, the reality is that the format makes it extremely difficult for third sector organisations to participate. We understand that this is an issue that has also been raised by the Domestic Abuse Commissioner. We are concerned by the risk that the current bias towards businesses will not be adequately mitigated by this consultation, given that civil society organisations have comparatively less resources to engage with it.

### *2. Gender*

We understand that the societal harms related to online VAWG will be considered in the forthcoming VAWG guidance; however it remains the case that this is not adequately addressed in this consultation. There is a consideration of wider societal harms in relation to hate speech for example, and online VAWG deserves the same level of parity.

Given that Ofcom acknowledges that women and girls are more likely to be targeted on the internet based on their gender, we would expect the consultation to request evidence from companies that associated risks for women and girls are being mitigated. This should factor in the overlapping risks for Black and minoritised, and other marginalised women and girls. The current framing also invisibilises the perpetrators of harm and the decision-making of platforms which can create conducive contexts for harm.

### *3. Minimalist approach and small sites*

We are concerned that the consultation does not adequately reflect a systems-based approach which prioritises safety by design, and has a disproportionate focus on content takedown. We suggest that an approach which looks at how the entire service and its operation can seek to disincentivise and intervene in harmful behaviours would better align with what government intended for the law.

Whilst Volume 2 does go some way to understanding the direct harms experienced by women and girls (though not the indirect harms), this does not follow through to Volume 4 and the subsequent expectations placed on companies. *All* of the focus is on takedowns - with additional ambiguity around whether these need to be “swift”.

This approach appears to replicate a wider societal dynamic in which VAWG is primarily addressed through interventions for women and girls after harm has occurred - and which rely heavily on victim motivation and action to bring about resolutions - rather than prevention.

In our experience, smaller sites can be where some of the most significant harm is situated for women and girls, and the most extreme content. However, smaller companies are, in many instances, exempt from implementing particular mitigating measures due to Ofcom’s proportionality analysis. Even when limited to content moderation (i.e. not addressing systemic and functionality mitigation measures), small/single-risk services are “let off the hook” based on their size and the proportionality assessment.

### *4. Illegality*

We question Ofcom’s approach to the definition of illegal content. Whilst we understand that Ofcom must work within the scope of the Act, there are areas in which it is ambiguous. We suggest that Ofcom is interpreting the provisions overly narrowly, by limiting it to individual pieces of content, rather than a systems-based approach that considers elements such as algorithm weighting, nudges, content revenue sharing practices - which don’t apply only to a narrow lens on a piece of content and the intention behind it.

We also believe that there is too much weight given to reporting as an indicator of harm online. We know that the majority of survivors do not report, and this should not be the primary basis for the measure of safety for a given platform.

We have set out our position on these issues in further detail in a joint formal response to Ofcom's consultation. However, we would welcome your consideration of these related issues in the round.

We would be keen to meet with you to discuss this further, and we look forward to working with you to make progress on this issue and to ensure that women and girls are able to participate online free from violence and abuse.

Please contact [redacted] to make arrangements to meet.

Yours Sincerely,

1. Andrea Simon, Director, **End Violence Against Women Coalition**
2. Ellen Miller, Interim CEO, **Refuge**
3. Professor Clare McGlynn, **Durham University**
4. Maeve Walsh, Director, **Online Safety Act Network**
5. Sir Peter Wanless, Chief Executive, **NSPCC**
6. Carey Philpott, CEO, **SATEDA**
7. Ghadah Alnasseri and Mary Clarke, Co-Executive Directors, **Imkaan**
8. Indy Cross, CEO, **Agenda Alliance**
9. Souad Talsi, Founder and Interim CEO, **Al Hasaniya Moroccan Women's Centre**
10. David Wright, CEO, **SWGfL**
11. Lynn Perry MBE, CEO, **Barnardo's**
12. Sharon Erdman, CEO, **RASASC Rape Crisis South London**
13. Ros McNeil, Assistant General Secretary, **National Education Union**
14. Amy Roch, Interim CEO, **Galop**
15. Emma Lingley-Clark, Interim CEO, **Suzy Lamplugh Trust**
16. Simone Vibert, Head of Policy and Research, **Internet Matters**
17. Maureen Connolly, CEO, **Birmingham and Solihull Women's Aid**
18. Deirdre Kehoe, CEO, **LMK Let Me Know**
19. Professor Liz Kelly, Director, Child and Woman Abuse Studies Unit, **London Metropolitan University**
20. Dr Fiona Vera-Gray, Deputy Director, Child and Woman Abuse Studies Unit, **London Metropolitan University**
21. Susie McDonald, CEO, **Tender Education & Arts**
22. Professor Aisha K. Gill, Professor of Criminology, Head of Centre for Gender and Violence Research, **University of Bristol**
23. Medina Johnson, Chief Executive, **IRISi**
24. Liz Mack, CEO, **Advance**
25. Frank Mullane, CEO AAFDA (**Advocacy After Fatal Domestic Abuse**)
26. Gisela Valle, Director, **Latin American Women's Rights Service**
27. Ciara Bergman, CEO, **Rape Crisis England & Wales**
28. Anthea Sully, CEO, **White Ribbon UK**
29. Cheryl Henry Leach, CEO, **Standing Together Against Domestic Abuse (STADA)**

30. Hera Hussain, CEO, **Chayn**
31. Leanda Barrington-Leach, Executive Director, **5Rights Foundation**
32. Sophie de Groot, COO, **Young Abuse Support**
33. Jemima Olchawski, Chief Executive, **The Fawcett Society**
34. Rebekah Legg, CEO, **Restored**
35. Mia Hasenson-Gross, Executive Director, **René Cassin**
36. Elena Michael, Director, **#NotYourPorn**
37. Sara Kirkpatrick, CEO, **Welsh Women's Aid**
38. Gurpreet Virdee, CEO of Development, **Women and Girls Network**
39. Claire Bloor, CEO, **SARSAS (Somerset and Avon Rape and Sexual Abuse Support)**
40. Laura Tomson and Rachel Adamson, Co-Directors, **Zero Tolerance**
41. Aoife Delaney, Senior Women's Coordinator, **Traveller Movement**
42. Seyi Akiwowo, Founder and CEO, **Glitch**
43. Dr Lucie Moore, **CEASE (Centre to End All Sexual Exploitation)**
44. Farah Nazeer, CEO, **Women's Aid of Federation of England**