

Your response

Volume 4: What should services do to mitigate the risk of online harms

Our approach to the Illegal content Codes of Practice

Question 12:

Do you have any comments on our overarching approach to developing our illegal content Codes of Practice?

Response:

Context of my response

I am a survivor of online grooming and I am concerned about whether Ofcom accounted for the needs and circumstances of survivors in developing these illegal content Codes of Practice and the design consultation process. Many of the demographics disproportionately at risk of each online harm outlined in Volume 2 overlap. I have also experienced harmful suicide content on the internet, but I do not have capacity to respond to proposals on suicide content due to the barriers I have faced in responding to this consultation.

This consultation process is the way for consumer perspective to be represented in how illegal content codes of practice are developed, I have not seen evidence of other ways consumer perspective can be represented outside of this process. I am concerned about the implications for how Ofcom's development of codes of practice is judged against the reality of harm.

The perspectives of victims of online harm are most impactful when combined with the perspectives of other victims to understand what systemic issues we face. However, I am submitting an individual response as I found no organisations with capacity to work with victims on their response, and found no victims who found the consultation accessible. I hope my consultation response gives a sense of where victims can help Ofcom, what barriers we face to helping Ofcom at the moment, and the immense risk this gap poses to delivering online safety outcomes.

Concerns surrounding the accessibility for disabled people of the consultation process

Context

I have a cognitive disability and have concluded that the consultation process is inaccessible. I rely on clear well-structured and concise information to process it, as do many disabled people. As well as people with cognitive disabilities, this can be key for disabled people who use assistive technology to navigate documents.

Evidence of concerns

Best practice for designing for users with cognitive and learning disabilities includes using consistent ways of presenting information, creating task orientated content and having easy ways to navigate through content [Making Content Usable for People with Cognitive and Learning Disabilities \(w3.org\)](#)

In order to respond to this consultation, I started with the summary but found it lacked the relevant detail to answer the questions. I then had to navigate hundreds of pages flipping between overviews, volumes and annexes to answer questions, as well as interpreting information in summaries, paragraphs and tables. In navigating 19 documents structured in many different ways, I struggled to comprehend how the risk identified thus related to the measures proposed. I believe this has affected the quality of my response and has added significant burden to how much time I have had to spend working on this response.

There were no options advertised as part of the call for submissions to request a different format for the consultation materials or for the consultation response. I had the email of a member of staff at Ofcom from a networking event, and I did raise concerns about the accessibility of the consultation in December. I was offered a call to discuss any questions I had a week prior to the submission deadline. No mechanisms for securing an alternative format for information on the proposal were offered here either, despite the discussion centring on the inaccessibility of the documents provided. I was offered extra time to respond but based on my concerns about how the quality of my response is impacted by the consultation design and the dozens of hours I have invested already in this process I did not take up this offer.

As Ofcom state in their approach to Impact assessments [Impact-assessment-guidance.pdf \(ofcom.org.uk\)](#) "We also have statutory obligations which require us to consider the impact on specific groups of persons when formulating policy proposals. These are: a) our public sector equality duties under section 149 of the Equality Act 2010 (the "Equality Act") and section 75 of the Northern Ireland Act 1998 (the "NI Act") including potential impacts on the groups of persons identified in those sections as having protected characteristics"

Impact of concerns

The very construction of this consultation is inaccessible, and no alternative ways of requesting to engage in the consultation process or alternative formats were offered, this amounts to indirect discrimination, as described in the Equality Act 2010, through breaching the below section of the Public Sector Equalities Duty:

"Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4)The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.”

My needs as a disabled person were not accounted for in this process, as I had to navigate through information structured in inconsistent ways spread across a plethora of documents with no clear navigational structure. The design of this process resulted in me struggling to process and comprehend information needed to respond to the consultation. The only reason I was able to respond at all was thanks to the work the Online Safety Act Network did to start to highlight the relationships between documents and articulate how each could help someone carry out a response. Relying on a third sector network to partially meet access needs is not in line with the duties Ofcom faces to proactively consider my needs and take responsibility for meeting them

Accessibility issues that exclude disabled people from the consultation will disproportionately affect victims and survivors of online harm from providing a response, because disabled people are overrepresented in victims and survivors of online harm. At numerous points in Volume 2 you identify how disabled people are at disproportionate risk of online harm, including online grooming: “It is estimated that children with disabilities are nearly three times as likely to be sexually abused than children without disabilities.³³¹ In particular, research has found that children with disabilities or who are neurodivergent are more vulnerable to pressures from others to produce SGII.” I am concerned about how much consultation responses will reflect the perspectives of disabled consumers as a result

Recommendation

Ofcom publish the impact assessment for the illegal harms codes of practice consultation process.

Ofcom designs consultation methods and carries out impact assessments with consumers affected by online harm

Ofcom prioritises demonstrating it meets the Equality Act duties before publishing codes of practice

Concerns Ofcom’s interpretation of its illegal harms duties

Context

The framing of Ofcom’s duties around illegal harm are not in line with how risk of illegal harm manifests on online platforms, or how the online safety act has been constructed. In Ofcom’s “Overview” document, Ofcom says “A new legal requirement of the Act is for all services to swiftly take down specific illegal content when they become aware of it,”.

Evidence

Ofcom have framed their responsibility to enforce platforms act at the point illegal harm has taken place. This is at odds not only with the reality of abuse but how the online safety act duties were constructed, as described by Lord Parkinson at committee stage: “This requires platforms to design their services to achieve the outcome of preventing users encountering such content. That could include upstream design measures, as well as content identification measures, once content appears on a service.”

Impact of concerns

The stages of a grooming process vary and not all of it involves illegal activity, as identified in Volume 2 “Existing literature has highlighted key offender patterns that occur in most grooming cases. These generally include phases of friendship forming, trust development, risk assessment, exclusivity, conversation related to sex, and a conclusion, namely the online and/or offline sexual abuse of a child.¹⁹² These stages are not fixed, and often occur interchangeably and/or extremely rapidly.”

Indeed, there was a period of time between my abuser first making contact with me and asking for self-generated images of myself, in that time he built my trust by building an emotional connection with me and understanding my circumstances. In that time the interactions we were having were in no way illegal, but manifested in the conditions for illegal harm to take place. The risks posed here are not mitigated in Ofcom’s approach.

This means there is a gap between Ofcom’s approach to seeing their responsibility of illegal harm either being present or not present, and the reality of the range of user behaviour that is legal that can take place before illegal harm materialises. Ofcom thus need to take a systemic safety by design approach, that incentivises platforms achieving outcomes before harm has taken place. This will enable Ofcom to achieve their duty to ensure platforms prevent illegal harm taking place.

Recommendation

Ofcom realign with the duties set out in the Online Safety Act through safety by design approaches to the illegal codes of practice, where codes centre outcomes to prevent illegal harm from taking place

Concerns about output based approach

Context

Ofcom’s proposals for the codes focus on suggesting output based approaches for some forms of functionality.

Evidence

This will not address the way risk of online grooming manifests itself across a range of different platforms, as identified in Volume 2 “The different types of risk linked to grooming are therefore likely to vary depending on the functionalities of a service, making it important that services are aware at what stages in the grooming process their service may be exploited, so that they can deploy proportionate mitigations.”.

Impact

The output based mitigation approach proposed means there are different approaches to risk mitigation based on the functionality, and functionality is seen in isolation. In some areas such as within direct messaging, it is up to a young person to assess risk of grooming and choose what action they take, not the platform. Ofcom’s proposals are output based and therefore do not incentivise a service understanding the risk functionality poses as part of their specific product offering, instead a general approach is taken, preventing the incentive for platforms to deploy proportionate mitigations.

Recommendation

Ofcom move to setting out what outcomes a platform needs to achieve through its codes of practice and shift away from isolated actions a platform can take at the point of harm

Concerns about emphasis on organisations understanding but not acting on harm

Context

The recommender system testing proposal will not address the CSAM user networking risk you have identified. This approach aims to develop understanding of the risk, something that researchers and journalists have already done, and thus this is not enough of an incentive to get organisations to address these risks as they are already well understood.

Evidence

The proposal focuses on understanding the existing performance of recommender systems. However as described in Volume 2 the risks have already materialised and understood “User groups are places where like-minded individuals can share content and engage with one another.³³⁷ Perpetrators take advantage of these spaces and connect in online communities to exchange CSAM, as well as to give advice regarding abusive behaviours and practices. The NSPCC notes that CSAM can be shared through online communities, and this behaviour can become “normalised or even encouraged” as like-minded people who share a sexual interest in children connect online.³³⁸ 6C.159 In some user groups, perpetrators share CSAM with one another and thereby commit a CSAM offence, as well as facilitate CSAM offences through the exchanging of ideas, advice and tradecraft tips. Sharing CSAM is sometimes a condition of entry into some closed user groups.” . Indeed existing platforms recommend users who are adults and distribute CSAM, so we already have some idea about existing performance of large platforms such as Instagram, this was covered by researchers and journalists in this article [Instagram Connects Vast Pedophile Network - WSJ](#)

Impact

This approach needs to focus on designs of recommenders and accounting for risks there as well as in testing. I know that the man who abused me networked with other abusers, I believe this posed a risk to me as a child, this needs to be mitigated proactively as it does play in active role in risk faced by end users.

Recommendation

Ofcom should focus on outcomes based on preventing illegal harm from materialising.

Concerns about the accessibility of Ofcom’s consultation process for low socio-economic victims of online harm

Context

In responding to this consultation I found no organisations offering opportunities to work with victims on a response. Civil society organisations representing consumers have been at capacity in responding to this, and have not had capacity to work with those affected by harms on a response. This has led me to create an individual response and as discussed earlier, the inaccessibility of this consultation has impacted the amount of time it has taken me to respond.

I am middle class, university educated and have stable employment that has allowed me to dedicate numerous evenings and weekends to understand the proposals. However, Ofcom’s current approach to developing the codes of practice disproportionately excludes victims and survivors of online harm on the basis of socio economic background. This is particularly worrying for disabled consumers who, as I have detailed above, may face disproportionate burden of time in responding to this consultation as it stands

Evidence

In volume 2 it's evident that other survivors of online child sexual abuse are disproportionately unlikely to have these financial circumstances that enabled me to respond "The gender and socio-economic background of users has been found to increase the risk of SGII occurring. Evidence has found that girls in general, as well as girls from less privileged backgrounds, are at greater risk of experiencing the non-consensual sharing of SGII"

Impact

This means Ofcom's approach to developing the codes of practice is against the Regulators code "Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards."

<https://assets.publishing.service.gov.uk/media/5f4e14e2e90e071c745ff2df/14-705-regulators-code.pdf>

Recommendation

In line with the government's consultation principles I believe in order to start to address accessibility issues and prevent those affected by proposals being excluded from responding, Ofcom should implement the following : "Consideration should be given to more informal forms of consultation that may be appropriate – for example, email or web based forums, public meetings, working groups, focus groups, and surveys – rather than always reverting to a written consultation. Policy-makers should avoid disproportionate cost to the Government or the stakeholders concerned." <https://www.gov.uk/government/publications/consultation-principles-guidance>

As described in National Audit Office best practice for regulators, focus on how to embed consumer perspective should be responsibility of each team at Ofcom "Where regulators have a specific duty towards people, such as to protect consumers or workers, how to embed this focus across all teams and in all aspects of their work." <https://www.nao.org.uk/wp-content/uploads/2021/05/Principles-of-effective-regulation-SOff-interactive-accessible.pdf>

Concerns over Ofcom's approach to child sexual abuse material

Context

As outlined in Annex 7 Ofcom's approach to ensuring platforms identify child sexual abuse material focuses primarily on hash matching, referencing existing data bases to identify abuse. But this only detects content that has already been identified as child sexual abuse rather than emerging child sexual abuse material.

Evidence

As discussed in Volume 2 "The prevalence of self-generated indecent imagery (SGII) is also indicative of the scale of grooming, as some SGII is coerced from children via grooming. The IWF identified that CSAM created by children accounted for almost four in every five (78%) reports it dealt with in 2022". When the imagery is first produced and sent on these platforms it will not be part of the data bases that are used to detect abuse.

Impact

I sent self generated images myself to my abuser over end to end encrypted channels, and I never reported them. Depending on how these were shared with other abusers these may or may not have ended up on hash lists. Due to the lack of measures aimed at addressing the risk profile of end to end encryption in the proposed codes, there is no way self generated images shared only within end to end encrypted channels would end up on a hash list that prevented the further spread of these images. Again this transfers risk ownership to the victim to manually report images.

Therefore the proposals fail to address that platforms contribute to the generation of child sexual abuse, and the proposals to prevent the sharing of child sexual abuse fail to account for how a platform's functionality enables creation and prevents detection of abuse

Recommendation

Ofcom should work with experts and survivors of self generated child sexual abuse to analyse how proposals fail to account for this form of harm and what outcomes are needed to address this harm

Concerns over Ofcom's approach to considering the human rights of users

Context

Ofcom's approach to human rights primarily discusses the human rights of those producing content, not other users impacted by the production and sharing of that content.

Evidence

When considering measures surround child sexual abuse material Volume 4 states:

"Potential interference with users' freedom of expression arises insofar as content is taken down on the basis of a false positive match for CSAM or of a match for content that is not CSAM and has been wrongly included in the hash database. In addition, there could be a risk of a more general 'chilling effect' if users were to avoid use of services which have implemented hash matching in accordance with our option."

Impact

Here and in other areas of proposals, the rights of my abuser and not the rights of me as a victim as considered. For example, my right to a private life under Article 8 of the European Convention on Human Rights is currently at risk of being violated by the ability for my perpetrator to share the child sexual abuse material they have of me. By failing to consider the human rights of victims, Ofcom risks failing to comply with section 6 of the Human Rights Act, in that "[i]t is unlawful for a public authority to act in a way which is incompatible with a Convention rights".

Recommendations

Ofcom should refrain in future from framing consultation questions around the human rights of one set of users whilst failing to frame consultation questions around the human rights of other sets of users.

Ofcom should analyse where victims of online harm's human rights are being violated and should design this in to revised proposals

Concerns surrounding default user settings and user support for child users

Context

The proposals surrounding default user settings and user support for child users are extremely lacking and are not framed as outcomes to prevent risk of online sexual exploitation. Once a young person is discovered by a user, they will be able to establish how likely a young person is to accept their request to contact them. From there all risk mitigation, in particular on end to end encrypted platforms, relies on a young person identifying risk and taking action. This shows why it is important that Ofcom follows the outcome based approach set out in primary legislation, Ofcom here sets out an output based approach, which only transfers risk mitigation to the platform at the point of recommender systems, not across a user journey. Proposals such as your default settings and user support rely on an output implemented at one stage of a user journey, despite the fact that risk takes place and can be cumulative across a person's experience of online sexual exploitation. After discovering a young person and a young person accepting their contact, all measures that will prevent and stop risk rely on a child identifying risk.

Evidence

Volume 2 details other functionality outside of recommender systems that aid the discovery of children:

"User groups can be used to target children, particularly groups for adolescents that discuss sexual themes" Yet risks related to user groups forms no part of these proposals as you've centred this on outputs relating to recommender systems rather than outcomes across the range of ways a perpetrator can identify and contact a young person

Ofcom identifies in volume 2 the numerous risks direct messaging plays in the user experience of someone being groomed, yet once contact is made through direct messaging, your proposals centre on shifting risk mitigation to children, when we know that there are significant barriers to them using the functionality proposed.

Impact

Abusers will be able to continue to discover victims in ways outside the one piece of functionality you have isolated here.

I do not know quite how my abuser discovered my user profile, recommender systems may or may not have played a role but a range of other design features played a role in how he found and selected me that is in no way covered by your proposals. Firstly, as you acknowledge in Volume 2 "User profiles, and the information that is presented on them, can be used by perpetrators to identify and target victims and survivors, thereby starting the grooming process.", my abuser was able to identify I was a teenager, and probably based on my user profile was able to identify I was quite isolated. That led him to assess I was likely to accept a friend request and he sent one. Indeed Ofcom acknowledge the level of risk that takes place after an abuser has sought out a potential victim, in volume 2 Ofcom state "Typically, grooming for sexual abuse will first involve identifying a child. Then, a perpetrator will seek to make contact and communicate with the child. Although an offence may not take place in the identification of the child, it is nevertheless a crucial step towards the commission of grooming offences."

Secondly, my abuser requested contact with me and I accepted it, compounding the risk I faced as a result of user profiles. In Annex 7 Ofcom writes "If the service has user connections, child users cannot receive direct messages from a non-connected user; b) If the service does not have user connections, child users are provided with a means of actively confirming whether to receive a

direct message from a user before it is visible to them, unless direct messaging is a necessary and time critical element of another functionality, in which case child users should be presented with a means of actively confirming before any interaction associated with that functionality begins.” At this point Ofcom has transferred risk mitigation on to a young person to assess whether they want to take the risk of connecting with someone. I wasn’t in a position to assess whether this person wanted to harm me so I connected with them. The nature of grooming can mean it is hard for a young person to identify that someone does want to groom them, as you write in Volume 2: “Perpetrators seeking to groom children deploy multiple conversational styles and tools that help them to sexually abuse children online. This can include flattery, trust-building, threats, sexualisation and bribery”. Indeed, contact with my abuser began in a way that was very mundane and would not be classed in any way as illegal. To transfer mitigation of risk on to user empowerment outputs at this moment in time is an approach that will fail to mitigate risk overall

Thirdly, once contact has been established, the nature of grooming can often disincentivise users to use blocking or reporting mechanisms. Yet Ofcom’s proposals centre implementing and promoting the following as listed in Annex 7 : “the options available to take action against a user, such as blocking, muting, reporting or equivalent action.” Indeed it took me years to block my abuser, and I never reported him, so I am alarmed that the output based approach to code of practices centres on functionality that is already available to many victims, but that the nature of grooming makes inaccessible. Ofcom recognise this in Volume 2: “The research highlights that grooming is significantly under-reported by victims for many reasons including shame, fear, and the lack of recognition of the crime by some children who experience it”. I was in a cycle of feeling ashamed that I was talking to my abuser, but also he was the person who gave me emotional support when I felt this way and I didn’t feel I could talk to anyone else about it. This means Ofcom’s proposals again fail to match up with the dynamics of the risk presented to children here

Recommendation

Ofcom reframe codes of practice around risks presented to users and the outcomes needed to mitigate those risks.

Is this response confidential? (if yes, please specify which part(s) are confidential)

Response: No