



Marie Collins Foundation Children's Safety Code of Practice Consultation Response

We believe the draft proposals are not strong enough in the following areas:

- **Safety by design:** The Code is too focused on content and contains very limited provisions that relate to features and functionalities. At the very least The Code should embed the overarching duty in section 1 of the Act that regulated companies must be safe by design and provide a higher standard of protection for children than adults throughout. We fully support the Online Safety Act Network's proposed amendment to strengthen product testing, mitigating measures and monitoring and measurement. Considering features and functionalities is a child safety duty "across all areas of a service" including "the design of functionalities, algorithms and other features" (section 12(8) and 12(8)(b) Online Safety Act 2023). We must not minimise issues of harmful conduct, contact, and contract risks (design of services which extend use and time spent on services and engagement of child users), including those that Ofcom research has identified. Regulated services should be required to consider children in different age groups by implementing age-appropriate design. Services should also be expected to take into consideration in the design process, the vulnerabilities of certain groups of children. At MCF we see a high proportion of victims and survivors who are neuro diverse. This makes certain functionalities, for example the hook that draws children in to engage for long periods of time, seek affirmation, be influenced, particularly harmful. Safety by design needs to understand and mitigate against this. Services should be required to consult with expert groups during their design process to fully understand what safety by design means for particular users.
- **Minimum age in terms of service:** The Code should explicitly require services to uphold the minimum age for their platform. This needs to include access to content, features and functionalities. They should explicitly identify what age assurance methods they are using to ensure young children cannot access sites

not meant for them and enforce this. We are concerned about the proliferation of pornographic content across social media platforms used by children, and not only on dedicated adult platforms, and the harms caused to children by being exposed to this.

- **Children age-appropriate experiences:** The Code does not require services to use age assurance methods to estimate the age or age groups of children under the age of 18, ignoring a key duty (section 12(2)) of the Act which sets out a requirement to take measures to "mitigate and manage the risks of harm to children in different age groups" (i.e. to consider the age and development stage of children and to treat different age groups differently). Age assurance requirements should cover age-appropriate services as well as 18+ services.
- **Identification of risk:** The measures in the Code do not align with the risk-based regulatory approach set out in the Act which requires services to satisfy the regulator that they have met their children's safety duties. Every risk to children identified in Ofcom's evidence base (Volume Three) must be addressed with a corresponding measure or required outcome. An outcomes-based approach should be adopted, and a risk cannot remain active until a measure is identified to mitigate that risk. This is harmful and puts children at further ongoing risk. At a bare minimum regulated services should prevent access to risky or age-inappropriate features, functionalities or content where a risk has been identified and there are no corresponding measures by switching them off by design and default. Children with heightened vulnerabilities must be considered with services that may have identified a specific risk to these children are required to address it. As a bare minimum, services should be required to repeat their risk assessments when new evidence comes to light that suggests their mitigations are no longer effective.
- **Proportionality and size of services.** We are concerned that the child specific size bands mean that only services that have more than seven million monthly child users must comply with many of the measures in the Children's Code unless they also meet the multi-risk requirement. This does not address the concerns and evidence of the extreme harm and risk of smaller, high-harm services set out by us in response to the Illegal Harms Code of Practice consultation.
- **Compliance.** Services that choose to implement the measures recommended should not be treated as complying with the relevant children's safety duties if

they are found to be in breach of them. Regulated services cannot be allowed a loophole to leave known risks unaddressed. We need to keep pressure on tech companies to create safe services by holding them to a high standard.

- **Safety Measures.** By specifying that the safety measures to be used are only those that have already been tried and tested by industry, we are allowing industry to avoid implementing those that have been identified as effective by other innovative tech experts (Cyacomb for example with E2EE) but regulated companies are not willing to try. This leaves a significant gap between risk and mitigation and will lead to the failure to future proof this regulation.

We welcome the Online Safety Act as a vehicle to ensure that tech companies are under a duty and obligation to ensure that we all, and children in particular, are able to have safe and fulfilling lives in online spaces. We wish to continue to work with OFCOM, industry partners and others to ensure this is not a tick box exercise, but rather one that truly improves lives for all going forward. The right to be safe is a basic human right and one that Tech companies must uphold and be held to account for if they fail to do so.