Marie Collins Foundation

Ofcom Technology Notices Consultation Response

07.03.25

For information purposes, the Marie Collins Foundation is a UK charity uniquely focused on addressing and responding to the significant problem of Technology-Assisted Child Sexual Abuse (TACSA). Our field of engagement includes direct and indirect support and advocacy work with victims and survivors of TACSA; research endeavours on this topic with academic partners and the overall promotion of the lived experience of victims and survivors of TACSA, to inform and influence improved prevention and response to TACSA, both domestically and internationally. We also create and deliver specialist training to professionals across the globe to equip them for better intervention and support for those who have experienced TACSA and to promote a victim focused, recovery approach.

Although we note the five consultation questions, we have chosen to concentrate our submission to highlighting our areas of appreciation and concern around the consultation topic area, rather than responding to each individual question. In particular, we do not possess the requisite technical expertise around the accuracy settings and accreditation of technologies to comment fulsomely on this area. We will outline anything we feel is helpful or strong within those provisions, to the best of our knowledge and understanding. We feel more comfortable offering our input on Annex 5 Draft Guidance on the procedural aspect of utilising technology notices. Our submission is strictly concentrated to CSEA content. Terrorist content is outside our purview, and we will not make comment on the how the consultation affects this area.

Areas of appreciation

- The proposed two-stage test for determining minimum standards of accuracy for CSEA content technologies is sensible. To be able to go beyond the first stage audit-based assessment is important and we are glad to see this included within these proposals. This offers an additional opportunity for minimum accuracy standards to be determined and set. The four principles underpinning the audit-based assessment are sensible and fitting for the task.

- It is our sense that the technology notices may be powerful and instrumental in tackling CSEA in key and specific ways. This is welcome, provided Ofcom is willing to routinely use them, provided they meet the necessary and proportionality requirements, in the first instance. More detail on what Ofcom would consider necessary and proportionate would be helpful, however.

- We are encouraged by the details on page 11 of the technology notices consultation document, specifically:

  d) could require the use of accredited technology on content communicated privately for the purposes of identifying CSEA content; and

  e) could require that a service use best endeavours to develop or source technology for the purposes of detecting CSEA content communicated publicly or privately

  It is important that this has been stated so clearly within the document, and we approve of this power via the technology notices process.

- We agree with Ofcom that minimum accuracy should refer to accuracy in the widest sense (3.7, page 21) and the process for this is therefore an attempt to cover accuracy from all angles.

- The figures throughout the documents to illustrate the processes are very helpful to allow conceptualisation of the technology notice process. These are welcome and clear.

- We are grateful to see a scoring system being outlined for accuracy standards. While we cannot comment specifically on whether these are suitable and proportionate scores, we are glad to see them included. In other consultations

there has been a lack of benchmarking for certain actions, so we appreciate seeing this laid out so clearly here. Other stakeholders will have to offer their input on whether the scoring mechanism is appropriate and fit for purpose.

- It is very important that Ofcom have required any self-scoring on accuracy measures by providers to be subject to independent evaluation, by Ofcom or another third party. We support this. It serves to maintain accountability and transparency by providers.

- Furthermore, we are heartened that accreditation of technology for minimum standards of accuracy will be determined by Ofcom or an Ofcom-appointed third party (p9, Annex 5). It is crucial that this has not been left to providers to set or influence.

- We agree with Ofcom's rationale for and proposal to use benchmarked performance thresholds (p38).

- We also agree that performance testing needs to be separated by content type. CSEA and terrorist content are very different areas and require a distinct testing approach. We also agree with the priority testing areas laid out on page 39 of the technology notices consultation document.

- The complexity of performance testing and thresholds is clear, especially given this needs to be an ongoing process. In general, we agree with the rationale laid out for this on pages 45-46, including the frequency for re-testing.

- We welcome the duty to cooperate that providers must adhere to when a skilled person report is commissioned by Ofcom (A5.14, page 23 , Annex 5).

- We understand the rationale offered for the timescales for compliance with a Technology Notice.

- We appreciate that Ofcom will make the issuances of Warning Notices and Technology Notices public, on their website, even if the full content of such notices is not made plain.

Areas of concern

- While we recognise the process to determine minimum accuracy requirements is complex, we wonder whether it is unduly arduous and if it could be truncated in some way?

- We have highlighted this in other responses but given that it is mentioned specifically on page 9 of the primary technology notices consultation document, we remain averse to the inability to enforce use of proactive technologies to analyse user generated content communicated via End-to-End Encrytped (E2EE) mechanisms. Elsewhere, we recommended the use of pre-screening content, as a proactive technological measure and we reiterate this position again. We understand that Ofcom are constrained in this regard by aspects of the primary legislation, but we feel this is such an important area for addressing content that we want to put our recommendation on record again.

- Similarly, we did not appreciate the multiple references to 'technical feasibility' in the documents. While we note that some of this is derived from the OSA itself, we wish to challenge the narrative around this and strongly encourage Ofcom to consider options for improving the overall safety regime going forward, without undue reliance on technical feasibility by providers. We are aware that some solutions do exist to locate CSEA content within E2EE technologies. We expect that Ofcom will also be aware of such technology. Although this generally triggers an industry and public response about privacy concerns, we wish to see Ofcom demonstrate more tenacity around the whole area of technical feasibility. This is especially important when providers are allowed to challenge or avoid take down duties, relying on technical feasibility issues, rather than Ofcom determining as the regulator what is technically feasible or not. (Ultimately, this may require changes to the primary legislation, but again, we feel it is important to put this on record here).

- Although we understand Ofcom want to achieve good engagement with providers, we are not convinced by the need to issues a Warning Notice, prior to a Technology Notice. While we are aware that some of this aspect of the guidance is derived

from the Act itself and therefore Ofcom are somewhat constrained by the legislative framework, we remain of the view that Warning Notices offer providers advance notice and might be problematic, leading to concealment/diversion issues, especially by way of the representations process. We suggest that when a Technology Notice is implemented, dialogue with the provider can be incorporated as part of that primary process. A Warning Notice allows too much latitude to providers to effectively appeal or rebuff a potential upcoming action (the Technology Notice itself). It would be preferable for Ofcom to allow for engagement with the provider once the Technology Notice has been issued, rather than prior to this.

- While we note Ofcom have a range of options open to them for dealing with CSEA content (paragraph e, p14, Annex 5), we strongly encourage Ofcom to be tenacious in the application of their duties and potential interventions, as outlined on page 9, Annex 5. Oversensitivity to potentially "intrusive measures" may curtail the effectiveness of interventions, including the issuing of Technology Notices.

- We consider some of the other matters that Ofcom may take into account when deciding to utilise the Technology Notice process is overly provider-centric, for example paragraph b, page 15 Annex 5 – size and capacity of the provider. As we have stated in other submissions to Ofcom consultations, we believe that providers must absorb and comply with measures as a prerequisite for the right to do business with a UK user base. Regulatory actions should not be diluted due to the size and capacity of the business. We are concerned that to do so demonstrates undue favour towards industry, rather than the protection of users, including children.

- We are concerned by A4.4, page 18, Annex 5:
"We would not therefore be likely to consider exercising our Technology Notice functions based on a complaint of a single piece of relevant content being present on a service."
Any CSEA content represents actual abuse of a child/children. Where a complaint is made that content is present on a service, Ofcom should take immediate action to hold the provider to account and enforce their compliance with the OSA and

entire regulatory regime. Ofcom's powers are vital in protecting children from harm and ensuring that there is a zero-tolerance approach to CSEA material, whether a single instance or more. Furthermore, we contend that the presence of **any** CSAM on a service is evidence that the providers' systems and processes are not robust enough. We therefore strongly encourage Ofcom to reconsider this position in relation to this.

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