



## Response to the Online Harms White Paper consultation

**The Molly Rose Foundation welcomes the recognition that availability of harmful content through digital media has the most serious consequences for young and vulnerable people.** Currently, social networks are not required to follow consistent requirements to keep these users safe. Harms do not need to be illegal to have a particularly acute impact on young and vulnerable people, consequently the environment where they are exposed to the greatest risk must not continue to operate with the least regulation. The White Paper is a starting point that understandably contains some aspects where thinking needs to be verified and developed. The Molly Rose Foundation is pleased to be able to contribute to this process.

### 1. The opportunity

**It is critical to society that the government shape access to content for positive interaction with the internet.** Establishing a duty of care for service providers towards those using social media is an opportunity for the UK to lead the world, benefit society and improve long term economic sustainability. The impact of the Health and Safety at Work Act (1974) and the application through its regulator's approach over three decades, provides an inspirational example of how the UK can dramatically improve safety in an environment of complex cause-and-effects by establishing a risk-based approach that is widely emulated in other countries. The social and financial benefits to business and the nation are well documented. The Financial Conduct Authority also provides a helpful example of how to achieve this. Following a principles-based approach, it requires companies to demonstrate compliance through corporate and named persons' responsibility embedded in decision-making processes.

**It is vital that these proposals are not watered down** in response to any effort to weaken the proposals pursued by influential and economically strong industry leaders, that have consistently failed to self-regulate while recording record profits. The White Paper has a broad scope and the present turbulent political landscape must not divert from maintaining a focus on addressing the critical issues raised.

## 2. Principles

**Social media leverages social capital to provide content and thus without vigilant moderation will act as an amplifier for all the social harms available.**

The internet brings multiple benefits to many people and an environment for it to flourish is in the public interest. The untimely death of Molly Russell and the many well publicised examples of harm to other children, demonstrates the current deregulated environment for these “de-facto” public spaces, is unsafe. The technology companies that have profited by providing access to social media content have not acted cohesively, responsibly and ethically to keep children and vulnerable adults safe.

**The Molly Rose Foundation is encouraged that the White Paper sets out to establish a framework for clear and universal standards** and a regulator to help all comply with them. This will help the industry by providing greater clarity of what is acceptable in a sector where many organisations are relatively newly established, that the pace of change is rapid.

Any industry that does not put its consumers’ safety first is unlikely to continue to thrive and prosper. Therefore, in the long-term establishing and enforcing a duty of care will benefit the commercial service providers. Even if change may be perceived by some as inconvenient and a threat to the return on investment generated by their current business models.

**Proportionate measures are essential to protect all and especially the vulnerable from harmful content.** Companies should not profit from distributing harmful content. If this increases cost to ensure safety – this should be seen in the context of a huge growth in profitability of platform providers. The vision provided by the White Paper for a free and open but secure internet, a regulatory framework and the companies included in the scope provides a good starting point, that can be refined by ongoing experience.

**The enforcement measures need to be proportionate to the harm** that can be caused by the content. For example, hosting, promoting or prompting designed addiction to content that causes psychological harm such as self-harm, eating disorders, sexual abuse or suicide must lead to substantial financial penalty for companies and personal liability for the executives responsible.

**The Molly Rose Foundation strongly advocate that the consequences must stringently discourage planned non-compliance** to boost profit or avoid inconvenient actions. There should be no “Ford Pintos” (Ref: Grimshaw v. Ford Motor Company, 1981), when the corporate cost/benefit analysis prompts a decision that it is financially beneficial to pay for the legal consequences rather than to put customer and public safety first. The outcomes should be similar to established corporate manslaughter legislation, which places Occupational Safety and Health responsibility with individuals, as well as financially discouraging organisations.

**There is a balance to be maintained between privacy and freedom of speech and unacceptable abuse without consequence.** The current balance needs to be reset and be more consistent with the physical world and other social channels such as broadcast media. Lack of action to moderate content and encryption of data must not provide anonymity for abusers to harm others through their actions online, with no feasible means of being held accountable for their actions.

**The regulator should help, guide and educate the public to be aware of the risks and advise how they can stay safe on line.** This content can use platform providers' services alongside other channels to reach those at risk and should be regularly reviewed and updated to keep pace with change.

Further exploration of these principles is contained in the appendix section.

### **3. The urgency for a quick response**

Ready access to harmful content and concurrent rapid growth of self-harming in the younger population shown by the latest statistics, together with the prevalence of young people taking their own lives, prompts the need for urgent action.

**The Regulator should work with the industry and expert stakeholders to create clear and unambiguous Codes Of Practice (COPs)** and issue guidance to define what is proportionate and reasonable. This approach can allow the legislation to be applied flexibly, appropriately and dynamically, in a fast-moving sector that can outpace the legislative process.

**For good governance the regulator must be advised by an independent body** made up of a cross section of expert advisors such as charities, academics and others with wide ranging experience of the issues arising. Funding of this board should come from a levy charged to the tech companies. For public confidence and sound governance, its funding must not come directly from commercial service providers to the board nor its members, to avoid conflicts of interest.

**Robust legislation and COPs are urgently needed** but rightfully will take time to create and establish with due diligence. It may be that a new regulator proves essential but while assessment of this is made the evolution to a regulatory environment can be incubated in Ofcom, which possesses much experience that is transferable from its existing purpose. For the safety of children and vulnerable adults online, ahead of legislation it is essential that all parties start cooperating and do not allow the present severe harms to continue while waiting for the process to run its course. Government must do

everything it can to encourage platforms to begin complying with forthcoming regulation, in spirit and “to the letter” as it is developed.

The advisory body can be set up, start meeting and report into a suitable regulator or government function in a matter of months. The regulator/function can issue guidance to service providers and work to raise awareness and advise the public. Service providers can start to work towards implementing its recommendations or face the prospect of explaining their lack of action to customers, advertisers and government.

#### 4. A shared view amongst expert charities

**The Molly Rose Foundation concurs with NSPCC’s advocacy for a principles-based approach to regulation.** With service providers subject to a legally enforceable and proportionate duty of care that requires identification of reasonably foreseeable risks and product and process assurance to mitigate risk for young and vulnerable people. Measures should:

- Establish the principle that service providers creating risk are responsible for the cost of addressing it, rather than passing on a burden to parents, the young and vulnerable people, through the emotional, mental, physical, social and economic impact of online harms
- Assure industry compliance and cultural change in design and delivery of online services
- Ensure online safety gets better not worse before regulation, by introducing a voluntary COP that is expansive in scope. It should be strongly encouraged by government, including by publishing whether companies are complying.

Ian Russell speaking at the NSPCC's How Safe Are Our Children? Conference on 25<sup>th</sup> June 2019 said: *"I think it is for the sake of everyone who enjoys using the internet and social media platforms that we proportionately find ways to make sure the content is as safe as possible."*

Ian Russell

Chair of Trustees

Molly Rose Foundation

Richard Evens

Policy and communications Trustee

<https://mollyrosefoundation.org/>

June 2019

## 5. Appendix

### **Regulation must be principles led to drive cultural change and applied with best endeavours:**

- The regulator should operate a principles-based approach, with a clear duty on service providers to identify and respond to systemic risks in fulfilling their duty of care
- A risk-based approach is essential to enable companies to focus the most problematic of harms
- Demonstrating compliance only through adherence to a pre-defined set of 'tick box' requirements is insufficient
- Service providers must demonstrate active consideration of safety for young and vulnerable people in decisions making. Products and services must be consciously designed to be intrinsically safe or low-risk
- Compliance should be assessed on a 'best endeavours' basis. All service providers adhere to a minimum; with the expectation that larger enterprises are more proactive in their approach through their greater capacity, capability and access to financial resources.

### **Codes of Practice should deliver robust minimum standards of online safety:**

- The White Paper proposes a series of Codes of Practice that set out specific minimum requirements. The Molly Rose Foundation welcome their content and the recognition that if content can reasonably be thought to cause harm to young people, in the absence of an established evidence base that it is conclusively not harmful, it is legitimate to act to regulate it
- The regulator should have the primary role in developing and applying the COP, by drawing on its regulatory, market and technical expertise. This principle is well established with other regulators and for clarity, effectiveness and consistency should be fully applied to these COPs
- Forthcoming legislation may not cover the private messaging functions of sites, such as Facebook Messenger or direct messaging on platforms such as Twitter, Instagram or Snapchat. Given the evidence that abusers often seek to reach out the young and vulnerable on public forums and migrate

them to private ones, this seems to be a gap that should be addressed in legislation and COPs to be effective.

### **Regulator enforcement powers and disclosure requirements for online service providers**

- The statutory powers given to the regulator must be fit for purpose and impose a duty of disclosure on those operating in the regulated environment. These should hold the non-compliant to account and incentivise behavioural and cultural change in companies that breach their requirements
- As proposed in the White Paper, the Molly Rose Foundation agrees that service providers must fully share data with the regulator for transparency and accountability, which currently is severely lacking. They should also be required to disclose how their products conform to their legal duty of care and promptly disclose any breakdown of online safety processes that has created a material risk or a harm
- Service providers can be held legally responsible to cooperate with the regulator and notify other service providers to protect young and vulnerable people from abusive harms including encouragement to self-harm and suicide. The potential introduction of end-to-end encryption could inhibit the detection and investigation of online harms. It is for those proposing the encryption to prove how their proposal is consistent with their duty of care to design products and services that are intrinsically safe or low risk, and to keep young people safe.

*Following the tragic loss of Molly Rose Russell, the Russell family and their friends formed a charitable foundation in Molly's memory. The aim of the Molly Rose Foundation is suicide prevention, targeted towards young people under the age of 25. We want to help spot those suffering from mental illness and connect them to the help, support and practical advice they need.*

