MOLLY ROSE FOUNDATION

Ofcom's Protection of Children Code

Policy briefing

Molly Rose Foundation, founded following the death of 14-year old Molly Russell, is deeply dismayed by the lack of ambition in Ofcom's Protection of Children's Code. The regulator's approach means that children will continue to face preventable harm. Put simply, **we do not have confidence that the Online Safety Act will prevent a repeat of Molly's death.**

Ofcom has chosen to put the economic interests of tech companies before the urgency of tackling online safety risks. The underpinning Act must now be urgently reviewed.

Why Ofcom's code is wholly insufficient

Ofcom's Protection of Children code is wholly insufficient and will allow too much preventable harm to continue unchecked:

Children are inadequately protected from algorithmic harm: Ofcom's measures to prevent children being algorithmically recommended Primary Priority content, including suicide and self-harm material, have been weakly drafted and are unlikely to prove effective.

The regulator assesses that its measures to protect children from Primary Priority Content will attract one-off costs of up to £80k and ongoing costs of £3k to £20k per regulated firm. **It is entirely unrealistic to expect this level of spend can result in the wholesale reworking of algorithms required on such large-scale platforms as Instagram and TikTok.**

Ofcom will only require platforms to reduce the frequency to which children are shown other forms of harmful content, including dangerous stunts, rather than stop recommending it altogether. Other measures which could have helped, such as enabling children to provide feedback on algorithmic recommendations, appear to have been watered down and are now effectively left to the platform's discretion.

Ofcom fails to account for societal harms in its Codes: the regulator has explicitly confirmed it has made no quantitative assessment or modelling of the societal costs and impacts of harmful online content, despite having constructed its entire approach to implementing the Act on whether it is economically proportionate to impose measures on regulated firms.

We cannot conceive why the regulator is failing to adopt a 'polluter pays' approach to its regulatory scheme, nor how it can fail to give appropriate regard to Big Tech's business model that actively assumes the costs of its failure to tackle harm will be externalised to individuals, public services and society as a whole.

Lack of focus on safety-by-design: the Code fails to adequately require safety-by-design and Ofcom's approach to implementing it may actually disincentivise investment in safety innovation. Despite a clear requirement to make services safe-by-design in the very first section of the Act, Ofcom has failed to go far enough to require platforms to provide safe and age-appropriate experiences. Ofcom's Register of Risks highlights multiple high-risk functionalities, such as livestreaming, but then fails to require companies to take specific actions to address them.

Weakening of draft safety measures: several platforms have persuaded the regulator that it is not 'technically feasible' to moderate content, and Ofcom therefore will only require them to take 'proportionate' other measures, for example, preventing children from accessing group chats where Primary Priority Content has been identified. It is difficult to see how this plays out successfully in practice and it is highly likely to be gamed. Ofcom has also agreed to remove a number of measures they originally consulted on from applying to currently small, low-risk platforms, risking a migration of harmful content to smaller sites.

The regulator's approach is a box-ticking exercise

Ofcom has consistently failed to engage with civil society concerns, and despite a year-long consultation process, almost all of MRF's recommendations have been rejected. Last week, Ofcom summarily dismissed the substantive concerns of Ian Russell, the Children's Commissioner and many other civil society groups as 'wrong.'

It is increasingly clear that the regulator has viewed consultation as a box ticking exercise, rather than as a crucial opportunity to engage with expert and lived experience insight. In February, DSIT Minister Feryal Clark told Parliament that Ofcom's overriding objective in consulting on the codes should be to ensure that the codes are as **"proofed against judicial review as possible"**.

Ofcom's approach is stacked in favour of industry, slow and reactive in nature, and timid in its response to the scale and magnitude of online harm. **It falls short of what is needed to prevent future deaths when we currently lose a young life aged 10-19 to suicide where technology plays a role every single week.** A subsequent consultation on additional measures was originally promised by Ofcom 'later in 2024', but is now not expected until summer 2025.

The Online Safety Act is not fit-for-purpose

The Online Safety Act is not working as Parliament intended, and substantial revisions to the underpinning framework are now required. Ofcom's deeply unambitious codes provide a 'safe harbour' for platforms that effectively mean the Code acts as a ceiling not a floor for their safety standards.

Despite assertively claiming that the Protection of Children Code is 'transformative' and a 'gamechanger', Ofcom has not produced any impact assessment to set out its likely effects. Ofcom faces no requirement to either meet or report against specified harm reduction targets.

The regulator's timidity is not only bad for children's safety, but runs contrary to the Government's primary mission of securing economic growth. DSIT economic modelling shows that a strengthened OSA framework that reduced exposure to online harm by 15% would deliver a £4 billion annualised economic benefit.

It is time for the Prime Minister to act. The Government must make a decisive commitment to refocus the Act around fundamental safety objectives, and to commit to legislative time to fix and strengthen the Online Safety Act in the next parliamentary session.

For a briefing and discussion about how we can work together to tackle preventable harm, please contact Andy Burrows: a.burrows@mollyrosefoundation.org

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