

UKSIC Policy Briefing

Independent appeals system

An amendment has been tabled (see below) to establish an independent appeals system within the Online Safety Bill. This has been tabled by Baroness Newlove, Lord Russell of Liverpool, Lord Stevenson of Balmacara and Baroness Kidron. There is wide support in both Houses.

This Policy Briefing includes an overview of the current regulatory and legislative background. The amendment that has been tabled and case studies that have been identified by the Report Harmful Content helpline.

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Background

Increasingly Governments across the world are supporting victims of online harms through independent appeals. These procedures are also referred to as ombudsman or dispute resolution processes that enable those who have made a report to a platform, to raise a complaint about the response they received from the platform.

Examples of independent appeals processes exist in [Australia](#) and [New Zealand](#) but more countries are now also adopting independent appeals, for example the new [Irish Online Safety and Media Regulation Bill 2022](#) includes provision “for the making of a complaint to the Commission”.

Within the UK, SWGfL (as a partner in the UK Safer Internet Centre) has operated [Report Harmful Content - We Help You Remove Content](#) since 2019 to encourage those experiencing legal but harmful content to report to platforms and then providing an independent appeals process. Report Harmful Content (RHC) has no regulatory powers and merely holds platforms to account to their own published terms and conditions. Data gathered from the 2022 annual report showed that:

- One in ten (11%) of reports were escalated to industry platforms – i.e. 11% of the reports made to RHC resulted in an independent appeal with us mediating between a victim and the industry platform concerned. 89% resulted in further explanations of why content would not infringe platform community standards
- **Of those reports escalated to industry 87% were successfully actioned and harmful content was removed**
- In approximately a third of all reports, signposts to the correct industry reporting routes were provided

This evidence emphasises the importance of an independent appeals process in the user reporting journey. A significant number of report responses received by victims of harmful content from industry platforms were initially incorrect and RHC was able to resolve. Had RHC not been there, the harm occurring may not have been realised or addressed.

Referencing Report Harmful Content, [the Draft Online Safety Bill \(Joint Committee\), in December 2021](#) recommended (paragraph 457) that; ***“The role of the Online Safety Ombudsman should be created to consider complaints about actions by higher risk service providers where either moderation or failure to address risks leads to significant, demonstrable harm (including to freedom of expression) and recourse to other routes of redress have not resulted in a resolution”*** and that ***“We suggest that the Department look to Report Harmful Content as a potential model for what such an Ombudsman could look like”***.

The Draft Online Safety Bill (Joint Committee) report went on to justify the recommendation (paragraph 456) highlighting *“service providers’ user complaints processes are often obscure, undemocratic, and without external safeguards to ensure that users are treated fairly and consistently”*, concluding that *“It is only through the introduction of an external redress mechanism that service providers can truly be held to account for their decisions as they impact individuals”*.

On [Thursday 9th June 2022 where the Online Safety Bill received its Seventh sitting debate](#), much discussion related to independent appeals (referred to here as the need for an ombudsman).

The Digital Minister recognised that; *“In some parts of our economy, we have ombudsmen who deal with individual complaints, financial services being an obvious example. The Committee has asked the question, why no ombudsman here? The answer, in essence, is a matter of scale and of how we can best fix the issue. The volume of individual complaints generated about social media platforms is just vast”*.

This attracted a heated debate including the following responses:

Dame Maria Millar MP said; *“it is not a good argument to say that this is such an enormous problem that we cannot have a process in place to deal with it.*

Kim Leadbeater MP said; *“Surely, if we are saying that this is such a huge problem, that is an argument for greater stringency and having an ombudsman. We cannot say that this is just about systems. Of course, it is about systems, but online harms — we have heard some powerful examples of this — are about individuals, and we have to provide redress and support for the damage that online harms do to them”*

Children and young people

Children harmed by a service’s design feature must not be left without a form of redress. There is considerable research on the online risks of harm to children ([link](#)), and examples of the proliferation and growing problem of very serious harm, particularly with regard to child sexual abuse material.

- Research from the IWF found 97% of all child sex abuse material identified in 2021 featured the sexual abuse of girls. Ten years ago, only 65% of the imagery analysts saw was of girls.
- In 2021 the IWF took action to remove a record-breaking 252,000 URLs which it confirmed contained images or videos of children being raped and/or suffering sexual abuse. ([link](#))

Once a child encounters content or activity which violates a services' statutory safety duties under the Bill, this must be reported and addressed as a matter of priority. There is no mechanism in the Bill for individuals to bring a complaint to a regulatory authority or advocacy body in cases where they have come to harm.

Current reporting mechanisms are failing children especially:

- Research published by the Children's Commissioner for England found that 40% of children who didn't report harmful content didn't because they felt there "was no point in doing so". Almost a third (30%) said they didn't know how to report, and 25% said they didn't know the content could be reported. Only 15% felt that the content didn't need to be reported.
- The research found that often children's reports are not acted upon by platforms. Only 63% of children said the content they had reported was removed, with 25% seeing no action on their reports and 10% weren't sure whether anything happened as a result of their report. ([link](#))

There is clear support for independent appeals as part of the Online Safety Bill as current regulation is weak.

Currently the [Video Sharing Platform Regulations](#) requires ([notified](#)) platforms 'to provide for an impartial out-of-court procedure for the resolution of any dispute between a person using the service and the provider to operate impartial dispute resolution in the event'.

In its report of the first year of this regulation, Ofcom highlighted that the requirements imposed on platforms in scope are not being met in full currently. This is shown in VSP responses to Ofcom's information requests the summary of which found:

- Whilst some platforms made changes to their measures in direct response to being regulated under the regime, platforms generally provided limited evidence on how well their safety measures are operating to protect users.
- Some platforms are not sufficiently prepared and resourced for regulation and are not prioritising risk assessment processes currently

This highlights the importance of explicitly spelling out what is expected of platforms in scope of the OSB as, even when the explicit requirement around independent appeals is in place, platforms are still failing in the duty to comply with this.

The Online Safety Bill will supersede this current regulation and its included obligations. This will include the removal of the current obligations on notified platforms to provide an independent appeals system.

An independent appeals system

Having made a report to a platform and with a complaint about the response they received, mirroring many other sectors, victims should be afforded an independent appeals process.

An appeals process is a common concept. Independence in this process is important. As is demonstrated from the evidence from RHC, platform processes are often obscure, undemocratic, automated and without external safeguards to ensure that users are treated fairly and consistently. Without independence, victims are at the mercy of platforms' processes and decisions. Whilst the VSP Regulations suggest that platforms can achieve impartiality through an internal, procedurally separate person or team, a truly independent appeals process is required.

In terms of scale, there are similar examples from other countries that provide an indication of the potential volume of reports, for example, [Netsafe](#) operate in New Zealand as an independent body acting within the confines of the Harmful Digital Communications Act on behalf of people experiencing harm online. During 2022 they received 3,403 complaints which breached principles within the act, prompting further action.

In its guidance, we support the principle that Ofcom should include an independent appeals charter detailing principles and expectations of an independent appeals service and industry platforms.

Independent appeals system amendment

We strongly support the following amendment:

BARONESS NEWLOVE, LORD RUSSELL OF LIVERPOOL, LORD STEVENSON OF BALMACARA, BARONESS KIDRON

250A* Insert the following new Clause—

“Independent appeals system.

(1) An appeals system is to be established (“the Independent Appeals Process”) to provide for a procedure for the resolution of any dispute between a user of a regulated service and the regulated service provider, in the case that any feature of one or more regulated services, or any conduct of one or more providers of such services, or any combination of such features and such conduct, is, appears to be, or presents a material risk of—

- (a) causing users significant or potential significant harm;
- (b) contravening users' rights, as set out in the Human Rights Act 1998, including freedom of expression;
- (c) in the case of children, contravening a child's rights as set out in the United Nations Convention on the Rights of the Child and general comment 25 on children's rights by the Committee on the Rights of the Child in relation to the digital environment;
- (d) otherwise having the effect of impairing the physical, emotional, moral or psychological development of children.

(2) The dispute resolution provided by the Independent Appeals Process must—

- (a) be easy to use and must take into account the needs of vulnerable users and children;
- (b) be transparent;
- (c) be fair, taking into account the rights and legitimate interests of users and not discriminating between different users;
- (d) evolve to match changes in technology;
- (e) be timely.

(3) The provision of or use of this procedure must not affect the ability of a person using the service to bring a claim in civil proceedings.”

Member's explanatory statement

This amendment would establish an independent appeals system to provide impartial out of court resolutions for individual users of regulated services. It lists the types of risks of harm the system would consider as part of the complaints, and includes principles to which the resolution services of the system must have regard.

250B* Insert the following new Clause— “OFCOM's guidance about individual complaints

- (1) OFCOM must produce guidance about individual complaints under section (Independent appeals system) which must include—
- (a) the criteria specified in subsection (2) of section (Independent appeals system);
 - (b) priority for complaints regarding children;
 - (c) recognition that adults, including those who are vulnerable, encounter online harm;
 - (d) priority for complaints that may result in offline harm;
 - (e) a clear statement of the limits and priorities of the Independent Appeals Process; (f) commitment to share the insight with OFCOM for their market research,
 - (g) procedural matters relating to such complaints, including the expectation that the internal dispute mechanism has been accessed and exhausted or found to be inadequate,
 - (h) an Independent Appeals Charter, detailing principles and expectations of the service, and
 - (i) any other aspects of such complaints that OFCOM consider it appropriate to include.
- (2) OFCOM must publish the guidance (and any revised or replacement guidance)."

Member's explanatory statement

This new Clause would place a duty on OFCOM to produce guidance on the individual complaints process outlined in the other new Clause proposed by Baroness Newlove after Clause 149.

Case Studies

The following cases are examples that have been referred to the Report Harmful Content Helpline. Users had escalated their concerns to providers but the content had not been removed and further support was required.

Complex cases for consideration

- 1) Photographer would photograph models over the age of 18 but drug them during a session and then sexually abuse/ rape them. Upon finding out this had happened the victims reported the sexual abuse/ rape to the police and subsequently the photographer was charged with various sexual offences, eventually being prosecuted and still today serving jail time for this. During the period between charge and conviction, the investigating officer got in touch with the professionals online safety helpline as she had come across professional photographs of victims from the modelling shoots shared on the photographers Twitter account publicly. These photos did not violate Twitter's community standards and even with the additional context explained via our escalation routes, Twitter would not remove the content, stating that the victims themselves would have to report their own images. This posed a problem because in many instances the victims didn't even

know about their existence. In addition, there were several photographs of people who were not known to the police. In the end, the only way these images could be removed was by us working with the investigating officer to ensure the CPS/ the judge in this case, made it a condition of the photographers' conviction that his Twitter account with the content was removed. The account was live for 2 years before it eventually got removed.

- 2) Facebook group created for a local youth LGBTQ+ charity advertising their services in the locality had a bad review left on it by a Christian group in the area which advised against people engaging with the charity as it promoted homosexuality which was a sin. Report Harmful Content supported the LGBTQ+ charity with reporting the review to Facebook but it was not removed. The protected characteristics of religion and sexuality were clashing against each other here and Facebook would not take action presumably because whatever action that would have been taken would have silenced a particular group based on a protected characteristic and could be construed as hate speech.
- 3) An adult client who has a previous conviction for a sexual offence gets in touch with Report Harmful Content about an account on TikTok which has been created by one of their victims and is sharing their full name and images detailing the crimes they have committed/ sharing previously released public news articles about these. Whilst the content itself doesn't share personally identifiable information that isn't already available, the public news articles/ forum boards out of our service's scope, list the client's address. They would like the content removed from TikTok but under the right to be forgotten principles it is in the public interest to remain and there is no legal grounds for it's removal as the information being shared is accurate and a true representation of what has occurred. The information remaining online however, is putting the client's physical safety at risk. Should the content be escalated and removed to protect the perpetrator from further harm but also silence the victim who has already suffered as a result of the perpetrators actions. Or, should it remain online further facilitating a physical safety risk for the perpetrator?
- 4) An adult reports an independently run website outside of the scope of the OSB sharing graphic violent content (gore content) to Report Harmful Content. The site shows footage of terror attacks, death by firing squad, beheadings, suicides, rape and torture. The website is outside the remit of our service and our jurisdiction as it is hosted in Canada. All we can do in these instances is encourage the reporting of the site to the hosting provider who, unless it's deemed criminal content in the jurisdiction it's hosted, will unlikely take action. We can also request that search engines downgrade the sites in search results and/ or withhold advertising on these sites where

applicable. This doesn't however get round the issue of the sites being easily accessible and readily available to all in the UK in just a few clicks.

About the UK Safer Internet Centre

The UK Safer Internet Centre (UKSIC), established in 2011, is a leading global partnership helping to make the internet a great and safe place for everyone.

Formed of three charities (Childnet, Internet Watch Foundation and SWGfl), we work together to identify threats and harms online and then create and deliver critical advice, resources, education, and interventions that help keep children, young people and adults, safer. We share our best practices across the UK and globally.

About 5Rights Foundation

5Rights develops new policy, creates innovative frameworks, develops technical standards, publishes research, challenges received narratives and ensures that children's rights and needs are recognised and prioritised in the digital world. While 5Rights works exclusively on behalf of and with children and young people under 18, our solutions and strategies are relevant to many other communities.

Our focus is on implementable change and our work is cited and used widely around the world. We work with governments, inter-governmental institutions, professional associations, academics, businesses, and children, so that digital products and services can impact positively on the lived experiences of young people.