

Submission to Online safety expert group on an individual complaints mechanism

March 2022



Founded in 1995, the Children's Rights Alliance unites over 130 members working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services.

Accompaniment Support Service for Children (A.S.S.C.)
Ag Eisteacht
Alcohol Action Ireland
Amnesty International Ireland
An Cosán
Aoibhneas
AsIAM
Association of Secondary Teachers Ireland (ASTI)
ATD Fourth World – Ireland Ltd
Atheist Ireland
Barnardos
Barretstown Camp
Bedford Row Family Project
BeLonG To Youth Services
Blossom Ireland
Catholic Guides of Ireland
Child Law Project
Childhood Development Initiative
Childminding Ireland
Children in Hospital Ireland
Children's Books Ireland
Children's Grief Centre
Clarecare
COPE Galway
Cork Life Centre
Crann Centre
Crosscare
CyberSafeKids
Cycle Against Suicide
Dalkey School Project National School
Daughters of Charity Child and Family Service
Dental Health Foundation of Ireland
Department of Occupational Science and Occupational Therapy, UCC
Disability Federation of Ireland
Doras
Down Syndrome Ireland
Dublin Rape Crisis Centre
Dyslexia Association of Ireland
Dyspraxia/DCD Ireland
Early Childhood Ireland
Educate Together
EPIC
Equality for Children
Extern Ireland
FamiliBase
Féach
Focus Ireland
Foróige
Gaeilscoileanna Teo
Galway Traveller Movement
Good Shepherd Cork
Immigrant Council of Ireland
Inclusion Ireland
Institute of Guidance Counsellors
Irish Aftercare Network
Irish Association for Infant Mental Health
Irish Association of Social Workers
Irish Congress of Trade Unions (ICTU)
Irish Council for Civil Liberties (ICCL)
Irish Foster Care Association
Irish Girl Guides
Irish Heart Foundation
Irish National Teachers Organisation (INTO)
Irish Penal Reform Trust
Irish Primary Principals' Network
Irish Refugee Council
Irish Second Level Students' Union (ISSU)
Irish Society for the Prevention of Cruelty to Children
Irish Traveller Movement
Irish Youth Foundation
Jack and Jill Children's Foundation
Jigsaw
Katharine Howard Foundation
Kids' Own Publishing Partnership
Kinship Care
Leap Ireland
Let's Grow Together! Infant and Childhood Partnerships CLG.
LGBT Ireland
Mecpaths
Mental Health Reform
Mercy Law Resource Centre
Migrant Rights Centre Ireland
Mothers' Union
My Mind
My Project Minding You
Museum of Childhood Project
Music Generation
New Directions
National Childhood Network
National Council for the Blind of Ireland
National Forum of Family Resource Centres
National Parents Council Post Primary
National Parents Council Primary
National Youth Council of Ireland
Novas
One Family
One in Four
Parents Plus
Pavee Point
Peter McVerry Trust
Prevention and Early Intervention Network
Private Hospitals Association
Psychological Society of Ireland
Rainbow Club Cork
Rainbows Ireland
Rape Crisis Network Ireland (RCNI)
Realt Beag/Ballyfermot Star
Respond Housing
SAFE Ireland
Saoirse Housing Association
SAOL Beag Children's Centre
Scouting Ireland
School of Education UCD
Sexual Violence Centre Cork
SIPTU
Simon Communities of Ireland
Social Care Ireland
Society of St. Vincent de Paul
SPHE Network
SpunOut.ie
St. Nicholas Montessori College
St. Nicholas Montessori Teachers' Association
St. Patrick's Mental Health Services
TASC
Teachers' Union of Ireland
Terenure College Rugby Football Club
Transgender Equality Network Ireland
The Anne Sullivan Foundation
The Ark, A Cultural Centre for Children
The Irish Red Cross
The UNESCO Child and Family Research Centre, NUI Galway
Traveller Visibility Group Ltd
Treoir
UNICEF Ireland
Women's Aid
Youngballymun
Young Social Innovators
Youth Advocate Programme Ireland (YAP)
Youth Work Ireland

Children's Rights Alliance

7 Red Cow Lane, Smithfield, Dublin 7, Ireland

Ph: +353 1 662 9400

Email: info@childrensrights.ie

www.childrensrights.ie

© 2022 Children's Rights Alliance – Republic of Ireland Limited

The Children's Rights Alliance is a registered charity – CHY No. 11541

Introduction

The Children’s Rights Alliance unites over 140 organisations working together to make Ireland one of the best places in the world to be a child. We change the lives of all children in Ireland by making sure that their rights are respected and protected in our laws, policies and services. We identify problems for children. We develop solutions. We educate and provide information and legal advice on children's rights.

The Children’s Rights Alliance welcomes the publication of the Online Safety and Media Regulation (OSMR) Bill in January 2022. The Bill has the potential to put an end to the age of self-regulation by the big tech and social media giants and create a level of accountability that is sorely needed. It could open the window to a safer online world for children and young people in this country.

While the online world brings unparalleled opportunity to children to learn, create, connect and socialise, it also brings unparalleled risk, including the loss of personal data, exposure to harmful content, cyberbullying, negative impacts on health and well-being, online grooming and extortion. For too long legislation and policy have not kept pace with the evolution of the online world. This has left children and young people at risk and unprepared to appropriately and safely navigate online platforms.

Research commissioned in 2021 by the Children’s Rights Alliance as part of the [1,2,3 Online Safety campaign](#) found that 91 per cent of the public believe that the Government should stand up to the big tech companies and set rules that protect the public from harmful or illegal use. This research also showed that 70 per cent of the public believe that the Government should introduce laws that hold social media companies responsible for content they allow on their platforms.¹ Self-regulation of the industry can result in inconsistent standards being applied.

The continued momentum in progressing the Online Safety and Media Regulation Bill is welcome and is a step in the right direction for the protection of children and young people online. This submission will focus on the need for the introduction of an individual complaints mechanism.

¹ Children’s Rights Alliance, ‘Irish public send clear message to Government – do not shy away from regulating social media and big tech’, (Press Release 16 October 2021) <<https://bit.ly/3s8gk4T>> accessed 1 February 2022.

1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?
3. What risks do you foresee if there were no individual complaints mechanism?

Children make up one third of global online users.² Results from a National Survey of Children, their Parents and Adults regarding Online Safety conducted between December 2019 and October 2020, found that 62 per cent of children and young people in Ireland, aged nine to 17 years, use social media.³ This rises to 90 per cent of 15 to 17 year olds.⁴ In 2020, CyberSafeKids found that 84 per cent of eight to 12 year olds in Ireland are on social media platforms despite current age restrictions.⁵ They also reported that a quarter of all children have seen or experienced something online in the last year that bothered them, with almost one third of those children having kept it to themselves rather than report it to their parents or someone else.⁶

The inclusion of an individual complaints mechanism is vital to ensure that children and young people whose rights are not respected by the online service provider(s) and who have exhausted all appropriate channels with the relevant service or platform, have access to an effective remedy in line with their rights under the European Convention of Human Rights.⁷ This would also be in line with the Council of Europe [Guidelines to respect, protect and fulfil the rights of the child in the digital environment](#) which state that States are required to make provision for 'known, accessible, affordable, and child-friendly avenues through which children, as well as their parents or legal representatives, may submit complaints and seek remedies'.⁸ Guidance is given on what constitutes an effective remedy and it includes inquiry, explanation, reply, correction, proceedings, immediate removal of unlawful content, apology, reinstatement, reconnection and compensation.⁹ Importantly, it provides that the process should be speedy, child-friendly and provide the appropriate redress.¹⁰

The UN Committee on the Rights of the Child in its 2021 General Comment on children's rights in the digital environment highlights that 'States parties should ensure that appropriate and effective remedial judicial and nonjudicial mechanisms for the violations of children's rights relating to the digital environment are widely known and readily available to all children and their representatives'.¹¹ Failure to include an individual complaints mechanism would deny children their right to access an effective remedy when harm occurs online.

There is clear public support for the introduction of an individual complaints mechanism. In 2021, as part of the [1,2,3 Online Safety campaign with 18 of its members](#), the Children's Rights Alliance, commissioned public polling on online safety and 77 per cent of those surveyed¹² believe that an Online Safety Commissioner should have the power in law to investigate complaints made by members of the public when social media companies fail to uphold the rights of the person.¹³ Our members have supported children and families in situations where there has been either an insufficient or no response to a complaint made about harmful content. This has resulted in distress

² Unicef, *Children in the Digital World* (UNICEF 2017).

³ National Advisory Council for Online Safety, *Report of a National Survey of Children, their Parents and Adults regarding Online Safety 2021* (2021) 8.

⁴ *ibid.*

⁵ CyberSafeKids, *Annual Report 2020*, (2021) 24.

⁶ *ibid.* 3.

⁷ European Convention of Human Rights Arts 6 and 13.

⁸ Council of Europe, '*Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment*' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.* at para 44.

¹² Survey conducted between the 17th –28th September 2021 to a nationally representative sample of 1,003 adults in the Rep. of Ireland.

¹³ Children's Rights Alliance, 'Irish public send clear message to Government – do not shy away from regulating social media and big tech', (Press Release 16 October 2021) <<https://bit.ly/3s8gk4T>> accessed 1 February 2022.

to the children, young people and their families.¹⁴ The introduction of an individual complaints mechanism, alongside the introduction of future Online Safety Codes, could indirectly reduce harm caused to children and young people by requiring platforms to resolve complaints they receive swiftly and effectively.

- 2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?**

- 8. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b) by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?**

The individual complaints mechanism should be overseen by An Coimisiún and by the same Online Safety Commissioner(s) who have oversight of the systemic regulatory framework. Currently there is very little transparency around the number of complaints made to online platforms and the types of complaints that they are receiving.¹⁵ The introduction of an individual complaints mechanism would strengthen the existing provisions of the Bill as it would give the Online Safety Commissioner a real insight into the types of complaints platforms receive and are failing to resolve or take adequate action through their own complaints mechanisms. This would help to inform the development of future online safety codes, particularly those on complaints handling. The Online Safety Commissioner would also gain valuable insights into trends and emerging issues through the more complex complaints they receive which could inform the development of new online safety codes over time.

- 4. Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?**

- 5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?**

An individual complaints mechanism should cover the different categories of online content set out in the Bill.

It will be important that protocols are developed between the Gardaí and the Media Commission to ensure the effective and swift removal of material that falls into the category of offence-specific i.e. illegal categories of online harm under section 139A(2)(a) such as child sexual abuse materials, intimate images and material that incites hatred. It will be important that this is also addressed in the online safety codes.

¹⁴ CyberSafeKids, Written Submission to the Expert Working Group set up to review the Individual Complaints Mechanism as part of the General Scheme of the Online Safety and Media Regulation (OSMR) Bill, 8 March 2022.

¹⁵ Houses of the Oireachtas, *Joint Committee on Tourism, Culture, Arts, Sport and Media Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill* (2021) 27.

6. How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

While concerns have been raised about the volume of complaints that the Online Safety Commissioner could receive, including from online users across the EU as many of the online platforms are headquartered in Ireland, this is not a reason to exclude an individual complaints mechanism from the scope of the legislation. Each online service or platform should have its own efficient and effective complaints system that deals with complaints at the local level. It is only the most complex cases that should need to be resolved by the Media Commission, provided that the online platforms put in place their own appropriate complaints mechanisms which comply with the legislation and the codes of conduct that the Online Safety Commissioner will develop. (See Appendix 1 for our proposed Individual Complaints Mechanism).

Failure to provide an individual complaints mechanism based on concerns of volume denies children and young people access to an effective remedy which they have a right to under Article 6 (right to fair procedures) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. Any complaints mechanism introduced must comply with these rights. The Council of Europe recommends Member States should ensure that a child's right to an effective remedy under the European Convention of Human Rights¹⁶ is respected and protected when their rights have been infringed online.¹⁷

7. In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures. How would this balance be affected by matters of scale and volume of content?

It is important in the development of an individual complaints mechanism that due consideration is given to the vindication of fundamental rights, in particular freedom of expression and the right to fair procedures.

The UN Convention on the Rights of the Child (UNCRC), which Ireland ratified in 1992, predates the evolution of the digital technology that is nowadays used in everyday life meaning that the Convention does not currently encompass an article on the digital rights of children. However, a number of rights enshrined in the UNCRC apply in the context of children and the digital era including:

- Article 3 (Decisions made in the child's best interests)
- Article 12 (The child's right to participate and have their views heard)
- Article 13 (Right to freedom of expression)
- Article 15 (Freedom of association)
- Article 16 (Protection of privacy)
- Article 17 (Access to appropriate information)
- Article 28 (Right to education)

¹⁶ European Convention of Human Rights Art 6 and 13.

¹⁷ Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24.

One of the most fundamental rights when it comes to the online world is the duty on governments to take on all legislative, administrative and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (Article 19).

In 2021, the UN Committee on the Rights of the Child published a General Comment or guidance on how to apply children's rights in relation to the digital environment. It notes that '[t]he digital environment is becoming increasingly important across most aspects of children's lives, including during times of crisis, as societal functions, including education, government services and commerce, progressively come to rely upon digital technologies. It affords new opportunities for the realization of children's rights, but also poses the risks of their violation or abuse'.¹⁸

A child's right to an effective remedy under the European Convention of Human Rights,¹⁹ when their rights have been infringed online,²⁰ is also reflected in the Council of Europe's *Guidelines to Respect, Protect and Fulfil the Rights of the Child in the Digital Environment*.²¹

Another aspect of online safety for children and young people is in relation to their privacy rights and how these are best protected. An individual's right to privacy is protected under both the International Covenant on Civil and Political Rights (Article 17) as well as the European Convention on Human Rights (Article 8) with specific protections for a child's right to privacy under the UN Convention on the Rights of the Child (UNCRC).²² Online safety legislation should ensure children and young people's rights to both privacy and protection. While the right to privacy is not absolute, States should seek to achieve a proportionate balance between these rights. One way to ensure that rights are respected would be to ensure that the definitions of harm outlined in the Bill are clear and precise to ensure they are in compliance with other human rights standards, in particular the right to freedom of expression.²³

Any complaints mechanism should seek to protect the fundamental rights of both the user and uploader. In cases where the material is considered that it could be harmful, rather than in clear cases where it is illegal, this could be achieved by ensuring that sufficient notice is given to both parties of the complaint being made, and sufficient time provided for a right of reply. Key also to this would be an accessible appeals mechanism for any uploader, who may themselves be a child or young person.

9. Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

Each online service or platform should have its own efficient and effective complaints system that deals with complaints at the local level. It is only the most complex cases that should need to be resolved by the Media Commission, provided that the online platforms put in place their own appropriate complaints mechanisms which comply with the legislation and the codes of conduct that

18 UN Committee on the Rights of the Child, General Comment no 25 (2021) on children's rights in relation to the digital environment, CRC/C/GC/25, para 3.

19 European Convention of Human Rights Art 6 and 19.

20 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 24.

21 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) 11.

22 UN Convention on the Rights of the Child A/RES/44/25 (20 November 1989) Art 16.

23 Irish Human Rights and Equality Commission, *Submission to the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht on the General Scheme of the Online Safety and Media Regulation Bill* (2021) 24.

the Online Safety Commissioner will develop. (See Appendix 1 for our proposed Individual Complaints Mechanism).

The Law Reform Commission (LRC) has recommended establishing a statutory Digital Safety Commissioner, modelled on comparable offices in Australia and New Zealand.²⁴ The LRC also envisioned that this office would have responsibility for publishing a Code of Practice on Digital Safety which would include an efficient take-down procedure.²⁵ Under the LRC proposals, if a social media site did not comply with the standards in the Code of Practice, an individual could then appeal to the Digital Safety Commissioner, who could direct a social media site to comply with the standards in the Code.²⁶ The LRC further recommended that if a social media site did not comply with the Digital Safety Commissioner's direction, the Commissioner could apply to the Circuit Court for a court order requiring compliance.²⁷

The current Bill does not follow the recommended approach of the LRC, or the existing models in Australia ([eSafety Commissioner](#)) or New Zealand ([Netsafe](#)), in providing a mechanism for individuals to appeal to the Online Safety Commissioner when an online service provider fails to comply with the standards of the Online Safety Codes. The powers of the Commission set out in the current Bill should be amended in line with the recommendations of the Joint Committee on Tourism, Culture, Arts, Sport and Media. The inclusion of an individual complaints mechanism is vital to ensure that children and young people whose rights are not respected by the online service provider(s) and who have exhausted all appropriate channels with the relevant service or platform, have access to an effective remedy in line with their rights under the European Convention of Human Rights.²⁸ This should also align with the clear description of a child-friendly remedy outlined in the Council of Europe *Guidelines*²⁹ while also complying with the UN Committee on the Rights of the Child's guidance.³⁰

The lack of an individual complaints mechanism relating to online services means that there is a discrepancy between where a broadcaster or provider of an audiovisual on-demand media service fails to comply with a media code and where an online service provider fails to comply with an online safety code. In relation to a broadcaster's failure to comply with a media code, an individual can make a complaint directly to the Media Commission under section 11 which substitutes section 48 of the Broadcasting Act 2009. Under this section, once a complaint is made within the relevant timeframes set out in the legislation³¹ the Commission may refer the complaint in the first instance to the service or broadcaster concerned,³² dismiss the complaint³³ or refer it to an authorised person for investigation.³⁴ Where a complaint is referred or dismissed, the Commission must notify the person who made the complaint about its action 'as soon as practicable'³⁵ and place a notice on its website about the action taken within 60 working days from the date that the complaint was received.³⁶

The procedures for investigation are set out in section 139Z. Section 139Z (1) provides that the Commission can appoint an authorised officer to carry out investigations. An investigation can be

24 Law Reform Commission, *Report on Harmful Communications and Digital Safety* (LRC 116 - 2016) 144.

25 *ibid.*

26 *ibid.*

27 *ibid.*

28 European Convention of Human Rights Arts 6 and 13.

29 Council of Europe, 'Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment' (COE 2018) <<https://bit.ly/2Xp9hpE>> accessed 8 January 2021, 24.

30 *ibid* at para 44.

31 S48(2) :A complaint shall be made in writing to the Commission not more than 30 days after—

(a) where the complaint relates to one broadcast, the date of the broadcast, (b) where the complaint relates to 2 or more unrelated broadcasts, the date of the earlier or earliest, as the case may be, of those broadcasts, (c) where the complaint relates to 2 or more related broadcasts, of which at least two are made on different dates, the later or latest of those dates, or (d) where the complaint relates to programme material made available on an audiovisual on-demand media service, the date the programme material ceased to be available on that service.

32 Online Safety and Media Regulation Bill 2022 s11 which substitutes a new section 48(3) into the Broadcasting Act 2009.

33 *ibid.*

34 *ibid.*

35 *ibid.*

36 *ibid.*

commenced where the Commission has reason to suspect that there has been a contravention.³⁷ This section applies to the complaints that will be received under proposed new section 48 relating to broadcast and audio-visual on demand media services.

A similar procedure could be adopted for individual complaints relating to online services or platforms where in effect the Commission will engage in a pre-investigation screening of complaints to ensure that they are dealt with in the appropriate way (reverted back to the provider, dismissal or investigation). This would ensure that there is no discrepancy between online services and media services.

10. How should the success or otherwise of an individual complaints mechanism be measured?

The success of the individual complaints mechanism should be measured by reference to the number of people who have achieved an effective and efficient remedy. It should also be measured by the impact it has in making platforms' complaints mechanisms more efficient and effective at handling complaints at the local level.

11. What would be the appropriate period for review of the operation of an individual complaints mechanism?

The individual complaints mechanism should be reviewed after five years of it being operational. This would ensure that there is sufficient time for the process to get up and running, for it to be promoted effectively and for any initial learnings to be taken on board. It would also provide a sufficient period of time for the Online Safety Commissioner(s) to be able to track trends and emerging issues which can then inform the development of Online Safety Codes.

³⁷ Online Safety and Media Regulation Bill s139Z A



Our Voice Heard, Our Safety Online

Proposed Individual Complaints Mechanism -
 This complaints system would be applicable to the harms outlined in the Online Safety and Media Regulation Bill.

