

# **Bereaved Families for Online Safety**

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## **Submission for Ofcom's illegal harms consultation February 2024**

The Bereaved Families for Online Safety group is supported by 5Rights Foundation and the NSPCC, and comprises of: Ian Russell, father of Molly Russell, Ruth Moss, mother of Sophie Parkinson, Amanda and Stuart Stephens, parents of Olly Stephens, Liam Walsh, father of Maia Walsh, Hollie Dance, mother of Archie Battersbee, Lisa Kenevan, mother of Isaac Kenevan, Mariano Janin, father of Mia Janin, and Lorin LaFave, mother of Breck Bednar.fr

As a group of families who have lost children as a result of harms in the digital world, we write with our disappointment regarding Ofcom's proposed illegal harms duties – particularly as they relate to the safety of children.

We are deeply concerned that Ofcom's approach at this stage sets a dangerous precedent and may lead to the implementation of weaker provisions for children that do not adequately address the risks they face in the online world; risks we as a group are all too familiar with.

The importance of setting ambitious Codes of Practice cannot, and should not, be understated: especially as the purpose of the Online Safety Act seeks to afford children a high level of protection by making services safe by design.

We have set out our specific concerns below, which we hope Ofcom will take the time to review and reconsider.

### ***Proportionality of harms against business costs***

We are disappointed that Ofcom has prioritised business interests and that there is a disproportionate focus on the cost of implementing safety measures by tech companies rather than the cost to the victims of harm – especially children. For bereaved families like us, it is deeply disturbing that Ofcom has seemingly taken the side of tech businesses whilst having little regard for those who have been impacted in the most devastating circumstances.

### ***Reporting mechanisms, complaints, and moderation***

We are not satisfied that Ofcom's approach to content moderation and reporting systems addresses the needs of both children and parents when using online services, nor reflects the reality of using these tools. In our own individual experiences, the lack of transparency in the decisions made by services means it is impossible to establish what happens after a report has been submitted unless that button is pressed hundreds of times. Often when a judgement is made there is no route to appeal, and it can be difficult to find a human actor in moderation systems. Children and parents need clear and distinct reporting mechanisms that offers a right to appeal, is transparent, and finds a human early in the process if a child is involved. Where this is not happening, and the company fails to act responsibly, we want to be able to report this to Ofcom.

### ***Terms and conditions***

We believe that companies should not be allowed to bypass their duties via their terms of service, particularly as it relates to reporting mechanisms, complaints, and moderation, as has been allowed to happen. In our own experiences, reporting mechanisms are ineffective when the result is that harmful content or activity simply does not ‘violate community guidelines.’ In the case of primary priority illegal content, the risk of harm should be made evident in the terms of service and ensure that there is full alignment with reporting mechanisms.

### ***Recommender systems and contextual judgement***

We are disappointed that Ofcom has set a high bar for self-harm offences within the Code of Practice, and at the expense of greater consideration to the cumulative impact that the repeated recommendation of such content has, particularly to those who are vulnerable. In some of our own individual stories, our children were fed information by an algorithm that left them at a greater risk of harm as a result of the context in which they viewed them. We believe that Ofcom must have regard to the contextual judgement of recommendations made to, including, those seeking harm or more vulnerable to harm.

### ***Small services***

We are concerned that the illegal harms Code of Practice fails to adequately bring into scope small, single-risk services by affording them specific exemptions from the regime – in particular, mitigation measures. Ofcom is aware of the risk that smaller services can have, yet this is not reflected in the Code of Practice due to Ofcom’s interpretation of proportionality and size. Our understanding from following the Bill during its passage was that on the last day of report stage Baroness Morgan got a concession from the Government that changed the language of the Act from simply size to size or risk. This change does not seem to be reflected in the Code as currently written. We are also horrified to see that some companies with millions of users have not been considered large – surely this is an error. Ofcom must ensure that small services cannot bypass regulation that absolves them of their duties.

### **Signed:**

Ian Russell  
Ruth Moss  
Stuart Stephens  
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