Ofcom’s Protecting People from Online Harms Consultation

Submission by Ofcom’s Advisory Council for Northern Ireland

February 2024

A. Introduction

The Advisory Committee for Northern Ireland welcomes the Online Safety Act and Ofcom’s work to establish a framework for regulation, in consultation with stakeholders. These represent a major leap forward in protecting people across the UK from a wide, and continuously evolving, range of online harms.

The Committee has been closely engaged with Ofcom’s work on online safety over more than two years, receiving briefings and contributing to wide-ranging discussions. We have welcomed Ofcom’s extensive engagement with stakeholders across Northern Ireland (NI), who have wide ranging expertise and experience in this area. The Committee has focused its advice on several issues which are most distinctive and pertinent to NI, whilst recognising that people here will benefit from the broad scope of arrangements to protect them from online harms. We will continue to engage with Ofcom’s work in this area as the regulatory regime, and the harms it seeks to mitigate, continue to evolve.

We have summarised priority themes in Section B and explored these and other issues in more detail in Section C.

B. Priority themes

The Committee has identified a number of issues and wishes to draw attention to two in particular:

i. Taking account of paramilitarism and sectarianism in NI

The Committee wishes to be assured that regulated services will understand what constitutes an illegal harm in a NI context and have effective arrangements and resourcing in place to protect against these. This is particularly true of paramilitarism and sectarianism in NI - distinct forms of hate, terror and other harms which could be easily overlooked if not explicitly included in Ofcom’s requirements and guidance.

We note the lack of research in this regard and ask Ofcom to consider the following actions in relation to evidence gathering:

- Commissioning research into the prevalence, form, impact and perceptions of sectarianism and paramilitarism
- Gathering evidence of the actions which services currently take in respect of these harms

- Deepening its stakeholder engagement in this regard, including casting the net wider than active consultees to provide further examples and insights
- Considering issues with an all-Ireland or border dimension, in liaison with relevant authorities and organisations

The Committee also asks Ofcom to consider amending its requirements and guidance to take account of Nations-specific harms, particularly paramilitarism and sectarianism in NI. It suggests:

- an over-arching statement to make services aware that online harms can take particular forms within different communities around the UK, and some have a Nation-specific dimension
- an over-arching statement(s) with regard to both paramilitarism and sectarianism in NI, noting how these may cut across different types of illegal harms and present in distinct ways to other forms of terror, hate etc.
- inclusion of sectarianism and paramilitary activity as relevant across guidance and examples, particularly in relation to terror, hate and the proceeds of crime
- extended guidance around the use of Irish, Ulster-Scots and colloquial language

ii: Handling user reports and complaints and identifying wider themes

There is a significant ongoing communications challenge as we find that many users and organisations are not aware that Ofcom's role focuses on systems and processes rather than resolving their individual issues. Ofcom has a critical role to play in ensuring that services effectively pre-empt harms and respond to reported harms, if the regime is to work and the regulator is not to be overwhelmed with reports that should be resolved by the services.

Ofcom also has a crucial role to play in proactively identifying emerging and evolving issues to ensure that the regime remains relevant and delivers its aims. It is not clear to the Committee at this stage how organisations and consumers can bring wider issues to Ofcom's attention. Will they have access to a sufficiently large, diverse and resourced network of super complainants (including NI based organisations independent of government)? Or will there also be more direct access to Ofcom to ensure that wider issues experienced at a grass roots level can permeate in a timely manner?

C. Themes

NI dimensions to illegal harms, including sectarianism and paramilitarism

We particularly welcome Ofcom's guidance on the nature of illegal harms to support services in assessing risk and judging whether content is illegal. Although this guidance cannot be exhaustive or prescriptive it is essential to underpin consistency and clarity in services' arrangements. It helpfully conveys a breadth of harms to be considered and designed in across the range of systems and processes.

We are, however, very mindful that online harms, including priority harms, can take particular forms within different communities around the UK, and some have a Nation-specific dimension.

This is especially the case for sectarianism and paramilitary activity in NI – significant and enduring illegal harms which are distinctive to NI and which also find expression online. These are distinct from forms of terror or hate in other parts of the UK and can be easily overlooked if not explicitly included where relevant in Ofcom's regulatory regime. The Committee wants to be assured that regulated services understand what constitutes an illegal harm in a NI context and have effective arrangements in place to protect against these.

It is therefore vital that Ofcom's regime and guidance explicitly includes these forms of illegal harm to ensure that they do not slip through the net in terms of proactive measures as well as appropriate responses to user reports.

In considering how best to do this, Ofcom may wish to take the following points into consideration.

- Sectarian incidents remain a marked feature of hate crime in NI whilst NI related terrorism (NIRT) remains a significant factor in the UK and, especially, in the NI security situation. The threat of NIRT in NI has been assessed as severe since 2009 – with a brief interlude in March 22 – and is moderate in Britain. The Sixth Northern Ireland Peace Monitoring Report noted that, while "security-related incidents have remained at consistently lower levels than seen over the last two decades…the dissident republican groups continue to have the capacity and motivation to launch deadly attacks and all paramilitary groups continue to exploit, attack and intimidate sections of the population."[1] The Independent Reporting Commission (IRC) in 2023 reported that "Paramilitarism represents a continuing threat to individuals and society, and must continue to be given sufficient attention and focus.[2] The impact of paramilitary activity is especially high for certain 'at risk' communities, with particular pressures on young people.

- Paramilitarism in NI is a complex, contested and evolving concept which can only be understood in the context of NI and its history of conflict, and this has implications for how online protections are understood, designed and resourced. The NI Affairs Committee Report, "The Effect of Paramilitary Activity and Organised Crime on Society in Northern Ireland" gives an insight

[1] Northern Ireland Peace Monitoring Report, Number Six, November 2023 CRC-peace-monitor-report-6-web.pdf (community-relations.org.uk)

[2] Independent reporting Commission, Sixth Report, December 2023

into the layers of complexity from different, informed viewpoints.[3] Although paramilitary groups originated in the Troubles with territorial objectives, activities associated with them have evolved in recent years. The IRC described paramilitarism being used by some groups and individuals as "a cloak for overt criminality (such as extortion, drug dealing, threats, dealing in counterfeit goods, money laundering, illegal money lending, sexual exploitation and other illegal activities.)"[4] However, there are still important distinctions from other organised crime groups across the UK, as these groups are still embedded within wider social groups and public activities in NI, carrying a level of political legitimacy as well as a degree of community support. Both paramilitary activity and sectarianism – which are linked – can increase at times of heightened political tension. Furthermore, the 14 republican and loyalist proscribed groups have connections and overlaps with other political and community groupings who may support and amplify paramilitary actions. Members of proscribed groups may also play other, legitimate, roles in the community.

- Sectarianism is similarly only understood within its NI context and is also complex and contested. In 2022/23 the Police Service of NI (PSNI) recorded the highest level of sectarian hate crimes since 2015/16.

- There is a great deal of interconnectedness between paramilitarism and sectarianism and forms of expression which are legal and do not cause harm, whether that is, for example, political viewpoints or beliefs, journalism or humorous comment. This means that context and nuance are central to judging whether content is illegal and to protecting freedom of expression where required, and there may be differences of opinion and interpretation among stakeholders and the public as to where the line is crossed. There is a particular challenge for content moderation, given the use of aliases and connections as cover and the practice of positioning illegal content within wider legal expressions of culture and belief.

- It is very clear, and not surprising, that both sectarian hate crime and NI related terrorism have found expression online. The Institute for Strategic Dialogue (ISD) states that "ISD research has shown how social media serves as a battleground for sharing and amplifying sectarian messaging. Furthermore, proscribed paramilitary groups, adept at evasion tactics, can still be found on social media platforms, where they are able to mobilise demonstrations, share propaganda and recruit new members online."[5] Such expression can take particular form – for instance in May 2022 the NI Affairs

[3] House of Commons NI Affairs Select Committee Report: "the effect of paramilitary activity and organised crime on society in Northern Ireland", February 2024

[44] Independent Reporting Commission, Fifth Report, December 2022

[5] Zoë Manzi, "Northern Ireland Related Terrorism", Institute for Strategic Dialogue, January 2024

Select Committee received expert evidence in relation to paramilitary activity online, noting threats, coercion and incitement to riot amongst young people in particular.[6] There are also specific flags and emblems associated with paramilitary groups that need to be taken account of in assessing online harms, noting that some are also used in wider contexts which are not illegal.

- Closed apps, such as What's App and Signal, are regularly used by paramilitaries to communicate and extend coercive control in their communities. A member of the Committee engaged directly with a group of university students, including a cohort who lived in 5 or 6 communities in different parts of NI where loyalist or republican paramilitaries are especially active. These students saw the use of social media as a powerful way for paramilitaries to exert control, including over young people, and noted that this was especially prevalent at times of heightened tension, such as the recent restoration of devolved government. The Committee notes that Ofcom has no regulatory powers over closed apps but asks it to consider how it can best mitigate any connections with the services it does regulate. For example, they may play a role in driving users to the closed apps for these purposes, or be used to amplify messages emerging from them.

- There is, however, a distinct lack of research regarding the prevalence and nature of sectarianism and NIRT online. The Committee believes that there is a pressing need for research to inform the development of the regulatory regime before it is finalised, and also to inform how it responds to emerging situations going forward.

- We are also aware that very little is known about the arrangements which services have in place to protect from these harms, both proactively and in response to reports and complaints. The ISD states that "Due to a lack of attention, small online communities supportive of terrorism in NI have been able to grow unnoticed on various platforms."[7] Meanwhile, we are aware that some of the highest profile instances of perceived or actual sectarian hate online have been taken down by authors in response to a real life backlash, rather than as a result of action by platforms. There is also anecdotal evidence that user reports of, for example, counterfeit goods with a potential link to proscribed organisations do not appear to have been acted upon.

- Online protection is complicated by the different legislative and policy landscape in NI and the lack of clear legal definitions. The NI Department for Justice's Independent Review of Hate Crime Legislation in NI highlighted that current legislation for enhanced sentencing and 'stirring up' offences do not

[6] NI Affairs Committee Oral Evidence: The effect of paramilitaries on society in NI – add link

[7] Ciaran O'Connor and Jacob Davey:" Slipping through the net: exploring online support for proscribed groups in Northern Ireland" Institute for Strategic Dialogue, April 2023

adequately capture the meaning of sectarianism in NI, which extends beyond religion and includes nationality and political identity. The review's recommendations have not been implemented due to the collapse of Stormont, although this may change in time with the recommencement of devolved government. It is notable that the criminal justice agencies have adopted working definitions which refer to the particular community divisions in NI whilst the PSNI reports sectarian hate crime as a distinct category and has a separate policy on dealing with reports of crimes of this nature. Paramilitary activity may be prosecuted under terror legislation but other legislation may also come into play given the range of activities, for instance in relation to the proceeds of crime. There is a wealth of policy, statutory and other activity in relation to combatting sectarianism and paramilitarism, and we can expect a growing interest in online protections.

- The Committee is also mindful of the range of ways in which harms which are common across the UK may also have a distinctive NI dimension. For example, some expressions of racism (the greatest cause of hate crime in NI) are linked to elements exercising coercive control within communities that are largely made up of one tradition. Similarly, there is often a sectarian element to the enduring problem of misogynistic online abuse and threats to female politicians and other leaders in NI. There can also be a NI dimension to issues emerging elsewhere, for example the ISD reported a Russian-linked disinformation campaign linking the Salisbury poisonings to republican paramilitaries.[8]

- Illegal harms may be harder to identify through techniques applied across the UK or internationally when they are expressed in colloquial terms or in Irish or Ulster-Scots. Common usage includes 'code-switching' or mixing Ulster-Scots or Irish with English in social media content, as in conversation.

- In some cases the context of the border or an all-island dimension is relevant. For example, events causing potential harms online and offline in the Republic of Ireland may have resonance in NI in a way that they will not in the rest of the UK. There are other areas where harms, and protection against harms, have a particular cross-border dimension, for example joint policing initiatives between the Police Service of NI and An Garda Síochána, the police service of the Republic of Ireland.

It is difficult without more research to suggest precisely how the regulatory regime might be adapted to reflect these circumstances. However, the Committee offers the following suggestions for consideration:

[8] Zoë Manzi, "Northern Ireland Related Terrorism", Institute for Strategic Dialogue, January 2024

- Ofcom should, as soon as possible, commission further research into the prevalence, form, impact and perceptions of sectarian and paramilitary harms online in NI, and promote the need for further research by other agencies
- Ofcom should gather evidence of the actions which services currently take in relation to paramilitary and sectarian harms in NI, through information from services and independent sources/research
- Ofcom's should continue to deepen and extend its work with a broad range of stakeholders in NI; there may also be scope to seek specific examples and insights from media, elected representatives and others with real life experience, casting the net wider than those who will make formal consultation submissions
- Ofcom should consider issues which have an all-Ireland or cross border dimension, liaising with Coimisiún na Meán and other relevant authorities
- Ofcom should consider adding to its guidance with:
    - an over-arching statement to make services aware that online harms can take particular forms within different communities around the UK, and some have a Nation-specific dimension. This is relevant not just to how services judge illegal harms but also the range of arrangements they put in place, such as assessing risk, training and resourcing content moderation and complaint handling, designing automated systems for detection of harms, terms and conditions etc
    - an over-arching statement(s) with regard to both paramilitarism and sectarianism in NI, noting how these may cut across different types of illegal harms and present in distinct ways to other forms of terror, hate etc.
    - inclusion of sectarianism and paramilitary activity as relevant across guidance and examples, particularly in relation to terror, hate and proceeds of crime; particular regard might be given to instances of racist hate crime relating to political or national identity
    - inclusion of indigenous minority languages such as Irish and Ulster-Scots in guidance around resourcing with regard to languages around the UK; the use of different languages and colloquial language is also relevant to guidance on judging if content is illegal.

The Committee also has some comments on areas of the proposed regime which are not specifically related to NI, summarised below.

Proposed measures

The Committee welcomes the proposed measures for search and user to user (U2U) services, across the categories that we would expect to see, such as governance and risk management, content moderation, reporting and complaints, terms of service and enhanced user control. It is helpful that the new requirements align well with standard approaches to governance and assurance frameworks.

We agree with the principle of varying requirements according to the size of the service and the level and nature of risk it presents, in order to focus action where it will have most impact. However, we also note that services which are designated as 'small' may still have up to 7 million users per month. There is a risk that certain types of illegal harms will increasingly use smaller services which have lower requirements for proactive management and control, and we think that this is an area which Ofcom might usefully monitor.

Content Moderation

We also note that the proposed measures do not require small services with low risk or specific risk to train content moderation staff to detect and take down illegal content (Measures Proposed for U2U and Search Services, 4F). We accept that there is a sliding scale of measures, depending on the size of service and level of risk. And we are pleased to see that all smaller services are included in rigorous requirements for assessing risk, reporting and resolving complaints and making public statements regarding their arrangements. However, content moderation plays a particular role in the toolbox for tackling online harms – it may pick up issues earlier in the process, both themes that are starting to emerge and may inform the risk assessment, or issues which are low volume but high impact. It seems counterintuitive – and at odds with public expectation – that some smaller services which, by their nature, involve content moderation would not automatically include detection of illegal harms in their training. We ask Ofcom to consider if this duty should be extended, and how that might be achieved in a way that maximises protection without imposing undue burden where the risk, in both volume and impact, is very low indeed.

User reporting and complaints

We are very mindful that many consumers have an expectation that Ofcom will resolve their individual issues. Our anecdotal observation is that organisations with an interest in online safety are not yet well informed about respective roles, unless they are already very closely involved and contributing to Ofcom's work. There is a significant ongoing communications challenge for the regulator, industry and wider stakeholders and we look forward to seeing public understanding of the respective roles for Ofcom and services develop, especially among the most vulnerable and affected groups. Ofcom's effectiveness in enforcing services to play their role in pre-empting and resolving harms will be to the fore in ensuring the regime works and Ofcom's own resources are not overwhelmed by reports which should be directed to the services.

Ofcom also has a critical role to play in proactively identifying emerging and evolving issues to ensure that the regime remains relevant and delivers its aims. It has a depth of expertise as well as research and monitoring capability through its own resources and those of stakeholders. Supercomplaints will also be an important means of bringing key issues to light. However, the process by which other organisations and consumers can bring wider issues to Ofcom's attention is less clear and would benefit from further definition and communication. Will they, for instance, have ready access to a sufficiently large, diverse and resourced network of supercomplainants (including NI based organisations independent of government) or will there be more direct access to Ofcom? It is important that there is an ability for wider issues experienced at grass roots level to permeate in a timely manner, and we are mindful that there can be organisational, cultural and resource barriers to this.

It is hugely important that user reporting and complaints systems, as well as Terms of Service/Publicly Available Statements are easy to find, access and use so that issues can be raised and resolved quickly. We have heard reports that even large organisations find it difficult to get major platforms to engage with their complaints and reports of harms, unless they resort to legal action, a course of action which is not available to most individuals and organisations. We agree with the guidance which Ofcom has laid out, noting that this is a major shift in practice for many services. We therefore would suggest that Ofcom moves quickly to enforce these new requirements where necessary.

We welcome the particular consideration given to children and people with disabilities in Ofcom's guidance in this regard. However, we suggest that the requirement for writing Terms of Service at the reading age comprehensible to the lowest age of user permitted to agree to them is extended to also take into account the range of people at any age who may benefit from an easy read version, including – but by no means limited to - adults with learning difficulties. The broad benefits of 'easy read' explanations for users should also be a consideration for reporting/complaints arrangements.

Anonymity and account verification

The Committee recognises the difficulties imposed by anonymous social media accounts. The right to privacy does not necessarily confer a right to anonymity. As Onora O'Neill said:

"There is no right to anonymity for those who protect or disguise ethically unacceptable or unlawful action. The anonymity often enjoyed by those who organise or purchase online influence is not a matter of right and is not protected by the right to privacy. Ethically and epistemically unacceptable communication, such as spreading false information and accusations, corrupting democratic process, defaming others or spying on them, promoting illegal activities or false advertising, inciting violence or hatred, should not be protected."[9]

The Committee is interested to understand whether a system of account verification is viable, or what other safeguards might be put in place.

Supporting best practice

We consider that Ofcom's extensive work on a regulatory regime, drawing on wide-ranging research as well as stakeholder views and expertise, has value in informing good practice beyond enforceable regulatory requirements. We suggest that Ofcom's guidance could encourage services to consider whether any aspects of requirements that are not mandatory at their level could nonetheless be helpful in supporting good practice and a more systematic and potentially cost-effective way to protect against harms. This might particularly apply to services which could expect to be redesignated as 'large' as their user base expands.

We are also interested to understand more about Ofcom's processes for providing ongoing guidance and alerts to service providers in relation to emerging and evolving online harms, so that good practice can be developed as early and consistently as possible.

D. Next steps

The Committee welcomes the breadth and depth of Ofcom's work on implementing the Online Safety Act, noting there remain significant challenges in the scale and speed of the task in hand, and its evolving nature.

We will continue to advise Ofcom with particular regard to NI dimensions to online safety, through formal consultations and ongoing discussion and engagement with the project teams. We will take a close interest in the views of stakeholders in NI through engagement and consultation. We will also use our knowledge of NI and its communities to provide examples and evidence and make connections to provide further insight.

Advisory Committee for Northern Ireland

February 2024

[9] Onora O'Neill, "A philosopher looks at digital communication", 2022