

Your response

About Barnardo's

Barnardo's is the UK's largest national children's charity. In 2022/23, we reached 373,200 children, young people, parents and carers through more than 800 services and partnerships across the UK. Our goal is to achieve better outcomes for more children. To achieve this, we work with partners to build stronger families, safer childhoods and positive futures.

Barnardo's has a long history of supporting all children through different forms of childhood harms, including child sexual abuse and exploitation. Barnardo's has supported children and young people affected by sexual abuse for over 25 years and now delivers specialist services in 45 locations across the UK. Our practitioners support children and young people's recovery by rebuilding their confidence and self-esteem, and by helping their families, schools and social networks make sense of what has happened. It is often long-term and complex work. We also work in partnership with other statutory and voluntary organisations to promote joined-up responses for children and their families, and strong support networks.

Barnardo's also hosts the Centre of expertise on child sexual abuse which seeks to reduce the impact of child sexual abuse through improved prevention and better response and provides support and guidance to thousands of professionals through its resources, training and research.

Overview of Barnardo's response

Barnardo's welcomes the opportunity to respond to the Guidance for service providers publishing pornographic content consultation. Barnardo's, alongside other charities and organisations, worked extensively on the Online Safety Act to ensure the inclusion of 'highly effective' age assurance to protect children from pornographic content wherever it is found online – including on dedicated pornography sites and social media sites. In our frontline services, we see the devastating impacts that viewing pornography can have on children – normalising abusive sexual acts and damaging their mental health.

We have responded to the consultation questions below, but wanted to set out some fundamental concerns that we have with the approach that Ofcom have taken in the guidance. Ultimately, we are concerned about Ofcom's focus on a methods and processes approach to age assurance rather than an outcome-based approach. We feel that this does not align with Parliament's intention, and that it could impact child protection from online pornographic content.¹

Similarly, we are concerned that Ofcom has not defined what 'highly effective' age assurance means. We believe that this will cause confusion amongst pornography providers about how to implement age assurance to a 'highly effective' degree, and cause issues for Ofcom when it comes to enforcement. We also disagree with Ofcom's analysis that the technology does not exist, and believe that a numerical definition is possible and would be the most robust. When the BBFC were preparing to implement age verification for pornography under the Digital Economy Act more than six years ago, they believed that the technology was available for effective age verification and was developing at

¹ <https://hansard.parliament.uk/lords/2023-07-06/debates/35CCD184-5828-4C47-AA19-D19D8AF44938/OnlineSafetyBill>, column 1430

an increasing rate.² Six years on, the market for age verification technology has only increased and it is successfully used in a range of areas including the prevention of gambling, alcohol and tobacco sales.³

The inclusion of a duty on Part 5 and Part 3 sites to implement age assurance to protect children from online pornographic content is an important step forward in child protection, but the implementation of this duty is key. We know that children are accessing abusive, harmful and degrading pornographic content at younger and younger ages,⁴ and so we urge Ofcom to ensure that the implementation of the Act through the guidance is as strong and robust as possible.

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<p>Question 1: Do you agree with our proposed guidance on scope? If not, please provide any information or evidence in support of your views, including descriptions of services or content where you consider it is unclear whether they fall within the scope of Part 5.</p>	<p>Confidential? – No</p> <p>Barnardo’s is concerned about condition three of the proposed guidance on scope, which sets out that the service must have links to the UK.</p> <p>Wherever it is found online, pornographic content harms children’s mental health, and their attitudes towards healthy sex, relationships and issues such as consent. Children are accessing pornographic content at an increasingly early age; BBFC research found that children are accessing pornographic content from as young as seven,⁵ and Barnardo’s has supported children as young as five years old who have accessed this content online. Children often accidentally stumble across pornographic content, searching for terms such as ‘porn’ or ‘sex’ without knowing what they mean, or via pop-up adverts on streaming and gaming sites. Further, research by the Children’s Commissioner for England found that 37% of young people who had previously seen online pornography had seen it through dedicated pornography sites.⁶</p> <p>If not all pornographic sites accessible in the UK are in the scope of the guidance, we are concerned that children will be able to continue to access pornographic content without any age blockers in place.</p> <p>We are also concerned that condition three will mean that smaller pornography providers that are based outside the UK but which are accessed by users in the UK</p>

² <https://committees.parliament.uk/writtenevidence/109597/pdf/>

³ Age Verification Providers Association, 2022. [Age verification, privacy and data](#)

⁴ <https://www.childrenscommissioner.gov.uk/resource/a-lot-of-it-is-actually-just-abuse-young-people-and-pornography/>

⁵ BBFC, 2019. [Children see pornography as young as seven, new report finds](#)

⁶ <https://assets.childrenscommissioner.gov.uk/wpuploads/2023/02/cc-a-lot-of-it-is-actually-just-abuse-young-people-and-pornography-updated.pdf>

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	<p>will be outside of the scope of the guidance. Smaller sites may be able to hide behind the costs associated with understanding the locations of their user base, and therefore fall outside of the scope of the guidance.</p> <p>During the passage of the Online Safety Act through Parliament, Government Ministers made it clear that their expectation was that the age verification and age estimation measures in the Act would extend to all sites which contain pornographic content accessible in the UK. For example, in a Government factsheet provided to respond to the concerns of Peers, it was stated that “The Bill’s regulatory framework will cover all online sites with pornographic content, including commercial pornography sites, social media, video-sharing platforms and fora. It will also cover search engines, which play a significant role in enabling children to access pornography.”⁷</p> <p>We therefore feel that ‘links to the UK’ should be interpreted in the broadest sense, and mean that any pornographic provider accessible in the UK is within scope of the guidance. This would ensure that children are protected from all pornographic content, wherever it is found online, which was the intention set out by the Government.</p>
<p>Question 2: Do you have any comments on how our proposed guidance applies in respect of pornographic content created by generative-AI services within the scope of Part 5? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p> <p>Barnardo’s are supportive of the proposed guidance covering pornographic content created by generative-AI services on platforms that fall within the scope of Part 5 of the Act.</p> <p>We are concerned about the increasing rates of AI-generated pornographic content, and the type of content that generative-AI services have the potential to create. A study found that 96% of all deepfake images are non-consensual pornography,⁸ and we are worried that pornographic content developed using AI-generative services will be able to depict abusive, violent and degrading sexual acts. This is particularly concerning with regards to recent developments in text-to-video generative-AI technology.⁹</p>

⁷ Online Safety Bill: Protecting Children from Accessing Pornography Online

⁸ <https://www.tandfonline.com/doi/full/10.1080/1369118X.2023.2234980>

⁹ <https://www.theguardian.com/technology/2024/feb/15/openai-sora-ai-model-video>

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	<p>It is important that the guidance is future-proof and able to keep up with new technological advancements, and including AI-generated pornographic content within the scope will help to enable this.</p>
<p>Question 3: Do you have any comments on our proposed guidance in respect of the kinds of age assurance which could be highly effective? If you consider there are other kinds of age assurance which have not been listed that you consider could fulfil the proposed criteria, please identify these with any supporting information or evidence.</p>	<p>Confidential? – No</p> <p>Barnardo’s disagree with Ofcom’s approach in the guidance to age assurance, which takes a methods and process-driven approach. We believe that the guidance does not take an outcome-focused approach, which was the intention of Parliament, and also creates uncertainty for pornography providers – and for enforcement.</p> <p>In introducing the new amendments to the Online Safety Act, Lord Parkinson, the Minister, set out that Providers covered by the duties will need to “ensure that their use of these measures meets a clear, objective and high bar for effectiveness. They will need to be highly effective at correctly determining whether a particular user is a child. This new bar will achieve the intended outcome behind the amendments which we looked at in Committee, seeking to introduce a standard of “beyond reasonable doubt” for age assurance for pornography, while avoiding the risk of legal challenge or inadvertent loopholes.”¹⁰ This demonstrates that the Government do have an intention for the guidance to include an outcome-focused approach.</p> <p>We understand that, when the BBFC were preparing to implement the Digital Economy Act 2017, they had opted for an outcome-based approach, rather than specifying specific forms of age verification and estimation that would be considered acceptable. When providing evidence to the Women and Equalities Committee, the BBFC stated that they: “opted for a principles-based approach, rather than specifying a finite number of “approved” solutions, to allow for and encourage technological innovation within the age verification industry.”¹¹</p>

¹⁰ <https://hansard.parliament.uk/lords/2023-07-06/debates/35CCD184-5828-4C47-AA19-D19D8AF44938/OnlineSafetyBill>, column 1430

¹¹ <https://committees.parliament.uk/writtenevidence/109597/pdf/>

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	<p>To ensure that the intention of parliament is met in the guidance, the guidance should take an outcome-focused approach to the implementation of age verification and age estimation, including a definition of what Ofcom determines 'highly effective' age verification and age estimation to mean.</p> <p>Notwithstanding these points, we do agree that the proposed age assurance methods included in the guidance would be broadly acceptable methods of age verification and age estimation.</p>
<p>Question 4: Do you agree that service providers should use the proposed criteria to determine whether the age assurance they implement which is highly effective at correctly determining whether or not a user is a child? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p> <p>Barnardo's do agree that technical accuracy, robustness, reliability and fairness are important criteria for service providers to consider when determining which age assurance technology to use. However, we disagree that this should be the only criteria used to assess whether an age assurance measure is highly effective.</p> <p>We disagree with Ofcom's assessment that there is not sufficient evidence to introduce a specific metric for assessing whether an age assurance technology is highly effective, and believe that the guidance should introduce a numerical definition (i.e. in 99% of instances users under the age of 18 cannot access pornographic content). We believe that having a clear definition such as this will make it clearer for pornography providers who are in scope of the guidance about the expectations placed on them, and would help Ofcom when conducting enforcement action.</p> <p>Evidence from age assurance providers suggests that achieving highly effective age assurance is possible with current technology. For example, Yoti found that its True Positive Rate for 13- to 17-year-olds correctly estimated as under the age of 25 is 99.91%, with no discernible bias across genders or skin tones.¹² The Google age estimation model has also been assessed to accurately estimate the age of person who is 18 as being under the age of 25 with 99.9% reliability.¹³ Of course, we would want to see such technologies used in conjunction with age verifica-</p>

¹² <https://www.yoti.com/wp-content/uploads/2023/12/Yoti-Age-Estimation-White-Paper-December-2023.pdf>

¹³ <https://www.accscheme.com/registry/google-inc-llc>

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	<p>tion technologies for those identified as under 25 to ensure that a user is over the age of 18, and protect children from accessing pornographic content.</p> <p>When the BBFC were preparing to implement the Digital Economy Act 2017, they were confident that the technology existed for age assurance to be highly effective, and reported that they saw “substantial developments in the sector” during this time.¹⁴ This was now over six years ago, and significant technological developments have taken place in this time, including an increase in Artificial Intelligence tools.</p> <p>Age assurance technologies are used every day, from gambling to buying age-restricted products online such as alcohol or knives. We therefore believe that the technology does exist for Ofcom to be confident in setting out ‘highly effective’ age assurance with a numerical definition.</p>
<p>Question 5: Do you have any information or evidence on the extent of circumvention risk affecting different age assurance methods and/or on any steps that providers might take to manage different circumvention risks for different methods?</p>	<p>Confidential? – No</p> <p>Barnardo’s is concerned about Virtual Private Networks (VPNs) being used to circumvent age verification and age estimation technologies to access pornographic content. Previously, some pornography sites have created and advertised their own VPNs to allow children to bypass controls put in by Internet Service Providers.¹⁵</p> <p>To prevent this risk, Ofcom’s guidance could stipulate that pornography providers should block traffic from known VPNs, or could require age verification/ estimation on every occasion a VPN attempts to access its site and pornographic content.</p> <p>If Ofcom did adopt an outcome-based approach to the guidance by defining what highly effective means, this would help to circumvent risks affecting age assurance methods. Providers would be mandated to ensure that risks of circumventing age assurance methods do not prevent the age assurance methods being ‘highly effective’ and would therefore need to take action to protect against such risks.</p>

¹⁴ <https://committees.parliament.uk/writtenevidence/109597/pdf/>

¹⁵ The Telegraph, 2019. [Porn sites offer loopholes to get around web ban as BBFC admits it is powerless to stop tech savvy teens](#)

Question	Your response
<p>Question 6: Do you agree with our proposed guidance that providers should consider accessibility and interoperability when implementing age assurance? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p> <p>Barnardo’s agree that accessibility and interoperability are important criteria for providers to consider when implementing age assurance, and are key for instilling confidence among the public in age assurance technologies, and aiding compliance.</p> <p>Age assurance methods chosen should not discriminate against any users, and it is important that they are accessible and easily understood for users accessing them. It is important that this information is provided in an easy-to-understand way, including privacy information to help instil confidence in using age assurance technologies.</p>
<p>Question 7: Do you have comments on the illustrative case study we have set out in the guidance? Do you have any supporting information or evidence relating to additional examples of how the criteria and principles might apply to different age assurance processes?</p>	<p>Confidential? – No</p> <p>The illustrative case study is helpful in setting out clearly and accurately how the process of age assurance will work, and what would be considered an effective form of age assurance under the guidance.</p> <p>It could also be helpful to include a more nuanced case study which would display how some approaches would not meet the bar of ‘highly effective’. For example, the case study could set out an example of a provider only implementing age estimation technologies to detect if a user was over the age of 18 that had a +/- range of 1.5 years, without any combination with age verification technologies to ascertain if the user was in fact over 18.</p> <p>As set out previously, though, we do remain concerned with the guidance’s focus on processes and methods of age verification rather than taking an outcome-based approach.</p>
<p>Question 8: Do you agree with our proposed guidance on the record-keeping duties? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p> <p>Barnardo’s is concerned that the record-keeping duties set out in the guidance have too much focus on whether the pornography provider is complying with Ofcom’s guidance, rather than if their forms of age assurance are actually protecting children from pornographic content.</p> <p>Rather than showing compliance with the guidance, we believe the record-keeping duties should adopt an outcome-based approach, meaning that the pornography provider should assess how effective their age assurance</p>

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	<p>methods were in preventing children from accessing the content.</p> <p>This is in line with the Act, with Section 81(5) setting out that written records are required which ensure compliance with the duty set out in section 81(2), which states “A duty to ensure, by the use of age verification or age estimation (or both), that children are not normally able to encounter content that is regulated provider pornographic content in relation to the service”.¹⁶</p> <p>Further, when introducing the measures to the Act, Lord Parkinson the Government Minister stated that “Amendment 214 will require Part 5 providers to publish a publicly available summary of the age-verification or age-estimation measures that they are using to ensure that children are not normally able to encounter content that is regulated provider pornographic content on their service. This will increase transparency for users on the measures that providers are using to protect children.”¹⁷</p> <p>To be aligned with the Act, and to ensure that the age assurance technologies are actually preventing children from accessing pornographic content rather than just complying with Ofcom’s guidance, it is therefore key that the record-keeping duties take an outcome-based approach.</p> <p>It is also important that any record-keeping is checked and audited, including through a ‘mystery shopper’ process, to audit the accuracy of the record-keeping, and check compliance with their duties under the Act.</p>
<p>Question 9: Do you have any comments on our proposed approach to assessing compliance with the duties on service providers who publish or display pornographic content, including on the proposed examples of non-compliance? Please provide any information or evidence in support of your views.</p>	<p>Confidential? – No</p> <p>Barnardo’s is concerned that Ofcom’s approach to enforcement included in the draft guidance does not go far enough to demonstrate that Ofcom will take enforcement action when a pornography provider does not comply with age assurance regulations.</p> <p>Swift, robust enforcement of the age assurance regulations is necessary to ensure compliance across pornography providers. When speaking with pornography provid-</p>

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¹⁷ <https://hansard.parliament.uk/lords/2023-07-06/debates/35CCD184-5828-4C47-AA19-D19D8AF44938/OnlineSafetyBill> column 1431

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	<p>ers, they have told us of the importance of a ‘level playing field’, to ensure that larger pornography providers who do comply with age assurance guidelines are not then at a commercial disadvantage compared to their competitors with users moving to sites which do not require age assurance – which will ultimately create a ‘race to the bottom’.</p> <p>This view was also shared by the BBFC, which stated that “from our engagement with the adult industry, it has always been very clear that a proactive approach involving active investigations and the threat of swift enforcement is essential to ensure that compliant sites are not commercially disadvantaged by their non-compliant competitors. Without this deterrent, there is a risk that the regulation creates a commercial incentive for unscrupulous sites to be non-compliant so they can benefit from traffic diverting to them from those that have put age-verification in place.”¹⁸</p> <p>Evidence from other jurisdictions which have introduced age verification to access pornographic content demonstrate how swift and robust enforcement is needed, and how pornography providers can ignore legislation. In Louisiana, for example, Pornhub reported that traffic to its website dropped by 80 percent after it began enforcing age verification, with traffic moving to competitors which had not implemented age verification in accordance with legislation.¹⁹ Further, recently in Texas, a lawsuit has been filed against Aylo for violating a Texas law which requires pornography sites to implement age verification systems.²⁰ Without swift enforcement of the Online Safety Act, it is unlikely that the Online Safety Act’s implementation will effectively prevent children from accessing pornographic content.</p> <p>It is therefore key that the draft guidance takes a much more robust approach to enforcement, to ensure compliance.</p>

¹⁸ <https://committees.parliament.uk/writtenevidence/109597/pdf/>

¹⁹ <https://www.theverge.com/2023/7/3/23782776/pornhub-blocks-mississippi-virginia-age-verification-laws>

²⁰ <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-major-pornography-distributor-violating-texas-age-verification-laws>

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<p>Question 10: Do you have any comments on the impact assessment set out in Annex 1? Please provide any information or evidence in support of your views</p>	<p>Confidential? – No</p> <p>We are supportive of the impact assessment set out in the draft guidance, however feel it should also include an assessment of the positive impacts of the policy in preventing children from accessing online pornographic content.</p>
<p>Question 11: Do you agree that our proposed guidance is likely to have positive effects on opportunities to use Welsh and treating Welsh no less favourably than English?</p> <p>If you disagree, please explain why, including how you consider the proposed guidance could be revised to have positive effects or more positive effects, or no adverse effects or fewer adverse effects on opportunities to use Welsh and treating Welsh no less favourably than English.</p>	<p>Confidential? – No</p> <p>We have no comments on this.</p>

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