

## Your response

### Ofcom's Register of Risks

Question 1:	
i)	Do you have any comments on Ofcom's assessment of the causes and impacts of online harms?
The assessment is comprehensive and covers the main causes and impacts of animal cruelty online harms.	
ii)	Do you think we have missed anything important in our analysis? Please provide evidence to support your answer.
No response.	
iii)	Is this response confidential? (if yes, please specify which part(s) are confidential)
No.	

Question 2:	
i)	Do you have any views about our interpretation of the links between risk factors and different kinds of illegal harm? Please provide evidence to support your answer.
No response.	
ii)	Is this response confidential? (if yes, please specify which part(s) are confidential)
No.	

### Service's risk assessment

Question 3:	
i)	Do you have any comments on our approach to amending the draft Risk Profiles or our proposed risk factors for animal cruelty?
The proposed amendments to the draft risk profiles and the proposed animal cruelty risk factors are well-drafted and reflect the latest evidence about online animal cruelty.	
ii)	Please provide the underlying arguments and evidence that support your views.

No response.

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

**Question 4:**

i) Are the draft Risk Profiles for illegal content sufficiently clear in presenting the relationships between the risk factors and the risk of harm posed by animal cruelty content?

No response.

ii) Please provide the underlying arguments and evidence that support your views.

No response.

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

**Question 5:**

i) Do the draft Risk Profiles for illegal content include the risk factors that are most strongly linked to the risk of harm posed by animal cruelty content?

No response.

ii) Please provide the underlying arguments and evidence that support your views.

No response.

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

## The Illegal Content Judgements Guidance (ICJG)

### Question 6:

- i) Do you agree with our proposals? Please provide the underlying arguments and evidence that inform your view.

No.

In drafting the Illegal Content Judgement Guidance for service providers, Ofcom has incorrectly assessed how frequently offences under [section 4\(1\) of the Animal Welfare Act](#) can take place online.

The [consultation document](#) correctly states that *'online content can clearly depict an act of animal cruelty that would amount to an offence, the content cannot itself cause suffering to an animal.'* This means that online content will not in itself breach section 4(1) of the Animal Welfare Act. The consultation goes on to set out how online content can amount to what is known as 'inchoate' breach of the Act; encouraging, assisting or conspiring to commit the offence of causing unnecessary suffering to an animal, all acts that can be committed online. When online content constitutes an inchoate breach of the Animal Welfare Act, it qualifies as a priority offence for the purposes of the Online Safety Act, meaning that service providers are required to take proactive action against it.

However, the consultation document then suggests that *'not all pre-recorded depictions of cruelty to animals will amount to encouraging, assisting or conspiring to commit an action that would cause, or be likely to cause, unnecessary suffering to an animal'*. This assessment that pre-recorded animal torture content will mostly not qualify as an inchoate offence under the Animal Welfare Act (and thereby will not qualify as a priority offence under the Online Safety Act) leads Ofcom to propose that service providers should instead tackle such content through the non-priority offence route provided by the Online Safety Act, utilising a Communications Act offence. This non-priority offence route requires a lesser degree of action from service providers than that required for priority offences.

If carried through into the final Illegal Content Judgement Guidance, this approach would constitute a direction to service providers to treat most cases of animal torture content as non-priority. Such a direction would contravene the intentions of the Parliamentarians who pressed for animal welfare to be added as a priority offence, and the decision of the Government Ministers who agreed to the addition. More evidence on these parliamentary intentions is provided in response to q6ii, this evidence shows the clear intention for animal torture content to be treated as priority offence for the purposes of the Online Safety Act. As parliamentarians and Ministers made clear during the passage of the Act, the primary purpose of the legislation was to protect online service users, especially children, from the consequences of seeing certain forms of online content. The Parliamentary debates saw consensus forged that seeing animal torture content, whether live streamed or pre-recorded, had such a detrimental impact on users that it should be put on the priority list. By downgrading animal torture content to non-priority status, Ofcom is at risk of

contravening decisions made by Parliament as to what forms of content people require maximum protection from.

It is important to address the erroneous assessment that has opened the door to this unsatisfactory outcome; Ofcom's view that pre-recorded animal torture content will in most cases not constitute a section 4(1) Animal Welfare Act inchoate offence.

Contrary to Ofcom's view, the vast majority of online pre-recorded depictions of cruelty to animals will by their very nature amount to conspiring to cause unnecessary suffering to an animal, or encouraging or assisting it, and therefore constitute a section 4(1) Animal Welfare Act inchoate offence.

Part 1 of the [Criminal Law Act 1977](#) defines conspiracy as follows: *'a person agrees with any other person or persons that a course of conduct shall be pursued which...will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement.'* The act of making online animal torture content typically involves multiple people (e.g one to commit the acts of torture, one to film) agreeing and preparing a course of conduct which result in the offence of animal suffering taking place. The filmed nature of this agreeing and preparation provides a record of a course of conduct pursued that led to a section 4(1) Animal Welfare offence, a record of the inchoate offence of conspiracy. From the start of the content to the moment of the act of cruelty being inflicted, proof of conspiracy to commit the offence is being captured.

To give a precise example, acts such as those committed by the 'monkey torture ring' [investigated](#) by the BBC in June 2023 saw some pre-recorded films of animal torture where torturer, camera person and online organisers collaborated on courses of conduct that led to unnecessary animal suffering. The resulting films were then broadcast to wider audiences. [Charges](#) against members of the ring in the USA have been laid on conspiracy grounds, with the films themselves providing evidence of conspiracy.

In other UK cases, including several recently successfully prosecuted by the RSPCA, online content has been used as evidence of conspiracy to commit animal cruelty (see evidence below). For example, in April 2024 Essex man Phillip Ali was [convicted](#) under the Animal Welfare Act for running a dog fighting ring, with WhatsApp voice notes planning fights, along with pre-recorded videos, used as evidence of conspiracy of the part of Mr Ali and accomplices to commit the offences. A list of similar cases can be found in Link's response to question 6 ii. Pre-recorded videos are frequently used as evidence of direct Animal Welfare Act breaches, with those responsible for causing unnecessary suffering to animals under section 4(1) being held to account after the unnecessary suffering has occurred on the basis of the offence having been captured on video.

The Ofcom consultation document accepts that livestreamed animal torture is likely to constitute conspiracy, as the courts have made clear, pre-recorded videos and other forms of online content can also serve this role.

Given that pre-recorded online content has been accepted as evidence of conspiracy to commit animal welfare offences in UK courts, Ofcom should recognise that such material can (and mostly will) constitute a conspiracy inchoate offence for the purposes of the Online Safety Act.

There will also be examples of pre-recorded online animal torture content that constitute inchoate offences on the grounds of encouraging or assisting a breach of the Animal Welfare Act. Some animal torture content will encourage viewers to go out and commit similar offences, either by directly inciting the audience, or by simply demonstrating how copycat behaviour could be carried out. Similarly social media content can enable the payment for and planning of animal torture, constituting assistance to commit the crime. This online organising, through apps like WhatsApp and Telegram, was a particular feature of the monkey torture case, with records of payments for monkey torture acts securing the [conviction](#) of UK citizens on the inchoate offence of assisting unnecessary suffering of an animal.

As the above sets out, Ofcom's judgement that pre-recorded animal torture content will in most cases not constitute an inchoate Animal Welfare Act offence is incorrect. The consequences of failing to correct this error, and directing service providers to treat most animal torture content as a non-priority offence using the Communications Act, will be detrimental to efforts to address online animal abuse and run directly contrary to the intentions and decisions of the parliamentarians responsible for this part of the Online Safety Act (see evidence below). As the RSPCA highlight in a separate consultation response, as a charity with extensive experience of bringing welfare prosecutions, they are unaware of any precedent for using the Communications Act to successfully address animal abuse. There is a real risk that directing service providers down this novel non-priority route will result in service provider confusion about the nature of online animal welfare offences, the seriousness of them and how they should varyingly respond to live and pre-recorded content. Such ambiguity, along with official non-priority status, will result in online animal torture content being less-than robustly tackled, the opposite outcome from that intended by law makers.

**Link strongly recommends that Ofcom revises the draft Illegal Content Judgement Guidance for service providers, to state that the vast majority of animal torture online content will constitute an inchoate offence under Section 4(1) of the Animal Welfare Act and that service providers should always treat such content as a priority offence for the purposes of the Online Safety Act.**

This simpler approach, underpinned by an accurate understanding of the nature of inchoate Animal Welfare Act offences, will direct and enable service providers to take proactive action against animal torture content wherever it appears on their platforms, as Parliament intended when passing the final Online Safety Act.

Link also recommends three further tweaks to the draft guidance:

Type of animal (para 9.58 of draft guidance)

The guidance provides a definition of protected animal, for the purposes of Section 4(1) of the Animal Welfare Act. Whilst most of the definition is well crafted, it suggests that wild animals can only count as protected animals when 'under the control of a person on a permanent basis'. This differs from the Animal Welfare Act [definition](#) (section 2), which states an animal 'under the control of man whether on a permanent or temporary basis' counts as protected. This deviation from the Animal Welfare Act could see content of temporarily restrained wild animals (for example a badger being held up by a person, as in this [case](#) of animal torture online content) omitted from service provider action. Paragraph 9.58 of the draft guidance should be amended to align precisely with

the Animal Welfare Act definition of protected animal, stating that animals are protected when 'under the permanent or temporary control of man' to avoid such outcomes.

Exemption for food production (para 9.81 of draft guidance)

In the section of the guidance suggestion the non-priority Communications Act route for addressing animal torture content, it is suggested that food production could provide a good reason for online content to show serious injury or death being caused to animal. Assuming this section of the guidance is not removed entirely, this part needs amendment. The broad nature of 'food production' (especially across different global cultures) could allow a loophole to allow animal torture content to stay online. This loophole should be removed from para 9.81 (and from para 9.84, where it reappears).

Exemption for political campaigning (para 9.83 of the draft guidance)

The same section of the guidance clarifies that content for the purposes of 'political campaigning' should not be interpreted as illegal content. This is a welcome exemption, which preserves the use of online animal content by campaigners and charities to raise awareness of cruelty and ways to combat it. This use of content could helpfully be clarified further, by adding an additional bullet point to the list of examples (in paragraph 9.84) of content not to be treated as illegal. The bullet point, to clearly set out that the political exemption covers educational campaigning by charities, could run as follows:

- [For example, it will not usually be reasonable to infer that content is obscene where it depicts] 'animals who have experienced or are experiencing suffering where clearly shared in the course of educating and enabling the public to act to prevent such situations from occurring.'

ii) Please provide the underlying arguments and evidence that support your views.

Evidence to demonstrate that pre-recorded online content has been accepted as evidence of animal welfare offences in UK courts:

2024 conviction re dog fighting, Essex (also cited above in response to question 6i):

<https://www.dailymail.co.uk/news/article-13272701/Police-uncovered-sick-tranche-videos-drugs-paraphernalia-home-Philip-Ali-spent-10-years-jail-attempted-murder-international-kingpin-brutal-world-dog-fighting.html>

2023 conviction re dogs being set on foxes and badgers, Cheshire:

<https://www.manchestereveningnews.co.uk/news/uk-news/man-banned-keeping-animals-after-28458781>

2023 conviction re dogs being set on foxes and badgers, Aberdeen:

<https://www.scottishspca.org/news/former-gamekeeper-who-filmed-animal-fights-for-tik-tok-sentenced>

2016 conviction re dogs being set on badgers, Yorkshire (also cited above in response to question 6i):

<https://www.express.co.uk/news/nature/719654/Badger-baiter-jailed-sickening-footage-animal-flung-dogs-emerged>

Evidence of law makers intending that all animal torture content be treated as a priority offence for the purposes of the Online Safety Act:

Lord Parkinson of Whitley Bay, then Parliamentary Under Secretary of State (Department for Culture, Media and Sport) at Online Safety Bill [Commons amendment stage](#), 19.09.23:

*“To accelerate protections in this important area, the Government have tabled an amendment in lieu listing Section 4(1) of the Animal Welfare Act 2006 as a priority offence. This will mean that users can be protected from animal torture material more swiftly. **Officials at the Department for Environment, Food and Rural Affairs have worked closely with the RSPCA and are confident that the Section 4 offence, unnecessary suffering of an animal, will capture a broad swathe of illegal activity. Adding this offence to Schedule 7 will also mean that linked inchoate offences, such as encouraging or assisting this behaviour, are captured by the illegal content duties.**”*

The Rt Hon Michelle Donelan MP, then Secretary of State for Science, Innovation and Technology, [announcing the addition](#) of Animal Welfare Act offence on 07.09.24:

*“This kind of activity is deeply disturbing and not something an animal-friendly nation like the UK should ever tolerate. **Social media sites must not be used as platforms to promote the sadistic and harrowing actions of some deeply depraved internet users, and today we’re taking steps to make sure it is swiftly removed so both animals and users can be protected.** The Online Safety Bill will make the UK the safest place in the world to be a child online, and it will now stop the proliferation of animal abuse too.”*

Baroness Merron, then Shadow Lords Spokesperson for Culture, Media & Sport, proposing amendment which led to Government adding animal cruelty to the list of priority offences, Online Safety Bill [Lords Committee stage](#), 25.05.23

*“**This amendment seeks to add animal cruelty offences to the list of priority offences set out in Schedule 7, which would require platforms to proactively identify and remove content that depicts animal cruelty, including torture and death.** This content is increasingly common, and it is shocking— films of cats being kicked about as footballs, dogs being set on fire and monkeys being ensnared into plastic bottles with dogs then being set upon them. All this is widely shared and viewed, and none of it is properly addressed by social media companies. These animal cruelty offences clearly meet the criteria of prevalence, risk of harm and severity of that harm, which have been set out and previously used by the Government to justify additions to the list.”*

See also Link briefings covering and responding to arguments about online animal abuse during the passage of the Act:

[https://wcl.org.uk/docs/assets/uploads/Online\\_Safety\\_Bill\\_Briefing\\_animal\\_cruelty\\_trafficking\\_content\\_12.04.23.pdf](https://wcl.org.uk/docs/assets/uploads/Online_Safety_Bill_Briefing_animal_cruelty_trafficking_content_12.04.23.pdf)

[https://wcl.org.uk/docs/assets/uploads/Online\\_Safety\\_Bill\\_Briefing\\_animal\\_cruelty\\_trafficking\\_content\\_Lords\\_report\\_stage.pdf](https://wcl.org.uk/docs/assets/uploads/Online_Safety_Bill_Briefing_animal_cruelty_trafficking_content_Lords_report_stage.pdf)

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No

**Question 7:**

- i) Do you consider the guidance to be sufficiently accessible, particularly for providers with limited access to legal expertise?

No response.

- ii) Please provide the underlying arguments and evidence that support your views.

No response.

- iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

**Question 8:**

- i) What do you think of our assessment of what information is reasonably available and relevant to illegal content judgements?

No response.

- ii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

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Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 85 organisations to campaign for animals and the natural world.

For further information, contact: Matt Browne, Link Director of Policy & Advocacy [matt@wcl.org.uk](mailto:matt@wcl.org.uk)

This briefing is also supported by the following members of the Link coalition:

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