

# Annex: “I’ve seen horrible things”: children’s experiences of online harms

October 2024

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The Children’s Commissioner’s Office’s response to Ofcom’s ‘Protecting Children from harms online’ consultation

## Table of contents

Introduction.....	6
Volume 2: Children’s Access Assessments.....	8
Q1: Our proposal that service providers should only conclude that children are not normally able to access a service where they are using highly effective age assurance?.....	8
Q2: Our proposed approach to the child user condition, including our proposed interpretation of “significant number of users who are children” and the factors that service providers consider in assessing whether the child user condition is met? .....	9
Q3: Our proposed approach to the process for children’s access assessments? .....	11
Volume 3: Causes and Impacts of Online Harm to Children.....	12
V3.1 Draft Children’s Register of Risk (Section 7) .....	12
Q4: Do you have any views on Ofcom’s assessment of the causes and impacts of online harms? Please provide evidence to support your answer. ....	12
a) Do you think we have missed anything important in our analysis? .....	14
Q5: Do you have any views about our interpretation of the links between risk factors and different kinds of content harmful to children? Please provide evidence to support your answer.....	18
Q6: Do you have any views on the age groups we recommended for assessing risk by age? Please provide evidence to support your answer.....	18
Q7: Do you have any views on our interpretation of non-designated content or our approach to identifying non-designated content? Please provide evidence to support your answer.....	19
Q8: Do you have any evidence relating to kinds of content that increase the risk of harm from Primary Priority, Priority or Non-designated Content, when viewed in combination (to be considered as part of cumulative harm)? .....	20
Q9 Have you identified risks to children from GenAI content or applications on U2U or Search services? Please Provide any information about any risks identified.....	22
Q10: Do you have any specific evidence relevant to our assessment of body image content and depressive content as kinds of non-designated content? .....	23
V3.2 Draft Guidance on Content Harmful to Children (Section 8) .....	24
Q12 Do you agree with our proposed approach, including the level of specificity of examples given and the proposal to include contextual information for services to consider?.....	24
Q13 Do you have further evidence that can support the guidance provided on different kinds of content harmful to children?.....	25
Q14 For each of the harms discussed, are there additional categories of content that Ofcom a) should consider to be harmful or b) consider not to be harmful or c) where our current proposals should be reconsidered? .....	25
Volume 4: Assessing the Risks of Harm to Children.....	26
V4.1 Governance and Accountability (Section 11) .....	26
Q15 Do you agree with the proposed governance measures to be included in the Children’s Safety Codes? .....	26
Q16: Do you agree with our assumption that the proposed governance measures for Children's Safety Codes could be implemented through the same process as the equivalent draft Illegal Content Codes? .....	33
V4.2 Children’s Risk Assessment Guidance and Children’s Risk Profiles’ (Section 12) .....	34

Q17: What do you think about our proposals in relation to the Children’s Risk Assessment Guidance? a) Please provide underlying arguments and evidence of efficacy or risks that support your view. ....	34
Q18: What do you think about our proposals in relation to the Children’s Risk Profiles for Content Harmful to Children? a) Please provide underlying arguments and evidence of efficacy or risks that support your view. ....	40
Q19: Do you think the four-step risk assessment process and the Children’s Risk Profiles are useful models to help services understand the risks that their services pose to children and comply with their child risk assessment obligations under the Act? .....	42
Q20: Are there any specific aspects of the children’s risk assessment duties that you consider need additional guidance beyond what we have proposed in our draft? .....	43
Q21: Are the Children’s Risk Profiles sufficiently clear and do you think the information provided on risk factors will help you understand the risks on your service? .....	43
<b>Volume 5: What services should do to mitigate the risks of online harms .....</b>	<b>44</b>
<b>V5.1 Ofcom’s proposals for the Children’s Safety Codes (Section 13) .....</b>	<b>44</b>
Q22: Do you agree with our proposed package of measures for the first Children’s Safety Codes? .....	44
Q23 Do you currently employ measures or have additional evidence in the areas we have set out for future consideration? .....	56
Q25 Do you agree with our approach to developing the proposed measures for the Children’s Safety Codes? Please explain why. ....	59
Q26: Do you agree with our approach and proposed changes to the draft Illegal Content Codes to further protect children and accommodate for potential synergies in how systems and processes manage both content harmful to children and illegal content? Please explain your views. ....	61
Q27: Do you agree that most measures should apply to services that are either large services or smaller services that present a medium or high level of risk to children? .....	61
Q28: Do you agree with our definition of ‘large’ and with how we apply this in our recommendations? .....	62
Q29: Do you agree with our definition of ‘multi-risk’ and with how we apply this in our recommendations? .....	62
Q30: Do you agree with our proposal to recommend the use of highly effective age assurance to support Measures AA1-6? .....	62
Q31: Are there any cases in which HEAA may not be appropriate and proportionate? In this case, are there alternative approaches to age assurance which would be better suited? Please provide any information or evidence to support your views. ....	67
Q32: Do you agree with the scope of the services captured by AA1-6? .....	67
Q33: Do you have any information or evidence on different ways that services could use highly effective age assurance to meet the outcome that children are prevented from encountering identified PPC, or protected from encountering identified PC under Measures AA3 and AA4, respectively? .....	68
Q34: Do you have any comments on our assessment of the implications of the proposed Measures AA1-6 on children, adults or services? Please provide any supporting information or evidence in support of your views. ....	68
Q35: Do you have any information or evidence on other ways that services could consider different age groups when using age assurance to protect children in age groups judged to be at risk of harm from encountering PC? .....	68
<b>V5.4 Content moderation U2U (Section 16) .....</b>	<b>69</b>
Q36: Do you agree with our content moderation proposals? Please provide the underlying arguments and evidence that support your views. ....	69
Q37: Do you agree with the proposed addition of Measure 4G to the Illegal Content Codes? .....	69
<b>V5.5 Search moderation (Section 17) .....</b>	<b>70</b>

Q38 Do you agree with our search moderation proposals? Please provide underlying arguments and evidence to support your views.....	70
Q39: Are there additional steps that services take to protect children from the harms set out in the Act? If so, how effective are they?.....	70
Q40: Regarding Measure SM2, do you agree that it is proportionate to preclude users believed to be a child from turning the safe search settings off? .....	71
Q41 Do you consider that it is technically feasible to apply the proposed code measures in respect of GenAI functionalities which are likely to perform or be integrated into search functions? Please provide arguments and evidence to support your view.....	72
Q42: What additional search moderation measures might be applicable where GenAI performs or is integrated into search functions? Please provide arguments and evidence to support your view.....	72
<b>V5.6 User reporting and complaints (Section 18) .....</b>	<b>73</b>
Q43: Do you agree with the proposed user reporting measures to be included in the draft Children’s Safety Codes? .....	73
Q44: Do you agree with our proposals to apply each of Measures UR2 (e) and UR3 (b) to all services likely to be accessed by children for all types of complaints? .....	75
Q45: Do you agree with the inclusion of the proposed changes to Measures UR2 and UR3 in the Illegal Content Codes (Measures 5B and 5C)? .....	75
<b>V5.7 Terms of service and publicly available statements (Section 19) .....</b>	<b>75</b>
Q46: Do you agree with the proposed Terms of Service / Publicly Available Statements measures to be included in the Children’s Safety Codes? .....	75
Q47: Can you identify any further characteristics that may improve the clarity and accessibility of terms and statements for children? .....	76
Q48: Do you agree with the proposed addition of Measure 6AA to the Illegal Content Codes? .....	77
<b>V5.8 Recommender systems.....</b>	<b>77</b>
Q49: Do you agree with the proposed recommender systems measures to be included in the Children’s Safety Codes? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence. If you responded to our illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response .....	77
Q50: Are there any intervention points in the design of recommender systems that we have not considered here that could effectively prevent children from being recommended primary priority content and protect children from encountering priority and non-designated content?.....	79
Q51: Is there any evidence that suggests recommender systems are a risk factor associated with bullying? If so, please provide this in response to Measures RS2 and RS3 proposed in this chapter.....	80
Q52: We plan to include in our RS2 and RS3, that services limit the prominence of content that we are proposing to be classified as non-designated content (NDC), namely depressive content and body image content. This is subject to our consultation on the classification of these content categories as NDC. Do you agree with this proposal? Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3.....	81
<b>V5.9 User support.....</b>	<b>82</b>
Q53: Do you agree with the proposed user support measures to be included in the Children’s Safety Codes? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence. If you responded to our Illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.....	82
<b>V5.10 Search features, functionalities and user support (Section 22) .....</b>	<b>83</b>
Q54: Do you agree with our proposals? Please provide underlying arguments and evidence to support your views. ....	83
Q55: Do you have additional evidence relating to children’s use of search services and the impact of search functionalities on children’s behaviour?.....	84
Q56: Are there additional steps that you take to protect children from harms as set out in the Act? If so, how effective are they? .....	85
<b>Summary of recommendations.....</b>	<b>85</b>
Volume 2.....	85
Volume 3.....	85

Volume 4.....	87
Volume 5.....	91

## Introduction

*“More online protection, TikTok (and all socials) is destroying our minds and morals at a very young age, alongside exposing young eyes to highly inappropriate sexual, suicidal, violent, traumatising content that then becomes normalised.” – Girl, 17.*



This is a written response by the Children's Commissioner to Ofcom's consultation, Protecting people from illegal harms online, on the draft codes of practice relating to illegal content under the Online Safety Act 2023.

The Children's Commissioner, Dame Rachel de Souza, has a statutory independent role to protect and promote the rights of children in England and for children around the United Kingdom on issues reserved for the UK Parliament, with particular regard for children living away from home or receiving children's social care. Her priority is to bring the views and interests of children to the heart of Government.

Online safety is an issue reserved for the UK Parliament. The Children's Commissioner works closely with colleagues from the devolved nations to ensure that the views of children from around the United Kingdom are reflected on this issue. Sections 41(6)(h) and 215(4)(e) of the Online Safety Act

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2023 name the Children's Commissioner as a statutory consultee. The former requires Ofcom to consult the Children's Commissioner when creating or amending a code of practice issued under the Act.

## Volume 2: Children's Access Assessments

**Q1: Our proposal that service providers should only conclude that children are not normally able to access a service where they are using highly effective age assurance?**

- **The Children's Commissioner has previously stated that Ofcom should draw up a Code of Practice on age assurance<sup>1</sup>, and so the Office welcomes the regulator's steps towards doing so.** The CCo also welcomes the provisions made in Section 35 of the Online Safety Act which set out the child access assessments and recognises these as the parameters the regulator is working within when drawing up the Code's access assessment.
- **The CCo agrees that all online services must carry out a child access assessment.** The Office anticipates that, given children's dexterity at adapting to the rapid changes that characterise the online world, online services will conclude that if they are accessible to anyone, they are certainly accessible to children.
- The Office's research has found that the majority of WhatsApp and YouTube users aged 8-17 were underage<sup>2</sup> (79% and 50% respectively) - despite children, generally, have an accurate understanding of the minimum age across different social media and messaging platforms, with the exception of WhatsApp, Other prominent online platforms had high numbers of underage users, such as TikTok (44%), Snapchat (41%) and Instagram (36%).
- In responses to *The Big Ambition* survey children confirmed that it was easy to circumvent existing age verification processes. One 13 year old boy said *"Inappropriate websites have 'I am over 18' and it is really easy to bypass. This is another thing from WhatsApp and Discord. Please change this as it is dangerous for kids. Even some go on the dark web and there is no 'I confirm I am 18+'"*.
- **The CCo therefore strongly supports highly effective age assurance to safeguard children as well as to illustrate to platforms how many children are likely to be on their site.**



- Data from the Children’s Commissioner’s *The Big Ambition* survey found that both children and adults were concerned about the ability to access inappropriate platforms for children’s ages. One 14 year old boy told the Commissioner *“I also think Tik Tok and Instagram age limits should be higher as there are too many influencers who push a fake lifestyle or bad examples. Verification age ID should be necessary to open the app... like passports etc”*.
- Another boy, aged 9, said *“Children under 10 should [not] be on social media because they don't understand the dangers of friending other people they do not know”*. These examples set out what was a common qualitative theme in the Big Ambition – that children recognise that some parts of the internet are inappropriate for them, but that they are able to access it anyway. **The CCo strongly supports the introduction of highly effective age assurance as a means to measure whether or not children can access an online service.**
- The CCo recognises that the Children’s Access Assessment provisions are only designed to supply platforms with information regarding the existence of child users on their site. Later in this consultation, the Office will make recommendations regarding the Code’s provisions for using that information to pursue the Act’s online safety objective.

**Q2: Our proposed approach to the child user condition, including our proposed interpretation of “significant number of users who are children” and the factors that service providers consider in assessing whether the child user condition is met?**

- **The CCo strongly supports the additional cases when a platform would be considered to be accessible to children set out in points 2.35-2.37.**
- The CCo has concerns about the Act’s definition of the child user condition to be met if there is a significant number of child users on a service or if the service is of a kind that is likely to attract a significant number of users (Section 35 (3)). The child user condition is met if a significant number of children are users of the service, or if the service, or that part of it, is of a kind likely to attract a significant number of users who are children. Determining what is

attractive for children is itself complex and requires further research. Beyond that definition, and while attractiveness is a helpful criteria, it is not an exhaustive measure of child access. Children responded to the Big Ambition survey to highlight that they sometimes found themselves accidentally viewing content online, despite not searching for it. Several children used the word “exposed” in their responses, with one 17-year-old girl stating that “Social media should be better regulated and stop us being exposed to sex, violence, weight loss etc.”. These categories of content would not, objectively, be described as specifically “attractive” to children, but were nonetheless content that child users were accessing. The CCo would prefer a more exhaustive approach to child access. However, the CCo recognises that the regulator must work with the shortcomings of that legislative provision – but nonetheless wishes to highlight the limitation to safety that exist by ascribing child user conditions according to the number of users or reasoning for using a service.

- The CCo will refer to the above when making recommendations about the application of safety measures in Volume 5. This is to highlight that, as services in scope and which meet this child user condition, even small platforms are large enough to warrant falling in scope of the child user condition and therefore must be considered large enough to harbour risks.
- **The CCo strongly supports the regulator’s context-specific approach to defining what a “significant number of users who are children” is in practice – including the judgement that “even a relatively small absolute number or proportion of children could be significant in terms of the risk to harm of children” (4.23). The CCo recommends this approach is extended to other considerations in this Code of Practice, including the scope of the safety measures set out in Volume 5.**
- **The CCo strongly supports the regulator’s decision not to specify a number threshold for the interpretation of “significant number”** - for the reasons set out above, and also because this stands to future-proof this provision of the Act.
- **The CCo considers the factors service providers should consider, as laid out in 4.32 and Table 7 of the draft guidance, to be limiting and strongly encourages the regulator to broaden the nature of the factors listed in this section.** Where the CCo can see that benefits to children, content that is appealing to children and evidence from market research can

indicate whether or not a service is likely to attract child users, the CCo is concerned these factors abstract the nature of childhood from the child user condition. Benefits, appealing content and market research are all adult interpretations of what would draw children to a particular online service. Indeed, the content examples given in Table 8 of the draft guidance is limited and misses a lot of the content types children told the Office they found online when surveyed in *The Big Ambition*. The number of children who shared this testimony, from an adult on behalf of a 12 year old boy: *“Children are able to view content that a child should not view. For example, Andrew [Tate] content can be seen on YouTube and Tik Tok”*.

### **Q3: Our proposed approach to the process for children’s access assessments?**

- **The CCo strongly supports the approach the regulator has taken to devising the Child Access Assessments, with the caveat that the Office considers the child user condition in the Online Safety Act to be limiting.**
- **The CCo strongly supports the criteria for Highly Effective Age Assurance in Table 4. The CCo wishes to express particular support for the performance monitoring steps recommended under the ‘reliability’ measure.**
- **The CCo strongly supports the watertight approach to ensuring highly effective age assurance is widely adopted, as set out in the draft Children's Access Assessment Guidance 3.9.**
- Regarding the ‘fairness’ factor in the criteria for Highly Effective Age Assurance – the **CCo strongly supports the consideration of the impact discriminatory outcomes have on the effectiveness of the assurance method.**
- **The CCo strongly encourages the regulator and the government to develop guidance and a framework for the development of age assurance tools that are free from bias.**
- **The CCo strongly supports the direction that services should carry out a child access assessment before a significant change to any aspect of a service design or operation,** (see our response to Volume 4 for further recommendations to strengthening the definition of “significant changes”); in response to evidence of reduce age assurance; and in response to an increased number of children using the service.

## **Volume 3: Causes and Impacts of Online Harm to Children**

### **V3.1 Draft Children's Register of Risk (Section 7)**

**Q4: Do you have any views on Ofcom's assessment of the causes and impacts of online harms? Please provide evidence to support your answer.**

Volume 3 establishes the scope of harms to children. The risks identified have met the evidence threshold considered appropriate by the regulator and protections against them should therefore be provided for in the recommended measures in Volume 5. The CCo expresses concern that much of the harms identified in this Volume are not accounted for in Volume 5 and no regulatory framework is in place for them.

- **The CCo welcomes the assessment of service characteristics of risk factors – and that the regulator has taken the approach that “where we find evidence of a relationship between a characteristic of a service or harm, we consider the characteristic to be a ‘risk factor’. The Office has set out further service characteristics in the response to question 4(a), below.**
- **The CCo encourages the regulator to expand the scope of their assessment to include the types of technologies listed in 7.2.**
- **The CCo also recommends the regulator establishes a framework for regularly consulting with children during the monitoring of harms and regulated services. The regulator could work with the Children's Commissioner's Office to do so.** In a roundtable with the Children's Commissioner's Young Ambassadors, held in July 2024, one young person asked specifically for this to be set up. When asked what the one message they had for tech companies was, they said a “youth board so that the tech company can consult with young people actually using their products”, adding that it should be “one that isn't a PR stunt”.
- The CCo does not believe that children's voices have been incorporated “as far as possible” into the regulator's assessment of risks of harm and their impacts (7.34). While the Children's

Commissioner's Office welcomes the deliberative engagement that Ofcom did with children in the formation of Register of Risk, the office is concerned that this consultation was small scale and may not have sufficiently captured the experience of children with additional vulnerabilities who are likely to be at greatest risk of harm. **The CCo recommends that Ofcom develops their own in-house child participation forum to be used for future Registers of Risk and for developing child-led research on online safety. Children should be involved not only in deliberation but also in feeding back on decisions the regulator has made. Children should be the key stakeholder for this consultation and the Code should be designed around their experiences online.**

- Regarding the regulator's assessment that user-base size is a primary factor of consideration for risk, the CCo would like to highlight the stated evidence in points 7.1.31, 7.2.48, 7.3.27, 7.5.32, establishing that the size of an online platform's user-base does not accurately predict risk to children from certain types of content harms. **The CCo therefore strongly recommends that the factors included in the regulator's Register of Risks (Volume 3), the risk assessment criteria and governance frameworks (Volume 4) and proposed child safety measures (Volume 5) are not based solely on the size of a service's user base.**
- The CCo notes that recommender systems are one type of design choices highlighted in the analysis of each content type that can increase the risk of children encountering this type of harmful content online. The CCo refers to the response to the specific section on recommender systems in Volume 5 (Q22) for evidence and explanation of this point.
- The CCo notes the regulator's concern about the ethical considerations that limit research into children's experience of these harmful content types. **The CCo considers this further incentive for the regulator to embed child consultation through representative bodies, such as the Children's Commissioner's Office, when gathering evidence on harm.**
- The CCo notes that children expressed concern that some online services were addictive as a result of multiple different design and content factors. Services mentioned were gaming sites (as noted in the consultation) and other broader access points such as social media or smartphones (that are not explicitly mentioned in relation to the development of addictive behaviours). In *The Big Ambition*, one 11 year old girl asked decision-makers to "stop online

*games where you can play with others because young children will get addicted to games that are not for their age (get influenced and start swearing and being rude just like they do online)”, and an adult on behalf of a 4 year old girl said “social media is painting a false and unrealistic version of life. Educate children about how phones are addictive”.*

- **The CCo encourages the addictive features on platforms such as gaming platforms to be considered as an additional risk factor for harmful content, as the increased time and reliance on it which comes with developing addictive behaviours increases the risk a child might come into contact with that content type.** This recommendation is made in more detail in the later response to Question 53 in Volume 5, but the CCo recommends this risk factor is considered for all types of harmful content identified in this consultation.

#### **a) Do you think we have missed anything important in our analysis?**

Noting the limitations to the regulator’s approach to identifying risks of harm to children, highlighted above, the CCo comments on the following:

##### **Pornographic content:**

- User base: while the regulator correctly states that the average age a child encounters pornography is 13, the Children’s Commissioner has previously found that 27% had seen it by the age of 11, and 10% by the age of 9<sup>3</sup>. The latter figures, despite being included later in the Volume text, are not cited in the summary and are therefore not factors that make the top-line for risk to this content-type. **The CCo is concerned this communicates that services should consider risk to be applied to some, but not all, children.** This is not the intention of the Act and the CCo does not believe an online safety regime robust enough to tackle this type of content will be robust without the full consideration of risk, across all ages, is understood as a priority. The CCo strongly recommends that this is understood by online services when they develop measures to prevent children from accessing it, as per their duties under the Act. **To avoid these oversights in evidence gathering and information sharing, the Office strongly recommends the regulator embeds meaningful consultation with children – such that their views are given weight warranted by the development of a Code specifically for their needs – in the evidence gathering process.**

- **Functionalities and recommender-systems: the CCo strongly advises the regulator to make a more proactive assessment of the functionalities that result in pornographic content posing a risk of harm to children.** This will require the regulator to reassess their chosen approach to establishing an evidence threshold for harm, such that it will be flexible to anticipate harm arising in new technologies. An example of this is deepfake technology and the proximity to harm it can move children closer towards. For this evidence threshold to be fit for purpose, the Office strongly recommends the regulator embeds meaningful consultation with children – such that their views are given weight warranted by the development of a Code specifically for their needs – in the evidence gathering process.
- **The CConotes that many of the functions identified to be risky – for example, user networking, content exploring, and revenue models – are transferrable from various emerging technologies.** The online safety framework must be adaptable to these emerging harms.
- The CCo has responded to Ofcom’s consultation on guidance for providers publishing pornographic content<sup>4</sup> and refers to that submission for further information on it.

#### **Suicide and Self-Harm content:**

- **Similarly to the reasons highlighted in the section on pornography, above: the CCo strongly advises the regulator to make a more proactive assessment of the functionalities that result in suicide and self-harm content posing a risk of harm to children.**

#### **Eating disorder content:**

- **The CCo welcomes the regulator’s recognition of the nuanced nature of eating disorder content. The Office welcomes the thoughtful establishment of how offline illnesses translate into harmful online behaviours, which is achieved through including evidence that the regulator considers “relevant to understanding the risk of harm from eating disorder content” (7.3.6).** The Office encourages the regulator to apply this same approach to
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all assessments of harmful content, and in the consideration of the proposed mitigation measures for those risks.

- The CCo recommends that the regulator brings other elements of online service business models into scope of the business model risk factor assessment. Children with experience of eating disorders are not just targeted by third party adverts for weight loss programmes, they are also targeted by the algorithms online services themselves rely on to sustain their own business models. As set out above, content that an algorithm understands is “relevant” to a child with a mental health condition risks exposing them to content that is relevant to their mental health condition – for a child with an eating disorder, this becomes a lottery of content that might be harmful for them.
- **The CCo recommends the regulator expands the scope of the business model risks to include risks inherent in online services’ business models, not just third party interests. This consideration is applicable across all types of content that is harmful to children as identified in this volume.**

#### **Abuse and Hate Content:**

- The CCo would like to highlight that the regulator provides evidence to say that smaller online services present a greater risk to a child than larger platforms, as they often “contain far more abuse” and present a greater risk of exposing a child to this type of harmful content. Despite this established fact, the regulator has provided fewer safety measures for smaller services in the proposed measures in Volume 5 than larger ones. **The CCo refers to the specific response to that point in Volume 5 but wishes to highlight it here to indicate where the regulator’s safety provisions are falling short of their own risk assessment.**
- The CCo notes that misogyny is not included as an example of hate and abuse content in the guidance on abuse and hate content in section 8.6. Where the CCo recognises that sex-based abuse is covered insofar as it is provided for in the Act, the CCo would recommended that it is named as a specific type of content to be assessed in the guidance. In a roundtable held in July 2024, young ambassadors for the Children’s Commissioner’s Office highlighted violence against women and sexism as specific content types of concern. One told us “they shouldn’t be allowed



to spew their misogyny freely onto this, onto the social media platforms where young boys in particular are hearing it and thinking that this is the right thing to think or this is a good thing to act upon. I think also now its gotten to the point where it's actually epidemic levels of misogyny, especially in schools." **The CCo strongly recommends that misogyny is named in the guidance.**

### **Bullying content:**

- Bullying is a matter of great concern to children. Numerous respondents to the Office's The Big Ambition survey highlighted online bullying as a concern. One 11-year-old girl said "they should make online bullying illegal or something because it's really a big problem", with a 7 year old boy saying that the government should "stop people from bullying children online."
- **The CCo expresses concern that the cross-platform nature of online bullying has not been detailed in the regulator's assessment of the causes and impact of harms to children.** The Office considers this oversight to be a symptom of the wider approach the regulator has taken to designing an online safety regime that looks at individual instances of harm, as opposed to a broader assessments of risks that is proactive in catching harm before it occurs. Where the Office recognises that the Online Safety Act obliges individual platforms to fulfil their individual duties, the regulator nonetheless has the discretion to build cross-platform considerations of harm into the online safety framework. To justify doing so, the regulator would first need to set out cross-platform harms, of which bullying is a prominent type for children, as an established cause of harm with significant impact on the child user. **The CCo therefore recommends the regulator establishes that bullying content which is shared across multiple online service platforms is as an existing risk in addition to bullying content that is present on a single platform. Such an established risk would provide for more proactive measures to protect children before that harm occurs, which the regulator would introduce under volume 5.**
- The Office would like to highlight that the regulator provides evidence in this section which sets out that GenAI technologies increase the risk of harm from bullying content. Despite this, the regulator does not feature these emerging technologies and the emerging harms that come

with them in the risk assessment criteria, nor are they provided for in the proposed safety measures set out in Volume 5.

- **Where the evidence threshold already establishes a known risk to children, the CCo strongly recommends the regulator acts on that evidence and puts measures in place to protect children against known risks of harm.**

**Q5: Do you have any views about our interpretation of the links between risk factors and different kinds of content harmful to children? Please provide evidence to support your answer.**

The response to Question 4 (above) sets out the Office's view that the regulator's approach to identifying risks to children from harmful content is too narrow in scope to be effective at illustrating a full and proactive view of the risk of harm to children online. The CCo refers to the response above in answer to this question.

**Q6: Do you have any views on the age groups we recommended for assessing risk by age? Please provide evidence to support your answer.**

- Evidence from *the Big Ambition* shows that children are less likely to agree that they feel safe online the younger their age. The proportion agreeing they feel safe peaks at ages 11 and 12 (80%), increasing from 38% from the age of 5. The degree to which children feel safe remains relatively stable aged 11-18 (80% and 73% respectively). With this in mind, risk should be assessed as if it were applied to the youngest child on a platform.
- Evidence from the CCo's Digital Childhoods<sup>5</sup> survey indicates that, despite having minimum age limits, social media platforms remain accessible to young children. TikTok and Snapchat, both of which have a minimum age limit of 13, had users aged 8-17 who were underage users of those platforms – 44% and 41% respectively. The CCo considers this to be a risk factor that the regulator must consider when carrying out their risk assessment.

**Q7: Do you have any views on our interpretation of non-designated content or our approach to identifying non-designated content? Please provide evidence to support your answer.**

- **The CCo welcomes the regulator’s call for evidence on the definition of non-designated content (NDC).** The regulator supports the provisions set out in the Act to compel social media companies to consider kinds of harmful content beyond the types set out on the face of the Act.
- **The CCo views this provision as an opportunity for the regulator to work towards a vision of a safe online world for children, and therefore strongly encourages the regulator to put resources into the evidence gathering and regime monitoring process set up around NDC.**
- **The CCo notes that the lack of evidence on how some in a variety of content types which might be harmful to children makes it difficult to justify singling out certain ones out. The CCo recommends the regulator strengthens this evidence base by taking bold action in two ways: the first, to consult children through the established consultation mechanism discussed later in this response; and the second, for the regulator to use the information gathering powers it has under the Act to ask companies for information they hold about certain types of content.**
- **For the potential of the NDC provision to be realised, the CCo recommends the regulator establishes a framework for engaging with a variety of independent external stakeholders and experts.** This must include consultation with children, through the established regulator’s consultation framework developed with the Children’s Commissioner’s Office. Such an approach will allow a full and proactive understanding of what content constitutes “a material risk of harm”. It will also result in the adoption of a flexible approach to gathering evidence and will therefore result in proactive measures to mitigate emerging harms.
- **The CCo welcomes the proactive nature of the NDC provision and strongly advises the regulator to lean into the spirit of it, ensuring that content that might be harmful is labelled as NDC content until it is proven to be safe.** Given that NDC is lower in the risk hierarchy established under the Act, it is proportionate for the regulator to provisionally apply

the NDC content label and recommend safety measures proportionate to it. Where the label is proven to be inappropriate, proven through qualitative monitoring of children's experiences for example, the label can be removed because that particular content type has been proven safe for children. The CCo strongly recommends adopting the safeguarding approach to content highlighted above.

- In a roundtable held in July 2024, young people told the CCo that image editing tools and filters were an aspect of the online world that impacted their perception of themselves negatively the most. In fact, when the conversation came up, young people talked more about the design features which created "body image" content as their concern rather than the content type itself. One told the Office that on Tiktok, "you've automatically got the beauty filter on. I found this with my TikTok and on my phone as well. I was like, why is my face blurred? ... I think that in itself is saying, yeah, you do a video you want to look your best, you should use a filter. So I think that should definitely be scrapped. I mean, these kids wanting to do a video on there ... they've got a filter on their face to make them look somewhat lighter sometimes, sometimes with a bigger nose, smaller nose, bigger lips. And I think its just harmful." **The CCo recommends the regulator considers expanding the scope of its research regarding the categorisation of content under NDC. This expansion should provide for content that has been manipulated by tools built into online services, such as the filters the young person mentions above. Content manipulated in this way should be considered as NDC and the risks assessed accordingly.**

**Q8: Do you have any evidence relating to kinds of content that increase the risk of harm from Primary Priority, Priority or Non-designated Content, when viewed in combination (to be considered as part of cumulative harm)?**

- Cumulative harm occurs not only through the interaction of content and functionalities, as set out in Volume 3, but also by the spread of harmful content across multiple online services. One respondent to the Big Ambition survey said that *"greater control over content is needed to prevent children from accessing inappropriate material or copying inappropriate behaviours which are regularly uploaded on to different platforms."* – Adult on behalf of girl, 9.

- Cumulative harm occurs not simply through content types, but through the interaction of content types and some design interfaces (see response to Question 50) , cross-platform transference and also offline factors, such as the osmosis of online and offline harms. The Children’s Commissioner’s Office will seek to understand how violent content can affect children and young people’s feelings of safety online and offline, and what this means for keeping them safe in the coming year, which will contribute to this evidence base.
- Young people have shared with the CCo how the spread of harmful content across multiple online platforms could be managed. When discussing how easy it was to post a piece of harmful content on multiple platforms quickly, one young person highlighted that some online services, such as Facebook and Instagram, are synced. This means it is easy and possible to post a piece of content from one output but for it to be shared across multiple platforms. The young person said “it makes it easier for harmful content to be shared across multiple platforms, so if you don’t have TikTok for example, its likely that you’ll see it on another social media platform”. **The CCo is highlighting this frictionless spread of content across multiple platforms at a speed faster than many of the measures proposed in Volume as a factor which contributes to the impact of cumulative harm, and encourages the regulator to propose additional measures against these specific design features which allow it.**
- **The CCo supports the regulator’s desire to strengthen their evidence base on this issue, and recommends this question is put to the children the regulator consults with when they adopt the recommendation made in this response to set up a consultation framework for child users.**
- **The CCo also recommends the regulator uses their information gathering powers to require technology companies to share the data they have on this issue.**
- **The CCo recommends that, where there is evidence enough to warrant the regulator’s attention – not least mentioning in the consultation on the Child’s Register of Risks – the regulator adopts a safeguarding approach to harm mitigation whereby a possible or emerging risk is labelled so until it is proven not to cause harm to children.** This would remove the burden of proof of harm from children, and future-proof the online safety regime in the face of emerging risks from the rapid development of technology.

**Q9 Have you identified risks to children from GenAI content or applications on U2U or Search services? Please Provide any information about any risks identified**

- **The CCo considers the fact that GenAI has not yet been proven safe for children as a risk enough to warrant regulatory oversight.** Allowing this technology to be rolled out and accessible without it needing to certify itself as safe for children is a regulatory oversight which demonstrates a limited regulatory commitment to reducing risks to children. The process of identifying risks should not necessitate harm to occur to a child in order to justify the regulator taking action to prevent harm occurring afterwards.
- The CCo welcomes the regulator's recognition that GenAI technologies present an emerging harm to children (6.12), and wishes to express concern that the regulator has nonetheless not provided safety measures to mitigate them in Volume 5, nor have they designed a risk assessment framework that is flexible enough to respond to emerging harms such as those arising from emerging technologies. The CCo refers to the response provided to question 17 in Volume 5 for full explanation of this concern.
- The Children's Commissioner has previously expressed concern about the increasing use of new technologies<sup>6</sup>, the harms of which are unknown. In research released by Ofcom in June 2023, 59% 7-17 year olds and 79% 13-17 year olds have used a generative AI tool in the last year<sup>7</sup>.

It is essential that the regulator expands the scope of their Children's Register of Risks to provide protections and oversight over these technologies. Given that the above evidence exists, the CCo considers the evidence threshold the regulator has adopted to be too high to be effective or to fulfil the proactive intention set out in the Act.

- **The CCo recommends that, where there is evidence of harm from GenAI enough to warrant the regulator's attention – not least mentioning in the consultation on the Child's Register of Risks – the regulator adopts a safeguarding approach to harm mitigation whereby a possible or emerging risk such as GenAI is labelled so until it is proven not to cause harm to children.** This would remove the burden of proof from children, and future-proof the online safety regime in the face of emerging risks from the rapid development of technology.

**Q10: Do you have any specific evidence relevant to our assessment of body image content and depressive content as kinds of non-designated content?**

**We are interested in a) (i) specific examples of body image or depressive content linked to significant harms to children, b. (ii) evidence distinguishing body image or depressive content from existing categories of priority or primary priority content.**

- The CCo welcomes the proactive nature of the NDC provision and strongly advises the regulator to lean into the spirit of it, ensuring that content that might be harmful is labelled as NDC content until it is proven to be safe.
- The CCo would support the inclusion of content which negatively impacts children's body image as NDC content. Findings from the Office's *The Big Ambition* survey found strong links between types of content which are not in scope of PPC and PC content categories and children experiencing negative impacts on their mental health and wellbeing. Only 4.7% of those who disagreed with the statement that they felt safe online felt happy with the way they looked, indicating a correlation between the online world and negative body image. One 14-year-old boy highlighted that *"Tik Tok and Instagram age limits should be higher as there are too many influencers who push a fake lifestyle or bad examples."* A 15-year-old girl highlighted *"hyper-sensitivity, fixation, obsession, anxiety/low self-esteem"* as consequences of social media use, and another 13-year-old girl said, *"you can find plenty of videos showing a fake sense of reality, which can really harm children's mental health"*.
- **The Office recommends the regulator strengthens the evidence base on this issue by resourcing in-depth research on this issue in particular.** One method of doing so might be working with the Children's Commissioner's Office to hold a roundtable with high-profile influencers, technology companies and the Commissioner's Young Ambassadors.
- **The CCo would support the inclusion of content which negatively impacts the mental health of children as NDC content.** Findings from the Office's *The Big Ambition* survey found strong links between some types of content alluding to low mood. One respondent to the Big Ambition highlighted the ability of social media platforms to *"promote negative thoughts and actions"*, which contributed to concerns about their child's mental health (adult on behalf of

girl, 9). While it is unclear from the survey what this content looks like, the prevalence of concern around the mental health impacts of social media content is clear. The Office recommends the regulator strengthens the evidence base on this issue by resourcing in-depth research on this issue in particular.

- The Office would like to highlight that children with preexisting health conditions are more vulnerable to feeling unsafe online. Children living in mental health hospitals were the most likely group to disagree that they felt safe online (42%) of all the locations, with university being the location where young people were least likely to disagree with the statement (5%). The Office is supportive of a definition of NDC that recognises the individual nature of harm and supports the regulator's investigation of this matter. Protecting these vulnerable children must be a priority – as one 14-year-old girl put it, *“they're mentally ill on the internet as well”*.

### **V3.2 Draft Guidance on Content Harmful to Children (Section 8)**

**Q12 Do you agree with our proposed approach, including the level of specificity of examples given and the proposal to include contextual information for services to consider?**

- **The CCo supports the regulator's proposed approach to identifying harmful content.**
- **The CCo supports the regulator's stated intention to monitor the effectiveness of the Guidance of Content that is Harmful to Children**
- **The CCo notes that the decision not to be prescriptive about what harmful content looks like gives potential for the Guidance to be responsive to new and emerging harms, and supports this approach.**
- **The CCo welcomes the regulator's assessment that it is proportionate to take an approach to online safety that brings all services, including small and micro businesses, into scope (8.55).**



**Q13 Do you have further evidence that can support the guidance provided on different kinds of content harmful to children?**

- **The CCo recommends that the regulator proposes a sector-wide discussion at regular intervals where companies can share information they have found regarding the harmful content they identify on their service in response to and building on the guidance provided in this volume.** This will increase information sharing, strengthen the knowledge base and assist the regulator in producing useful and timely guidance. It will also allow for deeper understanding of the nuance which presents difficulties in identifying harmful content, such is described in point 8.28.

**Q14 For each of the harms discussed, are there additional categories of content that Ofcom a) should consider to be harmful or b) consider not to be harmful or c) where our current proposals should be reconsidered?**

- The CCo considers the ongoing monitoring for harms essential to the safety of children online in the long-term. The CCo recommends this question is put in the consultation with stakeholders:
- The consultation framework established by the regulator in partnership with the Children's Commissioner's Office;
- The sector-wide discussions organised to encourage information sharing among technology companies to strengthen the knowledge base for child online safety;
- The technology companies themselves through the regulator's information gathering powers.

## Volume 4: Assessing the Risks of Harm to Children

### V4.1 Governance and Accountability (Section 11)

#### **Q15 Do you agree with the proposed governance measures to be included in the Children's Safety Codes?**

- **The CCo agrees with the regulator that good governance and accountability is essential to effectively identifying and managing risks to children.** It is right that the burden of responsibility for children's online safety, and the pursuit of the objective of the Act, is located the hands of service providers. The CCo supports the intention to ensure that this responsibility is acted on to provide the highest level of protection for children.
- **As discussed elsewhere in this consultation response, the CCo is concerned by the regulator's approach to designing an online safety regime which recommends lower standards for providers to meet their duties under the Online Safety Act primarily because of factors such as cost.** There are a series of measures that the regulator has watered down or given a reduced scope, justified with respect to a cost-benefit analysis for the businesses in question. Insufficient priority is given to the cost of harms to children.
- The CCo has concerns about the weakening of the following measures in the pursuit of corporate protection:

**Measure GA1** – Most senior body to carry out and record an annual review of risk management activities relating to children's safety

#### **Who should implement it?**

All user-to-user services that are large

All large general search services

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- The CCo notes the regulator’s application of this measure to some but not all services. The rationale for these restrictions is rooted in the cost of its application to small providers. The CCo considers this line of reasoning to legitimise technology companies’ decision to put profit and cost ahead of children’s online safety. The CCo expects child safety to be the top priority for these companies in the conduct of their business.
- The regulator explains in their proposals that the costly establishment of a governance body with the sole purpose of ensuring compliance with a services’ duties to both the illegal harms and child safety duties “may come at a stage when the organisations need greater expertise on how to achieve sustainable growth, business contacts and long-term strategic support” (11.41).
- **The CCo does not consider the latter to be valid factors displacing a legal obligation set out in the Act, on which the regulator is supposed to advise and set a high standard of expected behaviour.**
- **The CCo expresses strong concern that this contributes to a regulatory pattern that communicates to technology companies that their business interests may come before their expected compliance with the intention of the Act. The CCo strongly recommends the regulator retracts any indication that this is the case.**
- **The CCo notes that the regulator has largely recommended existing industry models of governance that, while effective in protecting company interests, abstract from the objective of the Act.** Highlighting the benefits and execution of measure GA1, the regulator cites a number of existing corporate governance bodies to which online services might turn to base their new governance bodies for online safety on. These models protect business interests as opposed to consumer safety - for example, the UK Corporate Code (11.34) establishes how corporations can assess risks *to* their businesses, not risks caused *by* their businesses. This approach underlies many of the proposals in Volume 4 which sees the regulator propose an online safety regime that is presented as a “corporate goal” as opposed to a legal requirement. The CCo would like to highlight that the regulator’s role is the enforcement of the Act and the implementation of measures that will achieve the Acts objective. **As set out in previous responses relating to the costs to businesses of safety measures in the pursuit of the Act’s**

objective, the regulator's role is not to preserve the business interests of services in scope.

- **Finally, the CCo expresses concern that the regulator's ambition for this governance measure is not to fundamentally change the landscape of the digital world, which we have evidenced is ridden with risks to children who have a right to reside in the online world.** The regulator states that the establishment of a governance body which would oversee compliance with the Act might result in "a change in the overall structure and dynamic of the way these services are run" (11.53). The Code cites this as a reason apparently to not recommend this measure to all services accessible to children. The CCo does not believe that, in its current form, the online world is a safe space for children.
- **The CCo strongly recommends that the regulator adopts the vision of child safety as a floor, rather than a ceiling, and ensures a robust centring of child safety in the construction of a new online environment in which children can be free to learn and play safely.**
- **Improving online safety might require a change in the overall structure and dynamic of the way these services are run – the CCo strongly suggests the regulator leans into this message as it is intended under the Act.**

**Measure GA2** – Name a person accountable to most senior governance body for compliance with children's safety duties

#### **Who should implement it?**

All user-to-user services

All search services

- **The CCo welcomes this measure as part of the wider package outlined in the consultation.**
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- As referenced in the response to measure GA1, the CCo does not consider it appropriate for the regulator to place child safety objectives into the ESG framework as this is a framework which ultimately acts to drive corporate growth. Corporate growth is not the objective of the Act and often works against measures taken to pursue the objective of the Act.
- **The CCo strongly recommends the regulator communicates that child safety sits above all other corporate interests by removing proposals that would see it absorbed into existing corporate functions.**

**Measure GA3** – Written statements of responsibility for senior members who make decisions relating to management of child safety risks

**Who should implement this?**

All user-to-user services that are:

- Large, or
- Multi-risk for content harmful to children.

All search services that are:

- Large general search services, or
- Multi-risk for content harmful to children

- **The CCo expresses concern that this measure is not recommended for all services accessible to children.** The CCo does not consider the motion that “the overall cost burden on smaller services may negatively affect users and people in the UK” (11.106) relevant to achieving the online safety objective set out in the Act.
- The CCo notes that while GA3 is not recommended to all services, GA2 is more comprehensive. However, the Office does not consider a single named member of staff as accountable to child

online safety (GA2) to be equivalent to a senior member of staff having written responsibilities to ensure a particular company complies fully and proactively with their duties under the Act.

- The CCo views accountability and responsibility to be two different things. Accountability is individual in nature and is reserved for retrospective learning when something goes wrong; responsibility is an ongoing burden to carry a task – in this case, keeping children safe online – through to completion. GA2 allows any member of staff, regardless of seniority, to be identified as the accountable member – whereas GA3 requires oversight from senior members of staff. More senior oversight over an issue both instils and communicates that the issue is a priority, as child online safety should be.
- **The CCo recommends measure GA3 is applied to all services in scope of the Act.** This would ensure it is a top priority and will also provide the oversight needed for proactive action to be taken, as opposed to the reactive action that follows accountability.

**Measure GA4** - Have an internal monitoring and assurance function to provide independent assurance that measures are effective

#### **Who should implement this?**

All user-to-user services that are:

- Large; and
- Multi-risk for content harmful to children

All search services that are:

- Large, and
  - Multi-risk for content harmful to children
-

- While the CCo supports this measure, we are concerned that there is no minimum standard for internal monitoring and assurance.
- The CCo is also concerned that GA4 does not apply to all services accessible to children.
- The CCo recommends that this measure is taken further. The regulator should establish a metric for companies to gather information on to assess the effectiveness of monitoring and assurance. Companies should have to submit the measure of effectiveness to Ofcom and publish their results on a public platform on annual cycle alongside the outcomes of their Access Assessment and Risk Assessment.

**Measure GA5** – Track unusual increases or new kinds of Primary-Priority Content, Priority Content, and Non-designated Content on the service that may be becoming present on the service.

#### **Who should implement this?**

All user-to-user services that are:

- Large, or
- Multi-risk for content harmful to children.

All search services that are:

- Large gengeneral search, or
- Multi-risk for content harmful to children

- The CCo notes with concern that there is no minimum standard of outcome for this measure despite the regulator providing services with the “flexibility to choose the most cost-effective way to implement the measure”.
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- There is potential for services to implement any low-cost no-cost measure – despite many having the resources to do more – and that action alone indicating that they are compliant with their duties irrespective of how effective and thorough that measure is.
- **The CCo strongly recommends the regulator provides a minimum outcome standard for proposals that allow flexibility of design for online services.**
- **Furthermore, the CCo strongly recommends flexibility is conditional on online services providing evidence that the measure they choose is the most effective and robust one possible on their platform.**
- These two conditions could be measured by the qualitative feedback from child users on their platform, in answer to the question “How safe do you feel online?”, gathered as part of the regular consultation carried out by child users as required as a core input to the Child Risk Assessment framework which will be strengthened following the recommendations set out earlier in this response.

**Measure GA6** – Have a Code of Conduct that sets standards for employees around protecting children

#### **Who should implement this?**

All user-to-user services that are:

- Large, or
- Multi-risk for content harmful to children.

All search services that are:

- Large general search services, or
-



- Multi-risk for content harmful to children

- **While the CCo welcomes the broad application of this measure, the Office does not welcome the justification for that application being that “costs are likely to be small relative to the benefit in terms of significant risk of multiple harms and are largely related to one-off set up costs” (11.186).**
- **The CCo recommends the regulator removes justifications seeking to reassure services in scope that their business interests remain a central factor in decision making around the design of an online safety regime**, and that they also adjust their approach across the rest of the Code accordingly.
- Costs to companies harbouring risks enough to warrant being in scope of the Act must not be a barrier to implementing the Act.
- The CCo strongly recommends that the regulator refrains from communicating in both the consultation documents and in the proposed measures that costs-benefits for businesses can be the sole deciding factor for services in the design of an online safety regime. If a private company cannot function financially in an online safety framework, then they cannot comply with their duties under the Act and the regulator must respond accordingly.
- The CCo considers children should have a voice in the governance of services. **The CCo recommends that an additional measure is introduced that would require online services to consult regularly with child users as part of the risk assessment and governance processes.**

**Q16: Do you agree with our assumption that the proposed governance measures for Children's Safety Codes could be implemented through the same process as the equivalent draft Illegal Content Codes?**

- **In our response to the Illegal Content Codes consultation, the CCo supported the proposed governance measures.**
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- The CCo welcomes the clear, coherent structure for online safety that the regulator seeks to build by using similar processes for both the Illegal Content Codes and Children's Safety Codes. The Office considers clarity and coherence good practice for setting such standards.
- **Going forward, the CCo would recommend that the regulator tests this assumption through the established consultation and monitoring frameworks.**

## **V4.2 Children's Risk Assessment Guidance and Children's Risk Profiles'** **(Section 12)**

**Q17: What do you think about our proposals in relation to the Children's Risk Assessment Guidance? a) Please provide underlying arguments and evidence of efficacy or risks that support your view.**

- **Regarding the stated constitution of the suitable and sufficient risk assessment, the CCo supports the choice of both quality and quantity to be underlying components of a suitable and sufficient risk assessment.**
- **However, the CCo is concerned that the regulator has provided a risk assessment framework that will act as a ceiling rather than a floor for child online safety.**
- The outcome of the risk assessment – that is, how effective it has been at identifying risks to children - is the only measure that will demonstrate whether or not an assessment is suitable and sufficient. The CCo is concerned that the regulator has not included the measure of how much safer a platform is as a result of the risk assessment in its establishment of what a suitable and sufficient risk assessment would look like.
- The CCo recognises that there is no one-size fits all design of a risk assessment due to the variation in nature of online platforms, but given the Act has a single online safety objective to make the online world safe for children, **the CCo would expect and strongly recommends that this outcome is included in the risk assessment process.**

- **As has been highlighted, the CCo proposes that the outcome standard to be applied in this case should be the measure of how much more and how far children’s experiences indicate they are and feel safer online.** This should be measured as part of the ongoing consultation with child users, which the CCo recommends is included in both the core inputs of the risk assessment (see below) and as a separate monitoring obligation embedded in the governance measures (see response to question 15.)
- The CCo is concerned that the current lack of an outcome measure in the assessment of the sufficiency and suitability of the risk assessment process is a further aspect of the regulator’s proposed approach to implementing the Online Safety Act that will stagnate the innovation of a safe online world by encouraging compliance to specific measures targeting specific existing threats as opposed to encouraging a forward-looking approach that would require problem-solving and long-term solutions to emerging harms.
- **The statement that risk assessments should be informed by evidence is promising, however, the evidence threshold is too high to be flexible and responsive enough to emerging harms; is retrospective in nature and also puts the burden of proof on the user base the Act is intended to protect.** Such a regime, - built with this evidence framework acting as the floor and the achievement of compliance rather than problem solving acting as the ceiling – shrinks the risk assessment effectiveness and abstracts it from the purpose of the Act.

**The CCo recommends the regulator solves this by implementing the following:**

- **A more appropriate evidence threshold that is proactive, accessible and responsive to emerging harms.** This would look like evidence gathering on an ongoing basis, consultation with children, and the regulator using their information gathering powers to design an online safety regime that can identify emerging harms.
  - **Instilling the outcome measures of safer child experiences into every proposed measure in this consultation, including the risk assessment process.**
  - **Regular consultation with the child-user base to monitor how suitable and sufficient the risk assessment process is.**
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The CCo broadly supports the four-step approach to carrying out a Child Risk Assessment highlighted in Table 12.2, but recommends that the following changes are made to the assessment step (step 2) to ensure the risk assessment is proactive and sufficient to address harm to children:

- **An assessment of emerging risks of harm to be included as a further key activity.** This would future-proof an otherwise narrow and retrospective approach.
- **The inclusion of consultation with a child-user base and the inclusion of independent experts.** This would provide a balanced assessment of risk which would act as a form of regulation of the suitability and sufficiency of the risk assessment process, without the need for specific interventions from the regulator.
- **The regulator to refrain from establishing the assignment of ternary levels (low, medium, high) for individual pieces of harmful content as the central and defining element of the risk assessment process (12.37).** This is because this prescriptive approach provides a series of assessments of individual pieces of harmful content named on the face of the Act only – it will not provide a broader assessment of the interaction of those content types, their evolution into new types of harms nor how they contribute to cumulative harm. **The CCo recommends that, in addition to the ternary levels of harm for each content type, the assessment of likelihood and impact of harm is made with consideration of the total experience of children regarding their exposure to harm online. This should be assessed using the consultation of this user base, recommended earlier in this response.**
- **The regulator changes “the total number of users who are children” to “the total number of users”** - in line with the provisions in the Draft Service Risk Assessment Guidance for Illegal Content (12.42). This is to ensure children are afforded the maximum protection and pays regard to the fact that children may circumvent the highly effective age assurance measures designed to identify children on a platform.

The CCo considers the provisions in step 3 (decide measures, implement and record) as insufficient to render an effective risk assessment process. The CCo offers changes in the following areas:

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- **To establish that all chosen measures will be subject to the minimum outcome standard applied to all measures in the Code, which the Office has recommended throughout this consultation.** This will ensure that services choose measures that are likely to be more effective, break through the ceiling of compliance into problem-solving which is otherwise not incentivized in this Code.
- **For the regulator to adjust their objective for the development of the risk assessment guidance to be more ambitious than “providing a clear route to compliance across the regime”.** To ensure the regime does not become a safe harbour for risk, the regulator must design a risk assessment process with the objective of achieving the highest safety standard for children – which requires proactive action beyond compliance. The adoption of safety measures – the nature of which are at the discretion of the online service in question – must not be the minimum baseline for compliance under the Act.

The CCo is concerned by the lack of clarity offered in step 4 (report, review and update the risk assessment) and regards the measures as insufficient to render an effective and proactive risk assessment process. The CCo offers changes in the following areas:

- Regarding the reporting on relevant governance channels – the CCo refers to the points made earlier in this response with respect to governance (see above). **The Office recommends child online safety is instilled at the heart of senior governance and that the internal reports are made to the highest level of an online service.**
- **Regarding the monitoring of the risk assessment process – the CCo recommends the risk assessments are made available to independent researchers and the public.** The CCo considers public scrutiny of this kind to be a form of regulation that would not require specific interventions from the regulator.
- **Regarding the instruction to carry out a new risk assessment – the CCo recommends the regulator simplifies what would constitute a “significant” change to a service to warrant a new risk assessment (12.95).** The CCo recommends that, in the absence of a definition in the Act, “significant” should be understood as any change to an online service. Points a-e (12.95) should be considered a non-exhaustive list.

- **Further to the above, the CCo strongly recommends that the regulator extends the criteria for what would trigger a new risk assessment to include the development of a new function of an online service, during the development stages.** Product testing should include a risk assessment specific to the child safety duties, and the results must be included both as a core input to the risk assessment and as a provision to trigger a new risk assessment.
- **The CCo would only consider a cyclical 12-month risk assessment cycle appropriate if the above changes to what would trigger a new risk assessment are made, and if the consultation of child users has been instilled as part of the governance process (set out in response to question 15 above).** 12 months is a long time in the technology industry and the CCo's priority is the safety of children. The Office encourages the regulator to pay due regard to emerging harms and ensure their regime is future-proof to it.

Regarding the evidence to be used in the risk assessment process, the CCo:

- **supports the requirement for services to explain why they have used certain pieces of evidence for their risk assessment (12.58).**
- **Further to the above, the CCo welcomes the inclusion of the illegal content risk assessment in the core input of the risk assessment subject to this consultation (12.65).**
- **Further to the above, the CCo recommends that services are also required to explain why they have not used any core evidence specified in the guidance.** This is to ensure services are carrying out the risk assessment to a suitable and sufficient standard. This is especially important given that services will have the discretion to decide what kinds of evidence will give them robust conclusions about the level of risk on their platforms (12.62), and ultimately how much action they will be required to take thereafter.

However, the CCo is concerned about the following aspects of the risk assessment process regarding evidence:

- **While the CCo supports the requirement for services to explain why they have used certain pieces of evidence for their risk assessment (12.58), the CCo recommends this is**
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**extended to require services to explain why they have not used any core evidence specified in the guidance.** This is to ensure services are carrying out the risk assessment to a suitable and sufficient standard. This is especially important given that services will have the discretion to decide what kinds of evidence will give them robust conclusions about the level of risk on their platforms (12.62), and ultimately how much action they will be required to take thereafter.

- **The CCo recommends that companies should consider all enhanced inputs and provide an explanation as to why the inclusion of a particular enhanced input in the risk assessment was not necessary.** The Office recognises that, should the input list be as extensive as we would recommend it to be, it would not be necessary for all services to be required to use the remaining enhanced inputs. In some cases, enhanced inputs will not be appropriate because they may not accurately inform the risk assessment.
- **The CCo expresses concern that the regulator has given services the flexibility to choose the type of enhanced input that requires a cost that is “least onerous” for them – and indeed that the core inputs have limited costs by comparison to the enhanced inputs (12.72-12.76).** This easy division communicates that the regulator has sought to draw up a list of core inputs not in the pursuit of the most effective risk assessment, but a risk assessment regime that would incur fewer costs to businesses in scope. The Office refers back to the other references to cost in the Children’s Code and strongly encourages the regulator to revise their framing of their proposals.
- **The CCo expresses concern that the core inputs to the risk assessment (Annex 6 Table 4.1) are almost universally retrospective – including “retrospective analysis of incidents of harm”, user complaints and user data.** This will result in a retrospective assessment of risk, producing an online safety regime that remains several steps behind emerging risks of harm. **The CCo strongly recommends some of the inputs included in the ‘enhanced inputs’ list are made mandatory parts of the risk assessment process, including specifically:**
  - **User consultation – specifically child users;**
  - **Views of independent experts;**

- **Results of product testing;**
- **Internal and external commissioned research;**
- **outcomes of external audits;**
- **engagement with relevant representative groups;**

This is to ensure all core risk assessments are proactive in nature. In a roundtable held with the Children's Commissioner's Young Ambassadors in July 2024, young people expressed their concern that "things are evolving, things are changing so quickly where, by the time everything is enforced, and new legislation will have to be put in place". Designing a risk assessment process that is responsive to these emerging harms is essential to instilling young people's trust that it will work for them.

- **The CCo strongly recommends that child user consultation is included as a specific core input in the risk assessment process.** This will ensure the experiences of children are best understood and represented. Furthermore, the CCo considers the expertise of children vital in the understanding of the digital environment, and one the regulator must embed in an online safety regime targeted at them specifically.

**Q18: What do you think about our proposals in relation to the Children's Risk Profiles for Content Harmful to Children? a) Please provide underlying arguments and evidence of efficacy or risks that support your view.**

**The CCo is concerned that the regulator has chosen not to include risk factors from the Children's Register where the regulator has considered the evidence to be limited (Annex 6 A1.5).** As has been stated elsewhere in this consultation, the evidence threshold for risk identification is too high to produce a proactive online safety regime. The CCo makes the following recommendations:

- That the regulator establishes a well-resourced centre for data and research collection, in partnership with external bodies, independent researchers and consultation with child users through the Children's Commissioner's Office.



- That the regulator adjusts the evidence threshold to remove the burden of proof from children. The regulator must reframe the risk assessment to instil a safeguarding-first approach.
- The risks which crop up in this consultation and in external monitoring but which have “limited” evidence are included in the Children’s Risk Profiles as a potential risk of harm. This will ensure emerging harms are monitored as they evolve and, in the absence of an online safety regime that is future-proof, offer a greater likelihood of those risks being apprehended.

**While the CCo recognises the value of the tick-box resource to help both user-to-user and search online services identify risk factors on their services (Annex 6 Figures A1.1 and A1.2), the CCo is concerned that an approach centred around tick boxes and processes will not instil the highest standard of child safety.** The CCo is concerned that this approach will allow services to turn a blind eye to new “types” of online services which have yet to be invented (beyond, for example, livestreaming or posting images) - but the invention of which is a corporate objective and ever-present reality in the rapidly evolving technological world. The narrow approach set out in this one-pager does not sufficiently account for the broader context of risk and harm from the online safety regime and will limit proactive risk assessment. The CCo strongly recommends the regulator provides easy-to-use guidance that is proactive and flexible to emerging harms. **The CCo recommends that alongside a tickbox form, which makes the risk assessment easy to conduct, there should be high standards for online safety which can be monitored through a single outcomes measure. This would create a balance between a risk assessment system which is easy to implement and one which is effective.**

- **The CCo welcomes the inclusion of an online services’ commercial profile as a risk factor. The CCo strongly encourages the regulator to provide greater clarity in how commercial models present a risk of harm to children, and to propose proactive measures with standardised outcomes to mitigate these risks in Volume 5.**

**Q19: Do you think the four-step risk assessment process and the Children's Risk Profiles are useful models to help services understand the risks that their services pose to children and comply with their child risk assessment obligations under the Act?**

- **In our response to the Illegal Harm Consultation, the CCo welcomed the four-step risk assessment process. The CCo broadly supports simple processes as they are easier to regulate.**
- See our response to Question 17 for our assessment of the four-step risk assessment.
- See our response to Question 18 for our assessment of the Child Risk Profiles.
- **The CCo is concerned that the risk assessment process is reliant on Child Risk Profiles which are non-responsive in their definition of risk. The CCo urges the regulator adopts an approach which is more proactive and strongly encourages the regulator to adopt the recommendations made in this response (to both the child risk profiles and the risk assessment process) in order to close the loopholes evident from this framework.**
- **The CCo is concerned that the factors listed in the Risk Level Table (4.65), to determine the risk profile of a platform, are optional.** The regulator states they are designed to inform not to direct. Online services will be given the flexibility to diagnose their risk profile. Given that the services will be signing onto more stringent measures the higher the risk platform, the CCo recognises that there will be little incentive for online services to self-certify themselves as a high-risk platform. If the regulator identifies the factors in the Risk Level Table to be determinate of risk profiles, they should provide that distinction as a minimum standard in the risk assessment process.

**Q20: Are there any specific aspects of the children's risk assessment duties that you consider need additional guidance beyond what we have proposed in our draft?**

- **The CCo has set out in the responses above several recommendations for clarity, and refers back to them here.**

**Q21: Are the Children's Risk Profiles sufficiently clear and do you think the information provided on risk factors will help you understand the risks on your service?**

- **The CCo recognises this question is included for the respondents from the technology industry but refers to the response above.** The CCo wishes to highlight that even if the information in the Code might provide some understanding of risks, the Office does not consider the scope of the Children's Risk Profiles to be sufficient to provide substantive assessments of risks on a platform.

## Volume 5: What services should do to mitigate the risks of online harms

### V5.1 Ofcom's proposals for the Children's Safety Codes (Section 13)

#### **Q22: Do you agree with our proposed package of measures for the first Children's Safety Codes?**

The CCo notes that agreement with the proposed Children's Safety Codes set out in this Volume is contingent on the regulator adopting the recommendations made across the responses to previous volumes in respect of:

1. The Child Access Assessments (response to Volume 2)
2. Children's Register of Risks (response to Volume 3)
3. Risk Assessment Guidance and Children's Risk profiles (response to Volume 4)

#### **Regarding the scope of the measures:**

The CCo encourages the regulator to approach the Codes as an opportunity to set the standard for the quality and impact of any measures taken by providers to fulfil their legal duties set out in Section 12(8) of the Online Safety Act 2023<sup>8</sup>. The CCo is concerned by the approach taken to developing this package of measures and will address each in turn:

- **No safety measures have been recommended to address a number of the factors identified on the Children's Register of Risks.**

**Generative AI** is identified in Volume 3 as a risk of harm to children (Vol 3 7.14), with evidence given to support this. In Volume 5, however, the regulator states there is not enough evidence to justify

bringing in safety measures to address it. In this response to Volume 3, the CCo sets out further evidence supporting the recognition of this and more developing technologies as emerging harms that must be met proactively by the regulator.

Given the evidenced risk to children presented by Generative AI technology, **the CCo strongly recommends the regulator closes the gap between Volumes 3 and 5 to ensure a coherent and watertight online safety regime.**

### **Other functionality risks: U2U services**

A number of other functionalities identified in Volume 3 as risk factors for some types of PPC and/or PC content have no recommended safety measures to prevent harm occurring on user-to-user services of any size or risk profile in Volume 5. This includes functionalities for:

- Hyperlinks
- Reposting, resharing and forwarding content
- Posting multimedia including photos and videos
- Livestreaming
- Hashtags or content tagging
- Screenshotting or recording
- User tagging
- User connections
- Encrypted messaging
- Ephemeral messaging
- Anonymous or fake accounts
- Business models (advertisement based)

- Editing tools

Similarly, a number of the functionalities identified in Volume 3 as risk factors for some types of PPC and/or PC content have no recommended safety measures to prevent harm occurring on search services of any size or risk profile in Volume 5. This includes:

- Predictive search
- Personalised search
- Business models (advertisement based)
- Commercial size or profile.

The CCo considers the lack of pre-emptive measures for the above concerning, and notes it as being consistent with the retrospective approach taken to harm mitigation in the regulator's proposed online safety regime.

**The CCo does not consider this to be a sufficient stance and strongly recommends the regulator puts in place safeguards for children to prevent harm happening, rather than requiring children to be exposed to harm before any safeguards are put in place.**

#### **Other functionalities: search services**

There are also a number of risky functionalities identified in Volume 3 for some types of PPC and/or PC content which have no safety measures after harm occurs on search services of any size or risk profile in Volume 5. This includes functionalities for:

- Hashtags
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- Screenshotting or recording
- User tagging
- User profiles
- User connections
- User groups
- Group messaging
- Encrypted messaging
- Direct messaging
- Ephemeral messaging
- Anonymous or fake accounts
- Business models (advertisement based)
- User location
- Editing tools

Similarly, there are no reactive safety measures recommended in Volume 5 for the risk of harm of the business model (advertisement based) on search services, despite that risk being identified in Volume 3. The CCo refers the regulator back to the evidence presented in the consultation document for Volume 3 for a justification of why the above functionalities pose a risk to children.

Moreover, despite the raft of evidence provided in Volume 3, no measures in the Code seek to mitigate the substantive risk of harm to children presented by the business models of online services. This threat to the online safety regime is compounded by the Code which actively seeks to protect those business models, detailed in full below.

Given the evidenced risk to children presented by GenerativeAI technology, **the CCo strongly recommends the regulator closes the gap between Volumes 3 and 5 to ensure a coherent and watertight online safety regime.**

**Finally, the CCo is concerned that where this consultation has carried out a thorough investigation of online safety risks (Volume 3), the regulator has not mapped the online world and established how many services exist within it.** This known unknown is a risk in and of itself, as any risks inherent to under-the-radar platforms may present risks beyond what was laid out in Volume 3. **The CCo recommends the regulator works with government bodies, online services and telecommunications providers to produce a register of services which exist in the UK. This should be audited every year.**

- **The safety measures that are in place not been designed with the pursuit of child safety as their sole objective, as was the intention of the Act. This is evidenced by the disproportionate weight given to costs to services being the main barrier to recommending measures to all online service providers.**

The cost of implementing a number of the safety measures proposed in the Code is cited as a valid reason for not recommending all online services in scope of the Act implementing the proposed measures, despite the inherent risk to children on all services by the nature of their ability to access a service, and the rapid changes that can happen on a service ahead of the implementation of safety measures retrospectively. **The CCo considers the weight given to costs-to-business disproportionate to the pursuit of the objective of the Act.**

The Section 13 of the Act interprets the Child Safety Duties set out in Section 12, and includes an interpretation of proportionality for the regulator, which is defined by both the outcome of the most recent child risk assessment, and the “size and capacity” of the service in question. When the regulator is weighing up how to balance the interests involved in the proposed measures, they are required to be proportionate to “Ofcom’s assessment (under section 98) of the risk of harm presented by services of that kind or size” (Schedule 4 para 2(d)). Given that the regulator has identified a number of risks in Volume 3 that are either not provided for in measures set out in Volume 5, or the measures in Volume 5 not being applied to services of a size and kind where the risk of harm is present - and justified not

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extending those measures because of the relative cost of implementation for businesses - the CCo does not consider this to be a proportionate approach. Furthermore, the technical feasibility condition set out in Schedule 4 (para 2(c)) does not mention costs.

Interpreting the Act in this way is consistent with the spirit of the parliamentary debates which heralded the progress of the Act into law. Lord Parkinson of Whitley Bay elucidated the difference between technical feasibility and costs, in this case in relation to the age assurance measures:

*“Proportionality remains relevant for the purposes of providers in scope of the new duty at Clause 11(3)(a) only in terms of the age-verification or age-estimation measures that they choose to use. A smaller provider with less capacity may choose to go for a less costly but still highly effective measure. For instance, a smaller provider with less capacity might seek a third-party solution, whereas a larger provider with greater capacity might develop their own solution.”<sup>9</sup>*

Furthermore, Lord Parkinson of Whitley Bay set out that costs can be cited as a reason for choosing different types of measures in the pursuit of effectiveness at achieving the objective of the Act, but that costs themselves cannot exempt services from being required to comply with their duties under the Act:

*“While the size and capacity of providers is included as part of a consideration of proportionality, let me be clear that this does not mean that smaller providers or those with less capacity do not need to meet the child safety duties and other duties in the Bill, such as the illegal content safety duties. These duties set out clear requirements for providers. If providers do not meet these duties, they will face enforcement action.”<sup>10</sup>*

Furthermore, the proposed measures must be compatible with the Online Safety objectives of the Act (Schedule 4 para 3). The CCo is concerned that, by allowing smaller services with limited financial resources to not implement measures against known risks present on their services, the Code allows smaller services to not take action against known risks and gives their non-compliance with their duty to children legitimacy.

**The CCo does not consider financial resource a justification for maintaining risks of harm to children and considers an online safety regime that communicates such corporate interests can be a reason not to take action against harm to be contrary to the Act's objectives.** If a company is not able to take the necessary steps to ensure their products are safe for children, the Children's Commissioner does not consider it compatible with the law to allow that company to continue to provide that harmful service to children. The role of the regulator is to protect children, not to safeguard corporate revenues.

Finally, the Children's Commissioner expresses concern that the Code communicates a willingness on part of the regulator to give corporate interests greater weight in the design of these measures than children's voices. Such is the next concern about the lack of consultation with children, set out below. **The Children's Commissioner strongly recommends that Ofcom gives children's interests proportionate weight when designing online safety measures.**

- **The measures have not been designed in consultation with children and therefore do not provide the foundation for an online safety regime in their interests.**

The CCo has highlighted concerns throughout this response that there are no provisions to consult with children in the Code measures, nor has there been meaningful consultation of children in the design of those measures. This is a concern shared by the Children's Commissioners for Wales and Northern Ireland, and the Children's Commissioner for Scotland is calling for greater participation for young people in the online safety regime.

**Regarding the design phase for this package of measures, the CCo notes that:**

- Where the Office recognises the regulator carried out deliberative engagement with children, the regulator did not have a formal process in place for children to contribute to the design of the Code measures. The CCo recommends that Ofcom works with the Children's Commissioner's Office to build a children's consultation framework, through which the regulator will be able to consult representative groups of children to inform their decision-making processes, regime designs and monitor the effectiveness of safety measures.

- This consultation itself is not designed for child engagement. There was no child-friendly version produced alongside the extensive consultation documents, set across 5 volumes and 15 annexes, presenting an obstacle not only to children’s engagement but to a number of organisations and charities who represent them who do not have the capacity to engage with such a lengthy process. The fact that the regulator has felt they had to direct this consultation towards the legal teams at service providers who are in-scope of the Act demonstrates just how much more weight the regulator has given their potential concerns and interests over those of children, whom the Act is designed to afford protection.
- There are a number of instances across the earlier Volumes where the lack of child consultation has contributed both to an abstracted understanding of childhood and children’s online experiences, and to the production of guidance and measures that fall short of the potential set out in the Act. The CCo refers the regulator back to the comments on the risk assessment process, the gaps in evidence about harms and about access as examples of this.

Regarding the measures in this volume, the limited understanding of what children need to be kept safe online as established by the points above has led to Code measures which will not meet the full potential of the Online Safety Act. The focus of the issue in this Volume, however, is also the fact that children remain locked out of the monitoring and evaluation processes for the Code’s safety measures.

**Example:** the Code rightly puts in place a regime for user reporting (measures UR 1-4) and terms of service (TS1 and TS2). These are important mechanisms insofar as they give children tools to make decisions about their online lives and report harm after it occurs. However, as the two sets of measures that are applied most widely across service providers (in terms of size and risk profile), these measures put the responsibility for identifying harm onto children without giving them an official consultative role that would proactively build a secure online environment.

This concern is compounded by the risk assessment process, alluded to previously in this consultation, which is largely based on the reactive reports that children send in regarding harms. The CCo is concerned that the most widely applied safety measures are the ones that will facilitate an insufficient risk assessment process.

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Furthermore, the Children's Commissioner's Office's *The Big Ambition* survey has found that less than half of teenagers believe they have the power to influence issues they care about. Regimes such as the Children's Code are opportunities to reverse this concerning trend.

**The CCo recommends that Ofcom works with the Children's Commissioner's Office to build a children's consultation framework, through which the regulator will be able to consult representative groups of children to inform their decision-making processes, regime designs and monitor the effectiveness of safety measures.** Consultations should take place regularly and should be given proportionate weight to the impact of the issue on children's lives. The Office of the Children's Commissioner for Northern Ireland is proposing that this consultation body and framework is drawn on in the monthly review of the Online Safety Act by the NICCY youth panel, as detailed in their response to this consultation.

- **The measures that are applicable to all services are weakened significantly without the application of other measures.**

**The CCo considers that the proposed package of measures should be implemented as a package, rather than a menu of measures from which services can pick and choose which are appropriate for their service – as they themselves will be assessing their size and risk profile.** This is because the effectiveness of each measure is dependent on the effective implementation of other measures, some of which are not mandatory.

Below sets out which measures a small and low-risk services will be required to put in place under the Code, and which measures they will not in the pursuit of a type of particular safety steps. The examples set out how exempting the necessity of the other measures in the package will compromise the effectiveness of the mandatory measure.

Example 1: Regarding the pursuit of content moderation provisions for user-to-user services

Services will have **content moderation functions** designed to take swift action against harmful content (CM1), but:

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- No internal moderation policies (CM2);
- No performance targets (CM3);
- *No prioritisation of certain content policies (CM4);*
- No mandated resourcing of content moderation (CM5);
- No staff training for staff carrying out content moderation (CM6);
- No training for volunteers carrying out content moderation (CM7);

The CCo does not consider that a content moderation function will have the same risk mitigation impact as they would have should the company in question put in place the measures above, including and in particular mandatory resources for the content moderation function.

Furthermore, the volume of safety measures in the package that are not required for all services of all sizes and risk profiles limits the scope of success for this package of measures. The CCo considers the justification of this based on proportionality to be insufficient, as set out above. Small, low risk services will not need to implement any of the following measures which the CCo considers essential in a child-centred online safety regime:

- User support materials (US6)
  - Information for children on how to restrict interaction with accounts or content (US4)
  - Signposting to support services following a complaint (US6)
  - Exclude PPC from recommender systems (RS1)
  - Limit content likely to be PC from recommender systems (RS2)
  - Allow child users to signal negative feedback to content on recommender systems (RS3)
  - Allow child users to block or mute users (US2)
  - Allow child users to disable comments (US3)
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- Require children to consent to being added to group chats before they are added (US1)

This concern is not limited to the measures in this Volume – it is also present in the approach to designing the governance measures set out in Volume 4: Regarding the pursuit of governance and accountability provisions for user-to-user services

Services will have a named person **accountable** to most senior governance body (GA2), but:

- No annual review of annual risk management activities; (GA1)
- No written statement of responsibilities for senior members of staff; (GA3)
- No ongoing internal monitoring process to assess the effectiveness of safety measures (GA4);
- No tracking evidence of new or increasing harm (GA5);
- No code of conduct relating to safety duties protecting children (GA6);
- No staff compliance training (GA7)

The CCo does not consider a single accountable person, reporting up to a senior governance body, will have the same risk mitigation impact as they would be should the company in question put in place the measures above, including and in particular compliance training and an annual review of risk management activities.

**Finally, the CCo considers that the online safety regime should instil a sense of security for children and their parents, whereby children know that any area of the internet they can access is subject to safety measures that ensures they have safe experiences.** The prior knowledge that all companies have had to, for example, put in place staff the training and resources to facilitate their content moderation would provide users across the UK with the assurance that the quality of content moderation tools are ubiquitous across the online world.

**The CCo strongly encourages the package of measures proposed in this consultation are applied to all services, of all sizes and risk profiles, as a package.** Online service providers should evidence how they meet these requirements and submit this evidence on a cyclical basis without the regulator needing to use their enforcement powers.

- **The proposed package of measures act as a safe harbour for harms owing to a lack of a standardised minimum outcome for each.**

The Code does not specify that safety measures implemented by online service providers should be monitored and proven effective at reducing harm to children in order for that service to be considered compliant with their child safety duties. Under the current Code, any measure an online service states *will* be effective is the threshold for compliance, even though they may not be effective or future-proof.

The regulator recognises the risk of their chosen online safety regime. In the consultation document, Ofcom states:

*“Services that choose to implement the measures we recommend in Ofcom’s Children’s Safety Codes will be treated as complying with the relevant children’s safety as well as their reporting and complaints duties. This means that Ofcom will not take enforcement action against them for breach of that duty if those measures have been implemented. This is sometimes described as a “safe harbour”. However, the Act does not require that service providers adopt the measures set out in the Children’s Safety Codes, and service providers may choose to comply with their duties in an alternative way that is proportionate to their circumstances.” (Para 13.4)*

The CCo cannot support an online safety regime that chooses to give private companies a low bar for compliance which also undermines the spirit of the Act. The rules-based system, complete with a threshold for measuring success only by the compliance with implementing duties as opposed to implementing duties that prove to be effective at achieving their aim, is a serious concern for the Office.

**The CCo strongly recommends the regulator states that services should prove that the measures they choose to put in place against identified risks are effective at reducing harm to children.**

This should be measured through regular consultation with child users carried out transparently by online services. To ensure the consultations carried out by online services are to a sufficient standard, **the regulator should also produce consultation guidance for online service providers in scope of the Act, based on the consultation framework established with the Children’s Commissioner’s**

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**Office** and set out in point 3, above. The services should gather qualitative evidence and present it to Ofcom at regular assessment cycles. The regulator should not be expected to use their information gathering powers for this measure. Technology companies should instead present this information publicly.

Beyond the above, the CCo largely supports the broad areas identified in the proposed package of measures (robust age checks; safer algorithms; effective moderation; strong governance and accountability; more choice and support for children).

### **Q23 Do you currently employ measures or have additional evidence in the areas we have set out for future consideration?**

#### **A. Automated content moderation**

*“There should be more shielding in place on social media apps, as children are feeling unsafe through seeing things that either aren’t suitable but come up because it’s ‘recommended’.” – Girl, 13.*

- **The CCo agrees that any new technology used in the interests of online safety needs to be accurate, effective, lack bias and be proportionate to the risk of harm.**
  - **The CCo strongly recommends the regulator states that services should prove that the measures they choose to put in place against identified risks are effective at reducing harm to children.**
  - **The CCo is concerned the absence of such a minimum outcome standard will result in limited action being taken by online services, or that the technology used in taking action will pose new risks to child users beyond the oversight of the regulator.**
  - **The CCo welcomes additional consultations on specific uses of technology, particularly when such tools would have consequences for children’s rights.**
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## B. GenAI:

*According to Ofcom's research released in June last year, 79% 13-17 year-olds have used a GenAI tool in the last year<sup>11</sup>.*

- The Children's Commissioner has noted the risks for GenAI content as an emerging issue of concern for children<sup>12</sup>.
- **The CCo supported the inclusion of the risks posed by Generative AI content in the risk assessment proposals for Ofcom's consultation on 'Protecting People from Illegal Harms Online'<sup>13</sup>**

## C. Impact of choice architecture:

*"Help reduce screen addiction in young children" - Girl, 16*

- **The CCo strongly recommends the regulator closes the gap between Volumes 3 and 5 to ensure a coherent and watertight online safety regime.** Ofcom must reconsider its decision not to include "persuasive design" features (evidence of harm provided in Volume 3, 7.13.7) that function to maximise the volume of time children spend on a service.
  - **The CCo wishes to highlight Ofcom's acknowledgement of the substantive body of research detailing the application of persuasive design features (Vol 5.13.70), and elements of business models highlighted in this response to Volume 3 in justification of bringing these factors into scope of the Code.**
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#### D. Children of different ages

*Children need to be made aware of online threats at an early age (bullying/pacts/trends). I also think parents need to be made aware of online threats!” – Adult on behalf of boy, 5.*

- The Children’s Commissioner supports Ofcom’s approach to focussing on proposals that will result in safer experiences for all children, regardless of their age.
- The evidence from *The Big Ambition* shows that children feel most unsafe before the age of digital consent under GDPR (aged 13), after which it remains relatively stable. Given the volume of children who are able to open accounts on online service platforms below the minimum age of 13<sup>14</sup> (for example, TikTok 44%; Snapchat 41% and Instagram 36%), both above and below the digital age of consent and minimum ages set by online service providers.
- In consultation responses to both the ‘Protecting people from illegal harms online’<sup>15</sup>Part 5 guidance to service providers publishing pornographic content’,<sup>16</sup> the CCo has called for highly effective age assurance. We support Ofcom’s criteria that this age assurance method should be technically <sup>3</sup>, robust, reliable, and fair. Furthermore, the CCo recommends that the guidance should include a clear definition of the standard required for a method to be highly effective, as defined in the Act.
- **The CCo notes that age is not the only determinant of experience of harm and encourages Ofcom to explore the role of other characteristics which impact child user experience, such as ethnicity and SEND status.**

**The CCo recommends that Ofcom works with the Children’s Commissioner’s Office to build a children’s consultation framework, through which the regulator will be able to consult representative groups of children to inform their decision-making processes, regime designs and monitor the effectiveness of safety measures. This will include an assessment of the impact of age.**

## E. Parental controls

*“Online safety is non-existent and parents are so ill-informed and don’t put restrictions in place (across the class spectrum) so I have friends who have seen porn, fighting and other inappropriate content and they are only 10/11 years old or younger. It feels like there is nothing in place to help.” – Girl, 12*

- **The CCo supports Ofcom’s view of parental controls as a complementary role to supporting children to have safer experiences online.**
- **The CCo does not consider parental controls alone to be a highly effective measure against online harms.** The Children’s Commissioner’s Office has previously highlighted that many parents will lack the means to put effective parental controls in place and is concerned this will leave some children unprotected if parental controls are relied on as a central element of the online safety regime.
- **The CCo considers the primary responsibility for mitigating the risk of online harms to be in the hands of the online service providers, who also hold legal responsibility to fulfil child safety duties under the Act.** The role of parents and carers, though importantly outside the scope of the Act, should be seen as secondary to the responsibility that online service providers have to make their platforms safe by design.
- The Children and Young People’s Commissioner Scotland has also highlighted that age verification alone cannot fulfil service provider’s duties to keep children safe online. Children, particularly young children, may access via a parent’s device and steps need to be taken to reduce the risk of harm.

## **Q25 Do you agree with our approach to developing the proposed measures for the Children’s Safety Codes? Please explain why.**

The Office refers to the response given to question 22, and reiterates the following recommendations:

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1. **Ofcom should work with the Children's Commissioner's Office to build a children's consultation framework, through which the regulator will be able to consult representative groups of children to inform their decision-making processes, regime designs and monitor the effectiveness of safety measures.**
2. **The regulator should close the gap between Volumes 3 and 5 to ensure a coherent and watertight online safety regime.**
3. **The package of measures proposed in this consultation should be applied to all services, of all sizes and risk profiles, as a package.**
4. **The regulator should provide a minimum outcome standard, against which services should prove that the measures they choose to put in place against identified risks are effective at reducing harm to children.**
5. **Ofcom should give children's interests proportionate weight when designing online safety measures.**
6. **The regulator should clarify that the cost to a business is not a valid reason for an online service provider to not put in place a safety measure.**
7. **The regulator should work with government bodies, online services and telecommunications providers to produce a register of services which exist in the UK. This should be audited every year.**
8. **The regulator should produce consultation guidance for online service providers in scope of the Act, based on the consultation framework established with the Children's Commissioner's Office.**

**Q26: Do you agree with our approach and proposed changes to the draft Illegal Content Codes to further protect children and accommodate for potential synergies in how systems and processes manage both content harmful to children and illegal content? Please explain your views.**

- **The CCo welcomes the consistency and parallel development between the draft Children’s Safety Codes and draft Illegal Contents Codes. The Office encourages Ofcom to do so in a manner that does not blur the two distinct types of risk to children, to ensure they are afforded the greatest protection from the broad range of risks they face online.**
- The CCo responded to the ‘Protecting people from illegal harms online’ consultation and stated that the regime for protecting children against illegal harms must be consistent with the Children’s Code. The Office requests consideration of that response<sup>17</sup> when reading this one.

**Q27: Do you agree that most measures should apply to services that are either large services or smaller services that present a medium or high level of risk to children?**

- **The CCo does not agree that measures should be applied according to size or risk profile. This is because, as set out clearly in Ofcom’s own assessment of the causes and impacts of harm to children (Volume 3), risk of harm is present on services of all sizes.**
- The risk assessment process trusts companies to carry out an accurate risk assessment which truthfully sets out to the best of their knowledge the existing risks on their platforms. As set out in this response to Volume 4, this is problematic given the record of these companies in following similar guidance: see, for example, whistleblower Arturo Bejar’s testimony regarding efforts to mislead the public about online harms<sup>18</sup>; and the volume of internal research carried out by private companies on harmful content which was only presented in recent US court filings<sup>19</sup>. Given this past behaviour, the CCo urges caution at trusting companies to carry out their own risk assessments when the incentive is to downplay the existence of risk - an incentive that is instilled when the regulator prescribes measures according to risk profile.

- Aside from the above concern, the CCo considers the risk assessment itself an insufficient measure of risk, as set out in this response to Volume 4. The risk assessment is largely retrospective and will not be dynamic enough to respond to emerging harms. Should a service identify itself as low-risk – based on retrospective data analysis – the potential for harms to be present on the platform remains. Platforms should not be proven to have caused harm to justify implementing safety measures. These measures should already be in place, until a service is proven safe for children.
- The CCo considers the Child Access threshold to be a qualifying factor to determine if a service should implement safety measures. **The CCo recommends that the regulator applies measures to all providers, and that providers are expected to report on their compliance and success of their chosen risk mitigation measures. This evidence should be published on their website in a format accessible to both children and guardians.**

**Q28: Do you agree with our definition of ‘large’ and with how we apply this in our recommendations?**

- **The CCo welcomes the consistency between the definitions of a ‘large’ service provided in both the ‘Protecting people from illegal harms online’ and the Children’s Safety Codes.**

**Q29: Do you agree with our definition of ‘multi-risk’ and with how we apply this in our recommendations?**

- **The CCo considers the online environment, which develops at speed and often ahead of safety measures, a multi-risk environment.** The Office therefore encourages the regulator to consider all service platforms to have the potential to be multi-risk and adjust the recommended safety measures for those services accordingly.

**Q30: Do you agree with our proposal to recommend the use of highly effective age assurance to support Measures AA1-6?**

- **The CCo welcomes measures AA1-6 for highly effective age assurance, because it is what children have said they need to feel safer online. In the CCo’s Digital Childhoods survey<sup>20</sup>,**

70% asked for a minimum age requirement on social media platforms, with the rate of agreement rising with age. In that same report, the CCo has called for highly effective and privacy-protecting age assurance for online services.

- The CCo strongly supports the regulator’s recommendation to use highly effective age assurance over alternative options. The Office agrees that self-declaration would be an insufficient measure to determine a child’s age.
- Noting that online services may choose not to implement these exact measures in the discharge of their duties, **the CCo recommends that the regulator provides a minimum outcome standard, against which services should prove that the measures they choose to put in place against identified risks are effective at reducing harm to children.**
- Noting that there are no monitoring provisions included in the proposed measures, **the CCo recommends that the regulator includes an obligation for online services to report on the implementation and effectiveness of the measures.** This will ensure industry wide best practice is adopted and afford children the highest quality age assurance.
- The CCo strongly supports the regulator’s recommendation to use highly effective age assurance over alternative options. The Office agrees that self-declaration would be an insufficient measure to determine a child’s age.
- The CCo notes that the results from the Office of the Children’s Commissioner for Northern Ireland’s child engagement show that children are supportive of highly effective age assurance measures.

#### **AA1: Use of highly effective age assurance – services whose principle purpose is the hosting or dissemination of primary priority content**

- The CCo welcomes the measure.
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- The CCo requests that the **regulator clarifies how and to what standard service providers will complete a self-assessment of their main purpose for existence**. This is to ensure that services which publish or host a range of content including PPC are obliged to implement age assurance to the highest standard as is proportionate. (15.48)
- The CCo agrees with the regulator that it is unlikely that a platform which publishes PPC would be able to design a “child safe experience” that would prevent children from being exposed to PPC content. (15.51)
- The CCo welcomes the direction to services to take steps to identify how child users might circumvent age assurance measures. **The CCo recommends this direction is supplemented with a direction to publish the assessment of that risk in the Child Risk Assessment, and to share the steps taken to mitigate it publicly**. This is to ensure the highest possible standard of risk mitigation is taken and to share knowledge with other platforms in the industry, so they too can adjust their own measures where necessary. (15.59)

#### **AA2: Use of highly effective age assurance – services who's principle purpose is the hosting or dissemination of priority content**

- **The CCo welcomes the measure.**
- **The CCo supports the regulator’s decision to prevent access to a whole service which has a high or medium risk of encountering PC.**
- **The CCo supports the regulator’s decision not to allow services of this kind to design graded approaches to measures in line with a user’s age.**

#### **AA3: Use of highly effective age assurance – services that do not prohibit primary priority content**

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- **The CCo welcomes the measure;**
- **The CCo supports the measure to implement highly effective age assurance to prevent children encountering PPC content on a service that, while it is not the main purpose of the service, nonetheless does not prohibit PPC content.**
- **The CCo recommends this measure is applied to all services that meet the child access threshold;**
- **The CCo recommends the regulator ensures that all services take steps against a child being exposed to PPC content on their platforms at the three points of possible age check: access to service; account creation; accessing a part of the service hosting PPC. (15.135)**

#### **AA4: Use of highly effective age assurance – services that do not prohibit priority content**

- **The CCo welcomes the measure;**
- **The CCo welcomes the regulator’s indication that online services might need to use additional measures alongside age assurance to ensure children are protected from exposure to PC. (15.167)**
- **The CCo supports the regulator’s suggestion that identified PC is ringfenced away from children. (15.166).**
- **The CCo encourages the regulator to consider prevention to be a form of protection for children, as opposed to two separate regimes related to the safety of children. The CCo recommends greater clarity is provided to online services in relation to the outcome standard that should result from the action they take to keep children safe from PC. The “flexibility” that is afforded to them must be in terms of what action is best suited to provide the highest protection on their individual service, and not interpreted as flexibility in addressing access to PC. (15.168)**

**AA5: Use of highly effective age assurance – services with a recommender system which pose a risk of primary priority content;**

- **The CCo welcomes the measure;**
- **The CCo wishes to highlight that recommender systems are one type of platform design that pose a material risk of harm to children.** As highlighted in Ofcom’s own analysis of design features that pose a risk of harm to children in Volume 3, children must be protected from harm from all aspects of a platform design. **The CCo therefore recommends that the measure for age assurance to access an online service which has a specific interface design is extended to include the other harmful interfaces identified in Volume 3.**

**AA6: Use of highly effective age assurance – services with a recommender system which pose a risk of priority content;**

- **The CCo welcomes the measure;**
- **The CCo welcomes the regulator’s indication that services which host NDC may be brought into scope of this measure. (15.243)**
- In their responses to the Children’s Commissioner’s *The Big Ambition* survey, one 15 year old girl made a clearly set out the offline impact of being exposed to content that does not meet the legislative threshold for PPC or PC, but nonetheless caused them significant harm. She told the office: *“I think that placing age restrictions on certain social media platforms is so important. This is because I really, strongly think that social media makes the foundation of the youth’s hyper-sensitivity, fixation, obsession, and anxiety/low self-esteem.”*
- The CCo considers recommender systems to be factors which increase the risk of harm to a child, and therefore **encourage the regulator to apply this measure to all services accessible to children.**

**Q31: Are there any cases in which HEAA may not be appropriate and proportionate? In this case, are there alternative approaches to age assurance which would be better suited? Please provide any information or evidence to support your views.**

- Children have asked for highly effective age assurance: in the CCo's Digital Childhoods survey<sup>21</sup>, 70% asked for a minimum age requirement on social media platforms, with the rate of agreement rising with age. The **CCo considers highly effective age assurance to be appropriate and proportionate for all services in scope of the Online Safety Act.**

**Q32: Do you agree with the scope of the services captured by AA1-6?**

AA1-AA2:

- **The CCo recommends that these measures are applied to all services, regardless of risk.**
- **The CCo strongly recommends these measures are extended to services that pose a low risk of exposure to PC, and to services whose principle purpose is to host NDC.** This recommendation is made on the basis that content which meets the NDC threshold has a substantive and evidenced harmful impact on children. The Act stipulates NDC as a type of content to be in scope of regulations, and the Office calls for the highest proportionate level of safety from those harms to be afforded to child users.

AA3-AA4:

- **The CCo recommends that these measures are applied to all services, regardless of risk or content type – including NDC.**
- **The CCo expresses concern that the decision not to bring all services in scope of measure AA4 appears to have been made not on the assessment of the impact it would have on the child, but on an assessment of the impact of the cost it would have to the businesses required to comply with it.** (15.205) Cost to business must not come before a company's duty to keep children safe online.

AA5-6:

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- The CCo considers recommender systems to be factors which increase the risk of harm to a child, and therefore encourage the regulator to apply this measure to all services accessible to children.

**Q33: Do you have any information or evidence on different ways that services could use highly effective age assurance to meet the outcome that children are prevented from encountering identified PPC, or protected from encountering identified PC under Measures AA3 and AA4, respectively?**

- The CCo recommends the regulator requires services that are in scope of the Act to share detailed information about how they a) implement highly effective age assurance and b) how they are monitoring its effectiveness. This would encourage industry best practices and provide child users and their guardians with information to make an informed choice about how they navigate their services. This reporting requirement must be included on the face of the Children's Code.

**Q34: Do you have any comments on our assessment of the implications of the proposed Measures AA1-6 on children, adults or services? Please provide any supporting information or evidence in support of your views.**

- The CCo welcomes the use of child rights assessments in the consideration of the proposed measures.
- The CCo agrees with the regulator's assessment that the rights of adults attempting to access services using age assurance will be relatively limited.

**Q35. Do you have any information or evidence on other ways that services could consider different age groups when using age assurance to protect children in age groups judged to be at risk of harm from encountering PC?**

- Earlier in this consultation response, the Office presented findings on the link between age and the degree to which a child agrees they *feel*/safe online. The agreement rate peaks before the
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minimum age for access to most online services (13). Noting that a vast number of children are able to access online services before that age<sup>22</sup> (between 36% and 79% for users aged 8-17), the CCo strongly encourages the use of highly effective age assurance that meets a minimum standard of efficacy for all ages, and all children.

## **V5.4 Content moderation U2U (Section 16)**

**Q36: Do you agree with our content moderation proposals? Please provide the underlying arguments and evidence that support your views.**

- **The CCo welcomes the measures.**
- The CCo recognises that content moderation as measure will provide protection to children only from the harm that arises from harmful content. The CCo wishes to emphasis that the harmful content is not the only source of harm, and that the risk from offline factors and platform design will not be mitigated by this measure.
- **The CCo supports measure CM1**
- **The CCo supports the principle of measures CM2-CM7 but recommends that the measures are applied to online services of all size and risk profiles, not just large.** This recommendation is based on the findings of Ofcom's own research that children experiment with different apps and platforms outside the largest and most well-known ones<sup>23</sup>, and the Commissioner considers it essential they are afforded the same level of protection on smaller sites as the large ones.

**Q37: Do you agree with the proposed addition of Measure 4G to the Illegal Content Codes?**

- **The CCo welcomes the addition of Measure 4G to the Illegal Content Codes.**
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- **The CCo supports the consistent but differential approach the regulator proposes to both illegal content and content that is harmful to children.**

## **V5.5 Search moderation (Section 17)**

**Q38 Do you agree with our search moderation proposals? Please provide underlying arguments and evidence to support your views.**

- **The CCo strongly recommends measures SM2-7 are applied to all search services regardless of their size or risk profiles.** This is to ensure all services have an approach to search moderation safety that would afford children the highest level of protection.
- **The CCo urges the regulator to establish a minimum outcome standard for each of the measures SM3-7** to ensure children are afforded the highest level of protection.

**Q39: Are there additional steps that services take to protect children from the harms set out in the Act? If so, how effective are they?**

- The evidence from the CCo's surveys on children's online safety suggests that any existing proactive measures designed to protect children from harms set out in the Act are inadequate. The Office's Digital Childhood report<sup>24</sup> found that 45% of children 8-17 had seen harmful content online. The regulator should conclude from this figure that further measures are needed.
- Likewise, evidence from the same survey suggests that the existing reactive measures designed to protect children from harms set out in the Act are also inadequate. The Office for the Children's Commissioner for England found that 25% children who chose to report harmful content to a service platform saw no action taken against it<sup>25</sup>, and a further 10% weren't sure if there had been any outcome from their report. Further research from the Office of the Children's Commissioner for Wales, submitted to Ofcom in response to the Children's Code's consultation, has indicated that only 32% of children and young people who'd reported

concerns (of the 39% total who had) to an online platform felt their concerns had been taken seriously. 29% said they did not feel their concerns had been taken seriously. The regulator should conclude from these figures that further measures are needed.

- The CCo would like to highlight that the above evidence points to a broader distrust between children and the services and bodies who have a duty to protect them. 40% of children chose not to report harmful content when they came across it because they felt there was no point doing so<sup>26</sup>. This has implications for the design of an online safety regime. It is essential that services work to earn the trust of children that their wellbeing will be protected online. **We encourage the regulator to work towards building an online environment that children can trust has their safety at its heart. This will require the regulator to work with the Children's Commissioner's Office to build a children's consultation framework, through which the regulator will be able to consult representative groups of children to inform their decision-making processes, regime designs and monitor the effectiveness of safety measures.**

**Q40: Regarding Measure SM2, do you agree that it is proportionate to preclude users believed to be a child from turning the safe search settings off?**

- The CCo strongly supports the measure.
  - The CCo notes that the measure relates only to PPC content, which has been proven to have a material risk of harm to children and is included on the face of the Act.
  - The CCo considers the protection of children from PPC content is a legitimate interest and the decision to preclude child users from accessing that material is proportionate to the aims of the Act.
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**Q41 Do you consider that it is technically feasible to apply the proposed code measures in respect of GenAI functionalities which are likely to perform or be integrated into search functions? Please provide arguments and evidence to support your view.**

- **The CCo welcomes the regulator’s approach to developing safety measures that will be future-proof and adaptable to emerging online harms.**
- **The CCo considers applying the proposed measure to GenAI functionalities is essential to the pursuit of the objective of the Act.** The Commissioner has previously encouraged caution around the use of AI tools when it comes to children<sup>27</sup>. Recognising that between 36% and 79% 13-17 year-olds have used a GenAI tool in the last year, the CCo recommends that the regulator takes action to ensure child safety as that technology develops.
- **The CCo recommends that the regulator commits to carrying out in depth research into the development and application of generative AI functionalities, and consider their impact should the developers of that technology choose to integrate them into search functions.**
- **The CCo strongly encourages a child risk assessment is carried out during the product testing phase of technological development, as set out in this response to Volume 4.**

**Q42: What additional search moderation measures might be applicable where GenAI performs or is integrated into search functions? Please provide arguments and evidence to support your view.**

- We refer the regulator back to the Office’s response to Question 41 of this consultation. The CCo encourages the regulator to future-proof the proposed safety measures ahead of emerging online harms.
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## **V5. 6 User reporting and complaints (Section 18)**

### **Q43: Do you agree with the proposed user reporting measures to be included in the draft Children's Safety Codes?**

- **The CCo recognises user reporting as a crucial factor in the design of an effective regulatory regime**, and one that children have expressed is important to them. Almost a third (30%) of children told the Office they did not know how to report harmful content<sup>28</sup> and a further 25% explained that they did not know they even could<sup>29</sup>. These statistics indicate that the current reporting provisions are insubstantial. The CCo therefore welcomes the regulators commitment to establishing measures which will empower users with an improved reporting function.
- **The CCo welcomes the scope of the proposed measures, with regard paid to the fact that these measures are being applied to all user-to-user and search service platforms of all sizes and risk platforms.**
- Regarding the revised wording to the Illegal Harms Consultation proposed as part of measure UR4 (b) (i) from “specific proactive technology” to “specific content identification technology”: the CCo discourages the regulator from taking an approach to illegal harms and content that is harmful to children that would narrow the focus to content identification alone. This is because content identification assesses existing harms presented by user reports or other scoping mechanisms. It is not an approach that is flexible to emerging harms. Online safety, owing to the rapidly evolving nature of the technology, requires proactive approaches. **The CCo recommends the regulator adopts the language of proactivity in its Children's Code, to indicate this is the approach service providers should take.**
- **The CCo recommends that, alongside the risk assessments, online platforms should be obliged to publish reports detailing what harms have been reported on their platforms, and what action was taken to mitigate this.** This would encourage the adoption of industry best practice and contribute to the monitoring process of any emerging harms.

- While the Office agrees that a standardised user-reporting and complaints would be an ineffective approach (18.49), the CCo does nonetheless **encourage the regulator to establish a minimum outcome standard to be used as an index to evaluate the effectiveness of individual reporting tools platforms adopt**. This would ensure that, whatever form a tool takes, it fulfils its function to a sufficient standard to have a positive impact on the child user experience.
- Some children expressed that they don't feel that their reports were taken seriously, like this 13 year old girl: "I think the government should get more involved with making sure online social media apps like Snapchat or TikTok take reports more seriously. It's genuinely terrifying knowing someone is pretending to be you and not knowing what they're doing with that fake account, someone is saying awful and untrue things about you online, meanwhile you reported them ages ago and they're still able to virtually harass you.". Other respondents indicated that reporting functions were not understood by some users: Safer internet education is needed. Parents and schools need to be given more guidance on this problem and what issues to be aware of and how to report them." - adult on behalf of girl, 10. Noting the prominence of reporting in shaping children's online lives, children should be involved in the design of these reporting tools.
- **The CCo recommends that children are consulted on the design of the reporting tools including the key interface and functionality elements which would define how accessible it would be to them. As a statutory consultee who engages with millions of children, the Commissioner would welcome collaboration with the regulator to this end.**
- **The CCo welcomes user-reporting as one measure the regulator can implement to reduce barriers to children reporting harms online. However, the CCo would like to emphasise that a lack of reporting tool is not the only obstruction to reporting.** As discussed earlier in this response, the degree of trust young people have in the capacity of platforms to protect them from online harms results in their reluctance to reporting. The willingness of children to report harmful content reduces significantly the longer they have been online, and the office has previously indicated concern that this contributes to the erosion of trust in young people<sup>30</sup>. It is essential, then, that in the design of the Children's Code children's voices are listened to.

**Q44: Do you agree with our proposals to apply each of Measures UR2 (e) and UR3 (b) to all services likely to be accessed by children for all types of complaints?**

- The CCo supports the measures and their application to all services which are accessible to children.

**Q45: Do you agree with the inclusion of the proposed changes to Measures UR2 and UR3 in the Illegal Content Codes (Measures 5B and 5C)?**

- The CCo supports the additions made to Measure UR2, as they intend to make steps towards removing barriers to reporting.
- The CCo supports the additions made to Measure UR3, as they intend to make steps towards removing barriers to reporting

## **V5.7 Terms of service and publicly available statements (Section 19)**

**Q46: Do you agree with the proposed Terms of Service / Publicly Available Statements measures to be included in the Children's Safety Codes?**

- The CCo welcomes the regulators commitment to providing clear and accessible information to assist children and parents to make informed decisions about their use of online services.
- The CCo also welcomes the regulator's recognition that empowering children with the necessary information to give them knowledge of their rights is an important aspect of an online safety regime.
- The CCo supports the regulator's proposal to ensure that a services' terms or statements are written to a reading age appropriate for children (19.17). The Office recommends the regulator takes the principle of this proposal further, and lowers the reading age a statement is written in to Entry Level 3 reading age (9-11 years old)<sup>31</sup>. This would ensure not only that the terms are accessible to the 1 in 7 adults in the UK who do not exceed entry level

3 reading standard but will also be accessible the children who circumvent the current minimum age standards and any future age assurance measures<sup>32</sup>. As an example, it would be much more appropriate for the terms of service for WhatsApp – which 79% children aged 8-17 reported using underage - to be written for a reading age of a 7 year old than a 16 year old, which is the minimum age for that service. This recommendation would complement the regulator's stated approach to not dedicate resources to compelling online platforms to enforce their individual minimum ages of access, and instead provide measures that would ensure the online world is appropriate for children of all ages. The Office considers the appropriate age for to be online to be subject to the relevant stakeholders in government and parents. The Office does not consider private technology companies to be an authority with the capacity to judge what age it is most appropriate for a child to access their services.

- **The CCo strongly welcomes Measure US6 and refers the regulator to our response to that section for further information.**
- **The CCo strongly recommends measure TS3 is implemented by all online services, not just services in Categories 1 and 2A.** A summary of the most recent child risk assessment is essential information for children and parents to make informed decisions about their use of a service. Given that the regulator has yet to consult on the categorisation of services, the Office considers it essential that the regulator communicates that all services should be carrying out risk assessments in the knowledge that their results will be scrutinised by users. **The CCo recognises that the additional terms of service duties are set out in the Act as duties separate from those related to the protection of children from harm, but would encourage the regulator to consider the protective potential in all the duties set out in the Act. This will ensure child safety is at the core of all changes made to online services.**

**Q47: Can you identify any further characteristics that may improve the clarity and accessibility of terms and statements for children?**

- **The CCo recommends that the regulator establishes a minimum standard of transparency for the Terms of Service and Publicly Available Statements.** Safety information for children must not in any way mislead or obstruct full understanding of the risks which exist on a given
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service, and this standard act as a transparency monitor, ensuring full access to information regarding the risks and effectiveness of risk mitigation on an online service. The degree to which statements are transparent should be judged by the risk assessments published publicly online, and by consulting children as part of the consultation framework set up alongside the Children's Commissioner's Office.

- **The CCo recommends that the reading age of the Terms of Service and Publicly Available Statements is written in to Entry Level 1 reading age (7 years old).**

#### **Q48: Do you agree with the proposed addition of Measure 6AA to the Illegal Content Codes?**

- The CCo welcomes the principle of the proposed addition of Measure 6AA to the Illegal Content Code. **The Office nonetheless encourages the regulator expand the scope of Measure 6AA to include all online services accessible to children.** The Office considers the protection of children from online harm to be a legitimate pursuit and in the spirit of the Act, and therefore a proportionate measure for all services.

#### **V5.8 Recommender systems**

**Q49: Do you agree with the proposed recommender systems measures to be included in the Children's Safety Codes? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence. If you responded to our illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response**

- **The CCo welcomes the regulator's attention to how the design of online services can contribute to the exposure of children to harmful online content.** Recommender systems in particular were highlighted by children as a specific harm, with one 13 year old girl telling us *"There should be more shielding in place on social media apps, as children are feeling unsafe through seeing things that either aren't suitable but come up because it's 'recommended'."*

- **The CCo welcomes the regulator’s recognition of the role recommender systems play in the occurrence of harm to children but encourages the regulator to view recommender systems as one in a litany of design choices which contribute both to the exposure of children to harmful content, and the occurrence of harm to children by means separate from that harmful content** – for example, the development of what children themselves have called addictive behaviours. Some of these design interfaces were identified in Ofcom’s assessment of risks in Volume 3 but are missing in Volume 5. **The Office recommends that the regulator extends the safety-first approach laid out in Vol 5.8 for recommender systems to other design features recognised to be harmful and therefore fall in scope of section 1 of the Act.**
- The CCo strongly supports measure RS1, and welcomes an approach that will push online services further than they have before to protect children from harm arising from recommender systems. Nonetheless, **the CCo recommends the provision is extended to include all online services that is assessed as being accessible by children.** This is to future-proof the measure against the evolution of recommender algorithms outside of the definition provided in this consultation, and against any subsequent emergent risk of harm.
- **The CCo strongly recommends that measure RS2 is applied to both user-to-user and search services, and to those services of all risk profiles rather than just those with medium-to-high risk of PC.** This is to provide protection to children in the event that the existing risk assessment framework proves inadequate in establishing the real risk profile of a service – which, as highlighted in this response to Volume 4, is likely without a standardised risk assessment framework. It will also future-proof the measure against the evolution of online services in the gaps between an online services’ regular assessment of risk.
- The CCo considers that, with the above changes made, an adapted RS2 would remain a proportionate measure to achieve the purpose of the Act. There is no legitimate interest in maintaining the chance a child might be exposed to PC content on their feed.
- **The CCo strongly recommends the regulator expands the scope of measure RS3 to include all user-to-user and search services of all sizes and all risk profiles, and to remove the cap on the number of content types that would justify a complaint.** The CCo views all PPC, PC

and other content that is harmful to children – which are written on the face of an Act of Parliament – as justification of a complaint regardless of where a child is exposed to it.

- **The CCo does not support the above measures with their current limitations.** The CCo does not consider the above measures sufficient to protect children from cumulative harm without extending the provisions to include other design features, even with the adoption of the recommendations stated above.

**Q50: Are there any intervention points in the design of recommender systems that we have not considered here that could effectively prevent children from being recommended primary priority content and protect children from encountering priority and non-designated content?**

- **The CCo considers the motivation behind the design of any feature or functionality to be an intervention point that the regulator must consider when designing a framework around online safety.** In their responses to the Children’s Commissioner’s *The Big Ambition* survey, children told us they wanted to see action taken to prevent children “*using technology because it can be addictive*” (Boy, aged 12). The Office recognises that, as businesses, any privately-owned online service will make decisions that are in the best interests of that companies’ business. It is, then, their primary priority.
- Where the CCo recognises it is not possible to change this motivation, the Office **strongly recommends that the regulator considers assessing the motivation behind the design of any feature or functionality of an online service, and the impact that will have on the interests of children.**
- For example, the recommender system feature which the regulator has rightly identified as a risk to children was designed with the motivation to ‘recommend’ content that would compel a child user to continue using a service. As the consultation itself states, this feature maximises the time a user spends on this service and the services’ profitability. Assessing the motivation alone indicates several risk factors for the exploitation of children: in this instance, it is maximising how much space a product has in a child’s life and reducing the volume of control

that child would have over its influence, a combined outcome that generates profit for a company but no proven benefit for a child (Vol 5.20.8). This approach, when applied to other system designs and features, would highlight where the regulator would need to be proactive in the regulation of a service provider's obligation under Section 1 of the Online Safety Act.

- The CCo considers an assessment of the motivation behind the design of any feature or functionality in use on a service platform to be a proportionate measure to achieve the aims of the Act. **The Office does not consider it the role of the regulator to hold the business interests of privately owned companies ahead of the safety of children when designing a safe online world for children.**

**Q51: Is there any evidence that suggests recommender systems are a risk factor associated with bullying? If so, please provide this in response to Measures RS2 and RS3 proposed in this chapter.**

- **The CCo considers recommender systems to be a risk factor for children's exposure to bullying content.** 'Bullying' content is [defined](#) in the Part 3 62(12) of the Act as "content targeted at a person which – a) conveys a serious threat; b) is humiliating or degrading; c) forms part of a campaign of mistreatment" . This definition differentiates bullying content from abusive or hateful content, which is limited to content targeting a set of defined characteristics. Despite the individualised nature of this definition, bullying content is treated the same as any other piece of content (PC or otherwise) by recommender systems. The risk of harm to a child from PC does not vary on which definition it meets. The risk of harm is similar because recommender systems approach content types with the same question: "is this content relevant for this person"?
- Children indicated that bullying content causes them substantive harm when that content is shared across multiple platforms. One survey respondent said that *"To make kids' lives better, the Government should be supporting us with better education, being safe online and raising the concerns of bullying and harassment. This is because nowadays kids are getting bullied physically and mentally, online or offline, and it's affecting this generation."* (Girl, 13). When shared to, for example, several social media sites, this content is subject to several



recommender systems with varied degrees of safety measures applied to them in line with measures RS1-3. This will result in this content – which can be understood by systems programmed to feed users content that is “relevant” to them – having a greater chance of reaching a child user.

- Moreover, children indicated that the cumulative harm of bullying content arises from risk factors associated with the architecture of the online world, not merely from the content type itself. Children stated that the ability of a single piece of content to be everywhere, all at once, across multiple platforms and potentially many more a single child wouldn't know about but nonetheless concern about, causes substantive distress. One girl, aged unspecified, told us in the Big Ambition service that *“they (the government) should also recognise the rising amount of bullying as social media starts to normalise it, these points are vital towards someone's health.”* **The CCo recommends the regulator recognises the risk recommender systems have in relation to bullying content and that they propose measures in the Code to address it.**

**Q52: We plan to include in our RS2 and RS3, that services limit the prominence of content that we are proposing to be classified as non-designated content (NDC), namely depressive content and body image content. This is subject to our consultation on the classification of these content categories as NDC. Do you agree with this proposal? Please provide the underlying arguments and evidence of the relevance of this content to Measures RS2 and RS3.**

- **The CCo supports measures that will protect children from harmful online experiences, including those that arise from exposure to content which meets the threshold of Non-Designated Content.**
- The CCo recognises the threshold for NDC is yet to be consulted on and refers the regulator back to our response to Vol 3 for further information regarding the establishment of that threshold.

- The CCo strongly welcomes the regulator’s approach to mitigating the risk of harm from NDC by addressing the design features which both increase the chance of a child being exposed to that harm, and design features which contribute to the cumulative harm that arises from a combination of interaction between NDC content and design features. **The CCo recommends this approach is extended to bring in all aspects of a service’s design into scope.**

## **V5.9 User support**

**Q53: Do you agree with the proposed user support measures to be included in the Children’s Safety Codes? Please confirm which proposed measure your views relate to and provide any arguments and supporting evidence. If you responded to our Illegal harms consultation and this is relevant to your response here, please signpost to the relevant parts of your prior response.**

- **The CCo strongly supports the inclusion of user support in the Children’s Safety Codes and welcomes measures US 1-6.**
- Children asked for better user support provisions to give them control of their online lives. In the Children’s Commissioner’s *The Big Ambition* survey, one 10 year old boy told the Office that they wanted “more safety mode on the internet because you get lots of people who be very rude and mean and try to ask questions” (504), and a 17 year old girl told us that “just educating about the dangers of the online world is not enough, it needs more control”.
- **The CCo recommends measures US1-6 are applied to user-to-user online services of all sizes, and all risk profiles.** This is to future-proof the measures against any harms that emerge on smaller, lower-risk sites that have yet to meet the size or risk threshold but nonetheless have the potential to do so at any given time.
- **The CCo recommends the principles of US1-6 are extended to give child users more control over other aspects of user experiences beyond exposure to individuals or pieces of content.** We encourage the regulator to draft additional proposals to afford children control over the influence persuasive design, among other design features highlighted elsewhere in

this response. US3 and US4 go some way to giving children control over the architecture of their online worlds, but the Office encourages the regulator to be more ambitious and provide children with an ability to switch off certain functions or interfaces entirely.

- The Office wishes to emphasise that user empowerment features, such that this boy have asked for, should not be standalone provisions. The CCo does not consider it to be a child's responsibility to create safety in a decidedly unsafe environment. However, the Office works to empower children in their lives and the additional controls for them are welcome.
- The CCo extends the above point - that user support should not be held as an effective solution to the risks children navigate in their day-to-day online lives – to include media literacy and information guide provisions, such as the ones highlighted in US6, should not be considered as effective measures against online harm. Aside from the variety of offline factors that influence the quality and relevance of media literacy, the Office considers there to be a risk that online services will use such provisions as opportunities to deflect from their responsibility to make the necessary changes to the architecture of their platforms. The Office therefore welcomes user controls in the context of other standardised requirements. Furthermore, **the Office considers the provision of offline support and signposting to services online to be a vital aspect of a safe online world, and would encourage the regulator to integrate a triaging function for mental health helplines into their user support measures.**

## **V5.10 Search features, functionalities and user support (Section 22)**

**Q54: Do you agree with our proposals? Please provide underlying arguments and evidence to support your views.**

- **The CCo welcomes the regulator's approach to regulating design-based aspects of the online world and supports measures SD1 and 2.**
- **The CCo recommends the regulator expands the scope of SD1 and 2 to include all search services of all sizes and type** (general, general indexed, vertical and predictive – and scope to include any emerging types). This is necessary because it is the nature of online products for some small search services to grow rapidly into a larger ones. With the retrospective

assessment of harm set out in Volume 4, protections will only be applied after harm occurs and will therefore have a positive effect at a delayed and slower pace, leaving children unprotected.

- **The CCo recommends the regulator proposes proactive measures against harm arising from search functions as well as the reactive ones set out in Volume 5.** Though the Office supports the measures, the CCo considers the retrospective approach to harmful content, which too heavily relies on user responsibility to report it, to be insufficient to provide child users with meaningful protection from harm.
- Search features and functions, like other types of functions and design types, are a gateway to potential harm and must be regulated as such. In the Children's Commissioner's *The Big Ambition* survey, one 11 year old girl told us *"when you search for something innocent online, the results you receive are not always what you were hoping to see"* - a common observation by children, and one that is often linked with the prevalence of unregulated technologies such as sorting algorithms. The Office refers back to the recommendations made throughout this response to bring those functionalities into scope.
- The regulation of search functions, like many other functions such as persuasive design features, algorithms and image filters, is insufficient if it considers the purpose of regulation to be the limitation of certain types of content. A regulatory model for these design features should be structured to meet the higher aim set out in Section 1 of the Act to consider the overarching experience of children online.

**Q55: Do you have additional evidence relating to children's use of search services and the impact of search functionalities on children's behaviour?**

- **The CCo refers the regulator back to our response to Volume 3, where we detailed the impact of harmful service design on children.**

**Q56: Are there additional steps that you take to protect children from harms as set out in the Act? If so, how effective are they?**

- Online services are required to be safe and age-appropriate by design, under the duty of care set out in Section 1 of the Act. **The CCo recommends the regulator expands the scope of their proposals to meet the potential of this legislative framework.** This should include adopting the overarching approach to the protection of children in the prevention of harm from certain types of content. To make use of this provision and afford children with the maximum protection under the Act, the regulator should expand the principles of their current proposals to include
- The CCo refers back to the response made in this consultation to Volume 4, and **recommends the regulator makes additional proposals to act as guidance to search services when mitigating risks identified in the functionalities and design features in isolation of the content type defined on the face of the Act.**

## Summary of recommendations

### Volume 2

*No recommendations*

### Volume 3

1. The CCo recommends the regulator establishes a framework for regularly consulting with children during the monitoring of harms and regulated services. The regulator could work with the Children's Commissioner's Office to do so.

2. The CCo strongly recommends that the factors included in the regulator's Register of Risks (Volume 3), the risk assessment criteria and governance frameworks (Volume 4) and proposed child safety measures (Volume 5) are not based solely on the size of a service's user base.
3. The CCo encourages the addictive features on platforms such as gaming platforms to be considered as an additional risk factor for harmful content, as the increased time and reliance on it which comes with developing addictive behaviours increases the risk a child might come into contact with that content type.
4. Where the evidence threshold already establishes a known risk to children, the CCo strongly recommends the regulator acts on that evidence and puts measures in place to protect children against known risks of harm.

**For specific content types:**

5. Functionalities and recommender-systems: the CCo strongly advises the regulator to make a more proactive assessment of the functionalities that result in pornographic content posing a risk of harm to children.
6. The CCo recommends the regulator expands the scope of the business model risks to include risks inherent in online services' business models, not just third party interests. This consideration is applicable across all types of content that is harmful to children as identified in this volume
7. The CCo recommends the regulator establishes that bullying content which is shared across multiple online service platforms is as an existing risk in addition to bullying content that is present on a single platform. Such an established risk would provide for more proactive measures to protect children before that harm occurs, which the regulator would introduce under volume 5.

**On evidence:**

8. **NDC:** The CCo recommends the regulator strengthens the evidence base or NDC by taking bold action in two ways: the first, to consult children through the established consultation
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mechanism discussed earlier in this response; and the second, for the regulator to use the information gathering powers it has under the Act to ask companies for information they hold about certain types of content.

9. The CCo recommends the regulator establishes a framework for engaging with a variety of independent external stakeholders and experts.
10. The CCo welcomes the proactive nature of the NDC provision and strongly advises the regulator to lean into the spirit of it, ensuring that content that might be harmful is labelled as NDC content until it is proven to be safe.
11. The CCo also recommends the regulator uses their information gathering powers to require technology companies to share the data they have on this issue.
12. **GenAI:** The CCo recommends that, where there is evidence of harm from GenAI enough to warrant the regulator's attention – not least mentioning in the consultation on the Child's Register of Risks – the regulator adopts a safeguarding approach to harm mitigation whereby a possible or emerging risk such as GenAI is labelled so until it is proven not to cause harm to children.
13. The CCo recommends that the regulator proposes a sector-wide discussion at regular intervals where companies can share information they have found regarding the harmful content they identify on their service in response to and building on the guidance provided in this volume.

## Volume 4

1. The CCo expresses strong concern that this contributes to a regulatory pattern that communicates to technology companies that their business interests may come before their expected compliance with the intention of the Act. The CCo strongly recommends the regulator retracts any indication that this is the case.
  2. The CCo strongly recommends that the regulator adopts the vision of child safety as a floor, rather than a ceiling, and ensures a robust centring of child safety in the construction of a new online environment in which children can be free to learn and play safely.
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3. Improving online safety might require a change in the overall structure and dynamic of the way these services are run – the CCo strongly suggests the regulator leans into this message as it is intended under the Act.
4. The Office recommends child online safety is instilled at the heart of senior governance and that the internal reports are made to the highest level of an online service.

**For the risk assessment:**

5. A more appropriate evidence threshold that is proactive, accessible and responsive to emerging harms.
  6. Instilling the outcome measures of safer child experiences into every proposed measure in this consultation, including the risk assessment process.
  7. Regular consultation with the child-user base to monitor how suitable and sufficient the risk assessment process is.
  8. An assessment of emerging risks of harm to be included as a further key activity.
  9. The inclusion of consultation with a child-user base and the inclusion of independent experts.
  10. The CCo recommends that, in addition to the ternary levels of harm for each content type, the assessment of likelihood and impact of harm is made with consideration of the total experience of children regarding their exposure to harm online. This should be assessed using the consultation of this user base, recommended earlier in this response.
  11. To establish that all chosen measures will be subject to the minimum outcome standard applied to all measures in the Code, which the Office has recommended throughout this consultation.
  12. For the regulator to adjust their objective for the development of the risk assessment guidance to be more ambitious than “providing a clear route to compliance across the regime”.
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13. Regarding the monitoring of the risk assessment process – the CCo recommends the risk assessments are made available to independent researchers and the public.
14. Regarding the instruction to carry out a new risk assessment – the CCo recommends the regulator simplifies what would constitute a “significant” change to a service to warrant a new risk assessment
15. For the regulator to extend the criteria for what would trigger a new risk assessment to include the development of a new function of an online service, during the development stages
16. The CCo would only consider a cyclical 12-month risk assessment cycle appropriate if the above changes to what would trigger a new risk assessment are made, and if the consultation of child users has been instilled as part of the governance process (set out in response to question 15 above)
17. The CCo strongly recommends the regulator consults with experts outside of the industry to think up new, more innovative inputs that will offer a broader assessment of risk that is less reliant on the tone set by industry.
18. The CCo recommends that companies should consider all enhanced inputs and provide an explanation as to why the inclusion of a particular enhanced input in the risk assessment was not necessary.
19. The CCo strongly recommends some of the inputs included in the ‘enhanced inputs’ list are made mandatory parts of the risk assessment process, including specifically:
  - User consultation – specifically child users;
  - Views of independent experts;
  - Results of product testing;
  - Internal and external commissioned research;
  - outcomes of external audits;

- engagement with relevant representative groups;
20. The CCo recommends that alongside a tickbox form, which makes the risk assessment easy to conduct, there should be high standards for online safety which can be monitored through a single outcomes measure. This would create a balance between a risk assessment system which is easy to implement and one which is effective.
21. The CCo strongly encourages the regulator to provide greater clarity in how commercial models present a risk of harm to children, and to propose proactive measures with standardised outcomes to mitigate these risks in Volume 5.

#### **Measure specific recommendations:**

- **GA2:** The CCo strongly recommends the regulator communicates that child safety sits above all other corporate interests by removing proposals that would see it absorbed into existing corporate functions.
- **GA3:** The CCo recommends measure GA3 is applied to all services in scope of the Act.
- **GA4:** The regulator should establish a metric for companies to gather information on to assess the effectiveness of monitoring and assurance. Companies should have to submit the measure of effectiveness to Ofcom and publish their results on a public platform on annual cycle alongside the outcomes of their Access Assessment and Risk Assessment.
- **GA5:** The CCo strongly recommends the regulator provides a minimum outcome standard for proposals that allow flexibility of design for online services.
- **GA5:** Furthermore, the CCo strongly recommends flexibility is conditional on online services providing evidence that the measure they choose is the most effective and robust one possible on their platform.

- **GA6:** The CCo recommends the regulator removes justifications seeking to reassure services in scope that their business interests remain a central factor in decision making around the design of an online safety regime
- **GA6:** The CCo recommends that an additional measure is introduced that would require online services to consult regularly with child users as part of the risk assessment and governance processes.

## Volume 5

1. The CCo recommends that Ofcom works with the Children's Commissioner's Office to build a children's consultation framework, through which the regulator will be able to consult representative groups of children to inform their decision-making processes, regime designs and monitor the effectiveness of safety measures.
  2. The CCo strongly recommends the regulator closes the gap between Volumes 3 and 5 to ensure a coherent and watertight online safety regime.
  3. The CCo strongly encourages the package of measures proposed in this consultation are applied to all services, of all sizes and risk profiles, as a package.
  4. The regulator should provide a minimum outcome standard, against which services should prove that the measures they choose to put in place against identified risks are effective at reducing harm to children.
  5. The Children's Commissioner strongly recommends that Ofcom gives children's interests proportionate weight when designing online safety measures.
  6. The CCo recommends the regulator clarifies that the cost to a business is not a valid reason for an online service provider to not put in place a safety measure.
  7. The CCo recommends the regulator works with government bodies, online services and telecommunications providers to produce a register of services which exist in the UK. This should be audited every year.
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8. The regulator should also produce consultation guidance for online service providers in scope of the Act, based on the consultation framework established with the Children's Commissioner's Office.

**Measure specific recommendations:**

- **AA1-6:** The CCo recommends the regulator requires services that are in scope of the Act to share detailed information about how they a) implement highly effective age assurance and b) how they are monitoring its effectiveness.
- **AA3:** The CCo recommends the regulator ensures that all services take steps against a child being exposed to PPC content on their platforms at the three points of possible age check: access to service; account creation; accessing a part of the service hosting PPC.
- **SM1-7:** The CCo recommends that the regulator commits to carrying out in depth research into the development and application of GenAI functionalities, and consider their impact should the developers of that technology choose to integrate them into search functions.
- **UR4:** The CCo recommends the regulator adopts the language of proactivity in its Children's Code, to indicate this is the approach service providers should take.
- **UR1-5:** The CCo recommends that, alongside the risk assessments, online platforms should be obliged to publish reports detailing what harms have been reported on their platforms, and what action was taken to mitigate this.
- **RS1-3** The CCo recommends that children are consulted on the design of the reporting tools including the key interface and functionality elements which would define how accessible it would be to them. As a statutory consultee who engages with millions of children, the Commissioner would welcome collaboration with the regulator to this end.



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- <sup>7</sup> Ofcom, *Online Nation 2023 report*, 2023, [Link](#)
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- <sup>18</sup> United States Senate Committee on the Judiciary: Subcommittee on Privacy, Technology and the Law, 2024, (Testimony of Arturo Bejar), [Link](#)
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