

Appendix B – submission to Joint Committee on Draft Online Safety Bill

Online Safety Bill

24 September 2021

About the Local Government Association

- 1.1. The Local Government Association (LGA) is the national voice of local government. We are a politically led, cross-party membership organisation, representing councils from England and Wales.
- 1.2. Our role is to support, promote and improve local government, and raise national awareness of the work of councils. Our ultimate ambition is to support councils to deliver local solutions to national problems.

Summary

- 2.1. The Online Safety Bill is an important opportunity to ensure that the myriad benefits offered by the internet are not overshadowed by online harms and illegal activity.
- 2.2. The Bill will need to ensure flexibility to respond to the emergence of new technologies and the rapidly changing nature of online communication.
- 2.3. Defining harm should focus on the impact on those affected, and consider the impact of cumulative harm. Developing a framework in which harm could be assessed would support organisations navigate this difficult area, including where a disagreement crosses the line into harassment, for example.
- 2.4. We would like to see further consideration around mitigation of harm caused to adults, in particular vulnerable adults, by legal content, and also the responsibilities of individuals not to perpetuate online harm.
- 2.5. We are pleased to see clauses aimed at protecting journalism and content of democratic importance. We would welcome consideration around how we can ensure these are not abused by those seeking to do harm, including how they interact with legislation around hate crimes and harassment.
- 2.6. With regard to financial harms, it would be helpful to consider the impact of financial harms on young people, and how to address fraudulent activity online.

The definition of harm

- 3.1. It would be helpful for the Online Safety Bill to put forward a framework for providers to consider what is meant by “harm”. This must focus on the effect of content on individuals and groups, recognising that what is to some “harmless banter” is to others is bullying and can cause mental distress or fear.
- 3.2. This should not be interpreted as closing down debate or stifling freedom of speech. Disagreement and differing perspectives are not the same as causing

harm. We must encourage and nurture the former if we are to maintain a healthy democracy. The potential to see the two as the same – whether that is someone claiming harm caused by disagreement, or arguing that a harmful statement is a mere “different view” – is a key reason why a framework in which to assess “harm” would be helpful.

- 3.3. Section 17 of the Children Act 1989 outlines the need to ensure children are able to achieve and maintain a reasonable standard of health or development. Here, “development” means physical, intellectual, emotional, social or behavioural development; and “health” means physical or mental health. We suggest that this is used as a basis for a definition of harm to children.
- 3.4. We also draw attention to the United Nations Convention on the Rights of the Child General Comment 25, which focuses on children’s rights in the digital environment. This highlights, among other issues, the responsibility of countries to ensure the best interests of children are a “primary consideration” when considering competing interests, as well as the need to seek and take account of children’s views on how technology impacts them and the opportunities it provides.
- 3.5. It is important to take into account the views of those who have been victims of online harms, to understand how best to define and identify this. Increasing numbers of people are stepping forward to share their experiences, with these serving to outline the range of harms suffered online. These include the parents of children who have sadly died by suicide as a result of online bullying, young people drawn into exploitation via the internet, politicians whose safety and ability to represent their constituents freely has been threatened, and those whose eating disorders have been fuelled by online content.
- 3.6. We have concerns that currently, there is an expectation that those in public office are ‘expected’ to put up with a degree of harassment by virtue of their jobs. For example, when Sandwell Metropolitan Borough Council recently applied for an injunction against a local ‘citizen journalist’ who was targeting the authority’s director of public health, the judge ruled that “the acceptable limits of criticism are wider for non-elected public servants acting in an official capacity than for private individuals.” While we agree that constructive criticism and challenge are vital in a democracy, this should not be confused with abuse and harassment. All people have a fundamental right not to be bullied either at work or in their personal lives.

Key omissions

- 4.1. The Bill currently fails to account for cumulative harm. We have heard from our members that often the mental harm resulting from online content is not so much in individual messages, but rather the accumulation of a large number of abusive or threatening messages. This may either be from one individual, or high numbers of messages from a range of individuals.
- 4.2. This cumulative effect can happen over time, or as the result of a social media ‘pile-on’, in which a large number of people target an attack or argument at an individual or small number of people. This can be exacerbated by algorithms that amplify popular content, for example via ‘trending topics’ without distinguishing between helpful and harmful content.
- 4.3. The Bill also does not call for mitigation of risk of harm to adults, including vulnerable adults, from non-illegal content; rather, it only asks that Category One providers identify how such content will be “dealt with”. We are concerned that this fails to

address concerns about threats, bullying and intimidation online. In addition to the sometimes devastating consequences of such behaviour on people's mental wellbeing, this is having wider reaching consequences. For example in the realm of politics, we know that such behaviour is already putting people off of standing for public office, damaging efforts to improve diversity and representation in politics and subsequently having a negative impact on our democracy.

- 4.4. The focus of the Bill on providers of services also ignores the actions of individuals. While providers can and should take more responsibility for the content they host on their sites, it is important to send a clear message to individuals that posting harmful content will not be tolerated. This can include sanctions for those who cause harm, and explicit support and encouragement for providers in tackling this.

Areas for further consideration

5. Further detail is required in relation to journalistic content and content of democratic importance, and their interaction with concerns around misinformation and disinformation. High quality journalism (from large organisations through to citizen journalists providing important local information) and fact-based political debate are essential elements of any democracy which must be protected; however there must also be safeguards to ensure that these are not abused.
 - 5.1. A significant issue for many of our members is that of smear campaigns, in which falsehoods are shared about councillors, prospective councillors or officers to prevent them from holding office or to cast doubt on their professional competence. Much of this is shared by those claiming to be doing so in the name of journalism or political debate. While this could in theory be removed as misinformation or via expensive libel claims, in practice this is rarely the case. The Bill will therefore need to carefully manage how these issues integrate alongside those on freedom of speech.
 - 5.2. Similarly, some extremist groups and individuals present their rhetoric as journalism and use live political issues as opportunities to stoke division and encourage harassment of others. It will need to be clear how the Bill interacts with, for example, legislation around hate crimes and harassment.
 - 5.3. We also encourage careful consideration of the categorisation of sites and the potential implications of this. Action is required on content that is legal but harmful to adults only by Category One sites; if this covers only those with a very large number of users, some sites that are well used but by a far smaller number of users to spread online hate will fall out of scope. It must be clear what action can be taken to tackle such sites.
 - 5.4. It would also be helpful to consider whether a new clause should be established banning the establishment of social media accounts for harmful purposes. There is much anecdotal evidence around individuals setting up multiple accounts from which to "troll" others; if each individual account brought its own penalty, this may reduce the likelihood of individuals setting up multiple accounts.
 - 5.5. We would welcome consideration of the role of 'bots' in the spread of mis and disinformation, and the trolling of individuals. While many bots are benign it is important to consider the impact of bots for several reasons. Firstly, their ability to greatly amplify certain stories or hashtags is significant and can contribute to both the swift spread of mis- and disinformation and to social media pile-ons. Secondly, bots

are increasingly advanced and can be difficult to distinguish from real people, increasing the likelihood of recipients of messages trusting the content and being influenced by them.

- 5.6. We support calls for the Bill to include a broad consideration of financial harms. It is positive that the Bill is intended to tackle some financial scams such as dating and investment fraud. However, at a point where this wide-ranging Bill is looking at the responsibilities of both platforms and users of them, there is scope to address a wider range of fraudulent activity and financial harm enabled through online platforms; for example, the LGA has previously called for online platforms to be responsible for the sale of illegal or counterfeit goods. The Government should ensure that measures to tackle these wider issues are brought forward, whether as part of this bill or through an alternative vehicle.
- 5.7. The Bill should also consider how financial harms impact upon young people, including through scams or 'loot boxes' in games.