



RCNI Feedback to the Expert Group on an Individual Complaints Mechanism in the Online Safety & Media Regulation Bill 2022

Introduction – Rape Crisis Network Ireland (RCNI) and this Feedback

Rape Crisis Network Ireland (RCNI) is a specialist information and resource centre on rape and all forms of sexual violence. The RCNI role includes the development and coordination of national projects such as using our expertise to influence national policy and social change, and supporting and facilitating multi-agency partnerships. We are owned and governed by our member Rape Crisis Centres who provide free advice, counselling and other support services to survivors of sexual violence in Ireland.

RCNI welcomes very much the opportunity to feed back to the Expert Group on the potential inclusion of an Individual Complaints Mechanism (ICM) in the Online Safety and Media Regulation Bill 2022. It will be seen from our responses below to each separate question that we are very much in favour of an ICM. We are also part of the 1,2,3 Online Safety Campaign, an alliance of several Children's Rights Alliance organisations which is being led by CRA itself.

1. What value would you see an individual complaints mechanism adding to the regulatory framework for online safety set out in the Bill in terms of a) avenues of redress and b) reducing risk of harm?

- (a) RCNI's view is that an independent and effective ICM would add a very necessary backstop avenue of redress to vindicate the rights of individuals, both children and adults, to fair procedures (Article 6) and to an effective remedy (Article 13) under the European Convention on Human Rights, in any situation in which the designated online service (DOS) had not itself done so through effective, timely and fair operation of its own Online Safety Code.
- (b) An effective, independent ICM will do much to reduce the risk of harm from online abuse to children and adults by taking down material, making it inaccessible and by reducing its spread on the internet, in particular.

2. Do you see any conflict or synergies between an individual complaints mechanism and existing provisions in the Bill, for example online safety codes on complaints handling?

RCNI's view is that there are no conflicts between an ICM and any existing provisions in the Bill. On the contrary, having an effective ICM procedure in place enhances the learning of the Online Safety Commissioner about online safety issues, especially new ones as they arise. These can then be addressed through other means as well as the ICM, e.g. educational and legal policy initiatives.

3. What risks do you foresee if there were no individual complaints mechanism?

The risk is that aggrieved individuals would have no means of resolving their own safety issue quickly and effectively other than that provided by the DOS. If the DOS procedure set out in the Online Safety Code were to fail for any reason, that means that the risk of continuing psychological and/or reputational and financial damage would continue to increase. Psychological damage caused by online sexual abuse is neither trivial nor short in duration for its victims.

4. Which of the categories of harmful online content set out in the Bill should be covered by an individual complaints mechanism?

Every category of harmful online content set out in the Bill should be covered. Also, any new category of harmful online content which is added in future (e.g. age-inappropriate online content) should be covered.

5. Should a distinction be made between those categories of harmful online content which are connected to a criminal offence (which would require the involvement of appropriate law enforcement bodies) and those other categories of harmful online content?

There should be a clear protocol between An Garda Síochána and the Online Safety Commissioner which sets out the procedure where harmful online content connected to a criminal offence is detected or reported by a victim. Other than that, we see no reason for any other distinction in how the different categories of harmful online content are treated.

6. How can issues of scale and volume of content be addressed, particularly if an individual complaints mechanism was to be applied to those services which are Video Sharing Platform Services under the revised Audiovisual Media Services Directive and would therefore be available to users throughout the EU, not just in Ireland?

RCNI's view is that the ICM should only come into play on rare occasions when the relevant DOS does not provide a timely or effective response to a complaint about harmful online content. Provided that the relevant Online Safety Code is followed, this should not arise very often and therefore, there should be no issue about unmanageable volumes of complaints which will involve ICM. We also note that under the Bill, broadcasting and audio-visual on-demand media services will both be subject to individual complaints mechanisms. The proposed ICM will bring the regulation of harmful online content into line with these existing mechanisms. In our view, this is a fair and equitable solution.

7. In what ways can an individual complaints mechanism achieve an appropriate balance between a) protecting and supporting the needs of all individuals, particularly children and other vulnerable persons, and b) the protection and vindication of fundamental rights, e.g. freedom of expression and fair procedures. How would this balance be affected by matters of scale and volume of content?

(a) Any ICM addressing harmful online content must be simple and accessible to use for all potential victims of online sexual abuse, including children, young people and vulnerable adults. It must also be effective and timely to prevent any further harm, insofar as this is possible. Further, it must be independent and well-resourced if it is to protect and support the needs of victims of this pernicious form of online abuse.

(b) Anyone who is the source or conduit of harmful online content, other than content which is already illegal (ie that which it is already a criminal offence to disseminate) which is the subject of a complaint to the ICM should have the right to reply and to have that reply considered. There should also be a right of appeal.

8. Should an individual complaints mechanism be overseen by a) An Coimisiún by the same Online Safety Commissioner who has oversight over the systemic regulatory framework, b)

by a second Online Safety Commissioner be appointed to carry out this function or c) by a separate body to An Coimisiún?

RCNI's view is that it would make the most sense for An Coimisiún and the same Online Safety Commissioner who has oversight over the systemic regulatory framework to oversee the ICM. In this way, the Online Safety Commissioner would benefit from the insight gained from the ICM work whenever it had to review Online Safety Codes or monitor compliance with them.

9. Should an individual complaints mechanism be structured as a) being a first line service (tier 1) or b) as an avenue of appeal (tier 2) for those who have already engaged with a designated online service subject to an online safety code on complaints handling?

RCNI's view is that (b) is appropriate. Any ICM should only come into play in those rare and likely complex cases where the relevant DOS has not provided any timely or effective solution, ie the first-tier platform-specific remedies have been exhausted.

10. How should the success or otherwise of an individual complaints mechanism be measured?

Success should be measured primarily by the proportion of satisfactory resolutions of all complaints. This should be and remain high as a proportion of all complaints dealt with, if the ICM is working as it should. If large numbers of complaints are not being resolved to the satisfaction of complainants, the ICM should be adjusted.

11. What would be the appropriate period for review of the operation of an individual complaints mechanism?

RCNI suggests that a period of five years would be appropriate to allow time for the ICM to become established and overcome any initial difficulties before its operation can be judged fairly. However, if there is an issue with its effective operation, this will become obvious most likely much more quickly and in this case, remedial measures can be taken without waiting till the five-year period is completed.

Please do not hesitate to get in touch if you would like any more information on any point in this submission.

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Date: 21st March 2022