

LAW SOCIETY SUBMISSION



ONLINE SAFETY AND MEDIA REGULATION BILL - INDIVIDUAL COMPLAINTS MECHANISM

EXPERT GROUP ON AN ONLINE SAFETY INDIVIDUAL COMPLAINTS
MECHANISM

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ABOUT THE LAW SOCIETY OF IRELAND

The Law Society of Ireland is the educational, representative and regulatory body of the solicitors' profession in Ireland.

The Law Society exercises statutory functions under the Solicitors Acts 1954 to 2011 in relation to the education, admission, enrolment, discipline and regulation of the solicitors' profession. It is the professional body for its solicitor members, to whom it also provides services and support.

The headquarters of the organisation are in Blackhall Place, Dublin 7.

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1. Introduction

- 1.1. The Law Society of Ireland ('the **Society**') welcomes the establishment of an expert group on an online safety individual complaints mechanism ('the **Expert Group**') by the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media to examine the possible provision of an individual complaints mechanism in the Online Safety and Media Regulation Bill ('the **Bill**'). The Society appreciates the opening of a public consultation to allow input from relevant stakeholders on the establishment, practicalities and potential operation of such a mechanism.
- 1.2. The Society is the educational, representative and co-regulatory body for the solicitors' profession in Ireland. This submission is based on the views of members of the Society's Human Rights & Equality Committee which is comprised of solicitors with experience and expertise in national and international human rights, as well as comprehensive knowledge of media regulation.
- 1.3. The introduction of the General Scheme of the Online Safety and Media Regulation Bill ('the **General Scheme**') is timely given the growing need to protect individuals, particularly younger members of Irish society, from harmful online content and to provide access to redress for those affected by same.
- 1.4. This submission sets out the Society's response to the questions posed by the Expert Group in its Consultation Document.

2. Response to consultation questions

2.1 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?

- 2.1.1** The Society considers the establishment of the proposed individual complaints mechanism to be essential in providing a platform for individuals to voice concerns and raise complaints. Until now, online platforms and their content have largely been untamed and to a degree, untouchable. It is only in recent years through the use of 'Norwich Pharmacal' Orders that service providers have been required to disclose information in relation to the identity of service users responsible for posting harmful and defamatory content online. However, this mechanism is prohibitively expensive for many individuals. The Society believes that an individual complaints mechanism would fill this gap.
- 2.1.2** A key avenue for redress for individuals affected by harmful and defamatory online content is the effective removal of this content which may, over time, lead to an eventual reduction in the risk of harm. In circumstances where the service provider is different from third parties providing the content (**'content providers'**), it would be beneficial to establish a mechanism to sanction content providers through measures such as content limitation notices, takedown orders and fines.
- 2.1.3** It should be the responsibility of service providers of a designated online service to investigate individual complaints related to content providers, subject to an Online Safety Code on Complaints Handling. The complaints process should incorporate a preliminary examination process which would help to triage complaints and ensure that only those complaints which fall within the statutory remit move forward for investigation.
- 2.1.4** The power of the Online Safety Commissioner (**'the Commissioner'**) to set Codes of Practice should contain a provision to establish a robust complaints system for individual platforms that, in turn, could increase the likelihood of complaint resolution for individuals in the first instance. The Commissioner would be a last resort in situations where online services or platforms fail to deal with complaints appropriately.

The Media Commission (**'the Commission'**), of which the Commissioner is to be a member, can define categories of very serious and harmful content (**"defined categories"**). Where a complaint is made in respect of a defined category, the service provider must make a formal notification to the Commission within a defined period informing them of receipt of same. This is similar to the complaints process established by the Health Information and Quality Authority (**HIQA**). In addition, the service provider should stipulate the timeframe for completion of an internal investigation into the complaint. The service provider should then formally notify the Commission of the outcome of the investigation and the steps taken in relation to same.

- 2.1.5 The content provider should be afforded an opportunity to appeal the decision of the service provider to the Independent Appeals Panel (Tier 2).
- 2.1.6 In relation to all other complaints, service providers can complete an annual return of those received, investigated and the outcomes of same.
- 2.1.7 A benefit of an individual complaints process being conducted by the service provider is that, if the complaint is founded, it will lead to a more immediate, efficient and largely cost free “take down” of inappropriate material (as against having to wait for a regulatory body’s investigation process to complete). This is important where any delay in taking down material can cause further harm given the ability for high-speed sharing of damaging material across multiple platforms, making subsequent take down largely redundant.

2.2 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?

- 2.2.1 Media service providers are to be well regulated under the General Scheme which is to include a “super complaints” process (see [Head 52B – Systematic complaints scheme](#)) together with a broad range of statutory powers which relate to the investigative processes and sanctions. However, this should complement, rather than be a substitute for, an individual complaints mechanism.
- 2.2.2 Current provisions of the General Scheme can be utilised as part of the individual complaints mechanism to review regulated service providers who do not satisfactorily or adequately investigate complaints in accordance with the complaints code.

2.3 What risks do you foresee if there were no individual complaints mechanisms?

- 2.3.1 As stated, many individuals feel powerless in the face of unregulated online content. An individual complaint mechanism will provide a voice to individuals and help redress the balance of power. A risk associated with the absence of an individual complaints mechanism is that individuals would have less access to affordable, swift and adequate access to justice.

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

- 2.4.1 Service providers should have sufficient remit to investigate all categories of complaints. Their complaints process, which should be subject to inspection by an authorised officer, should contain a preliminary investigation process to filter out vexatious or unmeritorious complaints. The Bill should make provision for the code to include defined categories of harmful content and service providers should be required to notify the Commission of such complaints within a particular timeframe (see para 2.1.5 above).

2.5 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?

2.5.1 Yes, a distinction should be made between the categories. The General Scheme already seeks to achieve a significant amount, particularly in terms of regulation. As such, we are concerned that it risks overextending itself in attempting to cover all things related to online safety.

2.5.2 Harmful online content connected to a criminal offence should be dealt with solely by An Garda Síochána. However, in respect of a designated online service, either through the designation of any rules or codes that may apply, the Commission can create an obligation on the service provider to report any online content connected to a criminal offence to An Garda Síochána and impose sanctions for either failing to do so and/or where a conviction follows.

2.6 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?

2.6.1 It is simply not feasible to expect the Commission to have the sufficient resources and manpower to assess, and potentially investigate, a huge number of complaints. As stated, it is recommended that the Commission follow the example of HIQA and place the onus firmly on the service provider to assess and triage complaints, ensuring that only those that warrant investigation are investigated.

2.6.2 In addition, the service provider should notify the Commission of the defined categories of complaints within a specified time period and submit an annual return of the investigations conducted in relation to all other complaints. The Commission can then notify other Regulators where complaints are founded and any sanctions applied e.g. the European Regulatory Group for Audiovisual Media Services.

2.7 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?

2.7.1 Service providers should be expected to have a robust, fair procedures as part of the complaints process, not only in relation to the mechanics of the investigation, but also in relation to the preliminary investigation/triage stage, with due regard to the protection of all the rights of any person involved.

2.7.2 In relation to children, the Council of Europe recommends that Member States ensure that a child's right to an effective remedy under the European Convention of Human Rights¹ is respected and protected when their rights have been infringed online.² This means that States are required to make provision for 'known, accessible, affordable, and child-friendly avenues through which children, as well as their parents or legal representatives, may submit complaints and seek remedies'.³

2.7.3 Pursuant to the complaints code, the service provider should be required to set out the supports provided to individual complainants relating to defined categories of complaint, which should include liaising with other agencies.

2.8 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?

2.8.1 The mechanism should be overseen by the Online Safety Commissioner, with the complaints being investigated by the service provider.

2.9 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?

2.9.1 As stated, service providers should be charged with conducting all investigations and providing formal notice to the Commission when complaints in respect of defined categories are received. The Commission should only be engaged as a Tier 2 appeal function. Where the complaint has not been properly investigated, or appropriately managed, the Commission can then impose a sanction.

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

2.10.1 It should be measured by reviewing statistics which relate to the notification of defined categories of harmful content, the annual returns of complaints and management of same; the sanctions imposed and notifications to other Regulators.

2.10.2 In addition, feedback from those who use the process will assist in developing and improving the codes through learning from such complaints over time.

2.10.3 Paragraph 31 of the [UN Guiding Principles on Business and Human Rights](#) provides a useful guide on complaints mechanisms which could be useful in the context of formation of a complaints process, and in defining indicators for success.

¹ [European Convention on Human Rights Arts 6 and 19](#)

² Council of Europe, '[Recommendation CM/Rec\(2018\)7 of the Committee of Ministers to Member States on Guidelines to respect, protect and fulfil the rights of the child in the digital environment](#)'

³ Ibid

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

2.11.1 The mechanism should be reviewed after five years.

Conclusion

We hope that these observations and recommendations will be useful to the Expert Group in its consideration of these matters. We will be glad to engage further on any of the issues raised.

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