Submission to the Industry and Regulators Committee inquiry into "Regulators and Growth"

Introduction

1. We welcome the Committee's inquiry and are pleased to submit this evidence, which focuses primarily on the way in which Ofcom has discharged its online safety functions to date and how this impacts on the Government's growth agenda.

2. The Online Safety Act Network brings together over 70 civil society organisations, campaigners, academics and advocates with an interest in the implementation of the Online Safety Act 2023 (OSA). More details about our work are here. The Network continues the work carried out by Professor Lorna Woods OBE, William Perrin OBE and Maeve Walsh at Carnegie UK during the passage of the Online Safety Bill: Professor Woods' proposal for a "duty of care" to address online harm reduction formed the basis of the OSA; and the Carnegie team supported Members, Peers and Select Committees during the Bill's passage, gave evidence to Parliamentary inquiries and Bill Committees and were acknowledged by Parliamentarians in both Houses for their contribution.

3. The questions posed by the Committee in this inquiry are predicated on the assumption that regulatory interventions are - generally speaking - barriers to growth. This assumption has also underpinned the current Government's response, particularly under the previous DSIT Secretary of State, to the implementation of the Online Safety Act. Growth and innovation were to be prioritised; robust online safety regulation was to be tolerated but not encouraged.

4. Ofcom - as a primarily economic regulator - was happy to follow suit. Its first set of codes - on illegal harms and on protection of children - go large on "proportionality", "costs to business" and "burdens". Indeed, the adjective "onerous" was used repeatedly in relation to their code of practice measures: see page 43 onwards of our full response to the consultation for commentary on this.

5. We would like to put forward two alternative arguments to these perspectives: the first on the costs to the Government and the economy (and therefore growth) of not regulating harms effectively; and the second on how Ofcom's particular approach to online safety regulation could actually be counter-productive and be stifling the growth it purports to encourage.

Regulation and economic costs

6. The impact assessment from the Department for Science, Innovation and Technology [puts the estimated costs] to businesses of the enactment of the Online Safety Act at £263m[1]. But costs to the economy are not just costs to businesses: they include the costs to individuals and society of dealing with the impact of otherwise preventable harms. Costs to public services are significant: the NHS, the police, the criminal justice system, schools and colleges all deal with the real-world impacts of online harms on victims, whether self-harm or mental health support, prosecutions for CSAM, extremism and hate crime, dealing with bullying, deepfakes and intimate image-abuse within education, etc. The Government's impact assessment gives an estimated annual cost of the harms (those which it could quantify, and then only conservatively) at £254 billion over 10 years, with annual harms including: contact CSEA with an online element as £1.03bn; the estimated cost of dealing with modern slavery where there is an online element is £35m; online drugs offences cost between £469-567m a year; cyberbullying costs to the NHS of £30m a year. And on it goes.

7. DSIT's analysis is that - even at a "very conservative approach to benefit estimation" - a reduction in exposure to online harms through the enactment of the OSA by 1.3% would equate to the UK receiving an annualised economic benefit of £345 million. Robust enforcement would lead to greater returns. Strengthening the law to extend the regulatory powers of Ofcom would deliver even more. [According to analysis by the Molly Rose Foundation], strengthening the Online Safety Act with the aim of "achieving a 15% reduction in online harms could be expected to deliver £4 billion pounds in annualised economic return." Stronger regulation = greater economic benefits.

8. This is why we and many of the civil society organisations we work with have raised concerns over Ofcom's focus on the costs that the regulatory regime incurs on businesses with no consideration of the costs to society of the harm incurred by (some of those) businesses that the Act was set up to reduce. Its approach to proportionality looks at whether regulated services are likely to have the resources to implement its recommended measures rather than looking at whether regulated services that are unsafe - and therefore likely to cause harm, and incur costs, at an individual and societal level - should be required to deploy all necessary resources to reduce those onward costs. Eg is the measure proportionate based on the scale and severity of the likely harm, rather than is it proportionate based on how much it will cost a service causing the harm to implement it?

9. If the necessary resources required to implement a measure result in the platform or service becoming unviable, then that is a net win for the economy: it is not transferring the costs of

---

[1] Online Safety Act Enactment Impact Assessment:
https://assets.publishing.service.gov.uk/media/6716222b9242eecc6c849b09/Online_Safety_act_enactment_impact_assessment.pdf

dealing with the harm caused by that service onto the Government and (overstretched) public services. This is the "polluter pays" principle.

Ofcom and innovation

10. A further consideration with regard to Ofcom's approach is whether their approach to defining the "clear and detailed" measures in their codes of practice limits innovation. We have described the problems we have with this at length in our commentary on the proposals and responses to their consultations. (See for example [page 60 onwards](#) in our response to the illegal harms consultation.) In short, Ofcom does not require regulated services to address all the risks they may have identified in their risk assessments (whether for illegal harms or for content harmful to children); instead, they can follow the measures outlined in the relevant code of practice and, as a result of the "safe harbour" given to regulated services by the OSA (eg if they comply with the codes of practice then they are in compliance with their duties), then they need to do no more to address identified risks on their services. This is then compounded by the fact that Ofcom has interpreted the need for "clear and detailed" measures as equating to "measures which already exist and can be evidenced to work".

11. For example, in the illegal harms codes we flagged this statement from Ofcom: "We also considered several other options regarding how services can assure their measures to mitigate and manage illegal content are effective. These could be alternatives to the options discussed above or could supplement them. However, we do not consider there is currently enough information on the effectiveness of other possible measures to be able to recommend them in Codes at this stage." (8.131)

12. We have concerns about the impact of this approach on innovation (and the related growth of UK companies who may be keen to innovate): Ofcom has decided against a risk-based, outcome-focused approach to addressing risks, including those that a platform may have already identified, which would allow individual platforms and services to address those risks in a way that is proportionate and appropriate for their own conditions: in short, to innovate. Not only is this approach from Ofcom limiting business's own scope or incentives to innovate, it is also limiting the evidence base from which new measures for codes could be drawn: if companies don't innovate to address and mitigate risks, then Ofcom will not be able to determine whether there are new approaches that could be recommended at scale via its codes.

13. Another aspect for consideration is the growth (and innovation) within the safety tech sector itself in the UK: a sector that [DSIT champions as a success story](#). Ofcom's codes could have been a fantastic opportunity for growth in this sector: enabling regulated services to seek out suitable third-party tools to deliver their compliance with their safety duties. But the prescriptive nature of them and the need for Ofcom to point to evidence that the measure proposed is already in play elsewhere effectively shuts down the incentive for that sector to develop innovative solutions to improve online safety in the UK.

<u>Regulatory coordination</u>

14. In Ofcom's letter to the Government last year on its contribution to the growth agenda, they set out how they were "Joining up with regulators."

> "Finally, we recognise the need for regulators to innovate in how they operate so they can respond effectively to technological and market developments and support innovation. In 2020 we established the Digital Regulation Cooperation Forum with ICO, CMA and FCA because we saw the need to collaborate across our regulatory boundaries to join up on multiple levels. Most recently we have together piloted the DRCF AI and Digital Hub, supported with Government funding. This is a free informal advice service for tech innovators, enabling product developers to bring their products to market safely and quickly. And at Ofcom we are also trialling a new regime for spectrum licensing, granting organisations temporary access so they can test technical solutions before they launch commercially."

15. We do not think that this is enough - whether as a response to the growth agenda, or to the reduction of harm. We have called consistently for a number of years for the DRCF to be put on a statutory footing and doing so would improve the ability of the four constituent regulators to work consistently, provide clarity to the services they regulate and reduce duplication. We would recommend the Committee considers the benefits of this move in the context of their focus on growth.

Online Safety Act Network
January 2026