



# Dublin Rape Crisis Centre

## Response to the Online Safety Expert Group on an Individual Complaints Mechanism

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## About Dublin Rape Crisis Centre

The mission of Dublin Rape Crisis Centre (DRCC) is to prevent the harm and heal the trauma of all forms of sexual violence in Ireland. DRCC has been at the forefront of the Irish response to sexual violence for more than 40 years. That response includes:

- Running the National 24-Hour Helpline and associated services;
- Providing individual advocacy, counselling and other support;
- Accompaniment and support services for those attending the Sexual Assault Treatment Unit (SATU) and those reporting to An Garda Síochána or attending court;
- Data collection and analysis on trends and issues relating to sexual violence.

As a frontline service provider, we work with and support people who have been directly affected by sexual violence including online abuse. We are also committed to eliminating its tolerance through education, awareness raising, advocacy and policy analysis. Through that work, we see the often life-long consequences of the trauma and harm caused by sexual violence of all kinds. We also know from our experience that often times this harm is as a result of digital technology that is used to harass and humiliate.

## About this submission

We are pleased to provide comment to the online safety expert group for their examination of the practicalities and potential operation of an individual complaints' mechanism. We have structured our responses to the expert group in the form of answers to the questions set out in the consultation document.

In addition, we support the submission being made by the Children's Rights Alliance on behalf of a coalition of organisations including Dublin Rape Crisis Centre. The particular focus of that submission relates to children and young people but is equally applicable to the wider population, in particular those who are particularly vulnerable because of age, relational abuse, or other issues.

## Questions and responses.

### **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?**

1.1 The current regulatory system provides no effective avenue of redress for those who do not receive an effective remedy because of the action or inaction of a provider. Their option under the current proposed regime is to accept what the provider has offered or exercise their right to go to court. This is not an accessible remedy for most people, nor will it be effective. Court applications are likely to be prohibitively expensive for all but the extremely wealthy, made more expensive and traumatic by the reality that their opponent in court will be a service provider with deep pockets and almost endless access to expert legal resources.

1.2 The current proposed scheme will not permit a timely remedy. Access to the courts will not produce a timely take down of harmful material or other practical, effective remedy if the provider fails to carry out that action.

1.3 The proposed framework proposes a system of *super-complaint*<sup>1</sup>. This may be welcome but does not substitute for the right of every person to access a fair, independent tribunal and to an effective remedy where they have suffered harm at the hands of a regulated entity. A *super-complaint*, of its nature, will be managed by entities who will have to make decisions on potential or actual themes for such complaints which may or may not cover the individual harm that is the subject of the complaint. Such complaints can only be built up over time, thus further denying a user a timely, fair, independent and accessible remedy. Such a system is a useful investigation method where trends are emerging but it actually leaves most individuals without access to a remedy other than what the provider offers. This is a denial of an individual's right to an effective remedy as part of their right to access justice.

1.4 The lack of a viable, affordable, effective appeal against a provider's decision will contribute to a culture and system whereby platforms will be partially self-regulating, thus undermining the purposes of the Bill.

1.5 The lack of an effective appeals mechanism will tend to contribute to a culture of impunity for abusers whereby they may be encouraged or permitted to continue, knowing that the complaints system is in-house with provider and that no mechanism for independent objective oversight exists, while the person abused lacks an effective alternative.

1.6 There is a foreseeable danger that there will be an ongoing failure to deal with online abuse, causing continuing, long-term harm, trauma and loss to those who are the object of such abuse.

1.7 Without such a mechanism, the Commission will lack vital evidence on practice of the platforms: evidence that would build the understanding of the Commission in relation to developing ever-better standards and codes.

## **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?**

2.1 There are synergies. The proposed regulation of providers through a range of investigative powers and sanctions, as well as the development of binding Codes of Conduct and provision for super-complaints procedures provide an important, if 'top-down', approach to regulation. It still however lacks a recognition of the need to ensure that each

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<sup>1</sup> General Scheme of the Online Safety and Media Regulation Bill Head 52B.

individual user's rights to an adequate and effective investigation are protected through an individual complaint mechanism to an external source.

2.2 In addition to protecting the rights of users of the platforms, an individual complaints' mechanism is essential to inform An Coimisiún and the Online Safety Commissioner about gaps or adjustments needed in regulation, awareness and education. It will bring the necessary balance between the rights of the users and the commercial objectives to the platforms.

2.3 We do not see any conflict. Rather, a protection of individual rights which is currently missing from the Bill.

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

3.1 The principal risk is that online harm will continue to be a significant problem for those who experience digital abuse in an unregulated or under-supervised environment. It is necessary to have external oversight of commercial, corporate, for profit providers handling of complaints in order to ensure that providers establish and maintain robust, fair and timely complaint handling mechanisms which accomplish the objective of protecting individual rights, taking down harmful content, limiting abuse and reducing harm.

3.2 The proposed power of scrutiny by An Coimisiún is insufficient because it will not give independent assessment or data on either inadequate or indeed good practice in providers' in-house complaints mechanism, thus limiting its understanding of what constitutes safe digital platform regulation and therefore failing to fulfil its mandate in relation to safety.

3.3 The so-called *super-complaint* mechanism requires 'gatekeepers' to gather, distil and make assessments which will only relate to chosen specialist themes, thus denying an individual remedy to many, likely including those who are least resourced and most vulnerable.

3.4 Without an individual complaints' mechanism, it is likely that providers will continue to partially self-regulate thus negating one of the purposes of the Bill.

3.5 Those who share information in the broadcast and offline media world will continue to be regulated more closely than those who provide material in the digital world. This is unfair and an additional burden on an industry which is currently an important source of information, ideas and debate and which already has difficulty surviving as it competes against digital operators.

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

4. 1 All categories of harm named in the Bill 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?**

5.1 Yes. As is commonplace with other complaints mechanisms, criminal matters for the police should be referred to the police or other appropriate law enforcement agencies.

5.2 A robust first instance investigation should already have dealt with most suspected criminal activity and ensured that it was referred to the relevant law enforcement body.

**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?**

6.1 As is the case with other oversight bodies – Health Information and Quality Authority (HIQA), Financial Services and Pensions Ombudsman (FSPO) – the legislation and subsequent codes of conduct and rules of the An Coimisiún should require providers to engage in a timely, robust and thorough investigation of complaints at the outset. If the providers provide such systems, then only particularly complex or novel cases will come before independent complaints mechanism.

6.2 The experience of other countries suggests that in reality, most cases are solved at provider level, with the provider knowing that an independent appeal is likely to be pursued in the case of shortcomings in the first instance complaint.

**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?**

7.1 Many tribunals and complaints mechanisms have had to address the balancing of rights between complainant, provider and/or regulator. This balancing is required by the Irish constitution, the EU Charter of Fundamental Rights and the European Court of Human Rights amongst others. Issues of freedom of expression, fair procedure, right to privacy, rights to an effective remedy and rights to be protected from serious harm are amongst the rights that must be considered.

7.2 Guidance on complaints systems which will also be relevant for an individual complaint mechanism is provided by the UN's guidance on General Principles for Business and Human Rights<sup>2</sup> and would require the mechanism's guiding principles to ensure that it is legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous

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<sup>2</sup> [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)\_para.31

learning and based on engagement and dialogue with stakeholders. Ireland's National Action Plan on Business and Human Rights, and subsequent guidance issued in 2021, recognises the right to a remedy as a priority focus in establishing responsible business practices consistent with those General Principles<sup>3</sup>

**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?**

8.1 It should be overseen by the Online Safety Commissioner to ensure coherence, clarity and ongoing learning.

**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?**

9.1 Tier 2. An avenue of appeal which will be required for only the most complex or novel of cases or as a result of significant failure by ineffective provider systems. The main obligation for investigation and remedy should be with the providers' own robust and effective complaints' systems.

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

10.1 This is a matter to be reviewed once a form of individual complaints' mechanism is established.

10.2 However, in broad general terms, the mechanism will succeed if those who experience online harm which is not effectively dealt with by the provider have an affordable, easily understood, appropriate system available to limit the harm and provide an effective remedy. Indicators are likely to include:

- Timeliness. Digital harm happens quickly. Remedies too must happen quickly.
- Focus on the needs of users. Both providers and complainants need to be satisfied that their needs are being addressed.
- Ongoing learning. Providers should be able to learn from this mechanism about improvements to their complaint investigation systems.
- Cost effectiveness.

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<sup>3</sup> <https://www.dfa.ie/media/dfa/alldfawebsitemedia/National-Plan-on-Business-and-Human-Rights-2017-2020.pdf> and [https://www.dfa.ie/media/dfa/ourrolepolicies/humanrights/Guidance\\_on\\_Business\\_and\\_Human\\_Rights.pdf](https://www.dfa.ie/media/dfa/ourrolepolicies/humanrights/Guidance_on_Business_and_Human_Rights.pdf)

- Fair. Procedures are fair and transparent.
- Trust. Digital users know and trust An Coimisiún and the Online Safety Commissioner.
- Platforms learn from complaints appealed to the mechanism to improve their processes, procedures and investigation.

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

The review should take place no earlier than five years for operation of the mechanism, as this is an entirely new regulatory system which needs time for development, building understanding, and understanding effectiveness

### **Conclusion**

We trust that the above submission is useful to the Online Expert Group in its consideration of an independent complaints' mechanism. If we can be of any further assistance, please do not hesitate to contact us.

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