

NSPCC

Making the case for user advocacy

**NSPCC's proposals for user advocacy
arrangements in the Online Safety Bill**

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Introduction

The NSPCC is the UK's leading child protection charity and has spearheaded the campaign to introduce legislation to protect children from online harms. Four years after the NSPCC first secured a commitment from the Government to regulate online services, the Online Safety Bill has been laid before Parliament.

This is a landmark moment in the fight against online child abuse. However, expert NSPCC analysis shows that there are areas in the Bill that can be strengthened to prevent avoidable harm to children.

This report contains analysis that shows that user advocacy arrangements are a 'must have' if the Government want to give children the best protection in the new online safety regulatory regime.

What is user advocacy?

In regulated sectors, user advocacy organisations are specialist bodies which advocate for improved outcomes on behalf of the groups which they represent. They are funded by a levy on the regulated companies, in line with the 'polluter pays' principle, and play a key role in representing their users' interests; identifying areas of harm or user detriment; and providing counterbalance to the influencing strategies of regulated companies. They are experts in how to navigate regulation, the regulated sector, and the users they represent.

The report is aimed at policy makers and:

- argues that user advocacy arrangements are a missing tool in the UK's strategy to protect children online. By addressing this gap, we can better guarantee a functioning regulatory regime;
- looks at the wider regulatory context, including how user advocacy arrangements are used in other sectors to help achieve policy objectives;
- explains why user advocacy arrangements are needed in the online safety regulatory regime, and what a user advocate would look to do; and
- considers the options for implementing user advocacy arrangements.

The report reflects NSPCC's view on user advocacy and has been informed by:

- Interviews with experts in regulated sectors throughout December 2021 and January 2022;¹
- NSPCC desk-based policy research on regulatory best practice;
- independent polling of 2,500 UK users of technology platforms, conducted by YouGov in January 2022.

It is being released alongside the results of this [polling](#), which shows clear and considerable public support for the introduction of statutory user advocacy measures.

1 Organisations NSPCC met with include:

- Consumer Council for Water – Statutory User Advocate for water customers in England and Wales
- Citizens Advice – Statutory User Advocate for energy, post and cross sector consumer policy issues and non-statutory user advocate role for social policy.
- Ofwat – Regulatory of the water and sewerage sector in England and Wales
- Ofgem – Regulator of the electricity and gas sector in Great Britain
- United Kingdom Regulators Network – member organisation formed of 13 UK utility, financial, transport and housing regulators.

Summary

In March 2022, the Government laid the Online Safety Bill before Parliament. The wide-ranging bill aims to drive technology platforms to safeguard users, particularly children. The Bill contains clear and very welcome policy intent, but there still remains opportunities to improve it – one being levy funded user advocacy arrangements for children.

This is the first in a series of reports which will articulate solutions that can help the Online Safety Bill to achieve its objectives to protect children from preventable harm, and to meet the NSPCC's six tests for effective regulation.²

This report sets out the NSPCC's view that user advocacy arrangements for children, funded by a levy on online services, should be built into the Online Safety Bill. We argue this is necessary to strengthen the Bill's protections for children and ensure the regulatory regime delivers the safest possible outcomes for children.

User advocacy arrangements are used in nearly all regulated sectors, including energy, water, post, and transport. They play a key role in representing users, particularly vulnerable groups, and to ensure that their voices are heard and appropriately counterbalanced against the backdrop of well-resourced and vocal regulated companies.

“Appropriately resourced consumer advocacy can play a vital role in functioning markets, helping industry, regulators and Government identify ways to improve the consumer experience, championing the consumer voice in public debates, and advising and supporting consumers as they engage in markets” – Department of Digital, Culture, Media & Sport (2019)³

The insights of user advocacy bodies can help both regulators and regulated companies make better decisions and drive better, more user-focussed outcomes.

However, the draft Bill currently lacks any specific proposals for user advocacy. **This means that children who have been or are at risk of sexual abuse will receive less statutory user advocacy protections than users of a post office or passengers on a bus.** It is vital that children have a statutory user advocacy body resourced to reflect their needs, and to ensure the regime delivers on its objectives to offer a higher overall standard of protection for children.

Without a statutory user advocacy body in place, we risk creating a regime where children's voices are lost, and safeguarding issues do not receive the appropriate level of understanding and attention. A user advocate for children can use its expertise and insight to ensure that children's needs are front and centre, and their needs are appropriately met.

The arrangements are needed:

1. To ensure safeguarding is front and centre of the regime

Children need a powerful voice to represent their interests in the new regulatory regime. As other legislative and regulatory schemes have recognised, children face a combination of inherent risks, vulnerabilities, and challenges in exercising their rights as service users.

Children need a statutory user advocacy body to promote and protect their interests in regulatory decision making. The user advocacy body can provide an expert voice on complex and often multi-layered safeguarding risks. It can actively support the regulator to identify and develop effective and child-centred approach.

The user advocacy body can leverage economies of scale to develop an evidence base through information gathering powers, research, and other data sources. It can fuse its understanding of safeguarding issues with data from a range of sources to advocate independently in the interest of children in the new regime.

The user advocacy body can work with the regulator to ensure that it fully understands children's issues as they design the overarching regulatory framework; and use its expertise and safeguarding lens to input into risk assessments, codes of practice and other regulatory decisions. It can offer necessary support and critical challenge to the regulator at all stages of the regulatory process.

The regime will arguably only be sufficiently child-centric if Ofcom has appropriate challenge from, and access to the expertise of, an independent user champion.

² NSPCC (2022) Time to Act: an assessment of the Online Safety Bill begins the NSPCC six tests for protecting children. London: NSPCC.

³ DCMS (2019), [Reforming Consumer Advocacy in Telecoms](#).

2. For driving positive outcomes in the regulatory regime

User advocacy is essential to ensure Ofcom has an accurate and well-informed understanding of new and emerging risks, and to embed an effective 'early warning function' into the regulatory regime.

In a sector characterised by rapid technological and market change, Ofcom will need to be equipped with an agile understanding of harm and feel confident that it has a robust understanding of new and fast-moving systemic issues. The regulator has itself recognised that independent expertise will be more important to them than in any other part of its regulatory remit.⁴

Without the support and challenge of a statutory user advocacy body, able to draw on a deep understanding of the complex interplay between children's usage of technology and safeguarding risks, there is a risk that the evidence base upon which the regulator must take decisions could be partial, patchy, and incomplete.

Without appropriate safeguarding expertise, the context to understand harms and potential mitigations could be misinterpreted.

A user advocacy body can effectively neutralise these risks. A user advocacy body can leverage its evidence base, fusing it together with a deep understanding of safeguarding concerns, to provide an 'early warning system' that effectively underpins the functioning of the regulatory regime.

The advocacy body can identify new and emerging risks and work collaboratively with platforms to help them take swift action to protect child users. It can input into the risk assessment process and use its intelligence to help the regulator identify trends in respect of highly agile threat profiles and high-risk design features.

Where platforms do not act on harms identified by the user advocate, or where there is evidence that companies have failed to identify and respond to risks as part of their risk assessment process, the user advocacy body can supply the regulator with evidence and insight that can enable it to take enforcement action.

The success of the regime's systemic risk assessment process will be underpinned by, and significantly reliant on, the regulator's ability to rapidly identify new and emerging harms. In this context, the need for highly effective early warning functions will be key, and the importance of a well-defined user advocacy mechanism is clear.

If Ofcom is unable to rapidly identify new and emerging harms, the resulting delays could mean entire regulatory cycles where harms are not captured in risk profiles or company risk assessments, and an inevitable lag between harms being identified and companies being required to act on them.

3. To provide necessary counterbalance to the tech lobby's interventions, and neutralise any influencing advantage

Robust user advocacy arrangements must be seen as a crucial component of the regulatory regime - and as a crucial means to provide necessary counterbalance against the influencing muscle and resources of some of the largest companies in the world.

At present, the Government has arguably viewed user advocacy arrangements as a 'nice to have'. This assessment is misplaced. Strong, credible, and independent user advocacy arrangements are a crucial mechanism to equip the regulator with the data and detailed safeguarding expertise it needs to be able to pursue ambitious regulatory outcomes, and to consistently act in the best interests of children.

There is a pronounced risk that without an effective counterbalance, the large technology companies will actively seek to skew the evidence base, through:

- pursuing a well-funded programme that aims to secure the capture of independent and expert voices;⁵
- commissioning, funding, or enabling research that is designed to present a selective and highly skewed understanding of the risks and benefits to children,⁶ including through granting preferential access to favoured researchers or requiring copy approval.⁷ This could result in a partial evidence base on which the regulator will then have to take decisions;

4 Comments made by Dame Melanie Dawes in her oral evidence session to the Joint Committee on the Draft Online Safety Bill.

5 Google is noted to '[groom] academic standard bearers, prominent academics who will drive younger peers in a direction that is more favourable to the company.' Abdalla et al note that 'just as Big Tobacco leveraged its funding and initiatives to identify academics who would be receptive to industry positions and who, in turn, could be used to, legislation litigation, Big Tech leverages its power and structure in the same way. Abdalla, A; Abdalla A. (2021) The Grey Hoodie Project: Big Tobacco, Big Tech, and the Threat on Academic Integrity. Proceedings of the 2021 AAAI/ACM Conference on, Ethics and Society. Toronto: University of Toronto; Cambridge, MA: Harvard Medical School.

6 For example, the Campaign for Accountability sets out how companies cited industry-funded papers in submissions to the Federal Trade Commission without disclosing it.

7 For example, leaked internal documents from Google suggest scientists using their data sets must 'strike a positive tone' in their research, and 'must consult with policy and public relations teams., Paresh, D, Dastin D (2020) Google told it scientists to strike a positive tone in AI research -documents. Reuters (2020).

- once it has successfully flooded the evidence base, larger companies are highly likely to consider protracted and expensive legal action to frustrate or challenge regulatory decisions. This could reasonably be expected to influence the regulatory risk appetite, which could result either in delayed action or reluctance to proceed with more ambitious ex ante initiatives.⁸

These tactics are not new – we have previously seen similar tactics used by other regulated sectors, such as the tobacco industry.⁹ In recent years, we've seen tech companies look to pursue similar tactics, including attempts to frustrate evidence on the nature of AI risks;¹⁰ and granting privileged access to data sets for favoured researchers.¹¹

Powerful industry interests are not unique to the tech sector, but the size of and resources available to the largest players is arguably distinct. In most other regulated markets, these risks are addressed through strong advocacy models that provide appropriate counterbalance.

Without such arrangements in place, there is a clear risk the children's interests will become asymmetrical, and unable to compete effectively with the arguments made by industry.

More significantly, it risks producing a regulatory system that may be unable to respond to one of the most substantial threats to its effectiveness – a well-funded set of industry interventions that is explicitly aimed at preventing the regulator from building a full understanding of the impact of their products on children.

This could weaken the regulator's ability to deliver regulatory outcomes for children, but we cannot risk the regulator being set up to fail.

A vision for user advocacy

In order to champion children's interests in the new regime, a user advocacy body needs to be driven by children's voices and their online experiences. The body should derive its intelligence and expertise from:

- **the views of children and children's real-life experience of the online environment:** Children's interests are a legitimate part of decisions on technology design and governance, and their voices are an invaluable asset which must be heard by decision makers;

- **experience of safeguarding children and advocating on behalf of children's interests:** A safeguarding mindset is crucial for understanding how product design decisions translate into real-world drivers of harm, and to effectively turn the views and experiences of children into real and actionable insight;
- **knowledge and understanding of how regulatory regimes work in practice:** including how companies can be incentivised to deliver positive societal outcomes;
- **research into how children use online platforms and how harms develop:** This could include commissioning research on children's behaviours and on new and potentially risky forms of technology, such as decentralised social media or the metaverse;
- **investigations and deep dives into platforms and high-risk design features:** The body will develop internal expertise in the technical, legal, and regulatory environment, and be informed by deep expertise about technological design and risks.
- **Collaboration with civil society groups and children's charities at home and abroad.**

This report argues that the user advocacy body should be created on a statutory basis, funded by a levy on online services, and with sufficient powers and resources to ensure it can represent children's needs effectively. Only once these conditions have been met will the regime be sufficiently strengthened to protect children from preventable harm.

The average annual expenditure of a user advocacy body is £4.1mn – this is incredibly small compared to the societal costs of online child sexual abuse and exploitation which Government estimates at over £2,000mn a year.¹²

A statutory user advocate for children will contribute to a better functioning regulatory system, is exchequer-neutral, and will further improve the cost benefit analysis of the Online Safety Bill by drastically reducing the societal costs of exposing children to abuse.

8 Citizens Advice (2018) Access Denied: the Case. The Protections for Telecoms Users. London: Citizens Advice.

9 For example, see Abdalla, A; Abdalla A. (2021) The Grey Hoodie Project: Big Tobacco, Big Tech, and the Threat on Academic Integrity. Proceedings of the 2021 AAAI/ACM Conference on, Ethics and Society. Toronto: University of Toronto; Cambridge, MA: Harvard Medical School.

10 For example, the high profile case of Timnit Gebru, in which she was asked to withdraw a research paper on algorithmic bias by her employer, Google.

11 The Research Director of the Shorenstein Center on Media Politics and Public Policy at Harvard, Joan Donovan, has voiced that 'it's frustrating to see an effort Facebook has put into academic capture over the last four years, selecting certain firms to receive special datasets [...] This is the playbook from Big Tobacco and Big Oil.' Comments posted to Twitter, January 2021.

12 HM Government (2021), [Draft Online Safety Bill Impact Assessment](#), p.80.

Why do children need strong user advocacy?

1 in 5 internet users are children, and they deserve a powerful and well-resourced voice to represent and protect their interests in online safety regulatory issues.¹³ Although a significant user base, children's needs have been frequently overlooked in decisions about product design and internet governance.

However, there is a need to recognise and respond to the inherent vulnerability of children as internet users, and to build a regulatory regime that reflects that.

Children's digital rights are starting to be recognised in legislative and regulatory obligations. The UN Committee on the Rights of the Child has adopted General Comment 25, which clarifies the rights of children in digital environments and places accountability on nation states to ensure the provisions are followed.¹⁴ Similarly, Recital 38 of GDPR in the EU recognises that children merit specific protection with regard to their personal data, as they may be less aware of the risks, consequences, and safeguards concerned and their rights in relation to the processing of personal data.¹⁵

Children are not a homogeneous group. We know that certain factors make children more vulnerable to risks of harm: for example, children are likely to be at increased risk of abuse because of their gender or sexual identity, or if they have a disability.¹⁶ Children from Black, Asian and other minority ethnic backgrounds can face bespoke barriers to disclosing abuse and accessing support, including pressure to conform to gendered roles and may exhibit a lack of trust in institutions.

If there are to be tangible improvements to children's online experiences, the Government needs to ensure there are effective mechanisms to understand children's needs, and that the online safety regime is built to appropriately capture their experiences.

Children are exposed to considerable harm online, which continues to increase in its scale and complexity:

- NSPCC freedom of information requests show that, in the UK and over the last 5 years, the number of recorded online child sexual offences and number of child abuse image crimes recorded by police forces have surged to record levels. **Online abuse crimes have increased by 78%¹⁷ and child abuse image offences by 37%.¹⁸**
- Research by the Department of Digital, Culture, Media & Sport (DCMS) has shown that 80 per cent of six- to 12-year-olds have experienced some kind of harmful content online. Half of 13- to 17-year-olds believe they have seen something in the last three months that constitutes illegal content.¹⁹
- In 2021, the IWF investigated 252,000 URLs which were confirmed to contain images or videos of child sexual abuse. Sometimes URLs contain multiple images and videos. This includes a three-fold increase in self-generated imagery showing seven- to 10-year-olds who have been targeted and groomed by online abusers.²⁰

There is now considerable evidence that tech company design choices are causing serious detriment to children.

Risky design choices such as friend recommender algorithms, and a rush to introduce end-to-end encryption on social networks without appropriate safety mitigations in place, can make social media and messaging companies readily exploitable for abusers. Almost three quarters of grooming offences recorded between April 2020 and March 2021 involved Instagram, Snapchat, Facebook Messenger, and WhatsApp.²¹

13 Information Commissioner's Office (2020) [Age appropriate design: a code of practice for online services](#).

14 United Nations (2021), [Convention on the Rights of the Child](#).

15 European Union (2016), [GDPR: Special Protection of Children's Personal Data](#).

16 The Children's Society, <https://committees.parliament.uk/writtenevidence/25174/pdf/>, accessed 11 May, 2022.

17 NSPCC [data](#) from freedom of information requests. This is a count of offences such as sexual assault, rape or sexual communication with a child where any element of the offence was committed online.

18 NSPCC [data](#) from freedom of information requests.

19 Joint Committee on the Draft Online Safety Bill (2021), [Report of session](#).

20 [IWF](#) (2022).

21 NSPCC [data](#) from freedom of information requests.

The experience of a survivor of online grooming: Frida's* story

"When I was 13, a man in his 30s contacted me on Facebook. I added him because you just used to add anyone on Facebook. He started messaging me and I liked the attention. We'd speak every day, usually late at night for hours at a time. We started using WhatsApp to message. He started asking for photos, so I sent some. Then he asked for some explicit photos, so I did that to, and he reciprocated. He told me he'd spoken to other girls online and lied about his age to them, but he didn't lie to me so I felt like I could trust him.

"In my eyes, telling anyone in my life about this man was not an option. We need to stop putting the responsibility on a vulnerable child to prevent crime and start living in a world which puts keeping children safe first. That means putting child safety at the heart of policy.

"I want a statutory child user advocacy body funded by the industry levy. This would play a vital role in advocating for children's rights in regulatory debates. Being groomed made me feel incredibly vulnerable, isolated, and weak. I felt I had no one who was on my side. Having a body stand up for the rights of children in such a vulnerable position is invaluable... it is so rare that voices like mine have a chance to be heard by policy makers.

"Watching pre legislative debates I've been struck by how detached from my lived experience they can be, and indeed the lived experiences of thousands of others. If we want to protect children, we need to understand and represent what they need."

*Not real name

Last year, Frances Haugen, an ex-Meta employee and whistle-blower leaked documents showing that Meta had failed to act on internal research on the negative impacts of its products on children's well-being.²² A separate whistle-blower has claimed that Meta uses return on investment criteria when deciding on whether to introduce technology to stop online child abuse material.²³

The Joint Committee on the Draft Online Safety Bill stated that "despite concerns that have been repeatedly raised about these problems, the companies whose systems and processes distribute this content have been unable or unwilling to address them successfully".²⁴

Following the NSPCC's Wild West Web campaign, Government agreed to legislate to protect children online by regulating online services. The Online Safety Bill is a landmark piece of legislation which will introduce safety duties on technology companies. Ofcom, which has been appointed regulator, will regulate the systems and processes of the companies in scope.

The objectives²⁵ of the Bill are:

- 1. to increase user safety online:** through reducing the risk of exposure to specific online harms, with an objective that children should receive a higher standard of protection that adults;
- 2. to preserve and enhance freedom of speech online:** through reducing online harm which can lead to user disengagement and ensuring that the proposals do not result in 'over-blocking' and unjustified content removal;
- 3. to improve law enforcement's ability to tackle illegal content online:** through achieving both a general reduction in illegal harm online, and by making it easier for law enforcement to tackle identified illegal harm through increased transparency and reporting, improvements in safety technology, and effective regulatory oversight;
- 4. to improve users' ability to keep themselves safe online:** through greater platform transparency and a combination of non-regulatory support measures which focus on empowering users;
- 5. to improve society's understanding of the online harm landscape:** through enhancing the amount and quality of information in relation to online harm that is available to government, industry, and civil society.

22 Guardian (2021), [Facebook aware of Instagram's harmful effect on teenage girls](#).

23 BBC (2021), [Whistleblower: Facebook's response to child abuse 'inadequate'](#).

24 Joint Committee on the Draft Online Safety Bill (2021), [Report of session](#).

25 HM Government (2022), [Online Safety Bill Impact Assessment](#), p.12-13.

The missing tool for an effective regulatory regime

Whilst the Bill provides the overall framework for the regulatory regime, much of the overall shape of the regulatory system will be left to Ofcom. This includes designing regulatory mechanisms; defining risk profiles of platforms and high-risk technologies; assessing companies' risk assessments; and drafting a considerable number of regulatory codes.

Right now, technology companies are leveraging their capital and resources to scale up their regulatory expertise, in order to represent their interests in the new regulatory framework.

At present, a range of civil society organisations that represent children are engaged with the Online Safety Bill. However, it should not be taken for granted that groups proving deep expertise on the interplay between children, technology and safeguarding can continue to perform these activities in perpetuity, or to the level and extent that is necessary to support, and where necessary, offer challenge to support the functioning of the regulatory regime.

Initially, DCMS seemed to recognise the need for user advocacy arrangements and committed to introducing user advocacy arrangements when they published the draft Bill.²⁶ However, the provisions in the final Bill, which will see Ofcom bolster its Consumer Panel to reflect children's interests and to make arrangements to understand the user experience, appear wholly insufficient to ensure Ofcom can adequately understand and respond to safeguarding risks, and in turn can arrive at sensible regulatory decisions that unlock safer outcomes for children.

As it stands, regulation will disproportionately rely on mechanisms such as representative user panels and independent ad hoc pieces of research. However, in isolation, these are arguably insufficient to capture the dynamic and highly agile nature of many safeguarding concerns; and will fail to provide the consistent and deep reservoir of expertise necessary to ensure that regulation is delivered with a clear and unwavering focus on children and the drivers of harm.

This report explores why independent user advocacy arrangements are integral for effectively functioning regulatory regimes, and how user advocacy must be seen as an integral component of effective online harms regulation, not simply a bolt-on, 'nice to have' or largely consultative exercise.

26 HM Government (2021), [Draft Online Safety Bill Impact Assessment](#).

User advocacy arrangements in other regulated sectors

In other regulated sectors, there are clear mechanisms in place to ensure the interests of vulnerable users are represented in regulatory decision-making. User advocacy bodies, also known as consumer advocates or watchdogs, are organisations with statutory powers and requirements to protect and promote the interests of users, particularly vulnerable groups.

User advocacy bodies can be existing third sector organisations which are designated statutory powers and functions – for example Citizens Advice, which had prior experience and expertise protecting and representing vulnerable user groups – or public bodies.

In most cases, the advocacy functions are funded by a levy on the regulated companies, in line with the well-established ‘polluter pays’ principle, meaning that firms are liable for the costs of the regulator, as well as user advocacy and wider consumer empowerment initiatives. This contribution towards a fully functioning regulatory settlement, not just the immediate costs of the regulator itself, helps to ensure a regime that works effectively, and that can best support the delivery of regulatory outcomes in the best interests of users.

User advocacy bodies may play wider roles in civil society but will have their specific advocacy functions defined in statute. For instance, CCWater’s primary function is to “provide advice and represent consumers on water matters”.²⁷ This provides it with a mandate to work in the interests of consumers, particularly vulnerable consumers.

The organisations are also given powers in statute to help them achieve their objectives. For instance, Citizens Advice and CCWater have broad powers to request information from regulated companies and to disclose information for the purpose of protecting and promoting energy, postal, and water consumer interests.²⁸ User advocates are often defined as statutory consultees, meaning that regulated companies are obligated to seek the user advocates views on matters where it is important that users’ views are taken into account.

Table A below contains an overview of some of the key regulated sectors in the UK and their respective user advocates. An expanded version of the table which includes expenditure and size of market can be found in the annexe.

Table A: Sectors with statutory user advocacy arrangements

Sector	User advocate
Energy	Citizens Advice
Post	Citizens Advice
Transport	Transport Focus
Water	Consumer Council for Water
Telecoms	DCMS are consulting on appointing Citizens Advice
Online safety	No user advocate proposed

The use of user advocacy arrangements across a range of sectors speaks volumes about the positive impact they have on regulatory outcomes. In telecoms, which does not yet have user advocacy arrangements, the Government are consulting on introducing new user advocacy arrangements in recognition of the positive benefits they offer to users, and in respect of delivering better regulatory outcomes.

In a recent consultation document, DCMS proposed to replace Ofcom’s internal Consumer Panel with a consumer advocate. They state that “appropriately resourced consumer advocacy can play a vital role in functioning markets, helping industry, regulators and the Government identify ways to improve the consumer experience, championing the consumer voice in public debates, and advising and supporting consumers as they engage in markets”.²⁹ For similar reasons, CCWater was separated from Ofwat with the 2003 Water Act.

User advocates are cost effective, deliver a strong return on investment, and play an essential role in ensuring that regulation evolves in line with user interests and needs.

Crucially, user advocates are neutral to the Exchequer. Instead of being funded by the Treasury, they are funded by a levy on regulated companies, and by actively tackling user harm and detriment, they may ultimately save long-term costs associated with the societal impacts of online harms.

NSPCC analysis finds that the average annual expenditure of a user advocacy body is only £4.1mn³⁰ – in comparison, the societal costs of online child sexual abuse and exploitation is estimated by Government to be over £2 billion a year.³¹

27 CCWater’s legal duties and powers.

28 Provision 11 of the Consumers, Estate Agents and Redress Act 2007.

29 DCMS (2019), [Reforming Consumer Advocacy in Telecoms](#).

30 Average expenditure of energy, post, transport and water sector consumer advocacy bodies.

31 HM Government (2021), [Draft Online Safety Bill Impact Assessment](#), p.80.

Functions of user advocacy bodies and why they are vital for protecting children

Looking at other sectors, there are key lessons on how user advocacy arrangements contribute to policy and regulatory objectives and protect vulnerable users from avoidable harm.

Although the exact functions and shape of the organisations may vary, user advocates contribute to positive user outcomes by a range of ways, including:

- 1) protecting and promoting the interests of users in regulatory decisions, with a particular focus on vulnerable users;
- 2) producing actionable research and insight to hold companies to account; and
- 3) conducting targeted interventions to identify tackle user detriment, with an aim of improving the experience of service users.

Reflecting the interest of users in key decisions

Typically, user advocacy bodies play a role in representing the most poorly served or vulnerable groups. User advocates have long championed vulnerable users, including groups of service users whose particular needs and challenges might otherwise be overlooked.

User advocate bodies are able to perform a range of functions and interventions, including:

- identifying rapidly emerging risks, for example harms related to technological or market changes;
- bringing issues to the attention companies and regulators, for example drawing on aspects of product or service design that may disproportionately impact certain groups of users;
- inputting into long term strategic plans, including offering appropriate counsel on the regulator's long-term strategic priorities;
- responding to formal consultations and ensuring children are represented in regulatory debates, meetings, and decision-making processes.

The research and policy insights from consumer advocates can provide regulators with a strengthened understanding of how consumers may experience harm when using services; and can lead to better and more balanced regulatory decisions. User advocacy groups provide a clear counterbalance to industry arguments;

and without this, regulatory world views and decision making could be disproportionately influenced by industry commissioned research, data and lobbying.

User advocates advocate for policy and regulatory changes with Government, regulators and with companies directly. For example, Passenger Focus has worked extensively to successfully advocate for introduction of strengthened compensation arrangements for delayed journey times on trains.³²

User advocacy bodies often have "super complaint" powers. Super complaints are fast-tracked complaints made by approved organisations and that set out how a feature or features of a market may be significantly harming the interests of users.³³ This helps the regulator to focus its resources on substantive priorities, and provides a formal mechanism for regulatory decision-making to be informed by civil society expertise and evidence.

While the Online Safety Bill makes provision for super complaints, it sets a relatively high evidentiary bar for tabling them. In turn, this means that supercomplainants will require a high degree of expertise and resource necessary to produce them.

User advocacy bodies are well placed to develop effective and well targeted super complaints, and to work closely with the regulator to develop an emerging and well-developed shared sense of priorities.

Producing research and insight to improve transparency and advance users' interests

User advocacy bodies are able to produce their own research and insight to improve transparency in the sectors in which they operate, and to actively advance their users' interests.

They speak directly with the users they represent and can commission independent research and data to develop a user-centred understanding of the problems and potential detriment occurring in the sector.

Research from user advocacy bodies is particularly useful for understanding and advancing the interests of vulnerable users. Firstly, research can help find new user segments which have previously been ignored and underserved by regulated companies. For instance, advocacy groups have been integral in shining a light on the experience of users of services who are in

³² Transport Focus' 'Make Delay Pay' campaign.

³³ An example of a super complaint is Citizens Advice's to the CMA and is described in case study A in the annex.

financial difficulty and that otherwise might encounter 'hidden' distress.

Secondly, research can be used to further the understanding of the experience and needs of different user groups. This helps in identifying the root cause of harms, their implications, and options for mitigating against harm.

In the case of users who are in financial difficulty, their experience may lead to them rationing essential utilities, such as electricity or gas, and/or failing into debt. This in turn can disrupt the financial stability of the energy supplier. It is therefore in the interest of all parties that a user advocate conducts research on vulnerable groups.

User advocates may also commission expert analysis to consider systemic issues. For instance, in 2020, Citizens Advice procured expert economic regulatory advice on the cost of capital for energy networks.³⁴ This analysis contributed to Ofgem's market and regulatory design decision, influenced companies long term planning, and, ultimately, drove down costs for energy consumers.

A statutory user advocate for children is well-placed to explore and understand the specific experiences of children, including those with one or more vulnerabilities – and to build on the approaches successfully deployed elsewhere to influence the worldview and decision-making of regulators.

Conducting investigations and information requests

User advocacy bodies are able to conduct investigations into topics of concern relating to service users. CCWater and Citizens Advice both have powers to open investigations and request information from the regulated companies. For instance, CCWater has powers to "obtain and keep under review information about consumer matters and the views of consumers".³⁵ As described in case study B, user advocates can use their powers to shine a light on issues of consumer detriment which the regulator may not be considering.

Given the scale and extent of harm being faced by children online, we must appreciate that regulation is a means not an end – online harms will not rapidly disappear at the point at which the regulatory regime takes effect.

A user advocacy body will be able to further develop our understanding of how to protect children from harm, identify and understand the impacts of new and emerging risks, and keep pace with the safeguarding implications of rapidly shifting technologies. In turn, this will contribute towards the long-term delivery of better regulatory outcomes.

Other functions that some user advocates play include:

- **Advice** – providing free independent advice to the users they represent. For instance, Citizens Advice has regional hubs, phonelines and an online chat function where people can speak to a trained advisor about issues they face.
- **Complaints** – some user advocacy bodies play a role in registering complaints against the regulated companies. These complaints can form evidence which the user advocate can use to argue for changes in the sector. For example, CCWater provides a service for citizens to complain to if they are not happy with the handling of their initial complaint direct to the water company.
- **Delivering sectoral change** – the Government can use the consumer advocate to inform broad based decisions on system-level change. In 2020, as a response to the Covid-19 pandemic, the Department for Environment, Food and Rural Affairs and the Welsh Government asked CCWater to conduct an independent review of financial support for water customers and to make recommendations on how to improve help available to customers who may struggle to pay their water and sewerage bills.³⁶

34 Citizens Advice (2020), [RIIO-2: Cost of capital](#).

35 CCWater's [legal duties and powers](#).

36 CCWater (2021), [Independent Water Affordability Review](#).

Structural lessons from other sectors

The most effective user advocacy bodies have the following structure factors in common:

- **The critical mass and the economies of scale to consider advocacy, research, analysis, investigations, and other functions in the round.** By fusing expert intelligence with an understanding of the consumers they represent, user advocacy bodies can draw on their connection with, and expertise in, protecting vulnerable users to identify system-level drivers of new and existing harms. This systemic approach can support regulators through providing them with evidence and understanding of how harms manifest and can most effectively be tackled. This offers particular benefits for vulnerable and often overlooked groups;
- **Statutory powers to support their functions.** User advocates typically benefit from strong information gathering and disclosure powers. Information gathering powers allow the advocate to get under the bonnet of regulated companies, and to build a rich understanding of how their decisions affect consumers. User advocates can explore individual companies or the sector as a whole. They can shine a light on best and worst practice and inform the regulator's approach to enforcement.
- **Independence.** User advocates typically exhibit strong independence from regulated companies, the regulators and the Government, enabling them to operate with credibility, authority and maintain a clear focus on the users they represent.
- **Resources to fund their activity.** It is not enough for a body to have power; it also needs appropriate resource to scale its expertise and drive change. The user advocate needs to be suitably resourced to create, build, and maintain data sources of evidence and insight, and to have dedicated resource that enables it to actively participate in the regulatory process. Although inexpensive compared with either the direct costs of regulation or company revenue, well developed advocacy still needs to be funded. Our clear view is this should be funded by a levy on the regulated companies.
- **Legitimacy.** User advocates with statutory designation have resulting legitimacy to challenge the decisions of regulators and regulated companies. All engaged parties will be forced to consider the concerns of the advocate as it raises new harms. By establishing the user advocate in statute, the Government guarantees its future, which, in turn, provides consumers with confidence in the regulatory regime.

The case for a children's user advocacy body for online harms

It is vital the government commits to a statutory user advocate representing children, funded by an industry levy, to ensure children's interests are front and centre in the regulatory regime.

A user advocate for children is an integral part of securing effective online harms regulation, and to ensure appropriate counterbalance against well-resourced industry interventions.

A user advocate can:

- promote and protect the interests of children in regulatory decision making, providing an expert voice on complex and often multi-layered safeguarding risks;
- offer support and critical challenge to the regulator, by ensuring that an understanding of children's behaviour and safeguarding is front and centre in its decision-making;
- act as an early warning system and raise emerging children's issues with the Secretary of State, regulator, and platforms so that harms are identified at an early stage, and can be actively tackled whilst they are still nascent. This is particularly relevant in a sector characterised by a high extent of technological disruption and market change;
- hold online services to account if they continue to treat children's issues as a secondary concern;
- provide a counterbalance to industries attempts to capture the regulator, by providing new and robust evidence on which decision can be taken;
- shine a light on the most harmful practices and contribute to the effective running of the regulatory regime, including by having the resource and expertise to produce robust super complaints; and
- collaborate with international partners to build insight and keep international standards high.

The regulatory parameters of an online harms user advocate would not include some functions performed by other advocacy bodies, for example performing economic analysis, but there is a clear impetus to develop advocacy and representation arrangements that create a 'level playing field' for children.

Meeting children's needs

Children are a significant proportion of internet users, but face particular and enhanced risks of online harm and abuse that have typically been poorly mitigated by internet firms.

Although it is intended that the Online Safety Bill affords a higher level of protection to children than adults, the complex and often multi-layered interplay of children's behaviour, their developmental profile, and the complex interplay of online safeguarding risks aligned against often poor platform design choices makes it highly challenging to regulate in a way that is cognisant of, and fully understands, how best to protect children from online harm and abuse.

As a result, children need a powerful voice to represent their interests in the new regulatory regime, and to provide critical challenge to regulators and regulated companies.

Currently, children's needs are poorly met by online services. This is for a range of reasons including:

- use of algorithmic and design choices by technology companies that cause or amplify a range of online harms, and that can be exploited by abusers to perpetuate sexual abuse;
- limited and ineffective risk assessment processes, with companies often poorly able to understand the nature of safeguarding risks, even if they seek to do so;
- limited market incentives and regulatory drivers for platforms to focus on child safety considerations; and
- ideological or broader considerations that mean many companies actively fail to consider or actively downplay children's fundamental rights when designing their services. For example, child risks are often neglected or ignored in use cases, or their risks are down weighted against broader benefits to adults.

Additionally, we know that some children can be disproportionately exposed to the risk of abuse. For instance, children who have disabilities are at an increased risk of being abused compared with their non-disabled peers.³⁷ The regulator may produce research to consider the children, but unless it can effectively capture the experience of a broad range of

37 Jones (2012), <https://learning.nspcc.org.uk/safeguarding-child-protection/deaf-and-disabled-children>, accessed 11 May 2022.

children, including those with one or more vulnerable characteristics, it may struggle to reach regulatory decisions that are effectively informed by the widest possible set of intersectional dynamics. This will result in a reduced ability to identify and protect groups of children which are particularly at risk of harm.

In evidence to the Joint Committee, Ofcom CEO Melanie Dawes stressed the particular importance of partnerships with expert groups on online harms. She suggested this was more important than in any other sector that Ofcom regulates.

A user advocacy body must be able to combine together research and insight with a clear child-centric and intersectional approach. It must demonstrate a deep understanding of the interplay between technology uses and safeguarding risks. Only when all conditions are achieved will there be actionable insight on how children's needs can be best met.

Ensuring children's needs are prioritised

Although Ofcom will have a statutory obligation to offer a higher standard of protection of children than adults, in practice the regulator will have to balance a wide range of competing, and at times contesting, priorities.

The regulator will be asked to promote and protect a wide range of safety concerns, including a growing number of primary harms set out in primary legislation. The regulator will also need to take account of and appropriate balance its decisions on safety with the promotion and protection of freedom of expression, and it must balance a duty to protect innovation.

Put simply, Ofcom will have its hands full. A user advocate will be able to offer appropriate challenge and support the regulator and to ensure it can focus its strategic resources and direction on where it can best intervene to tackle detriment.

A strong children's voice will be necessary to guide the regulator in areas where it may propose highly contestable outcomes, for example on product decisions such as end-to-end encryption, where fundamental rights might be poorly aligned.

Against a sea of well-resourced broader interest groups, some of whom may benefit from funding or ancillary support from industry, it will be essential that the interests of children can be authoritatively and robustly represented.

Providing a deep source of specialist expertise

If online safety regime is to effectively deliver safer online outcomes for children, it will be essential the regulator is able to be informed by expert and authoritative advice, including on safeguarding.

A user advocacy body can play a crucial role in supporting the regulator to appropriately consider the impact of its decisions, and that Ofcom fully understands the online risks that children face. Regulating for children is a very different proposition to other markets. It is made even more complex by the interplay of children's behaviour, usage of technology and safeguarding risks.

The user advocacy body can play a central role in drawing attention to where children are likely to face differential or enhanced risks when using online services, and to often complex safeguarding dynamics which the regulator in isolation may struggle to understand.

The NSPCC welcomes the appointment of Ofcom as the online safety regulator, with its clear and unwavering commitment to designing and operating a watertight framework. However, even the most committed regulator needs external challenge to ensure that users' needs are appropriately reflected.

Children's needs have typically been poorly considered in the decision-making processes of sectoral regulators, and Ofcom cannot simply rely on its own research to reach suitably child-centric decisions.

The advocacy body's evidence and insight can support the regulator to develop a strong and effective overarching regulatory framework, with a credible set of risk assessments and codes of practices that are fully informed by the risks that children face.

Act as an early warning system by identifying emerging issues and the potential for harm

Ofcom will be inheriting regulatory responsibilities in a sector which is characterised by rapid technological and market change, and a correspondingly agile and complex child abuse threat. Ofcom's regulatory framework will need to adapt to changing harms, services, and technical solutions.

Innovation brings new opportunities for children, including the use of immersive environments to learn, play and socialise. However, repeatedly we see the safeguarding implications are often poorly understood.

In the context of such a rapidly evolving threat, it is vital that the regulator is able to be informed by credible, authoritative and well-resourced expertise; and that

safeguarding concerns can quickly be identified and understood, for example through dedicated safeguarding expertise networks which the regulator itself is unlikely to possess.

A user advocacy body can assist the regulator by serving as a powerful 'early warning' function, supporting the regulatory regime to keep pace with the speed at which technology and platforms are changing, whether that is decentralised social media³⁸ or the metaverse,³⁹ each of which poses additional risks and potential harms.

Robust sectoral monitoring, undertaken through a safeguarding lens, is vital to ensure new and emerging risks can be identified quickly. If Ofcom is unable to rapidly identify new and emerging harms, the resulting delays could mean entire regulatory cycles where harms are not captured in risk profiles or risk assessments, and an inevitable lag between harms being identified and companies being required to act on them.

Ensuring children's interests are reflected and fairly balanced against those of industry

Without a strong and well-resourced user advocate in place, there is a pronounced risk of asymmetry between industry interventions and those representing service users.

User advocacy is desirable to stop Ofcom being forced to make decisions on partial or selective data, and to balance children's interests against those of the well-resourced technology companies. It is highly likely that large technology companies will follow the tobacco lobby playbook and attempt to skew the evidence base in ways that might be advantageous to them.⁴⁰ Companies can look to achieve this skewing effect through:

- capturing independent and expert voices, including by funding academic institutions or independent figures;
- commissioning and funding research that presents a distorted picture of the harms and that downplays the risks of their services to children; and

- providing preferential access to datasets for researchers and academics who are likely to be sympathetic to the technology industry's interests.

Indeed, there is emerging, anecdotal evidence that platforms are skewing data or seeking to use it to paint a partial picture of their products:

- the high-profile case of Timnit Gebru being asked to withdraw a research paper on algorithmic bias by her employer, Google, and being subsequently fired;⁴¹
- Frances Haugen, the whistle-blower, leaked data showing that Meta have attempted to keep important internal documents from the public eye, including the impact of its platforms on the health and well-being of young girls.⁴²
- As the technology reporter Ryan Mac has observed, large companies typically employ nominally independent child safety experts to input into and comment on the rollout of new safety features, but often may not disclose these experts are paid or have other conflicts of interest.⁴³

As a highly technical regulator, Ofcom will be required to produce its regulatory regime based on the evidence it has in front of it. Without a well-resourced user advocacy body in place, Ofcom could find itself being required to take decisions on partial or incomplete data, including evidence that is funded or subject to copy approval from major companies.

This demands a counterbalance. If Ofcom only has access to partial or skewed data, its risk appetite and ability to make decisions that protect children will likely be constrained. Child protection objectives, and indeed the success of the regulatory regime more broadly, rely on the existence of a counterweight.

In this context, user advocacy arrangements can play a valuable role to neutralise any attempt by the large technology companies to capture the evidence base, and to skew or chill Ofcom's regulatory approach.

38 Twitter has [ambitions](#) of decentralising the platform through blockchain technology.

39 Several [organisations](#) are competing with Meta to bring metaverse products to market.

40 For example, it is widely accepted that in the 1950s, and for a time after, the tobacco lobby undertook a campaign aimed at showing the tobacco industry as a friendly sector, looking out for their consumers interests. They funded and commissioned research aimed at sowing doubt into scientific research showing conclusive links between smoking and lung cancer. The tobacco lobby invested in academic institutions to gain influence over research questions and plans of individual scientists with an aim of refusing funding proposals that linked smoking to addiction or cancer and ensuring funding for research that attributed cancer to other causes. See for example Abdalla, A; and Abdalla, M (2021) [The Grey Hoodie Project](#): Big Tobacco, Big Tech and the threat to academic integrity. Preprint. Cambridge, MA: Harvard; Toronto, ON: University of Toronto

41 [Timnit Gebru](#) was fired by Google over a paper she produced highlighting bias in AI.

42 Guardian (2021), [Facebook aware of Instagram's harmful effect on teenage girls](#).

43 Comments made on Twitter in response to Instagram product announcements.

Building high quality data and super complaints

A user advocacy body can support children by ensuring that Ofcom and platforms' decisions are based on high quality and data and insights. The advocacy body can achieve economies of scale by both drawing on existing data sources and creating new ones.

To create an evidence base, a user advocate could:

- make use of children's voices: drawing on the real-life experiences of children will provide a child-centric understanding of harms, and provide a grounded understanding of how technology-facilitated harms play out;
- commission research to understand children's experience of using online services;
- use its information gathering powers to request particular data from platforms: including to understand how they anticipate and respond to online risks to children;
- open investigations by deep- diving into practices of particular companies or technologies;
- leverage existing data streams, for instance, NSPCC's Childline data or the Canadian Centre for Child Protection's Project Arachnid.⁴⁴

The user advocacy body would be able to leverage its evidence base, and fuse it with a deep understanding of children's issues and safeguarding, to create tangible insights that can make the case for change. These can be shared with platforms to improve their child protection approaches and with Ofcom to inform the development of their risk profiles and enforcement approach.

This evidence will also provide the foundation for the user advocacy body to raise super complaints. Although the Bill makes provisions for third party organisations to raise super complaints, without sufficient capacity, capability, and resources, it is unlikely that a super complaint would meet the evidential threshold.

It is costly to raise an effective super complaint. For example, Citizens Advice's successful complaint to the CMA on the loyalty penalty was 76 pages in length⁴⁵ and included 18 months of data gathering and research.⁴⁶ User advocacy arrangements can therefore directly support the production of high-quality, targeted supercomplaints.

Keeping international standards high

A user advocate for children could build international coalitions with other organisations to share best practice on safeguarding children online, keep regulatory standards high, and advance the UK's standing in policy and regulatory thought leadership.

A funded children's advocate will have capacity to build networks with child-centred organisations in other jurisdictions, and with major international bodies such as the recently announced European Centre for Child Sexual Abuse.

This will ensure that there is increased global co-operation and understanding about the child abuse threat, that the UK can share and learn from other countries about how best to achieve change within regulated regimes. In turn, the UK can share its learnings about how best to achieve legislative and regulatory change for children with other countries pursuing a regulatory approach.

⁴⁴ Project Arachnid is the Canadian Centre for Child Protection's platform to detect known images of child sexual abuse material and issue takedown notices to industry. It has led to six million images and videos of child sexual exploitation being removed from 1,000+ electronic service providers spanning 100+ countries worldwide, helping to break the cycle of victimization for survivors.

⁴⁵ Citizens Advice (2018) [Excessive prices for disengaged consumers](#).

⁴⁶ Ibid.

Representation, user redress, or advocacy? The need for a child-centred user advocacy solution

The Online Safety Bill is predicated on the basis that children face pronounced risks both because of their inherent vulnerability; and because it is reasonable to expect they may be less aware of the safeguarding concerns, and their rights, in relation to the harms caused by online platforms.

In respect of online harms faced by adults, the Bill sets out a threefold blended approach that delivers direct regulatory action; promotes the growth of safety by design solutions; and that promote user empowerment.

As it stands, the Bill proposes that children's needs could be factored into the regime through using representation panels and commissioned research. Clause 132 places a duty on Ofcom to make arrangements to ascertain the experience of users of regulated services, and to publish annual statements about the research that has been carried out.

While we welcome Ofcom being required to carry out an extensive programme of research, this should be in addition to well-developed and funded arrangements for user advocacy.

Neither research nor user representation mechanisms represent a sufficiently agile nor well-developed set of processes to identify and respond to new and emerging harms. These approaches cannot reasonably be expected to perform the 'early warning function' that is necessary to ensure the regime's overall effectiveness.

The second suggestion is redress arrangements. The Joint Committee recommended that the Bill was strengthened through the creation of an ombudsman to consider online safety complaints.

While user redress may offer benefits to many users, in particular adults who may be better equipped and empowered to take user complaints through an ombudsman system, it seems highly unlikely these will offer sufficiently substantive protections to children and young people.

The nature of many child facing risks, and the inherent difficulty in developing user empowerment initiatives that could reasonably be expected to benefit children, means that children are likely to require additional solutions to ensure their needs are promoted (and the risks they face are understood).

Children are likely to face significant barriers to using redress mechanisms, with the 'cognitive burden' associated with making a complaint likely to be heightened for many young people. Evidence shows that only 14% of 12–15-year-old children have ever reported content. Children who are most at risk of online harms may find it incredibly challenging to complete a multi-stage redress process, and because of limited confidence in the efficacy of many social media platform reporting processes, may be highly reluctant to do so.

There are also a number of other limitations which mean that, in the absence of strong advocacy and representation arrangements, it is unlikely that child-facing risks could be adequately surfaced to the regulator.

Firstly, the nature of many online harms may not be readily recognisable to individual users, particularly children. For example, if a child is being served harmful content as result of algorithmic profiling of tailored design choices, harm is most likely to be identified through focused research and analysis, rather than as a result of individual complaints.

Secondly, many children who have experienced online abuse may not readily recognise their experience as such. For example, children that have been groomed on social media may often not appreciate the abusive dynamics of the interaction, and in some cases, children abused on livestreaming and video-chat services may not even realise that abuse has taken place.

How can user advocacy be implemented?

This report has demonstrated the importance of effective user advocacy arrangements to underpin the regulatory regime, and to drive the strongest possible set of outcomes for children.

There are several ways in which DCMS could create user advocacy arrangements, all of which have implications for the final shape and effectiveness of the regulatory arrangements.

Option one: a statutory body, funded through a levy on regulated companies

The Government could decide to establish the user advocate on a statutory footing. This would build on the precedent of multiple other sectoral user advocates outlined in table A. It would follow the standard approach for embedding into the regulatory settlement extensive sectoral expertise that can advocate on behalf of service users as part of the regulatory settlement. The user advocate would have its legal functions, duties and powers established in primary legislation.

In turn, this would provide stability to the regime; formalise the role of the user advocate; and create a clear incentive for regulated companies to engage closely and productively with the user advocate to tackle harm to children. As an example, CCWater has a statutory function is to represent consumers on water matters, as well as extensive information gathering and disclosure powers.

The user advocacy body could be an entirely new body, or an existing organisation could be appointed to discharge its functions. In other sectors, both public bodies and civil society organisations exercise these statutory duties.

The user advocacy body would also be defined as a statutory consultee for both Ofcom and regulated services. This would foster strong working relationships, encourage a deep and productive focus on child protection issues, and enable new harms to be tackled as early as possible.

The user advocacy body would be funded by a levy on the regulated companies, in line with the 'polluter pays' principle and all other examples of user advocacy bodies. A levy model is a wholly proportionate and reasonable set of costs when considered in terms of the commercial return available to platforms that offer their services to children, but routinely fail to protect them from reasonably foreseeable harms.

The average annual expenditure of a user advocacy body is £4.1mn - this is relatively insignificant compared to the societal costs of online child sexual abuse and exploitation which Government estimates at over £2 billion a year.⁴⁷ A user advocate for children will contribute to a better functioning regulatory system, and will further improve the cost benefit analysis of the Online Safety Bill by further reducing the societal costs of online harms.

A single entity, covering all four nations of the UK, is the most appropriate model to represent children.

Access to information

The user advocacy body will require strong information powers if it is to be able to effectively input into the regime and hold companies to account for safety failings. We would expect a user advocate to children to have clear and comprehensive information gathering powers, similar to that provided to Citizens Advice in the Consumer, Estate Agents and Redress Act 2008.⁴⁸

The user advocacy body, as well as other organisations which represent the views of vulnerable users, should have preferential access to platform data, including access to data sets and product risk assessments.

User advocacy and civil society groups should be explicitly included within the functions set out in clause 138, which requires Ofcom to undertake a review of the provision of access to company data for independent researchers. The importance of access to company data has rightly been highlighted by the Facebook whistleblower Frances Haugen, and there is a compelling case for these powers to be strengthened to mirror the arrangements set out in the Digital Services Act.⁴⁹

47 Citizens Advice (2018) [Excessive prices for disengaged consumers](#).

48 [Provision 11](#) of the Consumers, Estate Agents and Redress Act 2007.

49 Frances Haugen (2022), [Civil society must be part of the Digital Services Act](#).

Option two: Co-designation

The Government could consider co-designation powers, through which Ofcom could be afford powers to co-designate third-party organisations to discharge parts of its regime. Ofcom already draws on co-designation arrangements in other sectors, for example the Advertising Standards Authority is designated as a co-regulator for advertising matters in respect of video-on-demand.⁵⁰

Here, duties and powers for the user advocate would be designated in a contract lasting a particular length of time. Ofcom would work with the advocate to agree clear terms of reference, including the user advocate's duties and objectives.

Powers would be co-designated from Ofcom, meaning that the user advocate would have specific powers which Ofcom believe were appropriate. In this case, we would expect Ofcom to designate information gathering and disclosure powers.

Ofcom would need to establish adequate funding for the user advocate to carry out its duties.

Although co-designation works well in other sectors, there are a number of disadvantages in respect of drawing on this approach within the online safety regime. For example, it raises questions about how and whether the user advocacy body could effectively challenge and hold the regulator to account, if it is in turn reliant on it for funding and powers.

ICO and end-to-end encryption

The ICO's recent public comments on end-to-end encryption (E2EE) provide a good example of the potential benefits of user advocacy arrangements for children: a user advocate can help regulators understand safeguarding issues, inform their worldview, and support them to adopt sensible and proportionate safeguarding positions.

Following a Home Office sponsored campaign highlighting the risk that E2EE poses to child protection, the ICO publicly stated that delaying the introduction of E2EE on online services could actively put children at risk.

In reaching this public position, the ICO suggested that there were a range of other methods that companies and law enforcement could use to respond to online sexual abuse, including greater reliance on reports from users themselves.⁵¹

However, online grooming is often discovered, not disclosed.⁵² The National Crime Agency point to the fact that referrals from social media companies on unencrypted products lead to 500 arrests and safeguard 650 children every month.

This raises the question of whether the ICO consulted or sought child protection or safeguarding expertise when identifying potential mitigations, including expert opinion on the efficacy of the mitigations being proposed by social network companies.

Had there been a user advocate in place, with the scale and capacity to proactively build relationships with sectoral regulators, it would have been able to help the ICO understand the implications of its position on end-to-end encryption, and to set out that the proposed reliance on user reports fundamentally misunderstands the dynamics of grooming and child sexual abuse.

The ICO's position was a statement, not a regulatory decision. However, it underlines the importance of regulators being able to access appropriately resourced sectoral and safeguarding expertise when making decisions that relate to children.

A deep understanding of safeguarding issues and experience of viewing problems from a child's perspective is imperative to truly understand whether company approaches are proportionate or efficacious.

Regulatory decision-making will be stronger, and regulators better able to take decisions that are in the best interests of the child, if there are strong user advocacy arrangements which can support and offer critical challenge to the regulator's work.

50 Letter from Ofcom to the Advertising Standards Authority regarding co-regulation.

51 Information Commissioners position on end-to-end encryption, as reported in the [Guardian](#).

52 NSPCC (2019) <https://learning.nspcc.org.uk/news/2019/may/grooming-often-discovered-not-disclosed-how-can-teachers-spot-signs>.

Making financial penalties fund safety outcomes

Schedule 12 sets out that where Ofcom decides to impose financial penalties, these should be returned to HM Treasury's Consolidated Fund.

However, there is a compelling case that rather returning company penalties to the exchequer, the 'polluter pays' principle should apply, with financial penalties being redirected towards harm mitigation, user education and empowerment initiatives, and towards supporting the victims of online abuse with their recovery.

The Bill should be amended to enable financial penalties to be redirected towards funding online safety initiatives and organisations that directly protect and promote the interests of service users.

A number of voluntary arrangements currently exist in other sectors. For example, Ofgem established the Energy Industry Voluntary Redress Scheme, which enables companies subject to enforcement action to make payments to the scheme, in lieu or in addition to a financial penalty that would otherwise be returned to the Exchequer.⁵³ Funds are redirected towards energy efficiency initiatives.

53 [Energy Saving Trust](#) run the energy redress scheme which allows registers charities, community interest groups, co-operative societies and community benefit society to apply for funds to deliver energy related projects that benefit end users.

Appendix

Table B: Regulated sectors of the economy and related user representation tools

Sector	Market size ⁵⁴	User advocate	User advocate total spend
Energy	£27 bn GVA	Citizens Advice	£3,729,100 (2020-21)
Post	£12.1 bn GVA	Citizens Advice	£1,098,600 (2020-21)
Transport	£29.7bn GVA	Transport Focus	£5,700,000 (2019/20)
Water	£13.2 bn GVA	Consumer Council for Water	£5,968,000 (2020/21)
Telecoms	£36.6bn GVA	Communications Consumer Panel ⁵⁵	£0.5mn (2019-20)
Financial services and insurance	£129 bn GVA	Financial Services Consumer Panel ⁵⁶ The FCA also use a consumer network of multiple third parties to input into decision making. This includes Citizens Advice and other organisations.	FSCP: £0.29mn (2020-21)
Meta, Alphabet, Snap Inc and Twitter	£2,261 bn market capitalisation ⁵⁷ However, this figure is global and is not comparable with GVA	No user advocate	No funding

54 All Gross Value Added figures are sourced from the [ONS](#).

55 DCMS are consulting on scrapping the Communications Consumer Panel and replacing it with Citizens Advice, which will be better funded.

56 The FSCS only meet twice a month and do not perform the full range of consumer advocacy duties.

57 Statista (February 2021), [Market capitalization of largest U.S. internet companies as of February 2022](#).

Case studies of successful user advocacy initiatives

Case study A: Citizens Advice – Loyalty penalty super complaint

In 2018, Citizens Advice raised a super complaint with the CMA to stop consumers of essential services being penalised for their loyalty. They called on the CMA to review 5 markets, including telecoms and financial services, to tackle the issues of loyal customers being kept on uncompetitive deals and paying more for a service than a new customer would.

Citizens Advice's own research found that 8 in 10 payers were charged significantly higher prices for remaining with their existing supplier in at least one essential market. They estimated that loyalty customers were overpaying by £4bn.⁵⁸ They also found that vulnerable customers were often on the worst deals.

Following the super complaint, the CMA “found evidence of businesses using practices relating to autorenewals and subscription services to exploit consumers into paying more than they needed to. These harmful business practices included actively making it harder for consumers to exit their contracts or rolling people over without giving them sufficient warning, which make it more difficult for customers to avoid paying a loyalty penalty”.⁵⁹ Regulators in the relevant sections are now taking specific action to tackle the loyalty penalties.

Case study B: CCWater – Freeze Thaw

In 2018, the Beast from the East storm hit England and Wales and the subsequent freezing and thawing of pipes lead to supply interruptions for over 200,000 customers and an uncoordinated response from the water companies. Ofwat launched a review of water companies' responses in parallel to CCWater to understand what happened, how companies performed, and the lessons learned.

Both organisations took separate approaches: Ofwat opted for a call for evidence and CCWater carried out research on customers' views of the incident. Companies' responses to Ofwat's call for evidence tended to show glowing stories of the hard work that the companies had taken to mitigate the impact. However, CCWater's research from consumers sits in stark contrast and highlights poor communication to customers, inadequate provision of alternative water supply and consumers in vulnerable circumstance not receiving the support they required.⁶⁰

CCWater were able to use their alternative source of information to inform Ofwat and challenge the regulated companies narrative. This led to regulatory change which increased the compensation to consumers for outages and influenced companies to collaborate in subsequent weather events.⁶¹

58 Citizens Advice (2021), [Loyalty penalty](#).

59 CMA (2020) [Loyalty penalty update](#). p.4.

60 CCWater (2018), [Customers' experience of water supply interruptions following the freeze-thaw events of March 2018](#).

61 Ofwat (2018), [Out in the Cold](#).

NSPCC

Everyone who comes into contact with children and young people has a responsibility to keep them safe. At the NSPCC, we help individuals and organisations to do this.

We provide a range of online and face-to-face training courses. We keep you up-to-date with the latest child protection policy, practice and research and help you to understand and respond to your safeguarding challenges. And we share our knowledge of what works to help you deliver services for children and families.

It means together we can help children who've been abused to rebuild their lives. Together we can protect children at risk. And, together, we can find the best ways of preventing child abuse from ever happening.

But it's only with your support, working together, that we can be here to make children safer right across the UK.

[nspcc.org.uk](https://www.nspcc.org.uk)