

Your response

Ofcom's Register of Risks

Question 1:

- i) Do you have any comments on Ofcom's assessment of the causes and impacts of online harms?

The RSPCA agrees with OfCom's assessment to include animal cruelty as a risk factor within the U2U profile. However we disagree that only live acts meet the thresholds in the Act of encouraging/assisting or conspiring to commit acts of cruelty and are then defined as priority issues. Live acts of cruelty are, in the RSPCA's experience, extremely rare and the 2024 successful recent Indonesian monkey torture prosecution, which was successfully prosecuted in the UK under the Obscene Publications Act 1958, may have given an unbalanced view of the propensity and availability of these acts on social media outlets.

The RSPCA monitors the use of social media where acts of animal cruelty are posted and we have found that these acts, all recorded and not live do fit in the Online Safety Act threshold of encouraging/assisting/conspiring people to commit animal cruelty acts. These acts differ in terms of which Online Safety Act threshold they meet and which social media avenue is used. The information on the past few years gathered by the RSPCA Intelligence Unit is summarised below:

Use of dogs in hunting: if the animal being hunted is under the control of man, this is an offence under S4 of the Animal Welfare Act 2006. Social Media plays a significant role in advertising and posting these types of activities with Facebook being the top platform followed by TikTok, Instagram and Snapchat. Whatsapp as a secure messaging service has increased significantly since 2021/2022. The purpose of posting these recorded images online for the user is to advertise and showcase the dogs being used and particularly to highlight their strengths and capacity. This is done by posting the dogs, sometimes with the owner but sometimes on their own, with their trophy, the animals that have been hunted and killed. The intention behind this is to increase the dog's value particularly as a stud dog. It also has a secondary goal of improving the image and profile of the dog owner within that particular community (whether that is a closed local hunting community or a wider community such as the traveller community). The RSPCA believes this social media posting falls under the definition of conspiring and encouraging activities contrary to S4 of the Animal Welfare Act 2006 as it would encourage others to copy these illegal acts and encourage others to show what their dogs are capable of doing. Some of these videos are accompanied by traditional music to appeal to the cultures of certain communities such as the travelling community, again encouraging others to repeat these illegal activities. Youtube has been used in hunting cases with 'tutorials' being posted online to encourage and conspire others to repeat these activities.

A 2023 successful prosecution under S4 of the AWA by the RSPCA was undertaken after the defendant posted on Tiktok, posts of them using dogs to hunt and fight badgers and foxes. The dogs were found to have scarring on their faces and forelimbs. We believe these meet the test under the Online Safety Act 2023 of encouraging, assisting or conspiring to commit acts of cruelty. The person was prosecuted under S4 of the Animal Welfare

Act so meets the threshold of the OSA 2023. All the posts were accompanied by music to appeal to the community the posts were directed at influencing.

Ear Cropping (Mutilations): Instagram remains the main Social Media platform linked to Ear Cropping, with Facebook remaining second. TikTok and Snapchat. These images, all recorded, are used to advertise dogs that have been ear cropped, an illegal act under the Animal Welfare Act 2006 to encourage others to ear crop their dogs. The RSPCA has seen an 1243% increase in ear cropping between 2015 and 202, partly linked to images posted on social media particularly Instagram, which advertise their dogs as being high quality. The link to encourage others to do the same illegal mutilation would be met under the Online Safety Act 2023 given the increase in these offences in the past nine years and the preponderance of these images on Instagram. There has been a steady rise through 2022/2023 of mutilated dogs being posted on Instagram, linked to the business element of selling these dogs which are seen as being more valued than a non cropped dog. This is linked to the rise in the popularity of XL Bullies in 2022/3 linked into the fashion/status element of the breed before the Government prohibited the breed in mid 2023.

Dog fighting: there is a reduced level of use of social media to advertise dog fighting (illegal under the Animal Welfare Act 2006) as there is little expectation that organised dog fighters will post about their activities in open forums. Postings tend to be done in closed forums or secure chat groups. Facebook is the main platform, followed by TikTok, Instagram and Snapchat. The use of Whatsapp is commonplace but for the level of criminality involved it is more common for posts to be put on free encrypted applications like Signal or Telegram.

In summary, the RSPCA has successfully prosecuted three cases in the past three years where recorded acts of cruelty were put on social media channels which met the test of animal cruelty S 4 of the Animal Welfare Act 2006. We also believe these meet the test under the Online Safety Act 2023 of encouraging, assisting or conspiring to commit acts of cruelty. One case involved a video posted to a TikTok account showing the use of inappropriate physical punishment of dogs. A warrant was executed by the police and the dogs seized and a successful prosecution occurred.

ii) Do you think we have missed anything important in our analysis? Please provide evidence to support your answer.

We believe non live acts meet the thresholds in the Act of encouraging/assisting or conspiring to commit acts of cruelty and are then defined as priority issues. Live acts of cruelty are, in the RSPCA's experience, extremely rare and the 2024 successful recent Indonesian monkey torture prosecution, which was successfully prosecuted in the UK under the Obscene Publications Act 1958, may have given an unbalanced view of the propensity and availability of these acts on social media outlets.

The RSPCA monitors the use of social media where acts of animal cruelty are posted and we have found that these acts, all recorded and not live do fit in the Online Safety Act threshold of encouraging/assisting/conspiring people to commit animal cruelty acts. These acts differ in terms of which Online Safety Act threshold they meet and which social media avenue is used. The information on the past few years gathered by the RSPCA Intelligence Unit is summarised below:

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In summary, the RSPCA has successfully prosecuted three cases in the past three years where recorded acts of cruelty were put on social media channels which met the test of animal cruelty S 4 of the Animal Welfare Act 2006. We also believe these meet the test under the Online Safety Act 2023 of encouraging, assisting or conspiring to commit acts of cruelty. One case involved a video posted to a TikTok account showing the use of

inappropriate physical punishment of dogs. A warrant was executed by the police and the dogs seized and a successful prosecution occurred.

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

Question 2:

i) Do you have any views about our interpretation of the links between risk factors and different kinds of illegal harm? Please provide evidence to support your answer.

As stated above the RSPCA agrees with OfCom's assessment to include animal cruelty as a risk factor within the U2U profile. However we disagree that only live acts meet the thresholds in the Act of encouraging/assisting or conspiring to commit acts of cruelty. Live acts of cruelty are, in the RSPCA's experience, extremely rare and the recent Indonesian monkey torture case that was successfully prosecuted in the UK under the Obscene Publications Act 1958, may have given an unbalanced view of the propensity of these acts on social media outlets. The RSPCA has successfully prosecuted three cases in the past two years where recorded videos were posted on TikTok. One of these was encouraging and conspiring to get others to break S4 of the Animal Welfare Act 2006. The increase in dog ear cropping between 2015 and 2021 correlates with the increases in posting of ear cropped dogs since 2015 on social media sites, in particular Instagram.

The RSPCA in particular feels that posting on social channels of the use of dogs in hunting wild animals, an offence under S4 of the Animal Welfare Act 2006 if the animal is under the control of man would fall under the risk factor of conspiring and encouraging people who view the posts to undertake similar illegal acts. Facebook is the top platform used followed by TikTok, Instagram and Snapchat. Whatsapp as a secure messaging service has increased significantly since 2021/2022. The purpose of posting these recorded images online for the user is to advertise and showcase the dogs being used and particularly to highlight their strengths and capacity. This is done by posting the dogs, sometimes with the owner but sometimes on their own, with their trophy, the animals that have been hunted and killed. The intention behind this is to increase the dog's value particularly as a stud dog. It also has a secondary goal of improving the image and profile of the dog owner within that particular community (whether that is a closed local hunting community or a wider community such as the traveller community). The RSPCA undertook a successful prosecution under S4 of the AWA in 2003 using the social posts as evidence.

ii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

Service's risk assessment

Question 3:

i) Do you have any comments on our approach to amending the draft Risk Profiles or our proposed risk factors for animal cruelty?

The proposed amendments to the draft risk profiles and the proposed animal cruelty risk factors are well-drafted and reflect the latest evidence about online animal cruelty.

ii) Please provide the underlying arguments and evidence that support your views.

We believe non live acts meet the thresholds in the Act of encouraging/assisting or conspiring to commit acts of cruelty and are then defined as priority issues. Live acts of cruelty are, in the RSPCA's experience, extremely rare and the 2024 successful recent Indonesian monkey torture prosecution, which was successfully prosecuted in the UK under the Obscene Publications Act 1958, may have given an unbalanced view of the propensity and availability of these acts on social media outlets.

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would be met under the Online Safety Act 2023 given the increase in these offences in the past nine years and the preponderance of these images on Instagram. There has been a steady rise through 2022/2023 of mutilated dogs being posted on Instagram, linked to the business element of selling these dogs which are seen as being more valued than a non cropped dog. This is linked to the rise in the popularity of XL Bullies in 2022/3 linked into the fashion/status element of the breed before the Government prohibited the breed in mid 2023.

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In summary, the RSPCA has successfully prosecuted three cases in the past three years where recorded acts of cruelty were put on social media channels which met the test of animal cruelty S 4 of the Animal Welfare Act 2006. We also believe these meet the test under the Online Safety Act 2023 of encouraging, assisting or conspiring to commit acts of cruelty. One case involved a video posted to a TikTok account showing the use of inappropriate physical punishment of dogs. A warrant was executed by the police and the dogs seized and a successful prosecution occurred.

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

Question 4:

i) Are the draft Risk Profiles for illegal content sufficiently clear in presenting the relationships between the risk factors and the risk of harm posed by animal cruelty content?

The RSPCA believes that recorded acts contrary to S4 of the Animal Welfare Act 2006 also meet the thresholds in the Online Safety Act 2023 of encouraging, assisting, conspiring people to commit acts of cruelty. Live acts of cruelty are, in the RSPCA's experience, extremely rare and the recent Indonesian monkey torture case that was successfully prosecuted in the UK under the Obscene Publications Act 1957, may have given an unbalanced view of the propensity of these acts on social media outlets. The RSPCA has prosecuted a number of cases in the last three years where content has been uploaded to social media sites (TikTok being the most common) under S4 of the Animal Welfare Act 2006. The RSPCA does not believe that the Communications Act 2003 (S127) would be a suitable tool to use to prosecute recorded acts but these should come under the Online Safety Act 2023.

The RSPCA has never used the Communications Act 2003 S127 (1) to prosecute any cases contrary to S4 of the Animal Welfare Act for two reasons. Firstly the punishments are greater under the AWA (up to five years in prison and an unlimited fine as opposed to six months under the Communications Act) but even prior to the change in the sentencing under the Animal Welfare (Sentencing) Act 2021, the RSPCA believes the language in the

Communications Act 2003 S127 (1), namely to send content that is “grossly offence, indecent or obscene” is too vague to be used for animal cruelty prosecutions. It is also telling that the CPS and Wildlife Crime Unit used the Obscene Publications Act 1958 to successfully prosecute the two individuals in the UK who were encouraging people to commit acts of animal cruelty in the Indonesian monkey trial, rather than the Communications Act 2003 S127(1), possibly for the same reason. The RSPCA is not aware of any successful prosecution using S127 of the Communications Act where animal cruelty acts were involved. Whilst it may be useful as a fall back position the RSPCA does not believe it would add any value and may even confuse enforcement action if it is placed as an alternative to the Online Safety Act. Indeed by OfCom’s categorising these acts as a non priority we do not believe these acts would be taken into account by online moderators in their decisions whether to keep or delete the content.

ii) Please provide the underlying arguments and evidence that support your views.

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

Question 5:

i) Do the draft Risk Profiles for illegal content include the risk factors that are most strongly linked to the risk of harm posed by animal cruelty content?

The RSPCA agrees to adding animal cruelty as a risk factor to messaging services and social media. The RSPCA would like to see animal cruelty added to the adult services category as a risk factor. The RSPCA has seen animal cruelty being advertised on online adult sites including OnlyFans where the RSPCA has seen acts of bestiality and torture of animals being requested, albeit rarely on closed OnlyFans sites.

The RSPCA has also seen evidence of animal cruelty being used on encrypted sites and messaging.

ii) Please provide the underlying arguments and evidence that support your views.

The RSPCA has seen animal cruelty being advertised on online adult sites including OnlyFans where the RSPCA has seen acts of bestiality and torture of animals being requested, albeit rarely on closed OnlyFans sites.

The RSPCA has also seen evidence of animal cruelty being used on encrypted sites and messaging.

iii) Is this response confidential? (if yes, please specify which part(s) are confidential)

No.

The Illegal Content Judgements Guidance (ICJG)

Question 6:

- i) Do you agree with our proposals? Please provide the underlying arguments and evidence that inform your view.

No

- ii) Please provide the underlying arguments and evidence that support your views.

The RSPCA agrees with OfCom's assessment to include animal cruelty as a risk factor within the U2U profile. However we disagree that only live acts meet the thresholds in the Act of encouraging/assisting or conspiring to commit acts of cruelty and are then defined as priority issues. Live acts of cruelty are, in the RSPCA's experience, extremely rare and the 2024 successful recent Indonesian monkey torture prosecution, which was successfully prosecuted in the UK under the Obscene Publications Act 1958, may have given an unbalanced view of the propensity and availability of these acts on social media outlets.

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media posting falls under the definition of conspiring and encouraging activities contrary to S4 of the Animal Welfare Act 2006 as it would encourage others to copy these illegal acts and encourage others to show what their dogs are capable of doing. Some of these videos are accompanied by traditional music to appeal to the cultures of certain communities such as the travelling community, again encouraging others to repeat these illegal activities. Youtube has been used in hunting cases with 'tutorials' being posted online to encourage and conspire others to repeat these activities.

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No

Question 7:

i)	Do you consider the guidance to be sufficiently accessible, particularly for providers with limited access to legal expertise?
ii)	Please provide the underlying arguments and evidence that support your views.
<p>No - the RSPCA is concerned that the guidance to include S127 of the Communications Act 2003 as a non priority offence and alternative to using the priority offences under the Online Safety Act 2023 may confuse enforcement agencies particularly those with limited access to legal expertise.</p> <p>The RSPCA is not aware of any successful prosecution using S127 of the Communications Act where animal cruelty acts were involved. Whilst it may be useful as a fall back position the RSPCA does not believe it would add any value and may even confuse enforcement action if it is placed as an alternative to the Online Safety Act.</p> <p>The RSPCA believes that recorded acts contrary to S4 of the Animal Welfare Act 2006 meet the thresholds in the Online Safety Act 2023 of encouraging, assisting, conspiring people to commit acts of cruelty. These recorded acts should be prioritised under the Online Safety Act. Indeed the RSPCA has prosecuted a number of cases in the last three years where content has been uploaded to social media sites (TikTok being the most common) under S4 of the Animal Welfare Act 2006. The RSPCA does not believe that the Communications Act 2003 (S127) would be a suitable tool to use to prosecute recorded acts but these should come under the Online Safety Act 2023. The RSPCA believes the language in the Communications Act 2003 S127 (1), namely to send content that is “grossly offence, indecent or obscene” is too vague to be used for animal cruelty prosecutions. It is also telling e</p>	
iii)	Is this response confidential? (if yes, please specify which part(s) are confidential)
No.	

Question 8:

i)	What do you think of our assessment of what information is reasonably available and relevant to illegal content judgements?
<p>The RSPCA agrees that with the risk threshold proposed that services should infer that a user is encouraging or assisting the offence if: i) it appears from the content as if the user is talking about something real, proposing that it is more likely to be real if for instance what is described is physically possible or if practical details are given, and; ii) it is clear and obvious that the user is not fantasising or joking, bearing in mind that some users will pretend something is a fantasy or a joke to disguise illegal content. However we disagree that the service should only infer that a user is encouraging or assisting an offence <i>if they expect this to happen</i>. The RSPCA has successfully prosecuted three cases in the past two years where recorded videos were posted on TikTok ie the offence has <u>already happened</u> but posting it will encourage or assist in an additional offence being caused. The posting on social channels of the use of dogs in hunting wild animals, an offence under S4 of the Animal Welfare Act 2006 if the animal is under the control of man falls under the risk</p>	

factor of conspiring and encouraging people who view the posts to undertake similar illegal acts as the purpose of posting these recorded images online for the user is to advertise and showcase the dogs being used and particular to highlight their strengths and capacity. The intention behind this is to increase the dog's value particularly as a stud dog, improve the image and profile of the dog owner within that particular community and encourage others to commit future offences. The RSPCA undertook a successful prosecution under S4 of the AWA in 2003 using the social posts as evidence.

Regarding conspiracy to commit the offence, the RSPCA agrees with the draft recommendation that *moderators will need to consider that what the content shows is really an agreement to carry out an act which will cause the unnecessary suffering of an animal*. However, as underlined by the RSPCA prosecutions in 2023 and 2024 using social media content, there may not be an explicit agreement in the post to carry out the offence, as recommended by OfCom *if the content clearly shows an agreement to carry out the offence*. The RSPCA believes that if the content clearly shows an implicit rather than an explicit agreement to carry out the offence this should be enough for the moderators to infer it is illegal. Some examples of an implicit agreement could include posting pictures of a dog with the trophy of the hunted animal, an action that could be an offence under S4 of the Animal Welfare Act 2006, using background music to underline the actions that have been committed.

The RSPCA agrees with the proposed recommendations on location (*no account is to be taken of whether or not anything done in relation to the content takes place in any part of the United Kingdom*) and that *a service has reasonable ground to infer that the conduct amounts to the offence when there are reasonable grounds to infer that: a) the animal cruelty offence concerned is taking place in the UK, or b) is to be committed by someone who is British, or c) is taking place in any other country where animal cruelty is an offence*.

The RSPCA also agrees with the recommendations that whilst it is difficult to understand the state of mind of the user, *a service can reasonably infer that the user concerned either knows or reasonably ought to know that the animal is experiencing physical or mental suffering if a) the conduct being encouraged/assisted/conspired to involves causing any physical pain to the animal, including by any kind of mutilation done for aesthetic effect; b) the animal concerned is behaving in a way that that a non-expert would consider clearly indicates distress, defensiveness or aggression such as hissing, growling, baring teeth, lashing out or aggressively biting; or c) the content itself contains a recognition that the conduct will cause suffering to the animal*.

We object to Ofcom's proposed exception in section 9.81:

"...it is likely to be reasonable to infer that content is obscene where it graphically depicts what appears to be the real: deliberate killing or serious injury of humans or animals for no good reason (*except* where such killing or serious injury is otherwise lawful, for example in war or food production);"

There is no justifiable reason why obscene depictions of animal cruelty and suffering in the course of food production should be exempted and legitimised for online consumption. This proposed exception is also subjective with regard to cultural norms of food production. So whilst an act in South Korea showing a dog being beaten to death may be acceptable as it is for legal food consumption this act would clearly not be legal in virtually every other country. Adding this caveat, the RSPCA feels makes it more unclear to an online moderator than clearer as to what is acceptable and falls under the Act. In addition in many cases it will not be clear if the content being posted is for food production unless it is clear such as being taken in an abattoir. For instance a video of a pig being electrocuted in an abattoir would appear to be not subject to the Online Safety Act provisions but a video of a pig being electrocuted in a barn would be subject to moderation as one is legal and the other not. A video depicting fish being eaten at a funfair for Neknomination

dares is contrary to S4 of the Act (the RSPCA has successfully prosecuted several individuals for this after finding the recorded video on Instagram) and so should be taken down as it has been used to encourage others to take the dare, whereas a video of a fish being cooked alive in oil (a legal practice known as Ikizukuri in Japan), would not be moderated. The RSPCA believes this guidance gives an exemption for food production clouds rather than clarifies to a moderator what is acceptable.

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No.
