

## 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?

#### Response:

The Scottish SPCA is the only animal charity in the UK recognised as a reporting agency to the Crown Office Procurator Fiscal Service, our inspectors enforce the Animal Health and Welfare (Scotland) Act 2006. Some of the intelligence received by the Scottish SPCA as part of investigations relate to this consultation as we do receive intelligence in the form of non-live video footage that has been circulated online on platforms such as Tik Tok or the footage has been seized as part of the evidential collection process (such as footage stored on electronic devices (phones, computers)).

Therefore, the Scottish SPCA is supportive of Ofcom's assessment of inclusion of animal cruelty as a risk factor within the U2U profile. However live acts should not be the only threshold that needs reached in order for an offence to be committed. The Scottish SPCA is not aware of acts of animal cruelty being streamed live on recognised platforms within the UK. The only intelligence that we have had in relation to live streaming is footage being streamed on platforms that are not accessible to the general public where these activities are very much conducted 'underground', are part of closed groups and origin of footage is difficult to prove. The Scottish SPCA is aware however of animal cruelty footage being posted on platforms such as Snapchat and Tik Tok after the cruelty event has taken place. Recently this has included footage of dogs attacking a cat and a dog being drugged and then dying as a result (and this recording showing the process of that death) with this footage being circulated online after the incident had taken place.

Another example includes a Scottish SPCA's investigation which led to the successful prosecution of a gamekeeper who used dogs to fight and bait wild animals and subsequently filmed and shared videos of these activities on Tik Tok and Snapchat. The accused was found guilty of causing unnecessary suffering to three dogs under his care and keeping or training dogs for the purposes of animal fights under the Animal Health and Welfare (Scotland) Act 2006. The accused was sentenced in December 2023 and received a five-year ban on owning or keeping animals and 175 hours of community service.

A further example is one of a man who pled guilty to animal fighting and for distributing videos of dogs attacking badgers. In June 2021 he was handed a 270 hours' community payback order and four-year ban keeping dogs, for training his dogs for the purpose of animal fighting under Section 23 (1) (a) of the Animal Health and Welfare (Scotland) Act 2006. He was also convicted of supplying videos of animal fighting contrary to Section 24 (a) of the same Act.

Social media will often play a significant role in advertising activities such as animal fighting and investigations where someone has chosen to use these platforms are often very complex and challenging to prove origin of footage and location of where the activities actually took place. Successful prosecutions of this nature have included the utilisation of forensics such as utilising DNA

specialists who can assist with identifying badger and fox DNA on recovered items and indeed utilising soil analysis to identify location of where activities took place and proving that this location matches the location shown in the footage seized. The Scottish SPCA will also utilise evidence captured through messaging services predominantly WhatsApp but also occasionally Facebook Messenger. These messaging platforms have been used to share footage, encourage engagement with the activities being portrayed in the footage and to share advice in relation to prohibited activities such as ear cropping (mutilation) of dogs (an illegal act under s20 of the Animal Health and Welfare (Scotland) Act 2006 or in England and Wales s5 of the Animal Welfare Act 2006) all within a closed group.

As demonstrated in the examples above, the Scottish SPCA have had successful prosecutions in cases where video footage that has been posted online has been part of the evidence presented. We do also believe that these cases would meet the Online Safety Act 2023 of encouraging, assisting or conspiring to commit acts of cruelty.

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

Response:

The Scottish SPCA believes that live acts should not be the only threshold that needs reached in order for an offence to be committed. As highlighted in response to 1(i) where video footage of animal cruelty has been used as part of an investigation and in some cases leading to a successful prosecution this has related to non-live streamed footage where the date and time the incident took place differs to when that footage was posted on a social media platform.

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

Response:

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.

Response:

As stated in response to question 1 the Scottish SPCA supports Ofcom's assessment of inclusion of animal cruelty as a risk factor within the U2U profile. However live acts should not be the only threshold that needs reached in order for an offence to be committed. As highlighted in response to 1(i) where video footage of animal cruelty has been used as part of an investigation and in some cases leading to a successful prosecution this has related to non-live streamed footage where the date and time the incident took place differs to when that footage was posted on a social media platform. This non-live footage would still be deemed as a method to encourage, assist or conspire to commit acts of animal cruelty and therefore would fall under the Online Safety Act 2023.

The impact of witnessing animal abuse has been at the forefront of academic research in recent years and was also recognised in amendments to the United Nations Convention on the Rights of the Child (UNCRC) in 2023. The UNCRC is the base standard for children's rights and sets out the fundamental rights of all children. The UNCRC is the most widely ratified human rights treaty in the world and sets out the specific rights that all children have, to help fulfil their potential, including rights relating to health and education, leisure and play, fair and equal treatment, protection from exploitation and the right to be heard. The UK ratified the UNCRC in 1991. In August 2023, the UN Committee on the Rights of the Child issued a number of comments relating to the implementation of the Convention, including General Comment 26, paragraph 35 of which states: **'Children must be protected from all forms of physical and psychological violence and from exposure to violence, such as domestic violence or violence inflicted on animals.'** On 7 December 2023, the Scottish Parliament unanimously passed the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill for the second time. The Bill received Royal Assent on 16 January 2024 and is now the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act.

From research the Scottish SPCA has conducted in partnership with the University of Edinburgh it is known that:

- Cruelty attitudes are predicted by some demographic variables such as urban living, being male, younger age and not having pets, but depend on the type of animal cruelty (Hawkins et al., 2019).
- Acceptance of cruelty predicted low compassion and low reported humane behaviour towards animals. Acceptance of cruelty was predicted by negative attitudes towards animals, lower beliefs in animal minds and low attachment to pets (Hawkins et al., 2019).

The Scottish SPCA's Animal Guardians programme was established in 2018 to support young people who are showing behaviours towards animals that are a cause of concern. To date over 500 children and young people have been referred to the programme (with almost 300 actively taking part in the programme) with ages ranging from 3 years old to 16 years old and 50% of those referrals relate to children aged 5 – 10 years old. The University of Edinburgh has been evaluating this programme and have found that of those children and young people who have participated that:

- Some find talking about animal harm difficult
- For some there is evidence of trauma and ACES (normalisation of abuse and violence) in that child's life
- Some have issues with attachment to key people
- Some have higher SDQ scores (social, emotional and behavioural problems)
- Some have lower cognitive empathy and higher callous unemotional traits
- Some have lower executive functioning: Inability to regulate emotions and behaviour
- Content analysis suggested that some of the referred children (a) tended to have small attachment networks which often included pets, (b) tended to interpret ambiguous situations predominately negatively, (c) tended to like animals and see them as sentient, and (d) struggled admitting to cruelty. Three main superordinate themes emerged from this research: (a) *Bonding to animals*, (b) *Exposure to/normalization of violence*, and (c) *Signs of emotional issues/trauma*.

- The exposure to/normalisation of violence related to both in person exposure (i.e. domestic abuse) or viewing footage through online channels.

By taking part in the Animal Guardians programme it has been found that:

- Welfare knowledge, negative behaviour towards animals, and cognitive empathy all improved
- The programme is more effective on cognitive rather than affective measures: attachment to pets, affective empathy
- The programme is equally affective for boys and girls and when it comes to levels of abuse involved

The fact that exposure to/normalisation of violence has been seen as one of the themes that has influenced why some children have been showing the negative behaviours towards animals that they have and the fact that this exposure in some instances has related to viewing online (non-live) content highlights why it is important that not only live acts should meet the threshold in the Act of encouraging/assisting or conspiring to commit acts of cruelty.

Research references:

- Hawkins, R. D., Scottish SPCA & Williams, J. M. (2019). Children’s attitudes towards animal cruelty: Exploration of predictors and socio-demographic variations. *Psychology, Crime & Law*, 26(3), 226–247. <https://doi.org/10.1080/1068316X.2019.1652747>
- Wauthier, L. M., Farnfield, S., Scottish SPCA & Williams, J. M. (2022). A Preliminary Exploration of the Psychological Risk Factors for Childhood Animal Cruelty: The Roles of Attachment, Self-Regulation, and Empathy. *Anthrozoös*, 36(3), 447–469. <https://doi.org/10.1080/08927936.2022.2125197>
- Wauthier, L. M., & Williams, J. M. (2021). Understanding and Conceptualizing Childhood Animal Harm: A Meta-Narrative Systematic Review. *Anthrozoös*, 35(2), 165–202. <https://doi.org/10.1080/08927936.2021.1986262>
- Wauthier, L., Scottish Society for the Prevention of Cruelty to Animals (Scottish SPCA), & Williams, J. M. (2022). A Qualitative Study of Children's Accounts of Cruelty to Animals: Uncovering the Roles of Trauma, Exposure to Violence, and Attachment. *Journal of interpersonal violence*, 37(9-10), NP6405–NP6438. <https://doi.org/10.1177/0886260520928640>
- Wauthier, L., Knoll, M., Scottish SPCA, & Williams, J. M. 2024 (*under review*). Evaluation of the Animal Guardians Programme: An Intervention for Children Who Have Harmed Animals. *Anthrozoös*.

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

Response:

No

## Service's risk assessment

<b>Question 3:</b>	
i)	Do you have any comments on our approach to amending the draft Risk Profiles or our proposed risk factors for animal cruelty?
Response: The Scottish SPCA agrees with the approach to amending the draft Risk Profiles and risk factors for animal cruelty.  The Scottish SPCA is not aware of any cases where s127 of the Communications Act 2003 has been used with regards to animal cruelty and do not believe that it would be a suitable tool to use for prosecution. The Scottish SPCA has never used the Communications Act 2003 s127 as part of any of its cases. All recorded acts of animal cruelty should fall under the Online Safety Act 2023.	
ii)	Please provide the underlying arguments and evidence that support your views.
Response:  As stated in response to 3(i) The Scottish SPCA is not aware of any cases where s127 of the Communications Act 2003 has been used with regards to animal cruelty, it has not been used in any prosecutions led by the Society and we do not believe that it would be a suitable tool to use for prosecution. All recorded acts of animal cruelty should fall under the Online Safety Act 2023 due to the fact that content posted on these platforms would constitute to inchoate offences such as encouraging, assisting or conspiring to commit acts of cruelty.	
iii)	Is this response confidential? (if yes, please specify which part(s) are confidential)
Response: No	

<b>Question 4:</b>	
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?
Response: Similar response to question 3. The Scottish SPCA is not aware of any cases where s127 of the Communications Act 2003 has been used with regards to animal cruelty, it has not been used in any prosecutions led by the Society and we do not believe that it would be a suitable tool to use for prosecution. All recorded acts of animal cruelty should fall under the Online Safety Act 2023 due to the fact that content posted on these platforms would constitute to inchoate offences such as encouraging, assisting or conspiring to commit acts of cruelty.	
ii)	Please provide the underlying arguments and evidence that support your views.
Response: Covered in response 4(i)	

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

Response:

The Scottish SPCA supports Ofcom’s inclusion of animal cruelty as a risk factor to social media services, messaging services, group messaging, services with posting images or videos and commenting on content due to the evidence the Scottish SPCA has seized as part of prosecutions (as per examples highlighted in response 1(i)).

The Scottish SPCA would like to see animal cruelty added to the adult services category as a risk factor as we have been made aware that animal cruelty (such as bestiality and torture of animals) has been advertised on online adults’ sites (mostly closed sites).

The Scottish SPCA would also like to see animal cruelty added to the gaming services category as a risk factor. We are aware that children and young people who have taken part in the Scottish SPCA’s Animal Guardians programme that for some their perceptions of what they believe is acceptable in relation to animal cruelty has been influenced by the online games that they play. We know however that games that promote positive child-animal interactions result in a positive impact on that child’s knowledge about animal welfare needs, knowledge about appropriate and safe behaviour towards pets and beliefs about pet minds. In this research it was also found that children were less accepting of cruelty to pets after playing the game in this study (Hawkins., et al 2020). It has also been stated by (Coghlan & Sparrow 2021) that video game violence against animals has at least some potential, even if only a modest one, to contribute to moral indifference toward animals and to their routine mistreatment. These possible effects have ethical implications for animals, society, players, and video game designers

Hawkins, R. D., Scottish Society for the Prevention of Cruelty to Animals, & Williams, J. M. (2020). The development and pilot evaluation of a ‘serious game’ to promote positive child-animal interactions. *Human-Animal Interaction Bulletin*.

Coghlan, S., Sparrow, L. The “digital animal intuition:” the ethics of violence against animals in video games. *Ethics Inf Technol* **23**, 215–224 (2021). <https://doi.org/10.1007/s10676-020-09557-9>

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

Response:  
As per response 5(i)

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

Response:

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.

Response:

Yes

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

Response:

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

Response:

### Question 7:

- i) Do you consider the guidance to be sufficiently accessible, particularly for providers with limited access to legal expertise?

Response:

No

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

Response:

The Scottish SPCA believes confusion will be caused amongst enforcement agencies if s127 of the Communications Act 2003 is included as a non priority offence and would be concerned that this could be seen as an alternative to utilising the priority offences under the Online Safety Act 2023.

As already stated, the Scottish SPCA is not aware of any cases where s127 of the Communications Act 2023 has been used with regards to animal cruelty, it has not been used in any prosecutions led by the Society and we do not believe that it would be a suitable tool to use for prosecution. In addition to any offences committed under the Animal and Health Welfare (Scotland) Act 2006 all recorded acts of animal cruelty should fall under the Online Safety Act 2023 due to the fact that content posted on these platforms would constitute to inchoate offences such as encouraging, assisting or conspiring to commit acts of cruelty. It is hoped that inclusion in the Online Safety Act (and avoid confusion by utilising s127 of the Communications Act 2003) would also act as a greater deterrent to those looking to share this type of footage.

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

Response:

No

**Question 8:**

- i) What do you think of our assessment of what information is reasonably available and relevant to illegal content judgements?

Response:

As already stated, the Scottish SPCA has had successful prosecutions where the offence has already happened, the footage is not live but by posting that recorded footage on a platform such as Tik Tok or Snapchat demonstrates that offences have taken place and can serve as a method of encouraging others to commit a similar offence. The use of messaging services (again the Scottish SPCA has used this as evidence in previous cases) can certainly reach the threshold of conspiring to commit a priority offence or assisting (someone) to commit a priority offence in addition to any offences committed under the Animal Health and Welfare (Scotland) Act 2006.

The Scottish SPCA agrees that services should infer that a user is encouraging or assisting the offence if it appears from the content as if the user is talking about something real, but not with regards to if they 'expect it to happen'. As already highlighted the footage that has been posted on platforms such as Tik Tok are of events that have already happened, they are not *expected to happen* and by posting such footage the user should be seen as encouraging or assisting others to commit similar offences. By posting this footage the intention is already there to showcase and support the content of that footage.

In relation to the conspiracy to commit an offence the Scottish SPCA believes that if the content clearly shows implicit rather than an explicit agreement to carry out the offence this should be enough for moderators to deem that an offence has been committed.

The Scottish SPCA supports Ofcom's recommendations in relation to location and state of mind.

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

Response:

No