



Never give up on a child. Ever.

ISPCC submission to the Department of Justice and Equality's consultation process on the Review of the Defamation Act 2009

January 2017

1. Summary

The ISPCC appreciates the opportunity to input into the Department of Justice and Equality's consultation process on the review of the Defamation Act 2009. As the national child protection charity, providing support services to children and families all over Ireland, the ISPCC is well placed to comment on the specific issues arising for children in relation to defamation and particularly defamation in the online world.

The ISPCC has based its submission on its experiences of working with children, this work being grounded in the principles of the UN Convention on the Rights of the Child (UNCRC). The particulars of this submission are based on the Department's outlined scope of the review and are confined to commentary on *whether the Act's provisions are adequate and appropriate in the context of defamatory or online communications*. The scope states that the review will take into account any recommendations of the recent Report of the Law Reform Commission on Harmful Communications and Digital Safety, which are relevant to defamation law. It is within this scope that the ISPCC has based its submission.

The ISPCC's Childline service answered almost 440,000 contacts from children and young people across its phone, online and text platforms. In addition, we worked with 376 children on a one to one basis through our childhood support and mentoring services. The ISPCC's recommendations to the Department of Justice and Equality, are in line with several recommendations of the recent report of the Law Reform Commission, and as follows:

- Recommendation One: Implementing Key Education Measures regarding Online Behaviour
- Recommendation Two: Establishing the Office of a Digital Safety Commissioner
- Recommendation Three: Publishing a National Strategy on Children's Cyber Safety

2. Introduction

The ISPCC is pleased to make this submission to the Department of Justice and Equality's consultation process on the review of the Defamation Act 2009. This submission has been addressed within the context of the ISPCC's vision, mission and objective, as defined by its own strategic plan.

Our recommendations are grounded in our experience, the data we gather and the principles of the UN Convention on the Rights of the Child.¹ The ISPCC's Children's Advisory Committee

¹ Full Text on the UNCRC <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

(CAC), via their participation in our internal services review, were in a position to provide us with insight into their thoughts on the issue of defamation in the online world and what they see as key remedies for this act, which we will make reference to throughout this document.

The ISPCC (Irish Society for the Prevention of Cruelty to Children) is the national child protection charity². It provides a range of child-centred services including childhood support services, family support services and mentoring, all of which are focused on building resilience and coping skills. These services support children and young people and their families to develop their own skills and enable them to deal with challenges and situations in their lives, and to promote their well-being.

The ISPCC provides Childline, Ireland's only 24-hour listening service for children and young people. It is free, confidential and non-judgemental, providing support to children across Ireland.

The ISPCC conducted an internal case review of the cyber issues being faced by children and families over an 18-month period in 2015/2016. These reviews have helped to inform this submission.

Our internal review highlighted that many children face defamatory behaviour on a daily basis – exposure to this behaviour can be seen in private chat groups specifically set up with the intent and purpose to subject the victim to a risk of abuse in the form of insulting comments, taunting and offending behaviour. Due to the regularity of this behaviour, in some cases children have normalised this behaviour- thinking that the purpose or function of social media is to taunt and insult others, which may have a profound impact on their development, and on their ability to form relationships.

Quote from a young person: *“It is easy for people to hide behind a screen”*.

Our Vision

An Ireland where all children are safe, heard, and valued

Our Mission

To make the protection of children everyone's priority

Our Work

² Further information about the ISPCC's services and financial statements can be found in the Annual Report 2015 <http://www.ispcc.ie/campaigns-lobbying/publications/-ispcc-annual-report-2015/14783>

We listen, we support, we protect

3. ISPCC Key Areas for Consideration and Recommendations regarding the Review of the Defamation Act 2009

Children's online safety is the child protection issue of our time. Considerable work is required across government, both in law reform measures already underway by the Department of Justice and Equality and in other measures to be taken to ensure a whole of government approach to this issue – a national strategy on children's cyber safety.

One aspect that will require addressing in the strategy is the need to balance the protection of children from harmful behaviour with the need to avoid excessive criminalisation of children.

Children can be both victims of harmful communications and perpetrators also; in acting as perpetrators, they may not always have an understanding of the implications of their behaviour. In particular, the internet provides young people with the opportunity to publish material and commentary easily, to a wide audience. Young people may believe that certain forms of social media are temporary, with little understanding of how these seemingly temporary communications can easily be captured and shared as permanent posts. There is little research on young people's understanding of defamation and how commentary on social media can be defamatory.

Sometimes there can be a detachment from this type of behaviour, therefore a lack of accountability and acknowledgment regarding the potential negative effects on the victim can occur. Our experience demonstrates that children who have an under-developed sense of empathy often feel detached from defamatory comments they have made. Our support workers have noted that many children do not and would not make the same comments in a face to face setting that they make online. Our clients reported to us that while in the majority of cases the perpetrators are known to them, there are times when they are not and these perpetrators can be anonymous.

ISPCC Experience of Behaviour that constitutes Defamation in line with the 2009 Act

(i) Cyber Bullying in Group Chats

Within our Child and Family Support Services team members reported a concern for bullying behaviour that happens within 'Group Chats' that are facilitated by mobile messenger applications such as Viber and WhatsApp.

One example was given of a 14 year old girl who was invited to a group chat thread which was created for the intent of talking about her in a negative manner. She opted to 'leave' the group but was continually re-added by other members. She felt she had no control over her exposure to the taunting and felt it was non-stop.

Through our work with schools on our anti-bullying 'Shield' Programme³ we have learned that young people can deliberately manipulate and edit WhatsApp messages to make it appear that someone said something when they didn't. This content can then be spread and used to humiliate the young person.

For one young person the ISPCC worked with, an offensive message from a 'friend' was seen as the norm, in that it was ok to type vile comments and send them. The young person did ignore it. The support worker explored the idea that the individual would most likely not have said all those things face to face but knew how easy it can be to hide behind a screen.

(ii) Sexting and the Sharing of Perceived Privately Self-Generated Images

The generating and subsequent sharing of 'nude' or personal images by children is becoming more prevalent, and normalised. Children often generate these images and share them with others in the belief that they will be kept private. Unfortunately, as our case review has shown, this is not always the case. The resulting 'body shaming' (publicly making the person, feel embarrassed about their body and about their behaviour portrayed in the images) can be devastating for the child or young person, and in some cases, can lead them to contemplate self-harm or suicide.

A 16 year-old girl was referred to the ISPCC's child and family support service due to concerns regarding the sharing of inappropriate pictures and content with male peers. Within sessions this girl also discussed male students in her school sending her unsolicited inappropriate pictures. This was a common problem in her school. She became the recipient of explicit messages and pictures

³ <http://www.ispcc.ie/shield>

long after she had engaged in sharing explicit pictures of herself. She was concerned about the implications for her reputation which she felt was blighted due to her past decisions.

In his Ninth Report the government's special rapporteur on child protection Geoffrey Shannon reminds us of the relevance for children of the 'right to be forgotten'.⁴ Children need to be educated and empowered of this right: the right to request a search engine 'to delete information when it receives a request from a person affected'.⁵ While this right gives some protection, it does not cover those images shared peer to peer, unfortunately.

Another ISPCC case study highlighted how one client told their support worker of issues relating to a friend who had sent nude pictures which were then posted to her friend's parents' Facebook pages as an act of revenge. Their client had a good relationship with her mum and had open discussions about nude pictures and sexting; it was something she was encountering and which one boy was requesting of her. This happened during the client's intervention with the ISPCC so she was able to be supported to be assertive about it.

We know from our work in schools with regard to the Shield Youth Award that sexting is increasingly prevalent. Schools reported that students were self-generating images of themselves and these images were being shared amongst other students. Some young people are feeling pressure from their friends to send an image and are often criticised for sending the image in the first place.

(iii) Sextortion

Sextortion refers to a broad category of sexual exploitation which is marked by a threat of public humiliation, an abuse of power and for young people it often takes the form of threatening to release sexual images on social media sites and apps as a means of intimidation. They can threaten to publically release private images to intimidate or hurt their peers due to fall outs, relationship break-ups or revenge. In some cases young people are sometimes blackmailed for money or asked to send further intimate pictures, or coerced into sexual acts in attempts to stop a perpetrator from sending their personal images to others.

In a recent case a girl contacted the ISPCC after being threatened online. She informed Childline that conversations and photos had been stolen from her boyfriend's social media account and posted online without her permission. Her original intention – to share personal

⁴ <http://www.dcy.gov.ie/documents/publications/201611189thReportoftheSpecialRapporteuronChildProtection.pdf> pg.4

⁵ http://ec.europa.eu/justice/data-protection/files/factsheets/factsheet_data_protection_en.pdf

information with her boyfriend in a private setting was spoiled. Faced with comments online about her personal life, her looks, her behavior, she was distraught.

The sharing of personal information without someone's permission has become an extremely harmful form of activity, often undertaken as part of a broader tactic by criminals to exploit individuals. The shock of finding out that photos or personal information has been shared leaves the person extremely vulnerable, and often prevents them from making the right decision, i.e. speaking to a trusted adult. Instead they often agree to the demands of the criminal- which can include sending further intimate photos, money or both.

This has a profound effect on children and young people in particular because it is such a breach of trust and privacy. Adults are usually better equipped to deal with the problem, to recognize exploitation and extortion and better able to understand who is at fault. Many young people blame themselves, and fear reporting this behavior in case they are held responsible. It is important to recognize that criminals take advantage of that vulnerability.

ISPCC Key Recommendations

1. Implementing Key Education Measures regarding Online Behaviour

It is evident from the case examples highlighted in this submission that many children and young people can behave differently online than they would do in a similar face to face situation. Young people can experience a lack of empathy when behaviour takes place behind a screen. Young people are not always fully aware of the implications of posting commentary about others. Children need to be educated on online behaviour: they need to be made aware of potential legal and other consequences of this behaviour, including what constitutes defamation.

The ISPCC knows that children are now exploring their sexuality more online. However, the unintended consequences of this are not being explored. Children need to be educated about these unintended consequences in line with proposed changes to the law, including this review of the Defamation Act 2009.

Separately, and within the broader curriculum, from primary level onwards, children must be supported to become more aware of issues that can arise when posting and publishing online as well as the dangers of exposures to harmful communications. Children need to be supported to build their coping skills and emotional resilience, to make the right decisions online. They can be experts in the actual technology but not necessarily capable of using it in the right way. We need to communicate the importance of balancing the right to freedom of expression with the right to

privacy. Information and advice for parents and guardians as well as for teachers and educators must be improved, both by government and by industry providers.

2. Establishing the Office of a Digital Safety Commissioner

Ill-thought out and spontaneous sharing of images, self-generated or otherwise is a growing problem among children and their peers. Children have told us that there is general confusion about where they can go to report these concerning activities. The ISPCC supports the establishment of the Office of a Digital Safety Commissioner with responsibilities as outlined in the Law Reform Commission's Report.⁶ Children have reported to us that effective take down procedures are a key ask for them when it comes to online safety. Adequate resourcing and cross sector support will be fundamental to an effective and functional office of the digital safety commissioner.

3. Publishing a National Strategy on Children's Cyber Safety

There is currently no national strategy on children's cyber safety which is hugely concerning to the ISPCC. This must include proactive modernization of our sex education and technology curricula. We are currently failing to keep children safe if we fail to ensure a mandatory and consistent approach to sex education.

Children's online safety is the child protection issue of our time. New laws will go some way to responding to insidious behavior by criminals who target children. But they must be matched with a national strategy that gives children every opportunity to enjoy the huge educational and social benefits of technology and social media, in a safe and protected environment.

4. Policy Context

*United Nations Convention on the Rights of the Child*⁷

Article 3 – The Best Interests of the Child

All actions concerning the child must be based on his or her best interests.

Article 12 – The Child's Opinion

The child has the right to express an opinion, and to have that opinion taken into account, in any matter or procedure affecting the child, in accordance with his or her age and maturity.

⁶<http://www.lawreform.ie/fileupload/Final%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety%2021%20Sept%20PM.pdf> pgs 157-159

⁷ Full Text on the UNCRC <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

Article 13 – Freedom of Expression

The child has the right to obtain and make known information, and to express his or her own views, unless this would violate the rights of others.

Article 16 – Protection of Privacy

The child has the right to protection from interference with privacy, family, home and correspondence, and from libel or slander.

Article 19 – Protection from Abuse and Neglect

The State has an obligation to protect children from all forms of abuse and neglect, to provide support to those who have been abused and to investigate instances of abuse.

*Better Outcomes Brighter Futures: The National Policy Framework for Children and Young People 2014-2020*⁸

Outcome 2: Achieving full potential in learning and development

Government Commitment 2.7:

Continue to develop, evolve and implement curricula in the education system and to support initiatives in out-of school settings, to teach children knowledge and skills relating to information management, new technologies, coding and digital literacy.

Ninth Report of the Special Rapporteur on Child Protection 2016- Professor Dr Geoffrey Shannon

1.11.1 Developments Concerning Children’s Digital Rights

The relevance for children of the ‘right to be forgotten’ should be acknowledged, children should be educated about the matter, and it should be understood that the age at which an individual posts information online should be considered a very important factor in decisions about whether to remove an individual’s personal information from sites.

Report on Harmful Communications and Digital Safety 2016 – Law Reform Commission⁹

Chapter 3: Digital Safety, Takedown and Civil Law

⁸ http://dcya.gov.ie/documents/cypp_framework/BetterOutcomesBetterFutureReport.pdf

⁹ <http://www.lawreform.ie/fileupload/Final%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety%2021%20Sept%20PM.pdf> pgs 157-159

5. Conclusion

The law cannot necessarily prevent young people from engaging in risky behavior online- it cannot and should not criminalise children; however, it can and should make it as difficult as possible for criminals to target and exploit children. In September 2016, the Law Reform Commission grasped this challenge with the launch of its report Harmful Communications and Digital Safety which set out how the law in Ireland needs to change. The ISPCC has warmly welcomed its recommendations and encourages the department to implement these recommendations, where applicable, to its Review of the Defamation Act 2009.

The recommendations which have been set out in this document, if acted upon, have the potential to create a child-centred approach for all children and young people who, for whatever reason, the Act comes into play, while considering their best interests as individual rights holders.

We are available to discuss this at any point should that prove useful.

For further information, please contact the ISPCC: on fjennings@ispcc.ie