

Question on Notice from Senator Shoebridge on the UK experience of seeking to restrict people online from urging others to kill themselves – Response from the Uniting Church in Australia, Synod of Victoria and Tasmania

The relevant provisions in the UK *Online Safety Act* that have created an offence for a person to encourage or harass another online for the second person to kill themselves or carry out serious self-harm is Section 184:

184 Offence of encouraging or assisting serious self-harm

- (1) A person (D) commits an offence if—
 - (a) D does a relevant act capable of encouraging or assisting the serious self-harm of another person, and
 - (b) D's act was intended to encourage or assist the serious self-harm of another person.
- (2) D "does a relevant act" if D—
 - (a) communicates in person,
 - (b) sends, transmits or publishes a communication by electronic means,
 - (c) shows a person such a communication,
 - (d) publishes material by any means other than electronic means,
 - (e) sends, gives, shows or makes available to a person—
 - (i) material published as mentioned in paragraph (d), or
 - (ii) any form of correspondence, or
 - (f) sends, gives or makes available to a person an item on which data is stored electronically.
- (3) "Serious self-harm" means self-harm amounting to—
 - (a) in England and Wales and Northern Ireland, grievous bodily harm within the meaning of the *Offences Against the Person Act 1861*, and
 - (b) in Scotland, severe injury,and includes successive acts of self-harm which cumulatively reach that threshold.
- (4) The person referred to in subsection (1)(a) and (b) need not be a specific person (or class of persons) known to, or identified by, D.
- (5) D may commit an offence under this section whether or not serious self-harm occurs.
- (6) If a person (D1) arranges for a person (D2) to do an act that is capable of encouraging or assisting the serious self-harm of another person and D2 does that act, D1 is to be treated as also having done it.
- (7) In the application of subsection (1) to an act by D involving an electronic communication or a publication in physical form, it does not matter whether the content of the communication or publication is created by D (so for example, in the online context, the offence under this section may be committed by forwarding another person's direct message or sharing another person's post).
- (8) In the application of subsection (1) to the sending, transmission or publication by electronic means of a communication consisting of or including a hyperlink to other content, the reference in subsection (2)(b) to the communication is to be read as including a reference to content accessed directly via the hyperlink.
- (9) In the application of subsection (1) to an act by D involving an item on which data is stored electronically, the reference in subsection (2)(f) to the item is to be read as including a reference to content accessed by means of the item to which the person in receipt of the item is specifically directed by D.

(10) A provider of an internet service by means of which a communication is sent, transmitted or published is not to be regarded as a person who sends, transmits or publishes it.

(11) Any reference in this section to doing an act that is capable of encouraging the serious self-harm of another person includes a reference to doing so by threatening another person or otherwise putting pressure on another person to seriously self-harm.

“Seriously self-harm” is to be interpreted consistently with subsection (3).

(12) Any reference to an act in this section, except in subsection (3), includes a reference to a course of conduct, and references to doing an act are to be read accordingly.

(13) In subsection (3) “act” includes omission.

(14) A person who commits an offence under this section is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);

(b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);

(c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);

(d) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine (or both).

The drafting of the provision is broad. If there were concerns that the drafting is too broad and may impact on services and people trying to discourage others from serious self-harm, then a narrower drafting could be contemplated or a clause with targeted exemptions inserted.

The desire to protect people from being encouraged to engage in serious self-harm was something that some UK mental health bodies and professionals lobbied for. For example, we note the following open letter from October 2022:¹

Dear Prime Minister,

We are writing to urge you to ensure that the regulation of harmful suicide and self-harm content is retained within the Online Safety Bill.

Our organisations work to improve mental health, prevent self-harm, reduce the number of people who die by suicide, and provide treatment to people who need clinical support.

*While the internet can be an invaluable resource for individuals experiencing feelings of self-harm and suicide, online content can also act to encourage, maintain or exacerbate self-harm and suicidal behaviours. Although suicide and self-harm are complex and rarely caused by one thing, in many cases the internet is involved: **a 2017 inquiry into suicides of young people found suicide-related internet use in nearly 26% of deaths in under-20s, and 13% of deaths in 20-24 year olds.***¹

The Online Safety Bill is a major opportunity to make the UK the safest place to be online, as set out in the Conservative Party’s 2019 manifesto, by reducing access to harmful content relating to suicide and self-harm.

We consider the types of suicide and self-harm content that is legal, but unequivocally harmful, includes (but is not limited to):

¹ <https://www.mentalhealth.org.uk/about-us/news/open-letter-prime-minister-about-online-safety-bill>

- Information, instructions, and advice on methods of self-harm and suicide
- Content that portrays self-harm and suicide as positive or desirable
- Graphic descriptions or depictions of self-harm and suicide.

We have been pleased to see continued commitment from the Government to protecting vulnerable children as it considers modifying the Bill. But susceptibility to harm from suicide and self-harm content does not end when people reach the age of 18. Anyone, including young adults aged 18-24, can be just as vulnerable to harm from this type of content, especially given the way that everyone's mental health can fluctuate. It is therefore vital that the Bill protects people of all ages from legal but extremely harmful suicide and self-harm content on large and small platforms.

We urge you to commit to returning the Bill to Parliament as soon as possible in a form which protects the public from all extremely dangerous suicide and self-harm content. With every day that passes, we lose an opportunity to save lives.

Yours sincerely,

*Mark Rowland, CEO, Mental Health Foundation
Julie Bentley, CEO, Samaritans
Ged Flynn, Chief Executive, PAPYRUS - Prevention of Young Suicide
Simon Blake - Chief Executive, Mental Health First Aid
Sarah Hughes, CEO, Centre for Mental Health
Kadra Abdinisr, Strategic Lead, Children and Young People's Mental Health Coalition
Chris Martin, CEO, The Mix
Sean Duggan, Chief Executive, NHS Confederation Mental Health Network
Emma Thomas, Chief Executive, YoungMinds
Professor David Strain, Board of Science Chair, British Medical Association
Catherine Roche, CEO, Place2Be
Victoria Hornby, Chief Executive, Mental Health Innovations
Matthew Smith, Co-Founder & Chief Operating Officer, If U Care Share Foundation
Brian Dow, Deputy Chief Executive, Rethink Mental Illness*

It was also called for by some relatives of people who had taken their own lives.²

The UK National Society for the Prevention of Cruelty to Children (NSPCC) has raised concern about harmful online content being disguised as content to support children.³

We further note the public letter from Scotland's Mental Wellbeing Minister issued on 31 January 2024:⁴

*To: Scotland's self-harm support community
From: Mental Wellbeing Minister Maree Todd
I am writing to let you know that the offence of encouraging or assisting serious self-harm under section 184 of Online Safety Act 2023 has come into force today. This new offence criminalises the sharing of material intended to encourage and assist the serious self-harm of others and we consider it will act as an effective deterrent to people communicating harmful or malicious messages.*

² <https://www.telegraph.co.uk/politics/2022/10/09/people-who-promote-self-harm-online-should-prosecuted-says-sajid/?msocid=29802fe1fde768c339123b2afc876968>

³ <https://www.nspcc.org.uk/keeping-children-safe/online-safety/inappropriate-explicit-content/promotion-self-harm/>

⁴ <https://www.gov.scot/publications/mental-wellbeing-minister-letter/>

We all know that self-harm is a complex and sensitive issue, and that for many people it is a response to emotional distress and trauma. As such, any criminal law solution must be carefully considered. To support our consideration of this new offence, the Scottish Government has engaged extensively with a range of organisations, and directly with people with their own experience of self-harm, to understand the benefits and potential implications of this offence. I wish to take this opportunity to extend my sincere gratitude to all of you who took the time to share your experiences and views with us.

As part of this engagement we heard the following key themes:

- For many people who self-harm, online spaces can offer a vital lifeline, especially for people who experience stigma and discrimination. Online support helps to reduce feelings of isolation, provides helpful advice and information, and offers access to key national services and peer support.
- People affected by self-harm can be exposed to significant risks when accessing information or support online. This can mean that people who are already vulnerable experience harmful and malicious content, which in turn can lead to serious injury, and in some cases suicide attempts.
- Concerns that this new law could criminalise vulnerable people who simply seek to share their own experiences of self-harm online.

This feedback has been extremely helpful, and the Scottish Government recognises the need to balance creating a safe online environment for people at risk of self-harm, alongside facilitating compassionate and effective support, which includes online support. I would like to reassure you that this new offence only targets the deliberate encouragement or assistance of serious self-harm and those who intend by their act to cause another person to serious self-harm. Also, the scope of the offence is narrowly defined with a high threshold in order to only criminalise acts which could result in serious self-harm (defined in section 184 as “severe injury”).

We are therefore confident that this legal framework both:

- Ensures people who share their experiences of self-harm, or simply discuss the issue (without the intention of encouraging or assisting serious self-harm of others) will not be at risk of committing a criminal offence, and
- Allows the provision of valuable online support and services to continue.

In terms of the offence itself, it may be helpful to highlight that the offence can be committed either online, in correspondence or publications, or through in-person communication. It includes encouraging or assisting harmful behaviours where they meet the threshold of serious self-harm and - depending on the facts and circumstances of the particular case - could include encouraging someone to not eat, not drink or not take required prescription medication. Persons found guilty of this crime can face up to 5 years in prison. The Scottish Government will continue to work with Police Scotland to monitor the use and impact of the self-harm offence as a means to keep people safe from harm.

Finally, I would like to touch on the Government’s overall approach to supporting people affected by self-harm. We consider this new offence aligns and complements our ambitious approach on self-harm, which is laid out in our dedicated [Self-harm Strategy and Action Plan](#), which we published jointly with COSLA on 28 November 2023. The strategy sets out our vision for people who have self-harmed, or are thinking of self-harming, to receive compassionate, recovery-focused support, without fear of stigma or discrimination.

I wholeheartedly believe that this new offence, alongside our new Strategy and Action Plan, offers a real opportunity to demonstrate Scotland's ambition to improve our responses and support for people who self-harm. A critical part of that is ensuring people are protected from harmful communications.

Thank you again for your continued work in supporting people affected by self-harm in Scotland.

*Kind Regards,
Maree Todd MSP*

A more recent letter from some mental health organisations in the UK urged thorough implementation of the *UK Online Safety Act* to prevent the promotion of severe self-harm and people taking their own lives:⁵

Dear Prime Minister,

Public letter: dangerous suicide and hate forums

We write to you as CEOs and senior leaders working across mental health, suicide prevention, the countering of anti-Jewish racism and other forms of hate, and as parents and family members affected by suicide.

We were encouraged to hear you set out last year that a Labour government would reverse the rise in the number of deaths from suicide, highlighting that suicide is the biggest killer of young lives in this country.

Your focus on suicide could not be more timely. As you will be aware, the latest figures from the ONS show 6069 suicides registered in England and Wales in 2023; the highest rate in over 20 years. In Lord Darzi's recent report to the Secretary of State for Health on the state of the NHS, he highlighted that "there has been a worrying increase in suicides of young people" and advised that "suicide rates are now at their highest levels this century, and this is an area where close attention will need to be paid in the years ahead".

Addressing the shockingly high rates cannot be achieved without tackling harmful online suicide material. A 2017 inquiry into suicides of young people found suicide-related internet use in 26% of deaths in under-20s, and 13% of deaths in 20–24-year-olds.¹ Three-quarters of people who took part in Samaritans' research with Swansea University said they had harmed themselves more severely after viewing self-harm content online.²

We hope, therefore, that you agree that online suicide forums represent a clear threat to the government's ambitions and must be addressed immediately.

In this context, we are writing to you to alert you to Ofcom's alarming recommendation that the DSIT Secretary of State should not use the full powers available to him under the Online Safety Act to regulate the most dangerous online forums that promote and glorify suicide. This is contrary to the clear will of Parliament - and indeed Labour's then front bench representatives in both the Houses of Commons and Lords - that this be the case.

⁵ <https://www.mentalhealth.org.uk/about-us/news/our-joint-letter-sir-keir-starmer-about-online-safety-act>

During the passage of the Online Safety Act, there was a significant strength of feeling in Parliament that the harm caused online was not only occurring on large platforms but smaller ones too, and that the Bill needed to reflect this.

The previous government lost a vote in the Lords on an amendment on this topic that had cross-party support - indeed, your colleague Lord Knight of Weymouth called it 'a no-brainer'. As a result of this defeat, the government subsequently brought forward its own amendment to the Bill in the Commons, which Alex Davies-Jones MP, then Labour's shadow digital spokesperson, welcomed as, without it: 'we could have been left in a position where some of the most harmful websites and platforms, including 4chan and BitChute, which regularly host and promote far right, antisemitic content, slipped through the cracks of the legislation. None of us wanted that to happen.' As a result, Schedule 11 of the Act now allows the Secretary of the State to determine which providers should be in Category 1 based on functionality (and other 'characteristics') alone rather than requiring that they also be of a certain size. This would allow a limited number of small but exceptionally dangerous forums to be regulated to the fullest extent possible. These include forums that are permissive of dangerous and hateful content as well as forums that explicitly share detailed or instructional information about methods of suicide or dangerous eating disorder content. One way to do this using Schedule 11 would be to:

- *Set a 'functionality' that would trigger the possibility of category 1 categorisation under Schedule 11 1(1)(b). This might specify having question and answer comment threads that persist and are searchable by others (including non-registered users), a feature of all the sites of concern.*
- *Set a 'characteristic' or 'factor relating to the service' under Schedule 11 1(1)(c). This might be the fact that Ofcom or coroners are able to reasonably link one or more deaths or incidents of serious violent crime to that service.*

Given the cross-party support for such an approach to regulation of these platforms, we were dismayed to see that Ofcom, in its recently published advice to the previous Secretary of State on categorisation, explicitly recommended not using this power to address these extremely dangerous sites.³ We see no justification for this and Ofcom have not provided any. The current Secretary of State is expected to lay secondary legislation according to this advice though, as Baroness Jones recently noted in the Lords, he can divert from it. We would urge that the government takes this course of action. We provide evidence below to support this approach.

In the private appendix attached to this public letter, we have shared examples of the sorts of suicide material found on the specific site we are most concerned about. A BBC report has linked this site to at least 50 UK deaths,⁴ and we understand that the National Crime Agency is investigating 97 deaths in the UK thought to be related to the site.

This would then allow sites like the highly dangerous suicide forum, which, as outlined above, has been linked to a very significant number of UK deaths, many of which are caused by users accessing legal content,⁵ to be regulated at the same level as sites like Facebook and Instagram. Whilst it would not shut them down, it would make them accountable in ways they would currently not be and force them to give users choice about what type of content they saw, adding friction into the process of accessing extremely dangerous material.⁶

There are very similar issues with platforms that host violently antisemitic and Islamophobic content, with one site inspiring the shooting in Buffalo in the US and evidence that another smaller social media service was used to stoke this summer's racist riots. The cost of ignoring small, high harm platforms, in human lives, public

disorder, cost to the taxpayer and more besides is significant, and there is both an ethical and political obligation for the government to act.

We would argue that the events of the summer, in tandem with the ongoing human cost of a growing number of suicides, are sufficient evidence in themselves to justify the Secretary of State deciding to divert from Ofcom's advice and set the categorisation thresholds for the regime in the most robust and expansive way the Act allows.

Ofcom's current recommendations, which involve services having content recommendation systems, and having the functionality for users to forward or re-share content, in addition to having a large size, would do nothing at all to address the services we are concerned about.

We hope that you will be able to take action on addressing this major oversight in the advice that the government has been given by Ofcom.

Yours sincerely,

Imran Ahmed, CEO, Center for Countering Digital Hate

Andy Bell, Chief Executive, Centre for Mental Health

Julie Bentley, CEO, Samaritans

Andy Burrows, CEO, Molly Rose Foundation

Ellen O'Donaghue, CEO, James' Place

Ged Flynn, Chief Executive, PAPYRUS Prevention of Young Suicide

Alice Hendy MBE, CEO, R;pple Suicide Prevention

Dr Sarah Hughes, CEO, Mind

David Parfett, Bereaved parent

Andrew Radford, Chief Executive, Beat

Mark Rowland, CEO, Mental Health Foundation

Adele Zeynep Walton, Bereaved sister

Matthew Smith, Chief Operating Officer, If U Care Share Foundation

Danny Stone, Chief Executive, Antisemitism Policy Trust

Maeve Walsh, Director, Online Safety Act Network

We were unable to locate material online expressly raising concerns about the drafting of Section 184, although the letter from Minister Todd clearly indicates that such concerns must exist.

We could find no examples of any enforcement actions or prosecutions under Section 184 of the UK *Online Safety Act* to date. Also, we did not find any evaluation to assess what impact the Section has had in curbing activities and content that seek to encourage people to engage in severe self-harm or take their own lives or in stifling legitimate support for people contemplating harming themselves.