



House of Commons

Digital, Culture, Media and
Sport Committee

**Influencer Culture:
Lights, camera,
inaction?: Government
Response to the
Committee's Twelfth
Report of Session
2021–22**

**Third Special Report of Session
2022–23**

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The Digital, Culture, Media and Sport Committee

The Digital, Culture, Media and Sport Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Digital, Culture, Media and Sport and its associated public bodies.

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Third Special Report

The Digital, Culture, Media and Sport Committee published its Twelfth Report of Session 2021–22, [Influencer Culture: Lights, camera, inaction?](#) (HC 258), on 9 May 2022. The Government response was received on 22 August 2022 and is appended below.

Appendix: Government Response

Introduction

1. The Government welcomes the publication of this report and is grateful for the Committee's comprehensive inquiry into influencer culture. We recognise the rise of influencer culture and the impact this is having on both traditional and digital media as well as advertising.
2. The Government agrees with the Committee that pursuing a career as an influencer often comes with unrecognised challenges, including with those in the public eye often facing harassment online. We recognise that there has been a worrying rise in the amount of online abuse, harassment and intimidation directed at those in public life, including influencers. The Government is committed to making the UK the safest place in the world to be online and our new online safety laws will require tech companies to improve the safety of their users, and will need to take swift and effective action against threats on their services.
3. The Government is aware of the regulatory gap in regards to protecting child influencers to ensure they have suitable work conditions, and the Department for Education is open to exploring what legislative options may provide children with greater protection.
4. The Government also recognises the risk of children being exploited as both consumers of influencer content and as influencers themselves. Children are often unable to identify undisclosed advertising and find it difficult to separate this from other types of content they view on social media. Through the Government's existing work on the Online Media Strategy we will continue to support online users by providing them with the guidance that they need to identify different types of content online such as advertisements. We will also continue to work with industry partners in order to improve advertising disclosure rates from influencers, thereby improving the transparency of their posts.
5. We strongly support the work of the Incorporated Society of British Advertisers' (ISBA) on creating an influencer code of conduct, which now calls on its associated members to make commitments to diversity and inclusion. The Government agrees with the Committee that developing a code of conduct which promotes best practice for arrangements between influencers, brands and talent agencies would effectively complement ISBA's existing work in this field. We have already held initial discussions with our industry partners on what guidance should be included as part of the proposed code of conduct and look forward to continuing to develop this piece of work with them.

6. The Government welcomes the Committee's recommendations regarding the powers available to the Advertising Standards Authority (ASA). Through its work on the Online Advertising Programme (OAP) the Government is currently considering the ASA's tools and will update on its findings in due course.

7. We believe that the Committee's report sheds light on the influencer ecosystem and so the Government's first focus will be on working through as many of the specific proposed frontline actions as possible. As a result, the Government does not wish to commit to commissioning a review of the influencer marketplace at this time, but we will keep this issue under review.

8. The Government's response to the Committee's observations and recommendations are set out in detail below. The ASA and the Competition and Markets Authority (CMA) have informed the Government that they will be responding to recommendations addressed at them directly.

Harassment of influencers

Recommendations 1 & 2

- **Giving Ofcom oversight over and enforcement powers for new codes of practice is a positive step towards tackling online harassment. However, it is important that new codes of practice do not simply reflect the status quo of platform reporting mechanisms. Ofcom must raise the standards set by platforms or risk missing a key opportunity to tackle online harassment. Specifically, reporting mechanisms must be tailored to the nuances of various types of harm. For example, mechanisms for victims of harassment and stalking, as many influencers are, require a more careful approach as reactionary steps might encourage further harassment.** (Paragraph 21)
- **We recommend that the Government add to clauses 17 and 18 of the Online Safety Bill a requirement that reporting and complaints mechanisms, as outlined in new codes of practice created by Ofcom, must be tailored to the specific nature of various types of harms.** (Paragraph 22)

Government response

9. The Government agrees with the intentions of this recommendation: that the processes for dealing with user complaints may require a different approach from companies depending on the type and nature of harm involved. However the Online Safety framework already achieves this, and the Government does not consider that further additions to clauses 17 and 18 is necessary. Clauses 18(2b) and 28(2b) of the [Online Safety Bill \(OSB\)](#) place a statutory duty on in-scope services to operate a complaints procedure that provides for 'appropriate' action to be taken by the provider in response to the relevant complaint. We would therefore expect services to consider the nuances of different types of harm and the appropriateness of their action in response to the complaints they receive.

10. Ofcom will set out in its codes of practice how companies can fulfil relevant duties under the Bill. This will include the duties regarding content reporting and complaints procedures. The Government considers that specifying how Ofcom should draft its user

reporting and complaints codes of practice in legislation would be too prescriptive to set out on the face of the Bill. The codes of practice and Ofcom's statutory duty to keep the codes of practice under review will ensure the regulatory framework is able to deal with emerging threats.

11. Nevertheless, Ofcom's codes of practice must be compatible with the online safety objectives set out in legislation, and Ofcom will have a statutory duty to consult the Secretary of State, representatives of UK users, relevant experts and other appropriate persons on the development of these codes of practice. Ofcom will also be required to undertake impact assessments for new codes of practice and for revisions to existing codes. Ministers will have the power to issue a direction to modify a draft code of practice for reasons of public policy.

Market review of the influencer ecosystem

Recommendations 3, 6 & 7

- **We recommend that the Government conducts or commissions a market review into the influencer ecosystem, covering the scope of influencing work, the composition of the community, employment challenges and revenue streams. Particular attention should be given to diversity issues and how this affects pay disparities (discussed in chapter 3). For this purpose, we recommend that the Government secure data sharing arrangements with the major social media platforms. (paragraph 31)**
- **Although direct platform compensation is just one revenue stream for influencers, it is important to understand whether these initiatives and schemes are proportionate and fair, given the benefit to platforms from influencer activity. As the influencer ecosystem develops, it will be important to continue questioning the employment relationship between influencers and the platforms on which they operate. (paragraph 56)**
- **As part of the market review recommended in paragraph 31, the Government should investigate pay standards and practice in the influencer marketplace. This should encompass the various revenue streams available to influencers, including deals between influencers and third parties as well as revenue sharing mechanisms from the major social media platforms. (paragraph 59)**

Government response

12. The Government has carefully considered the Committee's recommendation that the Government conducts a market review into the influencer ecosystem and has decided it does not wish to commit to commissioning a review of the influencer marketplace at this time. We believe that the Committee's report already sheds light on the influencer ecosystem and effectively acts as an industry review. In recognition of this, the Government's first focus will be on working through as many of the specific proposed frontline actions as possible. However, we will keep this under review.

13. The Government supports the work of the Incorporated Society of British Advertisers' (ISBA) on creating an influencer code of conduct, which now calls on its associated members to make commitments to diversity and inclusion.

14. Regarding the employment relationship between influencers and platforms, the Government notes that employment status—employee, limb (b) worker (workers who have a casual employment relationship and work under a contract for service) or self-employed—is based on the reality of the relationship between an individual and the person for whom services are provided. Employees are entitled to all rights (subject to qualifying periods) and have responsibilities towards their employer. So-called limb (b) workers are only entitled to core rights such as a minimum wage and paid annual leave, but have increased flexibility over when, how, and where they work. Self-employed individuals generally have no employment rights but have complete flexibility in their work as they are in business for themselves and providing service to a client. Influencers can be classed under any of these depending on their employment relationship.

15. The Government remains committed to monitoring changes and working with stakeholders to ensure that the employment status framework remains fit for purpose for modern working practices. On 26 July 2022 [new employment status guidance](#) was published to provide additional clarity for businesses, individuals and other groups including those who work flexibly, so they have a better understanding of which employment status for employment rights (including pay, leave and working conditions) they fall into.

Advertising Standards Authority (ASA)

Recommendations 4, 8, 10, 11, 12, 15, 16

- **We recommend that the Advertising Standards Authority (ASA) introduce a requirement to the UK Code of Non-broadcast Advertising (CAP Code) for virtual influencers to be watermarked.** (paragraph 32)
- **We recommend that the remit of the CAP code be extended by removing the requirement for editorial 'control' to determine whether content constitutes an advertisement.** (paraph 69)
- **We recommend that the ASA be given statutory powers to enforce the CAP Code. These powers should be considered as part of the Government's upcoming Online Advertising Programme. Appropriate funding arrangements should also be considered to ensure that the ASA is able to act effectively on these enforcement powers.** (paragraph 89)
- **The influencer marketing ecosystem is rapidly changing and presents unique problems in monitoring compliance with UK advertising regulations. We have heard that new sanctions and undertakings are an important and positive step but have not seen evidence to this effect. We therefore recommend that ASA conducts yearly monitoring exercises to better understand how compliance rates change over time and in response to policy and technological developments.** (Paragraph 90)

- **There are risks as well as benefits in the use of machine learning technology. We recommend that the ASA and CMA report yearly to the Government outlining the scope, capabilities, and risk management protocol for their monitoring technology as it develops. (Paragraph 93)**
- **We strongly recommend that the ASA update the CAP Code to include mandatory enhanced disclosure standards for advertisements targeted to children or an audience composed predominantly of children. Any updates should be supported by robust research into children's particular information processing requirements and ensure that children are able to critically evaluate, as well as identify, advertisements. (paragraph 116)**
- **The online advertising environment has changed significantly since 2012 when CAP conducted their review of the use of under-16s as brand ambassadors and in peer-to-peer marketing. During this time, the market for child influencers has expanded and there are considerable safeguarding concerns from industry experts. We, therefore, recommend that CAP conducts another review of the use of under-16s in marketing, ensuring that special focus is given to the use and impact of child influencers. This review should take place before the end of 2022. (paragraph 127)**

Government response

16. As the Committee notes, the Government is currently considering how online advertising is regulated through the [Online Advertising Programme \(OAP\)](#), with a primary focus on improving transparency and accountability across the ecosystem in order to protect consumers and reduce harms found in online advertising. In the OAP consultation, the Government outlined a number of options for the level of regulatory oversight that could be applied across the online advertising supply chain. Those range from a continuation of the self-regulatory framework through to full statutory regulation.

17. The OAP consultation closed on 8 June and we are currently analysing the responses. The Government will bear in mind the Committee's recommendation on providing the ASA with statutory powers as we complete our analysis, as well as, where relevant, the other recommendations directed at the ASA. The Government will set out its response to the consultation in due course.

18. The Government notes the recommendations addressed to the ASA, which the ASA will be responding to directly.

Influencer code of conduct

Recommendation 5

- **We recommend that the Government commission an industry partner to develop a code of conduct for influencer marketing alongside relevant stakeholders. The Government should then promote this code as an example of best practice for deals between influencers and brands or talent agencies. The**

Influencer Marketing Code of Conduct, created by the ISBA, could provide a useful starting point, although it would require amendments to ensure all relevant stakeholders were represented. (paragraph 44)

Government responses

19. The Government welcomes this recommendation and recognises that ensuring influencers have a good understanding of what is required of them is important, in particular, to ensure that those engaging with influencers understand when they are being exposed to marketing and advertising.

20. The Government has already held initial discussions with relevant industry bodies regarding what information could be included in a code of conduct in order to build on existing guidance. We will work alongside those bodies in order to identify what stakeholders are best positioned to provide input into a new code of conduct, or, where appropriate, to adapt and build on existing codes.

21. As the Committee has mentioned, ISBA has already created an Influencer [Code of Conduct](#), which was updated on 4 May 2022. This addresses many of the points raised by Dr Sophie Bishop as the code now has a focus on helping brands deliver better diversity, equity, inclusion, and representation in their influencer activity. The Government also notes that the ASA has [published guidelines](#) expressly aimed at influencers whilst members of the Influencer Marketing Trade Body (IMTB) must adhere to their own [code of conduct](#).

Competition Markets Authority (CMA)

Recommendations 9, 12 and 13

- **We support the request of the Competition and Markets Authority for greater powers to enforce consumer protection law. This includes the ability to make decisions directly without the need to go to court, and the stronger powers to enforce compliance, including turnover-based fines for frustrating enforcement procedures of breaking the law.** (paragraph 85)
- **There are risks as well as benefits in the use of machine learning technology. We recommend that the ASA and CMA report yearly to Government outlining the scope, capabilities, and risk management protocol for their monitoring technology as it develops.** (Paragraph 93)
- **We recommend that the CMA report to our Committee on the progress, costs, and results of their 2020 Facebook Ireland Ltd. undertakings. In doing so they should also provide updates on their progress securing undertakings from other social media platforms.** (paragraph 97)

Government response

22. The Government agrees with the Committee's recommendation that the CMA should receive greater powers in order to enforce consumer protection law. This was outlined in the [Government's Response](#) to the Reforming Competition and Consumer Policy consultation.

23. The draft Digital Markets, Consumer and Competition Bill was announced as part of the Queen's Speech 2022. Proposed measures to be contained within this draft Bill will allow the CMA to take swift and decisive action on behalf of consumers and to boost competition, ensuring we have an economy where firms compete to give consumers the best deals. It will also give the CMA the ability to decide for itself when consumer law has been broken, and to issue monetary penalties for those who break the rules.

24. The Government notes the recommendations addressed at the CMA, which the CMA will be responding to directly.

Media Literacy

Recommendation 14

- Media literacy is an important skill for children as they grow and develop alongside digital technology. However, children, parents and educational institutions have not been adequately supported in developing this skill. We support the Government's intention to address this deficit in their Online Media Literacy Strategy and recommend that it ensures Ofcom also lives up to its responsibilities in delivery on its statutory obligation to deliver this objective. (paragraph 111)

Government response

25. The Government welcomes the Committee's support of [the Online Media Literacy Strategy](#) which was published last year. The Strategy seeks to support the empowerment of users with the key skills and knowledge they need to make safe and informed choices online. This includes supporting users to: understand how the online environment works; identify different types of content online such as advertisements or sponsorships; and to understand that the online environment is not always reflective of reality.

26. In December 2021 Ofcom published its 'Approach to Online Media Literacy' document setting out a refreshed and expanded work programme to fulfil its statutory duty to promote media literacy. We are continuing to work closely with Ofcom to ensure our approaches are complementary and not duplicative. Additionally, the Online Safety Bill will strengthen Ofcom's media literacy functions by including media literacy within the new transparency reporting and information gathering powers; and by specifying media literacy in the risk assessment duties for regulated services, requiring them to consider how the promotion of user media literacy can reduce the risk of harm.

27. The Committee should also be aware that media literacy is taught in a number of compulsory subjects within the national curriculum, such as computing, citizenship and relationships, sex and health education. It is designed to equip pupils with the knowledge, understanding, and skills that enable them to use information and communication technology creatively and purposefully, whilst becoming discerning consumers of information. The computing curriculum also covers the principles of e-safety at all key stages, with progression in the content to reflect the different and escalating risks that young people face.

Child Exploitation

Recommendation 17

- We are deeply concerned that a lack of action in the booming influencer market will lead to even more children in the industry being exploited, with potentially lifelong consequences. We recommend that the Government urgently addresses the gap in UK child labour and performance regulation that is leaving child influencers without protection. We recommend that this be achieved through comprehensive new legislation in order to adequately address the complexities of the influencer industry. This should include provisions on working hours and conditions, mandate the protection of the child's earnings, ensure the child's right to erasure, and bring the child's labour arrangements under the oversight of local authorities (paragraph 141)

Government response

28. The Department for Education is responsible for child performance licensing. Under section 37 of the Children and Young Persons Act 1963, a licence must be obtained before a child can take part in certain types of performance and activities in Great Britain. This includes: any performance for which a charge is made, whether for admission or otherwise; any live broadcast performance, for example a television or radio broadcast, internet streaming; and any performance recorded (by whatever means) with a view to its use in a broadcast or such service or in a film intended for public exhibition.

29. However, this does not extend to user-generated content, for example where young people or a family record themselves and share it on a website or social media. As the Committee notes, in order to address this gap, legislation would be needed.

30. The Government appreciates these concerns and the Department for Education is open to exploring whether there may be a suitable legislative vehicle for delivering on these aims.