

SUBMISSION TO DCMS CALL FOR EVIDENCE ON LOOT BOXES

November 2020

Summary

1. We welcome the Call for Evidence on loot boxes and the Government's commitment to review the Gambling Act to take account of their emergence and the scale of gambling-related harm that they potentially cause. It is regrettable, however, that this call has only been launched now. It is over a year since the DCMS Select Committee's report on Immersive and Addictive Technologies recommended that "gambling-related harms associated with gaming should be recognised under the online harms framework"¹ – a framework which, according to recent Ministerial statements, will be confirmed before the end of the year in the Government's full response to the Online Harms White Paper. This call for evidence will therefore not inform that response, nor will it enable the creation of coherent regulation that reflects the inter-connectedness and multi-platform nature of young people's experience online, where switching between gaming and social media platforms is seamless and where online games increasingly include interactive messaging features that are associated with social media networks.
2. We are not experts in loot boxes. We are, however, members of the Gambling Health Alliance and endorse the submission that they are providing to the Call for Evidence which sets out detailed findings on loot boxes and their impact. We agree that this issue needs to be considered during the review of the Gambling Act but, as the DCMS Select Committee noted, there is a prior question for the Government as to whether it should also – or primarily – be considered as an Online Harm (to take account of the design of gaming products and services, and the online nature of their operation) rather than a gambling harm. In this regard, we would recommend that DCMS consider our proposals for a system of interlocking regulation to underpin the Online Harms regime, which would allow regulators in different sectors (in this example, the Gambling Commission) to co-operate with Ofcom (who we presume will be confirmed as the regulator for Online Harms) when evidence of harm is identified on platforms and services within the scope of the Online Harms regime². There is otherwise a risk that this call for evidence feeds into a review focused on gambling, but fails then to address the other harms that arise from online gaming – or indeed that the gaming industry finds itself regulated by multiple regimes.
3. With the above context in mind, we are pleased to take the opportunity to reiterate some of the arguments we made in our submission to the DCMS Select Committee inquiry last year which set out how a duty of care for social media to reduce harms online, developed by Professor Lorna Woods and William Perrin, might be applied to the regulation of online gaming to reduce harm to users, particularly children and young people. Since our submission last year, where we set out how a "duty of care" would require a "safety by design" approach, we are pleased to note that awareness

¹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmcomeds/1846/184602.htm>

² <https://www.carnegieuktrust.org.uk/blog/online-harms-interlocking-regulation/>

of this latter concept has become more embedded in policy and regulatory thinking, from the Age Appropriate Design Code through to the launch of a dedicated “Safety Tech” network, supported by DCMS itself. We are also pleased to recognise the continued commitment of the Department to the development of a statutory duty of care for online harm reduction and look forward to seeing its final proposals soon.

4. The DCMS Online Harms team is well-versed in our thinking on a systemic duty of care, under which all online services would be required to be able to demonstrate that they have developed their services with user safety in mind, particularly when those services are used by the most vulnerable, including children. Online behaviours, and the potential harms associated with them, are evolving fast. Online gaming is no exception. This presents a challenge to the development of responsive interventions, whether broad or narrow in scope, from regulators and other bodies, while leaving the most vulnerable users of social media and other platforms at ongoing risk of harm.
5. Our approach therefore builds on the well-established “precautionary principle” which has been used by the UK Government since the 1990s to address the threats caused by innovative and novel technologies, when sufficient evidence has not yet been collected to inform standard policymaking considerations.

A statutory duty of care and the precautionary principle

6. We set out in our detailed proposals³ how a statutory duty of care, imposed upon social media companies in respect of their users and enforced by a regulator, would reduce reasonably foreseeable harm caused by those services. We believe the Government, in considering the reform of the Gambling Act to include loot boxes, should draw on the same principles and ensure consistency with the Online Harms regime. Moreover, we do not see the case for exempting gaming platforms which have an online, user-generated element, from the duty of care and we know that many gaming companies are actively considering how to apply such an approach to their design.⁴ The boundary between some of these technologies, gaming platforms in particular, and social media is not clear-cut. Adopting a similar approach would support regulatory coherence across the sector. The focus in a statutory duty of care on specifying the outcome, rather than detailing how it happens, lends such duties to rapidly changing and diverse environments such as digital services. It allows those providing the services to address issues as they arise on that provider’s service and allows flexibility in response to changing circumstances.
7. In our submission to the DCMS Committee, we noted that that “evidence-based policymaking requires that policy decisions should be informed by rigorously established objective evidence. Typically, action on an issue is only taken after consultation and the collection of such scientific or large-scale evidence”. That is indeed the purpose for this subsequent Call for Evidence, which stresses the need for “scientifically rigorous evidence and data-backed information to support submissions where possible, particularly in relation to concerns around potential harm”.

3 <https://www.carnegieuktrust.org.uk/project/harm-reduction-in-social-media/>

4 We have been struck by the fact it is a livestreaming gaming platform – Twitch – which has gone further than many social media platforms in baking in user protection from abuse into its Terms of Service and addressing the multi-platform aspect of such abuse, where victims are targeted with co-ordinated attacks via different services. In Twitch’s case, users or viewers of the service were using Twitter to abuse or co-ordinate abuse of Twitch users. Twitch changed its TOS to allow it to take action against users on Twitch who are reported to be using other services to abuse Twitch users. Twitch also limits its own users in this regard: ‘We prohibit using Twitch to facilitate hateful conduct or harassment, whether the targets are on or off Twitch’ <https://www.twitch.tv/p/legal/community-guidelines/> and <https://www.bbc.com/news/newsbeat-43003470>

8. But, in innovative areas, there is often no long-term scientific research; or such evidence arrives too late to provide an effective measure against harms. Rapidly-propagating services, such as gaming platforms – which often combine live-streaming with user-interaction akin to that on a social media platform – are subject to waves of fashion amongst young people and are a particular challenge for long-term objective evidence. Although the body of academic evidence on harms arising from gaming may not be clear-cut, and public perception is mixed⁵, there is rising awareness of the “toxicity” of abuse on platforms⁶ and the addictive intent of much social media design.⁷
9. This challenge of inconclusive or incomplete evidence is common in all fast-moving technological areas. For example, while there is a growing body of survey material and qualitative research reports examining the impact of social media on the mental health of children and young people along with research into the potentially harmful cognitive effects, these studies often only demonstrate a correlation, eg between excessive screen time and negative mental health outcomes in children and adults, rather than causation. There is a similar challenge with available research into the impacts of addictive gaming and loot boxes and gambling addiction; for example, the European Parliament’s recent investigation into this issue and a study by York University.⁸ This leads to a degree of caution in terms of proposed interventions and calls for more research. However, at the other end of the spectrum, the explosion of social media and gaming use amongst young people has corresponded with evidence over a similar period of an increase in self-harm and suicidal behaviour.
10. In the face of such scientific uncertainty, the precautionary principle provides a framework for risk-based harm prevention. After the many public health and science controversies of the 1990s, the UK government’s Interdepartmental Liaison Group on Risk Assessment (ILGRA)¹ published a fully worked-up version of the precautionary principle for UK decision makers. ‘The precautionary principle should be applied when, on the basis of the best scientific advice available in the time-frame for decision-making: there is good reason to believe that harmful effects may occur to human, animal or plant health, or to the environment; and the level of scientific uncertainty about the consequences or likelihoods is such that risk cannot be assessed with sufficient confidence to inform decision-making.’⁹
11. The ILGRA document advises regulators on how to act when early evidence of harm to the public is apparent, but before unequivocal scientific advice has had time to emerge, with a particular focus on novel harms. The ILGRA’s work is still current and hosted by the Health and Safety Executive (HSE) and we commend it to the Committee for consideration as you undertake this consultation.

Safety by design

12. The duty of care would focus on the systems which such companies would be obliged to put in place as well as their business practices/operational systems, rather than on the content available via the software. This approach parallels the approach in data protection in relation to privacy by design and default, security by design and impact assessments.

5 <http://www.pewinternet.org/2015/12/15/gaming-and-gamers/>

6 <https://www.theguardian.com/games/2018/aug/17/tackling-toxicity-abuse-in-online-video-games-overwatch-rainbow-seige>

7 <https://www.theguardian.com/technology/2018/may/08/social-media-copies-gambling-methods-to-create-psychological-cravings>

8 <https://www.telegraph.co.uk/news/2018/06/12/addictive-video-games-may-change-childrens-brains-way-drugs/>; European Parliament July 2020 report: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU\(2020\)652727_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/652727/IPOL_STU(2020)652727_EN.pdf); York University study: [https://pure.york.ac.uk/portal/en/publications/loot-boxes-are-again-linked-to-problem-gambling\(76a94fb1-b89e-4a6f-935c-869ec0c27faf\).html](https://pure.york.ac.uk/portal/en/publications/loot-boxes-are-again-linked-to-problem-gambling(76a94fb1-b89e-4a6f-935c-869ec0c27faf).html)

9 <https://webarchive.nationalarchives.gov.uk/20190701143144/http://www.hse.gov.uk/aboutus/meetings/committees/ilgra/index.htm>

13. The design of gaming platforms – and the choices that developers and games companies make through the inclusion of loot boxes, in particular in games that are targeted or likely to be used by children under the age of 18 – is key. A statutory duty of care – applied to gaming platforms as well as social media services – would require the developers to think about the likely consequences of their design choices, thus encouraging them to minimise the adverse effects of their technology.
14. When we started out on this work, we focused primarily on the big social media platforms where we assumed that the most harm to users occurred. We have been persuaded that significant risk of harm can arise in smaller services, particularly to vulnerable groups such as children. The same will doubtless be true of emergent technologies – such as AR and VR, games and apps targeted at young people – especially where there is a community or interactive element. To address such harms while maintaining a risk-managed approach, a “safety-by-design” approach should apply to all relevant service providers¹⁰.
15. Apps and games can increase in popularity so fast that designers should be compelled to bake “safety by design” into their software and business practices from the beginning. Some groups are sufficiently vulnerable (e.g. children) that any business aiming a service at them should take an appropriate level of care no matter what its size or newness to market. Or, to put it another way, even the smallest sandwich shop has to comply with basic food hygiene rules from the day it opens for business.
16. We are happy to elaborate further on any of the material above.

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¹⁰ ‘For many businesses, all that’s required is a basic series of practical tasks that protect people from harm and at the same time protect the future success and growth of your business.’ <http://www.hse.gov.uk/simple-health-safety/>