

Written evidence submitted by YoungMinds and The Children's Society (DPB18)

Children and Data Protection

Public Bill Committee of the Data Protection Bill, House of Commons

YoungMinds and The Children's Society are jointly responding to the call for evidence from the Public Bill Committee for the Data Protection Bill, following an inquiry carried out in collaboration with Alex Chalk MP into the impact of cyberbullying on social media on children and young people's mental health. Our evidence will cover the following areas:

- 1) Children's consent in relation to information society services.
- 2) The right to be forgotten.
- 3) Age-appropriate design

About YoungMinds

YoungMinds is the UK's leading charity championing the wellbeing and mental health of children and young people.

We exist so that young people have the strongest possible voice in improving their mental health. We strive to make sure everything, from Government policy to practice in schools and services, is driven by young people's experiences and aspirations.

About The Children's Society

Right now in Britain there are children and young people who feel scared, unloved and unable to cope. The Children's Society works with these young people, step by step, for as long as it takes.

We listen. We support. We act.

There are no simple answers so we work with others to tackle complex problems. Only together can we make a difference to the lives of children now and in the future.

Because no child should feel alone.

1) Children's consent in relation to information society services

1.1) The Children's Society and YoungMinds have surveyed 1,089 young people about their experiences online, both in general and specifically in regard to cyberbullying¹. 61% of the under 18s we surveyed had their first social media account before the age of 13. This is despite all the major platforms (Snapchat, Instagram, Facebook etc.) all having a minimum user age of 13.

1.2) The Data Protection Bill would formalise the age at which children can consent to the processing of their data through 'information society services' at 13. This includes websites and social media platforms. If companies continue to rely on their current practice, whereby they only allow over 13s to have an account but have no age verification processes to check that those consenting are the age they state themselves to be, then there will continue to be widespread breaches of both the companies' own rules and, after this Bill becomes law, the new Data Protection Act. It is unclear from the Bill how breaches will be handled by the Information Commissioner and what penalties will be put in place for those failing to properly verify age.

1.3) The issue of consent extends beyond age however – capacity must be considered. When our staff members begin working with a new young person we have a range of different ways of presenting our own need to gain consent from young people to store their data and work with them. We combine video, audio and written material aimed at different age groups and those with mental ill-health and/or special educational needs. Internet companies currently tend to subsume consent within their Terms and Conditions but there is a need for it to be presented separately and in a manner suitable for children.

The voice of children and young people

1.4) The choice of 13 as the age of consent is based on the lowest possible age that the EU General Data Protection Regulation (GDPR) which requires member states to set the age of consent between 13 and 16. It was probably also selected as it is the age major social media providers already adopt in their usage policies. There was no meaningful consultation with children and young people concerning this age limit whilst the GDPR was being developed by the EU and there is no robust empirical evidence suggesting why it should be a good age to use for consent. Without such it is impossible for Parliamentarians and organisations to have an evidence-based view on this topic.

1.5) Whilst there are arguments for setting the age higher, or indeed lower, we would like to raise one argument that we feel does merit attention in defence of the decision to set the age at 13. In the UK the current age to consent to sex is 16. If consent for social media users was also set at 16 this would, without steps to ensure that age is actually verified robustly, potentially make it more difficult to tackle grooming and sexual exploitation and abuse. This is because those

grooming young people would be able to reasonably assume that the young person they were in contact with could consent to sex. Therefore, we would urge Parliamentarians not to attempt to or seek to set the age at 16 without making significant changes to grooming and sexual offences legislation.

2) The right to be forgotten

2.0) The GDPR introduces a 'right to be forgotten' (or 'right to erasure'), as outlined in this Bill, so that citizens can request for their data to be deleted if they withdraw their consent or other conditions are met.

2.1) Point (65) of the GDP Regulation states that the right to be forgotten "is relevant in particular where the data subject has given his or her consent as a child and is not fully aware of the risks involved by the processing, and later wants to remove such personal data, especially on the internet. The data subject should be able to exercise that right notwithstanding the fact that he or she is no longer a child."

2.2) In our survey, we found that 39% of young people had experienced cyberbullying in their lifetime. Whilst this often takes place for a range of different reasons often it can be linked to embarrassing content that young people themselves have shared, blackmailed into, or put online without their consent. 32% of young people who responded to our survey reported having embarrassing or unwanted photographs, videos, or information posted without their permission.

2.3) In our experience, we often find that children and young people can face a range of negative experiences online, including cyberbullying, abuse and exploitation. For them the right to erasure will be extremely welcome. Young people have also raised their concerns with us that without the right to erasure, errors of judgement, unhappy experiences and attitudes that they expressed online during childhood can have unwelcome consequences for them, such as being considered by prospective employers.

2.4) We would hope that throughout the passage of the Bill, the Government will clarify how they envisage data subjects being able to exercise their right to erasure.

Figure 1.

Children and young people's views on online bullying and its impact (from recent young people's participation work with The Children's Society and YoungMinds).

One young person explained: *"The bullying I experienced on social media had driven me to consider taking my life"*

Another young person described how the ability to 'screengrab' made it really easy for information shared in confidence to be 'leaked', which she described as:

“Using information against an individual for reasons such as making friends exclude an individual. They advised that it’s really easy to get around screengrab alerts which exist on apps such as Snapchat using other applications. Even where screengrab alerts are in place, receiving an alert is very disempowering as there is no way you can make a person delete the content – and even if they do, it will remain in their recently deleted file.”

2.5) We believe that it needs to be made clear to providers of social media and other online services that the right to erasure needs to be clearly communicated to children and to adults to inform them that they can remove content from their childhood that they may have concerns about. Current practices around Terms and Conditions are often confusing and as the Children’s Commissioner’s recent work looking at T&Cs² demonstrates there is a need for companies to communicate with children and young people appropriately. For example, the Commissioner has recently condensed Instagram’s T&Cs from 17 to 2 pages³.

3) Age-appropriate design code (S124)

3.1) YoungMinds and The Children’s Society support the introduction of an age-appropriate design code, which we believe would ensure that children have a higher level of data protection in the digital environment. Importantly, the code recognises that age appropriate design must take into account child development, and therefore evolve as children move dependency to autonomy throughout the course of childhood.

3.2) We believe that the age-appropriate design code takes a pragmatic approach by acknowledging that children - including many under the age of 13 - are using social media and therefore those likely to be used by them should be designed with their needs in mind according to an ICO code of practice.

3.3) Based on our extensive consultation with children and young people, we would expect that such a code of age appropriate design would include provision around:

Figure 2:

Privacy settings	Making sure that these are 'on' as a default including for live streaming and private photo/video sharing apps
Terms and conditions, and community guidelines	These should be available in language and a format not only understandable by children, but should be interactive, engaging and consistently reinforced. Where possible, these should be developed and tested with children and young people.
GPS technologies	These should be 'off' as standard
Reporting and dispute resolution	All platforms should clearly set out how a user can report bullying, abuse or any other harm taking place online. They should be clear about what level of response from the platform the user can expect to receive. Where a user has breached community guidelines following a report from another user, community guidelines should be reinforced.
Communicating users rights	Platforms should – in a way which is understandable to children – actively communicate their right to 'erasure' as set out in the GDPR

Safety by design

3.4) The UK Council for Child Internet Safety (UKCCIS) currently has a briefing for start-up companies advising on good practice in relation to safety features⁴.

3.5) Some social media platforms have introduced child-friendly design, such as Youtube Kids and the recently announced Facebook Kids messenger. This is to be welcomed, and demonstrates that platforms are accepting that children under the age of 13 are engaging with their platforms. Moreover, it demonstrates that they do have the ability to design engaging and exciting applications with children in mind, which contribute to keeping them safe whilst exploring the online world. We hope that platforms who are leading the way in this will work with emerging companies to promote this approach, and that they themselves will ensure that greater protections are in place for older children and teenagers.

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¹ <https://youngminds.org.uk/resources/policy/cyberbullying-inquiry/>

² <https://www.tes.com/teaching-resources/digital-citizenship>

³ https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/06/Growing-Up-Digital-Taskforce-Report-January-2017_0.pdf

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/487973/ukccis_guide-final_3_.pdf