

Duty of Care Owed by Online Service Providers to Children

Definitions

- (1) **“Online Service Provider”** means any individual or company providing any product or service (**“Online Service”**) which allows information, communications or content to be sent, received or seen using the internet in the United Kingdom
- (2) **“Child/Children”** means anyone under the age of 18
- (3) **“Harm”** means a detrimental impact on the physical, mental, psychological, educational or emotional health, development or wellbeing of Children.
- (4) **“Harmful Content”** means anything which causes, or could reasonably cause, Harm. This includes but is not limited to any content, technology or communications (words, pictures, videos or sounds) which are or contain:
 - a. Bullying, harassment and abuse
 - b. Discrimination or hate speech
 - c. Threatening or violent behaviour
 - d. Encouraging or glorifying illegal or harmful activity or behaviour
 - e. Encouraging suicide or self-harm
 - f. Identity theft, impersonation and fraud
 - g. Designed or likely to cause addictions
 - h. Encouraging or glorifying unhealthy body image
 - i. Nudity (Children or adults) or sexual content which is not educational, scientific or artistic)

Preliminary

- (5) Protecting and enhancing the welfare, health, development and education of Children should be a priority for everyone. Online Services provide significant benefit to everyone, but Harmful Content on Online Services can cause Harm to Children.
- (6) A duty of care is necessary to ensure that Children are protected against Harm and Harmful Content, without removing the benefits of Online Services.

The Duty of Care

- (7) Online Service Providers owe a duty to take all reasonable and proportionate care to protect Children from any reasonably foreseeable Harm which the Online Service could cause to Children (**“the Duty”**).
- (8) Online Service Providers owe the Duty to Children using the Online Services.
- (9) Online Service Providers should make, and will be treated as having made, all reasonable assumptions about Children including that Children:
 - a. are likely to use or in some way be exposed to the Online Services
 - b. have a more limited appreciation of risk than adults
 - c. will be less careful than adults, even when they are fully aware of the risks
 - d. may try to avoid any protections or restrictions the Online Service Providers put in place

- (10) Where an Online Service Provider can demonstrate that it has done all it reasonably can to prevent Harm to Children in regard to a particular complaint, the Online Service Provider will not be liable for the acts of third parties.

Factors to Consider in Determining Whether Online Service Providers have Discharged the Duty

- (11) To determine whether an Online Service Provider has discharged the Duty, the Court/Regulator shall consider all of the relevant circumstances of each case.
- (12) These circumstances include, but are not limited to the Online Service Provider's:
- a. technological capabilities available at the time (for example age verification controls, user recognition software, parental authorisation checks) and whether the Online Service Provider used these to protect Children;
 - b. terms and conditions for the Online Services being presented in a way which Children can understand;
 - c. compliance with all applicable laws and regulations;
 - d. policies and procedures in place to protect Children;
 - e. response to complaints, including how quickly they respond.