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.