PARLIAMENTARY DEBATES

HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

ONLINE SAFETY BILL

Fourteenth Sitting

Tuesday 21 June 2022

(Afternoon)

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not later than

Saturday 25 June 2022

The Committee consisted of the following Members:

Chairs: Sir Roger Gale, †Christina Rees

† Ansell, Caroline *(Eastbourne)* (Con)
† Bailey, Shaun *(West Bromwich West)* (Con)
† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Carden, Dan *(Liverpool, Walton)* (Lab)
† Davies-Jones, Alex *(Pontypridd)* (Lab)
† Double, Steve *(St Austell and Newquay)* (Con)
† Fletcher, Nick *(Don Valley)* (Con)
† Holden, Mr Richard *(North West Durham)* (Con)
† Keeley, Barbara *(Worsley and Eccles South)* (Lab)
† Leadbeater, Kim *(Batley and Spen)* (Lab)
† Miller, Dame Maria *(Basingstoke)* (Con)
Mishra, Navendu *(Stockport)* (Lab)
† Moore, Damien *(Southport)* (Con)
Nicolson, John *(Ochil and South Perthshire)* (SNP)
† Philp, Chris *(Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport)*
† Russell, Dean *(Watford)* (Con)
† Stevenson, Jane *(Wolverhampton North East)* (Con)

Katya Cassidy, Kevin Maddison, Seb Newman, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 21 June 2022

(Afternoon)

[Christina Rees *in the Chair*]

Online Safety Bill

Clause 140

Power to make super-complaints

2 pm

Amendment proposed: 67, in clause 140, page 121, line 20, at end insert

", or a particular group that campaigns for the removal of harmful online content towards humans and animals".—(*Alex Davies-Jones.*)

This amendment makes groups campaigning against harmful content eligible to make super-complaints.

The Committee divided: Ayes 5, Noes 9.

Division No. 44]

AYES

Blackman, Kirsty	Keeley, Barbara
Carden, Dan	
Davies-Jones, Alex	Leadbeater, Kim

NOES

Ansell, Caroline	Miller, rh Dame Maria
Bailey, Shaun	Philp, Chris
Double, Steve	Russell, Dean
Fletcher, Nick	Stevenson, Jane
Holden, Mr Richard	

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Amendment 153, in clause 141, page 121, line 32, after "140" insert

", which must include the requirement that OFCOM must respond to such complaints within 90 days"

Clauses 141 and 142 stand part.

Barbara Keeley (Worsley and Eccles South) (Lab): Good afternoon, Ms Rees. The importance of an effective complaints procedure has been argued strongly by many people who have given oral and written evidence to this Committee and indeed by Committee members. It is welcome that clause 140 introduces a super-complaints mechanism to report multiple, widespread concerns about the harm caused by services, but the lack of redress for individuals has been raised repeatedly.

This is a David and Goliath situation, with platforms holding all the power, while individuals are left to navigate the often complex and underfunded internal complaints systems provided by the platforms. This is what the London School of Economics and Political Science has called the

"current imbalance between democratic, 'people' power and the power of platforms."

As we argued on new clause 1, there is a clear need to consider a route for redress at an individual level. The current situation is unsatisfactory for people who feel they have been failed by a service's complaints system and who find themselves with no source of redress.

The current situation is also unsatisfactory for the regulator. Kevin Bakhurst from Ofcom told the right hon. Member for Basingstoke during our evidence sessions:

"Those individual complaints, although we are not going to be very specific in looking at individual pieces of material per se, are very useful to alert us where there are issues around particular types of offence or harm that the platforms are not seen to be dealing with properly."—[*Official Report, Online Safety Public Bill Committee,* 24 May; c.9-10, Q9.]

An external redress process was recommended by the Joint Committee on the draft Bill and has been suggested by multiple stakeholders. Our new clause would make sure that we find the best possible solution to the problem. I hope the Minister reconsiders these points and supports new clause 1 when the time comes to vote on it.

As I have argued previously, organisations will not be able to make full and effective use of the super-complaints system unless the platforms risk assessments are published in full. The Opposition's amendments 11 and 13 sought to address that issue, and I am disappointed that the Government failed to grasp their importance. There is now a real risk that civil society and other groups will not be able to assess and identify the areas where a company may not be meeting its safety duties. How does the Minister expect organisations making super-complaints to identify and argue that a service is causing harm to its users if they have no access to the company's own analysis and mitigation strategy? Not including a duty to publish risk assessments leaves a gaping hole in the Bill and risks undermining the super-complaints mechanism. I hope that the Minister will reconsider his opposition to this important transparency mechanism in future stages of the Bill.

For powers about super-complaints to be meaningful, there must be a strict deadline for Ofcom to respond to them, and we will support the SNP amendment if it is pushed to a vote. The Enterprise Act 2002 gives a 90-day deadline for the Competition and Markets Authority to respond. Stakeholders have suggested a similar deadline to respond for super-complaints as an effective mechanism to ensure action from the regulator. I urge the Minister to consider this addition, either in the Bill with this amendment, or in the secondary legislation that the clause requires.

Clauses 141 and 142 relate to the structures around super-complaints. Clause 141 appears to be more about handing over powers to the Secretary of State than insuring a fair system of redress. The Opposition have said repeatedly how we feel about the powers being handed over to the Secretary of State. Clause 142 includes necessary provisions on the creation and publication of guidance by Ofcom, which we do not oppose. Under clause 141, Ofcom will have to provide evidence of the validity of the super-complaint and the super-complainant within a stipulated timeframe. However, there is little in the Bill about what will happen when a super-complaint is made, and much of the detail on how that process will work has been left to secondary legislation.

Does the Minister not think that it is strange to leave it up to the Secretary of State to determine how Ofcom is to deal with super-complaints? How does he envisage the system working, and what powers does he think Ofcom will need to be able to assert itself in relation to super-complaints? It seems odd to leave the answers to those important questions out of the Bill.

Kirsty Blackman (Aberdeen North) (SNP): I appreciate the support from the Opposition in relation to amendment 153. I want to talk about amendment 153, but also about some of the issues there are with clauses 140 and 141—not so much 142. Clause 140(3) allows the Secretary of State to make regulations in relation to working out who an eligible entity is for making super-complaints. The Minister has helpfully been very clear that the definition is likely to be pretty wide—the definition of groups that are working on behalf of consumers is likely to be wide. The regulations that are made in this section are going to be made under the draft affirmative procedure. Although secondary legislation is not brilliant, the affirmative procedure will allow more scrutiny than negative procedure. I appreciate that the Minister has chosen—or the people drafting the Bill have chosen—that way forward for deciding on the eligible entity.

I am concerned that when it comes to clause 141(1), the regulations setting out how the complaints process will be made, and the regulation level, will be done under the negative procedure rather than under the draft affirmative procedure. I have got the Delegated Powers and Regulatory Reform Committee memorandum, which tells us about each of the delegated powers of the Bill, and the justification for them. I understand that the Department is referring to the Police Super-complaints (Designation and Procedure) Regulations 2018, which were made under the negative procedure. However, I am not convinced that in the Policing and Crime Act 2017 we were left with quite so little information about what would be included in those complaints. I think the justification for the negative procedure is not great, especially given the concerns raised about the over-reach of the Secretary of State's power and the amount of influence they have on Ofcom.

I think clause 142 is fine; it makes sense that Ofcom is able to make guidance. I would have liked to see the regulation part involve more input from parliamentarians. If there is not going to be more input from parliamentarians, there should at least be more in the Bill about how the complaints procedure would work. The reason we have tabled amendment 153 is to ensure that Ofcom provides a response. That response does not have to be a final response saying, "We have investigated everything and these are the findings." I understand that that may take some time. However, Ofcom must provide a response to super-complainants in 90 days. Even if it were to provide that information in the terms laid out in clause 141(2)(d)—whether a complaint is within clause 140, or is admissible under clause 140 or whether an entity is an eligible entity—and we were to commit Ofcom to provide that information within 90 days, that would be better than the current drafting, which is no time limits at all. It is not specified. It does not say that Ofcom has to deal with the complaint within a certain length of time.

A quick response from Ofcom is important for a number of reasons. I expect that those people who are bringing super-complaints are likely to be third sector organisations. Such organisations do not have significant or excessive budgets. They will be making difficult choices about where to spend their money. If they are bringing forward a super-complaint, they will be doing it on the basis that they think it is incredibly important and it is worth spending their finite funding on legal advice in order to bring forward that super-complaint. If there is an unnecessary delay before Ofcom even recognises whether the complaint is eligible, charities may spend money unnecessarily on building up a further case for the next stages of the super-complaint. They should be told very quickly, "No, we are not accepting this" or "Yes, we are accepting this".

Ofcom has the ability to levy fees so that it can provide the service that we expect it to provide as a result of the Bill. It will have a huge amount of extra work compared with its current work. It needs to be able to levy fees in order to fulfil its functions. If there is no timeline and it says, "We want to levy fees because we want to be able to respond on a 90-day basis", it would not be beyond companies to come back and say, "That is unrealistic—you should not be charging us extra fees in order for you to have enough people to respond within a 90-day period to super-complaints."

If Ofcom is to be able to levy fees effectively to provide the level of service that we would all—including, I am sure, the Minister—like to see to super-complainants who are making very important cases on behalf of members of the public and people who are being harmed by content online, and to give Ofcom that backing when it is setting the structures and levying the fees, it would be sensible for the Minister to make some commitments about the timelines for super-complaints.

In earlier clauses of the Bill, primacy is given to complaints to social media platforms, for example—to regulated providers—about freedom of speech. The Bill says that they are to give such complaints precedence. They are to deal with them as important and, where some content has been taken down, quickly. That precedence is written into the Bill. Such urgency is not included in these three clauses on super-complaints in the way I would like to see. The Bill should say that Ofcom has to deal with super-complaints quickly. I do not mean it should do that by doing a bad job. I mean that it should begin to investigate quickly, work out whether it is appropriate to investigate it under the super-complaints procedure, and then begin the investigation.

In some cases, stuff will be really urgent and will need to be dealt with very quickly, especially if, for example, it includes child sexual abuse images. That would need to be dealt with in a matter of hours or days, rather than any longer period.

I would like to see some sort of indication given to Ofcom about the timelines that we are expecting it to work to. Given the amount of work that third sector organisations have put in to support this Bill and try to make it better, this is a fairly easy amendment for the Minister to accede to—an initial response by Ofcom within a 90-day period; we are not saying overnight—so that everyone can be assured that the internet is, as the Minister wishes, a much safer place.

2.15 pm

The Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport (Chris Philp): As we have heard, the super-complaint process is extremely important for enabling eligible entities representing the interests of

[Chris Philp]

users or members of the public to make representations where there are systemic problems that need to be addressed. I think we all agree that is an important approach.

Clauses 140 to 142 set out the power to make super-complaints, the procedure for making them and the guidance that Ofcom will publish in relation to them. The shadow Minister raised a few questions first, some of which we have touched on previously. In relation to transparency, which we have debated before, as I said previously, there are transparency provisions in clause 64 that I think will achieve the objectives that she set out.

The shadow Minister also touched on some of the questions about individual rather than systemic complaints. Again, we debated those right at the beginning, I think, when we discussed the fact that the approach taken in the Bill is to deal with systems and processes, because the scale involved here is so large. If we tried to create an architecture whereby Ofcom, or some other public body, adjudicated individual complaints, as an ombudsman would, it would simply be overwhelmed. A much better approach is to ensure that the systems and processes are fixed, and that is what the Bill does.

The hon. Member for Aberdeen North had some questions too. She touched in passing on the Secretary of State's powers to specify by regulation who counts as an eligible entity—this is under clause 140(3). Of course, the nature of those regulations is circumscribed by the very next subsection, subsection (4), in which one of the criteria is that the entity

"must be a body representing the interests of users of regulated services, or members of the public".

That speaks to the important point about consumers that we touched on this morning. As the hon. Lady said, this will be done by the affirmative procedure, so there is enhanced parliamentary scrutiny. I hope that makes it clear that it would be done in a reasonable way.

Kirsty Blackman: I am sorry to try the Minister's patience. I think that we are in quite a lot of agreement about what an eligible entity looks like. I appreciate that this is being done by the affirmative procedure, but we seem to be in much less agreement about the next clause, which is being done by the negative procedure. I would like him to explain that contrast.

Chris Philp: Let me move on to clause 141 and amendment 153, which the hon. Lady spoke to a moment ago. Let us first talk about the question of time limits. As she said, the regulations that can be made under the clause include regulations on the time for various steps in the process. Rather than setting those out in the Bill, our intention is that when those regulations are moved they will include those time limits, but we want to consult Ofcom and other appropriate bodies to ensure that the deadlines set are realistic and reasonable. I cannot confirm now what those will be, because we have not yet done the consultation, but I will make a couple of points.

First, the steps set out in clause 141(2)(d)(i), (ii) and (iii), at the top of page 122, are essentially procedural steps about whether a particular complaint is in scope, whether it is admissible and whether the entity is eligible. Those should be relatively straightforward to determine. I do not want to pre-empt the consultation and the regulations, but my expectation is that those are done in a relatively short time. The regulations in clause 141(2)

"may…include provisions about the following matters"—

it then lists all the different things—and the total amount of time the complaint must take to resolve in its totality is not one of them. However, because the word "include" is used, it could include a total time limit. If the regulations were to set a total time limit, one would have to be a little careful, because clearly some matters are more complicated than others. The hon. Member for Aberdeen North acknowledged that we would not want to sacrifice quality and thoroughness for speed. If an overall time limit were set, it would have to accommodate cases that were so complicated or difficult, or that required so much additional information, that they could not be done in a period of, say, 90 days. I put on record that that is something that the consultation should carefully consider. We are proceeding in this way—with a consultation followed by regulations—rather than putting a time limit in the Bill because it is important to get this right.

The question was asked: why regulations rather than Ofcom? This is quite an important area, as the hon. Member for Aberdeen North and the shadow Minister—the hon. Member for Worsley and Eccles South—have said. This element of governmental and parliamentary oversight is important, hence our having regulations, rather than letting Ofcom write its own rules at will. We are talking about an important mechanism, and we want to make sure that it is appropriately responsive.

The question was asked: why will the regulations be subject to the negative, rather than the affirmative, procedure? Clearly that is a point of detail, albeit important detail. Our instinct was that the issue was perhaps of slightly less parliamentary interest than the eligible entity list, which will be keenly watched by many external parties. The negative procedure is obviously a little more streamlined. There is no hard-and-fast rule as to why we are using negative rather than affirmative, but that was broadly the thinking. There will be a consultation, in which Ofcom will certainly be consulted. Clause 141(3) makes it clear that others can be consulted too. That consultation will be crucial in ensuring that we get this right and that the process is as quick as it can be—that is important—but also delivers the right result. I gently resist amendment 153 and commend clauses 140 to 142.

Kirsty Blackman: Some Acts that this Parliament has passed have provided for a time limit within which something must be considered, but the time limit can be extended if the organisation concerned says to the Secretary of State, "Look, this is too complicated. We don't believe that we can do this." I think that was the case for the Subsidy Control Act 2022, but I have been on quite a few Bill Committees, so I may be wrong about that. That situation would be the exception, obviously, rather than the rule, and would apply only in the most complicated cases.

Chris Philp: The hon. Lady is suggesting a practical solution: a default limit that can be extended if the case is very complicated. That sort of structure can certainly be consulted on and potentially implemented in regulations. She referred to asking the Secretary of State's permission. Opposition Members have been making points about

the Secretary of State having too much power. Given that we are talking here about the regulator exercising their investigatory power, that kind of extension probably would not be something that we would want the Secretary of State's permission for; we would find some other way of doing it. Perhaps the chief executive of Ofcom would have to sign it off, or some other body that is independent of Government.

Kirsty Blackman: Sorry, I phrased that quite badly. My point was more about having to justify things—having to say, "Look, we are sorry; we haven't managed to do this in the time in which we were expected to. This is our justification"—rather than having to get permission. Apologies for phrasing that wrongly. I am glad that the Minister is considering including that point as something that could be suggested in the consultation.

I appreciate what the Minister says, but I still think we should have a time limit in the Bill, so I am keen to push amendment 153 to a vote.

Question put and agreed to.

Clause 140 accordingly ordered to stand part of the Bill.

Clause 141

PROCEDURE FOR SUPER-COMPLAINTS

Amendment proposed: 153, in clause 141, page 121, line 32, after "140" insert

", which must include the requirement that OFCOM must respond to such complaints within 90 days"—*(Kirsty Blackman.)*

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 45]

AYES

Blackman, Kirsty	Keeley, Barbara
Carden, Dan	
Davies-Jones, Alex	Leadbeater, Kim

NOES

Ansell, Caroline	Miller, rh Dame Maria
Bailey, Shaun	Moore, Damien
Double, Steve	Philp, Chris
Fletcher, Nick	Russell, Dean
Holden, Mr Richard	Stevenson, Jane

Question accordingly negatived.

Clauses 141 and 142 ordered to stand part of the Bill.

Clause 143

STATEMENT OF STRATEGIC PRIORITIES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 144 stand part.

Alex Davies-Jones (Pontypridd) (Lab): As we know, clause 143 introduces a power for the Secretary of State to set out a statement of the Government's strategic priorities in relation to online safety matters. Given that the power is similar to those that already exist in the Communications Act 2003, we do not formally oppose the clause. We welcome the fact that the Secretary of State must follow a consultation and parliamentary procedure before proceeding. It is vital that transparency surrounds any targets or priorities that the Secretary of State may outline. However, we want to put on record our slight concerns around the frequency limitations on amendments that are outlined in subsections (7) and (8). This is a direct interference regime, and we would appreciate the Minister's reassurances on the terms of how it will work in practice.

We also welcome clause 144, which sets out the consultation and parliamentary procedure requirements that must be satisfied before the Secretary of State can designate a statement of strategic priorities under clause 143. We firmly believe that parliamentary oversight must be at the heart of the Bill, and the Minister's Back Benchers agree. We have heard compelling statements from the right hon. Member for Basingstoke and other colleagues about just how important parliamentary oversight of the Bill will be, even when it has received Royal Assent. That is why clause 144 is so important: it ensures that the Secretary of State must consult Ofcom when considering the statement of strategic priorities.

Following that, the draft statement must be laid before Parliament for proper scrutiny. As we have said before, this is central to the Bill's chances of success, but Labour firmly believes that it would be unreasonable for us to expect the Secretary of State to always be an expert across every policy area out there, because it is not possible. That is why parliamentary scrutiny and transparency are so important. It is not about the politics; it is about all of us working together to get this right. Labour will support clause 144 because, fundamentally, it is for the Secretary of State to set out strategic priorities, but we must ensure that Parliament is not blocked from its all-important role in providing scrutiny.

Chris Philp: I thank the shadow Minister for her broad support for these two clauses. Clause 143 provides the power, but not an obligation, for the Secretary of State to set out a strategic statement on her priorities for online safety matters. As the shadow Minister said, it is similar to powers that already exist in other areas. The clause links back to clause 78, whereby Ofcom must have regard to the strategic priorities and set out how it responds to them when they are updated. On clause 144, I am glad that the shadow Minister accepts the consultation has to happen and that the 40-day period for Parliament to consider changes to the draft statement and, if it wishes to, to object to them is also a welcome opportunity for parliamentary scrutiny.

The Government have heard the wider points about parliamentary scrutiny and the functioning of the Joint Committee, which my right hon. Friend the Member for Basingstoke mentioned previously. I have conveyed them to higher authorities than me, so that transmission has occurred. I recognise the valuable work that the Joint Committee of the Commons and Lords did in scrutinising the Bill prior to its introduction, so I am glad that these clauses are broadly welcome.

Question put and agreed to.

Clause 143 accordingly ordered to stand part of the Bill.

Clause 144 ordered to stand part of the Bill.

Clause 145

DIRECTIONS ABOUT ADVISORY COMMITTEES

Question proposed, That the clause stand part of the Bill.

2.30 pm

Alex Davies-Jones: Labour supports the clause, which enables the Secretary of State to give Ofcom a direction to establish an expert committee to advise it on a specific online safety matter. As we have said repeatedly, it is vital that expert stakeholders are included as we begin the challenging process of regulating the internet. With that in mind, we need to ensure that the committee truly is expert and that it remains independent.

The Minister knows that I have concerns about Ofcom's ability to remain truly independent, particularly given the recent decision to appoint a Tory peer to chair the organisation. I do not want to use our time today to make pointed criticisms about that decision—much as I would like to—but it is important that the Minister addresses these concerns. Ofcom must be independent—it really is quite important for the future success of the Bill. The expert committee's chair, and its other members, must be empowered to report freely and without influence. How can the Minister ensure that that will genuinely be the case?

Subsection (4) places a duty on an advisory committee established under such a direction to publish a report within 18 months of its being established. I want to push the Minister on the decision to choose 18 months. I have mentioned my concerns about that timeframe; it seems an awfully long time for the industry, stakeholders, civil society and, indeed, Parliament to wait. I cannot be clearer about how important a role I think that this committee will have, so I would be grateful if the Minister could clarify why he thinks it will take 18 months for such a committee to be established.

That said, we broadly support the principles of what the clause aims to do, so we have not sought to amend it at this stage.

Chris Philp: I thank the shadow Minister for her comments and questions. She raised two substantive points on the clause; I will address those, rather than any wider issues that may be contentious.

The first question was about whether the advisory committee would be independent, and how we can be certain that it will not be unduly interfered in by the Government. The answer lies clearly in subsection (3). Paragraphs (a) and (b) make it very clear that although the Secretary of State may direct Ofcom to establish the committee, the identity of the people on the committee is for Ofcom to determine. Subsection (3)(a) states very clearly that the chairman is "appointed by OFCOM", and subsection (3)(b) states that members of the committee are

"appointed by OFCOM as OFCOM consider appropriate."

It is Ofcom, not the Secretary of State, that appoints the chair and the members. I trust that that deals with the question about the independence of the members.

On the second question, about time, the 18 months is not 18 months for the committee to be established—I am looking at clause 145(4)—but 18 months for the report to be published. Subsection (4) says "within" a period of 18 months, so it does not have to be 18 months for delivery of the report; it could be less, and I am sure that in many cases it will be. I hope that answers the shadow Minister's questions on the clause, and I agree that it should stand part of the Bill.

Question put and agreed to.

Clause 145 accordingly ordered to stand part of the Bill.

Clause 146

DIRECTIONS IN SPECIAL CIRCUMSTANCES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 10—*Special circumstances*—

"(1) This section applies where OFCOM has reasonable grounds for believing that circumstances exist that present a threat—

(a) to the health or safety of the public, or

(b) to national security.

(2) OFCOM may, in exercising their media literacy functions, give priority for a specified period to specified objectives designed to address the threat presented by the circumstances mentioned in subsection (1).

(3) OFCOM may give a public statement notice to—

(a) a specified provider of a regulated service, or

(b) providers of regulated services generally.

(4) A 'public statement notice' is a notice requiring a provider of a regulated service to make a publicly available statement, by a date specified in the notice, about steps the provider is taking in response to the threat presented in the circumstances mentioned in subsection (1).

(5) OFCOM may, by a public statement notice or a subsequent notice, require a provider of a regulated service to provide OFCOM with such information as they may require for the purpose of responding to that threat.

(6) If OFCOM takes any of the steps set out in this Chapter, they must publish their reasons for doing so.

(7) In subsection (2) 'media literacy functions' means OFCOM's functions under section 11 of the Communications Act (duty to promote media literacy), so far as functions under that section relate to regulated services."

This new clause gives Ofcom the power to take particular steps where it considers that there is a threat to the health and safety of the public or to national security, without the need for a direction from the Secretary of State.

Alex Davies-Jones: As we all know, the clause as it stands enables the Secretary of State to give Ofcom directions in circumstances where it considers that there is a threat to the health or safety of the public or to national security. That includes directing Ofcom to prioritise action to respond to a specific threat when exercising its media literacy functions, and to require specified service providers, or providers of regulated services more generally, to publicly report on what steps they are taking to respond to that threat.

However, Labour shares the concerns of the Carnegie UK Trust, among others, that there is no meaningful constraint on the Secretary of State's powers to intervene as outlined in the clause. Currently, the Secretary of State has the power to direct Ofcom where they have "reasonable grounds for believing" that there is a threat

to the public's health or safety or to national security. The UK did not need these powers before—during the cold war, for example—so we have to ask: why now?

Chris Philp: So far as I am aware, the phenomenon of social media companies, to which media literacy relates, did not exist during the cold war.

Alex Davies-Jones: It did not, but there were examples of disinformation, misinformation and the spreading of falsehoods, and none of these powers existed at the time. It seems weird—if I can use that term—that these exist now. Surely, the more appropriate method would be for the Secretary of State to write a letter to Ofcom to which it had to have regard. As it stands, this dangerous clause ensures the Secretary of State has the power to interfere with day-to-day enforcement. Ultimately, it significantly undermines Ofcom's overall independence, which we truly believe should be at the heart of the Bill.

With that in mind, I will now speak to our crucial new clause 10, which instead would give Ofcom the power to take particular steps, where it considers that there is a threat to the health and safety of the public or national security, without the need for direction from the Secretary of State. Currently, there is no parliamentary scrutiny of the powers outlined in clause 146; it says only that the Secretary of State must publish their reasoning unless national security is involved. There is no urgency threshold or requirement in the clause. The Secretary of State is not required to take advice from an expert body, such as Public Health England or the National Crime Agency, in assessing reasonable grounds for action. The power is also not bounded by the Bill's definition of harm.

These instructions do two things. First, they direct Ofcom to use its quite weak media literacy duties to respond to the circumstances. Secondly, a direction turns on a power for Ofcom to ask a platform to produce a public statement about what the platform is doing to counter the circumstances or threats in the direction order—that is similar in some ways to the treatment of harm to adults. This is trying to shame a company into doing something without actually making it do it. The power allows the Secretary of State directly to target a given company. There is potential for the misuse of such an ability.

The explanatory notes say:

"the Secretary of State could issue a direction during a pandemic to require OFCOM to; give priority to ensuring that health misinformation and disinformation is effectively tackled when exercising its media literacy function; and to require service providers to report on the action they are taking to address this issue."

Recent experience of the covid pandemic and the Russian invasion of Ukraine suggests that the Government can easily legislate when required in an emergency and can recall Parliament. The power in the Bill is a strong power, cutting through regulatory independence and targeting individual companies to evoke quite a weak effect. It is not being justified as an emergency power where the need to move swiftly is paramount. Surely, if a heavier-duty action is required in a crisis, the Government can legislate for that and explain to Parliament why the power is required in the context of a crisis.

Kim Leadbeater (Batley and Spen) (Lab): It is really important to make sure that the Bill does not end up being a cover for the Secretary of State of the day to significantly interfere with the online space, both now and in the future. At the moment, I am not satisfied that the Secretary of State's powers littered through the Bill are necessary. I share other hon. Members' concerns about what this could mean for both the user experience and online safety more broadly. I hope my hon. Friend agrees that the Minister needs to provide us—not just us here today, but civil society and others who might be listening—with more reassurance that the Secretary of State's powers really are necessary.

Alex Davies-Jones: I completely agree with my hon. Friend. We talk time and again about this Bill being world leading, but with that comes a responsibility to show global leadership. Other countries around the world will be looking to us, and this Parliament, when they adopt their own, similar legislation, and we need to be mindful of that when looking at what powers we give to a Secretary of State—particularly in overruling any independence of Ofcom or Parliament's sovereignty for that matter.

New clause 10 provides a viable alternative. The Minister knows that this is an area where even his Back Benchers are divided. He must closely consider new clause 10 and recognise that placing power in Ofcom's hands is an important step forward. None of us wants to see a situation where the Secretary of State is able to influence the regulator. We feel that, without this important clause and concession, the Government could be supporting a rather dangerous precedent in terms of independence in regulatory systems more widely.

Kirsty Blackman: I want to talk about a specific example. Perhaps the Minister will be able to explain why the legislation is written this way around when I would have written it the opposite way around, much more in line with proposed new clause 10.

Snapchat brought in the Snap Map feature, which that involved having geolocation on every individual's phone; whenever anyone took a photo to put it on Snapchat, that geolocation was included. The feature was automatically turned on for all Snapchat users when it first came in, I think in 2017. No matter what age they were, when they posted their story on Snapchat, which is available to anyone on their friends list and sometimes wider, anyone could see where they were. If a child had taken a photo at their school and put it on Snapchat, anyone could see what school they went to. It was a major security concern for parents.

That very concerning situation genuinely could have resulted in children and other vulnerable people, who may not have even known that the feature had been turned on by default and would not know how to turn on ghost mode in Snapchat so as not to post their location, being put at risk. The situation could have been helped if media literacy duties had kicked in that meant that the regulator had to say, "This is a thing on Snapchat: geolocation is switched on. Please be aware of this if your children or people you are responsible for are using Snapchat."

Chris Philp: Is the hon. Member aware of a similar situation that arose more recently with Strava? People's running routes were publicly displayed in the same way, which led to incidents of stalking.

Kirsty Blackman: I was aware that Strava did that mapping, which is why my friends list on Strava numbers about two people, but I was not aware that it had been publicly displayed. There are similar issues that routes can be public on things such as Garmin, so it is important to keep a note of that. I did not know that that information was public on Strava. If Ofcom had had the duty to ensure that people were aware of that, it would have been much easier for parents and vulnerable adults to take those decisions or have them taken on their behalf.

My reading of the clause is that if Ofcom comes across a problem, it will have to go and explain to the Secretary of State that it is a problem and get the Secretary of State to instruct it to take action. I do not think that makes sense. We have talked already about the fact that the Secretary of State cannot be an expert in everything. The Secretary of State cannot necessarily know the inner workings of Snapchat, Strava, TikTok and whatever other new platforms emerge. It seems like an unnecessary hurdle to stop Ofcom taking that action on its own, when it is the expert. The Minister is likely to say that the Secretary of State will say, "Yes, this is definitely a problem and I will easily instruct you to do this"—

Chris Philp *rose—*

Kirsty Blackman: The Minister will get the chance to make a proper speech in which he can respond.

It could be that the process is different from the one I see from reading the Bill. The Minister's clarifications will be helpful to allow everyone to understand how the process is supposed to work, what powers Ofcom is supposed to have and whether it will have to wait for an instruction from the Secretary of State, which is what it looks like. That is why proposed new clause 10 is so important, because it would allow action to be taken to alert people to safety concerns. I am focusing mostly on that.

I appreciate that national security is also very important, but I thought I would take the opportunity to highlight specific concerns with individual platforms and to say to the Minister that we need Ofcom to be able to act and to educate the public as well as it possibly can, and to do so without having to wait for an instruction.

2.45 pm

Chris Philp: Let me start by addressing the point that was raised by the hon. Member for Aberdeen North on Ofcom's power to issue media literacy advice of its own volition, which is the subject of new clause 10. Under section 11 of the Communications Act 2003, Ofcom already has the power to issue media literacy guidance on issues such as Snapchat geolocation, the Strava map location functionality that I mentioned, and the other example that came up. Ofcom does not need the Secretary of State's permission to do that, as it already has the power to do so. The power that new clause 10 would confer on Ofcom already exists.

Alex Davies-Jones: The Minister says that Ofcom can already use that existing power, so why does it not do so?

Chris Philp: That is obviously an operational matter for Ofcom. We would encourage it to do as much as possible. We encouraged it through our media literacy strategy, and it published an updated policy on media literacy in December last year. If Members feel that there are areas of media literacy in which Ofcom could do more, they will have a good opportunity to raise those questions when senior Ofcom officials next appear before the Digital, Culture, Media and Sport Committee or any other parliamentary Committee.

The key point is that the measures in new clause 10 are already in legislation, so the new clause is not necessary. The Secretary of State's powers under clause 146 do not introduce a requirement for permission—they are two separate things. In addition to Ofcom's existing powers to act of its own volition, the clause gives the Secretary of State powers to issue directions in certain very limited circumstances. A direction may be issued where there is a present threat—I stress the word "threat"—to the health or safety of the public or to national security, and only in relation to media literacy. We are talking about extremely narrowly defined powers.

Kirsty Blackman: The Minister said "a present threat", but the clause says "present a threat". The two mean different things. To clarify, could he confirm that he means "present a threat"?

Chris Philp: The hon. Lady is quite right to correct me. I do mean "present a threat", as it is written in the Bill—I apologise for inadvertently transposing the words.

Is it reasonable that the Secretary of State has those very limited and specific powers? Why should they exist at all? Does this represent an unwarranted infringement of Ofcom's freedom? I suppose those are the questions that the Opposition and others might ask. The Government say that, yes, it is reasonable and important, because in those particular areas—health and safety, and national security—there is information to which only the Government have access. In relation to national security, for example, information gathered by the UK intelligence community—GCHQ, the Secret Intelligence Service and MI5—is made available to the Government but not more widely. It is certainly not information that Ofcom would have access to. That is why the Secretary of State has the power to direct in those very limited circumstances.

I hope that, following that explanation, the Committee will see that new clause 10 is not necessary because it replicates an existing power, and that clause 146 is a reasonable provision.

Alex Davies-Jones: I welcome the Minister's comments, but I am not convinced by his arguments on the powers given to the Secretary of State on issues of national security or public health and safety. Parliament can be recalled and consulted, and Members of Parliament can have their say in the Chamber on such issues. It should not be up to the Secretary of State alone to direct Ofcom and challenge its independence.

Chris Philp: I understand the shadow Minister's point, but recalling Parliament during a recess is extremely unusual. I am trying to remember how many times it has happened in the seven years that I have been here, and I can immediately recall only one occasion. Does she think that it would be reasonable and proportionate to recall 650 MPs in recess for the purpose of issuing a media literacy directive to Ofcom?

Alex Davies-Jones: I think the Minister has just made my point for me. If he does not see this happening only in extreme circumstances where a threat is presented or there is an immediate risk to public health and safety, how many times does he envisage the power being used? How many times will the Secretary of State have the power to overrule Ofcom if the power is not to be used only in those unique situations where it would be deemed appropriate for Parliament to be recalled?

Chris Philp: It is not overruling Ofcom; it is offering a direction to Ofcom.

Alex Davies-Jones: Yes—having direct influence on a regulator, overruling its independence and taking the stance directly themselves. The Minister has made my point for me: if he does not envisage the power being used only in unique circumstances where Parliament would need to be recalled to have a say, it will be used a lot more often than he suggests.

With that in mind, the Opposition will withhold our support for clause 146, in order to progress with new clause 10. I place on record the Labour party's distinct concerns with the clause, which we will seek to amend on Report.

Dan Carden (Liverpool, Walton) (Lab): I add my voice to the concerns that have been raised about the clause, and about the powers for the Secretary of State that are littered throughout the Bill. This comes on top of the scandals around the public appointments process that we have seen under this Government—even around the role of chair of Ofcom, which they tried to hand to a former editor of the *Daily Mail,* Paul Dacre. Earlier this year, Lord Grade was appointed for a four-year term. He is on £140,000-odd a year. The Secretary of State is responsible for appointing the whole board of Ofcom. I really do wonder why, on top of the power that the Government hold in the appointments process, they need the Secretary of State to have the claims to intervention that the Bill affords her.

The Chair: Minister, do you wish to respond?

Chris Philp: I have nothing further to add.

Question put and agreed to.

Clause 146 accordingly ordered to stand part of the Bill.

Clause 147

SECRETARY OF STATE'S GUIDANCE

Question proposed, That the clause stand part of the Bill.

Alex Davies-Jones: It seems that our support for the clauses has run out. Clause 147 enables the Secretary of State to give guidance to Ofcom relating to its exercise of its statutory powers and functions under the Bill. It also allows the Secretary of State to give guidance to Ofcom around its functions and general powers under certain provisions of the Communications Act 2003. While we appreciate that the Secretary of State must consult Ofcom before issuing, revising or replacing guidance, we feel that this level of interference is unnecessary.

The Minister must recognise that the clause allows for an incredibly granular level of interference by the Secretary of State in the day-to-day functioning of a supposedly independent regulator. It profoundly interferes with enforcement and once again broadly undermines Ofcom's independence. Civil society and stakeholders alike share our concerns. I must press the Minister on why this level of interference is included in the Bill—what is the precedent? We have genuine concerns that the fundamental aims of the Bill—to keep us all safe online—could easily be shifted according to the priorities of the Secretary of State of the day. We also need to ensure there is consistency in our overall approach to the Bill. Labour feels that this level of interference will cause the Bill to lack focus.

Ultimately, Ofcom, as the independent regulator, should be trusted to do what is right. The Minister must recognise how unpopular the Bill's current approach of giving overarching powers to the Secretary of State is. I hope he will go some way to addressing our concerns, which, as I have already said, we are not alone in approaching him with. For those reasons, we cannot support clause 147 as it stands.

Chris Philp: We are introducing a new, groundbreaking regime, and we are trying to strike a balance between the need for regulatory independence of Ofcom and appropriate roles for Parliament and Government. There is a balance to strike there, particularly in an area such as this, which has not been regulated previously. It is a brand-new area, so we do not have decades of cumulated custom and practice that has built up. We are creating this from the ground up—from a blank sheet of paper.

That is why, in establishing this regime, we want to provide a facility for high-level strategic guidance to be given to Ofcom. Of course, that does not infringe on Ofcom's day-to-day operations; it will continue to do those things itself, in taking decisions on individual enforcement matters and on the details around codes of practice. All those things, of course, remain for Ofcom.

We are very clear that guidance issued under clause 147 is strategic in nature and will not stray into the operational or organisational matters that should properly fall into the exclusive ambit of the independent regulator. There are a number of safeguards in the clause to ensure that the power is exercised in the way that I have just described and does not go too far.

First, I point to the fact that clause 147(8) simply says that

" OFCOM must have regard to the guidance".

That is obviously different from a hard-edged statutory obligation for it to follow the guidance in full. Of course, it does mean that Ofcom cannot ignore it completely—I should be clear about that—but it is different from a hard-edged statutory obligation.

There is also the requirement for Ofcom to be consulted, so that its opinions can be known. Of course, being consulted does not mean that the opinions will be followed, but it means that they will be sought and listened to. There are also some constraints on how frequently this strategic guidance can be revised, to ensure that it does not create regulatory uncertainty by being chopped and changed on an unduly frequent basis, which would cause confusion.

Kirsty Blackman: I have a question about subsection (4)(b), which says that the guidance can be replaced more frequently than once every three years. I understand subsection (4)(a)—that is fine—but subsection (4)(b) says that the guidance can be changed if

"the revision or replacement is by agreement between the Secretary of State and OFCOM."

How will those of us who are not the Secretary of State or Ofcom know that there has been an agreement that the guidance can be changed and that the Secretary of State is not just acting on their own? If the guidance is changed because of an agreement, will there be a line in the guidance that says, "The Secretary of State has agreed with Ofcom to publish this only 1.5 years after the last guidance was put out, because of these reasons"? In the interests of transparency, it would be helpful for something like that to be included in the guidance, if it was being changed outside the normal three-year structure.

Chris Philp: It is better than being in the guidance, which is non-statutory, because it is in the Bill—it is right here in front of us in the measure that the hon. Lady just referred to, clause 147(4)(b). If the Secretary of State decided to issue updated guidance in less than three years without Ofcom's consent, that would be unlawful; that would be in breach of this statute, and it would be a very straightforward matter to get that struck down. It would be completely illegal to do that.

My expectation would be that if updated guidance was issued in less than three years, it would be accompanied by written confirmation that Ofcom had agreed. I imagine that if a future Secretary of State—I cannot imagine the current Secretary of State doing it—published guidance in less than three years without Ofcom's consent, Ofcom would not be shy in pointing that out, but to do that would be illegal. It would be unlawful; it would be a breach of this measure in the Bill.

I hope that the points that I have just made about the safeguards in clause 147, and the assurance and clarity that I have given the Committee about the intent that guidance will be at the strategic level rather than the operational level, gives Members the assurance they need to support the clause.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 5.

Division No. 46]

AYES

Ansell, Caroline	Miller, rh Dame Maria
Bailey, Shaun	Moore, Damien
Double, Steve	Philp, Chris
Fletcher, Nick	Russell, Dean
Holden, Mr Richard	Stevenson, Jane

NOES

Blackman, Kirsty	Keeley, Barbara
Carden, Dan	
Davies-Jones, Alex	Leadbeater, Kim

Question accordingly agreed to.

Clause 147 ordered to stand part of the Bill.

Clause 148

ANNUAL REPORT ON THE SECRETARY OF STATE'S FUNCTIONS

Question proposed, That the clause stand part of the Bill.

3 pm

Alex Davies-Jones: I will be brief. The clause is incredibly important. It requires the Secretary of State to prepare and lay before Parliament annual reports about their performance in relation to online safety. We fully support such transparency. That is all we want—we want it to go further. That is what we have been trying to say in Committee all day. We agree in principle and therefore have not sought to amend the clause.

Chris Philp: I could not possibly add to that exceptionally eloquent description.

Question put and agreed to.

Clause 148 accordingly ordered to stand part of the Bill.

Clause 149

REVIEW

Question proposed, That the clause stand part of the Bill.

Alex Davies-Jones: As we know, the clause compels the Secretary of State to undertake a review to assess the effectiveness of the regulatory framework. The review will have to be published and laid before Parliament, which we welcome. However, we note the broad time limits on this duty. We have heard repeatedly about the challenges that delays to the Bill's full implementation will cause, so I urge the Minister to consider that point closely. By and large, though, we absolutely support the clause, especially as the Secretary of State will be compelled to consult Ofcom and other appropriate persons when carrying out its review—something that we have called for throughout scrutiny of the Bill. We only wish that that level of collaboration had been accepted by the Minister on the other clauses. I will not waste time repeating points that I have already made. We support the clause.

Chris Philp: I welcome the shadow Minister's support for this review clause, which is important. I will not add to her comments.

Question put and agreed to.

Clause 149 accordingly ordered to stand part of the Bill.

Clause 150

HARMFUL COMMUNICATIONS OFFENCE

Kim Leadbeater: I beg to move amendment 112, in clause 150, page 127, line 28, at end insert "and;

(b) physical harm that has been acquired as a consequence of receiving the content of a message sent online."

This amendment would expand the definition of harm for the purposes of the harmful communications offence to incorporate physical harm resulting from messages received online.

The Chair: With this it will be convenient to discuss amendment 113, in clause 150, page 127, line 28, at end insert "; or

(b) physical harm resulting from an epileptic seizure, where the seizure has been triggered by the intentional sending of flashing images to a person with epilepsy."

Kim Leadbeater: I move the amendment in my name and will speak to amendment 113, which is in the name of the hon. Member for Blackpool North and Cleveleys (Paul Maynard).

The amendment would put into effect Zach's law in full. Zach, as many Members know, is an amazing, energetic and bright young boy from my constituency. I had the absolute pleasure of visiting Zach and his mum Clare at their home in Hartshead a few weeks ago. We chatted about school and his forthcoming holiday, and he even invited me to the pub. However, Zach also has epilepsy.

Disgustingly, he was trolled online a few years ago and sent flashing images by bullies, designed to trigger his condition and give him an epileptic seizure, a seizure that not only would cause him and his family great distress, but can be extremely dangerous and cause Zach significant psychological and physical harm. I know that we are all united in our disgust at such despicable actions and committed to ensuring that this type of unbelievable online bullying is against the law under the Bill.

On Second Reading, I raised the matter directly with the Minister and I am glad that he pointed to clause 150 and stated very explicitly that subsection (4) will cover the type of online harm that Zach has encountered. However, we need more than just a commitment at the Dispatch Box by the Minister, or verbal reassurances, to protect Zach and the 600,000 other people in the UK with epilepsy.

The form of online harm that Zach and others with epilepsy have suffered causes more than just "serious distress". Members know that the Bill as drafted lists

"psychological harm amounting to at least serious distress"

as a qualifying criterion of the offence. However, I believe that does not accurately and fully reflect the harm that epilepsy trolling causes, and that it leaves a significant loophole that none of us here wish to see exploited

For many people with epilepsy, the harm caused by this vicious online trolling is not only psychological but physical too. Seizures are not benign events. They can result in broken bones, concussion, bruises and cuts, and in extreme cases can be fatal. It is simply not right to argue that physical harm is intrinsically intertwined with psychological harm. They are different harms with different symptoms. While victims may experience both, that is not always the case.

Professor Sander, medical director of the Epilepsy Society and professor of neurology at University College London Hospitals NHS Foundation Trust, who is widely considered one of the world's leading experts on epilepsy, has said:

"Everyone experiences seizures differently. Some people may be psychologically distressed by a seizure and not physically harmed. Others may be physically harmed but not psychologically distressed. This will vary from person to person, and sometimes from seizure to seizure depending on individual circumstances."

Amendment 112 will therefore expand the scope of clause 150 and insert on the face of the Bill that an offence will also be committed under the harmful communications clause when physical harm has occurred as a consequence of receiving a message sent online with malicious intent. In practical terms, if a person with epilepsy were to receive a harmful message online that triggers their epilepsy and they subsequently fall off their chair and hit their head, that physical harm will be proof of a harmful communication offence, without the need to prove any serious psychological distress that may have been caused.

This simple but effective amendment, supported by the Epilepsy Society, will ensure that the horrific trolling that Zach and others with epilepsy have had to endure will be covered in full by the Bill. That will mean that the total impact that such trolling has on the victims is reflected beyond solely psychological distress, so there can be no ambiguity and nowhere for those responsible for sending these images and videos to hide.

I am aware that the Minister has previously pointed to the possibility of a standalone Bill—a proposal that is under discussion in the Ministry of Justice. That is all well and good, but that should not delay our action when the Bill before us is a perfectly fit legislative vehicle to end epilepsy trolling, as the Law Commission report recommended.

I thank colleagues from across the House for the work they have done on this important issue. I sincerely hope that the amendment is one instance where we can be united in this Committee. I urge the Minister to adopt amendment 112, to implement Zach's law in full and to provide the hundreds of thousands of people across the UK living with epilepsy the legal protections they need to keep them safe online. It would give me no greater pleasure than to call at Zach's house next time I am in the area and tell him that this is the case.

Dean Russell (Watford) (Con): May I praise the hon. Member for Batley and Spen for such an eloquent and heartfelt explanation of the reason why this amendment to the Bill is so important?

I have been campaigning on Zach's law for the past nine months. I have spoken to Zach multiple times and have worked closely with my hon. Friend the Member for Stourbridge (Suzanne Webb) in engaging directly with Facebook, Twitter and the big platforms to try to get them to do something, because we should not need to have a law to stop them sending flashing images. We had got quite far a few months ago, but now that seems to have stalled, which is very frustrating.

I am stuck between my heart and my head on this amendment. My heart says we need to include the amendment right now, sort it out and get it finalised. However, my head says we have got to get it right. During the Joint Committee for Online Safety before Christmas and in the evidence sessions for this Bill, we heard that if the platforms want to use a loophole and get around things they will. I have even seen that with regard to the engagements and the promises we have had.

Kirsty Blackman: I wonder whether the hon. Gentleman would consider a belt and braces approach as the best way forward? We could have it in the Bill and have the other legislation, in order that this will definitely protect people and companies will not be able to wriggle out of it.

Dean Russell: That is an excellent point. I have yet to make up my mind which way to vote if the amendment is pressed to a vote; I do not know whether this is a

[Dean Russell]

probing amendment. Having spoken to the Epilepsy Society and having been very close to this issue for many months, for me to feel comfortable, I want the Minister not just to say, as he has said on the Floor of the House, to me personally, in meetings and recently here, that the clause should cover epilepsy, and does seem to, and that he is very confident of that, but to give some assurance that we will change the law in some form.

Kim Leadbeater: I am incredibly grateful for the hon. Member's comments and contribution. I agree wholeheartedly. We need more than a belief and an intention. There is absolutely no reason why we cannot have this in black and white in the Bill. I hope he can find a way to do the right thing today and vote for the amendment.

Dean Russell: The phrase "Do the right thing" is at the heart of this. My hon. Friend the Member for Ipswich (Tom Hunt) presented the Flashing Images Bill yesterday. A big part of this is about justice. I am conscious that we have got to get the balance right; stopping this happening has an impact for the people who choose to do this. I am keen to hear what the Minister says. We have got to get this right. I am keen to get some assurances, which will very much sway my decision on the vote today.

Caroline Ansell (Eastbourne) (Con): At the risk of following my earlier voting pattern, I am also very much with the hon. Member for Batley and Spen in spirit. I could not do the subject any more justice than she has, describing this appalling online behaviour and just how damaging it is. I am a member of the all-party parliamentary group on epilepsy and have lived experience myself.

I want to highlight the comments of the Epilepsy Society, which I am sure is following our work this afternoon. It welcomes many of the introductions to the Bill, but highlights something of a legislative no man's land. Clause 187 mentions physical harm, but does not apply to clause 150. Clause 150 only covers psychological harm when, as we have heard described, many seizures result in physical harm and some of that is very serious. I know the Minister is equally committed to see this measure come about and recognises the points we have demonstrated. The hon. Lady is right that we are united. I suspect the only point on which there might be some difference is around timing. I will be looking to support the introduction and the honouring in full of Zach's law before the Bill is passed. There are many other stages.

My understanding is that many others wish to contribute, not least the Ministry of Justice. My hope, and my request to the Minister, is that those expert stakeholder voices will be part of the drafting, should it not be the case that supporting the amendment presented today is the very best and strongest way forward. I want to see recognition in law.

Chris Philp: Amendment 112 is clearly very important. As my hon. Friend the Member for Watford pointed out, I have already said that I believe that clause 150 goes a long way to address the various issues that have been raised. Since my hon. Friends the Members for Eastbourne and for Watford, and the hon. Member for Batley and Spen have been raising this issue—my hon. Friends have been lobbying me on this issue persistently and frequently, behind closed doors as well as publicly, and the hon. Member for Batley and Spen has been campaigning on this publicly with great tenacity and verve—the Government and the MOJ have been further considering the Law Commission's recommendations, which I referenced on Second Reading. Subsequent to Second Reading and the lobbying by the three Members who have just spoken—the hon. Member for Batley and Spen, and my hon. Friends the Members for Watford and for Eastbourne—I can now announce to the Committee that the Government have decided to enact the Law Commission's recommendations, so there will be a new and separate standalone offence that is specific to epilepsy for the very first time. I can firmly commit to that and announce it today.

3.15 pm

The question then arises which legislative vehicle the offence will go in. I am aware of the private Member's Bill, but it will take a very long time and we probably would not want to rely on it, so I am in the process of getting cross-Government agreement on which legislative vehicle will be used. I do not want to say any more about that now, because it is still subject to collective agreement, but I am expecting to come back to the House on Report and confirm which Bill the measure will go in.

Kim Leadbeater: I genuinely appreciate the Minister's comments, but why would we spend more time doing other pieces of legislation when we can do it right here and right now? The amendment will solve the problem without causing any more pain or suffering over a long period of time.

Chris Philp: One of the pieces of legislation that could be used is this Bill, because it is in scope. If the hon. Lady can bear with me until Report, I will say more about the specific legislative vehicle that we propose to use.

On the precise wording to be used, I will make a couple of points about the amendments that have been tabled—I think amendment 113 is not being moved, but I will speak to it anyway. Amendment 112, which was tabled by the hon. Member for Batley and Spen, talks about bringing physical harm in general into the scope of clause 150. Of course, that goes far beyond epilepsy trolling, because it would also bring into scope the existing offence of assisting or encouraging suicide, so there would be duplicative law: there would be the existing offence of assisting or encouraging suicide and the new offence, because a communication that encouraged physical harm would do the same thing.

If we included all physical harm, it would duplicate the proposed offence of assisting or encouraging self-harm that is being worked on by the Ministry of Justice and the Law Commission. It would also duplicate offences under the Offences Against the Person Act 1861, because if a communication caused one person to injure another, there would be duplication between the offence that will be created by clause 150 and the existing offence. Clearly, we cannot have two offences that criminalise the same behaviour. To the point made by the hon. Member for

Aberdeen North, it would not be right to create two epilepsy trolling offences. We just need one, but it needs to be right.

Kirsty Blackman: Will the Minister give way?

Chris Philp: In a second.

The physical harm extension goes way beyond the epilepsy point, which is why I do not think that that would be the right way to do it, although the Government have accepted that we will do it and need to do it, but by a different mechanism.

I was about to speak to amendment 113, the drafting of which specifically mentions epilepsy and which was tabled by my hon. Friend the Member for Blackpool North and Cleveleys (Paul Maynard), but was the hon. Lady's question about the previous point?

Kirsty Blackman: My question was about the announcement that the Minister is hoping to make on Report. I appreciate that he has committed to introduce the new offence, which is great. If the Bill is to be the legislative vehicle, does he expect to amend it on Report, or does he expect that that will have to wait until the amendment goes through the Lords?

Chris Philp: That is a good question, and it ties into my next point. Clearly, amendment 113 is designed to create a two-sentence epilepsy trolling offence. When trying to create a brand-new offence—in this case, epilepsy trolling—it is unlikely that two sentences' worth of drafting will do the trick, because a number of questions need to be addressed. For example, the drafting will need to consider what level of harm should be covered and exactly what penalty would be appropriate. If it was in clause 150, the penalty would be two years, but it might be higher or lower, which needs to be addressed. The precise definitions of the various terms need to be carefully defined as well, including "epilepsy" and "epileptic seizures" in amendment 113, which was tabled by my hon. Friend the Member for Blackpool North and Cleveleys. We need to get proper drafting.

My hon. Friend the Member for Eastbourne mentioned that the Epilepsy Society had some thoughts on the drafting. I know that my colleagues in the Ministry of Justice and, I am sure, the office of the parliamentary counsel, would be keen to work with experts from the Epilepsy Society to ensure that the drafting is correct. Report will likely be before summer recess—it is not confirmed, but I am hoping it will be—and getting the drafting nailed down that quickly would be challenging.

I hope that, in a slightly indirect way, that answers the question. We do not have collective agreement about the precise legislative vehicle to use; however, I hope it addresses the questions about how the timing and the choreography could work.

Kim Leadbeater: We have talked a lot about the Epilepsy Society this afternoon, and quite rightly too, as they are the experts in this field. My understanding is that it is perfectly happy with the language in this amendment—

Chris Philp: Which one?

Kim Leadbeater: Amendment 112. I think that the Epilepsy Society feels that this would be covered. I am also confused, because the Minister said previously that it was his belief and intention that this clause would cover epilepsy trolling, but he is now acknowledging that it does not. Why would we not, therefore, just accept the amendment that covers it and save everybody a lot of time?

Chris Philp: Representations have been made by the three Members here that epilepsy deserves its own stand-alone offence, and the Government have just agreed to do that, so take that as a win. On why we would not just accept amendment 112, it may well cover epilepsy, and may well cover it to the satisfaction of the Epilepsy Society, but it also, probably inadvertently, does a lot more than that. It creates a duplication with the offence of assisting or encouraging suicide.

Kim Leadbeater: Surely that is almost a bonus?

Chris Philp: No, it is not a bonus, because we cannot have two different laws that criminalise the same thing. We want to have laws that are, essentially, mutually exclusive. If a person commits a particular act, it should be clear which Act the offence is being committed under. Imagine that there were two different offences for the same act with different sentences—one is two years and one is 10 years. Which sentence does the judge then apply? We do not want to have law that overlaps, where the same act is basically a clear offence under two different laws. Just by using the term "physical harm", amendment 112 creates that. I accept that it would cover epilepsy, but it would also cover a whole load of other things, which would then create duplication.

That is why the right way to do this is essentially through a better drafted version of amendment 113, which specifically targets epilepsy. However, it should be done with drafting that has been done properly—with respect to my hon. Friend the Member for Blackpool North and Cleveleys, who drafted the amendment—with definitions that are done properly, and so on. That is what we want to do.

Dean Russell: Having been involved on this Bill for quite a while now and having met Zach, I know the concerns that the Epilepsy Society have had. For me, we just need the Minister to tell us, which I think he has, that this will become law, whatever the vehicle for that is. If we know that this will be an offence by the end of this year—hopefully by summer, if not sooner—so that people cannot send flashing images to people with epilepsy, like Zach, then I will feel comfortable in not backing the amendment, on the premise that the Government will do something, moving forward. Am I correct in that understanding?

Chris Philp: Yes. Just to be clear, in no world will a new law pass by the summer recess. However, I can say that the Government are committed, unequivocally, to there being a new offence in law that will criminalise epilepsy trolling specifically. That commitment is categoric. The only matter on which I need to come back to the House, which I will try to do on Report, is to confirm specifically which Bill that offence will go in. The commitment to legislate is made unequivocally today.

Caroline Ansell: I welcome the Minister's announcement and that commitment. I particularly welcome that the new offence will have epilepsy in the title. People who seek out those who may be triggered and have seizures

[Caroline Ansell]

to cause this harm use all sorts of tags, organisations and individuals to deliberately and specifically target those who suffer from epilepsy. It is therefore wholly right that this new offence, whether in this Bill or another, cites epilepsy, because those who would seek to do harm know it and call it that.

I have not had the privilege of meeting Zach; however, thanks to this online world, which we are experiencing through this legislation as the wild west, I was able to see the most beautiful tribute interview he did with his mum. He said that if the change were to be made and offence were to be recognised, "we win." He is so right that we all win.

Chris Philp: My hon. Friend makes an extremely powerful point that is incapable of being improved upon.

Kim Leadbeater *rose—*

Chris Philp: Or perhaps it is.

Kim Leadbeater: It is wonderful that we have such consensus on this issue. I am grateful to colleagues for that. I am very concerned about the pressures on parliamentary time, and the fact that we are kicking this issue down the road again. We could take action today to get the process moving. That is what Zach and his family want and what other people who have been subjected to this hideous bullying want. Without a firm timeframe for another way of getting this done, I am struggling to understand why we cannot do this today.

Chris Philp: The progress that the campaign has made, with the clear commitment from the Government that we are going to legislate for a specific epilepsy trolling offence, is a huge step forward. I entirely understand the hon. Lady's impatience. I have tried to be as forthcoming as I can be about likely times, in answer to the question from the hon. Member for Aberdeen North, within the constraints of what is currently collectively agreed, beyond which I cannot step.

Amendment 112 will sort out the epilepsy, but unfortunately it will create duplicative criminal law. We cannot let our understandable sense of urgency end up creating a slightly dysfunctional criminal statute book. There is a path that is as clear as it reasonably can be. Members of the Committee will probably have inferred the plan from what I said earlier. This is a huge step forward. I suggest that we bank the win and get on with implementing it.

Dean Russell: I appreciate that there will be differences of opinion, but I feel that Zach should be smiling today whatever the outcome—if there is a vote, or if this is a probing amendment. When I have chatted about this previously over many months, it has been a real challenge. The Minister quite rightly said that the Bill already covered epilepsy. I felt that to be true. This is a firming up of the agreement we had. This is the first time I have heard this officially in any form. My message to Zach and the Epilepsy Society, who may well be watching the Committee, is that I hope they will see this as a win. With my head and my heart together, I feel that it is a win, but I forewarn the Minister that I will continue to be like a dog with a bone and make sure that those promises are delivered upon.

Chris Philp: I think that is probably a good place to leave my comments. I can offer public testimony of my hon. Friend's tenacity in pursuing this issue.

I ask the hon. Member for Batley and Spen to withdraw the amendment. I have given the reasons why: because it would create duplicative criminal law. I have been clear about the path forward, so I hope that on that basis we can work together to get this legislated for as a new offence, which is what she, her constituent and my hon. Friends the Members for Watford and for Eastbourne and others have been calling for.

Kim Leadbeater: I appreciate the Minister's comments and the support from across the House. I would like to the push the amendment to a vote.

Question put, *That the amendment be made.*

The Committee divided: Ayes 5, Noes 10.

Division No. 47]

AYES

Blackman, Kirsty	Keeley, Barbara
Carden, Dan	
Davies-Jones, Alex	Leadbeater, Kim

NOES

Ansell, Caroline	Miller, rh Dame Maria
Bailey, Shaun	Moore, Damien
Double, Steve	Philp, Chris
Fletcher, Nick	Russell, Dean
Holden, Mr Richard	Stevenson, Jane

Question accordingly negatived.

The Chair: Amendment 113 was tabled by Paul Maynard, who is not on the Committee. Does any Member wish to move the amendment?

Amendment proposed: 113, in clause 150, page 127, line 28, at end insert "; or

(b) physical harm resulting from an epileptic seizure, where the seizure has been triggered by the intentional sending of flashing images to a person with epilepsy."—*(Kim Leadbeater.)*

3.30 pm

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 10.

Division No. 48]

AYES

Blackman, Kirsty	Keeley, Barbara
Carden, Dan	
Davies-Jones, Alex	Leadbeater, Kim

NOES

Ansell, Caroline	Miller, rh Dame Maria
Bailey, Shaun	Moore, Damien
Double, Steve	Philp, Chris
Fletcher, Nick	Russell, Dean
Holden, Mr Richard	Stevenson, Jane

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clauses 151 to 155 stand part.

Clause 157 stand part.

Barbara Keeley: Part 10 of the Bill sets out three new offences involving harmful, false or threatening communications. Clause 156 includes a new offence on cyber-flashing, to which my hon. Friend the Member for Pontypridd will speak shortly.

For many years, charities have been calling for an update to the offences included in the Malicious Communications Act 1998 and the Communications Act 2003. Back in 2018, the Law Commission pointed out that using the criminal law to deal with harmful online conduct was hindered by several factors, including limited law enforcement capacity to pursue the scale of abusive communications, what the commission called a "persistent cultural tolerance" of online abuse, and difficulties in striking a balance between protecting people from harm and maintaining rights of freedom of expression—a debate that we keep coming to in Committee and one that is still raging today. Reform of the legislation governing harmful online communications is welcome—that is the first thing to say—but the points laid out by the Law Commission in 2018 still require attention if the new offences are to result in the reduction of harm.

My hon. Friend the Member for Batley and Spen spoke about the limited definition of harm, which relates to psychological harm but does not protect against all harms resulting from messages received online, including those that are physical. We also heard from the hon. Member for Ochil and South Perthshire about the importance of including an offence of encouraging or assisting self-harm, which we debated last week with schedule 7. I hope that the Minister will continue to upgrade the merits of new clause 36 when the time comes to vote on it.

Those are important improvements about what should constitute an offence, but we share the concerns of the sector about the extent to which the new offences will result in prosecution. The threshold for committing one of the offences in clause 150 is high. When someone sends the message, there must be

"a real and substantial risk that it would cause harm to a likely audience",

and they must have

"no reasonable excuse for sending the message."

The first problem is that the threshold of having to prove the intention to cause distress is an evidential threshold. Finding evidence to prove intent is notoriously difficult. Professor Clare McGlynn's oral evidence to the Committee was clear:

"We know from the offence of non-consensual sending of sexual images that it is that threshold that limits prosecutions, but we are repeating that mistake here with this offence."

Professor McGlynn highlighted the story of Gaia Pope. With your permission, Ms Rees, I will make brief reference to it, in citing the evidence given to the Committee. In the past few weeks, it has emerged that shortly before Gaia Pope went missing, she was sent indecent images through Facebook, which triggered post-traumatic stress disorder from a previous rape. Professor McGlynn said:

"We do not know why that man sent her those images, and I guess my question would be: does it actually matter why he sent them? Unfortunately, the Bill says that why he sent them does matter, despite the harm it caused, because it would only be a criminal offence if it could be proved that he sent them with the intention of causing distress or for sexual gratification and being reckless about causing distress."—[*Official Report, Online Safety Public Bill Committee,* 24 May 2022; c. 58, Q105.]

The communications offences should be grounded upon consent rather than the motivation of the perpetrator. That is a clear omission in the Bill, which my hon. Friend the Member for Pontypridd will speak more about in relation to our amendments 41 and 42 to clause 156. The Government must act or risk missing a critical opportunity to tackle the harms resulting from communications offences.

We then come to the problem of the "reasonable excuse" defence and the "public interest" defence. Clause 150(5) sets out that the court must consider

"whether the message is, or is intended to be, a contribution to a matter of public interest".

The wording in the clause states that this should not "determine the point". If that is the case, why does the provision exist? Does the Minister recognise that there is a risk of the provision being abused? In a response to a question from the hon. Member for Aberdeen North, the Minister has previously said that:

"Clause 150…does not give a get-out-of-jail-free card".—[*Official Report, Online Safety Public Bill Committee,* 7 June 2022; c. 275.]

Could he lay out what the purpose of this "matter of public interest" defence is? Combined with the reasonable excuse defence in subsection (1), the provisions risk sending the wrong message when it comes to balancing harms, particularly those experienced by women, of which we have already heard some awful examples.

There is a difference in the threshold of harm between clause 150, on harmful communications offences, and clause 151, on false communications offences. To constitute a false communications offence, the message sender must have

"intended the message, or the information in it, to cause non-trivial psychological or physical harm to a likely audience".

To constitute a harmful communications offence, the message sender must have

"intended to cause harm to a likely audience"

and there must have been

"a real and substantial risk that it would cause harm to a likely audience".

Will the Minister set out the Government's reasoning for that distinction? We need to get these clauses right because people have been let down by inadequate legislation and enforcement on harmful online communications offences for far too long.

Chris Philp: Let me start by saying that many of these clauses have been developed in careful consultation with the Law Commission, which has taken a great deal of time to research and develop policy in this area. It is obviously quite a delicate area, and it is important to make sure that we get it right.

The Law Commission is the expert in this kind of thing, and it is right that the Government commissioned it, some years ago, to work on these provisions, and it is right that, by and large, we follow its expert advice in framing these offences, unless there is a very good reason not to. That is what we have done—we have followed the Law Commission's advice, as we would be expected to do. The clauses replace previous offences—for

[Chris Philp]

example, those in the Malicious Communications Act 1998—and update and improve those provisions in the form we see them in the Bill.

The shadow Minister, the hon. Member for Worsley and Eccles South, asked a number of questions about the drafting of the clauses and the thresholds that have to be met for an offence to be committed. We are trying to strike a balance between criminalising communications that deserve to be criminalised and not criminalising communications that people would consider should fall below the criminal threshold. There is obviously a balance to strike in doing that. We do not want to infringe free speech by going too far and having legitimate criticism and debate being subject to criminal sanctions. There is a balance to strike here between, on the one hand, public protection and where the criminal law sits versus, on the other hand, free speech and people expressing themselves. That is why clause 150 is constructed as it is, on the advice of the Law Commission.

As the hon. Member set out, the offence is committed only where there is a "real and substantial risk" that the likely audience would suffer harm. Harm is defined as

"psychological harm amounting to at least serious distress."

Serious distress is quite a high threshold—it is significant thing, not something trivial. It is important to make that clear.

The second limb is that there is an intention to cause harm. Intention can in some circumstances be difficult to prove, but there are also acts that are so obviously malicious that there can be no conceivable motivation or intention other than to cause harm, where the communication is so obviously malfeasant. In those cases, establishing intent is not too difficult.

In a number of specific areas, such as intimate image abuse, my right hon. Friend the Member for Basingstoke and others have powerfully suggested that establishing intent is an unreasonably high threshold, and that the bar should be set simply at consent. For the intimate image abuse offence, the bar is set at the consent level, not at intent. That is being worked through by the Law Commission and the Ministry of Justice, and I hope that it will be brought forward as soon as possible, in the same way as the epilepsy trolling offence that we discussed a short while ago. That work on intimate image abuse is under way, and consent, not intent, is the test.

For the generality of communications—the clause covers any communications; it is incredibly broad in scope—it is reasonable to have the intent test to avoid criminalising what people would consider to be an exercise of free speech. That is a balance that we have tried to strike. The intention behind the appalling communications that we have heard in evidence and elsewhere is clear: it is in inconceivable that there was any other motivation or intention than to cause harm.

There are some defences—well, not defences, but conditions to be met—in clause 150(1)(c). The person must have "no reasonable excuse". Subsection (5) makes it clear that

"In deciding whether a person has a reasonable excuse…one of the factors that a court must consider (if it is relevant in a particular case) is whether the message is, or is intended to be, a contribution to a matter of public interest (but that does not determine the point)"

of whether there is a reasonable excuse—it simply has to be taken into account by the court and balanced against the other considerations. That qualification has been put in for reasons of free speech.

There is a delicate balance to strike between criminalising what should be criminal and, at the same time, allowing reasonable free speech. There is a line to draw, and that is not easy, but I hope that, through my comments and the drafting of the clause, the Committee will see that that line has been drawn and a balance struck in a carefully calibrated way. I acknowledge that the matter is not straightforward, but we have addressed it with advice from the Law Commission, which is expert in this area. I commend clause 150 to the Committee.

The other clauses in this group are a little less contentious. Clause 151 sets out a new false communication offence, and I think it is pretty self-explanatory as drafted. The threatening communications offence in clause 152 is also fairly self-explanatory—the terms are pretty clear. Clause 153 contains interpretative provisions. Clause 154 sets out the extra-territorial application, and Clause 155 sets out the liability of corporate officers. Clause 157 repeals some of the old offences that the new provisions replace.

Those clauses—apart from clause 150—are all relatively straightforward. I hope that, in following the Law Commission's advice, we have struck a carefully calibrated balance in the right place.

Barbara Keeley: I would like to take the Minister back to the question I asked about the public interest defence. There is a great deal of concern that a lot of the overlaying elements create loopholes. He did not answer specifically the question of the public interest defence, which, combined with the reasonable excuse defence, sends the wrong message.

Chris Philp: The two work together. On the reasonable excuse condition, for the offence to have been committed, it has to be established that there was no reasonable excuse. The matter of public interest condition—I think the hon. Lady is referring to subsection (5)—simply illustrates one of the ways in which a reasonable excuse can be established, but, as I said in my remarks, it is not determinative. It does not mean that someone can say, "There is public interest in what I am saying," and they automatically have a reasonable excuse—it does not work automatically like that. That is why in brackets at the end of subsection (5) it says

"but that does not determine the point".

That means that if a public interest argument was mounted, a magistrate or a jury, in deciding whether the condition in subsection (1)(c)—the "no reasonable excuse" condition—had been met, would balance the public interest argument, but it would not be determinative. A balancing exercise would be performed. I hope that provides some clarity about the way that will operate in practice.

3.45 pm

Barbara Keeley: That was about as clear as mud, actually, but let us leave it there.

Question put and agreed to.

Clause 150 accordingly ordered to stand part of the Bill.

Clauses 151 to 155 ordered to stand part of the Bill.

Clause 156

SENDING ETC PHOTOGRAPH OR FILM OF GENITALS

Alex Davies-Jones: I beg to move amendment 41, in clause 156, page 131, line 15, at end insert—

"(za) B has not consented for A to share the photograph or film with B, or".

This amendment makes it an offence to send an image of genitals to another person if the recipient has not given consent to receive the image.

The Chair: With this it will be convenient to discuss amendment 42, in clause 156, page 131, line 20, at end insert—

"(1A) A person consents if the person agrees by choice, and has the freedom and capacity to make that choice."

This amendment is linked to Amendment 41.

Alex Davies-Jones: With your permission, Ms Rees, I will also speak to clause stand part.

Labour welcomes the clause. We see it as a positive step forward that the Government have committed to creating a new offence in certain circumstances where sending a photograph or film of a person's genitals to another person will cause distress or humiliation. However, the Government have missed a huge opportunity to accurately capture the problems caused by sharing intimate images online. I will come to that shortly in addressing amendments 41 and 42.

We know that the act of sending unsolicited genital images—cyber-flashing, or sending dick pics—is a huge problem here in the UK. Research from Bumble has shown how disproportionally the issue affects young women. The statistics are shocking and speak for themselves. A whopping 48% of millennial women said that they had been sent an unsolicited sexual image in the last year alone. I must pay tribute to the right hon. Member for Basingstoke, who we all know shared her own experiences of cyber-flashing relatively recently. She is not alone—not in this House or in the country.

I have my own experiences, as do friends, colleagues and even my staff members, and we all share the same concerns about the prevalence of cyber-flashing. The Minister does not need to be reminded of it; he knows of the extent of the issues. We heard compelling evidence only a few weeks ago from Professor Clare McGlynn and Nima Elmi from Bumble, among others.

Labour firmly believes, as Professor McGlynn has outlined, that cyber-flashing is problematic because it is non-consensual conduct of a sexual nature. Distributing these images is not in and of itself wrong, but doing so without the consent of the recipient is. The non-consensual act breaches women's rights to sexual autonomy, to be treated with dignity and to be free from sexual violence, regardless of the motive of the perpetrator.

We know that men's motivations for cyber-flashing are varied and overlapping. They include misogyny, causing distress, sexual gratification, humour, boosting status among peers, sexual intimidation, and transactional motivations. Yet there is no evidence that the harms experienced by women are worse when offenders have the specific motivations identified in motive-based proposals, such as causing distress.

For example, a woman may be sent unsolicited penis images while on public transport, making her feel threatened and fearful for her safety, regardless of whether the sender intended to cause her alarm or was simply trying to impress his friends as a bit of banter. That is why the consent approach really is crucial, as I will now discuss in relation to amendments 41 and 42.

Amendment 41 would make it an offence to send an image of genitals to another person if the recipient has not given consent to receive that image. Labour recognises that there are two main options when drafting a new cyber-flashing criminal offence. The first is what we are trying to achieve with these amendments—a comprehensive consent-based offence requiring proof of non-consent. The alternative, as currently proposed by the Law Commission, is far too limited. It offers a motive-based offence, which applies only on proof of specific motives on the part of the offender, such as to cause distress, alarm or humiliation, to get sexual gratification, or to cause distress by being reckless. This is hugely problematic for women and girls across the country, and the Minister must recognise the message this sends to them.

Proving a motive behind an offence as simple as merely sending a photograph is nigh on impossible. If we really want to see systemic change in attitudes to women and girls, we fundamentally should not be creating laws that place the burden on the victim. A consent-based offence, as in our amendments, covers all forms of cyber-flashing, regardless of the motives of the sender. Motive requirements create an unjustified hierarchy of abuses and victims, and they do not reflect victims' experiences. Requiring proof of specific motives will make investigations and prosecutions more difficult.

We know from police and victims that investigations and prosecutions for sharing sexual images without consent, such as revenge porn, are not taken forward due to similar motive requirements. How, therefore, can the Minister think that the provisions in the Bill related to cyber-flashing go far enough? Will they actually create change? I mentioned on Second Reading our genuine concerns about the levels of misogyny that have become far too normalised across our communities and within our society as a whole.

The consent-based offence provides a much better foundation for education and prevention projects. It sends the message that all sexual activity should be grounded in consent. It better supports education about online activities, with a focus on consent-based practices, and makes clear that any taking or sharing of sexual images without consent is wrong, harmful and criminal. Those are all positives.

The stakeholders are calling for a consent-based approach. The Opposition want the same. Even the Minister's own Back Benchers can see that the Bill fails to capture and address the real harms women and girls face online. The Minister can likely sense my exasperation. It comes from a place of genuine frustration. I cannot understand how there has not been any movement on this from the Government side.

My final point—and indeed plea—is to urge the Minister to consider what is going on internationally on this issue. He will know that a consent-based cyber-flashing offence has been adopted in Texas and is being debated in other US states. Consent is easily obtained and criminal charges easily avoided. It is important to remember that avoiding being charged with a criminal offence is

[Alex Davies-Jones]

straightforward. All the sender needs to do is ask, "Would you like to see a picture of my genitals?" It is as simple as that. I am sure even the Minister can agree on that point. I urge him to genuinely consider amendments 41 and 42. There has been no movement from the Minister and no concessions thus far as we have scrutinised the Bill, but he must know that the Bill is far from perfect in its current form.

Kirsty Blackman: I would like to make a couple of comments. The shadow Minister mentioned education and prevention projects, which are key. In Scotland, our kids' sex, health and relationship education in schools teaches consent from the earliest possible age. That is vital. We have a generation of men who think it is okay to send these images and not seek consent. As the shadow Minister said, the problem is everywhere. So many women have received images that they had no desire to see. They did not ask for them, and they did not consent to receive them, but they get them.

Requiring someone to prove the intent behind the offence is just impossible. It is so unworkable, and that makes it really difficult. This is yet another issue that makes it clear that we need to have reference to violence against women and girls on the face of the Bill. If that were included, we would not be making such a passionate case here. We would already have a code of conduct and assessments that have to take place on the basis of the specific harm to women and girls from such offences. We would not be making the case so forcefully because it would already be covered.

I wish the Minister would take on board how difficult it is for women and girls online, how much of an issue this specific action causes and how much pain and suffering it causes. It would great if the Minister could consider moving somewhat on this issue in order to protect women and girls.

Dame Maria Miller (Basingstoke) (Con): I want to make sure that the record is clear that while I did receive a dick pic, I am not a millennial. That shoes how widespread this problem is. My children would want that on the record.

Research done by YouGov showed that half of millennial women have been sent a photo of a penis, and that nine in 10 women who have ever received such a picture did not want to have it sent to them. To anybody who is trying to—I do not feel anybody today is—advocate that this is a small issue or a minority problem, the data suggest that it is not.

For the record, I think the reason I was sent that picture was not sexual at all. I think it was intimidatory. I was sitting in a train carriage on my way into Parliament on a hot day, and I think it was sent as intimidation because I could not leave that carriage and I had, in error, left my AirDrop on. Okay, that was my fault, but let us not victim blame.

I very much welcome the Minister's approach, because he is the first person to take forward a series of new offences that are needed to clarify the law as it affects people in this area. As he was talking, I was reflecting on his use of the word "clarity", and I think he is absolutely right. He is rightly looking to the Law Commission as the expert for how we interpret and how we get the most effective law in place.

Although we are not talking about the intimate image abuse recommendations in this part of the Bill, I draw to the Committee's attention that I, and others, will have received an email from the Law Commission today setting out that it will bring forward its recommendations next month. I hope that that means that the Minister will bring forward something concrete to us about those particular offences in the coming weeks. He is right that when it comes to cyber-flashing, we need to get it right. We need to make sure that we follow the experts. The Law Commission was clear when it undertook its review that the current law does not adequately address these issues. I was pleased when it made that recommendation.

A great many people have looked at these issues, and I pay tribute to each and every one of them, though they come to slightly different conclusions about how we interpret the Law Commission's recommendations and how we move forward. Professor Clare McGlynn is an expert. Bumble has done work on this; my hon. Friend the Member for Brecon and Radnorshire (Fay Jones) has done a great deal of work too, and I recognise her contribution.

The offence is particularly pernicious because it is as prevalent as indecent exposure. It is right that the offence is recognised in the Sex Offenders Act 2003 as a result. As the hon. Member for Pontypridd said, it is another form of gendered crime online. On the evidence of harm that it causes, she referenced the evidence that we got from Professor McGlynn about Gaia Pope. That was particularly concerning. I do not think any of us in the Committee would argue that this is not the most serious of offences, and I commend the Minister for bringing forward a serious set of recommendations to tackle it.

4 pm

The issue is quite specific: how we make sure we have the most effective law in place. Clause 156 amends the Sex Offenders Act and outlines that the offence is committed if somebody sends a photo or a film to another person with the intention of causing harm, distress or humiliation, or

"for the purpose of obtaining sexual gratification"

and they are reckless as to whether they cause harm, distress or humiliation. I welcome that, and I understand the Law Commission's recommendation focusing on the perpetrator's motives, not the victim's consent. I have great sympathy for the argument made by the hon. Member for Pontypridd, but I understand why the Law Commission, as the expert in law, has made that decision. I wonder whether there is a way forward that the Minister might want to contemplate.

I listened to the hon. Lady's argument—I have made a similar argument in the past—and I will repeat my question: what if the sender of an obscene picture sent it for all sorts of reasons? Maybe it was a joke. Indeed, to go back to my own personal experience, I do not think that the person in the carriage had any sexual motivations at all; he was being intimidatory.

Perhaps the Minister could look at line 19 on page 131, which addresses reckless behaviour. The idea of somebody acting with recklessness is important. At the moment, in proposed new section 66A(1)(b) of the 2003 Act, there is a tie between obtaining sexual gratification and being reckless. The Minister could find a way forward if

he simply changed "and" to "or". I do not think that my personal experience would be caught by this law at all but, as a non-millennial 58-year-old woman, I think it should be. The Minister needs to reflect on that a little.

A way forward that might adhere to what the legal experts at the Law Commission propose—carefully drawing the law so that it does not unintentionally catch people—would be to broaden the provisions slightly by putting in "or" rather than "and", so that those who act recklessly, such as the individual who sent an image to me, are caught within the law. That would avoid shifting the debate to the issue of consent. The Minister and I have both had long meetings with the Law Commission to understand why it has taken the approach that it has.

I put that suggestion on the table for the Minister to consider between now and Report so that he can find a way forward. Cyber-flashing is at least as harmful as indecent exposure; in fact, I would argue that it is more harmful, because people can experience cyber-flashing in the privacy of their own homes, whereas it is incredibly difficult to experience indecent exposure in that way. I hope that the Minister will look at that.

This seismic change will particularly affect young people: millennials and those who are younger, whatever they are called—generation Z. As parliamentarians, we are interested not just in the law, but in how we make sure it bites. It would be helpful if the Minister explained how we can make the Bill as preventive as possible, so that we do not simply punish young people but actually start to train them to understand that they will be committing a serious offence if they send indecent images of male genitalia to others—predominantly women—without their consent, as they are clearly doing on a large scale. Will the Minister indicate whether he will have conversations with those of his colleagues who are responsible for relationship and sex education, to ensure that young people are aware of this new sex offence and that they do not inadvertently fall foul of the law?

Chris Philp: I thank the Members who have contributed to the debate. Rather like with the provisions in clause 150, which we discussed a few minutes ago, a difficult and delicate balance needs to be struck. We want to criminalise that which should be criminal, but not inadvertently criminalise that which should not be. The legal experts at the Law Commission have been studying the matter and consulting other legal experts for quite some time. As my right hon. Friend the Member for Basingstoke said in her excellent speech, their recommendations have been our starting point.

It is probably worth making one or two points about how the clause works. There are two elements of intention, set out in subsection (1). First, the act of sending has to be intentional; it cannot be done accidentally. I think that is reasonable. Secondly, as set out in subsection (1)(a), there must be an intention to cause the person who sees the image alarm, distress or intimidation.

I understand the point that establishing intent could, in some circumstances, present a higher hurdle. As we discussed in relation to clause 150, we are, separately from this, working on the intimate image abuse offence, which does not require intention to be established; it simply requires lack of consent. I was not aware, until my right hon. Friend mentioned it a few moments ago—she was ahead of me there—that the Law Commission has given a timeframe for coming back. I am not sure whether that implies it will be concomitant with Ministry of Justice agreement or whether that will have to follow, but I am very pleased to hear that there is a timeframe. Clearly, it is an adjacent area to this and it will represent substantial progress.

I understand that it can sometimes be hard to establish intention, but there will be circumstances in which the context of such an incident will often make it clear that there was an intention to cause alarm, distress or humiliation.

Alex Davies-Jones: Has the Minister ever received a dick pic?

Chris Philp: Is that a rhetorical question?

Alex Davies-Jones: No, it is a genuine question.

Chris Philp: No.

Alex Davies-Jones: So he cannot possibly know how it feels to receive one. I appreciate the comments that he is trying to make, and that this is a fine balance, but I do see this specific issue of sending a photograph or film of genitals as black and white: they are sent either with or without consent. It is as simple as that. What other circumstances could there be? Can he give me an example of when one could be sent without the intention to cause distress, harm or intimidation?

Chris Philp: It is a fair question. There might be circumstances in which somebody simply misjudges a situation—has not interpreted it correctly—and ends up committing a criminal offence; stumbling into it almost by accident. Most criminal offences require some kind of mens rea—some kind of intention to commit a criminal offence. If a person does something by accident, without intention, that does not normally constitute a criminal offence. Most criminal offences on the statute book require the person committing the offence to intend to do something bad. If we replace the word "intent" with "without consent", the risk is that someone who does something essentially by accident will have committed a criminal offence.

I understand that the circumstances in which that might happen are probably quite limited, and the context of the incidents that the hon. Member for Pontypridd and my right hon. Friend the Member for Basingstoke have described would generally support the fact that there is a bad intention, but we have to be a little careful not accidentally to draw the line too widely. If a couple are exchanging images, do they have to consent prior to the exchange of every single image? We have to think carefully about such circumstances before amending the clause.

Dame Maria Miller: I have to say, just as an aside, that the Minister has huge levels of empathy, so I am sure that he can put himself into the shoes of someone who receives such an image. I am not a lawyer, but I know that there is a concept in law of acting recklessly, so if someone acts recklessly, as my hon. Friend has set

[Dame Maria Miller]

out in his Bill, they can be committing a criminal offence. That is why I thought he might want to consider not having the conditional link between the two elements of subsection(1)(b), but instead having them as an either/or. If he goes back to the Law Commission's actual recommendations, rather than the interpretation he was given by the MOJ, he will see that they set out that one of the conditions should be that defendants who are posting in this way are likely to cause harm. If somebody is acting in a way that is likely to cause harm, they would be transgressing. The Bill acknowledges that somebody can act recklessly. It is a well-known concept in law that people can be committing an offence if they act recklessly—reckless driving, for example. I wonder whether the Minister might think about that, knowing how difficult it would be to undertake what the hon. Member for Pontypridd is talking about, as it directly contravenes the Law Commission's recommendations. I do not think what I am suggesting would contravene the Law Commission's recommendations.

Chris Philp: I will commit to consider the clause further, as my right hon. Friend has requested. It is important to do so in the context of the Law Commission's recommendations, but she has pointed to wording in the Law Commission's original report that could be used to improve the drafting here. I do not want to make a firm commitment to change, but I will commit to considering whether the clause can be improved upon. My right hon. Friend referred to the "likely to cause harm" test, and asked whether recklessness as to whether someone suffers alarm, distress or humiliation could be looked at as a separate element. We need to be careful; if we sever that from sexual gratification, we need to have some other qualification on sexual gratification. We might have sexual gratification with consent, which would be fine. If we severed them, we would have to add another qualification.

It is clear that there is scope for further examination of clause 156. That does not necessarily mean it will be possible to change it, but it is worth examining it further in the light of the comments made by my right hon. Friend. The testimony we heard from witnesses, the testimony of my right hon. Friend and what we heard from the hon. Member for Pontypridd earlier do demonstrate that this is a widespread problem that is hugely distressing and intrusive and that it represents a severe violation. It does need to be dealt with properly.

We need to be cognisant of the fact that in some communities there is a culture of these kinds of pictures being freely exchanged between people who have not met or communicated before—on some dating websites, for example. We need to draft the clause in such a way that it does not inadvertently criminalise those communities—I have been approached by members of those communities who are concerned.

Alex Davies-Jones: They have consent to do that.

Chris Philp: The hon. Member for Pontypridd says from a sedentary position that they have given consent. The consent is not built into the website's terms and conditions; it is an assumed social norm for people on those websites. We need to tread carefully and be thoughtful, to ensure that by doing more to protect one group we do not inadvertently criminalise another.

There is a case for looking at the issue again. My right hon. Friend has made the point thoughtfully and powerfully, and in a way that suggests we can stay within the confines of the Law Commission's advice, while being more thoughtful. I will certainly undertake to go away and do that, in consultation with my right hon. Friend and others.

Nick Fletcher (Don Valley) (Con): I am pleased the Minister will go away and look at this. I am sure there are laws already in place that cover these things, but I know that this issue is very specific. An awful lot of the time, we put laws in place, but we could help an awful lot of people through education, although the last thing we want to do is victim blame. The Government could work with companies that provide devices and have those issued with the airdrop in contacts-only mode, as opposed to being open to everybody. That would stop an awful lot of people getting messages that they should not be receiving in the first place.

Chris Philp: My hon. Friend makes a very powerful and important point. Hopefully, people listening to our proceedings will hear that, as well as those working on media literacy—principally, Ofcom and the Government, through their media literacy strategy. We have had a couple of specific tips that have come out of today's debate. My right hon. Friend the Member for Basingstoke and my hon. Friend the Member for Don Valley mentioned disabling a device's airdrop, or making it contacts-only. A point was also made about inadvertently sharing geolocations, whether through Snapchat or Strava. Those are two different but important points that the general public should be more aware of than they are.

4.15 pm

For the time being, I will resist amendments 41 and 42, but in so doing I commit myself to look further at these measures. It is worth saying—this was mentioned a short time ago—that there is nothing in law dealing with this issue, so we have been debating points of detail from around the world. Those are important points of detail, and I am in no way minimising or dismissing them, but we should recognise that, today, Parliament is introducing this offence, which does not exist at the moment. We are taking a gigantic stride forward. While it is important to ensure that we get the details right, let us not forget that a gigantic stride forward is being taken here.

Alex Davies-Jones: I wholeheartedly agree with the Minister's comments. This is a gigantic step forward that is long overdue, and we wholeheartedly welcome the new offence being created, but, as he rightly pointed out, it is important that we get this right and that we make the measure as strong as possible so that the legislation causes direct and meaningful change.

To us, the issue is simple: "Do you want to see my genitals, yes or no?" We will push amendment 41 to the vote.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 9.

Division No. 49]

AYES

Blackman, Kirsty	Keeley, Barbara
Carden, Dan	
Davies-Jones, Alex	Leadbeater, Kim

NOES

Ansell, Caroline	Miller, rh Dame Maria
Bailey, Shaun	Moore, Damien
Double, Steve	Philp, Chris
Fletcher, Nick	Stevenson, Jane
Holden, Mr Richard	

Question accordingly negatived.

Amendments made: 3, in clause 156, page 131, line 37, leave out "12 months" and insert

"the general limit in a magistrates' court".

Amendment 5, in clause 156, page 131, leave out lines 40 to 42.—*(Chris Philp.)*

This amendment is consequential on Amendment 3.

Clause 156, as amended, ordered to stand part of the Bill.

Clause 157 ordered to stand part of the Bill.

Clause 158

CONSEQUENTIAL AMENDMENTS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss schedule 13.

Barbara Keeley: We have argued that changes to the legislation are long overdue to protect people from the harms caused by online communications offences. The clause and schedule 13 include necessary amendments to the legislation, so we do not oppose them standing part of the Bill.

Chris Philp: The clause cross-references schedule 13 and sets out amendments to existing legislation consequential on the communications offences in part 10. Schedule 13 has a number of consequential amendments, divided broadly into two parts. It makes various changes to the Sexual Offences Act 2003, amends the Regulatory Enforcement and Sanctions Act 2008 in relation to the Malicious Communications Act 1988, and makes various other changes, all of which are consequential on the clauses we have just debated. I therefore commend clause 158 and its associated schedule 13 to the Committee.

Question put and agreed to.

Clause 158 accordingly ordered to stand part of the Bill.

Schedule 13 agreed to.

Clause 159

PROVIDERS THAT ARE NOT LEGAL PERSONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider:

Government amendment 159.

Clauses 160 and 161 stand part.

That schedule 14 be the Fourteenth schedule to the Bill.

Alex Davies-Jones: Labour supports clause 159, because it is vital that the Bill includes provisions for Ofcom to issue a penalty notice or confirmation decision when the provider may not be a legal person in the traditional sense. We have repeatedly maintained that it is central to the success of the Bill that, once implemented, it properly and sufficiently gives Ofcom the relevant powers, autonomy and independence to properly pursue providers of regulated services and their wrongdoings.

We recognise the complexity of the service providers' business models and therefore agree that the Bill must be broad enough to ensure that penalty notices and confirmation decisions can be given, even when the provider may constitute an association, or an organisation between a group of people. Ultimately, as we have made clear, Labour will continue to support giving the regulator the tools required to keep us all safe online.

We have already raised concerns over Ofcom's independence and the interference of and over-reliance on the Secretary of State's powers within the Bill as it stands. However, we are in agreement on clause 159 and feel that it provides a vital tool for Ofcom to have at its disposal should the need for a penalty notice or confirmation decision arise. That is why we support the clause and have not sought to amend it.

Government amendment 159, as we know, ensures that if the provider of a service consists of two or more individuals, those individuals are jointly liable to pay a fee demanded under new schedule 2. As I will come on to in my comments on clauses 160 and 161, we welcome the provisions and clarifications around liability for fees when the provider of a service consists of two or more individuals.

As with clause 159, we welcome the clarity of provisions in the Bill that confirm actions to be taken where a group of two or more individuals act together. It is absolutely right that where two or more individuals together are the providers of a regulated service, they should be jointly and severally liable for any duty, requirement or liability to pay a fee.

We also welcome the clarification that that liability and joint responsibility will also apply in the event of a penalty notice or confirmation decision. We believe that these provisions are vital to capturing the true extent of where responsibility should lie, and we hope they will go some way to remedying the hands-off approach that service providers have managed to get away with for too long when it comes to regulation of the internet. We do, however, feel that the Government could have gone further, as we outlined in amendment 50, which we spoke to when we addressed clause 123.

Labour firmly believes that Ofcom's ability to take action against non-compliance en masse is critical. That is why we welcome clause 160 and will not be seeking to amend it at this stage. We also fundamentally support clause 161, which contains provisions on how joint liability will operate.

We will speak to our concerns about supply chains when we debate a later clause—I believe it is new clause 13—because it is vital that this Bill captures the challenges around supply chain failures and where responsibility lies. With that in mind, we will support clause 161, with a view to the Minister understanding our broader concerns, which we will address when we debate new clause 13.

[Alex Davies-Jones]

Finally, schedule 14 establishes that decisions or notices can be given jointly to both a regulated provider and its parent company. We particularly support the confirmation that all relevant entities must be given the opportunity to make representations when Ofcom seeks to establish joint liability, including on the matters contained in the decision or notice and whether joint liability would be appropriate.

As we have made clear, we see the provisions outlined in this schedule as fundamental to Ofcom's ability to issue truly meaningful decisions, penalties and notices to multiple parties. The fact that, in this instance, service providers will be jointly liable to comply is key to capturing the extent to which it has been possible to perpetuate harm online for so long. That is why we support the intention behind schedule 14 and have not sought to amend it.

Chris Philp: The shadow Minister has set out clearly the purpose of and intent behind these clauses, and how they work, so I do not think I will add anything. I look forward to our future debate on the new clause.

There is one point of correction that I wish to make, and it relates to a question that the hon. Member for Aberdeen North asked this morning and that is germane to amendment 159. That amendment touches on the arrangements for recouping the set-up costs that Ofcom incurs prior to the Bill receiving Royal Assent. The hon. Member for Aberdeen North asked me over what time period those costs would be collected, and I answered slightly off the cuff. Now I have had a chance to dig through the papers, I will take this opportunity to confirm exactly how that works.

To answer the question a little bit better than I did this morning, the place to go is today's amendment paper. The relevant provisions are on page 43 of the amendment paper, in paragraph 7(5) of Government new schedule 2, which we will debate later. If we follow the drafting through—this is quite a convoluted trail to follow—it states that the cost can be recouped over a period that is not less than three years and not more than five years. I hope that gives the hon. Member for Aberdeen North a proper answer to her question from this morning, and I hope it provides clarity and points to where in the new schedule the information can be found. I wanted to take the first opportunity to clarify that point.

Beyond that, the hon. Member for Pontypridd has summarised the provisions in this group very well, and I have nothing to add to her comments.

Question put and agreed to.

Clause 159 accordingly ordered to stand part of the Bill.

Clause 160

INDIVIDUALS PROVIDING REGULATED SERVICES: LIABILITY

Amendment made: 159, in clause 160, page 133, line 6, after "71" insert

"or Schedule (Recovery of OFCOM's initial costs)".—*(Chris Philp.)*

This amendment ensures that, if the provider of a service consists of two or more individuals, those individuals are jointly liable to pay a fee demanded under NS2.

Clause 160, as amended, ordered to stand part of the Bill.

Clause 161 ordered to stand part of the Bill.

Schedule 14 agreed to.

Clause 162

INFORMATION OFFENCES: SUPPLEMENTARY

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 163 to 165 stand part.

Alex Davies-Jones: Labour supports the intention behind clause 162, because we believe that only by creating specific offences will the messaging around liability and the overall message about public safety really hit home for those at the top in Silicon Valley. We welcome the clarification on exactly how Ofcom will be able to exercise these important powers, and we support the process of giving notice, confirmation decisions and subsequent penalties. We see the clause as fundamental to the Bill's overall success, although, as the Minister will recall, we feel that the Bill could go further in addressing broader offences beyond those around information practices. However, that is a debate for another day.

In this clause, we believe that the importance and, indeed, the power of information notices is crystal clear for service providers to see, and Labour fully supports and welcomes that move. That is why we will support clause 162 and have not sought to amend it at this stage. We welcome the clarity in clause 163 around the process that applies when a person relies on a defence in an information offence. We see this clause as sitting alongside current legal precedents and are therefore happy to support it.

We fully support and welcome clause 164. We believe it is central to the entire argument around liability that the Minister knows Labour has been making for some time now. We have heard in Committee evidence sessions some truly compelling insights from people such as Frances Haugen, and we know for certain that companies are prone to covering up information that they know will be received unfavourably.

4.30 pm

I point the Minister to one such worrying instance that occurred only last week in which Blake Lemoine, a senior software engineer in Google's responsible AI unit, was placed on paid leave after claiming that the tech group's chatbot had become sentient. From Lemoine's testimonies, the conversations with the language model for dialogue applications, known informally as LaMDA, seem incredibly real. The chatbot seemingly confessed to having hunger for spiritual knowledge, as well as feelings of loneliness. Although they do not constitute an information offence per se, we can and must all recognise that if what has been said is true, those developments in the world of AI are very worrying. That is why we welcome clause 164, which will place more liability on corporate officers for information offences committed by that entity.

Although we believe the liability should go further and transparency around information captured by platforms should be broader, we welcome the impact that the clause could have, given that both an entity and corporate officer could be found guilty of an offence in certain circumstances. That sits with legal precedents elsewhere and we are happy to support it.

Finally, we welcome the clarity outlined in clause 165, which sets out how information offences apply to providers that are not legal persons according to the law under which they are formed. As Members know, subsection (2) specifies:

"Proceedings for an offence alleged to have been committed by a relevant entity must be brought against the entity in its own name".

We agree with that approach, given the Bill's provisions for personal liability, which we have discussed at length.

We welcome the provisions outlined in subsection (5), which provide that if the relevant entity commits an offence and the offence was committed

"with the consent or connivance of an officer",

or can be attributed to the neglect of an officer, the officer also commits the offence. It is a welcome step indeed that the Bill captures both officer liability and, to a certain degree, group liability, in the form of partnership and unincorporated association. We are happy to support clause 165 and have not sought to make changes at this stage.

Chris Philp: Once again, the shadow Minister has described the various clauses in this group. They speak, as she said, to the important and very strong measures around information offences. It is so important that where someone fails to provide the information that Ofcom requires, not only is there a liability on the company to pay very large fines or have their service cut off, as we discussed earlier, but individuals have criminal liability as well.

Clause 162 gives further information about how information-related criminal offences operate and how criminal proceedings can be brought against a person who fails to comply with an information notice or a requirement imposed when Ofcom exercises its powers of entry and inspection. Clause 163 goes further to explain how defences to accusations of criminal offences can operate, and it is helpful to have that clearly set out.

Clause 164 allows for corporate officers of regulated providers to be found liable for offences committed by the provider under the Act. For example, corporate officers can also be found liable for information offences committed by their company. That is extremely important, because it means that senior personnel can be held liable even where they are not named by their company in an information response. That means the most senior executives will have their minds focused on making sure the information requirements are properly met.

Clause 165 provides further information about how information-related criminal offences will operate under the Bill when the regulated provider is not a legal person—when it is, for example, a partnership or an unincorporated association. I hope the clauses give the specificity and clarification required to operate the personal criminal liability, which gives the enforcement powers in the Bill such strong teeth.

Question put and agreed to.

Clause 162 accordingly ordered to stand part of the Bill.

Clauses 163 to 165 ordered to stand part of the Bill.

Clause 166

EXTRA-TERRITORIAL APPLICATION

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 167 stand part.

Alex Davies-Jones: Labour welcomes clause 166, which specifies that references to regulated services and Ofcom's information-gathering powers apply to services provided from outside the United Kingdom as well as to services provided from within the United Kingdom. While we recognise the challenges around internet regulation in the UK, we live in a global world, and we are pleased that the legislation has been drawn up in a way that will capture services based overseas.

We feel the Bill is lacking in its ability to regulate against content that may have originated from outside the UK. While it is welcome that regulated services based abroad will be within scope, we have concerns that that will do little to capture specific content that may not originate within the UK. We have raised these points at length in previous debates, so I will not dwell on them now, but the Minister knows that the Bill will continue to fall short when it does not capture, for example, child sexual exploitation and abuse content that was filmed and originated abroad. That is a huge loophole, which will allow harmful content to be present and to be perpetuated online well into the future. Although we support clause 166 for now, I urge the Minister to reconsider his view on how all-encompassing the current approach to content can be as he considers his Department's strategy before Report.

Clause 167 outlines that the information offences in the Bill apply to acts done in the United Kingdom and outside the United Kingdom. We welcome its provisions, but we feel that the Government could go further. We welcome the clarification that it will be possible to prosecute information offences in any part of the UK as if they occurred there. Given the devastating pressures that our legal system already faces thanks to this Government's cuts and shambolic approach to justice, such flexibility is crucial and a welcome step forward.

Chris Philp: Last week or the week before, we debated extensively the points about the extraterritorial application to protecting children, and I made it clear that the Bill protects people as we would wish it to.

Clause 166 relates to extraterritorial enforceability. It is important to make sure that the duties, enforceable elements and sanctions apply worldwide, reflecting the realities of the internet, and clause 166 specifies that references to regulated services in the Bill include services provided from outside the United Kingdom. That means that services based overseas must also comply, as well as those in the UK, if they reach UK users.

The clause ensures that Ofcom has effective information-gathering powers and can seek information from in-scope companies overseas for the purposes of regulating and enforcing the regime. Obviously, companies such as Facebook are firmly in scope, as hon. Members would expect. The clause makes it clear that Ofcom can request information held outside the UK and interview individuals outside the UK, if that is necessary for its investigations.

Clause 167 explains that the information-related personal criminal offences in the Bill—for example, failing to comply with Ofcom's information notices—apply to acts done inside and outside the UK. That means that those offences can be criminally prosecuted whether the

[Chris Philp]

perpetrator is based in the UK or outside the UK. That will send a clear message to the large global social media firms that no matter where they may be based in the world or where their services may be provided from, we expect them to comply and the enforcement provisions in the Bill will apply to them.

Question put and agreed to.

Clause 166 accordingly ordered to stand part of the Bill.

Clause 167 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Steve Double.)*

4.39 pm

Adjourned till Thursday 23 June at half-past Eleven o'clock.

Written evidence reported to the House

OSB78 James Wilson

OSB79 Meta (supplementary submission)

OSB80 Aviva

OSB81 Church of Scotland

OSB82 WebGroup Czech Republic, a.s. and NKL Associates s.r.o.

OSB83 Professor Uta Kohl, Professor of Law at Southampton Law School, and Dr Napoleon Xanthoulis, Lecturer in Law at Southampton Law School

OSB84 Barnardo's

OSB85 The Children's Society

OSB86 Professor Clare McGlynn, Durham Law School, Durham University, and Professor Lorna Woods OBE, School of Law, University of Essex