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Public Bill Committee

ONLINE SAFETY BILL

Seventh Sitting

Thursday 9 June 2022

(Morning)

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Monday 13 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

Thursday 9 June 2022

(Morning)

[Christina Rees *in the Chair*]

Online Safety Bill

11.30 am

The Chair: We are now sitting in public and proceedings are being broadcast. Please switch electronic devices to silent. Tea and coffee are not allowed during sittings. I have no objections to Members taking their jackets off—it is very warm in this room.

Clause 17

Duty about content reporting

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

The Chair: With this it will be convenient to discuss clause 27 stand part.

The Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport (Chris Philp): Good morning, Ms Rees. It is a pleasure to serve once again under your chairmanship. I wondered whether the shadow Minister, the hon. Member for Pontypridd, wanted to speak first—I am always happy to follow her, if she would prefer that.

Alex Davies-Jones (Pontypridd) (Lab): Always chivalrous!

Chris Philp: I do my best.

Clauses 17 and 27 have similar effects, the former applying to user-to-user services and the latter to search services. They set out an obligation on the companies to put in place effective and accessible content reporting mechanisms, so that users can report issues. The clauses will ensure that service providers are made aware of illegal and harmful content on their sites. In relation to priority illegal content, the companies must proactively prevent it in the first place, but in the other areas, they may respond reactively as well.

The clause will ensure that anyone who wants to report illegal or harmful content can do so in a quick and reasonable way. We are ensuring that everyone who needs to do that will be able to do so, so the facility will be open to those who are affected by the content but who are not themselves users of the site. For example, that might be non-users who are the subject of the content, such as a victim of revenge pornography, or non-users who are members of a specific group with certain characteristics targeted by the content, such as a member of the Jewish community reporting antisemitic content. There is also facility for parents and other adults with caring responsibility for children, and adults caring for another adult, to report content. Clause 27 sets out similar duties in relation to search. I commend the clauses to the Committee.

Kirsty Blackman (Aberdeen North) (SNP): I will talk about this later, when we come to a subsequent clause to which I have tabled some amendments—I should have tabled some to this clause, but unfortunately missed the chance to do so.

I appreciate the Minister laying out why he has designated the people covered by this clause; my concern is that "affected" is not wide enough. My logic is that, on the strength of these provisions, I might not be able to report racist content that I come across on Twitter if I am not the subject of that content—if I am not a member of a group that is the subject of the content or if I am not caring for someone who is the subject of it.

I appreciate what the Minister is trying to do, and I get the logic behind it, but I think the clause unintentionally excludes some people who would have a reasonable right to expect to be able to make reports in this instance. That is why I tabled amendments 78 and 79 to clause 28, about search functions, but those proposals would have worked reasonably for this clause as well. I do not expect a positive answer from the Minister today, but perhaps he could give consideration to my concern. My later amendments would change "affected person" to "any other person". That would allow anyone to make a report, because if something is illegal content, it is illegal content. It does not matter who makes the report, and it should not matter that I am not a member of the group of people targeted by the content.

I report things all the time, particularly on Twitter, and a significant amount of it is nothing to do with me. It is not stuff aimed at me; it is aimed at others. I expect that a number of the platforms will continue to allow reporting for people who are outwith the affected group, but I do not want to be less able to report than I am currently, and that would be the case for many people who see concerning content on the internet.

Alex Davies-Jones: The hon. Lady is making a really important point. One stark example that comes to my mind is when English footballers suffered horrific racist abuse following the penalty shootout at the Euros last summer. Hundreds of thousands of people reported the abuse that they were suffering to the social media platforms on their behalf, in an outcry of solidarity and support, and it would be a shame if people were prevented from doing that.

Kirsty Blackman: I absolutely agree. I certainly do not think I am suggesting that the bigger platforms such as Twitter and Facebook will reduce their reporting mechanisms as a result of how the Bill is written. However, it is possible that newer or smaller platforms, or anything that starts after this legislation comes, could limit the ability to report on the basis of these clauses.

Barbara Keeley (Worsley and Eccles South) (Lab): Good morning, Ms Rees.

It is important that users of online services are empowered to report harmful content, so that it can be removed. It is also important for users to have access to complaints procedures when wrong moderation decisions have been made. Reporting and complaint mechanisms are integral to ensuring that users are safe and that free speech is upheld, and we support these provisions in the Bill.

Clauses 17 and 18, and clauses 27 and 28, are two parts of the same process: content reporting by individual users, and the handling of content reported as a complaint.

However, it is vital that these clauses create a system that works. That is the key point that Labour Members are trying to make, because the wild west system that we have at the moment does not work.

It is welcome that the Government have proposed a system that goes beyond the users of the platform and introduces a duty on companies. However, companies have previously failed to invest enough money in their complaints systems for the scale at which they are operating in the UK. The duties in the Bill are an important reminder to companies that they are part of a wider society that goes beyond their narrow shareholder interest.

One example of why this change is so necessary, and why Labour Members are broadly supportive of the additional duties, is the awful practice of image abuse. With no access to sites on which their intimate photographs are being circulated, victims of image abuse have very few if any routes to having the images removed. Again, the practice of image abuse has increased during the pandemic, including through revenge porn, which the Minister referred to. The revenge porn helpline reported that its case load more than doubled between 2019 and 2020.

These clauses should mean that people can easily report content that they consider to be either illegal, or harmful to children, if it is hosted on a site likely to be accessed by children, or, if it is hosted on a category 1 platform, harmful to adults. However, the Minister needs to clarify how these service complaints systems will be judged and what the performance metrics will be. For instance, how will Ofcom enforce against a complaint?

In many sectors of the economy, even with long-standing systems of regulation, companies can have tens of millions of customers reporting content, but that does not mean that any meaningful action can take place. The hon. Member for Aberdeen North has just told us how often she reports on various platforms, but what action has taken place? Many advocacy groups of people affected by crimes such as revenge porn will want to hear, in clear terms, what will happen to material that has been complained about. I hope the Minister can offer that clarity today.

Transparency in reporting will be vital to analysing trends and emerging types of harm. It is welcome that in schedule 8, which we will come to later, transparency reporting duties apply to the complaints process. It is important that as much information as possible is made public about what is going on in companies' complaints and reporting systems. As well as the raw number of complaints, reporting should include what is being reported or complained about, as the Joint Committee on the draft Bill recommended last year. Again, what happens to the reported material will be an important metric on which to judge companies.

Finally, I will mention the lack of arrangements for children. We have tabled new clause 3, which has been grouped for discussion with other new clauses at the end of proceedings, but it is relevant to mention it now briefly. The Children's Commissioner highlighted in her oral evidence to the Committee how children had lost faith in complaints systems. That needs to be changed. The National Society for the Prevention of Cruelty to Children has also warned that complaints mechanisms are not always appropriate for children and that a very low proportion of children have ever reported content. A child specific user advocacy body could represent the interests of child users and support Ofcom's regulatory decisions. That would represent an important strengthening of protections for users, and I hope the Government will support it when the time comes.

Jane Stevenson (Wolverhampton North East) (Con): I rise briefly to talk about content reporting. I share the frustrations of the hon. Member for Aberdeen North. The way I read the Bill was that it would allow users and affected persons, rather than "or" affected persons, to report content. I hope the Minister can clarify that that means affected persons who might not be users of a platform. That is really important.

Will the Minister also clarify the use of human judgment in these decisions? Many algorithms are not taking down some content at the moment, so I would be grateful if he clarified that there is a need for platforms to provide a genuine human judgment on whether content is harmful.

Kirsty Blackman: I want to raise an additional point about content reporting and complaints procedures. I met with representatives of Mencap yesterday, who raised the issue of the accessibility of the procedures that are in place. I appreciate that the Bill talks about procedures being accessible, but will the Minister give us some comfort about Ofcom looking at the reporting procedures that are in place, to ensure that adults with learning disabilities in particular can access those content reporting and complaints procedures, understand them and easily find them on sites?

That is a specific concern that Mencap raised on behalf of its members. A number of its members will be users of sites such as Facebook, but may find it more difficult than others to access and understand the procedures that are in place. I appreciate that, through the Bill, the Minister is making an attempt to ensure that those procedures are accessible, but I want to make sure they are accessible not just for the general public but for children, who may need jargon-free access to content reporting and complaints procedures, and for people with learning disabilities, who may similarly need jargon-free, easy-to-understand and easy-to-find access to those procedures.

Chris Philp: Let me try to address some of the questions that have been raised in this short debate, starting with the question that the hon. Member for Aberdeen North quite rightly asked at the beginning. She posed the question, "What if somebody who is not an affected person encountered some content and wanted to report it?" For example, she might encounter some racist content on Twitter or elsewhere and would want to be able to report it, even though she is not herself the target of it or necessarily a member of the group affected. I can also offer the reassurance that my hon. Friend the Member for Wolverhampton North East asked for.

The answer is to be found in clause 17(2), which refers to

"A duty to operate a service using systems and processes that allow users and"—

[Chris Philp]

I stress "and"—"affected persons". As such, the duty to offer content reporting is to users and affected persons, so if the hon. Member for Aberdeen North was a user of Twitter but was not herself an affected person, she would still be able to report content in her capacity as a user. I hope that provides clarification.

Kirsty Blackman: I appreciate that. That is key, and I am glad that this is wider than just users of the site. However, taking Reddit as an example, I am not signed up to that site, but I could easily stumble across content on it that was racist in nature. This clause would mean that I could not report that content unless I signed up to Reddit, because I would not be an affected person or a user of that site.

Chris Philp: I thank the hon. Lady for her clarificatory question. I can confirm that in order to be a user of a service, she would not necessarily have to sign up to it. The simple act of browsing that service, of looking at Reddit—not, I confess, an activity that I participate in regularly—regardless of whether or not the hon. Lady has an account with it, makes her a user of that service, and in that capacity she would be able to make a content report under clause 17(2) even if she were not an affected person. I hope that clears up the question in a definitive manner.

The hon. Lady asked in her second speech about the accessibility of the complaints procedure for children. That is strictly a matter for clause 18, which is the next clause, but I will quickly answer her question. Clause 18 contains provisions that explicitly require the complaints process to be accessible. Subsection (2)(c) states that the complaints procedure has to be

"easy to access, easy to use (including by children) and transparent",

so the statutory obligation that she requested is there in clause 18.

11.45 am

Kirsty Blackman: Can the Minister explain the logic in having that phrasing for the complaints procedure but not for the content-reporting procedure? Surely it would also make sense for the content reporting procedure to use the phrasing

"easy to access, easy to use (including by children) and transparent."

Chris Philp: There is in clause 17(2)

"a duty to operate a service that allows users and affected persons to easily report content which they consider to be content of a…kind specified below",

which, of course, includes services likely to be accessed by children, under subsection (4). The words "easily report" are present in clause 17(2).

I will move on to the question of children reporting more generally, which the shadow Minister raised as well. Clearly, a parent or anyone with responsibility for a child has the ability to make a report, but it is also worth mentioning the power in clauses 140 to 142 to make super-complaints, which the NSPCC strongly welcomed its evidence. An organisation that represents a particular group—an obvious example is the NSPCC representing children, but it would apply to loads of other groups—has the ability to make super-complaints to Ofcom on behalf of those users, if it feels they are not being well treated by a platform. A combination of the parent or carer being able to make individual complaints, and the super-complaint facility, means that the points raised by Members are catered for. I commend the clause to the Committee.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

DUTIES ABOUT COMPLAINTS PROCEDURES

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

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

Amendment 78, in clause 28, page 28, line 28, leave out "affected" and replace with "any other"

This amendment allows those who do not fit the definition of "affected person" to make a complaint about search content which they consider to be illegal.

Amendment 79, in clause 28, page 28, line 30, leave out "affected" and replace with "any other"

This amendment allows those who do not fit the definition of "affected person" to make a complaint about search content which they consider not to comply with sections 24, 27 or 29.

Clause 28 stand part.

New clause 1—*Report on redress for individual complaints—*

"(1) The Secretary of State must publish a report assessing options for dealing with appeals about complaints made under—

(a) section 18; and

(b) section 28

(2) The report must—

(a) provide a general update on the fulfilment of duties about complaints procedures which apply in relation to all regulated user-to-user services and regulated search services;

(b) assess which body should be responsible for a system to deal with appeals in cases where a complainant considers that a complaint has not been satisfactorily dealt with; and

(c) provide options for how the system should be funded, including consideration of whether an annual surcharge could be imposed on user-to-user services and search services.

(3) The report must be laid before Parliament within six months of the commencement of this Act."

Barbara Keeley: I will speak to new clause 1. Although duties about complaints procedures are welcome, it has been pointed out that service providers' user complaints processes are often obscure and difficult to navigate—that is the world we are in at the moment. The lack of any external complaints option for individuals who seek redress is worrying.

The Minister has just talked about the super-complaints mechanism—which we will come to later in proceedings—to allow eligible entities to make complaints to Ofcom about a single regulated service if that complaint is of particular importance or affects a particularly large

number of service users or members of the public. Those conditions are constraints on the super-complaints process, however.

An individual who felt that they had been failed by a service's complaints system would have no source of redress. Without redress for individual complaints once internal mechanisms have been exhausted, victims of online abuse could be left with no further options, consumer protections could be compromised, and freedom of expression could be impinged upon for people who felt that their content had been unfairly removed.

Various solutions have been proposed. The Joint Committee recommended the introduction of an online safety ombudsman to consider complaints for which recourse to internal routes of redress had not resulted in resolution and the failure to address risk had led to significant and demonstrable harm. Such a mechanism would give people an additional body through which to appeal decisions after they had come to the end of a service provider's internal process. Of course, we as hon. Members are all familiar with the ombudsman services that we already have.

Concerns have been raised about the level of complaints such an ombudsman could receive. However, as the Joint Committee noted, complaints would be received only once the service's internal complaints procedure had been exhausted, as is the case for complaints to Ofcom about the BBC. The new clause seeks to ensure that we find the best possible solution to the problem. There needs to be a last resort for users who have suffered serious harm on services. It is only through the introduction of an external redress mechanism that service providers can truly be held to account for their decisions as they impact on individuals.

Dame Maria Miller (Basingstoke) (Con): I rise to contribute to the stand part debate on clauses 18 and 28. It was interesting, though, to hear the debate on clause 17, because it is right to ask how the complaints services will be judged. Will they work in practice? When we start to look at how to ensure that the legislation works in all eventualities, we need to ensure that we have some backstops for when the system does not work as it should.

It is welcome that there will be clear duties on providers to have operational complaints procedures—complaints procedures that work in practice. As we all know, many of them do not at the moment. As a result, we have a loss of faith in the system, and that is not going to be changed overnight by a piece of legislation. For years, people have been reporting things—in some cases, very serious criminal activity—that have not been acted on. Consumers—people who use these platforms—are not going to change their mind overnight and suddenly start trusting these organisations to take their complaints seriously. With that in mind, I hope that the Minister listened to the points I made on Second Reading about how to give extra support to victims of crimes or people who have experienced things that should not have happened online, and will look at putting in place the right level of support.

The hon. Member for Worsley and Eccles South talked about the idea of an ombudsman; it may well be that one should be in place to deal with situations where complaints are not dealt with through the normal processes. I am also quite taken by some of the evidence we received about third-party complaints processes by other organisations. We heard a bit about the revenge porn helpline, which was set up a few years ago when we first recognised in law that revenge pornography was a crime. The Bill creates a lot more victims of crime and recognises them as victims, but we are not yet hearing clearly how the support systems will adequately help that massively increased number of victims to get the help they need.

I will probably talk in more detail about this issue when we reach clause 70, which provides an opportunity to look at the—unfortunately—probably vast fines that Ofcom will be imposing on organisations and how we might earmark some of that money specifically for victim support, whether by funding an ombudsman or helping amazing organisations such as the revenge porn helpline to expand their services.

We must address this issue now, in this Bill. If we do not, all those fines will go immediately into the coffers of the Treasury without passing "Go", and we will not be able to take some of that money to help those victims directly. I am sure the Government absolutely intend to use some of the money to help victims, but that decision would be at the mercy of the Treasury. Perhaps we do not want that; perhaps we want to make it cleaner and easier and have the money put straight into a fund that can be used directly for people who have been victims of crime or injustice or things that fall foul of the Bill.

I hope that the Minister will listen to that and use this opportunity, as we do in other areas, to directly passport fines for specific victim support. He will know that there are other examples of that that he can look at.

Kirsty Blackman: As the right hon. Member for Basingstoke has mentioned the revenge porn helpline, I will mention the NSPCC's Report Remove tool for children. It does exactly the same thing, but for younger people—the revenge porn helpline is specifically only for adults. Both those tools together cover the whole gamut, which is massively helpful.

The right hon. Lady's suggestion about the hypothecation of fines is a very good one. I was speaking to the NSPCC yesterday, and one of the issues that we were discussing was super-complaints. Although super-complaints are great and I am very glad that they are included in the Bill, the reality is that some of the third-sector organisations that are likely to be undertaking super-complaints are charitable organisations that are not particularly well funded. Given how few people work for some of those organisations and the amazing amount of work they do, if some of the money from fines could support not just victims but the initial procedure for those organisations to make super-complaints, it would be very helpful. That is, of course, if the Minister does not agree with the suggestion of creating a user advocacy panel, which would fulfil some of that role and make that support for the charitable organisations less necessary—although I am never going to argue against support for charities: if the Minister wants to hypothecate it in that way, that would be fantastic.

I tabled amendments 78 and 79, but the statement the Minister made about the definition of users gives me a significant level of comfort about the way that people will be able to access a complaints procedure. I am terribly disappointed that the Minister is not a regular Reddit user. I am not, either, but I am well aware of

[Kirsty Blackman]

what Reddit entails. I have no desire to sign up to Reddit, but knowing that even browsing the site I would be considered a user and therefore able to report any illegal content I saw, is massively helpful. On that basis, I am comfortable not moving amendments 78 and 79.

On the suggestion of an ombudsman—I am looking at new clause 1—it feels like there is a significant gap here. There are ombudsman services in place for many other areas, where people can put in a complaint and then go to an ombudsman should they feel that it has not been appropriately addressed. As a parliamentarian, I find that a significant number of my constituents come to me seeking support to go to the ombudsman for whatever area it is in which they feel their complaint has not been appropriately dealt with. We see a significant number of issues caused by social media companies, in particular, not taking complaints seriously, not dealing with complaints and, in some cases, leaving illegal content up. Particularly in the initial stages of implementation—in the first few years, before companies catch up and are able to follow the rules put in place by the Bill and Ofcom—a second-tier complaints system that is removed from the social media companies would make things so much better than they are now. It would provide an additional layer of support to people who are looking to make complaints.

Dame Maria Miller: I am sure the hon. Lady will agree with me that it is not either/or—it is probably both. Ultimately, she is right that an ombudsman would be there to help deal with what I think will be a lag in implementation, but if someone is a victim of online intimate image abuse, in particular, they want the material taken down immediately, so we need to have organisations such as those that we have both mentioned there to help on the spot. It has to be both, has it not?

Kirsty Blackman: I completely agree. Both those helplines do very good work, and they are absolutely necessary. I would strongly support their continuation in addition to an ombudsman-type service. Although I am saying that the need for an ombudsman would likely be higher in the initial bedding-in years, it will not go away—we will still need one. With NHS complaints, the system has been in place for a long time, and it works pretty well in the majority of cases, but there are still cases it gets wrong. Even if the social media companies behave in a good way and have proper complaints procedures, there will still be instances of them getting it wrong. There will still be a need for a higher level. I therefore urge the Minister to consider including new clause 1 in the Bill.

12 noon

Shaun Bailey (West Bromwich West) (Con): It is a pleasure to see you in the Chair, Ms Rees, and to make my first contribution in Committee—it will be a brief one. It is great to follow the hon. Member for Aberdeen North, and I listened intently to my right hon. Friend the Member for Basingstoke, from whom I have learned so much having sat with her in numerous Committees over the past two years.

I will speak to clause 18 stand part, in particular on the requirements of the technical specifications that the companies will need to use to ensure that they fulfil the duties under the clause. The point, which has been articulated well by numerous Members, is that we can place such a duty on service providers, but we must also ensure that the technical specifications in their systems allow them to follow through and deliver on it.

I sat in horror during the previous sitting as I listened to the hon. Member for Pontypridd talking about the horrendous abuse that she has to experience on Twitter. What that goes to show is that, if the intention of this clause and the Bill are to be fulfilled, we must ensure that the companies enable themselves to have the specifications in their systems on the ground to deliver the requirements of the Bill. That might mean that the secondary legislation is slightly more prescriptive about what those systems look like.

It is all well and good us passing primary legislation in this place to try to control matters, but my fear is that if those companies do not have systems such that they can follow through, there is a real risk that what we want will not materialise. As we proceed through the Bill, there will be mechanisms to ensure that that risk is mitigated, but the point that I am trying to make to my hon. Friend the Minister is that we should ensure that we are on top of this, and that companies have the technical specifications in their complaints procedures to meet the requirements under clause 18.

We must ensure that we do not allow the excuse, "Oh, well, we're a bit behind the times on this." I know that later clauses seek to deal with that, but it is important that we do not simply fall back on excuses. We must embed a culture that allows the provisions of the clause to be realised. I appeal to the Minister to ensure that we deal with that and embed a culture that looks at striding forward to deal with complaints procedures, and that these companies have the technical capabilities on the ground so that they can deal with these things swiftly and in the right way. Ultimately, as my right hon. Friend the Member for Basingstoke said, it is all well and good us making these laws, but it is vital that we ensure that they can be applied.

Chris Philp: Let me address some of the issues raised in the debate. First, everyone in the House recognises the enormous problem at the moment with large social media firms receiving reports about harmful and even illegal content that they just flagrantly ignore. The purpose of the clause, and indeed of the whole Bill and its enforcement architecture, is to ensure that those large social media firms no longer ignore illegal and harmful content when they are notified about it. We agree unanimously on the importance of doing that.

The requirement for those firms to take the proper steps is set out in clause 18(2)(b), at the very top of page 18—it is rather depressing that we are on only the 18th of a couple of hundred pages. That paragraph creates a statutory duty for a social media platform to take "appropriate action"—those are the key words. If the platform is notified of a piece of illegal content, or content that is harmful to children, or of content that it should take down under its own terms and conditions if harmful to adults, then it must do so. If it fails to do so, Ofcom will have the enforcement powers available to it to compel—ultimately, escalating to a fine of up to 10% of global revenue or even service disconnection.

Kirsty Blackman: Will the Minister give way?

Chris Philp: Let me develop the point before I give way. Our first line of defence is Ofcom enforcing the clause, but we have a couple of layers of additional defence. One of those is the super-complaints mechanism, which I have mentioned before. If a particular group of people, represented by a body such as the NSPCC, feel that their legitimate complaints are being infringed systemically by the social media platform, and that Ofcom is failing to take the appropriate action, they can raise that as a super-complaint to ensure that the matter is dealt with.

Barbara Keeley: Will the Minister give way?

Chris Philp: I should give way to the hon. Member for Aberdeen North first, and then I will come to the shadow Minister.

Kirsty Blackman: I wanted to ask specifically about the resourcing of Ofcom, given the abilities that it will have under this clause. Will Ofcom have enough resource to be able to be that secondary line of defence?

Chris Philp: A later clause gives Ofcom the ability to levy the fees and charges it sees as necessary and appropriate to ensure that it can deliver the duties. Ofcom will have the power to set those fees at a level to enable it to do its job properly, as Parliament would wish it to do.

Barbara Keeley: This is the point about individual redress again: by talking about super-complaints, the Minister seems to be agreeing that it is not there. As I said earlier, for super-complaints to be made to Ofcom, the issue has to be of particular importance or to impact a particularly large number of users, but that does not help the individual. We know how much individuals are damaged; there must be a system of external redress. The point about internal complaints systems is that we know that they are not very good, and we require a big culture change to change them, but unless there is some mechanism thereafter, I cannot see how we are giving the individual any redress—it is certainly not through the super-complaints procedure.

Chris Philp: As I said explicitly a few moments ago, the hon. Lady is right to point out the fact that the super-complaints process is to address systemic issues. She is right to say that, and I think I made it clear a moment or two ago.

Whether there should be an external ombudsman to enforce individual complaints, rather than just Ofcom enforcing against systemic complaints, is a question worth addressing. In some parts of our economy, we have ombudsmen who deal with individual complaints, financial services being an obvious example. The Committee has asked the question, why no ombudsman here? The answer, in essence, is a matter of scale and of how we can best fix the issue. The volume of individual complaints generated about social media platforms is just vast. Facebook in the UK alone has tens of millions of users—I might get this number wrong, but I think it is 30 million or 40 million users.

Dame Maria Miller: Will the Minister give way?

Kim Leadbeater (Batley and Spen) (Lab): Will the Minister give way?

Chris Philp: I will in a moment. The volume of complaints that gets generated is vast. The way that we will fix this is not by having an external policeman to enforce on individual complaints, but by ensuring that the systems and processes are set up correctly to deal with problems at this large scale. *[Interruption.]* The shadow Minister, the hon. Member for Pontypridd, laughs, but it is a question of practicality. The way we will make the internet safe is to make sure that the systems and processes are in place and effective. Ofcom will ensure that that happens. That will protect everyone, not just those who raise individual complaints with an ombudsman.

Several hon. Members *rose—*

Chris Philp: I can see that there is substantial demand to comment, so I shall start by giving way to my right hon. Friend the Member for Basingstoke.

Dame Maria Miller: The Minister is doing an excellent job explaining the complex nature of the Bill. Ultimately, however, as he and I know, it is not a good argument to say that this is such an enormous problem that we cannot have a process in place to deal with it. If my hon. Friend looks back at his comments, he will see that that is exactly the point he was making. Although it is possibly not necessary with this clause, I think he needs to give some assurances that later in the Bill he will look at hypothecating some of the money to be generated from fines to address the issues of individual constituents, who on a daily basis are suffering at the hands of the social media companies. I apologise for the length of my intervention.

Chris Philp: It is categorically not the Government's position that this problem is too big to fix. In fact, the whole purpose of this piece of groundbreaking and world-leading legislation is to fix a problem of such magnitude. The point my right hon. Friend was making about the hypothecation of fines to support user advocacy is a somewhat different one, which we will come to in due course, but there is nothing in the Bill to prevent individual groups from assisting individuals with making specific complaints to individual companies, as they are now entitled to do in law under clauses 17 and 18.

The point about an ombudsman is a slightly different one—if an individual complaint is made to a company and the individual complainant is dissatisfied with the outcome of their individual, particular and personal complaint, what should happen? In the case of financial services, if, for example, someone has been mis-sold a mortgage and they have suffered a huge loss, they can go to an ombudsman who will bindingly adjudicate that individual, single, personal case. The point that I am making is that having hundreds of thousands or potentially millions of cases being bindingly adjudicated on a case-by-case basis is not the right way to tackle a problem of this scale. The right way to tackle the problem is to force the social media companies, by law, to systemically deal with all of the problem, not just individual problems that may end up on an ombudsman's desk.

That is the power in the Bill. It deals at a systems and processes level, it deals on an industry-wide level, and it gives Ofcom incredibly strong enforcement powers to

[Chris Philp]

make sure this actually happens. The hon. Member for Pontypridd has repeatedly called for a systems and processes approach. This is the embodiment of such an approach and the only way to fix a problem of such magnitude.

Kim Leadbeater: I associate myself with the comments of the right hon. Member for Basingstoke. Surely, if we are saying that this is such a huge problem, that is an argument for greater stringency and having an ombudsman. We cannot say that this is just about systems. Of course it is about systems, but online harms—we have heard some powerful examples of this—are about individuals, and we have to provide redress and support for the damage that online harms do to them. We have to look at systemic issues, as the Minister is rightly doing, but we also have to look at individual cases. The idea of an ombudsman and greater support for charities and those who can support victims of online crime, as mentioned by the hon. Member for Aberdeen North, is really important.

Chris Philp: I thank the hon. Lady for her thoughtful intervention. There are two separate questions here. One is about user advocacy groups helping individuals to make complaints to the companies. That is a fair point, and no doubt we will debate it later. The ombudsman question is different; it is about whether to have a right of appeal against decisions by social media companies. Our answer is that, rather than having a third-party body—an ombudsman—effectively acting as a court of appeal against individual decisions by the social media firms, because of the scale of the matter, the solution is to compel the firms, using the force of law, to get this right on a systemic and comprehensive basis.

Kirsty Blackman *rose—*

Alex Davies-Jones *rose—*

Chris Philp: I give way first to the hon. Member for Aberdeen North—I think she was first on her feet—and then I will come to the hon. Member for Pontypridd.

Kirsty Blackman: Does the Minister not think this is going to work? He is creating this systems and processes approach, which he suggests will reduce the thousands of complaints—complaints will be made and complaints procedures will be followed. Surely, if it is going to work, in 10 years' time we are going to need an ombudsman to adjudicate on the individual complaints that go wrong. If this works in the way he suggests, we will not have tens of millions of complaints, as we do now, but an ombudsman would provide individual redress. I get what he is arguing, but I do not know why he is not arguing for both things, because having both would provide the very best level of support.

Chris Philp: I will address the review clause now, since it is relevant. If, in due course, as I hope and expect, the Bill has the desired effect, perhaps that would be the moment to consider the case for an ombudsman. The critical step is to take a systemic approach, which the Bill is doing. That engages the question of new clause 1, which would create a mechanism, probably for the reason the hon. Lady just set out, to review how things are going and to see if, in due course, there is a case for an ombudsman, once we see how the Bill unfolds in practice.

Jane Stevenson: Will the Minister give way?

Chris Philp: Let me finish the point. It is not a bad idea to review it and see how it is working in practice. Clause 149 already requires a review to take place between two and four years after Royal Assent. For the reasons that have been set out, it is pretty clear from this debate that we would expect the review to include precisely that question. If we had an ombudsman on day one, before the systems and processes had had a chance to have their effect, I fear that the ombudsman would be overwhelmed with millions of individual issues. The solution lies in fixing the problem systemically.

12.15 pm

Several hon. Members *rose—*

Chris Philp: I think the shadow Minister wanted to intervene, unless I have answered her point already.

Alex Davies-Jones: I wanted to reiterate the point that the hon. Member for Aberdeen North made, which the Minister has not answered. If he has such faith that the systems and processes will be changed and controlled by Ofcom as a result of the Bill, why is he so reluctant to put in an ombudsman? It will not be overwhelmed with complaints if the systems and processes work, and therefore protect victims. We have already waited far too long for the Bill, and now he says that we need to wait two to four years for a review, and even longer to implement an ombudsman to protect victims. Why will he not just put this in the Bill now to keep them safe?

Chris Philp: Because we need to give the new systems and processes time to take effect. If the hon. Lady felt so strongly that an ombudsman was required, she was entirely at liberty to table an amendment to introduce one, but she has not done so.

Jane Stevenson: I wonder whether Members would be reassured if companies were required to have a mechanism by which users could register their dissatisfaction, to enable an ombudsman, or perhaps Ofcom, to gauge the volume of dissatisfaction and bring some kind of group claim against the company. Is that a possibility?

Chris Philp: Yes. My hon. Friend hits the nail on the head. If there is a systemic problem and a platform fails to act appropriately not just in one case, but in a number of them, we have, as she has just described, the super-complaints process in clauses 140 to 142. Even under the Bill as drafted, without any changes, if a platform turns out to be systemically ignoring reasonable complaints made by the public and particular groups of users, the super-complainants will be able to do exactly as she describes. There is a mechanism to catch this—it operates not at individual level, but at the level of groups of users, via the super-complaint mechanism—so I honestly feel that the issue has been addressed.

When the numbers are so large, I think that the super-complaint mechanism is the right way to push Ofcom if it does not notice. Obviously, the first line of defence is that companies comply with the Bill. The second line of defence is that if they fail to do so, Ofcom will jump on them. The third line of defence is that if Ofcom somehow does not notice, a super-complaint group—such as the NSPCC, acting for children—will make a super-complaint to Ofcom. We have three lines of defence, and I submit to the Committee that they are entirely appropriate.

Barbara Keeley: Will the Minister give way?

Chris Philp: I was about to sit down, but of course I will give way.

Barbara Keeley: The Minister said that the Opposition had not tabled an amendment to bring in an ombudsman.

Chris Philp: On this clause.

Barbara Keeley: On this clause. What we have done, however—we are debating it now—is to table a new clause to require a report on redress for individual complaints. The Minister talks about clause 149 and a process that will kick in between two and five years away, but we have a horrendous problem at the moment. I and various others have described the situation as the wild west, and very many people—thousands, if not millions, of individuals—are being failed very badly. I do not see why he is resisting our proposal for a report within six months of the commencement of the Act, which would enable us to start to see at that stage, not two to five years down the road, how these systems—he is putting a lot of faith in them—were turning out. I think that is a very sound idea, and it would help us to move forward.

Chris Philp: The third line of defence—the super-complaint process—is available immediately, as I set out a moment ago. In relation to new clause 1, which the hon. Lady mentioned a moment ago, I think six months is very soon for a Bill of this magnitude. The two-to-five-year timetable under the existing review mechanism in clause 149 is appropriate.

Although we are not debating clause 149, I hope, Ms Rees, that you will forgive me for speaking about it for a moment. If Members turn to pages 125 and 126 and look at the matters covered by the review, they will see that they are extraordinarily comprehensive. In effect, the review covers the implementation of all aspects of the Bill, including the need to minimise the harms to individuals and the enforcement and information-gathering powers. It covers everything that Committee members would want to be reviewed. No doubt as we go through the Bill we will have, as we often do in Bill Committee proceedings, a number of occasions on which somebody tables an amendment to require a review of x, y or z. This is the second such occasion so far, I think, and there may be others. It is much better to have a comprehensive review, as the Bill does via the provisions in clause 149.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

DUTIES ABOUT FREEDOM OF EXPRESSION AND PRIVACY

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

The Chair: With this it will be convenient to discuss clause 29 stand part.

Chris Philp: Clause 19, on user-to-user services, and its associated clause 29, which relates to search services, specify a number of duties in relation to freedom of expression and privacy. In carrying out their safety duties, in-scope companies will be required by clause 19(2) to have regard to the importance of protecting users' freedom of expression and privacy.

Let me pause for a moment on this issue. There has been some external commentary about the Bill's impact on freedom of expression. We have already seen, via our discussion of a previous clause, that there is nothing in the Bill that compels the censorship of speech that is legal and not harmful to children. I put on the record again the fact that nothing in the Bill requires the censorship of legal speech that poses no harm to children.

We are going even further than that. As far as I am aware, for the first time ever there will be a duty on social media companies, via clause 19(2), to have regard to freedom of speech. There is currently no legal duty at all on platforms to have regard to freedom of speech. The clause establishes, for the first time, an obligation to have regard to freedom of speech. It is critical that not only Committee members but others more widely who consider the Bill should bear that carefully in mind. Besides that, the clause speaks to the right to privacy. Existing laws already speak to that, but the clause puts it in this Bill as well. Both duties are extremely important.

In addition, category 1 service providers—the really big ones—will need proactively to assess the impact of their policies on freedom of expression and privacy. I hope all Committee members will strongly welcome the important provisions I have outlined.

Barbara Keeley: As the Minister says, clauses 19 and 29 are designed to provide a set of balancing provisions that will require companies to have regard to freedom of expression and privacy when they implement their safety duties. However, it is important that companies cannot use privacy and free expression as a basis to argue that they can comply with regulation in less substantive ways. That is a fear here.

Category 1 providers will need to undertake an impact assessment to determine the impact of their product and safety decisions on freedom of expression, but it is unclear whether that applies only in respect of content that is harmful to adults. Unlike with the risk assessments for the illegal content and child safety duties set out in part 3, chapter 2, these clauses do not set expectations about whether risk assessments are of a suitable and sufficient quality. It is also not clear what powers Ofcom has at its disposal to challenge any assessments that it considers insufficient or that reach an inappropriate or unreasonable assessment of how to balance fundamental rights. I would appreciate it if the Minister could touch on that when he responds.

[Barbara Keeley]

The assumption underlying these clauses is that privacy and free expression may need to act as a constraint on safety measures, but I believe that that is seen quite broadly as simplistic and potentially problematic. To give one example, a company could argue that end-to-end encryption is important for free expression, and privacy could justify any adverse impact on users' safety. The subjects of child abuse images, which could more easily be shared because of such a decision, would see their safety and privacy rights weakened. Such an argument fails to take account of the broader nuance of the issues at stake. Impacts on privacy and freedom of expression should therefore be considered across a range of groups rather than assuming an overarching right that applies equally to all users.

Similarly, it will be important that Ofcom understands and delivers its functions in relation to these clauses in a way that reflects the complexity and nuance of the interplay of fundamental rights. It is important to recognise that positive and negative implications for privacy and freedom of expression may be associated with any compliance decision. I think the Minister implied that freedom of speech was a constant positive, but it can also have negative connotations.

Kirsty Blackman: I am pleased that the clause is in the Bill, and I think it is a good one to include. Can the Minister reaffirm what he said on Tuesday about child sexual abuse, and the fact that the right to privacy does not trump the ability—particularly with artificial intelligence—to search for child sexual abuse images?

Chris Philp: I confirm what the hon. Lady has just said. In response to the hon. Member for Worsley and Eccles South, it is important to say that the duty in clause 19 is "to have regard", which simply means that a balancing exercise must be performed. It is not determinative; it is not as if the rights in the clause trump everything else. They simply have to be taken into account when making decisions.

To repeat what we discussed on Tuesday, I can explicitly and absolutely confirm to the hon. Member for Aberdeen North that in my view and the Government's, concerns about freedom of expression or privacy should not trump platforms' ability to scan for child sexual exploitation and abuse images or protect children. It is our view that there is nothing more important than protecting children from exploitation and sexual abuse.

We may discuss this further when we come to clause 103, which develops the theme a little. It is also worth saying that Ofcom will be able to look at the risk assessments and, if it feels that they are not of an adequate standard, take that up with the companies concerned. We should recognise that the duty to have regard to freedom of expression is not something that currently exists. It is a significant step forward, in my view, and I commend clauses 19 and 29 to the Committee.

The Chair: With your indulgence, Minister, Nick Fletcher would like to speak.

Nick Fletcher (Don Valley) (Con): I have been contacted by a number of people about this clause, and they have serious concerns about the "have regard" statement. The Christian Institute said that it was

> "promised 'considerably stronger protections for free speech', but the Bill does not deliver. Internet companies will be under 'a duty to have regard to the importance of' protecting free speech,"

but a "have regard" duty

> "has no weight behind it. It is perfectly possible to…have regard to something…and then ignore it in practice."

The "have regard" duty is not strong enough, and it is a real concern for a lot of people out there. Protecting children is absolutely imperative, but there are serious concerns when it comes to freedom of speech. Can the Minister address them for me?

12.30 pm

Chris Philp: As I have said, at the moment there is nothing at all. Platforms such as Facebook can and do arbitrarily censor content with little if any regard for freedom of speech. Some platforms have effectively cancelled Donald Trump while allowing the Russian state to propagate shocking disinformation about the Russian invasion of Ukraine, so there is real inconsistency and a lack of respect for freedom of speech. This at least establishes something where currently there is nothing. We can debate whether "have regard to" is strong enough. We have heard the other point of view from the other side of the House, which expressed concern that it might be used to allow otherwise harmful content, so there are clearly arguments on both sides of the debate. The obligation to have regard does have some weight, because the issue cannot be completely ignored. I do not think it would be adequate to simply pay lip service to it and not give it any real regard, so I would not dismiss the legislation as drafted.

I would point to the clauses that we have recently discussed, such as clause 15, under which content of democratic importance—which includes debating current issues and not just stuff said by an MP or candidate—gets additional protection. Some of the content that my hon. Friend the Member for Don Valley referred to a second ago would probably also get protection under clause 14, under which content of democratic importance has to be taken in account when making decisions about taking down or removing particular accounts. I hope that provides some reassurance that this is a significant step forwards compared with where the internet is today.

Alex Davies-Jones: I share the Minister's sentiments about the Bill protecting free speech; we all want to protect that. He mentions some of the clauses we debated on Tuesday regarding democratic importance. Some would say that debating this Bill is of democratic importance. Since we started debating the Bill on Tuesday, and since I have mentioned some of the concerns raised by stakeholders and others about the journalistic exemption and, for example, Tommy Robinson, my Twitter mentions have been a complete sewer—as everyone can imagine. One tweet I received in the last two minutes states:

> "I saw your vicious comments on Tommy Robinson…The only reason you want to suppress him is to bury the Pakistani Muslim rape epidemic"

in this country. Does the Minister agree that that is content of democratic importance, given we are debating this Bill, and that it should remain on Twitter?

Chris Philp: That sounds like a very offensive tweet. Could the hon. Lady read it again? I didn't quite catch it.

Alex Davies-Jones: Yes:

"I saw your vicious comments on Tommy Robinson…The only reason you want to suppress him is to bury the Pakistani Muslim rape epidemic"

in this country. It goes on:

"this is a toxic combination of bloc vote grubbing and woke"

culture, and there is a lovely GIF to go with it.

Chris Philp: I do not want to give an off-the-cuff assessment of an individual piece of content—not least because I am not a lawyer. It does not sound like it meets the threshold of illegality. It most certainly is offensive, and that sort of matter is one that Ofcom will set out in its codes of practice, but there is obviously a balance between freedom of speech and content that is harmful, which the codes of practice will delve into. I would be interested if the hon. Lady could report that to Twitter and then report back to the Committee on what action it takes.

Alex Davies-Jones: Yes, I will do that right now and see what happens.

Chris Philp: At the moment, there is no legal obligation to do anything about it, which is precisely why this Bill is needed, but let us put it to the test.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

RECORD-KEEPING AND REVIEW DUTIES

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

The Chair: With this it will be convenient to discuss clause 30 stand part.

Barbara Keeley: Record-keeping and review duties on in-scope services make up an important function of the regulatory regime that we are discussing today. Platforms will need to report all harms identified and the action taken in response to this, in line with regulation. The requirements to keep records of the action taken in response to harm will be vital in supporting the regulator to make effective decisions about regulatory breaches and whether company responses are sufficient. That will be particularly important to monitor platforms' responses through risk assessments—an area where some charities are concerned that we will see under-reporting of harms to evade regulation.

Evidence of under-reporting can be seen in the various transparency reports that are currently being published voluntarily by sites, where we are not presented with the full picture and scale of harm and the action taken to address that harm is thus obscured.

As with other risk assessments, the provisions in clauses 20 and 30 could be strengthened through a requirement on in-scope services to publish their risk assessments. We have made that point many times. Greater transparency would allow researchers and civil society to track harms and hold services to account.

Chris Philp: The shadow Minister has eloquently introduced the purpose and effect of the clause, so I shall not repeat what she has said. On her point about publication, I repeat the point that I made on Tuesday, which is that the transparency requirements—they are requirements, not options—set out in clause 64 oblige Ofcom to ensure the publication of appropriate information publicly in exactly the way she requests.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clauses 21 to 24 ordered to stand part of the Bill.

Clause 25

CHILDREN'S RISK ASSESSMENT DUTIES

Amendment proposed: 16, in clause 25, page 25, line 10, at end insert—

"(3A) A duty for the children's risk assessment to be approved by either—

(a) the board of the entity; or, if the organisation does not have a board structure,

(b) a named individual who the provider considers to be a senior manager of the entity, who may reasonably be expected to be in a position to ensure compliance with the children's risk assessment duties, and reports directly into the most senior employee of the entity." *—(Alex Davies-Jones.)*

This amendment seeks to ensure that regulated companies' boards or senior staff have responsibility for children's risk assessments.

The Committee divided: Ayes 7, Noes 10.

Division No. 14]

AYES

Blackman, Kirsty	Leadbeater, Kim
Carden, Dan	Mishra, Navendu
Davies-Jones, Alex	
Keeley, Barbara	Nicolson, John

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.

Clause 25 ordered to stand part of the Bill.

Clauses 26 to 30 ordered to stand part of the Bill.

Clause 31

CHILDREN'S ACCESS ASSESSMENTS

The Chair: I call Kirsty Blackman to move amendment 22. *[Interruption.]* Sorry—my bad, as they say. I call Barbara Keeley to move amendment 22.

Barbara Keeley: I beg to move amendment 22, in clause 31, page 31, line 17, leave out subsection (3).

This amendment removes the condition that applies a child use test to a service or part of a service.

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

Clause stand part.

Clause 32 stand part.

That schedule 3 be the Third schedule to the Bill.

Clause 33 stand part.

Barbara Keeley: The purpose of the amendment is to remove the child use test from the children's access assessment and to make sure that any service likely to be accessed by children is within the scope of the child safety duty. The amendment is supported by the NSPCC and other children's charities.

Children require protection wherever they are online. I am sure that every Committee member believes that. The age-appropriate design code from the Information Commissioner's Office requires all services that are likely to be accessed by children to provide high levels of data protection and privacy. Currently, the Bill will regulate only user-to-user and search services that have a significant number of child users or services for which children form a significant part of their user base. It will therefore not apply to all services that fall within the scope of the ICO's code, creating a patchwork of regulation that could risk uncertainty, legal battles and unnecessary complexity. It might also create a perverse incentive for online services to stall the introduction of their child safety measures until Ofcom has the capacity to investigate and reach a determination on the categorisation of their sites.

The inclusion of a children's access assessment in the Bill may result in lower standards of protection, with highly problematic services such as Telegram and OnlyFans able to claim that they are excluded from the child safety duties because children do not account for a significant proportion of their user base. However, evidence has shown that children have been able to access those platforms.

Other services will remain out of the scope of the Bill as currently drafted. They include harmful blogs that promote life-threatening behaviours, such as pro-anorexia sites with provider-generated rather than user-generated content; some of the most popular games among children that do not feature user-generated content but are linked to increasing gambling addiction among children, and through which some families have lost thousands of pounds; and other services with user-generated content that is harmful but does not affect an appreciable number of children. That risks dozens, hundreds or even thousands of children falling unprotected.

Parents have the reasonable expectation that, under the new regime introduced by the Bill, children will be protected wherever they are online. They cannot be expected to be aware of exemptions or distinctions between categories of service. They simply want their children to be protected and their rights upheld wherever they are.

As I say, children have the right to be protected from harmful content and activity by any platform that gives them access. That is why the child user condition in clause 31 should be deleted from the Bill. As I have said, the current drafting could leave problematic platforms out of scope if they were to claim that they did not have a significant number of child users. It should be assumed that platforms are within the scope of the child safety duties unless they can provide evidence that children cannot access their sites, for example through age verification tools.

Although clause 33 provides Ofcom with the power to determine that a platform is likely to be accessed by children, this will necessitate Ofcom acting on a company-by-company basis to bring problematic sites back into scope of the child safety duties. That will take considerable time, and it will delay children receiving protection. It would be simpler to remove the child user condition from clause 31, as I have argued.

12.45 pm

It is welcome that schedule 3 specifies the timing of service providers' risk assessments and children's access assessments. Three months from the publication of Ofcom guidance to the completion of the service assessments is ample time. What is concerning, as we have heard from contributions this morning, is the long delay that children have already faced in gaining protections online. We know that the situation has become very bad.

As I understand it, the duties on Ofcom to provide the necessary guidance on risk assessments and children's access assessments will come into force only on such a date as the Secretary of State may, by regulations, appoint, because the measure is not one of those listed in clause 193(1). That means that children and adults may continue to be exposed to harm for a significant further stretch of time. Can the Minister offer any clarification as to when Ofcom will be required to publish guidance? After the disappointing flop of part 3 of the Digital Economy Act 2017 not being implemented, what reassurances can the Minister offer that this regime will come into effect as soon as possible?

The Chair: I definitely call Kirsty Blackman this time.

Kirsty Blackman: I would have been quite happy to move the amendment, but I do not think the Opposition would have been terribly pleased with me if I had stolen it. I have got my name on it, and I am keen to support it.

As I have said, I met the NSPCC yesterday, and we discussed how clause 31(3) might work, should the Minister decide to keep it in the Bill and not accept the amendment. There are a number of issues with the clause, which states that the child user condition is met if

"a significant number of children"

are users of the service, or if the service is

"likely to attract a significant number of users who are children".

I do not understand how that could work. For example, a significant number of people who play Fortnite are adults, but a chunk of people who play it are kids. If some sort of invisible percentage threshold is applied in such circumstances, I do not know whether that threshold will be met. If only 20% of Fortnite users are kids, and that amounts only to half a million children, will that count as enough people to meet the child access assessment threshold?

Fortnite is huge, but an appropriate definition is even more necessary for very small platforms and services. With the very far-right sites that we have mentioned, it may be that only 0.5% of their users are children, and

that may amount only to 2,000 children—a very small number. Surely, because of the risk of harm if children access these incredibly damaging and dangerous sites that groom people for terrorism, they should have a duty to meet the child access requirement threshold, if only so that we can tell them that they must have an age verification process—they must be able to say, "We know that none of our users are children because we have gone through an age verification process." I am keen for children to be able to access the internet and meet their friends online, but I am keen for them to be excluded from these most damaging sites. I appreciate the action that the Government have taken in relation to pornographic content, but I do not think that this clause allows us to go far enough in stopping children accessing the most damaging content that is outwith pornographic content.

The other thing that I want to raise is about how the number of users will be calculated. The Minister made it very clear earlier on, and I thank him for doing so, that an individual does not have to be a registered user to be counted as a user of a site. People can be members of TikTok, for example, only if they are over 13. TikTok has some hoops in place—although they are not perfect—to ensure that its users are over 13, and to be fair, it does proactively remove users that it suspects are under 13, particularly if they are reported. That is a good move.

My child is sent links to TikTok videos through WhatsApp, however. He clicks on the links and is able to watch the videos, which will pop up in the WhatsApp mini-browser thing or in the Safari browser. He can watch the videos without signing up as a registered user of TikTok and without using the platform itself—the videos come through Safari, for example, rather than through the app. Does the Minister expect that platforms will count those people as users? I suggest that the majority of people who watch TikTok by those means are doing so because they do not have a TikTok account. Some will not have accounts because they are under 13 and are not allowed to by TikTok or by the parental controls on their phones.

My concern is that, if the Minister does not provide clarity on this point, platforms will count just the number of registered users, and will say, "It's too difficult for us to look at the number of unregistered users, so in working out whether we meet the criteria, we are not even going to consider people who do not access our specific app or who are not registered users in some way, shape or form." I have concerns about the operation of the provisions and about companies using that "get out of jail free" card. I genuinely believe that the majority of those who access TikTok other than through its platform are children and would meet the criteria. If the Minister is determined to keep subsection (3) and not accept the amendment, I feel that he should make it clear that those users must be included in the counting by any provider assessing whether it needs to fulfil the child safety duties.

Kim Leadbeater: I agree with thon. Lady's important point, which feeds into the broader question of volume versus risk—no matter how many children see something that causes harm and damage, one is one too many—and the categorisation of service providers into category 1 to category 2A and category 2B. The depth of the risk is the problem, rather than the number of people who might be affected. The hon. Lady also alluded to age verification—I am sure we will come to that at some point—which is another can of worms. The important point, which she made well, is about volume versus risk. The point is not how many children see something; even if only a small number of children see something, the damage has been done.

Kirsty Blackman: I absolutely agree. In fact, I have tabled an amendment to widen category 1 to include sites with the highest risk of harm. The Minister has not said that he agrees with my amendment specifically, but he seems fairly amenable to increasing and widening some duties to include the sites of highest risk. I have also tabled another new clause on similar issues.

I am glad that these clauses are in the Bill—a specific duty in relation to children is important and should happen—but as the shadow Minister said, clause 31(3) is causing difficulty. It is causing difficulty for me and for organisations such as the NSPCC, which is unsure how the provisions will operate and whether they will do so in the way that the Government would like.

I hope the Minister will answer some of our questions when he responds. If he is not willing to accept the amendment, will he give consideration to how the subsection could be amended in the future—we have more stages, including Report and scrutiny in the other place—to ensure that there is clarity and that the intention of the purpose is followed through, rather than being an intention that is not actually translated into law?

Chris Philp: Colleagues have spoken eloquently to the purpose and effect of the various clauses and schedule 3 —the stand part component of this group. On schedule 3, the shadow Minister, the hon. Member for Worsley and Eccles South, asked about timing. The Government share her desire to get this done as quickly as possible. In its evidence a couple of weeks ago, Ofcom said it would be publishing its road map before the summer, which would set out the timetable for moving all this forward. We agree that that is extremely important.

I turn to one or two questions that arose on amendment 22. As always, the hon. Member for Aberdeen North asked a number of very good questions. The first was whether the concept of a "significant number" applied to a number in absolute terms or a percentage of the people using a particular service, and which is looked at when assessing what is significant. The answer is that it can be either—either a large number in absolute terms, by reference to the population of the whole United Kingdom, or a percentage of those using the service. That is expressed in clause 31(4)(a). Members will note the "or" there. It can be a number in proportion to the total UK population or the proportion using a service. I hope that answers the hon. Member's very good question.

Kirsty Blackman: My concern is where services that meet neither of those criteria—they do not meet the "significant number" criterion in percentage terms because, say, only 0.05% of their users are children, and they do not meet it in population terms, because they are a pretty small platform and only have, say, 1,000 child users—but those children who use the platform are at very high risk because of the nature of the platform or the service provided. My concern is for those at highest

[Kirsty Blackman]

risk where neither of the criteria are met and the service does not have to bother conducting any sort of age verification or access requirements.

Chris Philp: I am concerned to ensure that children are appropriately protected, as the hon. Lady sets out. Let me make a couple of points in that area before I address that point.

The hon. Lady asked another question earlier, about video content. She gave the example of TikTok videos being viewed or accessed not directly on TikTok but via some third-party means, such as a WhatsApp message. First, it is worth emphasising again that in order to count as a user, a person does not have to be registered and can simply be viewing the content. Secondly, if someone is viewing something through another service, such as WhatsApp—the hon. Lady used the example of browsing the internet on another site—the duty will bite at the level of WhatsApp, and it will have to consider the content that it is providing access to. As I said, someone does not have to be registered with a service in order to count as a user of that service.

On amendment 22, there is a drafting deficiency, if I may put it politely—this is a point of drafting rather than of principle. The amendment would simply delete subsection (3), but there would still be references to the "child user condition"—for example, the one that appears on the same page of the Bill at line 11. If the amendment were adopted as drafted, it would end up leaving references to "child user condition" in the Bill without defining what it meant, because we would have deleted the definition.

Barbara Keeley: Is the Minister coming on to say that he is accepting what we are saying here?

Chris Philp: No, is the short answer. I was just mentioning in passing that there is that drafting issue.

On the principle, it is worth being very clear that, when it comes to content or matters that are illegal, that applies to all platforms, regardless of size, where children are at all at risk. In schedule 6, we set out a number of matters—child sexual exploitation and abuse, for example—as priority offences that all platforms have to protect children from proactively, regardless of scale.

1 pm

Of course, anything to do with children that is illegal falls under the legal duties that we have discussed already. Anything that touches on illegality is covered, notwithstanding this clause, which deals with topics where the subject, act or content is not illegal. It is important to keep that in mind.

Other areas include gambling, which the shadow Minister mentioned. There is separate legislation—very strong legislation—that prohibits children from being involved in gambling. That stands independently of this Bill, so I hope that the Committee is assured—

Barbara Keeley: The Minister has not addressed the points I raised. I specifically raised—he has not touched on this—harmful pro-anorexia blogs, which we know are dangerous but are not in scope, and games that children access that increase gambling addiction. He says that there is separate legislation for gambling addiction, but families have lost thousands of pounds through children playing games linked to gambling addiction. There are a number of other services that do not affect an appreciable number of children, and the drafting causes them to be out of scope.

Chris Philp *rose—[Interruption.]*

The Chair: There is no hard and fast rule about moving the Adjournment motion. It is up to the Government Whip.

Chris Philp: I have a few more things to say, but I am happy to finish here if it is convenient.

Ordered, That the debate be now adjourned.—*(Steve Double.)*

1.2 pm

Adjourned till this day at Two o'clock.