

UK government proposes stricter rules for internet safety

The government has announced plans to review laws and to ensure that “what is illegal offline is illegal online”.¹ As part of those plans, which take forward proposals discussed in its Internet Safety Strategy Green Paper published in October 2017,² the government has asked the Law Commission to review the laws on offensive communications and to assess whether they provide the right protection to victims online.

The government has also confirmed that it will introduce a comprehensive new social media code of practice in 2018, clarifying the minimum expectations for social media companies. It will also introduce an annual internet safety transparency report, providing UK data on offensive online content and what action is being taken to remove it. Those and other initiatives fall under the aegis of the government’s Digital Charter, a rolling programme of work to agree “norms and rules for the online world” and to put them into practice.

Internet Safety Strategy

The core principles and policies of the Digital Charter were announced in a Policy Paper published on 25 January 2018.³ The Paper notes that there has already been good progress under the Charter’s work programme, including:

- to give people more control over their personal data through the Data Protection Bill;
- to protect children and vulnerable adults online through the Internet Safety Strategy;
- to create a new Centre for Data Ethics and Innovation to advise government and regulators on the implications of new data-driven technologies, including artificial intelligence; and
- to build international pressure and consensus to tackle terrorist use of the internet and to support the establishment of an international industry-led forum to look at it.

In its Internet Safety Strategy Green Paper, the government reiterated its manifesto commitment to “ensuring that Britain is the safest place in the world to be online”. It stated that abusive and threatening behaviour online is unacceptable, and that work would be undertaken to determine whether laws are effective enough in ensuring parity between the treatment of offensive behaviour offline and similar behaviour online.

Digital Charter

Speaking at the World Economic Forum in Davos, the Prime Minister said that technological advances “continue to revolutionise the possibilities for humanity”, and stressed the need to have “international frameworks in place to ensure everyone can benefit from them”. She set out how, through the Charter, the UK will ensure that it is the best place to start and build a digital business, and that businesses in the technology sector will be supported in securing the public confidence and trust that they need.

The Prime Minister said that technologies like the internet had been developed with a philosophy that connecting people together would improve people’s lives. As noted in the Digital Charter Policy

¹Press release: [Government outlines next steps to make the UK the safest place to be online](#) 6 February 2018.

² [Internet Safety Strategy – Green paper](#) (October 2017).

³ [Digital Charter](#) (25 January 2018).

Paper, the internet, combined with new technology such as AI, is set to change society “perhaps more than any previous technological revolution – growing the economy, making us more productive and raising living standards”.

Alongside those opportunities, however, came new challenges and risks, the Prime Minister said. As set out in the Digital Charter Policy Paper, the internet could be used to spread terrorist material, could be a tool for abuse and bullying, and could be used to undermine civil discourse, objective news and intellectual property.

The Digital Charter is the government’s response to this. Its core purpose is to make the internet work for everyone. Through it, the government says that it will agree new norms and rules for the online world and put them into practice.

The Digital Charter will follow key principles, which underpin a work programme announced in the Policy Paper. Those principles include ensuring that the internet remains free, open and accessible, that personal data should be respected and used appropriately, and that the rights which people have offline should be protected online.

The Charter will not be developed by government alone. The government will look to the technology sector, businesses and civil society to take responsibility for working with it to find solutions to those challenges.

Priorities for the government include: (a) protecting people from harmful content and behaviour through its Internet Safety Strategy; (b) ensuring that data is used in safe and ethical ways; (c) looking at the legal liability that social media companies have for the content shared on their sites; (d) limiting the spread of disinformation intended to mislead for political, personal and/or financial gain; and (e) supporting businesses in keeping themselves and individuals safe from malicious cyber-activity.

Social media code of practice

The Green Paper outlined that a key part of securing a more coherent, joined-up approach to online safety was issuing the voluntary social media code of practice required under the Digital Economy Act 2017. The code is aimed at: (a) preventing abusive behaviour online; (b) introducing more effective reporting mechanisms to tackle bullying or harmful content; and (c) providing better guidance for users to identify and report illegal content.

The government is proposing to outline further steps on the strategy, including more detail on the code of practice and transparency reports, in spring 2018.

Essentially, the new code will outline standards and norms expected from online platforms. It will cover:

- the development, enforcement and review of robust community guidelines for the content uploaded by users and their conduct online;
- the prevention of abusive behaviour online and the misuse of social media platforms, including action to identify and stop users who are persistently abusing services;
- the reporting mechanisms that companies have in place for inappropriate, bullying and harmful content, and ensuring that they have clear policies and performance metrics for taking such content down;
- the guidance that social media companies should offer to users (a) to help the users identify illegal content, (b) to allow the users to contact the companies online and (c) to advise them

on how to report it to the authorities (with a view to ensuring that such guidance is as clear as possible); and

- the policies and practices that companies apply to privacy issues.

The government wants to see as many social media companies as possible sign up to the code of conduct, to demonstrate their commitment to improving online safety.

Law Commission review

The Malicious Communications Act 1988 and the Communications Act 2003 will be included in the scope of the Law Commission's review. The Commission will consider whether certain concepts under those Acts need to be reconsidered in the light of technological change. In the words of one of the Law Commissioners, Professor David Ormerod: "There are laws in place to stop abuse but we've moved on from the age of green ink and poison pens."

In particular, the Commission will analyse:

- how the Malicious Communications Act 1998 deals with offensive online communications;
- how the Communications Act 2003 deals with online communications;
- what "grossly offensive" means, and whether that poses difficulties for legal certainty;
- whether the law means fault or intention need to be proven to prosecute offensive online communications;
- the need to update definitions in the law that technology has rendered obsolete or confused, such as the meaning of "sender"; and
- how other parts of the criminal law overlap with online communications laws.

Other announcements

The government has also received a "commitment" from major online platforms including Google, Facebook and Twitter to put in place specific support during election campaigns to ensure that abusive content can be dealt with quickly.⁴ This takes forward a recommendation from the Committee on Standards in Public Life.

Additionally, the government has announced a new online safety guide for those working with children, including school leaders and teachers, "to prepare young people for digital life".⁵

Comment

As laudable as they appear on paper, it is uncertain whether these initiatives will work in practice. There is no guarantee of that, and much of this will depend on how the industry responds.

The social media code of practice has statutory backing, as it is a requirement under section 103 of the Digital Economy Act 2017, but it will remain a voluntary code.

⁴Press release: [Government outlines next steps to make the UK the safest place to be online](#) 6 February 2018.

The government has committed to monitoring the progress and effectiveness of the initiatives and reforms by producing an annual internet safety transparency report. This will report on:

- the amount of harmful/offensive content reported to companies;
- the volume and proportion of such material that is taken down;
- the effectiveness of complaint handling by social media companies; and
- the way that they tackle harmful and abusive behaviour.

The Law Commission has indicated that it will publish its review within six months, after which it will make recommendations. It will need to take into account considerations of free speech and the fluidity and spontaneity of online communications, but it seems likely to recommend change.

The challenge, then, for the Law Commission will be to determine how far to lower, if at all, the high thresholds under the Malicious Communications Act 1998 and the Communications Act 2003. Those criminalise grossly offensive, indecent and menacing communications, but do not cover other types of communications, many of which might still amount to trolling.

Eleanor Steyn, Associate, Simkins LLP