



**Tackling Online Harm –
What the Euros 2020 Taught Us**

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On Wednesday 7th July 2021, the England football team broke a 55-year cycle of disappointment by defeating Denmark and progressing to the finals of the UEFA European Football Championship 2020. Four days later, on 11th July 2021, the country watched as a nail-biting penalty shootout left Italy the victors of the Cup. Despite football not coming home, the England football team should have been unanimously praised as heroes for their performance during the tournament, and their resolve in ending “55 years of hurt” by making it to the final. Unfortunately, a number of online users took to social media to post hate-filled, racist abuse at three young players, Bukayo Saka, Marcus Rashford, and Jadon Sancho, who missed their penalty kicks. The actions of those few internet users has re-opened the long-standing question: what can be done in a digital age to stop this abuse, and who is responsible?

In December 2020, the Government published its Online Harms White Paper before publishing the Online Safety Bill in May 2021. The fundamental thread which runs through the Bill is to allow OFCOM to regulate and prevent “harmful, but legal, content” as well as minimising the amount of illegal content online. Rather than create new criminal offences in relation to this, the Government has chosen to place the onus on the online service providers, to ensure that the content is not published on their platforms in the first place. This marks a clear change in tact from previous attempts to prevent racial, or other, written abuse where the individual was punished after the fact. In order to do

so, section 39 of the Online Safety Bill has defined “regulated content”, which is the focus of the Bill, as all user-generated content, except:

- a) Emails,
- b) SMS messages,
- c) MMS messages,
- d) Comments and reviews on provider content (i.e. content published by or on behalf of the service provider),
- e) One-to-one live aural communications,
- f) Paid-for advertisements, and
- g) News publisher content.

User-generated content is defined as all content generated by a user or uploaded to or shared on the service by a user which may be encountered by another user through the service. Through these definitions, the Bill attempts to cover all material a user may post on social media, directly visible to another user. Section 11 creates a duty to protect adults in relation to “Category 1” user-to-user services (though Category 1 Services are yet to be identified as it will be for OFCOM to set the threshold requirements for those services to be registered). This section requires services to specify in their terms of service how content harmful to adults is to be dealt with, to ensure the terms of service are clear and accessible to users, and that they are applied consistently.

Further, the Online Safety Bill creates a duty of care, under section 9, in relation to user-to-user services to take proportionate steps to mitigate and effectively manage the risks of harm to individuals, as well as duties to implement systems and processes to minimise the presence of “illegal content” and to “swiftly take down such content”. Illegal content is defined in section 41 of the Bill as being:

- a) in relation to a regulated user-to-user service, content—
 - i. that is regulated content in relation to that service, and
 - ii. that amounts to a relevant offence;
- b) in relation to a regulated search service, content that amounts to a relevant offence.

The Bill goes on to provide that content consisting of certain words, images, speech or sounds amounts to a relevant offence if the provider of the service has reasonable grounds to believe that—

- a) the use of the words, images, speech or sounds amounts to a relevant offence,
- b) the use of the words, images, speech or sounds, when taken together with other regulated content present on the service, amounts to a relevant offence, or
- c) the dissemination of the content constitutes a relevant offence.

Where a relevant offence means (per section 41(4)):

- a) a terrorism offence,
- b) a child sexual exploitation and abuse offence,
- c) an offence specified in regulations to be made by the Secretary of State, or
- d) an offence of which the victim or intended victim is an individual.

Given the wording of the proposed legislation, particularly that of section 41(4)(d), it seems clear that racist or otherwise abusive content, calculated to cause harassment alarm or distress, or anxiety, could be said properly to be illegal content, as its use would amount to an offence under either section 4A Public Order Act 1986, or section 1 Malicious Communications Act 1988.

Although this could be seen as an efficient method to crack down on abusive content, the Government must always balance the need to protect free speech. To that end, the Bill contains section 12, which provides duties about the rights to freedom of expression and privacy. Under section 12, all services have a duty to have regard to the importance of protecting users' rights to freedom of expression, as well as protecting users from unwarranted infringements of privacy, when deciding on policies and procedures. In addition to this, Category 1 services have a duty to carry out and publish up-to-date assessments of the impact of their safety policies and procedures on such protections, as well as a duty to specify the positive steps being taken in response to an impact statement to ensure its users' rights are protected.

Although social media has existed, and has played a key part in shaping our society, for over a decade, its regulation is still in its infancy. The Online Safety Bill seeks to create clear categories of services and shift the burden onto them to ensure the internet is a safe place, however it does not appear to draw any clear lines over what is permitted and what

is not. Similarly, in an attempt to protect the rights of every individual, the proposed legislation perhaps leaves the waters murkier than they were before. Nevertheless, only time will tell whether it will be enough to keep users safe.