SUBMISSION TO THE DATA (USE AND ACCESS) BILL COMMITTEE CALL FOR EVIDENCE

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1. We welcome the call for evidence opened by the Data (Use and Access) Bill Committee and strongly encourage its members to consider this submission as it concludes its scrutiny of the Bill.

2. The Online Safety Act Network brings together over 70 civil society organisations, campaigners, academics and advocates with an interest in the implementation of the Online Safety Act 2023 (OSA). More details about our work are here. The Network continues the work carried out by Professor Lorna Woods OBE, William Perrin OBE and Maeve Walsh at Carnegie UK during the passage of the Online Safety Bill: Professor Woods' proposal for a "duty of care" to address online harm reduction formed the basis of the OSA; and the Carnegie team supported Members, Peers and Select Committees during the Bill's passage, gave evidence to Parliamentary inquiries and Bill Committees and were acknowledged by Parliamentarians in both Houses for their contribution.

3. There is significant concern across the civil society organisations we work with about Ofcom's approach to implementing the Online Safety Act. We have raised this throughout all our responses to their consultations since the Act received Royal Assent in October 2023 but, as we set out in our statement in response to the illegal harms codes, these have not been taken on board by the regulator.

4. We have also raised the concerns about Ofcom's approach - and in particular its narrow, cautious interpretation of the Act - with Government Ministers, both in discussions and in writing. The Government has not engaged with the substance of our concerns either. This is frustrating as the solutions to many of the problems that have emerged as a result of Ofcom's interpretation of the Act can be resolved by targeted, technical amendments to the Act itself - many of which are within the Government's gift to deliver via the Data (Use and Access) Bill.

5. We set out a list of 13 such amendments in the annex to a letter to Baroness Jones of Whitchurch, following a roundtable discussion she held in February with ourselves and thirteen of our Network partners. We have not had a response to this letter (which was sent on 14 February), so are attaching to this submission as part of our evidence.

6. As we set out in the letter to Baroness Jones, the list of amendments we suggest "are small, technical amendments to the OSA that do not add significant new provisions to the Act, nor unpick the framework that already exists. Such "tidying up" amendments are part and parcel of bedding in a complex and novel legislative framework and should be seen as business as usual for the Department in delivering its responsibilities." The DUAB is an ideal vehicle for the Government to use for these purposes. Indeed, the Labour government has already used it to take forward unfinished business from the OSA, including provisions on data access for researchers and on coroners data access.

7. With time running out for its Parliamentary passage, we hope that the Committee will take this evidence into account and probe the Government on its reluctance to engage with this approach. We would urge the Committee specifically to push the Government on whether it will consider coming back to the Commons with the suite of amendments proposed before the Bill returns to the Lords.

8. Discontent at the Government's handling of the online safety agenda has been raised a number of times in recent weeks in the Commons: see for example, the Westminster Hall debate on 24 February on a minimum age for social media; Jeremy Wright's Westminster Hall debate on the implementation of the OSA on 26 February; and the debate on Josh MacAlister's PMB on 7 March. This mirrors similar discontent in the Lords - across all parties - with the progress of OSA implementation and the Government's handling of it; see for example the recent debate on the categorisation regulations in which Lord Clement-Jones's regret motion was passed by a significant margin. These amendments would therefore be widely welcomed in both Houses.

9. **There are six particular OSA amendments that we feel are most pressing.** The first three are short targeted amendments for the OSA for which Professor Woods has provided draft text for the Committee's consideration. The remaining three are taken from the extensive work undertaken for inclusion in Josh MacAllister's Private Members Bill which was subsequently removed from the final version which had its Second Reading on 7 March:
    i. Inserting a "no rolling back" clause for category one services' terms of service (ToS) - see annex B
    ii. Introducing minimum standards for category one ToS - see annex C
    iii. Addressing the loophole in the Schedule 11 provisions for categorisation thresholds, which led to the Regret Motion in the Lords - see annex D
    iv. Ensuring that regulated services under the OSA set a minimum age limit for access - see annex E
    v. Introducing a safety by design code of practice - see annex F
    vi. Introducing provisions for class actions - see annex G

10. Amendments i) and i) are particularly urgent in light of Meta's recent decision to reduce important protections for vulnerable users by diluting its content moderation policies and

reducing enforcement. We set out the background to this in our recent blog, which also provides a link to an additional letter sent to the Home Secretary and Secretary of State for Science, Innovation and Technology on 24 January (which also has not received a response) in which we urged the Government to take forward these specific amendments. This letter is also attached to our submitted evidence as a PDF.

11. The provisions on class actions stem from a choice made under the previous regime that aspects of the GDPR which dealt with rights of action need not be implemented because of the possibility of class actions on the basis of the damage caused through loss of control over data. The Supreme Court then overturned the judgment on which this assessment is based. This amendment therefore seeks to allow actions for loss of control of data, as well as breach of statutory duty under OSA, to provide a route to redress for individuals affected which is suitable for the (usually) low value claims but where many people are affected. It also allows for the courts to deal with these claims together thus making the litigation process more efficient.

12. We would also draw the Committee's attention to amendments 12 and 13 in the annex to the letter we sent to Baroness Jones, which call for existing Data (Use and Access) Bill provisions to be strengthened.

13. We hope that the Committee will consider these recommendations, review the drafts of the six urgent amendments we have provided and probe the Government on its reluctance to act in this area before the Bill continues its Commons progress.

14. We are happy to provide further detail on this or speak to the Committee Chair and members, if helpful.

March 2025

ANNEXES

The following annexes are provided to this submission.

A: Text of letter from OSA Network to Baroness Jones of 14 February with annex detailing list of proposed OSA amendments (this is also attached as a PDF)

B: Draft amendment text for a “no rolling back” clause relating to regulated services Terms of Service to be inserted into the Online Safety Act

C: Draft amendment text for minimum standards for Terms of Service to be inserted into the Online Safety Act

D: Draft amendment text for OSA Schedule 11 to address the problems with Ofcom’s interpretation of the categorisation thresholds

E: Draft amendment to ensure that regulated services under the OSA enforce a minimum age limit

F: Draft amendment to introduce a safety by design code of practice into the OSA

G: Draft amendment text for class actions

Annex A: TEXT OF LETTER FROM OSA NETWORK TO BARONESS JONES ON 14 FEBRUARY; WE ALSO PROVIDE THE LETTER AS A PDF ATTACHMENT.

Dear Baroness Jones

FOLLOW UP TO CIVIL SOCIETY ROUNDTABLE - 12 FEBRUARY 2025

Thank you for hosting the discussion on the Online Safety Act at DSIT earlier this week and for your update on upcoming implementation milestones and the work underway in Government. We appreciated your willingness to listen to our concerns and the strong message you gave in your opening remarks about the importance of making the regime work and, as you said, "getting on the front foot". You also spoke to the importance of the "messaging", and we agree that communicating these efforts well is vital.

In our individual responses, we recommended a number of practical actions that the Government might take in this regard, to resolve some of the problems we see with both the Act and its implementation. Given the number of organisations around the table, you were - as you observed - left with a "long shopping list". This reflects the fact that - as Lucy Powell MP said, speaking on behalf of Keir Starmer's office in 2023 - new legislation and a strategic reset is needed. The new government is implementing the regime of the previous government, little changed despite the criticisms made by the Front Bench in Opposition.

We therefore committed to writing to you to bring together the key, targeted interventions we recommended so that you and your officials might be able to consider them in more detail before responding. They are attached to the annex of this letter; a number of them have been shared previously with you and officials, for example in our letter to the Secretary of State about Meta's changes to its content policies, to which we have not had a response. A detailed follow-up discussion on these, perhaps with more time available, would be welcome. In particular, we would be interested in your reflections on whether these specific suggestions are already covered by activities either the Government or Ofcom are already taking and, if not, whether they might be progressed urgently.

From our perspective, these are the bare minimum required to make the online safety regime work as Parliament intended when passing it. You rightly said that the current Government "inherited" this Act. It is far from perfect but it is within your gift to improve it. In doing so, you will be able to deliver many of the objectives that your colleagues argued so strongly for in Opposition but which will not currently be realised by the Act - or by Ofcom's interpretation of it. We fully appreciate the concerns you expressed at the end of the meeting about how difficult it is to get new legislation into the Parliamentary programme. However, these are small, technical amendments to the OSA that do not add significant new provisions to the Act, nor unpick the framework that already exists. Such "tidying up" amendments are part and parcel of bedding in a complex and novel legislative framework and should be seen as business as usual for the Department in delivering its responsibilities.

New legislation - and the necessary policy development and consultation to deliver that - will undoubtedly be needed before long. We mentioned areas including: suicide and self harm; the impact of fluid ideologies online and how, for example, an online environment of radical ideology and misogyny played into the murders in Southport; the need for an alternative dispute resolution mechanism; actions flowing from the pornography review; and AI-generated CSAM. We see no reason why the Government should not start planning for that now, as it will not interfere with Ofcom's implementation plans or their first year of enforcement.

But, as you gathered from our discussion, our primary focus is on what can be done urgently to mitigate against the very real risk that Ofcom's implementation and enforcement of the OSA "as is" will not live up to the expectations of Government or Parliament, nor will it deliver the step change in online safety that the British public, particularly parents, children and vulnerable groups, have been led to expect by both your Government and its predecessor.

It does not feel to us to be prudent to wait for that to play out. Our list of amendments in the annex is the first step towards mitigating that risk. Civil society resources are significantly stretched and, while requests from Government and Ofcom to respond to consultations and attend meetings are welcome, the outcomes rarely lead to significant changes to the direction of travel and often feel like they are tick-box engagement exercises. The failure of the Government to get to grips with Ofcom's lack of ambition is creating avoidable burdens for civil society and, indeed, frustrations for DSIT, itself - for example, the recent parallel consultations on the data access provision - and our continued good faith engagement should not be taken for granted.

So - in the spirit of the constructive engagement that you asked from us - we hope that you agree that your officials should invest time in considering these proposals in detail in the coming weeks and that, in tandem, you will work with your Ministerial colleagues to identify suitable legislative vehicles to bring such amendments forward.

We look forward to hearing your initial response soon and stand ready to work with your team on the details of these; a standing monthly meeting to aid collaboration and review progress might assist both sides in this regard.

SENT BY THE OSA NETWORK ON BEHALF OF THE 13 ROUNDTABLE PARTICIPANTS

ANNEX TO BARONESS JONES LETTER: Proposed technical amendments to the OSA 2023 - please note annotations to cross-reference to amendment text now provided to the DUAB Committee.

1. Introduce a general obligation on services to take reasonable steps to mitigate all the risks identified in their risk assessment. (See our letter to the DSIT SofS of 24/1 re Meta's policy changes)

2. Introduce minimum standards of terms of service for category 1 social media and search, e.g. for Equality Act protected characteristics, to provide a baseline of protections for users in the UK. (See our letter to the DSIT SofS of 24/1)
   Amendment text now provided at Annex C to this submission.

3. Insert a "no rolling back" clause to maintain ToS protections for users in the UK as they were at Royal Assent. (See our letter to the DSIT SofS of 24/1)
   Amendment text now provided at Annex B to this submission.

4. Introduce a requirement for Ofcom to produce a code of practice on safety by design, to deliver the objective set out in section 1 (3) and to focus more on harm caused by features and functionalities. This would underpin the existing, largely content-focused codes.
   Amendment text now provided at annex E to this submission.

5. Remove the requirement in Schedule 4 for measures to be "clear and detailed", which is contributing to Ofcom's high evidential threshold and limiting the scope of the codes.

6. Remove the "safe harbour" provisions relating to the code of practice (section 49(1)) which means that companies can be in compliance with their safety duties without addressing all the risks they have identified on their service.

7. Upgrade the VAWG guidance to a code of practice to make it enforceable.

8. Amend the categorisation regulations to ensure the intent of the Act - that category 1 includes small, risky platforms - is delivered.
   Amendment text now provided at annex D to this submission.

9. Review the list of priority offences to ensure that self-harm offences have parity with suicide.

10. Clarify the position on private messaging and end-to-end encryption, to ensure there are no safe havens for illegal content, such as child sexual abuse material

11. Set a minimum age limit for children's access [**Amendment text now provided at annex F to this submission]** and tighten up the wording in the Act around the requirement for providers to deliver

age-appropriate experiences for children to ensure Ofcom delivers measures to bring this into force.

Additional legislative amendments

12. Strengthen the researcher access to data provisions in the Data (Use and Access) Bill

13. Strengthen the NCII Offence introduced in the Data (Use and Access) Bill to ensure recourse and/or civil redress for individuals; and make NCII content illegal.

ANNEX B: "No Rolling Back" amendment

Section 72 Online Safety Act

Insert after after s 72(1)
(2) A provider of a regulated user-to-user service must maintain in its terms of service applying to users in the United Kingdom an equivalent or greater level of protection in terms of the scope of issues considered and the degree of protection to that in the provider's terms of service as at 26 October 2023.

Renumber s 72(2)-(12) as s 72(3)-(13) respectively.

Note
The date is the date of royal assent.

ANNEX C: Obligation to have Minimum standards amendment

Section 72 Online Safety Act 2023

Insert in s 72 after s 72(3)

(4) A provider must ensure that its terms of service give adequate protection to its users [and affected persons] in relation to the matters identified in s 16 [bearing in mind the size and functionalities of the service].

Renumber current s 72(4)-(12) as s 72(5)-(13); amend s 72(2) line one to refer to “subsections (3) to (8)” and in line 2, to refer to “subsections (3) to (10)”.

ANNEX D: Categorisation thresholds amendment

Schedule 11 Online Safety Act 2023

Delete para 1(4)(a)

Insert at the end of Para 1(5):

> "and the likely impact of the level of prevalence on the service of priority illegal content, primary priority and priority content harmful to children on the risk of harm to users and affected persons"

ANNEX E: Minimum age for access to social media

(1) The Online Safety Act 2023 shall be amended as follows.

(2) In section 12, the following text shall be inserted as a new subsection (13A) after subsection (13):

> "A duty to use age verification or age estimation measures for the purpose of enforcing its minimum age limit requirement as defined in its terms of service. The age verification or age estimation measures must be of such a kind, and used in such a way, that they are highly effective at correctly determining whether a particular user is permitted to use the service."[2]

ANNEX F: Safety by design code of practice

Code of practice: child safety by design

(1) Subject to subsection (2), OFCOM must prepare and issue a code of practice in relation to the design, features and functionalities of Part 3 services, describing measures recommended for the purpose of compliance with relevant child safety duties (except to the extent that measures for the purpose of compliance with such duties are described in a code of practice prepared under section 41 of the Online Safety Act).

(2) The code of practice must at a minimum address features and functionalities which may encourage or contribute to the development among children of different age groups of addictive, obsessive or other unhealthy behaviours, including excessive use.

(3) Where a code of practice published under this section is in force, OFCOM may:

(a) prepare a draft of amendments of the code of practice;

(b) prepare a draft of the code of practice as a replacement for the code of practice;

(c) withdraw the code of practice.

(4) In the course of preparing a draft of a code of practice or amendments of a code of practice under this section, OFCOM must consult with such persons as OFCOM consider appropriate.

(5) A provider of a Part 3 service is to be treated as complying with a relevant child safety duty if the provider takes or uses the measures described in a code of practice which are recommended for the purpose of compliance with that relevant child safety duty insofar as applicable to the provider and the service in question.

ANNEX G: Class action amendments

Rights of action and remedies

5 Claims for damages

(1) Under this section, a claim for damages may be made in civil proceedings in any part of the United Kingdom by or on behalf of a child under 18 years of age, or a person with parental responsibility for such a child, who suffers loss or damage as a consequence of the unlawful processing of personal data of that child by or on behalf of the provider of [a regulated service / an information society service][3].

(2) Subsections (3) to (14) apply to any claim for damages pursuant to subsection (1).

(3) If the court determines that the child's personal data was processed before the child was 16, it shall be assumed by the court that:

(a) the provider knew that the child was under 16 years of age unless the provider can establish that, at the relevant time, using highly effective age assurance measures, it had reasonably assessed that child to be a person of at least 16 years of age;

(b) no consent was obtained from a person with parental responsibility for the child unless the provider establishes that any consent that it holds:

(i) was given by a person who, at the relevant time, held parental responsibility for the child (whether alone or with others);

(ii) was given on an informed basis; and

(iii) was given no more than [six / twelve] months prior to the date on which any relevant processing took place.

(4) If the court determines that the child's personal data was processed when the child was 16 or 17 years of age, it shall be assumed by the court that:

(a) the provider knew that the person was under 18 years of age unless the provider can establish that, at the relevant time, using highly effective age assurance measures, it had reasonably assessed that person to have been at least 18 years of age;

(b) no consent was obtain from that person unless the provider establishes that any consent that it holds was given:

(i) on an informed basis; and

(ii) no more than [six / twelve] months prior to the date on which any relevant processing took place;

(5) In each of the circumstances described in subsections (3) and (4), if the court is satisfied that there was no lawful basis for the processing, and without prejudice to the court's ability to determine that other kinds of loss or damage were suffered and may be compensated, it shall assume that:

(a) the child has suffered damage in the form of loss of control of personal data; and
(b) any other loss or damage suffered by the child in connection with that processing was a consequence of the unlawful processing;

in each case entitling the child to compensation pursuant to Article 82(1) of the UK GDPR.

(6) For the purposes of subsections (3)(b)(ii) and (4)(b)(i), consent is given on an informed basis only if it is given freely in response to an explanation provided in plain intelligible terms of the specific kinds of processing that will be undertaken in respect of specific elements of the relevant child's personal data and of the intended or likely practical consequences of that processing.

(7) The right to make a claim for damages under this section does not affect the right to seek any other remedy or to bring any other proceedings in respect of the same claim or circumstances.

(8) In this section, "damage" includes damage not involving financial loss, including the loss of control by a person over their personal data.

(9) If the court makes an award of damages in respect of a claim brought under this section which, among any other things, seeks damages in respect of loss of control of personal data as a consequence of a defendant's unlawful processing of personal data (and regardless of whether the processing involved accurate or inaccurate personal data), the quantum of any damages awarded by the court in respect of loss of control shall be:

(a) no less than £[500] for each year during which the processing of personal data which did not include any personal data of the kind specified in subsection (10) took place or was continuing without a lawful basis under Article 6 of the UK GDPR; or

(b) no less than £[1,000] for each year during which the processing of personal data which included personal data of the kind specified in subsection (10) took place or was continuing without a lawful basis under Article 6 of the UK GDPR.

(10) Personal data is specified for the purposes of this subsection if it falls within any of the categories set out in Article 9(1) of the UK GDPR.

(11) The minimum quantum of damages specified in subsection (9) shall be without prejudice to any additional compensation which the court may determine to award for loss of control of personal data or for any other kind of loss or damage.

(12) The Secretary of State may by order amend subsection (9) so as to substitute different monetary amounts for either of the amounts for the time being specified in that subsection.

(13) If the court makes an award of damages in respect of a claim brought under this section, it may include exemplary damages in that award if it is satisfied that:

(a) the defendant did not take reasonable steps to avoid unlawfully processing the personal data of a person under 18 years of age,

(b) the defendant knew or should have known that it was unlawfully processing the personal data of a person under 18 years of age, and

(c) having regard to all the circumstances, an award of compensatory damages by itself would be unlikely to be a sufficient deterrent for the defendant or for other providers of similar services.

(14) Any provision in the terms of service for [a regulated service / an information society service], or in any other relevant agreement, which purports to exclude any part of this section or to waive, modify or override the effect of any part of this section, is void.

6 Proceedings for breach of certain statutory duties

(1) Under this section, a person who has suffered loss or damage in connection with the breach of one or more of the duties specified in sub-section (2) by another person to whom any such duty applies, may make a claim for damages or any other claim for a sum of money against that other person in civil proceedings brought in any part of the United Kingdom.

(2) The statutory duties are those specified in the following sections of the Online Safety Act 2023:

(a) section 10 (*Safety duties about illegal content*);

(b) section 12 (*Safety duties protecting children*);

(c) section 27 (*Safety duties about illegal content*);

(d) section 29 (*Safety duties protecting children*);

(e) section 36 (*Duties about children's access arrangements*);

(f) section 66 (*Requirement to report CSEA content to the NCA*); (g) section 81 (*Duties about regulated provider pornographic content*).

(3) The right to make a claim in proceedings brought under this section does not affect the right to seek any other remedy or bring any other proceedings in respect of the same claim or circumstances.

(4) In subsection (1), "damage" includes damage not involving financial loss.

(5) A claim brought under subsection (1) is subject to the defences and other incidents applying to actions for breach of statutory duty, save that for the purposes of this subsection (5) a person under 18 years of age cannot consent or contribute to a breach of any of the statutory duties specified in subsection (2).

(6) Where the court makes an award of damages in respect of a claim brought under this section, it may include exemplary damages in that award if it is satisfied that:

(a) the defendant did not take reasonable steps to avoid a relevant breach of duty, and

(b) having regard to all the circumstances, the award of compensatory damages by itself is unlikely to act as a sufficient deterrent to the defendant or to others to whom the same duty applies.

(7) Any provision in the terms of service of any person to which one or more of the statutory duties specified in subsection (2) applies, or in any other relevant agreement, which purports to exclude any part of this section or to waive, modify or override the effect of any part of this section, is void.

7 Collective action proceedings: procedure

(1) This subsection applies to a claim for damages arising under section 5 of this Act.

(2) This subsection applies to a claim for damages or any other claim for a sum of money arising under section 6 of this Act.

(3) Subject to the other provisions of this section, proceedings may be commenced before the High Court or (in Scotland) the Court of Session combining two or more claims to which either subsection (1) or subsection (2) applies ("collective proceedings").

(4) Collective proceedings must be commenced by a person who proposes to be the representative in those proceedings.

(5) Collective proceedings may be continued only if the court makes a collective proceedings order.

(6) A claim which has been made in proceedings under section 5 or 6 may be continued in collective proceedings only with the consent of the person who made that claim.

(7) The court must make a collective proceedings order for the purposes of subsection (5) unless it considers that:

(a) the person who commenced the proceedings is not a person who, if the order were made, should be authorised to act as the representative in those proceedings in accordance with subsection (10); or

(b) the relevant claims are not eligible for inclusion in collective proceedings.

(8) Claims are eligible for inclusion in collective proceedings if the court considers that they raise the same, similar or related issues of fact or law.

(9) A collective proceedings order must include the following matters:

(a) authorisation of the person who commenced the proceedings to act as the representative in those proceedings;

(b) description of a class of persons whose claims are eligible for inclusion in the proceedings (each member: a "class member"); and

(c) specification of the proceedings as opt-in collective proceedings or opt-out collective proceedings (see subsections (12) and (13)).

(10) The court may authorise a person to act as the representative in collective proceedings whether or not that person is a person falling within the class of persons described in the collective proceedings order for those proceedings (a "class member"), and must authorise a person to act as the representative unless it considers that it would not be just and reasonable to do so.

(11) The court may vary or revoke a collective proceedings order at any time, but only if it is just and reasonable to do so.

(12) "Opt-in collective proceedings" are collective proceedings which are brought on behalf of each class member who opts in by notifying the representative, in a manner and by a time specified (which may include a time after the commencement of proceedings subject to the acceptance of terms which are fair and equitable as between different class members), that the claim should be included in the collective proceedings.

(13) "Opt-out collective proceedings" are collective proceedings which are brought on behalf of each class member except—

(a) any class member who opts out by notifying the representative, in a manner and by a time specified (which may include any time prior to a judgment), that the claim should not be included in the collective proceedings, and

(b) any class member who—

(i) is not domiciled in the United Kingdom at a time specified, and

(ii) does not, in a manner and by a time specified, opt in by notifying the representative that the claim should be included in the collective proceedings.

(14) Where the court gives a judgment or makes an order in collective proceedings, the judgment or order is binding on all class members, unless otherwise specified by the court.

(15) For the purposes of subsection 8, two or more claims brought under section 5 of this Act shall be treated as raising the same, similar or related issues of fact or law if they are claims that the provider of an information society service, in connection with the offer of a specified information society service has processed the personal data of a child under 18 years of age without a lawful basis under Article 6 of the UK GDPR.

(16) The right to make a claim in collective proceedings under this section does not affect the right to seek any other remedy or bring any other proceedings in respect of the same claim or circumstances.

8 Collective action proceedings: damages and costs

(1) The court may make an award of damages in collective proceedings without undertaking an assessment of the amount of damages recoverable in respect of the claim of each represented person.

(2) In relation to any opt-out collective proceedings under section 7 of this Act in which the representative seeks damages for class members in respect of child-suffered distress (definitions)[4], the court must determine the quantum of any award of damages in respect of that child-suffered distress on a uniform per capita basis.

(3) In relation to any opt-out collective proceedings for claims arising under section 5 of this Act in which the representative seeks damages for class members in respect of loss of control of personal data, or the personal data of children for whom class members have parental responsibility, as a consequence of a defendant's unlawful processing of the personal data (and regardless of whether the processing involved accurate or inaccurate personal data), the court must determine the quantum of any award of damages in respect of that loss of control on a uniform per capita basis.

(4) The quantum of any per capita damages awarded by the court pursuant to subsection (3) shall be:

(a) no less than £[500] per capita for each year during which the processing of personal data which did not include any personal data of the kind specified in subsection (5) took place or was continuing without a lawful basis under Article 6 of the UK GDPR; or

(b) no less than £[1,000] per capita for each year during which the processing of personal data which included personal data of the kind specified in subsection (5) took place or was continuing without a lawful basis under Article 6 of the UK GDPR.

(5) Personal data is specified for the purposes of this subsection if it falls within any of the categories set out in Article 9(1) of the UK GDPR.

(6) The minimum quantum of damages specified in subsection (4) shall be without prejudice to any additional compensation which the court may determine to award pursuant to subsection (3) for loss of control of personal data or for any other kind of loss or damage.

(7) The Secretary of State may by order amend subsection (4) so as to substitute different monetary amounts for either of the amounts for the time being specified in that subsection.

(8) Where the court makes an award of damages in opt-out collective proceedings, the court must make an order providing for the damages to be paid on behalf of the represented persons to:

(a) the representative, or

(b) such person other than a represented person as the court thinks fit.

(9) Where the court makes an award of damages in opt-in collective proceedings, the court may make an order as described in subsection (8).

(10) Where the court makes an award of damages in opt-out collective proceedings brought under section 7 of this Act, without prejudice to any other order in relation to costs which the court may make, the court must order the defendant to pay to the person described in subsection (8) an amount equal to the proportionate costs and expenses reasonably incurred or to be incurred by or on behalf of the representative to confirm the identity of the represented persons and administer the timely distribution of damages to those represented persons.

(11) Subject to subsection (12), where the court makes an award of damages in opt-out collective proceedings brought under section 7 of this Act, any damages not claimed by the represented persons within a specified period must be paid to the charity for the time being prescribed by order made by the Lord Chancellor under section 194(8) of the Legal Services Act 2007.

(12) In a case within subsection (8) the court may order that all or part of any damages not claimed by the represented persons within a specified period is instead to be paid to the representative in respect

of any costs or expenses incurred by the representative in connection with the proceedings other than those compensated pursuant to subsection (10).

(13) The Secretary of State may by order amend subsection (10) so as to substitute a different charity for the one for the time being specified in that subsection.

(14) A damages-based agreement is unenforceable if it relates to opt-out collective proceedings under this Act unless it is a litigation funding agreement.

(15) For the purposes of subsection (14) a litigation funding agreement is an agreement which provides that:

(a) a person providing funding ("the funder") is to fund (in whole or in part):

(i) the provision of advocacy or litigation services (by someone other than the funder) to the recipient of the claims management services ("the litigant"),

(ii) where the litigant is a litigant in person, expenses incurred by that litigant, or

(iii) the payment of costs that the litigant may be required to pay to another person by virtue of a costs order, an arbitration award or a settlement agreement, and

(b) the litigant is to make a payment to the funder in circumstances specified in the agreement.

9 Collective action settlements: where a collective proceedings order has been made

(1) The High Court or (in Scotland) the Court of Session may, in accordance with this section and relevant rules of court procedure, make an order approving the settlement of claims in collective proceedings brought under section 7 (a "collective settlement") where:

(a) a collective proceedings order has been made in respect of the claims, and

(b) the court has specified that the proceedings are opt-out collective proceedings.

(2) An application for approval of a proposed collective settlement must be made to the court by the representative and the defendant in the collective proceedings.

(3) The representative and the defendant must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.

(4) Where there is more than one defendant in the collective proceedings, “defendant” in subsections (2) and (3) means such of the defendants as wish to be bound by the proposed collective settlement.

(5) The court may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.

(6) On the date on which the court approves a collective settlement—

(a) if the period within which persons may opt out of or (in the case of persons not domiciled in the United Kingdom) opt in to the collective proceedings has expired, subsections (8) and (10) apply so as to determine the persons bound by the settlement;

(b) if that period has not yet expired, subsections (9) and (10) apply so as to determine the persons bound by the settlement.

(7) If the period within which persons may opt out of the collective proceedings expires on a different date from the period within which persons not domiciled in the United Kingdom may opt in to the collective proceedings, the references in subsection (6) to the expiry of a period are to the expiry of whichever of those periods expires later.

(8) Where this subsection applies, a collective settlement approved by the court is binding on all persons falling within the class of persons described in the collective proceedings order who:

(a) were domiciled in the United Kingdom at the time specified for the purposes of determining domicile in relation to the collective proceedings (see section 7(13)(b)(i)) and did not opt out of those proceedings, or

(b) opted in to the collective proceedings.

(9) Where this subsection applies, a collective settlement approved by the court is binding on all persons falling within the class of persons described in the collective proceedings order.

(10) But a collective settlement is not binding on a person who:

(a) opts out by notifying the representative, in a manner and by a time specified, that their claim should not be included in the collective settlement, or

(b) is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the representative that their claim should be included in the collective settlement.

(11) This section does not affect a person's right to offer to settle opt-in collective proceedings.

(12) In this section and in section 10, “specified” means specified in a direction made by the court.

10 Collective action settlements: where a collective proceedings order has not been made

(1) The High Court or (in Scotland) the Court of Session may, in accordance with this section and relevant rules of court procedure, make an order approving the settlement of claims (a “collective settlement”) where:

(a) a collective proceedings order has not been made in respect of the claims, but

(b) if collective proceedings were brought, the claims could be made at the commencement of the proceedings (disregarding any limitation or prescriptive period applicable to a claim in collective proceedings).

(2) An application for approval of a proposed collective settlement must be made to the court by:

(a) a person who proposes to be the settlement representative in relation to the collective settlement, and

(b) the person who, if collective proceedings were brought in respect of the claims, would be a defendant in those proceedings (or, where more than one person would be a defendant in those proceedings, such of those persons as wish to be bound by the proposed collective settlement).

(3) The persons applying to the court under subsection (2) must provide agreed details of the claims to be settled by the proposed collective settlement and the proposed terms of that settlement.

(4) The court may make an order approving a proposed collective settlement (see subsection (8)) only if it first makes a collective settlement order.

(5) The court may make a collective settlement order only:

(a) if it considers that the person described in subsection (2)(a) is a person who, if the order were made, the court could authorise to act as the settlement representative in relation to the collective settlement in accordance with subsection (7), and

(b) in respect of claims which, if collective proceedings were brought, would be eligible for inclusion in the proceedings.

(6) A collective settlement order must include the following matters:

(a) authorisation of the person described in subsection (2)(a) to act as the settlement representative in relation to the collective settlement, and

(b) description of a class of persons whose claims fall within subsection (5)(b).

(7) The court may authorise a person to act as the settlement representative in relation to a collective settlement:

(a) whether or not that person is a person falling within the class of persons described in the collective settlement order for that settlement, but

(b) only if the court considers that it is just and reasonable for that person to act as the settlement representative in relation to that settlement.

(8) Where the court has made a collective settlement order, it may make an order approving a proposed collective settlement only if satisfied that its terms are just and reasonable.

(9) A collective settlement approved by the court is binding on all persons falling within the class of persons described in the collective settlement order.

(10) But a collective settlement is not binding on a person who:

(a) opts out by notifying the settlement representative, in a manner and by a time specified, that the claim should not be included in the collective settlement, or

(b) is not domiciled in the United Kingdom at a time specified, and does not, in a manner and by a time specified, opt in by notifying the settlement representative that the claim should be included in the collective settlement.

(11) In this section, "settlement representative" means a person who is authorised by a collective settlement order to act in relation to a collective settlement.