

Questions about procedure

Do the teams have an exhaustive list of issues that should be answered in a row, or is the structure arbitrary?

Mooters should focus on the points indicated at the end of the problem. Although teams are free to raise other issues that they consider relevant, these would normally be considered as secondary or “extra” points.

Is there specific formatting requirements for the brief?

No. Mooters must ensure that the brief is logical and easy to follow, but are not required to use any specific formatting.

When will the 2023 Moot Rules document be released?

The 2022 Rules of Procedure shall be used for the 2023 competition.

Is there flexibility in how we order our argument with respect to the elements of an Article 8 interference claim, or should we follow the order as laid out in the case law?

Mooters should structure their arguments as they deem most appropriate, although existing case law may be useful as a guide when making that decision.

Can we rely on decisions by the CJEU to support our arguments, especially with respect to the interaction between the Protection of Children Online Act, the GDPR and Directive 2016/680?

Mooters are reminded that this case takes place before the European Court of Human Rights. EU law and decisions from the Court of Justice of the European Union may be used appropriately given that context.

Questions about the legal provisions and background

Does the schoolteacher/director have an obligation to report incidents of bullying to the appropriate state authorities? Where is such an obligation provided?

Under the Protection of Children In Schools Act 1994, schools have an obligation to notify Newtonland Child Services if “they have a reasonable belief that the child’s mental or physical health is in danger.”

Is bullying a criminal offence in Newtonland? How long do trials for these offences usually take?

While bullying *per se* is not a crime in Newtonland, acts which constitute bullying (*e.g.* stalking, harassment, assault and battery, and malicious communications) are criminal offences. Trials for these offences can often take anywhere between a day and six weeks.

Was the POCO Act available online or in state journals to all people?

Yes. All legislation in Newtonland is published on the government website.

Is Newtonland a United Nations member country?

Yes.

Is Newtonland a member of the EU?

Yes.

Is Newtonland a party to the Budapest Convention on Cybercrime of the Council of Europe?

Yes.

What is the mission of Newtonland Child Services? How are they considered under national law?

The Newtonland Child Services was established to protect vulnerable and at-risk children, and to promote the interests of children at all levels of society. They are treated as a national authority with appropriate powers and duties to perform their tasks. Their decisions are subject to judicial review by the Newtonland High Court.

Section 4(2) of the POCO Act stipulates that orders to decrypt online communications shall be made on application by the Newtonland Police Force or Newtonland Child Services. However, a later provision (s. 4(3)(a)) states that the provider must send both an encrypted and decrypted version of those messages to the Newtonland Police Force and/or Newtonland Child Services. Does this mean that the application for an order can be made by either Newtonland Police Force or the Newtonland Child Services but the encrypted and decrypted version of the message must be sent to both, regardless of which government authority had made the application?

The order must specify to which body the messages should be sent. This is usually to the body which made the request, unless the case specifically requires that both the Newtonland Police Force and the Newtonland Child Services receive a copy.

Section 4(3)(b) states that the information society service provider must transmit any relevant or necessary encryption keys, methods or programs to the Newtonland Police Force and/or Newtonland Child Services, as appropriate. How are the necessary or relevant keys determined, by who are they determined and what constitutes appropriateness within this regard?

The necessity or relevance of the keys are determined by the court. The necessity or relevance is determined by asking what keys are required to read the messages that must be decrypted.

“As appropriate” in this instance refers to whether the keys should be sent to the Newtonland Police Force, the Newtonland Child Services, or to both.

For how long, and under what law, did Newtonland Child Services retain the data?

The Newtonland Child Services Act (Amended) 2014, s. 18 states:

“(1) Any information received by the Child Services must be reviewed promptly and efficiently.

(2) Where that data is deemed not to appear relevant to a child’s safety or well being, it should be deleted within one year. Such data should be placed into archival storage and only retrieved if it is discovered to be relevant to a child’s safety or well being.

(3) Where that data is found relevant to a child’s safety or well being, it should normally be retained until the child reaches the age of 18.”

Newtonland Child Services received the encrypted messages on 7th March 2021. The decryption was completed on 10th January, and reviewed over the next 10 days. Both the encrypted and decrypted versions of the messages were then placed in storage, as part of Bertie’s case file, for one year. After this time elapsed, both the encrypted and decrypted versions of the messages were deleted.

Does the provider have an obligation to delete all the information after sending a copy to the Newtonland Police and/or Child Services?

No. The provider retains the information and continues to use it per their service agreement with the user.

Is it possible for the Moot Coordinators to disclose the reasoned decision that defines the scope and the extent of the order that was made for the decryption of messages by the Court?

The order was granted in the following terms:

“The Newtonland Child Services have provided evidence from [Bertie]’s school headmaster that [Bertie] is under an unusually high level of anxiety and concern. In particular, they have demonstrated that [Bertie] seems to be concerned about bullying through his phone, which is an increasingly common threat to children in society. They have further, persuasively, argued that that access to [Bertie]’s messages is necessary to understand and combat this anxiety, as well as any external threats that [Bertie] may be receiving [...]

The court is aware that [Bertie]’s phone will contain messages which may affect the privacy and data protection rights of other people. However, I have been assured by the Newtonland Child Services that such information will be treated with appropriate care and discretion, that it is not possible to distinguish between relevant and irrelevant messages until after the decryption has taken place, and that information will only be utilised by that agency insofar as necessary to protect [Bertie]’s health and mental or physical safety [...]

I therefore accept the evidence that this shows a sufficient risk to [Bertie]’s health and mental or physical safety, and order the decryption of the messages on his phone.”

Is it also possible to provide a more detailed layout for the rejection of Ms. Debussy’s appeal?

Ms. Debussy’s application to appeal was rejected on the basis that she had not shown a *prima facie* argument that the High Court’s decision had been wrong under Newtonland law.

Is there a general regulation on the quality of law and safeguards in national law?

There is no such explicit general regulation beyond those enshrined in the European Convention of Human Rights.

Is there a developed case-law in national law in terms of foreseeability?

No such case law exists which may be relevant for this case.

Is there a developed case-law related to the POCO Act? After the legislation entered into force, how many times has a permission been requested to decrypt in different incidents? How many of them were granted? Are there any reports regarding the requests?

No such developed case law exists.

Since the Act has been in force, 18 applications have been made, of which 13 were granted. No general reports have been made.

Does the ECtHR have a track record of judgments that Newtonland has violated rights, especially in the context of the protection of private life?

No.

Are there any provisions regarding erasure, destruction, or/and anonymization in the Newtonland Privacy Act, in the POCO Act or in the domestic law? If so, what are they?

The relevant provisions can be found in the GDPR, and in The Newtonland Child Services Act (Amended) 2014, s. 18, as extracted in this document.

Is there a specific remedy or recourse in the Newtonland Privacy Act, the POCO Act, or domestic law? Do they have a data protection board?

The Newtonland Data Protection Authority is responsible for ensuring compliance with the Newtonland Privacy Act. Otherwise, all remedies and recourses must be obtained through the courts as a general matter of law.

Questions about the decryption

Who actually decrypted the messages, read them, and had the opportunity to read them in the particular case of Bertie?

The messages were decrypted by the Newtonland Child Services. They were read by a case worker assigned to Bertie's case.

Did the authorities know which messages were being decrypted before they were read? If so, could service providers decrypt selective messages by keyword, contact, topic, etc.?

Due to the nature of the encryption, it is not possible to know what a message says before it is decrypted. It is therefore not possible to decrypt selected messages by keyword, topic *etc.*

Messages could be selectively decrypted if the relevant criteria (*e.g.* messages with certain contacts or over a certain time period) is stored in plain text. However, this was not possible in the present case.

Were the messages collected from the local device or via an online service provider's server?

The messages were collected directly from Bertie's phone.

It is stated that the order was granted and the Newtonland Child Services used the relevant decryption keys to decrypt and review all of the messages on Bertie's phone. Did the Information Society Service Provider give the "relevant keys" or all the keys? Is it not the case that in order to review all of the messages, all of the keys would have to be given to the Child Services?

The Information Society Service Providers in question gave all keys required to read the messages on Bertie's phone. They did not provide keys that would decrypt messages on other users' phones.

Questions about events

How did Ms. Debussy and the others find out their messages were decrypted and involved in the examination process? Are the people whose messages are to be read in Newtonland included in the process?

Affected individuals were contact by the Newtonland Child Services after their messages had been decrypted and reviewed. Newtonland Child Services are entitled to invite individuals to follow-up interviews, though they did not invite Ms. Debussy to such an interview.

"Based on the information from the school, the Newtonland Child Services applied for an order for the decryption of messages sent and received by Bertie." Did the court give the order written in this sentence?

Yes.

Was Bertie using any specific messaging platform?

Bertie's messages were spread across three messaging platforms: "Contact Me Messenger", "Whaddup?" and "Telex".

Does the information society service have an age restriction? If the answer is yes, did Bertie's parents provide their approval for his usage?

Yes. For the messaging services in question, parents must provide their consent if the user is under the age of 13. Bertie's parents did provide this consent.

Who is the owner of Bertie's phone?

Bertie owns his phone.

It is stated that a cyberbullying scandal dominated the headlines before the enactment of the POCO act. What was the nature of this scandal? Is it possible for the Moot coordinators to provide more information (statistics, the forms of cyberbullying or harassment that caused the scandal) in order for the Mooters to substantiate their arguments?

The scandal related to the extent of cyberbullying in Newtonland, and the impact which it was having on children's mental health. Mooters can assume that research into cyberbullying in the EU more generally is representative of cyberbullying in Newtonland.

Section 2(5) of the POCO act states that Information society service "shall be defined as 'any service normally provided for remuneration.'" Has Bertie paid for the services?

Bertie has not paid for the services. The various communication services are supported by advertiser revenue.

Did Bertie and Ms. Debussy's decrypted messages contain any sensitive personal data?

The messages primarily contained information about Bertie's participation in Sunday School and extra-curricular activities at the church.

What are the content and details of the "extensive research" that Amos Ivormac mentioned during his speech in the Newtonland Parliament?

Amos Ivormac's research involved an extensive survey of and discussions with teachers, child protection case workers, and victims of bullying.