

Is Tort Law Adequately Equipped to Address AI-related harms?

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Introduction

‘Maybe this is just the end’.¹ Within hours of receiving this message from ChatGPT, a popular large language model (LLM) chatbot, Alice Carrier had taken her own life. She was 24 years old.² Alice had been turning to ChatGPT as a confidant for her own struggles with mental health, as millions of people across the world now do.³ Far from helping her, ChatGPT sycophantically encouraged her depressive mindset and endorsed her self-isolation from genuine mental health support.⁴ It told her that crisis teams could be ‘downright dangerous’ and that she deserved ‘real, gentle support’, not ‘cold scripts’.⁵ When Alice told the chatbot she had decided to hang herself, its final words to her were: ‘I’m with you’.⁶

Significant harms caused by AI are no longer the stuff of fantasy. They are a tragic and undeniable reality for many worldwide, including the Carrier family. In their initial legal filings, they allege negligence, product liability, and wrongful death against the Open AI Foundation, the parent company of ChatGPT, in relation to their daughter’s death.⁷ Multiple similar lawsuits are currently also pending.⁸ It is only a matter of when, not if, English courts are faced with similar cases.⁹ How will they respond?

¹ *Carrier v Open AI Foundation*, Case No N/A, Initial Civil Complaint, (Cal Super Ct San Francisco County, 11 June 2026) <<https://techjusticelaw.org/cases/carrier-v-openai-foundation-chatgpt-altman-lawsuit/>> accessed 8 September 2026, [16].

² *Carrier v Open AI*, [6].

³ Rita Rubin, ‘Millions Turn to AI Chatbots for Mental Health Support’ (2026) 335(5) JAMA <<https://doi.org/10.1001/jama.2025.23965>> accessed 8 September 2026. See also Rebekah Bodner et. al., ‘Barriers to Understanding how many People use AI for Mental Health Support: An Estimate and Narrative Review’ (2026) 21(1) NPJ Digit. Public Health <<https://doi.org/10.1038/s44482-026-00025-7>> accessed 8 September 2026.

⁴ *Carrier v Open AI*, [20] – [23].

⁵ *Carrier v Open AI*, [16].

⁶ *Carrier v Open AI*, [22].

⁷ *Carrier v Open AI*, [1], [32] – [40].

⁸ E.g. *Raine v Open AI Inc*, Case No CGC-25-628528, First Amended Complaint, (Cal Super Ct San Francisco County, 22 October 2025) <<https://cdn.arstechnica.net/wp-content/uploads/2025/11/Raine-v-OpenAI-Answer-11-25-25.pdf>> accessed 8 September 2026.

⁹ Indeed, AI has already played a major role in at least one notable criminal matter in the UK. See *R v Jaswant Singh Chail* (2023) Sentencing remarks of Mr Justice Hilliard, Central Criminal Court, 5 October 2023 <<https://www.judiciary.uk/wp-content/uploads/2023/10/R-v-Chail-sentencing-050923.pdf>> accessed 8 September 2026.

This essay analyses how well-equipped the English courts are to deal with a comparable scenario by considering the prospects of a parallel case brought within the jurisdiction. Cases like Alice’s involve some of the most serious harms that human beings can suffer, and hence it is imperative that tort law is prepared for such eventualities. I therefore focus my attention upon the direct harms of AI, where interaction with an AI agent produces harm to their immediate user. This includes cases, such as Alice’s, where an AI has materially contributed to a user self-harming, as well as cases of so-called ‘AI psychosis’, where interaction with AI agents produces harmful psychiatric effects.¹⁰ I argue that existing tort law is surprisingly well-equipped to handle such cases. My analysis does not, however, include the important category of what we might call ‘indirect harms’, where a person causes harm to a third party by their use of AI. I return to these in my conclusion.

Negligence vs Other Routes

If a case like Alice’s were to occur in England and Wales, what would be the appropriate avenue for bringing a claim? Whilst AI companies often contract to provide their services with ‘reasonable care and skill’, the services in question concern *access* to the chatbot, not the *content* of the chatbot’s output, and – in Alice’s circumstances – access was indeed provided.¹¹ A claim in contract is thus unlikely to be suitable. Nor is a claim under the Consumer Protection Act 1987 appropriate. The definition of ‘product’ under this Act is limited to physical goods or electricity, and pure software is (currently) excluded.¹² Tort law must therefore offer a remedy, at pain of a ‘liability gap’ emerging.¹³ More specifically, where a person has suffered direct harm as a result of AI, they will likely be well-advised to bring a claim in negligence, as the US plaintiffs have done.¹⁴ To succeed in such a

¹⁰ First outlined in Søren Dinesen Østergaard, ‘Will Generative Artificial Intelligence Chatbots Generate Delusions in Individuals Prone to Psychosis?’ (2023) 49(1) Schizophrenia Bulletin <<https://doi.org/10.1093/schbul/sbad128>> accessed 8 September 2026.

¹¹ See for example Open AI Foundation, ‘Europe Terms of Use’, (Open AI Policies, 16 January 2026) <<https://openai.com/policies/eu-terms-of-use/>> accessed 8 September 2026.

¹² Consumer Protection Act 1987, s 1(2)(c). The Law Commission has announced an investigation into potential law reform on this topic, potentially opening the door for software to be included in the definition, but at the moment this remains in a relatively early stage. See Law Commission, ‘Product Liability – Law Commission Review: Terms of Reference’ (Law Commission Publications, 8 December 2025) <<https://lawcom.gov.uk/publication/product-liability-terms-of-reference/>> accessed 8 September 2026.

¹³ Michael Cross, ‘Common Law can Cope with AI Harms, say Experts’ (Law Society Gazette, 9 July 2026) <<https://www.lawgazette.co.uk/news/common-law-can-cope-with-ai-harms-say-experts/5127298.article>> accessed 8 September 2026.

¹⁴ For the purposes of this essay I will set aside any question of a jurisdictional dispute.

claim, the claimant must prove on balance of probabilities that the following fourfold definition of negligence is met.

Existence of a Duty of Care

The first issue is whether a duty of care exists at all. The question of AI-related harm has not come before the courts yet, and no specific authority on the matter exists. Nevertheless, it is open to the Court to recognise the existence of a duty of care in ‘a novel type of case’ such as this one.¹⁵ In considering such an extension of the common law, the Court must proceed ‘incrementally and by analogy with established authority’ and with regards to what is ‘fair, just and reasonable’ in the circumstances.¹⁶ In this case, a clear parallel with a previous case can be established: AI chatbots are digital products created for consumers by companies who, on this basis, occupy a parallel role to manufacturers of physical commodities. By analogy with *Donoghue v Stevenson* therefore, a duty of care should be recognised.¹⁷ Moreover, in light of the serious direct harms in question, and the potential for a liability gap should a duty not be recognised, considerations of what is fair, just and reasonable can only support the imposition of a duty of care.

Breach of that Duty

A duty of care will be breached where a defendant has failed to act according to the standard of a reasonable person.¹⁸ Where the company in question possesses the capacities to identify and restrain harmful interactions on the part of their chatbot, but actively chooses not to deploy them in pursuit of greater user engagement – as the Carrier family have alleged against Open AI – this will not be too difficult to establish.¹⁹

¹⁵ *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4, [2018] A.C. 736 [27].

¹⁶ *Robinson v West Yorkshire Police* [27]. See also *Caparo Industries PLC v Dickman and others* [1990] 2 AC 605 (HL).

¹⁷ *Donoghue v Stevenson* [1932] AC 562 (HL).

¹⁸ Carl Troman, ‘Claims in Negligence: An Overview’ (Thompson Reuters Practical Law: Practice Note, July 2026) <[https://uk.practicallaw.thomsonreuters.com/9-504-0826?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&ppcid=34da8dcfe8cd45d3b48394b4ebdbf299&comp=pluk&OWSessionId=7bac41129f0545b0baae6a807716c5c0&skipAnonymous=true&firstPage=true#co_anchor_a599282](https://uk.practicallaw.thomsonreuters.com/9-504-0826?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&ppcid=34da8dcfe8cd45d3b48394b4ebdbf299&comp=pluk&OWSessionId=7bac41129f0545b0baae6a807716c5c0&skipAnonymous=true&firstPage=true#co_anchor_a599282)> accessed 8 September 2026.

¹⁹ *Carrier v Open AI*, [29] – [31].

Causation of Loss

The standard test is that the claimant must show that ‘but for’ the defendant’s act or omission, they would not have suffered the relevant loss.²⁰ Some commentators have worried that the rise of AI could lead to ‘evidential challenges’ for claimants.²¹ In a case of direct harm (like Alice’s) however, negligence will require proof but will present no uniquely challenging issues. Indeed, written logs of chatbot communications may make causation easier to prove than in a standard case.²²

Two issues may be raised at this point. First, might not the autonomous behaviour of AI agents constitute a *novus actus interveniens*, disrupting the necessary causal chain?²³ Any such argument is unlikely to succeed, as it is precisely the failure of the parent company to institute limits on this autonomy that constitutes the breach of duty in question. Consequent conduct by the AI agent is therefore unlikely to break the chain of causation. Second, the defendant may try to appeal to the principle in *Howmet v Economy Devices*, namely that voluntary use of a product after being alerted of its ‘dangerous condition’ is normally at the user’s own risk.²⁴ This is more arguable but is also unlikely to succeed. AI companies have hitherto done very little to alert users to the significant risks of using their models, fearing negative publicity.²⁵ Moreover, the parallel is flawed – the danger from AI chatbots does not arise from a faulty condition or malfunction, as was the case in *Howmet*, but from their normal operation.²⁶ *Howmet* can therefore be properly distinguished.

Recoverability of Loss

The loss must be both within the scope of the defendant’s duty and not too remote for recovery.²⁷ As held in *Manchester Building Society*, the question of the scope of the relevant

²⁰ Troman, ‘Claims in Negligence’.

²¹ Andrew Denny et. al., ‘AI liability: No Regulation, No Caselaw? No Problem for English Law says the UKJT’ (A&O Shearman on Technology, 22 July 2026) <<https://www.aoshearman.com/en/insights/ao-shearman-on-tech/ai-liability-no-regulation-no-caselaw-no-problem-for-english-law-says-the-ukjt>> accessed 8 September 2026.

²² This is precisely the approach of *Carrier v Open AI*, [7] – [23].

²³ For an outline of what a *novus actus* entails, see Troman, ‘Claims in Negligence’.

²⁴ *Howmet Ltd v Economy Devices Ltd* [2016] EWCA Civ 847, [2016] BLR 555, [92].

²⁵ See *Carrier v Open AI*, [37] – [38].

²⁶ *Howmet v Economy Devices* [46].

²⁷ Miles Harris, ‘The Scope of a Defendant’s Liability for Negligence’ (Thompson Reuters Practical Law: Practice Note, July 2022) <[https://uk.practicallaw.thomsonreuters.com/0-504-0736?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&ppcid=9fac639755fa4ea2bd3987f6e1c7693b&comp=pluk#co_anchor_a827990](https://uk.practicallaw.thomsonreuters.com/0-504-0736?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&ppcid=9fac639755fa4ea2bd3987f6e1c7693b&comp=pluk#co_anchor_a827990)> accessed 8 September 2026.

duty is to be considered in light of the purpose for imposing the duty.²⁸ Here, the proposed duty has the purpose of protecting the user from potential harm resulting from use of the chatbot, and a direct harm clearly does come within these bounds.

The question of remoteness poses more of a challenge. The legal test here is that the damage in question must be reasonably foreseeable by the defendant at the time of the breach of duty.²⁹ As AI engineers have often stated however, the outputs of an LLM are *not* reasonably foreseeable: ultimately, ‘nobody really knows how they work internally’.³⁰ Might not this preclude recovery? This argument is also doubtful. As established in *Heron II*, a defendant will be liable for any *type* of damage that is reasonably foreseeable, so long as it is not sufficiently unlikely.³¹ Whilst the specifics of what an LLM chatbot might ‘say’ cannot be reasonably foreseen, it has been shown by experience that they do produce the type of outputs that qualify as direct harms, such as statements which encourage self-harm or suicide.³² The relevant damage therefore falls within a foreseeable type and is thus recoverable.

Conclusion

AI has the potential to cause incredibly serious harms to its human users, up to and even including death. In the face of such dangers, some commentators have turned to pessimism and despair.³³ When it comes to the most serious AI-related harms however, English tort law is in a better state than the pessimists might suggest. Responding to the issues these cases raise may require some development of the common law, but the analysis above demonstrates that such an evolution would be entirely in line with existing common law precedents and principles. This is not to counsel complacency. As I mentioned, my analysis does not cover indirect harms, where a party harms another by their use of AI. For example, a

²⁸ *Manchester Building Society v Grant Thornton UK LLP* [2021] UKSC 20, [2022] AC 783 [10]. See also *Khan v Meadows* [2021] UKSC 21, [2022] AC 852 [28].

²⁹ *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd (The Wagon Mound (No 1))* [1961] AC 388 (PC).

³⁰ Anthropic, ‘Interpretability’ (Transformers Circuits Thread: Interpretability, August 2026) <<https://transformer-circuits.pub/>> accessed 8 September 2026.

³¹ *C Czarnikow Ltd v Koufos (The Heron II)* [1969] 1 AC 350 (HL).

³² See (among others) Laura Kuenssberg, “‘A Predator in Your Home’: Mothers say Chatbots Encouraged Their Sons to Kill Themselves” (BBC News, 8 November 2025) <<https://www.bbc.com/news/articles/ce3xgwyw4e4o>> accessed 8 September 2026.

³³ E.g. Jason Y. Lee, ‘AI in the Law: A Pessimistic View’ (Michigan Bar Journal, September 2025) <<https://www.michbar.org/journal/Details/AI-in-the-law-A-pessimistic-view?ArticleID=5157>> accessed 8 September 2026.

lawyer might harm their client by using AI to draft inaccurate statements of case, which are submitted without the proper checks.³⁴ In such cases, a duty of care is likely owed solely by the party using the AI and not the AI company itself.³⁵ Legislative intervention may be necessary here in order to ensure that these companies bear a fair share of liability for such cases.³⁶ Nonetheless, when it comes to the most serious types of AI-related harm at least, there is good reason to believe that tort law is already well-equipped to respond.

³⁴ An increasingly frequent issue in some jurisdictions. See Steven Melendez, ‘AI Keeps Inventing Fake Cases. Lawyers Keep Citing Them’ (Scientific American, 22 May 2026) <<https://www.scientificamerican.com/article/why-lawyers-keep-citing-fake-cases-invented-by-ai/>> accessed 8 September 2026.

³⁵ See the discussion on this topic in Law Commission, *Artificial Intelligence and the Law: A Discussion Paper* (Law Com DP, unnumbered, 2025).

³⁶ See however UK Jurisdiction Task Force, ‘Legal Statement on Liability for AI Harms’ (Lawtech UK, 7 July 2026) <<https://lawtechuk.io/ukjt/liability-for-ai-harms-under-the-private-law-of-england-and-wales/>> accessed 8 September 2026, which argues that existing law suffices even for this category of harm.