Law Commission
Reforming the law

HARMFUL ONLINE COMMUNICATIONS: THE CRIMINAL OFFENCES

Summary of the Consultation Paper

HARMFUL ONLINE COMMUNICATIONS: THE CRIMINAL LAW

THIS CONSULTATION

What is it about? 	Reform of the 'communications offences' – section 1 of the Malicious Communications Act 1988 and section 127 of the Communications Act 2003 – and other criminal offences covering harmful online communications, including cyberflashing and pile-on harassment.
What are we doing? 	We are conducting a public consultation on our provisional proposals for reform of the criminal offences covering harmful online communications. The provisional proposals seek to implement some of the recommendations we made in our 2018 Scoping Report on abusive and offensive online communications, available on our website at www.lawcom.gov.uk.
Why are we consulting? 	We are seeking views on whether the criminal law should be reformed in the ways we provisionally propose. We want any recommendations we ultimately make to have as strong an evidence base as possible. Therefore, consultation is a crucial pillar of our work.
Who do we want to hear from? 	We would like to hear from as many stakeholders as possible, including social media companies, criminal law practitioners, human rights and civil liberties groups, and people who have been subjected to online abuse and the service providers who support them.
Where can I read the full Consultation Paper? 	The Consultation Paper is available on our website at www.lawcom.gov.uk.
What is the deadline? 	The consultation will close on 18 December 2020.
What happens next? 	After analysing all the responses, we will make recommendations for reform, which we will publish in a Report. It will be for Government to decide whether to implement the recommendations.

INTRODUCTION

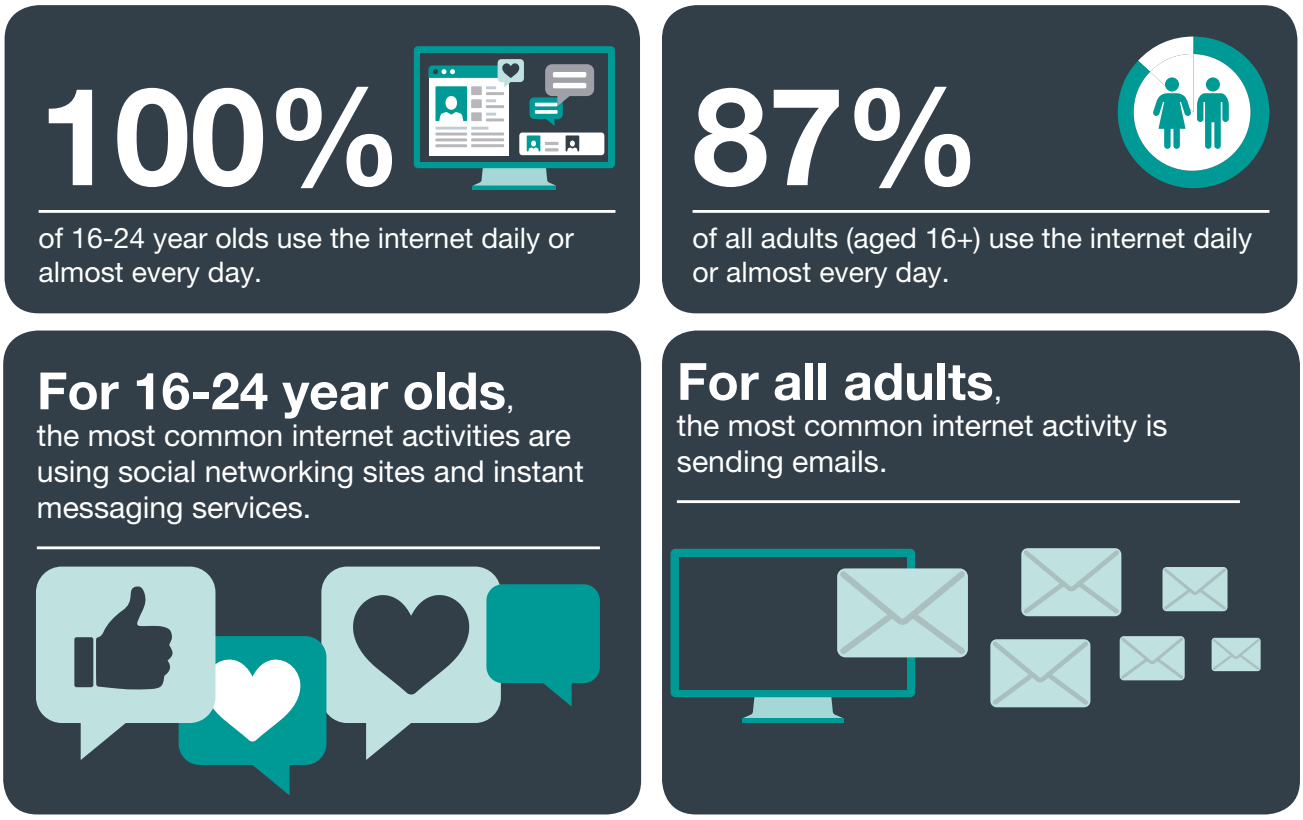
The last two decades have seen a revolution in communications technology. The rise of the internet and social media has offered extraordinary new opportunities to engage with one another and on an unprecedented scale. However, there is also increased scope for harm: the physical boundaries of the home no longer provide a safe haven for those who are bullied; domestic abusers can exert ever greater control over the lives of those they abuse; thousands of people can now abuse a single person at once and from anywhere in the world. **The criminal law has struggled to keep pace with these changes.**

A particular challenge for the criminal law is the enormous scale of online communications. In 2020, over 70% of UK adults have a social media profile, with the figure rising to 95% for 16-24-year olds.[1] The vast majority of people use the internet daily or almost every day, most commonly to send emails.[2] It is thought that around a third of people have been exposed to online abuse.[3]

In light of these developments, we are examining the case for reform of the criminal law in this area; chiefly, the 'communications offences' found in section 1 of the Malicious Communications Act 1988 ('MCA 1988') and section 127 of the Communications Act 2003 ('CA 2003').

The provisional proposals in our Consultation Paper are informed by the need better to protect freedom of expression, and address the harms arising from online abuse.

SCALE OF ONLINE COMMS



Office for National Statistics 2019

[1] Ofcom, 2020.
[2] Office for National Statistics, 2019.
[3] Alan Turing Institute, 2019.

FREEDOM OF EXPRESSION

The courts have recognised that the right to freedom of expression is very important in a democratic society. It has been held to include the right to speak offensively.

> **"Freedom only to speak inoffensively is not worth having."[4]**

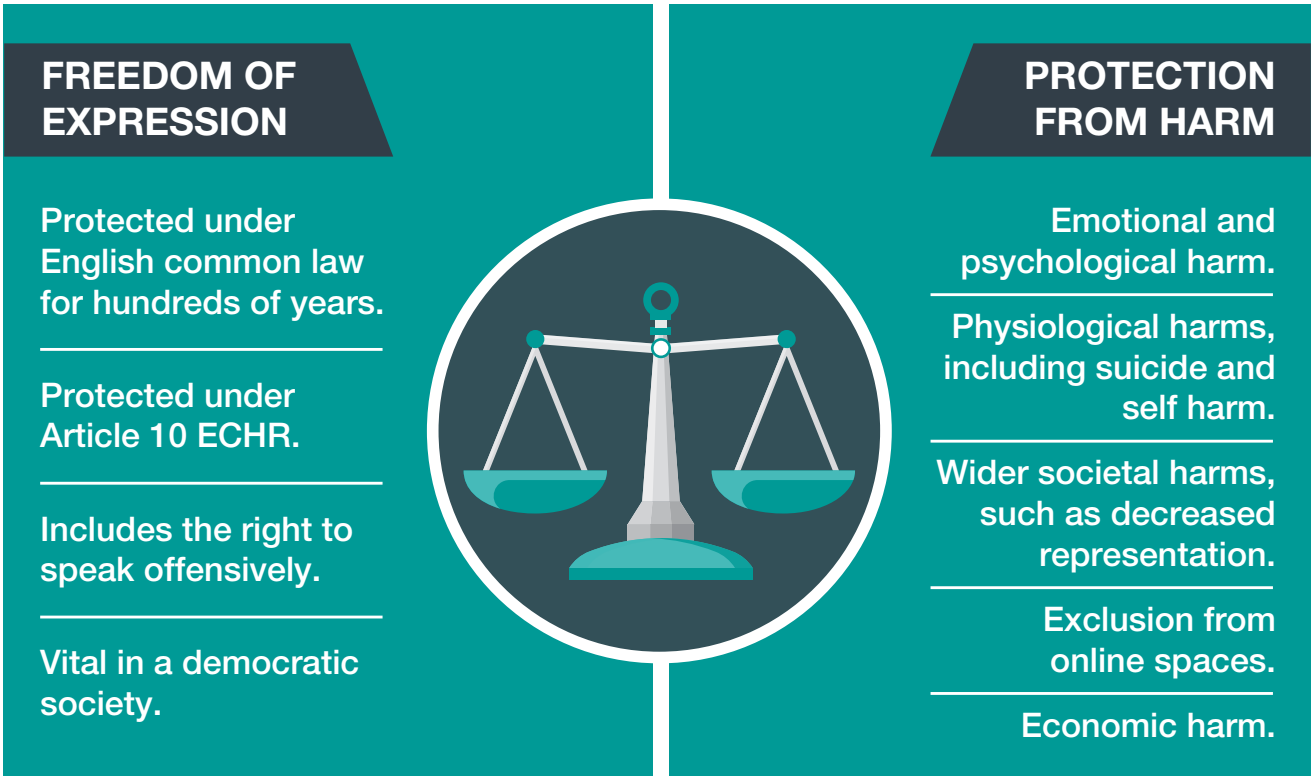
Article 10 of the European Convention on Human Rights ("ECHR") requires that any interference by the State in the right to freedom of expression – up to and including criminal sanctions – must meet certain conditions. Briefly stated, the interference must be adequately 'prescribed by law'. This means the relevant criminal offences cannot be too vague or ambiguous. The interference must also be a proportionate pursuit of a legitimate aim. An interference will be easier to justify if it protects people from harm.

HARM ARISING FROM ONLINE ABUSE

In the Consultation Paper, we categorise the harms arising from online abuse under five broad headings:

1) **psychological** and **emotional** harms;
2) **physiological** harms, including suicide and self-harm;
3) **exclusion** from public online space and corresponding feelings of isolation;
4) **economic** harms; and
5) wider **societal** harms.

BALANCING FREEDOM OF EXPRESSION AND PROTECTION FROM HARM



[4] Sedley LJ, *Redmond-Bate v DPP* [1999] Crim LR 998.

All of these harms form part of the justification for reforming the law. However, we propose a new offence based on likely emotional and psychological harm. Evidence from stakeholders suggests to us that this type of harm is the 'common denominator'. It is a widespread effect of online abuse and tends to accompany the other forms of harm.

For example, the UK's National Centre for Cyberstalking Research found that the most common reactions to cyber-harassment were "distress" (94.1%) and "fear" (80.9%).[5] Ditch the Label's Annual Bullying Survey 2019 found that of those participants who had been bullied within the last 12 months – 74% of whom experienced cyber-bullying – 66% experienced a moderate to extreme impact on their confidence and 63% experienced a moderate to extreme impact on their optimism and positivity.[6]

Another consideration is the need for a targeted, proportionate offence: an offence incorporating all five categories of harm would be very broad, going well beyond the reach of the existing communications offences and overlapping significantly with other crimes, such as fraud.

THE NEED FOR REFORM

In the Consultation Paper, we explain that the broad nature of the offences in the MCA 1988 and CA 2003 allows for their use across a wide range of online communications. But the threshold of criminality, especially when applied to the online space, is often set too low. Yet, at the same time, some forms of harmful communication – such as cyberflashing and pile-on harassment – are either left without criminal sanction or without sufficiently serious criminal sanction. In short, these offences do not target the harms arising from online abuse. The result is that they over-criminalise in some situations, and under-criminalise in others.

[5] National Centre for Cyberstalking Research, 2011.
[6] Ditch the Label, 2019.

It is not only changing harms that generate a need for new law in this area. The existing patchwork of criminal law is overlapping and ambiguous. Ambiguous law, or law that is very wide in scope, presents a real risk to freedom of speech, which has long been protected under English common law, as well as under the ECHR. We are concerned that the current offences are sufficiently broad that they could, in certain circumstances, constitute a disproportionate interference with the right to freedom of expression under Article 10 of the ECHR.

The provisional proposals in the Consultation Paper aim to fix both of these problems: they aim to address the harms arising from online abuse, while at the same time better protecting the right to freedom of expression.

In making provisional proposals for reform, we acknowledge that the criminal law can be only a limited part of the solution to online abuse – this is due in part to the enormous volume of online communications and the enforcement and policing challenges to which this gives rise.

The Online Harms White Paper, published by the Department for Digital, Culture, Media and Sport and the Home Office in 2019, focusses on the regulation of platforms (such as Twitter and Facebook). Further, tackling online abuse will require not just criminal law and regulatory reform, but also education and cultural change. Yet, the criminal law has a role to play in setting standards and supporting cultural change by deterring and punishing unacceptable conduct.

The structure of the Consultation Paper is as follows: in Chapter 2, we outline the law relating to Article 10 (freedom of expression) and Article 8 (the right to respect for private and family life, home and correspondence) of the ECHR. We consider how they affect the criminalisation of online communications.

In Chapter 3, we analyse the current law. We assess various offences that could apply online, such as those in the Protection from Harassment Act 1997 and the Public Order Act 1986, but our focus is the MCA 1988 and CA 2003.

In Chapter 4, we consider the harms that arise from online abuse. This is, in a sense, the other side of the scale from the freedom of expression concerns. The evidence we have received of the range of harms suffered by people of all backgrounds and characteristics has been enormously helpful in forming our views. Equally, it has been a poignant reminder of the urgency of our task.

In Chapter 5, we provisionally propose a new offence to replace section 127(1) CA 2003 and section 1 MCA 1988.

We conclude with Chapter 6, in which we address:

- reform of section 127(2) CA 2003;
- pile-on/group harassment;
- cyber-flashing;
- glorification of violent crime and glorification or encouragement of self-harm.

THE EXISTING LAW

In Chapter 3, we explain the strengths and weaknesses of the existing law, and particularly the problems with section 1 of the MCA 1988 and section 127 of the CA 2003. These offences are commonly relied upon in the context of online abuse, especially one-off abusive communications.

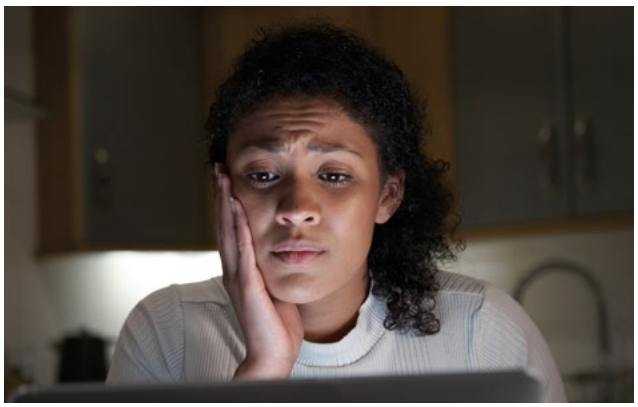
Section 1 of the MCA 1988 criminalises the sending of certain types of communication to another person, where one of the sender's purposes is to cause "distress or anxiety" to the recipient or another person. The relevant types of communication are those which convey a message which is indecent or grossly offensive, a threat, or false.

Section 127(1) of the CA 2003 criminalises the sending, via a "public electronic communications network", of a message which is "grossly offensive or of an indecent, obscene or menacing character". Section 127(2) of the CA 2003 criminalises sending a message which is: (i) known to be false; and (ii) for the purpose of causing "annoyance, inconvenience, or needless anxiety" to another.

The breadth of these offences means they can be useful in addressing online abuse, but they also suffer from serious problems. Reliance on vague terms like "grossly offensive" and "indecent" raises concerns that the offences criminalise some forms of free expression that ought to be protected. Simply put, these adjectives do not invariably correspond to harm. For example, consensual sexting between adults would be "indecent", but not obviously worthy of criminalisation.

Further, in the widely criticised case of *Chambers*, the CA 2003 was used to prosecute a joke made on Twitter, about 'blowing Robin Hood airport sky high'.[7] This is, in our view, another example of over-criminalisation.

However, there are other contexts in which the offences do not adequately criminalise certain conduct – such as cyberflashing and pile-on harassment.



[7] *Chambers v DPP* [2012] EWHC 2157 (Admin).

TECHNOLOGICAL NEUTRALITY

An important impetus for reform of the communications offences is to address the harm arising from abuse that takes place online. Online abuse presents one of the biggest challenges for the current law.

However, we have tried not to constrain the offence to particular forms of communication. Instead, the proposed new offence covers much the same the forms of communication as the MCA 1988: sending "electronic communications" (such as internet-based communications), "letters", and "articles" (meaning items such as faeces or used tampons). **The proposed new offence would likewise cover both online and some offline communications.**

One reason for proposing a technologically neutral offence is to mitigate the risk that the law will become redundant or unhelpful in the face of technological change. Given that the CA 2003 covers only communications sent via a "public electronic communications network", it is ill-equipped to deal with technologies like Bluetooth or Apple's AirDrop function. We hope the new offence will avoid this kind of problem – as well as striking the right balance between freedom of expression and the need to protect people from harm.

THE PROPOSED NEW OFFENCE

We provisionally propose a new offence based on likely emotional or psychological harm, to replace the offences in section 1 of the MCA 1988 and section 127(1) of the CA 2003.

In summary, the elements of the proposed new offence are as follows:

- The new offence requires that the defendant sends or posts a communication that was likely to cause harm to a likely audience.

  ➡ *The offence does **not** require proof that anyone was actually harmed. We think this would unjustifiably limit the scope of the offence, and place an unfair burden on victims, requiring them to give evidence in court of the harm they have suffered as a result of the communication.*

  ➡ *If someone was actually harmed, this can be taken into account at sentencing.*

- A likely audience is someone who, at the point at which the communication was sent or posted by the defendant, was likely to see, hear, or otherwise encounter it.

  ➡ *A likely audience would include, for example, a direct recipient of a message or the defendant's social media followers, but it could also include various other people.*

  ➡ *Depending on the circumstances, it may include people who are likely to be shown the communication by a third party.*

- Harm means emotional or psychological harm, amounting to at least serious emotional distress.

  ➡ *Serious emotional distress is a high threshold. 'Serious' does not simply mean 'more than trivial'. It means a big, sizeable harm.*

- The defendant must intend to cause, or be aware of a risk of causing, harm to someone likely to see, hear, or otherwise encounter the communication.

  ➡ *These are two alternative mental elements: the offence can be made out if the defendant intended to cause harm **or** if the defendant was aware of a risk of harm.*

  ➡ *Where the defendant intended to cause harm, it is likely that the level of culpability will be higher. This can be taken into account at sentencing.*

- When deciding whether the communication was likely to cause harm to a likely audience, the court must have regard to the context in which the communication was

sent, including the characteristics of those likely to see, hear, or otherwise encounter it.

➡ *Characteristics might include, for example, age or gender, as well as race, religion, disability, or sexual orientation. They are not limited to 'protected characteristics' under the hate crime legislation.*

- The defendant must send or post the communication without reasonable excuse.

  ➡ *This is not a defence. It is part of the offence. It is for the prosecution to prove.*

  ➡ *This requirement applies where the defendant intended to cause harm **and** where the defendant was aware of a risk of harm.*

- When deciding whether the defendant had a reasonable excuse for sending the communication, the court must have regard to whether the communication was or was meant as a contribution to a matter of public interest.

  ➡ *The jury or magistrate will decide whether the defendant acted without reasonable excuse, but this factor must be considered.*

  ➡ *This requirement helps to ensure that freedom of expression is adequately protected.*

Consultation Question 1 asks whether consultees agree with the proposed new offence.

Consultation Questions 2 to 16 give consultees the opportunity to comment on each aspect of the provisional proposals. For example, we ask how the law should define the threshold of 'serious emotional distress', and what should constitute reasonable excuse.

THE PROPOSED HARM BASED OFFENCE

1) The defendant sends or posts a communication that is **likely to cause harm** to a likely audience;

2) in sending or posting the communication, the defendant **intends to harm**, or **is aware of a risk of harming**, a likely audience; and

3) the defendant sends or posts the communication **without reasonable excuse**.

For the purposes of this offence, definitions are as follows:

   a) a communication is a letter, article, or electronic communication.

   b) a likely audience is someone who, at the point at which the communication was sent or posted by the defendant, was likely to see, hear, or otherwise encounter it.

   c) harm is emotional or psychological harm, amounting to **at least serious emotional distress**.

4) When deciding whether the communication was likely to cause harm to a likely audience, the court must have regard to the **context in which the communication was sent, including the characteristics of a likely audience**.

5) When deciding whether the defendant had a reasonable excuse, the court must have regard to whether the communication was or was meant as **a contribution to a matter of public interest**.

Like section 1 of the MCA 1988, the offence would be triable either-way: it could be tried in the Magistrates' court or the Crown Court.

QUESTIONS AND ANSWERS

Q: Does the proposed offence cover private communications, such as WhatsApp messages?

A: Yes. The proposed offence does not make a distinction between public and private messages. However, the private nature of the communication might affect the practical application of the offence. A private joke between friends, even a very bad taste joke, will not be covered unless it was likely to cause harm to someone likely to see, hear, or otherwise encounter it.

Q: What if the communication is offensive, but not harmful?

A: This will not be covered. Many communications will be both offensive and harmful, and these will be covered, but communications that are merely offensive will not.

Q: Does the proposed offence cover online newspaper articles?

A: No. The forms of communication covered include, for example, public posts on social media sites like Twitter or Facebook, individual comments on such posts or below an online newspaper article, and one-to-one messages. Press publications (whether hard-copy or online) would not be covered.

Q: What happens if someone posts nasty comments or personal information about me on their private social media page, but I do not follow that person? Could that be covered by the proposed offence?

A: Yes, it could be covered. This would depend on the circumstances. If, at the time the defendant posted the information, you were likely to see it (because, say, a mutual friend was likely to show it to you), this could be covered. Of course, all the other elements of the offence would have to be made out, too. Note, however, that the sharing of intimate images of a person without their consent is covered by a separate Law Commission project.

Q: What if the likely audience was especially vulnerable or prone to emotional distress? Would this be a defence?

A: No, it would not be a defence. However, it may affect whether the defendant was aware of a risk of harm. If the defendant was not aware of the particular vulnerabilities of a likely audience, then they may not have been aware of a risk of harm.

Q: What if the defendant's judgment is impaired by, for example, a medical condition?

A: The mental elements of the proposed offence are subjective: what matters is the defendant's actual state of mind. If a judgment-impairing medical condition means that the defendant was not aware of a risk of harm, then (assuming that the defendant did not intend to cause harm) the offence would not be committed.

RELATIONSHIP WITH HATE CRIME

A proportion of online abuse can be, and often is, described as 'online hate'. Indeed, a significant subset of online abuse is targeted at people on the basis of their race, religion, sexual orientation, transgender status, or disability. Under the laws against hate crime, these are 'protected characteristics'.

In view of this, it may be appropriate to include the proposed new communications offence as an 'aggravated offence' under hate crime legislation. This possibility is considered in the Law Commission's separate project on hate crime.[8]

However, not all abusive online communications amount to online hate. Equally, hate crime can encompass a wide range of behaviour – including, for example, acts of physical violence against people because of their race or sexual orientation, or criminal damage to businesses or places of worship – as well as hate speech.

FALSE COMMUNICATIONS

The offence provisionally proposed in Chapter 5 is designed to replace section 127(1) of the CA 2003, but not section 127(2). In Chapter 6, we start by setting out provisional proposals for reform of section 127(2) of the CA 2003.

Under the existing offence, it is a crime to send a knowingly false communication for the purpose of causing "annoyance, inconvenience or needless anxiety" to another. This is a low threshold. In our provisional view, it is too low. We therefore propose to raise the threshold.

Under our provisional proposal, the defendant would be liable if:

- The defendant sends or post a communication that they know to be false;
- in sending or posting the communication, they intend to cause non-trivial emotional, psychological, or physical harm to a likely audience; and
- the defendant sends or posts the communication without reasonable excuse.

As in the case of the harm-based offence, a communication is a letter, article, or electronic communication, and a likely audience is someone who, at the point at which the communication was sent or posted by the defendant, was likely to see, hear, or otherwise encounter it.

We mean for "non-trivial emotional, psychological, or physical harm" to include distress and anxiety, but not annoyance or inconvenience. It is a higher threshold of intended harm than under the existing offence, which we consider to be too low a threshold to justify the imposition of a criminal sanction. Even so, this offence would, like the offence under section 127(2) of the CA 2003, be summary-only (triable only in the Magistrates' court).

We do not propose to cover communications that the defendant believes to be true – no matter how dangerous those communications may be. We recognise that misinformation and 'fake news' are serious social problems, but they lie beyond our Terms of Reference.

Consultation Questions 17 to 21 give consultees the opportunity to comment on our provisional proposals in relation to section 127(2) CA 2003.

[8] The Law Commission's Consultation Paper on hate crime is available at www.lawcom.gov.uk.

KNOWINGLY FALSE COMMUNICATIONS: PROPOSED OFFENCE

1) The defendant sends or post a communication that they know to be false;

2) in sending or posting the communication, they intend to cause non-trivial emotional, psychological, or physical harm to a likely audience;

3) the defendant sends or posts the communication without reasonable excuse.

For the purposes of this offence, definitions are as follows:

a) a communication is a letter, article, or electronic communication.

b) a likely audience is someone who, at the point at which the communication was sent or posted by the defendant, was likely to see, hear, or otherwise encounter it.

Like section 127(2) of the CA 2003, the offence would be summary-only: triable only in the Magistrates' court.

PILE-ON HARASSMENT

We have been asked to consider group harassment, also known as 'pile-on' harassment.

Pile-on harassment happens when a number of different individuals send harassing communications to a victim. For example, hundreds of individuals sent messages to Jess Phillips MP along the lines of "I would not rape you". Stakeholders have told us that this type of online abuse can have a very serious impact.

Far from levelling off, the emotional and psychological toll of a pile-on increases with each message. It has been described to us by analogy with 'water torture', where a person is restrained and subjected to repetitive drips of water on the forehead: the cumulative effect causes serious harm.[9]

The law in this area is complicated. As we explain in Chapter 6, coordinated pile-on harassment is in some cases covered by section 7(3A) of the Protection from Harassment Act 1997 or by the so-called 'inchoate' offences under the Accessories and Abettors Act 1861. At least, this is true in theory. However, pile-on harassment seems rarely to be prosecuted, despite its harmful effects.

The proposed harm-based offence would help to address pile-on harassment, especially when it is not coordinated. For example, the conduct of someone who observes that a pile-on is happening and decides to join in could be caught by the proposed harm-based offence. In the context of a pile-on, their communication would

[9] Pre-consultation stakeholder meeting

be likely to harm, and the defendant would probably be aware of a risk of harm.

To the extent that pile-on harassment is caught by the proposed new offence, there would also be the possibility of prosecuting acts of encouraging or assisting a pile-on under the Serious Crime Act 2007. We give a full explanation of how this would work in Chapter 6. We also explain that we have some doubts about the practical workability of this route to prosecution.

In one sense, the prevalence of pile-on harassment, combined with its harmful impacts, speaks in favour of a targeted offence. This could take the form of a specific offence of inciting or encouraging pile-on harassment, or an offence of knowing participation in pile-on harassment.

Yet, at the same time, the sheer scale of pile-on harassment, sometimes involving thousands of messages per minute, would present significant difficulties in terms of policing and enforcement. We welcome consultees' views on this issue – see Consultation Questions 22 and 23.

Consultation Question 23 asks whether there should be specific offence criminalising knowing participation in pile-on harassment.

CYBERFLASHING

Reports of cyberflashing – that is, the unsolicited sending of sexual images using digital technology – have dramatically increased in recent years. In 2019, the British Transport Police recorded 66 reports of cyberflashing, compared to 34 reports in 2018, and just 3 reports in 2016. However, research done by Professor Clare McGlynn and Dr Kelly Johnson suggests that this is only the tip of the iceberg.

PROVISIONAL PROPOSALS IN RELATION TO CYBERFLASHING

Section 66 of the Sexual Offences Act 2003 should be amended to include explicitly the sending of images or video recordings of one's genitals.

Cyberflashing can cause serious harm. It is often experienced as a form of sexual harassment, involving coercive sexual intrusion by men into women's everyday lives. Sophie Gallagher has collected testimony from women who have been subjected to cyber-flashing, including the following:

"The normality of this sexually aggressive behaviour is such that I am not massively surprised [when it happens] and over time I have built up a defence mechanism of laughing it off. But at its core it is very invasive."

"It was only later I realised how predatory that cyber flashing behaviour was."

"It felt like this was another harassment women just have to absorb. It should work like any indecent exposure."

"It is the same as physical exposure and it should be treated as such."[10]

[10] S Gallagher, Huffington Post, 2019

As in the case of pile-on harassment, the proposed harm-based offence goes some way to addressing the problem. Provided the mental element of the offence is met, cyberflashing will generally be caught.

However, there is a case for making cyberflashing as a sexual offence, and not just a communications offence. One reason for this is a matter of fair labelling: the conduct is sexual in nature, and those who have been subjected to cyberflashing compare its impact to that of other sexual offences. Moreover, if cyberflashing is a sexual offence, this also means that additional protections, such as Sexual Harm Prevention Orders, could be available.

Under section 66 of the Sexual Offences Act 2003 ("SOA 2003") there is an offence criminalising exposure of one's genitals. In Chapter 6, we explain that this can cover some digital forms of exposure. However, it is not clear that it covers, for example, 'dick pics' sent via AirDrop.

Therefore, we provisionally propose that section 66 of the SOA 2003 should be amended to include the sending of images or video recordings of one's genitals – see Consultation Question 24.

We also recognise that there may be a case for making further reforms to address cyberflashing. The conduct element of a cyberflashing offence could be expanded to include sending images or video recordings of the genitals of another.

Further, the mental element under section 66 of the SOA 2003 requires that the defendant intends to cause alarm or distress. This could be expanded to include, for example, other intended consequences, recklessness, or awareness of a risk of harm – see Consultation Questions 25 and 26.

SCALE OF CYBERFLASHING

The British Transport Police recorded:

66 reports of cyberflashing in 2019

34 reports in 2018

3 reports in 2016

But research suggests that this is just the tip of the iceberg

GLORIFICATION OF VIOLENT CRIME

In Chapter 6, we also consider whether there is sufficient justification for a specific offence criminalising the 'glorification' of violence or violent crime.

We note that there are already various laws criminalising the encouragement of the commission of a criminal offence. Further, we are concerned that a broad offence based on a vague term like 'glorification' may be incompatible with Article 10 of the ECHR.

However, we would welcome evidence from consultees that would support the creation of such an offence – see Consultation Question 27.

GLORIFICATION OR ENCOURAGEMENT OF SELF-HARM

Finally, we consider whether there should be an offence of glorification or encouragement of self-harm.

Here again, we have reservations about 'glorification' as the basis of a criminal offence. However, unlike in the case of violent crime, it is not clear that there is any offence covering the encouragement of self-harm.

In our provisional view there may, therefore, be a case for a narrow offence of encouragement (or incitement) of self-harm. However, we are anxious to ensure that vulnerable people who post 'non-suicide self-harm' content would not be caught by such an offence. In this section, we also acknowledge that the proposed harm-based offence, set out in Chapter 5, may present a risk in this respect.

Consultation Question 28 asks: Can consultees suggest ways to ensure that vulnerable people who post non-suicide self-harm content will not be caught by our proposed new communications offence?

Consultation Question 29 asks: Should there be a specific offence of encouragement of self-harm, with a sufficiently robust mental element to exclude content shared by vulnerable people for the purposes of self-expression or seeking support? Can consultees provide evidence to support the creation of such an offence?

CONCLUSION

To summarise: the provisional proposals in the Consultation Paper aim to improve on the existing communications offences, ensuring that the law is clearer and that it more effectively targets serious harm and criminality.

We provisionally propose two complementary offences to replace section 1 of the MCA 1988 and section 127 of the CA 2003: a harm-based offence; and an offence addressing knowingly false communications.

The harm-based offence would, we think, provide an effective mechanism for addressing pile-on harassment.

In addition to these new offences, we also provisionally propose that section 66 of the SOA 2003 is amended to cover cyberflashing.

We invite consultees to give their views on these provisional proposals. The Consultation Questions provide opportunities to comment on the provisional proposals in general, as well as on each aspect of them.

We also ask consultees for their views on whether there should be specific offences covering any of the following: incitement or encouragement of pile-on harassment; knowing participation in pile-on harassment; glorification of violence or of violent crime; and incitement or encouragement of self-harm.

The full Consultation Paper can be found at www.lawcom.gov.uk