



Criminal & Civil Law

Protection from Harassment Act 1997

This Act is relevant for incidents that have happened repeatedly (i.e. on more than two occasions). Section 1 prohibits behaviour amounting to harassment of another.

Section 2 provides a criminal offence and

Section 3 provides a civil remedy for breach of the prohibition on harassment in Section 1.

Section 4 provides a more serious offence of someone causing another person to fear, on at least two occasions, that violence will be used against them.

A civil court may grant an injunction to restrain a person from conduct which amounts to harassment.

Communications Act 2003

Section 127 covers all forms of public communications, and subsection (1) defines an offence of sending a 'grossly offensive . . . obscene, indecent or menacing' communication.

Subsection (2) defines a separate offence where for the purposes of causing annoyance, inconvenience or needless anxiety, a person sends a message which that person knows to be false (or causes it to be sent) or persistently makes use of a public communications system.

Malicious Communications Act 1988

Section 1 makes it an offence to send an indecent, grossly offensive or threatening letter, electronic communication or other article to another person with the intention that it should cause them distress or anxiety.

Public Order Act 1986

Section 5 makes it an offence to, with the intent to cause harassment, alarm and distress, use threatening, abusive or insulting words, behaviour, writing, signs or other visual representation within the sight or hearing of a person likely to be caused harassment, alarm or distress. This may apply if a mobile is used as a camera/video rather than if speech, writing or images are transmitted.

Obscene Publications Act 1959

It is an offence under this Act to publish an obscene article. Publishing = circulating, showing, playing or projecting the article or transmitting that data, i.e. over a school intranet. An obscene article is one whose effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained or embodied in it.

Computer Misuse Act 1990

When cyberbullying takes the form of hacking into someone else's account, then other criminal laws will come into play, such as the Computer Misuse Act 1990, in addition to civil laws on confidentiality and privacy.

Crime and Disorder Act 1998

An anti-social behaviour order (ASBO) could be used for cyberbullying. An ASBO is a civil order which prohibits an individual from engaging in specific anti-social acts. An ASBO can be made against any person, aged ten or over, where there is evidence that their behaviour caused, or is likely to cause, harassment, alarm or distress to others, and where an order is needed to protect a person or

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persons from further anti-social acts. Whether a course of conduct is anti-social in nature is primarily measured by the consequences and the effect it has, or is likely to have, on a member or members of the community within which it is taking place. An ASBO can be used in conjunction with other measures as part of a tiered approach to tackling anti-social behaviour. Prohibitions should be precise, targeted at the specific behaviour complained of, and proportionate. ASBOs can prevent further escalation into criminal behaviour. Breach of an Anti-Social Behaviour Order is a criminal offence and criminal penalties apply.

Defamation

Defamation is a civil 'common law' tort. It applies to any published material that damages the reputation of an individual/ organisation, and it includes material published on the internet. A civil action for defamation can be brought by an individual or a company, but not by a public authority. It is up to the claimant to prove that the material is defamatory. However, the claimant does not have to prove that the material is false – the burden of proof lies with the author/publisher, who has to prove that what they have written is true.

Where defamatory material is posted on a website the person affected can inform the host of its contents and ask the host to remove it. Once the host knows that the material is there and that it may be defamatory, it can no longer rely on the defence of innocent dissemination in the Defamation Act 1996. This means that the person affected could (if the material has been published in the jurisdiction, i.e. in Wales and England) obtain a court order (an injunction) to require removal of the material, and could sue either the host or the person who posted the material for defamation.

Education Law

Education and Inspections Act 2006

Headteachers, with the advice and guidance of governors and the assistance of school staff, must identify and implement measures to promote good behaviour, respect for others, and self-discipline among learners, and to prevent all forms of bullying. This includes the prevention of cyberbullying.

The Act outlines some legal powers which relate quite directly to cyberbullying.

- Headteachers have the power 'to such extent as is reasonable' to regulate the conduct of learners when they are off-site or not under the control or charge of a member of staff. This is of particular significance to cyberbullying, which is often likely to take place out of school but which can impact very strongly on the school life of those learners involved.
- The Act also provides a defence for school staff in confiscating items from learners. This can include mobile phones when they are being used to cause a disturbance in class or otherwise contravene the school behaviour/anti-bullying policy. School staff may request a learner to reveal a message or show them other content on their phone for the purpose of establishing if bullying has occurred, and a refusal to comply might lead to the imposition of a disciplinary penalty for failure to follow a reasonable instruction. Where the text or image is visible on the phone, staff can act on this. Where the school's behaviour policy expressly provides, a member of staff may themselves search through the phone in an appropriate case where the learner is reasonably suspected of involvement.
- **Education Act 2010** provides further powers for schools. Guidance on malicious allegations against teachers is issued.

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