

by

Youthworks

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Understanding Cyberbullying

How the law relates to cyberbullying

This resource is part of a course on Understanding Cyberbullying.

It is updated regularly and former candidates can access the updates online in Module 10.



Criminal & Civil Law relating to Cyberbullying

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 and, following conviction of an offence under Sections 2 or 4, restraining orders are available to protect the victim of the offence.

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 offence may apply where a mobile phone is used as a camera or video rather than where speech writing or images are transmitted.

Obscene Publications Act 1959

It is an offence under this Act to publish an obscene article. Publishing includes circulating, showing, playing or projecting the article or transmitting that data, for example 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 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 to the legitimate aim of protecting the community from further abuse. ASBOs can be extremely effective in preventing further escalation into criminal behaviour. Breach of an Anti-Social Behaviour Order is a criminal offence and criminal penalties apply. Under pending legislation this may change to a Criminal Behaviour Order.

Defamation

Defamation is a civil 'common law' tort in respect of which the Defamation Acts of 1952 and 1996 provide certain defences. It applies to any published material that damages the reputation of an individual or an 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 on that point 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.

[The Defamation Act 2013](#)

Note from news release from Ministry of Justice: People who maliciously share sexually explicit pictures of former partners will face prosecution under new laws.

Sending images of this kind may, depending on the circumstances, be an offence under the Communications Act 2003 or the Malicious Communications Act 1988. If repeated, this may also amount to an offence of harassment under the Protection from Harassment Act 1997.

Specific legislation also applies to the making, dissemination or possession of indecent photographs of children under the age of 18.

The maximum penalty for possession of indecent photographs of children is five years in prison.

Creation and distribution of such photographs carries a maximum penalty of 10 years.

If anyone has been a victim of this kind they should go to the police.

'Revenge porn' became a specific offence in the **Criminal Justice and Courts Bill**.

<https://www.gov.uk/government/news/new-law-to-tackle-revenge-porn> it was not intended that this be used to criminalise children, but some cases have resulted in cautions.

The Serious Crime Act (2015) has introduced an offence of sexual communication with a child.

This applies to an adult, who communicates with a child and where the communication is sexual or if it is intended to elicit from the child a communication, which is sexual and the adult reasonably believes the child to be under 16 years of age. The Act also amended the Sex Offences Act 2003 so it is now an offence for an adult to arrange to meet with someone under 16 having communicated with them on just one occasion, previously it was on at least two occasions.

[The Serious Crime Act \(2015\)](#)

Education Law**Bullying can be defined as**

The intentional, often repetitive hurting of one person or a group by another person/group; where the relationship involves an imbalance of power. Bullying can be physical, verbal or psychological. It can take place face to face, indirectly or in cyberspace.

There is currently no legal definition of bullying. The DfE defines it as follows:

“Bullying is behaviour by an individual or group, repeated over time, that intentionally hurts another individual or group either physically or emotionally. Bullying can take many forms (for instance, cyber-bullying via text messages or the internet), and is often motivated by prejudice against particular groups, for example on grounds of race, religion, gender, sexual orientation, or because a child is adopted or has caring responsibilities. It might be motivated by actual differences between children, or perceived differences.”ⁱ

Stopping violence and ensuring immediate physical safety is obviously a school’s first priority but emotional bullying can be more damaging than physical; teachers and schools have to make their own judgements about each specific case. Many experts say that bullying involves an imbalance of power between the perpetrator and the victim. This could involve perpetrators of bullying having control over the relationship which makes it difficult for those they bully to defend themselves. The imbalance of power can manifest itself in several ways, it may be physical, psychological (knowing what upsets someone), derive from an intellectual imbalance, or by having access to the support of a group, or the capacity to socially isolate. It can result in the intimidation of a person or persons through the threat of violence or by isolating them either physically or online.

Cyber-bullying.

“The rapid development of, and widespread access to, technology has provided a new medium for ‘virtual’ bullying, which can occur in or outside school. Cyber-bullying is a different form of bullying and can happen at all times of the day, with a potentially bigger audience, and more accessories as people forward on content at a click. The wider search powers included in the Education Act 2011 give teachers stronger powers to tackle cyber-bullying by providing a specific power to search for and, if necessary, delete inappropriate images (or files) on electronic devices, including mobile phones. Separate advice on teachers’ powers to search (including statutory guidance on dealing with electronic devices) is available – see below for a link to this document.”ⁱⁱ

Schools’ duties

The school has a duty of care to protect all its members and provide a safe, healthy environment and these obligations are highlighted in law and in guidance detailed below.

The Department for Education has produced guidance for all schools including Academies and Free Schools which outlines duties to prevent and tackle bullying in schools.

<https://www.gov.uk/government/publications/preventing-and-tackling-bullying>

Bullying and Child Protection

Some incidents of bullying or cyberbullying may also be considered as a child protection matter. These cases should be considered as a Child Protection issue when there is ‘reasonable cause to suspect that a child is suffering or is likely to suffer, significant harm.’ These concerns must be reported to the local authority’s children’s social services.

New guidance on Safeguarding 2015

There is a strong focus on safeguarding in all Ofsted inspections on the Common Inspection Framework. Some recent additions to safeguarding requirements are outlined in the briefing below, whilst the main document is essential reading.

STATUTORY GUIDANCE [Department for Education]

[Keeping children safe in education July 2016](#)

Should be read alongside [Working Together to Safeguard Children 2015](#)

A version of the guidance for young people and a separate version suitable for younger children are also available for practitioners to share

GUIDANCE FOR PRACTITIONERS

[What to do if you are worried a child is being abused](#) **HELPLINE** NSPCC call 0808 800 5000

***The government made internet safety a compulsory part of the new curriculum in 2014. Schools can also teach e-safety during PSHE lessons and they are all required by law to have measures in place to prevent bullying and cyber bullying.**

Education and Inspections Act 2006 Section 89

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. These measures **must** be communicated to all pupils, school staff and parents. This information can be in a separate Anti-Bullying Policy or sit within a policy on Behaviour.

Our recommendation is that any policy relating to bullying should interact closely with the school's policies on Equality; e-Safety; Acceptable use of ICT; Behaviour; Safeguarding and Child Protection.

The head teacher **must** follow through and adopt the policy and all students, parents and teachers should be notified of it once it has been adopted.

Pupils should be involved in both the drafting of their anti-bullying policy and its monitoring by being encouraged to discuss the policy and its effectiveness. Involving pupils in this way is compatible with the children and young people's rights to participate under **Article 12 of the UN Convention on the Rights of The Child 1989** to which the UK is signed up.

The Education Act 2006 also outlines some legal powers which relate quite directly to cyberbullying.

Section 89

- 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.
- This Act also provides a defence for school staff in confiscating items (such as mobiles) from pupils if they are being used to cause a disturbance in class or they are being used to contravene the school behaviour / anti-bullying policy in other ways. School staff may request a pupil 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 allows this, a member of staff may search through the phone themselves in an appropriate case where the pupil is reasonably suspected of involvement. **My advice is never to do so without another appropriate staff member present. This is best done with the designated safeguarding lead or the ICT manager and a careful written note taken of the date, time, who was present and the purpose of the search and any evidence that it was necessary. It is vitally important that these matters are well covered in your school's AUP in ICT and in the Behaviour Policy.*

- The **DfE Guidance** clarifies this further in three useful documents: [Behaviour and discipline in schools- Advice for headteachers and school staff.](#)
- And '[Searching, Screening and Confiscation, Advice for Headteachers, Governors and School Staff. February 2014](#)'
- A factsheet: [DfE Behaviour and Discipline in Schools Guidance Supporting children and young people who are bullied: advice for schools](#) was issued in 2013.
- **The Education Act 2011 Section 85, Clause 3a** gives additional powers to schools – on screening, searching and confiscation, including of electronic devices where they believe that 'there is a risk that serious harm will be caused to a person if the search is not carried out as a matter of urgency'. There is DfE advice: '**Screening, searching and confiscation – Advice for Head Teachers, staff and governing bodies**'. This includes the power to delete certain content within certain conditions.

Academies, Free Schools and Independent Schools

The Independent School Standards Regulations 2010 state that the proprietor of an Academy or other independent schools is required to ensure that an effective anti-bullying strategy is drawn up and implemented.

The Equality Act 2010

This act replaces previous separate acts addressing discrimination and brings them into a single act. Schools **must** follow the Equality Act 2010. Staff must act to prevent discrimination, harassment and victimisation within the school. Under the act schools have duties to:

- 'Eliminate discrimination'
- 'Advance equality of opportunity'
- 'Foster good relations'

There are specific protected characteristics spelled out under this act.

'The specific duties require public bodies to prepare and publish one or more specific and measurable equality objectives which will help them to further the three aims of the Equality Duty. All public bodies subject to the specific duties must publish their first equality objectives by 6 April 2012. Subsequent objectives must be published at least every four years.'

http://www.equalityhumanrights.com/uploaded_files/EqualityAct/PSED/public_sector_equality_duty_guidance_for_schools_in_england_final.pdf

[http://www.pfc.org.uk/pdf/specific-duties%20Nov%202011%20\(2\).pdf](http://www.pfc.org.uk/pdf/specific-duties%20Nov%202011%20(2).pdf)

A **hate crime** is any occurrence as perceived by the victim or any other person to be one of the following:

Racist; homophobic; transphobic; because of religion; beliefs; gender identity or disability.

Hate crime includes name calling, violence, property attacks such as graffiti, verbal attacks, abusive messages either by phone, mail or via the internet. Contact the police if hate crime occurs.

The Education Act 2002. Maintained schools have obligations under **section 78** of the Education Act (2002) which requires schools, as part of a broad and balanced curriculum, to promote the spiritual, moral, cultural, mental and physical development of pupils at the school and of society. [DfE guidance](#) issued in November 2014: '**Promoting Fundamental British Values as Part of SMSC in Schools**', relates specifically to the requirements to actively promote fundamental British values in schools and explains how this can be met through the general requirement in the 2002 Act.

'Pupils must be encouraged to regard people of all faiths, races and cultures with respect and tolerance. It is expected that pupils should understand that while different people may hold different views about what is 'right' and 'wrong', all people living in England are subject to its law. The school's ethos and teaching, which schools should make parents aware of, should support the rule of English civil and criminal law and schools should not teach anything that undermines it. If schools teach about religious law, particular care should be taken to explore the relationship between state and religious law. Pupils should be made aware of the difference between the law of the land and religious law.'

The CPS Guidelines on prosecuting cases involving communications sent via social media. 2012 http://www.cps.gov.uk/consultations/social_media_consultation.pdf

These guidelines describe four types of communication. These are: 'credible threats of violence', 'communications that specifically target an individual or group' (including blackmail) and communications that may amount to a 'breach of a court order'. In addition there is a category of 'grossly offensive, indecent, obscene or false'. In the latter type, 'the offence is one of sending, delivering or transmitting, so there is no legal requirement for the communication to reach the intended recipient'. There is guidance for prosecutors on each of these categories and an outline of which laws may apply. Considering the potential for a 'chilling effect on free speech' if the millions of offensive communications are taken into account, the guidance calls for 'considerable caution' and a 'high threshold' before bringing charges regarding grossly offensive indecent, obscene or false communications.

Sexting – advice on dealing with cases

Advice from [NSPCC](#) to help parents

[ChildLine](#) is now able to help get explicit images removed by working with IWF. Young People will need to verify their age. They also provide an app called Zippit which offers some useful images to send back if asked to send an intimate photo. Tel 08001111

A very useful [booklet](#) is available from Securus software to help determine the type of case you are dealing with.

[Safer Internet Centre](#) offers resources on dealing with sexting.

ACPO the association of chief police officers has issued a [good practice guide](#) and a position statement regarding the prosecution of young people who have posted self-generated images

Professionals online safety helpline by UKCCIS 08443814772

helpline@saferinternet.org

'Cyberbullying and e-safety: what educators and other professionals need to know' published by Jessica Kingsley Publishers, London. www.JKP.com

ⁱ Preventing and Tackling Bullying, Advice for Headteachers, Staff and Governing Bodies. London: DfE DFE-00292-2013 October 2014

ⁱⁱ Preventing and Tackling Bullying, Advice for Headteachers, Staff and Governing Bodies. London: DfE DFE-00292-2013 October 2014