

## AN ANCIENT OFFENCE, A NEW MEDIUM: CRIMINALISING CYBER-BULLYING IN THE UK?

---



**Daniel Tan Wee Xian**

*Currently pursuing  
Year 2 of the LL.B on  
the UK Degree  
Transfer Programme  
(Law) at HELP  
University*

Bullying has existed since the dawn of mankind. Although the essence of bullying has not undergone any significant change, the meaning of the word ‘bully’ has gone through a semantic change. Ironically, the word was originally used as a term of endearment that can be applied to both sexes.<sup>1</sup> However, it is unfortunate that the emergence of technology has given birth to a new form of bullying - cyber-bullying. This is possibly due to the inadvertent abusive nature of mankind. Cyber-bullying has since become a global issue as a consequence of the relative ease with which people can connect with one another through social networking websites. It is reported that 38% of the young people in the UK have been cyber-bullied.<sup>2</sup> Thus, with the rise of cyber-bullying, one question comes to mind - are the laws governing the cyberspace in the UK wholly sufficient to combat such threats that have been rampaging across the world? Certainly it is imperative for one to scrutinise the laws associated with cyber-bullying to answer this question.

---

<sup>1</sup> ‘Oxford Dictionaries’ <<http://oxforddictionaries.com/definition/english/bully?q=bully>> accessed 14 November 2012.

<sup>2</sup> NSPCC, ‘Statistics on Bullying’ <[http://www.nspcc.org.uk/inform/resourcesforprofessionals/bullying/bullying\\_statistics\\_wda85732.html](http://www.nspcc.org.uk/inform/resourcesforprofessionals/bullying/bullying_statistics_wda85732.html)> accessed 14 November 2012.

### **The concept of bullying and cyber-bullying**

There are a few essential components that make up the definition of bullying. Alana James in her research on school bullying stated that the general aggressive behaviour is made up of three components:

- (i) intention to cause the particular harm,
- (ii) direct or indirect acts, and
- (iii) the harmful outcome (physically or emotionally).

However, bullying is set apart from other aggressive behaviours by two elements: “repetition of acts” and “unequal power” by a person or a group of persons.<sup>3</sup> In other words, bullying can be said to be a consistent act of aggression directed at the victim for a period of time.

The traditional form of bullying is usually physical in nature. This is in stark contrast to cyber-bullying, which is the act of bullying through electronic means.<sup>4</sup> In other words, it is an annex of the traditional bullying discussed earlier. Smith defined cyber-bullying as ‘an aggressive, intentional act carried out by a group or individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself.’<sup>5</sup> Thus, the effect of cyber-bullying on a victim is typically emotional in nature.

One of the major differences between the former and the latter is that the victim is more exposed and susceptible to cyber-bullying at anytime and

---

<sup>3</sup> Alana James, ‘School Bullying’ (NSPCC, February 2010) <[http://www.nspcc.org.uk/inform/research/briefings/school\\_bullying\\_pdf\\_wdf73502.p](http://www.nspcc.org.uk/inform/research/briefings/school_bullying_pdf_wdf73502.p)> accessed 17 November 2012.

<sup>4</sup> Julian J Dooley and others, *Cyberbullying Versus Face-to-Face Bullying; A Theoretical and Conceptual review* (Hogrefe Publishing 2009).

<sup>5</sup> Peter K Smith and others, ‘Cyberbullying: its nature and impact in secondary school pupils’ (2008) 49 *Journal of Child Psychology and Psychiatry* 376.

anywhere as most people have access to internet-enabled devices.<sup>6</sup> Furthermore, the Internet provides a way to connect to a much larger community that the perpetrator can utilise to bully victims via messages, pictures, and websites in front of a large virtual audience.<sup>7</sup> It is also noted that the bully can be protected by anonymity and is able to target victims by using the technology as a shield and means to conduct the bullying.<sup>8</sup>

### **The Current Legal Response to Cyber-Bullying**

For better understanding of this issue, laws applicable to cyber-bullying will be considered and evaluated. Among the laws available, a possibility to combat cyber-bullying is assault.<sup>9</sup> According to the courts, the definition of assault should be stretched to include words and silent telephone calls.<sup>10</sup> Furthermore, it is compulsory for the victim to have apprehended an immediate attack upon himself.<sup>11</sup> The immediacy requirement is fulfilled if the defendant's conduct caused the victim to apprehend the possibility of an immediate attack.<sup>12</sup>

---

<sup>6</sup> Yalda T Uhls, 'Is bullying going digital? Cyber Bullying Facts' (2010) <<http://www.psychologyinaction.org/2010/12/08/is-bullying-going-digital-cyber-bullying-facts/>> accessed 18 November 2012.

<sup>7</sup> U.S. Department of Health & Human Services, 'What is Cyberbullying' <<http://www.stopbullying.gov/cyberbullying/what-is-it/index.html>> accessed 18 November 2012.

<sup>8</sup> Yalda T Uhls (n 6).

<sup>9</sup> In *Fagan v Metropolitan Police Commissioner* [1969] 1 QB 439 (HL), the House of Lords defined 'assault' as 'any act which intentionally or recklessly cause another person to apprehend immediate and unlawful personal violence.' The authorities on assault were originally derived from common law. However, it is now provided by statute under Section 39 of the Criminal Justice Act 1988.

<sup>10</sup> *R v Constanza* [1997] Crim LR 576; *R v Ireland* [1997] 3 WLR 534 (HL); *Logdon v DPP* [1976] Crim LR 121.

<sup>11</sup> *Smith v Chief Superintendent of Woking Police Station* (1983) 76 Cr App R 234 (DC); *R v Ireland and Burstow* [1998] AC 147.

<sup>12</sup> *R v Ireland* [1997] 3 WLR 534 (HL).

An omission may amount to assault if the defendant's actions caused the victim to apprehend immediate unlawful force and failed to remove the victim from that situation.<sup>13</sup> The force apprehended must be unlawful as there are occasions where the application of force may be legitimate due to preventive or defensive measures.<sup>14</sup>

However, this offence would not provide adequate protection against cyber-bullying due to its *actus reus* (hereinafter referred to as "AR"), which is limited only to actions that cause an apprehension of an imminent attack as opposed to cyber-bullying that can occur through many ways. Cyber-bullying is merely derogatory in many instances and does not cause victims to apprehend an imminent attack. Furthermore, the scope of what could amount to an assault is wholly insufficient in combating cyber-bullying as only written words or silent telephone calls can amount to such an offence. However, having said that, this offence does encompass situations where cyber-bullying involves threats of physical harm.

On the other hand, the scope of *mens rea* (hereinafter referred to as "MR") for assault is adequate, as only a person with the guilty mind would be convicted.<sup>15</sup> Unfortunately, it is rendered useless in light of the AR of the offence, which is narrow in this context.

---

<sup>13</sup> Jonathan Herring, *Criminal Law; Text, Cases and Material* (4th edn, OUP 2010).

<sup>14</sup> A P Simester and others, *Simester and Sullivan's Criminal Law* (4th edn, Hart Publishings 2010).

<sup>15</sup> In *R v Venna* [1975] 3 All ER 788 (CA), the Court of Appeal in their decision made it clear that the defendant must be shown to have either intention (direct or indirect) or recklessness. Recklessness in this sense refers to Cunningham recklessness, which is a subjective test.

Section 47 of the Offences Against the Person Act 1861<sup>16</sup> (hereinafter referred to as “OAPA 1861”) can also be utilised against cyber-bullying. In this provision, the word “occasioning” is similar to “causing”. Hence, the defendant’s action (assault or battery) must have caused the victim to suffer actual bodily harm (hereinafter referred to as “ABH”) either directly or indirectly. In other words, the ABH suffered must flow from the defendant’s assault or battery. There have been many interpretations by the courts as to what constitutes ABH. In general, ABH can be defined as an injury, which is not minor but not too serious at the same time.<sup>17</sup> Therefore, the scope of ABH is extremely wide - it includes anything from syncope to a flesh wound.

Section 47 can be said to be an extension of assault itself where the gravity of harm is greater than that of assault as it requires the victim to suffer from ABH from the assault by the defendant. It is compulsory for the victim to suffer from some form of injury on his body, either externally or internally, which is within the confines of ABH. Therefore, the said section would not provide much protection from cyber-bullying as the AR of this offence revolves around physical harm only. A victim harmed psychologically due to harassment would not be able to rely on section 47 as such harm does not meet the requirements of an ABH. One may take a step further and say that it is even narrower than that of its counterpart - assault. Ergo, it is only useful in protecting the public from the traditional forms of bullying where the harm suffered by the victim is of a moderate nature.

---

<sup>16</sup> Section 47 of the OAPA 1861 creates this offence and any person found guilty under this offence is liable of imprisonment of maximum five years. The said section provides that ‘Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable . . . to be kept in penal servitude’. The term assault used in Section 47 is a blanket term to cover both the offences of assault and battery.

<sup>17</sup> *R v Donovan* [1934] KB 498; *R v Miller* [1954] 2 All ER 529; *R v Chan Fook* [1994] 1 WLR 689 (CA); *T v DPP* [2003] EWHC 266, [2003] Crim LR 622.

In addition, both section 20<sup>18</sup> and section 18<sup>19</sup> of OAPA 1861 are relevant in the context of cyber-bullying. The basic injuries provided for under these sections are wounding and grievous bodily harm which would infer physical harm.<sup>20</sup> However, the term “grievous bodily harm” in both of these provisions is defined as really serious injury which also takes into account the totality or accumulation of injuries and serious psychological harm that must be clinically recognised.<sup>21</sup>

The AR of section 20 vis-à-vis section 18 is very similar to one another in that both sections encompass situations where the victim is physically or mentally injured. The scope of these offences is wide enough to take into account the various methods of cyber-bullying. However, one may argue that these sections serve more as a punitive function rather than a deterrent one. Both of these sections require a recognised psychological condition, with section 18 requiring a more serious mental condition than that of section 20. Mere emotional distress and panic from cyber-bullying is inadequate. In other words, the perpetrator is unlikely to be found guilty under these two sections if the victim does not have any serious

---

<sup>18</sup> Section 20 of the OAPA 1861 creates this offence and provides that the defendant is liable to a maximum imprisonment of 5 years if found guilty under this offence. “Whosoever shall unlawfully and maliciously wound or inflict any GBH upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour, and being convicted thereof shall be liable... to be kept in penal servitude ...”

<sup>19</sup> Section 18 of OAPA 1861 creates this offence clearly expresses that those who are found guilty are liable to imprisonment for life. “Whosoever shall unlawfully and maliciously by any means whatsoever wound or cause any GBH to any person, ... with intent... to do some ... GBH to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof shall be liable ... to be kept in penal servitude for life ...”

<sup>20</sup> *C v Eisenhower* [1984] QB 331 (DC).

<sup>21</sup> *DPP v Smith* [1961] AC 290; *R v Saunders* [1985] Crim LR 230; *R v Brown and Stratton* [1998] Crim LR 484 (CA); *R v Ireland and Burstow* [1998] AC 147; *R v Bollum* [2004] 2 Cr App R 6.

psychological illness that is recognised and approved by a psychiatrist beforehand. What is the use of these sections in this context if it only allows the victim to rely on them only after suffering from serious psychological conditions?

Section 18 is more stringent compared to section 20 in that the MR requirement for the former is the intention to cause harm whereas the latter is only either the intention or foreseeability<sup>22</sup> that some harm was done. It is clear that the scope of MR for section 20 is wider than that of section 18 as it is inclusive of recklessness. Furthermore, the rigid nature of the MR for section 18 would prove problematic for cunning perpetrators - they would say that they had no intention at all to commit the crime. On the other hand, section 20 has blatantly violated the Latin maxim '*actus non facit reum nisi men sit rea*'. The AR and MR of the said section do not mirror each other. The former requires either malicious wounding or infliction of GBH whereas intention to cause some harm is sufficient for the latter. How can a person be guilty of an AR of such magnitude if he does not have the corresponding MR?

Apart from those offences mentioned above, there are other statutes which are directly associated with cyber-bullying. These include the Protection from Harassment Act 1997<sup>23</sup> (hereinafter referred to as "PHA 1997"), Malicious Communications Act 1988 (hereinafter referred to as

---

<sup>22</sup> Subjective recklessness or Cunningham recklessness, as derived from *R v Cunningham* [1957] 2 QB 396.

<sup>23</sup> Section 2 of the Protection from Harassment Act 1997 (PHA 1997) provides for the offence of harassment and those who are found guilty under Section 1 and Section 4 are liable of imprisonment for a maximum term of six months, a fine or both. It is by virtue of The Protection of Freedoms Act 2012 that the two new offences of stalking were created by the insertion of new sections, s 2A and s 4A, into PHA 1997. Hence, PHA 1997 provides four offences which deal with stalking and harassment.

“MCA 1988”), Communications Act 2003 (hereinafter referred to as “CA 2003”) and Public Order Act 1986 (hereinafter referred to as “POA 1986”).

Initially, there were only two sections relevant to this issue under PHA 199 - section 1 and section 4 of PHA 1997. However, two new offences were created against stalking by inserting section 2(A) and section 4(A) into PHA 1997. Hence, PHA 1997 now provides four offences which deals with stalking and harassment.

In section 1 of PHA 1997,<sup>24</sup> a “course of conduct” includes speeches and the stalking must involve at least two occasions that must be connected in their occurrence.<sup>25</sup> The “course of conduct” must have caused the harassment and it is sufficient as long as it causes distress, alarm and negative emotions (e.g. annoyance or worry) to the victim.<sup>26</sup>

The AR of section 4<sup>27</sup> is similar to that of section 1 in terms of the scope of the “course of conduct”. The only difference is that instead of harassment, the course of conduct must have led the victim to fear that violence would be used against him.

In the new section 2(A),<sup>28</sup> the course of conduct will amount to stalking if:

---

<sup>24</sup> A person is found guilty under this offence if he pursued a course of conduct that amounted to harassment.

<sup>25</sup> Protection from Harassment Act 1997, s7(3).

<sup>26</sup> Protection from Harassment Act 1997, s7; *DPP v Ramsdale* [2001] EWHC 106.

<sup>27</sup> A person is found guilty under this offence if he pursued a course of conduct that causes the victim to fear that violence will be used against him.

<sup>28</sup> A person is found guilty under this offence if he pursues a course of conduct that amounts to a breach of section 1(1) (a course of conduct that amounts to harassment) or stalking.



- (1) it causes alarm and distress, or
- (2) the acts or omissions are closely linked to stalking.

The course of conduct which is sufficient here need not involve stalking on both occasions. A single act or omission related to stalking is sufficient as long as there is a further action. For the first limb of the offence provided under section 4(A),<sup>29</sup> it must be proven that the defendant's course of conduct had led the victim to fear that violence would be used against him or her. In contrast, the second limb of the offence under section 4(A) requires the proof of a course of conduct, which causes serious alarm or distress that has a substantial adverse effect on day-to-day activities of the victim.<sup>30</sup>

The AR of the four offences in PHA 1997 is indeed capable of a wide interpretation. Section 2(A) helps to widen the scope of what could amount to an offence under PHA 1997 as the requirements are easier to fulfil - a course of conduct is not required as compared to that of section 1 and section 4. Furthermore, the word "stalking" in section 2(A) covers a wide range of acts and it is non-exhaustive. In contrast, section 4(A) seems to be a more serious version of section 4. Unfortunately, it fails to account for rare situations where the victim is unaware of the covert act by the defendant since it requires the victim to feel alarmed, distressed or experience negative emotions.

The accused will be found guilty nonetheless if the reasonable man finds that he or she is guilty albeit not realising that they have caused the

---

<sup>29</sup> A person is found guilty under this section if he pursues a course of conduct related to the offence of stalking involving the fear of violence or serious alarm or distress. Hence, there are two distinct arms of the offence created under this section.

<sup>30</sup> Currently, there is no definition of what can cause of 'substantial adverse effect on day-to-day activities of the victim'.

harassment.<sup>31</sup> This involves an objective test and this is unfair for defendants who exhibit innocent behaviour. In this sense, it can be seen that PHA 1997 does safeguard people from most cyber-bullying crimes although it may be deemed to be too draconian to perpetrators with no intention to commit the crime.

There is only one offence that could be relevant under MCA 1988. Under section 1<sup>32</sup> of MCA 1988, the harassment must be made through a certain medium specified in the Act. It also requires the act of the defendant to be of a specific nature in order for it to fall under the section. There is no need for a course of conduct as a single act is sufficient to constitute an offence. The implication of such requirements is that one cannot be charged under this offence even though his actions had caused the victim to be harassed if his actions do not satisfy the prerequisites<sup>33</sup> in MCA 1988. In reality, anyone could be harassed by almost any act as the act of harassment itself depends on the perception of the victim on the message. There is no hard and fast rule on how a message ought to be worded for it to cause such an effect on the victim. In fact, a balance needs to be struck between the defendant's action and the sensitivity of the victim's emotion. Therefore, one can say that the AR of MCA 1988 is too narrow to be an effective tool in combating cyber-bullying.

---

<sup>31</sup> One ought to note that the MR for all four sections under PHA 1997 is the same.

<sup>32</sup> A person is guilty under this offence if he sends to another person a letter, electronic communication or article which portrays a message which is indecent or grossly offensive, a threat, false and known or believed to be false by the sender or any article (or electronic communication) which is indecent or grossly offensive either in whole or part with the intention to cause distress and anxiety to the recipient.

<sup>33</sup> The defendant's action must first be indecent, grossly offensive, threatening or false (or believed to be false).

As for the MR, the defendant must have intended to cause distress or anxiety to either the ‘immediate or eventual recipient’.<sup>34</sup> This subjective test in proving the MR is commendable since it does not punish those with inadvertent offensive behaviour and mischievous minds.

Section 127(1)<sup>35</sup> and section 127(2)<sup>36</sup> of CA 2003 would be the topic of discussion here. Both of these sections are only limited to public electronic communications network (hereinafter referred to as “PECN”).<sup>37</sup> Moreover, a course of conduct is not a requirement for the said sections. The two offences provided under CA 2003 cover all possible forms of harassment facilitated by a PECN, with section 127(1) to cover serious cases of harassment and section 127(2) to account for minor ones. However, it is similar to MCA 1986 in that it has its limitations. Both sections only provide for offences (online harassment) occurring through a PECN. Cyber-bullying that takes place through a private electronic communications network, such as workplace bullying, is not accounted for by this Act.

In application, section 127(2) requires proof that the defendant intends to send the message. Furthermore, Lord Bingham said that the defendant must also intend to insult ‘those to whom the message relates’ or

---

<sup>34</sup> *DPP v Collins* [2006] UKHL 40, [2006] 1 WLR 2223 at [26] per Lord Browne.

<sup>35</sup> A person is guilty of an offence if he: (a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or (b) causes any such message or matter to be so sent.

<sup>36</sup> A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he: (a) sends by means of a public electronic communications network, a message that he knows to be false, (b) causes such a message to be sent; or (c) persistently makes use of a public electronic communications network.

<sup>37</sup> A public electronic communication network is defined as a network wholly or mainly for the purpose of making electronics communications services available to members of the public. ‘Services’ in this aspect are also defined as any electronic communications service that is provided so as to be available to members of the public.

the message must at least have an inference that the sender must have known that the message would indeed insult people in *DPP v Collins*.<sup>38</sup> Such an inference is done objectively.<sup>39</sup> The word “intend” in this context also includes subjective recklessness.<sup>40</sup> This is assumed to be interpreted similarly in section 127(1) - the defendant only needs to cause annoyance and anxiety to the victim. The MR requirement of intention or subjective recklessness in both offences serve as an effective filter against the scope of the AR of the offences - it ensures that only people with the corresponding intent is found guilty.

Section 5<sup>41</sup> of POA 1986<sup>42</sup> is a conduct specific offence; harassment need not be inflicted on the victim. However, all these actions must be done within the hearing and sight of the person likely to be caused harassment. On the contrary, section 4A<sup>43</sup> requires the harassment, alarm and distress to be inflicted on the victim. It should also be noted for both sections that a single act could amount to an offence. One could observe that the AR of both sections 4(A) and 5 of POA 1986 are limited due to the requisite character<sup>44</sup> of the Act. Therefore, the AR of both the offences is restricted and the

---

<sup>38</sup> [2006] UKHL 40, [2006] 1 WLR 2223.

<sup>39</sup> Neal Geach, Nicola Haralambous; ‘Regulating Harassment: Is the Law Fit for the Social Networking Age?’[2009] JCL 241.

<sup>40</sup> *ibid*.

<sup>41</sup> A person is guilty of an offence if he uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

<sup>42</sup> Section 5(5) and Section 4A(5) of the Public Order Act 1986 (POA 1986) states that those convicted under section 5 or section 4A will be liable to a fine only for the former section and imprisonment not exceeding six months, a fine or both for the latter section.

<sup>43</sup> A person is guilty under this offence if, with intent to cause a person harassment, alarm or distress, he uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.

<sup>44</sup> The defendant’s words or conduct must be threatening, abusive or insulting, or disorderly behaviour for both of the offences under Section 5 and Section 4(A) respectively.

“bottleneck effect” is detrimental for the fight against cyber-bullying. In addition, section 5 of the POA 1986 is said to ‘fall short off of the balancing act that criminal legislation must do in terms of offering protection but not being too dominating’<sup>45</sup> as a person can be charged under the said section as long as his words or conduct is seen by an individual likely to be harassed, without requiring the harassment to be caused. Human sensitivity varies in each person whereby some people may not be easily harassed compared to others. How can one person be liable for his demeanour or conduct if there is no guarantee that the ‘person likely to be caused harassment’ would indeed be harassed?

As for the MR of section 5, it is required that the defendant either intentionally or recklessly acted in a threatening, abusive, insulting or disorderly manner for the said offence. In contrast, section 4A is stricter than that of section 5 as it is a specific intent offence but this is not reflected in the designated punishment. The subjective intention required has been criticised to have caused ‘numerous difficulties because many harassers are able to establish that they did not intend to harass.’<sup>46</sup> Furthermore, there is a major confusion in the law as harassment, which is said to include alarm and distress in PHA 1997, is held to be different from alarm and distress in POA 1986.

### **The Million-Dollar Question**

There is, without a doubt, a thick fog covering this area of law associated with cyber-bullying. To say that there is incoherence in the law would be an

---

<sup>45</sup> Neal Geach, Nicola Haralambous; ‘Regulating Harassment: Is the Law Fit for the Social Networking Age?’[2009] JCL 241.

<sup>46</sup> T Lawson-Cruttenden and N Addison, *Blackstone’s Guide to the Protection from Harassment Act 1997* (Blackstone Press 1997) 5.

understatement. Moreover, the scope of AR of all the statutes is insufficient to account for all possible forms of cyber-bullying. It is imperative for Parliament to enact a more comprehensive law on cyber-bullying due to the many limitations of the current laws on cyber-bullying and more importantly on the premise that there is a need to criminalise cyber-bullying owing to its abusive nature and the consequences that follow.

The concerning legislation ought to have a wide range of AR to ensure that all possible type of offences associated with cyber-bullying are accounted for vis-à-vis MCA 1988, CA 2003, POA 1986 and PHA 1997. It is best if the wordings of the statutes are sufficiently wide to account for novel cases of cyber-bullying. Hence, it is appropriate to refer to the statutory definition of bullying and cyber-bullying of various states' cyber-bullying laws in America.<sup>47</sup> In contrast, the scope of the MR must be narrow as that of the MCA 1988 as a balancing act to negate the potential harshness of the offence, coupled with a wide AR scope. Moreover, persons with innocent behaviour (not realising the consequence of their actions) would not be "caught in the web" which is only meant to trap true perpetrators of the act.

---

<sup>47</sup> Kansas: K.S.A. (Kansas Statutes Annotated) 72-8256.C.2 (2009): "Cyber-bullying" means bullying by the use of any electronic communication device through means including, but not limited to, e-mail, instant messaging, text messages, blogs, mobile phones, pagers, online games and websites.

California: (Education Code Section 48900 (r)(1): 'Bullying means any severe or pervasive physical or verbal act or conduct, including communications made in writing or by means of an electronic act, and including one or more acts committed by a pupil or group of pupils...'

California: (Education Code Section 48900 (r)(2): Electronic Act means the transmission of a communication, including, but not limited to, a message, text, sound, or image, or a post on a social network Internet Web site, by means of an electronic device, including, but not limited to, a telephone, wireless telephone or other wireless communication device, computer, or pager.

In addition, encroachment of the freedom of expression as provided by Article 10 of the Human Rights Act 1998 must be avoided. People ought to be given their right to express their thoughts as long as it is not consciously directed to a person or a group of people for the purpose of harassment. As such, a fine line must be drawn between such freedom in cyberspace and criminal sanctions. Hence, it is best to deal with minor cyber-related offences by using a low cost adjudicator or regulator who can publish its findings and, where appropriate, impose a fine and direct the perpetrator to remove the material.<sup>48</sup>

It is also crucial to continue meliorating the Home Office's endeavours in taking measures to address concerns regarding the protection of children and vulnerable adults on the Internet following the release of the *Good practice guidance for social networking providers and other interactive sources* in 2008.<sup>49</sup> Therefore, such providers could take immediate action over possible cases of cyber-bullying before it comes to fruition. The benefit of such an arrangement is two-fold: Firstly, it builds a first-line of defence against any potential act of cyber-bullying on the victim; and, secondly, it delivers a stern warning to current and potential perpetrators that such acts would not go unpunished.

---

<sup>48</sup> Jacob Rowbottom, 'To Rant, Vent and Converse: Protecting Low Level Digital Speech' [2012] CLJ 355.

<sup>49</sup> Georgia Warren, 'Interactive online services, social networking sites and the protection of children' [2008] Ent LR 165. See UK Council for Child Internet Safety, *Good practice guidance for social networking providers and other interactive sources*, (2010) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/251456/industry\\_guidance\\_social\\_networking.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251456/industry_guidance_social_networking.pdf)>.

**Conclusion**

The current laws on cyber-bullying are inadequate to confer protection to the public against cyber-bullying. This issue must be addressed quickly considering the detrimental effects of cyber-bullying on the well-being of society as a whole. In a world of information technology, the laws on such cyber-crimes ought to be sufficient to combat them.