

# Guidelines on prosecuting cases involving communications sent via social media

## Introduction

These guidelines set out the approach that prosecutors should take when making decisions in relation to cases where it is alleged that criminal offences have been committed by the sending of a communication via social media. They are designed to give clear advice to prosecutors who have been asked either for a charging decision or for early advice to the police, as well as in reviewing those cases which have been charged by the police. Adherence to these guidelines will ensure that there is a consistency of approach across the CPS.

The guidelines cover the offences that are likely to be most commonly committed by the sending of communications via social media. "Social media" commonly refers to the use of electronic devices to create, share or exchange information, ideas, pictures and videos with others via [virtual communities](#) and [networks](#). For the purposes of these guidelines, this includes emails and texts and other forms of electronic communications.

These guidelines equally apply to the re-sending (or re-tweeting / sharing) of communications and whenever they refer to the sending of a communication, the guidelines should also be read as applying to the re-sending of a communication. However, for the reasons set out below, the context in which any communication is sent will be highly material.

These guidelines are primarily concerned with offences that may be committed by reason of the nature or content of a communication sent via social media. Where social media is simply used to facilitate some other substantive offence, prosecutors should proceed under the substantive offence in question.

These revised interim guidelines replace the previous guidelines and they have immediate effect.

## General Principles

Prosecutors may only start a prosecution if a case satisfies the test set out in the Code for Crown Prosecutors. This test has two stages: the first is the requirement of evidential sufficiency and the second involves consideration of the public interest.

As far as the evidential stage is concerned, a prosecutor must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction. This means that an objective, impartial and reasonable jury (or bench of magistrates or judge sitting alone), properly directed and acting in accordance with the law, is more likely than not to convict. It is an objective test based upon the prosecutor's assessment of the evidence (including any information that he or she has about the defence).

A case which does not pass the evidential stage must not proceed, no matter how serious or sensitive it may be.

It has never been the rule that a prosecution will automatically take place once the evidential stage is satisfied. In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest.

Every case must be considered on its own individual facts and merits. No prospective immunity from criminal prosecution can ever be given and nothing in these guidelines should be read as suggesting otherwise.

In the majority of cases, prosecutors should only decide whether to prosecute after the investigation has been completed. However, there will be cases occasionally where it is clear, prior to the collection and consideration of all the likely evidence, that the public interest does not require a prosecution. In these cases, prosecutors may decide that the case should not proceed further.

Cases involving the sending of communications via social media are likely to benefit from early consultation between police and prosecutors, and the police are encouraged to contact the CPS at an early stage of the investigation.

## **PART A: Offence types**

This Part addresses the offences commonly committed via social media and identifies four distinct categories of offences. Detailed guidance is provided on the approach to be taken to reviewing cases that come within category 4, in particular on how to assess the evidential and public interest stages of the Full Code Test and the relevance of Article 10 ECHR to these offences.

### **Initial assessment**

Prosecutors should make an initial assessment of the content of the communication and the conduct in question so as to distinguish between:

#### Category 1

Communications which may constitute **threats** of violence to the person or damage to property.

#### Category 2

Communications which **specifically target an individual or individuals** and which may constitute harassment or stalking, controlling or coercive behaviour, disclosing private sexual images without consent, an offence under the Sexual Offences Act 2003, blackmail or another offence.

#### Category 3

Communications which may amount to a **breach of a court order or a statutory prohibition**. This can include:

- Juror misconduct offences under the Juries Act 1974 [sections 20A-G];
- Contempts under the Contempt of Court Act 1981;
- An offence under section 5 of the Sexual Offences (Amendment) Act 1992;
- Breaches of a restraining order; or
- Breaches of bail.

All charging decisions (whether positive or negative) in cases involving allegations under the Juries Act 1974 must be referred to the Director's Legal Advisor (DLA) for approval (see: section entitled "Handling Arrangements" at the end of this guidance as to how this should

be done). A decision to prosecute such an offence will thereafter require the consent of the Attorney General.

Offences under the Contempt of Court Act 1981 or section 5 of the Sexual Offences (Amendment) Act 1992 also require the consent of the Attorney General and may be sent to the DLA for his consideration if assistance is required.

#### Category 4

Communications which do not fall into any of the categories above fall to be considered separately i.e. those which may be considered grossly offensive, indecent, obscene or false.

As a general approach, it will usually be in the public interest to prosecute cases falling within Categories 1, 2 or 3, where they satisfy the evidential stage of the test set out in the Code for Crown Prosecutors. On the other hand, cases which fall within Category 4 will be subject to a high evidential threshold and in many cases a prosecution is unlikely to be in the public interest.

Detailed guidance on the approach to take in applying the public interest in Category 4 cases is provided in the section on Category 4 offences below. The section also explains the application of Article 10 of the European Convention on Human Rights to Category 4 cases.

Having identified the category, prosecutors should follow the approach set out under the relevant heading below.

#### **Category 1: Threats**

Communications which may constitute threats of violence to the person may constitute a number of offences, including those set out below.

A threat to kill contrary to section 16 of the Offences Against the Person Act 1861.

A communication that intimidates or is intended to intimidate a witness or a juror may amount to an offence of intimidation under section 51 of the Criminal Justice and Public Order Act 1994 if the intention of the sender is to cause an investigation or the course of justice to be obstructed, perverted or interfered with.

Other threats of violence to the person may fall to be considered under the provisions of the Protection from Harassment Act 1997, namely section 4 (putting another in fear of violence) or 4A (stalking involving fear of violence or serious alarm or distress), if they constitute a course of conduct which amounts to harassment or stalking.

Threats of violence to the person or damage to property may also fall to be considered under section 1 of the Malicious Communications Act 1988, which prohibits the sending of an electronic communication which conveys a threat, or section 127 of the Communications Act 2003 which prohibits the sending of messages of a "menacing character" by means of a public telecommunications network. However, before proceeding with such a prosecution, prosecutors should heed the words of the Lord Chief Justice in *Chambers v DPP* [2012] EWH2 2157 (Admin) where he said:

*"... a message which does not create fear or apprehension in those to whom it is communicated, or may reasonably be expected to see it, falls outside [section 127(i)(a)], for the simple reason that the message lacks menace." (Paragraph 30)*

Where there is evidence of hostility based on race, religion, disability, sexual orientation or transgender identity, prosecutors should refer to the section on “Hate crime” below.

If the allegation involves a VAWG issue, prosecutors should refer to the section on “VAWG” below.

Any terrorist related threat or other communication should be referred to the Special Crime and Counter Terrorism Division at [ctd@cps.gsi.gov.uk](mailto:ctd@cps.gsi.gov.uk).

## Category 2: Communications targeting specific individuals

If communication(s) sent via social media target a specific individual or individuals they will fall to be considered under this category if the communication(s) sent fall within the scope of:

- Sections 2, 2A, 4 or 4A of the Protection from Harassment Act 1997 and constitute an offence of harassment or stalking; or
- Section 76 of the Serious Crime Act 2015 and constitute an offence of controlling or coercive behaviour; or
- Section 33 of the Criminal Justice and Courts Act 2015 and amount to an offence of disclosing private sexual images without consent ; or
- Other offences involving communications targeting specific individuals, such as offences under the Sexual Offences Act 2003 or Blackmail.

In such cases there may be a potential overlap of offences. For instance, where there is more than one incident or the incident forms part of a course of conduct directed towards an individual, a charge of harassment, stalking or controlling or coercive behaviour may be appropriate. Prosecutors will therefore need to assess the facts of the case carefully to determine the most appropriate charge(s) and reference should be made to the relevant legal guidance.

Where there is evidence of hostility based on race, religion, disability, sexual orientation or transgender identity, prosecutors should refer to the section on “Hate crime” below.

If the allegation involves a VAWG issue, prosecutors should refer to the section on “VAWG” below.

### Harassment or stalking

Harassment can include repeated attempts to impose unwanted communications or contact upon an individual in a manner that could be expected to cause distress or fear in any reasonable person. It can include harassment by two or more defendants against an individual or harassment against more than one individual.

Stalking is not defined in statute but a list of behaviours which might amount to stalking are contained in section 2A (3) of the Protection from Harassment Act 1997. This list includes contacting, or attempting to contact, a person by any means.

When considering an offence under the Protection from Harassment Act 1997, the prosecution will need to prove that the defendant pursued a course of conduct which amounted to harassment or stalking. The Act states that a "course of conduct" must involve conduct on at least two occasions.

The conduct in question must form a sequence of events and must not be two distant incidents (*Lau v DPP (2000)*, *R v Hills (2000)*). Each individual act forming part of a course of conduct need not be of sufficient gravity to be a crime in itself; however, the fewer the incidents, the more serious each is likely to have to be for the course of conduct to amount to harassment: *Jones v DPP [2011] 1 W.L.R. 833*.

Prosecutors should consider that a course of conduct may often include a range of unwanted behaviour towards an individual and a communication sent via social media may be just one manifestation of this. Where an individual receives unwanted communications from another person via social media in addition to other unwanted behaviour, all the behaviour should be considered together in the round by the prosecutor when determining whether or not a course of conduct is made out.

If there is evidence that an offence of stalking or harassment has been committed and the communication targets an individual or individuals on the basis of their race or religion, disability, sexual orientation or transgender identity prosecutors should refer to the section on "Hate crime" below.

Further information about the offences of harassment or stalking can be found within the CPS Legal Guidance on [Stalking and Harassment](#).

### **Controlling or coercive behaviour**

Communications sent via social media may alone, or together with other behaviour, amount to an offence of Controlling or coercive behaviour in an intimate or family relationship under Section 76 of the Serious Crime Act 2015. The offence came into force on 29 December 2015 and does not have retrospective effect.

The offence only applies to offenders and victims who are personally connected: in an intimate personal relationship; or they live together and they have previously been in an intimate personal relationship; or they live together and are family members.

The controlling or coercive behaviour in question must be repeated or continuous, it must have a serious effect on the victim, and the offender must know or ought to know that the behaviour will have such an effect. A "serious effect" is one that either causes the victim to fear, on at least two occasions, that violence will be used against them, or it causes the victim serious alarm or distress that has a substantial adverse effect on their usual day-to-day activities.

The patterns of behaviour associated with coercive or controlling behaviour might include: isolating a person from their friends and family, which may involve limiting their access to and use of social media; depriving them of their basic needs; monitoring their time; taking control over where they can go, who they can see, what to wear and when they can sleep. It could also include control of finances, such as only allowing a person a punitive allowance, or preventing them from having access to transport or from working.

Controlling or coercive behaviour does not only occur in the home. For instance, the offender may track and monitor the whereabouts of the victim by communications with the victim, via email, texts or social media, and / or by the use of spyware and software.

Note that where this offence does not apply, the offences of harassment or stalking may apply. For instance:

- The offender and victim are no longer in a relationship and no longer live together. However, the offender is continuing to exert controlling or coercive behaviour beyond the marriage, relationship or period of co-habitation.
- The offender and the victim are not in an on-going relationship and are not family members, as defined by the Act.

In such circumstances, prosecutors should consider the facts of the case carefully, to determine whether the evidence establishes the offences of harassment or stalking.

For further information prosecutors should refer to the legal guidance on [Controlling and coercive behaviour](#) and the legal guidance on [Domestic abuse](#).

### **Disclosing private sexual images without consent**

Section 33 of the Criminal Justice and Courts Act 2015 creates an offence of disclosing private sexual photographs or films without the consent of an individual who appears in them and with intent to cause that individual distress.

The offence is known colloquially as “revenge pornography” and is a broad term, which usually refers to the actions of an ex-partner, who uploads onto the internet, or posts on a social networking site, or shares by text or email, intimate sexual images of the victim, to cause the victim humiliation or embarrassment.

The offence will cover anyone who re-tweets or forwards without consent, a private sexual photograph or film, if the purpose, or one of the purposes, was to cause distress to the individual depicted in the photograph or film, who had not consented to the disclosure. However, anyone who sends the message only because he or she thought it was funny would not be committing the offence.

Sections 34 and 35 of the Act define “disclose”, “photograph or film”, “private” and “sexual”.

The statutory offence came into force on 13 April 2015 and does not have retrospective effect.

Further guidance is provided in the [Guidelines on prosecuting the offence of disclosing private sexual photographs and films](#).

When assessing whether a prosecution is required in the public interest, prosecutors must follow the approach set out in the guidelines referred to above as well as the wider principles set out in the Code for Crown Prosecutors. One factor that may warrant particular consideration is the involvement of younger or immature perpetrators. Children may not appreciate the potential harm and seriousness of their communications and as such the age and maturity of suspects should be given significant weight, particularly if they are under the age of 18.

Where non-consensual sharing of intimate images takes place prior to 13 April 2015, consideration should be given to whether the communication in question is grossly offensive, indecent, obscene or false, and may therefore be prosecuted under one of the Communications Acts offences: see Category 4 below.

Where the images may have been taken when the victim was under 18, prosecutors should consider whether any offences under section 1 of the Protection of Children Act 1978 (taking, distributing, possessing or publishing indecent photographs of a child) or under section 160 of the Criminal Justice Act 1988 (possession of an indecent photograph of a

child) have been committed. Further information is available in the legal guidance on Indecent images of children.

However, care should be taken when considering any cases of “sexting” that involve images taken of persons under 18. Sexting commonly refers to the sharing of illicit images, videos or other content between two or more persons. Sexting can cover a broad range of activities, from the consensual sharing of an image between two children of a similar age in a relationship to instances of children being exploited, groomed, and bullied into sharing images, which in turn may be shared with peers or adults without their consent.

Whilst it would not usually be in the public interest to prosecute the consensual sharing of an image between two children of a similar age in a relationship, a prosecution may be appropriate in other scenarios, such as those involving exploitation, grooming or bullying. In addition to the offences outlined above, consideration may be given to the offence of Causing or inciting a child to engage in sexual activity under section 8 (child under 13) or section 10 (child) of the Sexual Offences Act 2003 (SOA): see below under “Other offences”.

[Note that if section 15A of the SOA, Sexual communication with a child, is brought into force, this may be used to prosecute cases of sexting between an adult and a person under 16.]

### **Other offences involving communications targeting specific individuals**

Communications may target a specific individual and involve offences other than those set out above. In such circumstances, prosecutors should seek to prosecute the substantive offence, where there is sufficient evidence to do so.

Where intimate images or other communications are used to coerce victims into sexual activity, or in an effort to do so, other offences under the Sexual Offences Act 2003 should be considered, such as:

- Section 4, Causing sexual activity without consent, if coercion of an adult has resulted in sexual activity.
- Sections 8 (child under 13) and 10 (child), Causing or inciting a child to engage in sexual activity: 'causing' activity if coercion has resulted in sexual activity; and 'inciting' such activity if it has not.
- Section 15, Meeting a child following sexual grooming.
- Section 62, Committing an offence with intent to commit a sexual offence, if no activity has taken place but there is clear evidence that an offence was intended to lead to a further sexual offence.

Further information on these offences is contained in the legal guidance on [Rape and sexual offences](#).

Where intimate images or other communications are used to threaten and make demands from a person, prosecutors should consider whether the offence of blackmail applies. For example, so called “webcam blackmail”, where victims are lured into taking off their clothes in front of their webcam, and sometimes performing sexual acts, on social networking or online dating sites, allowing the offender to record a video. A threat is subsequently made to publish the video, perhaps with false allegations of paedophilia, unless money is paid. In such circumstances, it may be appropriate to charge blackmail or attempted blackmail.

### **Category 3: Breach of court orders and statutory prohibitions**

Court orders and statutory prohibitions can apply to those communicating via social media in the same way as they apply to others. Accordingly, any communication via social media that may breach a court order or a statutory prohibition falls to be considered under the relevant legislation, including:

- Offences under sections 20A-G of the Juries Act 1974, such as disclosing information obtained by research to another jury member and disclosing information relating to jury deliberations (where a jury was sworn on or after 13 April 2015);
- The Contempt of Court Act 1981 (this will include juror misconduct not covered by the statutory offences, and for disclosure of jury deliberations where a jury is sworn before 13 April 2015);
- Section 5 of the Sexual Offences (Amendment) Act 1992, which makes it an offence to publish material which may lead to the identification of a complainant of a sexual offence; and
- Automatic and discretionary reporting restrictions relating to persons under 18 years of age in s49 of the Children and Young Persons Act 1933 and s45 of the Youth Justice and Criminal Evidence Act 1999.

In such cases, prosecutors should follow the relevant CPS Legal Guidance such as on [Juror Misconduct Offences](#) and [Contempt of Court and Reporting Restrictions](#). Note the requirement for all charging decisions in Juries Act offences to be referred to the Director's Legal Advisor (DLA) for approval prior to seeking AG's consent. Referrals to the DLA should be in accordance with the procedure set out in the section entitled "Handling Arrangements" at the end of this guidance.

Cases of contempt and those under s.5 Sexual Offences (Amendment) Act 1992 also require AG's consent.

Prosecutors should also consider whether the communication in question has breached the requirements of another order, such as a Restraining Order, or if it would constitute a breach of bail.

#### **Category 4: Communications which are grossly offensive, indecent, obscene or false**

Communications which are grossly offensive, indecent, obscene or false will usually fall to be considered either under section 1 of the Malicious Communications Act 1988 or under section 127 of the Communications Act 2003.

Prosecutors should note:

- These provisions also prohibit communications conveying a threat (s.1 of the 1988 Act) or which are of a menacing character (s.127 of the 2003 Act) but these would almost always fall within category 1 and so are not referred to further in this section of the guidance.
- Some indecent or obscene communications may more appropriately be prosecuted under other legislation, which may contain more severe penalties, rather than as a communications offence. For instance, in *R v GS* [2012] EWCA Crim 398, the defendant was charged with publishing an obscene article contrary to section 2(1) of the Obscene Publications Act 1959, relating to an explicit internet relay chat or conversation with one other person, concerning fantasy incestuous, sadistic paedophile sex acts on young and very young children.

Section 1 of the Malicious Communications Act 1988 prohibits the sending of an electronic communication which is indecent, grossly offensive or which is false or which the sender



believes to be false if the purpose or one of the purposes of the sender is to cause distress or anxiety to the recipient. The offence is one of sending so there is no legal requirement for the communication to reach the intended recipient. The terms of section 1 were considered in *Connolly v DPP* [2007] 1 ALL ER 1012 and "indecent or grossly offensive" were said to be ordinary English words. Section 32 of the Criminal Justice and Courts Act 2015 amended section 1 making the offence an either-way offence and increased the maximum penalty to 2 years' imprisonment for offences committed on or after 13 April 2015. This amendment allowed more time for investigation, and a more serious penalty available in appropriate cases.

Section 127 of the Communications Act 2003 makes it an offence to send or cause to be sent through a "public electronic communications network" a message or other matter that is "grossly offensive" or of an "indecent or obscene character". The same section also provides that it is an offence to send or cause to be sent a false message "for the purpose of causing annoyance, inconvenience or needless anxiety to another". The defendant must either intend the message to be grossly offensive, indecent or obscene or at least be aware that it was so. This can be inferred from the terms of the message or from the defendant's knowledge of the likely recipient (*DPP v Collins* [2006] UKHL 40). The offence is committed by sending the message. There is no requirement that any person sees the message or be offended by it. The s127 offence is summary-only, with a maximum penalty of 6 months' imprisonment. However, prosecutions under section 127 of the Communications Act 2003 may be brought up to three years from commission of the offence, as long as this is also within 6 months of the prosecutor having knowledge of sufficient evidence to justify proceedings: s51 of the Criminal Justice and Courts Act 2015.

In *Chambers v DPP* [2012] EWHC 2157 (Admin), the Divisional Court held that because a message sent by Twitter is accessible to all who have access to the internet, it is a message sent via a "public electronic communications network". Since many communications sent via social media are similarly accessible to all those who have access to the internet, the same applies to any such communications. However, section 127 of the Communications Act 2003 does not apply to anything done in the course of providing a programme service within the meaning of the Broadcasting Act 1990.

Those who encourage others to commit a communications offence may be charged with encouraging an offence under the Serious Crime Act 2007: for instance, encouragement to tweet or re-tweet ("RT") a grossly offensive message; or the creation of a derogatory hashtag; or making available personal information (doxing), so that individuals can more easily be targeted by others. Such encouragement may sometimes lead to a campaign of harassment or "virtual mobbing" or "dog-piling", whereby a number of individuals use social media or messaging to disparage another person, usually because they are opposed to that person's opinions.

### **The High Threshold at the Evidential Stage**

There is a high threshold that must be met before the evidential stage in the Code for Crown Prosecutors (the Code) will be met. Furthermore, even if the high evidential threshold is met, in many cases a prosecution is unlikely to be required in the public interest. See further the sections below on The Public Interest and Article 10 ECHR.

In *Chambers v DPP* [2012] EWHC 2157 (Admin), the Lord Chief Justice made it clear that:

"Satirical, or iconoclastic, or rude comment, the expression of unpopular or unfashionable opinion about serious or trivial matters, banter or humour, even if distasteful to some or painful to those subjected to it should and no doubt will continue at their customary level, quite undiminished by [section 127 of the Communications Act 2003]."

Prosecutors are reminded that what is prohibited under section 1 of the Malicious Communications Act 1988 and section 127 of the Communications Act 2003 is the sending of a communication that is grossly offensive. A communication sent has to be more than simply offensive to be contrary to the criminal law. Just because the content expressed in the communication is in bad taste, controversial or unpopular, and may cause offence to individuals or a specific community, this is not in itself sufficient reason to engage the criminal law. As Lord Bingham made clear in *DPP v Collins*:

- "There can be no yardstick of gross offensiveness otherwise than by the application of reasonably enlightened, but not perfectionist, contemporary standards to the particular message sent in its particular context. The test is whether a message is couched in terms liable to cause gross offence to those to whom it relates."
- "The Justices must apply the standards of an open and just multi-racial society".
- "The question is whether ... [the defendant] used language which is beyond the pale of what is tolerable in our society".
- "[Is there anything] in the content or tenor of [the] messages to soften or mitigate the effect of [the] language in any way"?

### Context and approach

Context is important and prosecutors should have regard to the fact that the context in which interactive social media dialogue takes place is quite different to the context in which other communications take place. Access is ubiquitous and instantaneous. Banter, jokes and offensive comments are commonplace and often spontaneous. Communications intended for a few may reach millions. As Eady J stated in the civil case of *Smith v ADVFN* [2008] 1797 (QB) in relation to comments on an internet bulletin board:

*"... [they are] like contributions to a casual conversation (the analogy sometimes being drawn with people chatting in a bar) which people simply note before moving on; they are often uninhibited, casual and ill thought out; those who participate know this and expect a certain amount of repartee or 'give and take'."*

Against that background, prosecutors should only proceed with cases under section 1 of the Malicious Communications Act 1988 and section 127 of the Communications Act 2003 where they are satisfied there is sufficient evidence that the communication in question is more than:

- Offensive, shocking or disturbing; or
- Satirical, iconoclastic or rude comment; or
- The expression of unpopular or unfashionable opinion about serious or trivial matters, or banter or humour, even if distasteful to some or painful to those subjected to it.

If so satisfied, prosecutors should go on to consider whether a prosecution is required in the public interest.

### The Public Interest

Every day many millions of communications are sent via social media and the application of section 1 of the Malicious Communications Act 1988 and section 127 of the Communications Act 2003 to such comments creates the potential that a very large number of cases could be prosecuted before the courts. Taking together, for example, the following social media platforms are likely to contain hundreds of millions of communications every month: Facebook; Twitter; LinkedIn; YouTube; WhatsApp; Snapchat; Instagram and Pinterest.

In these circumstances there is the potential for a chilling effect on free speech and prosecutors should exercise considerable caution before bringing charges under section 1 of the Malicious Communications Act 1988 and section 127 of the Communications Act 2003. See further the section below on Article 10 ECHR.

When assessing whether a prosecution is required in the public interest for cases that fall within Category 4, prosecutors must follow the approach set out in these guidelines as well as the wider principles set out in the Code for Crown Prosecutors (the Code).

The following approach should be taken in Category 4 cases:

- In considering the public interest questions set out in paragraph 4.12 of the Code, prosecutors should have particular regard to paragraph 4.12(c) and the question asked about the circumstances of and harm caused to the victim, where the communication is targeted at a particular person. If there is clear evidence of an intention to cause distress or anxiety, prosecutors should carefully weigh the effect on the victim, particularly where:
  - There is a hate crime element to the communication(s): see the section on Hate crime below.
  - The victim was at the time a person serving the public.
  - There are coordinated attacks by different people or there is a campaign of abuse or harassment against the victim, sometimes referred to as “virtual mobbing”.
  - The victim is targeted in response to the victim reporting a separate criminal offence.
  - A person convicted of a crime subsequently contacts the victim of that crime, or their friends or family.
  - The offence is repeated.
- The age and maturity of suspects should be given significant weight, particularly if they are under the age of 18: see paragraph 4.12(d) of the Code. Children may not appreciate the potential harm and seriousness of their communications and a prosecution is rarely likely to be in the public interest.

#### Article 10 ECHR

Since both section 1 of the Malicious Communications Act 1988 and section 127 of the Communications Act 2003 will often engage Article 10 of the European Convention on Human Rights, prosecutors are reminded that these provisions must be interpreted consistently with the free speech principles in Article 10, which provide that:

"Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers ..."

As the European Court of Human Rights (ECtHR) has made clear, Article 10 protects not only speech which is well-received and popular, but also speech which is offensive, shocking or disturbing (*Sunday Times v UK (No 2)* [1992] 14 EHRR 229):

"Freedom of expression constitutes one of the essential foundations of a democratic society ... it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also as to those that offend, shock or disturb ..."

The ECtHR has also determined that there is only limited scope for prosecution in relation to political speech or debate on questions of public interest: *Sener v Turkey* [2003] 37 EHRR 34.

Freedom of expression and the right to receive and impart information are not absolute rights. They may be restricted but only where a restriction can be shown to be both:

- a) Necessary; and
- b) Proportionate.

These exceptions, however, must be narrowly interpreted and the necessity for any restrictions convincingly established: *Sunday Times v UK (No 2)*; *Goodwin v UK* [1996] 22 EHRR 123. See the section below on “Hate crime” for some examples of exceptions.

Accordingly, no prosecution should be brought under section 1 of the Malicious Communications Act 1988 or section 127 of the Communications Act 2003 (Category 4 cases) unless it can be shown on its own facts and merits to be both necessary and proportionate.

A prosecution is unlikely to be both necessary and proportionate where:

- a) The suspect has expressed genuine remorse;
- b) Swift and effective action has been taken by the suspect and/or others for example, service providers, to remove the communication in question or otherwise block access to it;
- c) The communication was not intended for a wide audience, nor was that the obvious consequence of sending the communication; particularly where the intended audience did not include the victim or target of the communication in question; or
- d) The content of the communication did not obviously go beyond what could conceivably be tolerable or acceptable in an open and diverse society which upholds and respects freedom of expression.

This is not an exhaustive list, however, and each case must be considered on its own facts and its own individual merits.

#### **Category 4 offences handling arrangements**

All Category 4 offences require charging authorisation from the Director’s Legal Advisor or the CPSD CCP or DCCP: see the section below on handling arrangements.

Note that Category 4 cases do not include menacing communications for referral purposes, as these should be considered under category 1. Areas and CPSD may therefore charge cases that involve menacing communications, without referral to the Director’s Legal Advisor.

## **PART B: Issues in Social Media offending**

This Part addresses various issues that commonly arise in social media cases and provides guidance on the approach to be taken in relation to each issue. Violence against women and girls (VAWG)

The Violence against Women and Girls (VAWG) Strategy provides an overarching framework to address crimes that have been identified as being committed primarily, but not exclusively, by men against women. The characteristic nature or context of VAWG offending

is usually that the perpetrator exerts power and / or a controlling influence over the victim's life.

The approach recognises VAWG as a fundamental issue of human rights, drawing on the United Nations conventions that the UK has signed and ratified. VAWG is recognised worldwide, and by the UK Government.

The CPS recognises that men and boys are also victims of VAWG crimes, including most of those offences highlighted in this section. All our VAWG policies are inclusive and are applied fairly and equitably to all perpetrators and victims of crime, irrespective of their gender.

Prosecutors should be familiar with the legal guidance on [Violence against Women and Girls](#) and apply the principles set out in the guidance in appropriate cases. For practical assistance in dealing with casework preparation and case presentation, reference should be made to the VAWG section of the Casework Hub.

Prosecutors are reminded of the potential use of social media to exert power and control in VAWG offences. For example, in cases of 'honour' based violence and forced marriage, threats to post personal information on social media, in order to bring shame upon someone, can be used to silence and coerce a victim.

Improving the safety, support and satisfaction of victims and witnesses is a key objective of the VAWG Strategy. In progressing cases, prosecutors should be aware of the particular difficulties faced by VAWG victims and the sensitivities involved in supporting them.

Key characteristics of VAWG offending that may impact on case handling include:

- The perpetrator and victim are often known to one another and often there is a controlling relationship.
- Levels of violence often escalate e.g. from harassment to murder.
- The victim may have additional issues to consider before even reporting an offence to the police e.g. financial dependency; joint children.
- Offences may range from abuse by a single perpetrator to being part of international organised crime.
- There may be delays in reporting due to fear, intimidation and trauma.
- There may be an increased likelihood of repeat victimisation and victim intimidation.
- There is potential for retractions and non-attendance at court.

### Cyber-enabled VAWG offences

The landscape in which VAWG Crimes are perpetrated is changing. The use of the internet, social media platforms, emails, text messages, smartphone apps (for example, WhatsApp; Snapchat), spyware and GPS (Global Positioning System) tracking software to commit VAWG offences is rising. Online activity is used to humiliate, control and threaten victims, as well as to plan and orchestrate acts of violence.

Some of this activity is known as "cyberstalking". There is no legal definition of cyberstalking, nor is there any specific legislation to address the behaviour. Generally, cyberstalking is described as a threatening behaviour or unwanted advances directed at another, using forms of online communications. Cyberstalking and online harassment are often combined with other forms of 'traditional' stalking or harassment, such as being followed or receiving unsolicited phone calls or letters. Examples of cyberstalking may include:

- Threatening or obscene emails or text messages.

- Spamming, where the offender sends the victim multiple junk emails.
- Live chat harassment or ‘flaming’, a form of online verbal abuse.
- “Baiting”, or humiliating peers online by labelling them as sexually promiscuous.
- Leaving improper messages on online forums or message boards.
- Unwanted indirect contact with a person that may be threatening or menacing, such as posting images of that person’s children or workplace on a social media site, without any reference to the person’s name or account.
- Posting “photoshopped” images of persons on social media platforms (see section on *False profiles* for further detail).
- Hacking into social media accounts and then monitoring and controlling the accounts.
- Sending electronic viruses.
- Sending unsolicited email.
- Cyber identity theft.

For further information Prosecutors should refer to the section on “[The impact and dynamics of domestic abuse](#)” in the Domestic Abuse Guidelines for prosecutors.

Whether any of these cyber activities amount to an offence will depend on the context and particular circumstances of the action in question. Prosecutors should consider the various social media offences under Categories 1-4, as well as other potential offences. In particular, the sections in these Guidelines on Harassment and stalking, Controlling and coercive behaviour and Disclosing private sexual images without consent may be relevant to cyberstalking.

#### Category 4 social media VAWG offences

Although many VAWG social media offences may be sufficiently serious to be prosecuted under a Category 1 or Category 2 type offence, there may be some instances when a prosecution may be brought under Category 4, if the high threshold is met i.e. communications that are grossly offensive, indecent, obscene or false.

For instance, communications that contain images or videos of women with very serious injuries, or of women being raped, or of women being subjected to sadistic acts of violence, accompanied by text that suggests that such assaults / rape / acts are acceptable or desirable may well, depending on the context and circumstances, be considered grossly offensive.

#### Non-social media VAWG offences

Domestic abuse is likely to become increasingly frequent and more serious the longer it continues. Therefore cases may involve evidence of social media offending, such as harassment, cyberstalking, or controlling or coercive behaviour through texts and emails, followed by an escalation to more serious non-social media offending, such as physical assaults. Prosecutors will need to assess whether it is appropriate to charge both types of offending, or whether the overall criminality is sufficiently addressed by charges reflecting only the more serious offending. Where only the more serious offending is charged, it may be possible to adduce in evidence the social media activity, such as controlling behaviour, as background context.

#### Flagging

All domestic abuse cases should be identified on the CMS and all cases should be flagged as “vulnerable / intimidated victim”.

## Hate crime

The CPS approach to hate crime is underpinned by a number of UN treaties and conventions to which the UK is a party, and UN declarations on hate crime, which the UK supports. These include the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Rights of Persons with Disabilities (2006), the Universal Declaration of Human Rights (1948) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981).

The CPS views all hate crime seriously, as it can have a profound and lasting impact on individual victims, undermining their sense of safety and security in the community. By dealing robustly with hate crime, we aim to improve confidence in the criminal justice system and to increase reporting of hate crime.

Hate crime covers offences and sentences that are aggravated by reason of the victim's race, religion, disability, sexual orientation or transgender identity.

### Category 4 social media hate crime offences

The high threshold at the evidential stage and the public interest and ECHR considerations set out above apply to social media Category 4 hate crime cases, as they do to other cases. However, as stated above in the section on "The Public Interest", prosecutors should also consider in particular paragraph 4.12(c) of the Code for Crown Prosecutors, which states that:

*"Prosecutors must also have regard to whether the offence was motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the suspect demonstrated hostility towards the victim based on any of those characteristics. The presence of any such motivation or hostility will mean that it is more likely that prosecution is required."*

When assessing communications that appear to be motivated by such discrimination or demonstrate such hostility, prosecutors should be alert to any additional reference or context to the communication in question. Such references or context may sometimes elevate a communication that would otherwise not meet the high threshold to one that, in all the circumstances, can be considered grossly offensive. For instance, a reference within the communication to a recent tragic event, involving many deaths of persons who share any of the protected characteristics.

Hate crime messages may sometimes use language that prosecutors are not familiar with, but which may cause gross offence to those to whom it relates. Prosecutors should ensure that they fully understand the meaning and context of particular language or slurs used, so that they can properly assess the degree to which it may cause offence. To do so, further information may be sought from a complainant or from relevant community groups.

Both domestic and European case law have addressed the issue of Article 10 and racist / religious hate crime speech:

*DPP v Collins* confirmed that it is consistent with Article 10 to prosecute a person for using the telecommunications system to leave racist messages. Effect must be given to Article 17 of the convention, which prohibits the abuse of any Convention rights, as held in *Norwood v the UK* (2004) 40 EHRR SE 111.

The European Commission has held that extreme racist speech is outside the protection of Article 10 because of its potential to undermine public order and the rights of the targeted minority: *Kuhnen v Germany* 56 RR 205.

The ECtHR has confirmed that Holocaust denial or revision is removed from the protection of Article 10 by Article 17: see *Lehideux and Isorni v France* [2000] 30 EHRR 665; and *M'Bala M'Bala v France* (application no. 25239/13), which ruled that a blatant display of hatred and anti-Semitism disguised as an artistic production (comic performance), even if satirical or provocative, was not protected by Article 10.

### Specific hate crime offences

Aggravated or hate crime offences include offences that may be committed via social media, such as harassment, stalking or the distribution of written material or visual images. When reviewing a case that may involve a hate crime offence prosecutors should refer to the relevant hate crime Legal Guidance and the Hate Crime section on the Casework Hub.

See the LG on [Prosecuting cases of Racist and religious crime](#) for:

- Racially or religiously aggravated offences, under ss28-32 of the Crime and Disorder Act 1998 (CDA), such as aggravated public order offences and Harassment and Stalking. To prove that the offence is racially or religiously aggravated the prosecution will need to prove the “basic” offence followed by racial or religious aggravation, as defined in s28 CDA.
- Stirring up racial or religious hatred under Part III of the Public Order Act 1986, in particular the offences of: publishing / distributing written material, ss19 and 29C; and distributing / showing / playing a recording of visual images or sounds, ss21 and 29E. Note that these cases must be referred to the Special Crime and Counter Terrorism Division (SCCTD) and proceedings require the consent of the Attorney General.

See the LG on [Stirring up hatred on the grounds of sexual orientation](#) for the offence of Stirring up hatred on the grounds of sexual orientation under Part III of the Public Order Act 1986. These offences must also be referred to the Special Crime and Counter Terrorism Division (SCCTD) and require the consent of the Attorney General.

See also the section below on “Public order legislation”.

### Sentencing uplift

Sections 145 and 146 of the Criminal Justice Act 2003 provide for an increased sentence for aggravation related to race, religion, disability, sexual orientation or transgender identity. The provisions apply to all offences, apart from racial and religious crime under ss29-32 of the Crime and Disorder Act 1998 (aggravated assaults, criminal damage, public order offences, harassment etc), as these offences carry higher maximum penalties than the basic equivalents.

To prove that the offence is aggravated and obtain a sentence uplift it is necessary to show that either the offender demonstrated hostility to the victim based on the victim’s protected characteristic (race, religion, disability, sexual orientation or transgender identity), or that the offence is motivated by hostility towards persons who have the protected characteristic. Prosecutors should determine the appropriate limb to proceed under, obtain evidence relevant to that limb and provide clear instructions to advocates.

For detailed guidance on the elements of these provisions and how to prove them see the LG on [Prosecuting cases of disability hate crime](#). See also the LG on Prosecuting cases of



homophobic and transphobic hate crime and the LG on [Prosecuting cases of Racist and religious crime](#).

### **Overlapping hate crime**

People can be targeted for a number of overlapping reasons, such as race, religion, disability, gender or sexual orientation. Where this is the case, the relevant CPS policies should be applied.

### **Flagging**

Hate crime cases should be identified at an early stage and flagged on the CMS. See the relevant hate crime legal guidance for the CPS definition of particular hate crimes, which are dependent on the perception or belief of the victim or another person. Where the definition is satisfied, offences should be flagged as hate crimes, regardless whether they are charged as such.

### **False or offensive social media profiles**

Social media platforms usually require people to use their real or authentic identity on the platform. This creates a safer space for users and enables platforms to detect accounts created for malicious purposes, making it harder to use an anonymous name to bully or engage in criminal behaviour.

The act of setting up a false social networking account or website, or the creation of a false or offensive profile or alias could amount to a criminal offence, depending on the circumstances.

For example:

- The former estranged partner of a victim creates a profile of the victim on a Facebook page, to attack the character of the victim, and the profile includes material that is grossly offensive, false, menacing or obscene.
- A “photoshopped” (digitally edited) image of a person is created and posted on a social media platform. Although many photoshopped images are humorous and inoffensive, others are disturbing or sinister, such as the merging of a person’s face with the nude body of another to create obscene images, which may be accompanied by offensive comment.

Depending on the circumstances, an offence may be committed under Categories 1, 2 or 4. Note that a Category 4 offence may be committed by way of a communication or message which is “false”.

Alternatively, a false or offensive profile may amount to an offence under the Public Order Act 1986. See, for example, the case of *S v CPS* [2008] EWHC 438 (Admin), in which the defendant was convicted of Causing a person harassment, alarm or distress under s4A of the Act, for loading onto a website an image of the victim, together with text, that alleged by implication a number of false assertions, including that the victim had been convicted of violence in the past.

If there is any financial gain or loss incurred as a consequence of the false account or profile, an offence may also be committed under the Fraud Act 2006: under section 8 possession or making or supplying ‘articles’ for use in frauds includes any program or data held in electronic form. For further guidance prosecutors should refer to the LG on the [Fraud Act 2006](#), in particular that relating to ss6-8 of the Act.

## Vulnerable and intimidated witnesses

Some witnesses may have particular difficulties attending court and giving evidence due to their age, personal circumstances, fear of intimidation or because of their particular needs. In such circumstances, where witnesses are considered to be vulnerable or intimidated, "special measures" can improve the quality of their experience by helping them to give their "best evidence". Examples of special measures are: screens in court to shield the witness from the defendant; live links, to enable a witness to give evidence from outside the court through a televised link to the courtroom; and examination of the witness through an "intermediary", a person appointed by the court to assist the witness to give their evidence at court.

Given the nature of many of the offences committed via social media, prosecutors need to be alert to the possibility that victims may be vulnerable or intimidated. In such cases, potential vulnerabilities should be properly considered, including early conversations with the police on whether special measures are required.

More detailed information is available in the Legal Guidance on Special Measures.

## Public Order legislation

Although some cases within Categories 1-4 may fall to be considered under public order legislation, such as Part 1 of the Public Order Act 1986, particular care should be taken in dealing with social media cases in this way because public order legislation is primarily concerned with words spoken or actions carried out in the presence or hearing of the person being targeted (i.e. where there is physical proximity between the speaker and the listener) and there are restrictions on prosecuting words or conduct by a person in a dwelling.

Prosecutors are reminded that in *Redmond-Bate v DPP* (Divisional Court, 23 July 1999), Sedley LJ emphasised that under the Public Order Act 1986 the mere fact that words were irritating, contentious, unwelcome and provocative was not enough to justify the invocation of the criminal law unless they tended to provoke violence. In a similar vein, in *Dehal v CPS* [2005] EWHC 2154 (Admin), Moses J, referring to section 4A of the Public Order Act 1986, held that:

"... the criminal law should not be invoked unless and until it is established that the conduct which is the subject of the charge amounts to such a threat to public order as to require the invocation of the criminal as opposed to the civil law." (Paragraph 5)

However, in some cases prosecutors may be satisfied that the offences in Parts I or III of the Public Order Act 1986 are relevant and should be used: see the sections above on "Hate crime" and "False and offensive social media profiles".

## Ancillary Orders

Ancillary orders are a useful tool to address the abuse of social media, whether the abuse amounts to a criminal offence or not, and particularly in circumstances where a person is in fear or requires protection. Prosecutors should consider whether an ancillary order may be appropriate, pre-charge, post-conviction and post-acquittal.

For a detailed account of available ancillary orders prosecutors should refer to the Ancillary orders toolkit and any relevant legal guidance.

The following are examples of orders that may be appropriate in social media cases:

## Prevention Orders

If a decision is made to take no further action, but there is a need to stop or prevent an individual engaging in anti-social behaviour, prosecutors may advise that the police consider seeking a Prevention Order (a pre-charge civil injunction) under s1 of the Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA). However, Article 10 rights will need to be considered before applying for such an order. The CPS cannot apply for this order.

## Criminal Behaviour Orders

Criminal Behaviour Orders (CBO) are available under Part 2 ASBCPA. A CBO is available on conviction for any criminal offence, in any court, on the application of the prosecutor.

The order is aimed at tackling the most serious and persistent offenders, so are more likely to be appropriate in Category 1 or 2 social media cases, rather than Categories 3 or 4. They are also primarily intended to protect the wider community, so other orders may be more appropriate where there is a named victim, such as in cases of domestic abuse.

The court must be satisfied that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person, and that the court considers making the order will help in preventing the offender from engaging in such behaviour.

In some cases, what may initially appear to be simply anti-social behaviour, there may be a link between the behaviour and hate crime. Where there is evidence of hostility based on the protected hate crime characteristics of ethnicity, religion, gender identity, sexual orientation or disability, prosecutors should be proactive in seeking further evidence from the police. For example:

- Asking the victim, the victim's carer and / or family, neighbours, housing agencies etc if there have been other incidents involving the victim;
- Checking whether the suspect has been involved in any other incidents and, if so, whether the victims on those occasions shared the same protected personal characteristics.

Further details can be found in the Legal Guidance on [Criminal Behaviour Orders](#).

## Restraining Orders

A Restraining Order is a civil behaviour order that can be made against a defendant on conviction or acquittal for any criminal offence. The order is intended to protect a named person from harassment, stalking (on conviction or acquittal) or conduct that will put the person in fear of violence (on conviction only).

These orders may be appropriate, for example, in the following types of cases:

- The defendant and witness know each other or previously have been in an intimate relationship.
- The parties have on-going contact.
- The complainant has been targeted by the defendant in some way.

Note that Restraining Orders must only impose prohibitions and not positive requirements.

For further information see the legal guidance on [Restraining Orders](#).

## Domestic Violence Protection Notices and Domestic Violence Protection Orders

Domestic Violence Protection Notices and Orders (DVPNs and DVPOs) give the police power to provide immediate protection to alleged victims of domestic abuse in circumstances where the police consider that there are no enforceable restrictions that can be placed on the perpetrator: for example, where the police decide there will be “no further action” on a case, or where a suspect receives a simple caution, or has been bailed without conditions.

To obtain the orders, evidence is required that the suspect has been violent or threatened violence towards the victim; and the order is necessary to protect the victim from violence or a threat of violence. A threat of violence could be made via social media.

The orders can be obtained without the victim’s consent.

DVPNs only have effect for 48 hours, after which an application has to be made by the police to a magistrates’ court to apply for a DVPO.

DVPOs provide the police and magistrates with the power to:

- Enforce non-molestation of the victim.
- Stop a defendant from contacting the victim.
- Prevent a defendant from evicting/excluding the victim from a premises (their household).
- Remove a defendant from a premises (their household).
- Prevent a defendant from returning to a premises (their household) for a period of up to 28 days.

Further information on these and other Orders relevant to domestic abuse can be found in the [Domestic Abuse Guidelines for Prosecutors](#).

### Conditions and prohibitions under Orders

Depending on the nature of the particular order, it may include prohibitions, to prevent or restrict certain behaviours, or positive requirements, to address the underlying causes of the offender’s behaviour.

In social media cases, the conditions to be imposed under an order may relate to the perpetrator’s use of social media, including a restriction or limit placed on communications. Such orders are likely to engage the right to private life under Article 8 ECHR, as well as Article 10 rights, and any interference with these rights will need to be justified, which will be easier where there is a conviction. There are also practical issues to consider in relation to whether a restriction is workable or capable of being monitored and enforced.

Case law relating to Sexual Harm Prevention Orders (SHPO) provides useful guidance on the key principles to consider when imposing requirements relating to internet use and access. In particular, the case of *R v Smith* [2011] EWCA Crim 1772:

- The order should be tailored to the exact requirements of the case.
- The order should avoid conflict or duplication with the requirements of any other court order, injunction or statutory regime to which the offender may be subject.
- The terms of the order should be clear, necessary and proportionate and should not be oppressive.

- A blanket prohibition on computer use or internet access is disproportionate and impermissible, as it restricts the defendant in the use of what is nowadays an essential part of everyday living and a requirement of much employment.
- An example of an effective term is to prohibit the defendant from:
  - i. Using any device capable of accessing the internet unless it has the capacity to retain and display the history of internet use, and the device is made available on request for inspection by a police officer; and
  - ii. Deleting such history of internet use.
- In some cases it may be necessary to prohibit altogether the use of social networking sites, other forms of chatline or chatroom, or even possessing devices that have access to the internet. Reasons for this may be, for example, the need to protect an individual or the public, or because of persistent breaches of orders. See [R v Henson \[2016\] EWCA Crim 425](#), in which the applicant was only permitted internet access at a public library or educational establishment under a SHPO, following persistent non-compliance with a previous SHPO, even after surveillance software to monitor his use of computers had been installed.

If an order prohibits a person from using social media sites, the police should send the court order to relevant sites, so that the person's account can be taken down. Some platforms may have a link that can be used to provide information about the court order.

### Victim Personal Statements

A Victim Personal Statement (VPS) gives victims an opportunity to describe the wider effects of the crime upon them, express their concerns and indicate whether or not they require any support. In social media cases, prosecutors should request a VPS if one has not already been made.

Provisions relating to the making of a VPS and its use in criminal proceedings are set out in the [Code of Practice for Victims of Crime](#) (Victims Code), and prosecutors should also refer to the legal guidance on [Victim personal statements](#).

Making a VPS is optional and most VPSs will be in addition to the usual witness statement. A thorough VPS will assist the sentencing court to assess any harm that the offence has caused, including the effect of the offence on the victim, such as distress and anxiety. A VPS may also be used to support an application for an ancillary order.

For domestic abuse cases, a VPS may include a complainant's concerns about safety, intimidation and the perpetrator's bail status.

A victim can make more than one VPS and it is important that VPSs are updated, so that any long-term effects of the offence are captured.

Victims are entitled to say whether they would like to read their VPS aloud in court or whether they would like it read aloud or played (if recorded) for them.

### Community Impact Statements

A Community Impact Statement (CIS) is a short document illustrating the concerns and priorities of a specific community over a set time period. The statement will illustrate the harm and impact on the community arising from particular types of offences or anti-social behaviour, or from a specific offence or incident.

A community does not have to be determined by geographic areas. A community can be defined as a group of people who interact and share certain characteristics, experiences or backgrounds, and/or are located in proximity to each other. This includes people who share particular characteristics connected to their heritage, belief system or physical being that define their day-to-day lives; for example, ethnic groups, religious groups, people with disabilities, children, older people.

A CIS may be used by the CPS to inform charging decisions and by the courts to inform sentencing decisions. Note that one of the public interest factors to consider under paragraph 4.12e of the Code is the impact of the offending on the community.

Prosecutors should be alert to check with the police whether there is a CIS available in cases in which a CIS may be relevant.

For further information refer to the legal guidance on Community Impact Statements.

### **Reporting and preventing abuse on social media**

Persons who are subject to abuse on social media may wish to report the abuse to the police and / or to the social media platform.

A number of platforms have developed tools to make reporting easier, to secure potential evidence and to prevent unwanted communications, including those that do not amount to a criminal offence. These include:

- A report link, so that particular or multiple communications can be reported directly to the platform. Social media sites may then decide to remove content and disable or suspend accounts, although it is not technically possible for a platform to guarantee a user will not return once their account is closed. Note that if a matter is reported to the police, the police should make a data retention request to the platform, so that evidence is secured for any investigation.
- Taking screenshots of the offending material, which can be saved on or off (for example, cloud storage or a USB drive) the device.
- Tools to block or mute the person who has uploaded abusive content, so that they can no longer see posts or have a conversation with the victim.
- Tools to unsubscribe or “un-follow” accounts that produce or share offensive material.
- Login alerts, which prompt the platform provider to send a notification if someone tries to log into an account from a new place.
- Privacy settings, to control who can see posts and information from profiles, such as phone numbers and email address.

Further cyber security advice can be found on the Government’s website [Cyber Streetwise](#) and on the Government supported website [Get Safe Online](#).

## Obtaining social media evidence

Prosecutors should refer to the [Social Media and Communication Data Guidance](#) on the International section of the Casework Hub for detailed guidance on obtaining social media evidence from Communication Service Providers in the USA.

## Jurisdiction

The general rule is that an offence will only be triable in the jurisdiction in which the offence takes place, unless there is a specific provision to ground jurisdiction, for instance where specific statutes enable the UK to exercise extra-territorial jurisdiction.

In cross-border cases involving England and Wales and other jurisdictions (including non-EU countries), an offence must have a "substantial connection with this jurisdiction" for courts in England and Wales to have jurisdiction. It follows that, where a substantial number of the activities constituting a crime takes place within England and Wales, the courts of England and Wales have jurisdiction unless it can be argued, on a reasonable view, that the conduct ought to be dealt with by the courts of another country. See *R v Smith (Wallace Duncan) (No.4)* [2004] EWCA Crim 631.

There are a number of authorities on websites hosted in other jurisdictions:

- In *R v Waddon*, unreported, 6 April 2000, a case relating to the publication of obscene article, the Court of Appeal held that the content of American websites could come under British jurisdiction when downloaded in the United Kingdom: images published on a website abroad were further published when downloaded in the UK.
- *R v Perrin* [2002] EWCA Crim 747: In assessing whether the publication by an American company of a web page breached the Obscene Publications Act 1959 s.2(1), it was not necessary for the court to show that the major steps in relation to publication took place within this jurisdiction.
- *R v Sheppard* [2010] EWCA Crim 65: where an offender had produced racially inflammatory material and posted it on a website hosted by a remote server in the United States, he could be tried in the United Kingdom because a substantial measure of his activities had taken place in the UK, as required by the test laid down in *R v Smith (Wallace Duncan)*.

For more detail on jurisdictional issues, see the legal guidance on [Jurisdiction](#).

## Handling arrangements

These revised guidelines come into effect on 10 October 2016. Any cases that fall to be considered under these guidelines will be dealt with by the relevant CPS Area or CPS Direct. Cases which fall to be considered under these guidelines should be handled by a prosecutor with the appropriate level of skill and experience. Special arrangements apply to cases which fall within Category 4.

Note that Category 4 cases do not include menacing communications for referral purposes, as these should be considered under category 1. Areas and CPSD may therefore charge cases that involve menacing communications, without referral to the Director's Legal Advisor.

Handling arrangements for Category 4 cases:

- CPSD cases: To ensure that cases which call for an immediate response can be dealt with while suspects are still in police custody, CPS Direct lawyers may charge cases involving communications sent via social media which fall into Category 4 with the prior authority of the CPSD CCP or DCCP.
- Cases not charged by CPSD: Other cases referred to CPS Areas pre-charge, or charged by the police, require authorisation from the Director's Legal Advisor. Authority is also required before any final decision is made to charge or where the Area intends to proceed with a police charge. Referrals to the DLA should be submitted electronically to the DLA Inbox at [DLA.Team@cps.gsi.gov.uk](mailto:DLA.Team@cps.gsi.gov.uk) and the e-mail should contain the following:
  - [i] The deadline for when a response is required and the reasons for that deadline.
  - [ii] The MG3 containing the reviewing lawyer's charging advice.
  - [iii] A clear indication of whether all the relevant evidence is on CMS or whether a paper file is available if required.
  - [iv] The details of the point of contact/reviewing lawyer and the URN of the case.
  - [v] Any identified or potential media interest in the case should be clearly highlighted.

Any terrorist related threat or other communication should be referred to the Special Crime and Counter Terrorism Division at [ctd@cps.gsi.gov.uk](mailto:ctd@cps.gsi.gov.uk)