



**FSU**  
FREE SPEECH UNION

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## Free Speech Union Press Release

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FOR IMMEDIATE RELEASE

### **Free Speech Union welcomes Law Commission's Proposal to Scrap s.127 (1) of the Communications Act 2003, But Has Reservations About Criminalising Communication 'Likely to Cause Psychological Harm'**

The Law Commission has now produced its report on communications offences (see Law Comm 399, [Modernising Communications Offences – A final report](#), with recommendations summarised in Chap.8).

Credit where credit is due. There is, on the whole, a lot to welcome in this document, and we are delighted to see that the Commission have taken a number of our own submissions seriously. Particularly welcome are four things.

One is the proposal to suppress the offence under s.127(1) of the Communications Act 2003 of making a grossly offensive communication using a telecommunications system. This provision spawned trivial prosecution after trivial prosecution, including that of Count Dankula (the Nazi pug case). It also had a chilling effect on online speech, and made a mockery of the principle that online and offline speech should be similarly treated. We are well rid of it.

Second, we welcome the re-jigging of the current offence under s.127(2) of the same Act of sending false information, so that it would cover only communications intended to cause non-trivial psychological or physical harm, rather than merely annoyance, inconvenience or needless anxiety.

Third, the proposed offence of harmful communications, which would replace the offences under s.127(1) above and the Malicious Communications Act 1988, would be limited to conduct committed without reasonable excuse, and in addition to acts intended to cause psychological harm or serious distress, a much narrower formulation than that originally put forward.

Fourthly, we very much welcome the proposal, strongly supported by us in our comments on the original consultation, to exempt news media from the harmful communications and false information offences.

In some cases, however, the proposal still falls short of adequate protection of free speech. We maintain that 'harm' should be defined as 'very serious emotional distress' to prevent the criminalisation of mere vulgar abuse. The necessity of setting the bar high is proven by cases such as that of Markus Meechan in 2018 (the case of "Count Dankula and the Nazi pug") who was convicted under s.127(1) of the 2003 Communications Act. Any new proposal that would continue to catch cases such as this would offer inadequate protection of free speech.

We also believe the same harmful communications offence must be limited to communications likely to cause harm to a person of reasonable firmness. There is in our view no reason even potentially to outlaw statements whose only possible harmful effect is on the unusually sensitive, however certain that effect may be.

If we compare the proposal to the Government's proposed Online Safety Bill, the outcome is plainly odd. The Online Safety Bill has a narrower definition of 'harmful content' – content with a material risk of having a significant adverse physical or psychological impact on an adult of ordinary sensibilities. With the two in combination, a citizen could be prosecuted in the criminal courts for content that would fall within Twitter's terms of use as approved by Ofcom. Joined-up thinking is needed here.

Again, we have doubts about the extension of the threatening communications offence to cover serious financial loss. As far as we can see, such an offence would (for example) cover a campaign calling on people not to buy the books of J.K. Rowling to punish her for her expressed views on trans matters; or for that matter calls to boycott BP because of its past conduct in relation to indigenous peoples in Africa.

We will continue, as and when legislation is introduced, to campaign on these points.

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