

Review of Legislation on Harmful Electronic Communications

31 March - 19 June 2015

Summary of consultation responses:

Introduction

In March 2015, the Council of Ministers issued a public consultation on whether it would be appropriate to make changes to the legislation in Jersey applying to harmful electronic communications (i.e. cyber bullying, harassment, revenge porn). The purpose of this consultation was to seek views on whether the existing legislation is appropriate, or whether it requires amending, to remove any doubt about its application and to ensure that it is 'future proof'. It also considered whether a new offence is required to tackle the publication of revenge pornography.

In issuing this consultation, the Council recognised that it is important that the relevant authorities in Jersey have the ability, in appropriate cases, to prosecute people for sending grossly offensive, threatening, false or malicious electronic communications, including via social media. As part of this, the Council acknowledged that the law should enable the appropriate authorities to tackle behaviour that constitutes cyberbullying; however, they also noted that the law should not provide that electronic communications are subject to a more stringent level of legislation than other means of communication.

The consultation sought views both on the proposed policy approach and on the existing legislation, as well as asking seven particular questions:

1. Do you think that the approach proposed in this consultation document strikes the right balance between ensuring freedom of expression and the need to uphold the criminal law?

2. Do you think that, as a matter of general principle, people should be held accountable for their activities conducted online in the same way that they are for activities conducted offline?
3. Do you think it is appropriate to amend the existing offence in Article 51(a) of the Telecommunications (Jersey) Law 2002 so that it is clearer when the sending of a harmful online communication should be treated as criminal?
4. Do you think that it would be appropriate to create a new offence so that is clearer when the sending of a harmful online communication should be treated as criminal?
5. Do you think that alternative approaches to tackle this type of behaviour should be considered as well as/or instead of changes to legislation? If so, please give details.
6. Do you believe that a specific offence should be considered relating to 'revenge pornography'?
7. Do you have any comments in relation to the topic that you feel have not been addressed in this consultation? If so, please give details.

The consultation was open for twelve weeks and closed on the 19th June 2015. It received twelve responses, a summary of which is enclosed below.

Summary of Consultation Responses

We received twelve responses to the consultation. Eleven responses were from individuals. One was from the Consumer Council.

Responses from Individuals

Given the sensitive nature of this topic, and in accordance with the States of Jersey's policy on public consultations, the responses from individuals have been anonymised, and their content has been summarised rather than repeated verbatim.

Most responses to the consultation reflected individual views, provided examples of personal experience and gave an insight into the potential for emotional distress that can result from harmful online communications.

The responses cover a range of subjects (from cyberbullying and freedom of expression, to questions of responsibility and the right to be forgotten) and provide a good indication of the complexity and emotional impact of this topic. Blogs are a topic of particular concern to many responders, particularly in terms of what should be considered harmful or unlawful in the context of publishing personal blogs.

Nine responses indicated that it would be advantageous to amend or clarify the existing legislation; seven suggested that it would be appropriate to create new offences for either the posting of harmful online communications or for the specific act of revenge pornography (though it is worth noting that many appeared unaware that this behaviour is likely already covered under existing legislation); nine agreed that the legislative approach should treat behaviour conducted online the same as behaviour conducted offline.

The responses also highlight the need for a proportionate approach, which takes into account the unique characteristics of online communication, and which recognises that legislation alone cannot be expected to address harmful online behaviour. The enclosed quotations provide a flavour of the responses:

- '...it is important that online publication is dealt with in a very similar mannervto [sic.] off-line publication'

- 'For those that haven't experienced this form of assault it is difficult to imagine what it feels like. I can assure you that it takes over your life. Even when it is finished the assault leaves its affect [sic.] on you.'
- 'A civilised society should always be open to new or different ideas, absolutely including ideas that some, or even all, of those supporting the established order disagree with.'
- 'People have to be held to account for what they write online when its [sic.] knowingly offensive to others.'
- '...the global reach of the internet means that while any framework of law might be used to constrain local individuals, the anonymity which the internet provides, and the global reach, ensures that a determined individual can always find a mechanism to flout any restrictions.'

Jersey Consumer Council

The Jersey Consumer Council submitted a substantive response on behalf of its members. The response concentrated on the importance of protecting freedom of expression, supported the proposed approach (i.e. that any amendments to the law should be proportionate, future-proof and platform neutral) and highlighted the role that education has to play in tackling harmful online behaviour.

In summary, the response stated that:

- 'It is very difficult to find the balance between preserving the right to one's freedom of expression, whilst at the same time removing speech that is deemed to be hateful.'
- '...comments produced, be they online or offline should be treated equally, and as such individuals should be held to account, where necessary.'
- 'As stated in the consultation, a large proportion of internet users feel confident in using the internet and engaging in social media.'
- 'The Council firmly believe in the important role of education in all matters to help everyone make informed choices; education is fundamental to this topic...'

The Jersey Consumer Council's response is attached as an appendix to this document.

It should be noted that the responses to the consultation mainly offer personal opinion and highlight individual experiences. As such, they provide limited new quantitative evidence; however, they do support the original quantitative research that was commissioned as part of the development of the consultation, as well as other analysis and evidence gathered throughout the process (e.g. international case studies).

Minister/department response to this feedback:

Next steps

Working jointly between the Home Affairs Department, the Economic Development Department, the States of Jersey Police and the Law Officers Department, officers will prepare recommendations on the options that are open to the Council of Ministers for making amendments to legislation, drawing on all of the evidence above. It is worth noting that any recommendations will depend upon the legal advice given in preparing law drafting instructions.

Supporting documents attached:

Appendix 1 – Jersey Consumer Council response
