

Harmful Online Communications

Questions for consultation (Please give reasons for your response)

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?

The consultation document does refer to the importance of freedom of expression. The Jersey Consumer Council welcomes this, and it is noted 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. Great caution should be taken to ruling something as hateful, but at the same time, sufficient sanctions should be in place to ward off internet trolls from posting malicious comments for example.

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?

As a principle the Council accepts that comments produced, be they online or offline should be treated equally, and as such individuals should be held to account, where necessary. The problem arises where it is not possible, or it is at least extremely difficult to trace online comments back to an individual. Any energy spent tracing the origin of an online comment, should be proportionate to content of the comment itself.

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?

The Council accepts that there should be an amendment to the current laws in place ensure that any charge brought against an individual is the correct one, and that a suitable offence is drawn up by way of statutory definition. The prosecution of an individual should not be brought under a law which does not adequately fit the offence.

In order to future proof potentially harmful online comments, the Council suggests an amendment to the Electronic Communications (Jersey) Law 2000, rather than under the Telecommunications (Jersey) Law.

The reasons are that it may well be the case that future online messages are not accessed through a ‘telecommunication system’, as such a more flexible approach may be an amendment to the Electronic Communications Law. As the Electronic Communications Law is there to facilitate electronic communications, the Council queries the function of this law, should an amendment of Article 51 of Telecommunications (Jersey) Law be enacted to counter harmful online messaging through social media.

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?

The Council doesn’t think that a new offence is required in order to tackle harmful online communications. As stated in the conclusion of the consultation, a large proportion of internet users feel confident in using the internet and engaging with social media. We therefore only require a light touch via an amendment to an existing law, to ensure that the vulnerable are protected from vexatious assaults online, rather than the creation of a separate offence.

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.

Advisory guidelines could be produced by the States of Jersey to assist with those who are not used to the internet or social media. These guidelines could highlight what is considered to be appropriate and inappropriate behaviour. In particular schools may benefit from such guidelines when children begin their IT education at school.

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 to help everyone understand the impacts of sending, receiving and the duration of online communications. Education must also timely ‘child age-related’ guidance for parents on such issues as auto-lock, perils of downloading apps and much more etc.

6. Do you believe that a specific offence should be considered relating to ‘revenge pornography’?

The Council believes that further research and consultation should take place prior to determining whether a specific offence should be created. We should look to see the approaches adopted by neighbouring countries, as well as the number of cases that arise locally before determining this issue.