THE REGULATION OF ONLINE ABUSE IN ENGLISH SECONDARY SCHOOLS: A SOCIO-LEGAL ANALYSIS

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The candidate confirms that the work submitted is her own and that appropriate credit has been given where reference has been made to the work of others.

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This thesis is for Mum and Dad.

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Abstract

Online abuse is a relatively new phenomenon. It is associated with psychological harm in both victims and offenders, and impacts the lives of students in English secondary schools. Regulators have galvanised to address the problem, with policy, law and technological mechanisms employed to manage online abuse between young people. This thesis explores the regulatory frameworks relevant to online abuse amongst secondary school students, including; the duty of care of schools for their pupils, schools' statutory powers and responsibilities relevant to behaviour and safeguarding, the criminal law, technological architecture and policy decisions within the technology sector. The study reflects upon the effectiveness of the frameworks from the viewpoint of secondary school students, staff and school based police using a mixed-methods approach incorporating original qualitative data from 3 state schools in Northern England. The study identifies areas which could be improved and what aspects of regulation are more likely to benefit young people, by reducing online abuse or improving how it is managed.

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Germany

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Table of Abbreviations

S127(1)	Section 127(1) of the Communications Act (2003)
S127(2)	Section 127(2) of the Communications Act (2003)
ACPO Matrix	ACPO Youth Offender Case Disposal Gravity Factor Matrix,
The Bullying Advice	Department for Education 'Preventing and Tackling Bullying, Advice for Headteachers, Staff and Governing Bodies (July 2017)
CJCA	Criminal Justice and Courts Act (2015)
CJA	Section 160 of the Criminal Justice Act (1998)
CPS	Crown Prosecution Service
DBS	Disclosure and Barring Service
DfE	Department for Education
The DTL Report	The Ditch the Label Report (2017)
HM Government	Her Majesty's Government, Government of the United Kingdom
ISP	Internet Service Provider
KCS	Anti-Social Behaviour Orders Department for Education 'Keeping Children Safe in Education Statutory Guidance for schools and colleges' September 2016
MCA	Malicious Communications Act (1988)
NEA	The Network Enforcement Act (2017) (Germany)
The NPCC	The National Police Chief Council
Ofsted	The Office for Standards in Education, Children's Services and Skills
PfHA	Protection from Harassment Act (1997)
POA	The Public Order Act (1986)
POCA	The Protection of Children Act (1978)
RJ	Restorative Justice
the Screening Advice	The Department for Education 'Searching Screening and confiscation' Advice for Headteachers school staff and governing bodies (January 2018)

Search and delete powers	Powers given to schools under the Education Act 2011 to perform without consent searches for objects including electronic devices where there is a reasonable suspicion on the part of a staff member a device has been used in connection with a criminal offence
The Sexting Advice	UKCCIS and the Department for Education, 'Sexting in school and colleges: responding to incidents and safeguarding young people' (2016)
SNS	Social Networking Service
SSPO	Safer Schools Police Officer
SNS Guidelines	Crown Prosecution Service, Guidelines on prosecuting cases involving communications sent via social media, Legal Guidance (21 August 2018)
SNS Terms	A term used to describe the combination of a SNS Contract of Service in addition to the Community Guidelines used by that SNS

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1.1 INTRODUCTION

This thesis critically analyses how alternative modes of regulation may be used to manage the problem of online abuse, using the experiences of young people, secondary school staff and school-based police. The aim of the study is to identify how the harmful effects of online abuse upon secondary school students may be minimised.

Online abuse can cause significant harm to young people. Incidents can provoke distress for some students, interfere with their education and reduce their enjoyment of life. In some instances, the consequences of online abuse have been linked to episodes of self-harm and suicide.[1] It is common for secondary school students to encounter forms of online abuse, yet young people may lack the skills to deal with such situations by themselves. Online abuse can be inexplicable to parents who lack technical knowledge, and understanding of the legal and social nuances associated with online communications. Expectations of how schools should intervene in matters involving the private lives of students, have changed. As well as providing education, schools provide pastoral care for their students and provide support when they encounter personal difficulties. Schools also have the power to discipline students for anti-social behaviour, including online abuse. However, it is unclear where the boundaries lay for school intervention in student behaviour outside of school, nor is it clear how successfully schools manage the volume of online abuse which occurs between students. The criminal law is applicable to online abuse behaviour, however it is not obvious as to whether the criminal law ought to be applied to children, even if the matter is serious. The social media sector thrives upon the participation of young people using its products. Technology is constantly changing, and this may enable online abuse, or prevent it. The extent to which this sector contributes to minimising the level of online abuse, or the extent to which it ought to contribute, is yet to be determined. This thesis utilises the experiences of students, school staff and police to identify which elements of the current frameworks are effective in the regulation of online abuse, and which may be counterproductive.

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[1] As discussed in Chapter 2 at 2.2

The purpose of this Chapter is to state the central thesis, provide an overview of the chapter themes and research questions, address the study's originality and contribution to knowledge and introduce the methodology and overall structure of the thesis.

1.2 Central thesis

This thesis contends that the psychological and developmental impact of online abuse constitutes a problem for some secondary school students as they transition through an intense period of cognitive and social development. The problem is potentially exacerbated by deficiencies in the criminal, civil and technological regulatory frameworks. To investigate this problem, this thesis uses qualitative data and documentary research to ascertain the effectiveness of regulatory frameworks relevant to online abuse. The overall aim of this thesis is to create research-based policy recommendations, intended to reduce online abuse and improve outcomes for young people. The research questions outlined at 1.5 seek to address objectives associated with achieving this aim, which include to ascertain: why online abuse occurs in schools, how this behaviour manifests as a problem, what regulatory structures are in place, whether such structures are effective, and how regulation may be amended or improved.

In order to achieve the outlined aim and objectives, the thesis will refer to the lived experiences[2] of secondary school students who have encountered online abuse, as well as school staff and school based police who are involved in managing matters of online abuse at school. The qualitative data is used to form a critical view of the existing regulatory framework. Experiences and statements expressed by the interview participants will be reflected upon during discussion of the documentary research relating to the criminal law, civil law and technical architecture associated with social media, online abuse and young people. The final analysis will provide a basis for recommendations regarding the potential improvement of the areas of law identified.

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[2] Norman Denzin & Yvonna Linsoln, 'Entering the Field of Qualitative Research' in *Collecting and Interpreting Qualitative Materials* (Norman Denzin & Yvonna Lincoln (eds) (Sage Publications London 1998) 11

Online abuse is known to occur in secondary schools across England,[3] involving a significant proportion of students,[4] potentially creating long lasting problems regarding their mental health and educational attainment.[5] Chapter 2 will investigate why online abuse is a problem in schools, examining psychological and developmental traits particularly associated with adolescence, and linking online abuse with negative outcomes for victims and perpetrators.[6] Empirical data relevant to the wellbeing of students, corroborating published research[7] will be highlighted. Adolescence is typically a time where young people first access social media without adult supervision, which can be an exciting, but potentially dangerous environment.[8] This thesis will explore the social aspects of this environment, and the link between online abuse and a culture of tolerance towards bullying.[9] In addition to the social origins of online abuse, this thesis shall investigate the impact of unique technological elements associated with online behaviour,[10] such as the passive participation of bystanders to online abuse in promulgating abusive behaviour,[11] and the impact this has upon the victim.

Chapters 3, 4 and 5 examine how existing law and polices may fail to address online abuse, identifying examples in the empirical data and documentary research to provide a basis for discussion regarding how the law or relevant policies may be potentially changed to affect an improvement. These chapters, directed by research questions outlined at 1.5, will examine the data against regulatory frameworks of a criminal, civil and technical nature, which have been developed or repurposed by regulators in order to combat online abuse. Proposals arising

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[3] 'Hundreds of scientists questioning thousands of children in dozens of nations have found that virtually every child has experience as bully, victim, and or observer': Kathleen Stassen Berger, 'Update on bullying at school: Science forgotten?' (2007) 27 Developmental Review, Science Direct 98

[4] In the is study, 37% of children 11-16 surveyed described they had been 'trolled' in the previous 12 month (sarcastic, unkind negative comments online): Clarie Lilley, Ruth Ball, Heather Vernon, 'The experiences of 11-16 year olds on social networking sites' (2014) NSPCC, 17% of adolescent respondents had experienced what they would describe as 'cyberbullying': Ditch the Label Annual Bullying Survey (2017), and see Ann Hagell, John Coleman and Fiona Brooks, AYPH and Public Health England, 'Key Data on Adolescence' (2015) where it was found 17.9% of 11-15 year olds described being bullied or harassed online in the 8 weeks leading up to the survey

[5] Hannah Young, Marilyn Campbell, Barbara Spears, Des Butler, Donna Cross, Phillip Slee, 'Cyberbullying and the role of the law in Australian schools: Views of senior officials' (2016) 60(1) Australian Journal of Education 86

[6] Sandra Graham, 'Victims of Bullying in Schools' (2016) 55 (2) Theory into Practice 136

[7] See 4.2.4

[8] 'Cyberspace to kids is like a forest that awaits discovery for a formerly caged animal'. Shaheen Shariff *Confronting Cyber-Bullying: What Schools Need to Know to Control Misconduct and Avoid Legal Consequences* (Cambridge University Press 2009) 99

[9] Ersilla Menesini and Christina Salmivalli, 'Bullying in schools: the state of knowledge and effective interventions' (2017) 22 (1) Psychology, Health and Medicine 240, also see Faye Mishna, Mona Khoury-Kassabri, Tahany Gadalla and Joanne Daciuk, 'Risk factors for involvement in cyber bullying: Victims, bullies and bully-victims' (2012) 34(1) Children and Youth Services Review 63

[10] Faye Mishna, Mona Khoury-Kassabri, Tahany Gadalla and Joanne Daciuk, 'Risk factors for involvement in cyber bullying: Victims, bullies and bully-victims' (2012) 34(1) Children and Youth Services Review 63

[11] Menesini (n9) 249

from the data and research may be relevant to ameliorating the outcome for victims, or providing an improvement to the overall wellbeing of students at school.

In Chapter 3, legislation creating offences relevant to online abuse behaviour will be discussed, including; the Protection from Harassment Act 1997, the Communications Act 2003, the Malicious Communications Act 1988 and the Public Order Act 1986. Difficulties in applying and enforcing such laws will be considered including the threshold for the intention to cause harm in online communications.[12] Online offences must not only meet an onerous standard of proof in court,[13] but they must also satisfy Crown Prosecution Service policy with respect to communications offences and children.[14] The data will explore how criminal law processes provide little assistance to schools struggling with online abuse behaviour, which is rarely enforced by school-based police, who are constrained by policy and resource issues even in the face of obvious criminal transgressions by students.[15] The data will highlight other difficulties associated with the existence of police in school grounds, where students admit a lack of candour when confronted by school staff and police.[16] As an alternative to pursing online abuse cases in the criminal courts, this thesis will consider other appropriate police-led means for dealing with such matters, such as community-based restorative solutions.[17]

In Chapter 4, schools will be considered in the context of their central position within the community, where they are used to implement wide-reaching efforts in respect of the welfare of secondary school children.[18] It will be suggested that the legal position of schools in respect of online abuse is unclear, particularly that which is initiated outside of schools and school hours. As the parameters and issues related to online abuse continue to evolve legally and culturally, the research shall explore the potential frustration and confusion on the part of

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[12] Aiman El Asam, Muthanna Samara, 'Cyberbullying and the law: A review of psychological and legal challenges' (2016) 65 Computers in Human Behavior 134

[13] ibid 127

[14] See 3.2

[15] This article discusses the lack of 'teeth' of the criminal law in schools: Hannah Young, Marilyn Campbell, Barbara Spears, Des Butler, Donna Cross, Phillip Slee, 'Cyberbullying and the role of the law in Australian schools: Views of senior officials' (2016) 60(1) Australian Journal of Education 93

[16] Justin Patchin and Sameer Hinduja, 'Deterring Teen Bullying: Assessing the Impact of Perceived Punishment From Police, Schools and Parents' (2018) 16 (2) 193, also see 4.4.2

[17] Noel Purdy, Connor McGuckin, 'Cyberbullying, schools and the law: a comparative study in Northern Ireland and the Republic of Ireland' (2015) 57 Educational Research 420

[18] Ibrahim Tanrikulu, 'Cyberbullying prevention and intervention programs in schools: A systematic review' (2017) 39 School Psychology International 75

school administrators,[19] who have been conferred significant legal responsibility to deal with such matters,[20]without corresponding resources.[21]

Chapter 4 considers how adequately schools carry out both their statutory and common law duties to protect their students from harm, and provide education, which may suffer due to online abuse.[22] The methods used by schools to carry out their responsibilities shall be examined, in the context of empirical data and documentary research indicating that harsh punishment and formal sanctions are unsatisfactory methods for deterring anti-social behaviour.[23] This exploration may be at odds with calls for controlling children through traditional means of punishment and discipline,[24] favoured by media reports of online abuse, which potentially cause panic amongst parents and school administrators.[25] Current educational responses encouraged by government policy may be excessively focussed upon interventions which prohibit or punish undesirable behaviour,[26] and may have little basis in research. For example, Chapter 4 at 4.7 will examine the empirical data against powers provided to schools to search student devices, and suggests that obtrusive interventions such as this may be contrary to reducing online abuse in schools. This type of scrutiny will emphasise the importance of evidence-based strategies for intervention.[27] It will be argued that behavioural policy implementation is more likely to be effective when administered in a positive and cooperative environment,[28] where self-reporting students feel confident in speaking to staff.[29] While schools are legally obliged to create and implement behavioural and safeguarding policy,[30] these policies may be implemented by research-based bullying prevention programmes, approaching online abuse as a social problem.[31] The research shall investigate as to whether the delivery of such programmes may be hampered by an

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[19] Purdy (n17) 420

[20] As described in 4.2.2 and 4.3

[21] See 2.8.4

[22] See 4.2.3

[23] Justin Patchin and Sameer Hinduja, 'Deterring Teen Bullying: Assessing the Impact of Perceived Punishment From Police, Schools and Parents' (2018) 16 (2) 190

[24] Shariff (n8) 99

[25] See 4.3.5

[26] ibid

[27] Tanrikulu (n18)75

[28] Nadia Ansary, Maurice Elias, Michael Greene and Stuart Green, 'Best practices to address (or reduce) bullying in schools' (2015) 97 (2) Phi Delta Kappan 30

[29] Graham (n6)136

[30] Menesini (n9) 249

[31] Such as the Olweus Bullying Prevention Program as mentioned in: Tanrikulu (n18) 85

inconsistency in their delivery,[32] as anti-bullying regimes which are of limited duration may be inadequate to return meaningful results.[33]

The role of the parent will be discussed in Chapter 2, which is considered in the context of behavioural norm-formation, and in providing support to children, highlighted by examples from the empirical data. This role compliments the function suggested for schools in providing a strong foundation for pro-social behaviour. Not all parents have the technical knowledge to provide practical assistance,[34] however the role of parents is considered in a supportive and nurturing context, providing structure, high standards and consistent emotional support, which is inversely related to deviant tendencies.[35]

In Chapter 5, technological responses to online abuse will be investigated including; blocking, reporting and filtering. The architectural aspects of social media and internet services have a potentially profound effect upon the regulation of online abuse.[36] The use of technological solutions by the student sample will be explored, together with discussion of any deficiencies as reported by students. This thesis will consider the effectiveness of automated technological solutions to control online abuse, where such behaviour is often contextual, nuanced and may not easily lend itself to screening and detection by artificial intelligence.[37] This chapter will emphasise the importance of using such technical solutions in conjunction with other measures which reflect the social aspect of the problem.

Chapter 6 will address the research aim and objectives. Key conclusions discovered as a result of the research and analysis contained in Chapters 2-5, will be expressed in the context of answering each research question. Where problems have been identified, Chapter 6 shall present policy-based recommendations and amendments to existing regulation, formed with a view to reducing online abuse amongst secondary school students.

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[32] Graham (n6) 136
[33] Tanrikulu (n18) 85
[34] Lian McGuire, James O'Higgins Norman, 'Parents coping with cyberbullying: a bio-ecological analysis' in Sheri Bauman and Marilyn Campbell (eds) *Reducing Cyberbullying in Schools: International Evidence-Based Practices* (Academic Press 2018) 61 and also Young (n4) 93
[35] Patchin (n22) 194
[36] Cigdem Topcu-Uzer, Ibrahim Tarikulu, 'Technological Solutions for Cyberbullying' in Sheri Bauman and Marilyn Campbell (eds) *Reducing Cyberbullying in Schools: International Evidence-Based Practices* (Academic Press 2018) 33
[37] Aiman El Asam, Muthanna Samara, 'Cyberbullying and the law: A review of psychological and legal challenges' (2016) 65 Computers in Human Behavior 137

1.3 Terminology

1.3.1 'Secondary School Student'

This thesis is concerned with online abuse regulation frameworks affecting children aged 11-17 who attend state secondary schools in England. Whilst the secondary school student is the central focus, other terms in the literature are used to describe this group, and may be used throughout this document. For the sake of brevity the term 'student' may be used, and the terms 'young people', and 'children' are used, as these terms are employed in policy documentation and legislation. Psychology and sociology literature uses the term 'adolescent', and other materials refer to the term 'pupil'. It remains that whatever term is used, this thesis is concerned with state secondary school students in England. Although the study and its findings are likely to be applicable to students in private education, elements of regulation may differ for this group, and as such the research is focused upon the regulation affecting state funded institutions, and the original empirical data is derived from three state secondary schools.

1.3.2 Online abuse

This study examines regulatory solutions to a non-exhaustive list of behaviours involving secondary school students towards each other, whereby social networking services ('SNS') or mobile internet technology is used to cause harm, with the term 'online abuse' used throughout to refer to these behaviours. The National Society for the Prevention of Cruelty to Children defines online abuse as 'any type of abuse that happens on the web, whether through social networks, playing online games or using mobile phones'.[38] For the purpose of this thesis online abuse may refer to a wide range of behaviour including (but not limited to); sending cruel messages to cause a person harm or distress, publicly posting debasing comments about another, creating parody SNS accounts to humiliate someone, spreading false rumours, distributing naked or sexual images or video of a person without their consent, and making threats of violence to a person via SNS or mobile technology. The behaviours to be discussed range in severity and impact, with some of the activities described above are referred to in the literature as 'cyberbullying'. At the time of writing, the term 'cyberbullying' has not been legally

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[38] NSPCC, Online Abuse https://www.nspcc.org.uk/preventing-abuse/child-abuse-andneglect/onlineabuse/ last visited 12/2/2018

defined in England,[39] however in the behavioural science literature, cyberbullying has been referred to as 'an aggressive intentional act carried out by a group or individual, using electronic forms of contact repeatedly over time against a victim who cannot easily defend his or herself'.[40] The term cyberbullying may not sufficiently encompass all the types of behaviour to be dealt with in this thesis, as the act of bullying refers to repeated, intentionally aggressive acts against someone who cannot easily defend themselves, which may not include some aggressive acts including one off communications between persons who are equally matched,[41] and some types of criminal activity such as revenge pornography.[42] Therefore while cyberbullying behaviours are included in the umbrella term of 'online abuse', the types of behaviours constituting online abuse may extend beyond cyberbullying. The term 'abuse' (to treat with cruelty or violence, to treat someone wrongly or badly, to speak to someone in an insulting way[43]) was preferred over the term 'bullying'[44] as it conveys the type of activity covered by the study more accurately.

1.3.3 Traditional Bullying

Traditional bullying refers to bullying between school students, which does not occur online, and includes 'face-to-face bullying' and 'relational bullying'.[45] In this thesis it may also be referred to as 'offline bullying', or 'bullying', denoting aggressive intentional acts carried out by a group or individual repeatedly over time against a victim who cannot easily defend themselves',[46] which has not been carried out using social media or mobile technology.

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[39] At the time of writing, there is no legal definition of 'online abuse' or 'cyberbullying' in England, although a definition may be included in the Code of Practice for Providers of Online Social Media Platforms yet to be issued by the Secretary of State under section 103 of the Digital Economy Act (2017)

[40] Peter K Smith, Jess Mahdavi, Manuel Carvalho, Sonja Fisher, Shanetter Russel and Neil Tippett 'Cyberbullying: its nature and impact on secondary school pupils' (2008) 49(4)Journal of Child Psychology and Psychiatry 64

[41] Peter K Smith, 'School based interventions to address bullying' (2016) 4(2) Estonian Journal of Education 143

[42] Section 33 of the Criminal Justice and Courts Act (2015)

[43] Maurice Waite and Sara Hawker (eds) *Oxford Paperback Dictionary and Thesaurus* Oxford University Press (2009)

[44] The term 'bully' means to frighten or persecute a weaker person: Maurice Waite and Sara Hawker(Eds) *Oxford Paperback Dictionary and Thesaurus* Oxford University Press (2009). Bullying has been described as 'an aggressive, intentional act carried out by a group or individual, repeatedly over time against a victim who cannot easily defend him or herself': Peter K Smith, Jess Mahdavi, Manuel Carvalho, Sonja Fisher, Shanette Russell and Neil Tippett, 'Cyberbullying: its nature and impact in secondary school pupils' (2008)49 (4) Journal of Child Psychology and Psychiatry 64

[45] Traditional Bullying is a term used for bullying which is not conducted online and can include bullying which is physical, verbal or relational (as in excluding someone from a group) see Tracy Waasdorp and Catherine Bradshaw, ' The Overlap Between Cyberbullying and Traditional Bullying' (2014) 56Journal of Adolescent Health 483

[46] Peter K Smith, Jess Mahdavi, Manuel Caralho, Sonja Fisher, Shanette Russell and Peter Tipett, 'Cyberbullying: its nature and impact in secondary school pupils' (2012) 49(4) Journal of Child Psychology and Psychiatry 64

Traditional bullying is relevant to this thesis as it will be shown it commonly occurs along-side online abuse.

1.3.4 Sexting, sexting abuse and non-sexting abuse

In this thesis the term 'sexting' is used broadly to describe the phenomenon of using digital technology to distribute sexually explicit, naked or semi-naked or sexualised images and video of young people, between young people. In the literature, sexting may also refer to the exchange of sexualised messages,[47] however for the purpose of this thesis, sexting refers only to naked, semi-naked or sexualised digital images and video. Sexting as it is defined in this thesis is not analogous to online abuse, as it will be shown that sexting often takes place with the consent of those involved, and does not necessarily cause harm. However the term 'sexting abuse' refers to sexting which involves online abuse, for example where sexual or naked images are distributed without the consent of the persons depicted in the images, or where a person threatens to distribute sexting images without consent, and otherwise where sexting involves deliberate harm to another. The term, 'non-sexting abuse' is used to describe online abuse which does not involve sexting.

1.4 Originality and contribution to knowledge

The thesis employs findings from original empirical research to test the effectiveness of educational, criminal law, and technology derived regulatory frameworks from the perspective of the secondary school student, school staff and a school-based police officer. Existing studies examine qualitative data obtained in schools regarding online abuse, however these tend to focus on the prevalence and the social or psychological impact of such behaviour,[48] without incorporating the role and effect of regulation as it is contemplated in this thesis.[49] Existing research also incorporates an examination of policy surrounding online safety of young people,[50] and the digital rights of children online.[51] The unique focus of this thesis involves the enquiry into the legal obligations of secondary schools in administering a

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[47] Jessica Ringrose, Rosalin Gill, Sonia Livingstone and Laura Harvey, 'A Qualitative Study of Children Young People and Sexting' (NSPCC 2012)

[48] For example, Niamh O'Brien and Tina Moules 'Not stick and stones but tweets and texts: findings from a national cyberbullying project' (2013) 31 No 1 Pastoral Care in Education 59

[49] Jessica Ringrose, Rosalind Gill, Sonia Livingstone and Laura Harvey, "A Qualitative Study of Children, Young People and 'Sexting' (NSPCC 2012)

[50] Andy Phippen, 'Online Safety Practise and Policy in the UK Schools 2016-2017' Report for the Safer Internet UK Council for Child Internet Safety (November 2017) or Christine Kennedy and Andy Phippen 'Oh you're all children, children do silly things. You'll be fine. Get over it!' (2017) Ent LR 28(6) 191 and Sonia Livingstone

[51] Sonia Livingstone, Children's Digital Rights: a priority (2015) 42 (4/5) InterMEDIA 20

safeguarding and behavioural regulatory framework to control online abuse. The legal framework compels schools to deal with criminal online abuse behaviour, within the confines of school resources, and school behavioural policy, which is not dealt with in the existing research. The role of the common law duty of care is uniquely examined against findings from the empirical research. Whilst the duty of care of schools is a well-litigated concept, cases in England, particularly those involving online abuse, are not common. This study provides an original examination of English secondary schools' common law and statutory duties in the context of online abuse, and considers how well schools carry out such duties, providing a basis for assessing the potential for future negligence litigation in England against schools failing to meet their legal obligations.

1.5 Chapter Structure and research questions:

The following sets out the content of the subsequent chapters and associated research questions which will ultimately be used to address the central thesis.

Chapter 2

Why is online abuse behaviour a problem amongst secondary school students?

This chapter considers online abuse as a behavioural and social problem, and examines its ties to traditional bullying, while considering the unique online elements which may exacerbate behaviours and associated harm. The prevalence of online abuse between secondary school students is investigated, along with the extent to which online abuse causes psychological harm to young people involved. Chapter 2 offers an explanation as to why online abuse is a problem worthy of investigation, and the enquiry regarding the social and psychological basis for online abuse also assists to form a view regarding the legitimacy of regulatory solutions examined in the following chapters.

Chapter 3

How is the English criminal law relevant to online abuse and can it be used to manage the problem of online abuse amongst young people?

Chapter 3 is divided into 3 parts. The first considers how the English criminal law captures online abuse behaviour and how policy frameworks moderate the application of such laws to young people. The second part studies the relevance of diversionary disposals and crime recording protocols applicable to school-based police officers dealing with online abuse. The third part considers 22 online abuse behaviours identified in the empirical research to

determine the criminal status of online abuse as reported in the data, and examines the potential contribution of school-based police in managing student behaviour.

Chapter 4

How effectively do schools carry out their civil law responsibilities relevant to online abuse?

Chapter 4 is divided into 3 parts. The first considers the history of common law duties schools have towards their students to consider why schools have such a pivotal role in the protection of young people, and how this is relevant to online abuse. The second part examines statutory responsibilities and powers provided to schools in order to protect the welfare of their students, manage their behaviour and provide them with education. The third part comprises of data analysis. Case studies from the empirical research are used as a basis to discuss the common law and the statutory framework, in considering how effectively schools implement their responsibilities, and use their powers.

Chapter 5

What contribution can the technology sector offer to manage online abuse amongst young people?

Chapter 5 explores the impact of technical regulatory architecture and internal policy of SNS, and internet service providers ('ISP'). The empirical research is referenced to discuss the effectiveness of technological regulation upon online abuse, whilst also considering the public policy implications of having technology regulate social problems.

Chapter 6

This is the concluding chapter, addressing the central thesis and drawing together the key findings of Chapters 2-5. Recommendations are made as to how regulation may be used more effectively to reduce online abuse or reduce its impact on young people.

1.6 Methodology

This socio-legal study draws upon a mixed methods approach, creating a dialogue between different sources and 'methods of knowing'.[52] It incorporates original fieldwork comprised of semi-structured qualitative interviews supported by a grounded analysis of documentary sources. The central thesis relies upon empirical evidence to appraise the effectiveness of the regulatory mechanisms designed to deal with online abuse. As such, a qualitative interview approach, designed to capture lived experiences was used to collect original data relating to the research questions. Qualitative methodologies focus on garnering the participant's attitudes, opinions, 'lived meanings',[53] and allow these to emerge as themes from the participants.[54] A qualitative approach was considered the most appropriate in order to develop an in-depth understanding of the perspectives of those involved, and allow for an examination of the regulation of online abuse to be viewed in a broader context.[55] Qualitative research often aims to find flaws in society, how these faults occurred, and to give a voice to those without power.[56] The power of young people to influence policy and in particular, legislation impacting upon online abuse is limited, yet as a group they represent as a significant stakeholder.

1.6.1 Documentary research

The main documentary research concerned the available academic literature on the main themes examined in this study including the psychosocial and social nature of online abuse behaviour, and its criminal, educational and technical regulation. Due to the fast-paced change of technology, media coverage of online abuse or technologies, and articles by technology journalists have been referred to where peer reviewed academic literature was not available. 'Grey' literature was considered, including official publications, research statistics published by cyberbullying charities, and data regarding youth crime obtained from Freedom of Information Act (2000) applications. Chapter 4 required the analysis of internal school behavioural and safeguarding policies in place within the participating schools, as well as Ofsted[57] reports where the inspector indicated views regarding how well the relevant school dealt with bullying. Applicable case law was examined in respect of criminal law, the duty of care of schools, together with second reading speeches and UK parliamentary committee publications relevant to the particular legislative sections analysed. Chapter 5 required analysis of the terms of

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[52] Joseph Maxwell, 'Using Numbers in Qualitative Research' (2010) 16(6) Qualitative Enquiry 475
[53] Norman K Denzin, Yvonna S Lincon, The SAGE Handbook of Qualitative Research, Sage (2005)
[54] An example of this was the notion of connectivity rather than anonymity emerging as an online factor contributing to harm
[55] Peter Cane and Joanne Conaghan *The New Companion to Law* (Oxford University Press 2009)3
[56] Herbet J Rubin and Irene S Rubin, *Qualitative Interviewing: the Art of Hearing Data* (SAGE 1995) 35
[57] Ofsted is the Office for Standards in Education, Children's Services and Skills

service for SNS and ISPs. The literature analysis has been embedded within the thesis allowing for reflective discussion.

1.6.2 The Fieldwork

The fieldwork included interviews at 3 state secondary schools in Northern England including an inner city school, a rural school and a school located in an affluent socio-economic area located within the same county. A total of 23 semi-structured interviews were conducted comprising of 17 students, 5 school staff members and 1 school based police officer who was responsible for 2 of the participant schools.

The sample size correlates with recommended estimations in grounded theory studies of 20-30 participants,[58] and was partially chosen for practical reasons such as timescales and project size.[59] The scale of the research enabled a close-up and rigorous account of the school social processes under investigation.[60] The focus upon granular details of the participants' accounts was a strategy[61] chosen to identify generalisable insights about potential lessons in other state school settings.[62] The decision on the final sample size was taken during the fieldwork as the researcher developed an increasingly comprehensive picture of the developed themes and the relationship between them.[63]

It was considered the sample size would allow investigation of the research objectives within the proposed timescale.   School 1 is a large Academy, with a mainly white British student population, and very few students from ethnic backgrounds. The school is located in an area where house prices are higher than average for England, and consists of few disadvantaged students.[64] The school was rated 'outstanding' at its last Ofsted Inspection, and it was considered by inspectors to rarely experience bullying incidents. School 2, also an Academy, while having a majority proportion of white British students, also has a high number of

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[58] Bryan Marshall, Peter Cardon, Amit Poddar, Renee Fontenot, 'Does sample size matter in qualitative research? A review of qualitative interviews in IS research' (2015) 54(1) The Journal of Computer Information Systems 11, referring to John Creswell, *Qualitative inquiry and research design: Choosing among five approaches* (2nd ed) (SAGE London 1998)

[59] Marshall (n58)11

[60] Nick Emmel, Jai Seaman, Francis Kenny, *Sampling and choosing cases in qualitative research: a realist approach* (SAGE London, 2013) 60

[61] Jennifer Mason *Qualitative Researching* (SAGE London 2002) 120

[62] Emmel (n60) 59

[63] Julius Sim, Benjamin Saunders, Jackie Waterfield, Tom Kingstone, 'Can sample size in qualitative research be determined a priori?' (2018) 21(5) The International Journal of Social Research Methodology' 619

[64] Its Ofsted Inspection identified it had a relatively lower than average number of students receiving free school meals which are offered to families qualifying due to low income.

students from an Asian or ethnic background. The number of disadvantaged students is high, with the number of students receiving free schools meals higher than the national average. The school was rated as 'requiring improvement' at its last Ofsted Inspection. It was noted that some concerns had been raised by parents about student safety, but that the school has a culture of strong pastoral care. The school is located within a city in a lower socio- economic area. School 3 is a Foundation Secondary School located in a rural area, and has a high number of white British students, and a larger than average number of students with special needs. The number of disadvantaged students receiving free school meals was average. It was rated 'good' at its last Ofsted inspection which noted bullying was considered to be very rare.

The three schools together reflected a diverse sample in respect of their area's socio-economic status and their student populations.

1.6.3 Access

An initial 'cold call' approach of requesting schools to participate was ineffective. Schools 1 and 2 were recruited through a personal contact at the schools, and School 3 was recruited through an introduction made by School 1.[65] Schools were provided with an information document[66] regarding the parameters and purpose of the study at the time of request to participate.

1.6.4 Interview Participants

Students were recruited by methods employed by the individual schools themselves. School 1 recruited through an email invitation extended to the whole student population. In the case of schools 2 and 3, the school displayed posters requesting volunteers. However the study was brought to the attention of year 9 students during information technology lessons in all of the schools. This has impacted the ages of participants. While the study includes participants ranging from 11 to 18 years of age, 55% of the student participants were 13 years old and in year 9. More female students volunteered as only 35% of the students who were interviewed were male. It is considered students who experienced online abuse as a victim, rather than a perpetrator, may have been more motivated to volunteer for the study. Students who were unhappy with the management of their online abuse incident may also have been

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[65] This approach was similar to a 'snowballing technique', in that the researcher approached subject schools known to her and through this school was able to contact another school: Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer' (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 933

[66] Information Document provided to participants is contained at Appendix 1

more interested in the study than students whose incidents were resolved satisfactorily. The volunteer pool was diverse in that it comprised of male and female volunteers, of varying ages, from different schools, in varied socio-economic areas. Staff were recruited voluntarily within the school on the basis they had experience in dealing with online abuse amongst students. The staff interviewed were typically engaged in pastoral roles, responsible for the well-being of students. The police officer was recruited through School 3 and was the only police officer who volunteered to participate in the study. The police officer covered both Schools 1 and 3 (as well as 4 other schools) and was able to offer perspectives and experiences based on the 6 schools covered. It was envisaged during the 2015 application for a notice of amendment for ethical review[67] that cyberbullying charities and their caseworkers would be interviewed to assess their relevance and impact upon online abuse. However the organisations approached declined to be interviewed. The Professionals Online Safety Helpline did provide useful data to the researcher regarding staffing levels.[68] It was subsequently decided upon reflection that it was not necessary to conduct interviews at cyberbullying charities, as such interviews would not serve to address the research objectives.

1.6.5 Informed Consent

Prior to recruitment of students, schools were provided with an information document[69] detailing the purpose of the research, how interviews would be recorded, stored and used, highlighting that participation was voluntary, and that data would be anonymised. Individual participants were also provided with this information which included that participants were able to withdraw up to 7 days after the interview was conducted. It was highlighted to participants that if they were to tell the interviewer any information which suggested they may come to harm, or that they may harm someone else, the interviewer would inform an appropriate person. Students were provided with a participant consent form, and a parental consent form[70], with the requirement that both be signed. School staff and the police officer also signed a consent form prior to interview. [71]

1.6.6 The interview and recording process

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[67] Referred to In Appendix 1
[68] The Professional Online Safety Helpline which provides advice to schools throughout the UK has 1.5 full time staff members: South West Grid For Learning and the UK Safer Internet Centre 'Why do the helplines need funding?' Info-graphic (2017), discussed at page 208
[69] Sample Information given to all participants (and parents) is included in Appendix 1
[70] Sample Consent forms attached at Appendix 1
[71] The completed consent forms can be made available upon request but have not been annexed to protect the identity of the participants

All interviews were conducted during school hours in a private office within each school, with school staff located in nearby offices. Participants in School 1 were interviewed in July 2015, and Schools 2 and 3 were interviewed between January and April 2016. The police officer was interviewed in January 2017. Interviews lasted on average 40 to 60 minutes and recorded directly onto a laptop computer. The audio file was then transferred onto an encrypted USB stick, and deleted from the computer. The interview was transcribed by the researcher in an anonymised format. Where participants used identifying references, aliases were substituted in the transcript.

1.6.7 How Interviews were conducted

An interview guide clustered around themes was prepared but not shared with the participants beforehand, and used as a guide to ensure the study's main themes were addressed as far as possible.[72] As ideas began to emerge from the interview data the pattern of questioning was modified.

Although the interviews were semi-structured and concentrated with central themes, identical questions were not asked in the same order, as the main purpose of the interviews was not to gather data for statistical comparability. The exceptions to this included identifying the age and sex of students for the purposes of ascertaining the breadth of the sample, and data was collected from each student regarding which social media the student used, and which technological strategies they employed to combat online abuse. The main purpose of the interviews was to obtain stories from the participants providing rich detail about their experiences of online abuse.

Principally the success of the interviews was dependent upon establishing rapport and trust with the participant.[73] This meant that over–formalisation of the interview process was avoided. Developing rapport and trust was also important when interviewing staff and the police officer, as the interview themes concerned the discussion of potentially intimate or disturbing events involving children, causing an understandable level of caution from adults, responsible for the welfare of those children. Eliciting responses as part of a natural conversation was therefore preferred over the use of a detached standardised interview. [74] In

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[72] Interview Guides are attached at Appendix 1
[73] Barbara CiCicco-Bloom and Benjamin F Crabtree, 'The Qualitative Research Interview: Making Sense of Qualitative Research' (2006) 40 Medical Education 321
[74] Robert B Burns, *Introduction to Research Methods*, (SAGE London 2000) 243

many cases students appeared to have attended the interview with specific incidents in mind, and it seemed to the researcher that the process of explaining their experiences was found to be positive and cathartic for the young person. Disclosures were appropriate in the context of the interview themes assisted by the researcher's empathetic manner towards interview subjects. This may have enabled the interview subject to feel as though they were being understood.[75] The researcher performed an active listening role conscious the participant was relating rich details of their experience, which may have provided the participant with the sense of connectedness.[76]

In these circumstances, although the interview themes were covered where possible in every interview, students were encouraged through natural conversation, to elaborate upon their experiences and otherwise communicate anything they felt was relevant to the general topic of online abuse. As a consequence, themes were added and expanded upon during the later process of coding and data analysis

The interview of students encouraged discussion of online abuse experiences as perpetrator or victim, involvement of school, the police or parents, action taken by the student themselves, the impact of online abuse and satisfaction with outcomes.

Interviews with staff were designed to illicit how their school dealt with online abuse, their interactions with students, parents, police and other outside agencies and views on effectiveness of response by schools. The interview with the school-based constable was designed to cover the extent to which police and the criminal justice system are involved with online abuse within a secondary school, the processes used and the types of online abuse dealt with.

1.6.8 Ethical Review

An application for ethical review to interview students and staff was made in 2014 and received a favourable ethical opinion on 14 February 2014 (reference number AREA 13-071). A notice of amendment was subsequently made and approved in September 2015 to include interviews with police officers, and to allow participants to be offered a £10 voucher from either iTunes, Café Nero or Pizza Express for participation in the interview. The application for ethical

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[75] John T Chirban, *Interviewing in Depth, The Interactive-Relational Approach* (Sage Publications, London 1996) 49
[76] ibid 29

review and notice of amendment, together with supporting documentation is contained at Appendix 1. As part of the approval relating to the notice of amendment, the ESSL Environment and LUBS (AREA) Faculty Research Ethics Committee, requested the researcher plan for procedures regarding a distressed student, and reports of on-going bulling or more serious reports of harm. The information document provided to students contained in Annexure 1 advises students that the researcher may break confidentiality in the event the student disclosed they were at risk of harm, or another student might be at risk. The researcher was cognisant of student safety, and was prepared to report an appropriate matter involving the wellbeing of a student to the safeguarding officer of the relevant school. Although students discussed incidents with the researcher where they admitted distress in the past, these were situations which had resolved and the researcher was satisfied no student was in danger. Consequently no matters relating to student safety arose.

1.6.9 Data Presentation

Findings from the empirical research are presented throughout the thesis as part of the discussion aimed at addressing the relevant research question in each chapter. Within chapters 2-5, illustrative quotes are sourced from the data as part of a reflective discussion.

Chapter 3 includes analysis of 22 online abuse behaviours identified from experiences as told by participants. In Part 3 of Chapter 3, the 22 behaviours are considered as to whether a prosecutable offence had taken place, and whether diversionary mechanisms used by police may be effective. Chapter 4 includes case studies drawing on the qualitative data. Part 3 of Chapter 4 combines an analysis of participant school behavioural and safeguarding policies, with the experiences described by students, staff and the school based police officer, to produce 2 case studies. These studies provide a critical review of how successfully Schools 1 and 3 implement their regulatory responsibilities. This is followed by 2 policy-based case studies which utilise illustrative examples from all 3 schools as part of the discussion.

Chapter 5 presents limited quantitative data gleaned from the fieldwork investigating the most frequently used social media amongst the sample, and uses this finding as a basis on which to more closely examine the most popular platforms, Facebook, Snapchat and Instagram.[77] The number of students in the data confirming their use of these platforms were indicative of a

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[77] Numerically aided phenomenology, a procedure for systematically describing categories of lived experience within a set of narratives: Don Kuiken and David S Mall 'Numericially Aided Phenomenology: Procedures for Investigating Categories of Experience (2001) 2(1) Forum: Qualitative Social Research 15

pattern from which useful analytic generalisations were made.[78] The numerical comparisons between social media platform use, and use of different methods of technical tools gleaned from the qualitative data, is more than anecdotal,[79] as it highlights regularities upon which to focus attention. The data was also used to illuminate the proportion of students who had experienced traditional bullying and online abuse, and to measure the popularity of the technical tools offered by social media amongst the sample.[80]

1.6.10 Data analysis

The personal narratives as offered by the students, staff and the police officer were analysed as part of an interpretivist qualitative approach, to understand what events meant to the participants, how they reacted to particular situations and why this may have occurred. The study incorporated how the participants themselves viewed what had occurred.[81]

Data analysis was inductive. Although the central thesis acknowledges that online abuse is a problem, the data analysis was not designed to test an established theory aiming at solutions, but to generate original solutions based on new theory emerging from the data. The interviews in this study were recorded and transcribed by the researcher, and then further analysed using NVivo software. The data was categorised into nodes in a first round according to the broad interview themes and then further themes were developed. At the time of establishing the second round of nodes relevant documentary data including internal school policies, and other published statistics and data were interrogated and coded according to their relevance to the research questions.

The analysis established an understanding of the day-to-day practises within participating secondary schools of how online abuse was managed, to what extent the youth justice system[82] was involved, and how technical tools were used by young people. This analysis was used to facilitate discussion.

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[78] Margarete Sandelowski, 'Real Qualitative Researchers Do Not Count: The Use of Numbers in Qualitative Research' (2001) 24 Research in Nursing and Health 230

[79] Joseph Maxwell, 'Using Numbers in Qualitative Research' (2010) 16(6) Qualitative Enquiry 475

[80] Quantitative-based statistics can be utilized in the analysis of qualitative data sets: Stefan Loehnert 'About statistical Analysis of Qualitative Survey Data' (2010) International Journal of Quality, Statistics and Reliability

[81] Rubin (n56) 35

[82] The youth justice system is overseen by the Youth Justice Board, established by the Crime and Disorder Act 1988, and is relevant to 10-17 year olds at risk of offending, or who have committed offences. The principle aim of agencies involved in the youth justice system is to prevent offending by young people, as set out in Section 37 of the Crime and Disorder Act 1998

1.7 Limitations of the research

1.7.1 Limitation of scope to state schools

The research focused upon state schools and omitted private schools, limiting the generalisability of the findings and recommendations stated in Chapter 6. Including both state and private schools in the design of the research may have allowed for a comparison of how private and state regulatory frameworks impact online abuse, and allowed for discussion regarding the online abuse problem in private and state institutions. However for the reasons detailed below, it was decided by the researcher to limit the research to state schools to allow for a more comprehensive analysis of how effectively state schools regulate online abuse. Private schools differ from state schools,[83] in that they are not required to follow the national curriculum and fees are charged for attendance. Private schools, whilst educational institutions, also operate as businesses, where student attendance is governed by the terms and conditions of the contract entered into between the school and a student's parent or guardian. This contractual element potentially introduces a new spectrum of legal obligations and remedies not applicable to state-managed institutions. The majority of students in England are educated at state schools.[84] Consequently the decision was made to limit the research by concentrating on state schools to provide more comprehensive recommendations specifically for this group, rather than engage in a comparative analysis.

1.7.2 The Police officer

The researcher's access to school-based police officers was limited, with the research including the participation of a single police officer. As the subject matter of the research was sensitive and involved young people, the availability of other school-based police officers was only available via a gatekeeper,[85] in this case a senior staff-member at School 3. Contact was made through the gatekeeper of School 3, and by coincidence, the police officer was also responsible for School 1. Enquiries were made to interview the school-based police officer at School 2, however this was not successful. While it would have been preferable to interview a second

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[83] As described in: Department for Education, 'Regulating Independent Schools' (2016) https://www.gov.uk/government/publications/regulating-independent-schools (last viewed 28 March 2019). In addition, while state schools are generally inspected by Ofsted most private schools are inspected by the Independent Schools Inspectorate or the Schools Inspection Service, with standards regulated by the Education (Independent School Standards) Regulations 2014

[84] Independent schools educate approximately 6% of all students in the UK with that figure rising to 15% for students over the age of 15 years: Independent Schools Council Research https://www.isc.co.uk/research/ last viewed 2 April 2019

[85] Gatekeepers are persons who may provide access to research participants who may be otherwise unreachable: Emmel, (n60) 154

police officer, a single research participant may provide great insight, and the participation of the officer produced an in-depth understanding, which furthered the knowledge of how the police officer dealt with online abuse at Schools 1 and 3.[86] The police officer's account also provided a third perspective of online abuse at Schools 1 and 3, in addition to the student and staff participants at those schools.[87] The interview with the police officer provided depth rather than scale,[88] with the officer being identified as a key person likely to provide a single rich source of information as opposed to a gradual collection of data from a larger sample of participants.[89]

1.7.3 Researcher bias

With respect to the interviews, the researcher orchestrated and directed the interview process, which inevitably influenced the data obtained. Participants were provided with an information document[90] detailing the purpose of the research, and the possibility of publication, which may have affected the participants' choice of stories to tell. The researcher selected the topic, the interview questions and the venue. While the questioning technique was gentle and respectful,[91] students may not have engaged in natural spontaneous responses, due to the unfamiliar situation of being interviewed by a university researcher. The individuals participating attended at the interview having been recruited by their school, and they attended at the interview following the researcher's request. Consequently responses were produced in an artificial sense due to the research setting.[92] It is acknowledged that the interview was a distinct type of discourse, in that it was produced by a conversation between and interviewee and interviewer.[93] The way questions were asked and structured provided a frame within which participants shaped their accounts.[94] Some students and staff participating in interviews appeared nervous, and there was a sense the researcher was 'in charge' of the interview,[95] which

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[86] ibid 69

[87] Clive Boddy, 'Sample size for qualitative research' (2016) 19(4) Qualitative Market Research 426

[88] ibid

[89] Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert M Kritzer' (eds) *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 933, and see: Emmel (n60)154 'it is not the number of cases, it is what you do with them that counts'.

[90] See Appendix 1

[91] John T Chirban, *Interviewing in Depth, The Interactive-Relational Approach* (Sage Publications, London 1996) 127

[92] Jowett Madeleine Jowett and Gill O'Toole, 'Focusing researchers' minds: experiences of using focus groups in feminist qualitative research' (2006) 6(4) Qualitative Research 453

[93] Jenny Kitzinger 'The Methodology of Focus Groups: The Importance of Interaction Between Research Participants' (1994) 16(1) Sociology of Health and Illness 117

[94] Dr Jean Clandinin and F. Michael Connelly, 'Personal Experience Methods' in Normal K Dezin and Yvonna Lincoln (eds) *Collecting and Interpreting Qualitative Materials* (SAGE London, 1998) 166

[95] Jowett (n92) 459

may have influenced responses, particularly in students who felt some deference to an adult visiting their school from a university, describing a project potentially involving publication.

In terms of data analysis, the researcher interpreted and represented participants' stories within her own self-fashioned narration. Generalisations made from participants' accounts are likely to be based on the unspoken knowledge and emotional feelings the participant's story provoked in the researcher.[96] The researcher's representation of the stories told by students and staff, and the conclusions drawn from such accounts, potentially told a story coloured by her own views of online abuse, and interest in online abuse as a social problem.[97] Such personal interest may be evident in the final analysis, as data analysis inevitably bears the marks of its producer.[98]

1.8 Date of accuracy

Due to the constant change affecting online abuse regulation, policy and the fast-paced change of technological architecture, in order to complete this thesis it has been necessary to select a cut off point at which the researcher may not have incorporated policy changes or amendments to regulation and architecture. The regulation cut off point is 1 September 2018.

1.9 Freedom of expression

This study focuses upon online abuse as behaviour, and does not focus upon online abuse as speech in the context of freedom of expression. However, it is noted that schools are places where ideas may be explored, and strategies to reduce online abuse may interfere with the ability of young people to engage in controversial ideas or contentious speech.[99]

An examination of how online speech should be regulated is unavoidably connected to a contrasting discussion regarding individuals' rights to express and explore thoughts and opinions. However this thesis does not focus upon the tension which exists between speech regulation and freedom of expression. While it is acknowledged this tension is a significant issue, its investigation does not accord with the overarching aim of this thesis, which is to

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[96] Norman K Denzin, 'The Art and Politics of Interpretation' in Normal K Dezin and Yvonna Lincoln (eds) *Collecting and Interpreting Qualitative Materials* (SAGE London, 1998) 313

[97] Clandinin (n94) 156

[98] Jowett (n92) 453

[99] Carrie-Anne Myres and Helen Cowie, ' Bullying at University: The Social and Legal Contexts of Cyberbullying Among University Students' (2017) 48(8) Journal of Cross-Cultural Psychology 1172, and also see: Stephen J Cerci and Wendy M Williams, 'Who Decides What Is Acceptable Speech On Campus? Why Restricting Free Speech Is Not the Answer' (2018) 13(3) Perspectives on Psychological Science 299

discover methods of regulation which may minimise online abuse amongst secondary school students.

The legal framework surrounding speech in England differs from other jurisdictions such as the United States of America, which asserts a robust defence of speech as protected by the First Amendment to the Constitution of the United States. This includes students' speech unless it creates a substantially material disruption to the normal business of the school.[100] In the United States, it is common for litigation to be instituted against schools which punish students for online abuse behaviour.[101] Such cases have left school administrators cautious about disciplining young people about controversial speech online,[102] particularly when online abuse behaviour is perpetrated from home.[103]

In England, student speech is also protected by law. Article 10 of the Human Rights Act 1998 protects students' rights to hold opinions and exchange ideas and information without government interference. The Equalities and Human Rights Commission has produced guidance for higher education providers,[104] from which inferences may be extrapolated when considering the position of students attending secondary schools. It notes that, 'everyone has the right to express and receive views and opinions, including those that may offend shock or disturb others'.[105] Similarly, section 43 of the Education Act 1986 (No. 2) which applies to higher education institutions, provides that those concerned with the governing of universities and colleges should take reasonable steps to provide freedom of speech to students and staff. [106] The European Court of Human Rights has referred to the right to freedom of expression

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[100] Freedom of Speech is protected by the Constitution of the United States, Amendment 1. With regards to schools, courts in the United States are required to consider if the speech had a material and substantial disruption to the operation of the school. The seminal case being *Tinker v Des Moines Tinker v Des Moines* 393 US 503 (US Supreme Court 1969)

[101] For example, an American student successfully sued her school for violating her First Amendment rights after she was suspended for creating a fake MySpace page in which she described her Principal as a 'hairy expressionless sex addict': United States Court of Appeals for the Third Circuit No 08-4138, *JS Ex Rel. Snyder a Minor v Blue Mountain School District* 650 F. 3d 915 (3d Cir 2011), also see *Kara Kowalski v Berkeley County Schools* 652 F. 3d 565 (4th Cir 2011) (United States Court of Appeals)

[102] Thomas Eveslage and Scott Eveslage, 'Cyberbullying and Student Expression' in William A Babcock and William H Freivogel (eds) *The SAGE guide to key issues in mass media ethics and law* (SAGE 2015) 53

[103] Shariff (n8) 99, referring to *Sullivan v Houston Independent School District* 333 F. Supp 1149 (S.D. Tex 1971) (United States District Court)

[104] 'Freedom of Expression: a guide for higher education providers and students' unions in England and Wales' *Equalities and Human Rights Commission* (February 2019)

[105] ibid 6

[106] The National Curriculum requires that students must study subjects covering sex and relationships from the age of 11 onwards, as well as religious education. Parents may choose to withdraw their children from religious education classes: 'Gov.UK 'The National Curriculum' <https://www.gov.uk/national-curriculum/other-compulsory-subjects> last viewed 1 April 2019

as one of the essential foundations of a democratic society,[107] as it provides the right to exchange information, debate ideas and express opinions and political views. The National Curriculum[108] includes instruction regarding the importance of discussion regarding ideas about; sex, education and religious values.[109] As such, educators have a responsibility to encourage dialogue about matters of a controversial nature.

Unlike the Unites States, there is no flood of English secondary school students turning to the courts to defend their right to engage in online abuse or controversial speech which occurred either in or outside school. This may be because freedom of expression in England is a right subject to caveats, including; national security, public safety and the protection of health or morals.[110] As defined in 1.3.2, the type of speech defined in this thesis as online abuse includes; sending cruel messages to cause a person harm or distress and distributing naked or sexual images or video of a person without their consent. The Human Rights Act 1998 is not typically used to defend this type of speech. Speech of this nature is unlikely to qualify as scholarly debate, or expression of political view necessary for the maintenance of democracy. An insulting or abusive term may arguably be a legitimate expression of opinion, however as will be discussed in Chapter 3, there is limited applicability of the right to freedom of expression in England, where that expression is contrary to the criminal law.

As will be discussed in Chapter 4, secondary schools have extensive civil duties to protect young people from harm, whereas their duty to protect students' freedom of expression is rarely highlighted to the same degree. The empirical data indicated a culture within schools whereby students accepted they could be punished for online abuse by their school, and to some extent the success of teachers' strategies in dealing with online abuse depended upon this culture. As noted by Teacher B of School 2:

'to be fair, when you ask them to delete it, they just delete it.'[111]

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[107] *Handyside v The United Kingdom* (App no 5493/72) ECHR [1976]
[108] The National Curriculum includes subjects to be taught in all local authority maintained schools: https://www.gov.uk/government/collections/national-curriculum#other-curriculum-subjects last viewed 20 April 2019
[109] In this resource produced by the British Library, teachers were provided with an exercise whereby a conservative school banned all books and online content featuring women: 'Magna Carta: My Digital Rights, Teachers notes' *<British Library https://www.bl.uk/teaching-resources/mcdr-freedom-school-censorship#>*
[110] Human Rights Act (1988) Schedule 1, Article 10
[111] School 2 Teacher B line 126, This type of approach was also confirmed with Teacher B School 3

The striking of a balance whereby young people in England retain the right to engage in challenging or controversial speech, contrasted against the obligations of the school and state to protect students from harm, is a notable and worthy discussion. However this discussion strays from the main aim of this thesis, which argues online abuse may cause harm to students, and on that basis searches for regulatory methods to remedy or minimise such harms. Therefore freedom of expression was not explored as a major theme in this thesis as the role of freedom of expression in schools may more properly form the basis of future research.

2

ONLINE ABUSE BEHAVIOUR: CAUSE AND IMPACT

2.1. Introduction

This chapter addresses why online abuse behaviour is a problem amongst secondary school students, and examines the types of harm it causes those involved. It considers the sociological basis for the online abuse phenomenon, and examines developmental characteristics associated with adolescence which may explain why online abuse may be particularly relevant to young people. The role of social factors in reducing online abuse and its impact is considered, including how perceived normative behaviour can influence the prevalence of online abuse, and how the response of parents and school staff can affect the wellbeing of a young person. Practical problems associated with students accessing educational support structures such as limited or untrained staff, will also be discussed. This chapter will use findings from the empirical research to provide illustrative examples of how online abuse affects young people, and how interactions with parents and teachers are relevant to the outcome of an incident. The analysis will assist to form a critical view in later chapters regarding whether the current regulatory frameworks designed to reduce online abuse can be justified.

2.2 Harm caused by online abuse

Online abuse between young people is potentially damaging to both victims and abusers. It affects young people more than other types of communications including graphic content or sexually explicit images.[112] Online abuse may affect young peoples' confidence, self esteem,

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[112] The Childnet 'Have your Say' survey indicated that 23% of secondary school children reported not enjoying their time online due to mean comments: Childnet Submission:
<http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/2603>

attendance at school, academic performance,[113] enjoyment of relationships[114] and the ability to socialise outside of school. [115]

The empirical research highlighted the impact of online abuse upon students' state of mind and their ability to complete their studies effectively. Student A School 1 described how he felt depressed and his normally excellent grades suffered:

'I was really, really sad, my grade levels went way down'.[116]

Student A School 3 described how she pretended to be sick and missed weeks of school as she did not feel like she could face her tormentors who also attended the same school:

'I ended up taking a lot of time off between Christmas and April'.[117]

Online abuse has been identified as a strong contributing factor for poor adolescent mental health. It has been linked with low self-esteem, depression, [118] self-harm and aggression towards friends and family,[119] psychosomatic complaints, suicidal ideation,[120]suicide attempt and completed suicides.[121] A 1% rise in the prevalence of online abuse has been linked to a

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[113] Fabio Sticca & Sonja Perren' 'Is cyberbullying worse than traditional bullying? Examining the Differential Roles of Medium, Publicity, and Anonymity for the Perceived Severity of Bullying' (2013) 42, Journal of Youth Adolescence 741 referring to K Machmutow, S Perren, F Sticca & FD Alsaker 'Peer victimisation and depressive symptoms" can specific coping strategies buffer the negative impact of cybervictimsation?' (2102) 17(3) Emotional and Behavioural Difficulties 403-420

[114] Fabio Sticca & Sonja Perren' Examining the Differential Roles of Medium, Publicity, and Anonymity for the Perceived Severity of Bullying' (2013) 42, Journal of Youth Adolescence 747 741 referring to K Machmutow, S Perren, F Sticca & FD Alsaker 'Peer victimisation and depressive symptoms" can specific coping strategies buffer the negative impact of cyber-victimisation?' (2102) 17(3) Emotional and Behavioural Difficulties 403-420

[115] Niamh O'Brien and Tina Moules 'Not stick and stones but tweets and texts: findings from a national cyberbullying project' (2013) 31 No 1 Pastoral Care in Education 60: where it was noted in the research findings: '22.4% (out of 89 surveyed) reported having their confidence affected 'a lot' or 'very much'. One girl reported developing anorexia, and a quarter of those who had been cyberbullied stayed away from school and a third stopped socializing outside of school'

[116] Student A School 1 line 181

[117] Student A School 3 line 106

[118] Katja Machmutow, Sonja Perren, Fabio Sticca & Francious D Alsaker 'Peer victimisation and depressive symptoms" can specific coping strategies buffer the negative impact of cybervictimsation?' (2102) 17(3) Emotional and Behavioural Difficulties 403

[119] Veronika Sleglova and Alena Cerna 'Cyberbullying in Adolescent Victims: Perception and Coping' 2011) 5(2) Journal of Psychological Research on cyberspace Cyber-psychology Article 4

[120] Peter K Smith, 'School based interventions to address bullying' (2016) 4(2) Estonian Journal of Education 143

[121] A meta analysis across 34 studies found links between cyberbullying and suicidal ideation amongst 284375 young people and suicide attempts among 70102 young people: Mitch van Geel, Paul Vedder, Jenny Tanilon, 'Relationship Between Peer Victimisation, Cyberbullying and suicide in Children and Adolescents' (2014) (5) JAMA Pediatrics 168

28% increase in unnatural child death.[122] Many deaths linked to online abuse have been reported in the media. [123] Online abuse is more strongly related to suicidal ideation and risk of suicide[124] than traditional bullying[125] alone. The Ditch the Label Report 2017 ('DTL report'), [126] indicated 24% of young people who had been bullied in the past year had suicidal thoughts. [127] Of the student participants in the empirical research, 1 student spoke of suicidal thoughts at the time of his abuse and 4 more students discussed involvement in self-harm.[128]

Student F School 2 stated he self-harmed due to online and face-to-face bullying regarding his sexuality and race:

'It lead to me self harming as I didn't know how to cope with it'. [129]

Student F School 3 stated that she engaged in self-harm in order to distract her from a prolonged abusive situation, which also comprised of a mix of online and offline bullying:

'I just thought that to take the pain off, I would cause myself more pain, to take my mind off it. It did not'. [130]

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[122] King-wa Fu, Chung-Hong and Patrick Ip, 'Exploring the relationship between cyberbullying and unnatural child death: an ecological study of twenty four European countries' (2014) 14 BMC Pediatrics 195

[123] Teenage deaths connected to the SNS have been reported in the media, including the deaths of; Hannah Smith, Joshua Unsworth, Daniel Perry, Erin Gallagher, Felix Alexander, Megan Evans, Natasha MacBryde, and Asad KhanMargaret Driscoll, 'The Children Bullied to Death, and what can be done to save them' The telegraph, 9 October 2016 and see 'Stories of 7 teen suicides' (two of these deaths were Florida based teenagers and one was from Ireland) http://nobullying.com/stories-of-7-teen-suicides-because-of-ask-fm-bullying/ (undated)

[124] Gianluca Gini, Dorothy L Espelage, 'Peer Victimisation, Cyberbullying, and Suicide Risk in Children and Adolescents' (6 August 2014) JAMA Network

[125] Traditional Bullying is a term used for bullying which is not conducted online and can include bullying which is physical, verbal or relational (as in excluding someone from a group) see Tracy Waasdorp and Catherine Bradshaw, ' The Overlap Between Cyberbullying and Traditional Bullying' (2014) 56 Journal of Adolescent Health 483

[126] Ditch the Label Annual Bullying Report 2017 https://www.ditchthelabel.org/research-papers/ Ditch the Label is a UK based anti-bullying charity. The DTL report comprises of a survey of 10,000 young people aged 12-20 in the UK about social media use. It indicated 37% of young people reported they developed anxiety, 24% reported suicidal thoughts, 23% self harmed, 12% developed an eating disorder, 8% abused drugs

[127] While suicide as a direct result of online abuse does occur, it remains relatively rare in relation to the estimated amount of online abuse incidents: There are approximately 7.4 million young people in the UK, an estimated 50% of young people have experienced online abuse at some point, and 20% of young people have experienced online abuse in the past year according to the DTL report. This equates to millions of online abuse incidents per year in England. In 2013 7.4 million people living in England were 10-19 year olds: Ann Hagell, John Coleman and Fiona Brooks, AYPH and Public Health England, 'Key Data on Adolescence' (2015)

[128] These students included: Student A School 1 (who admitted suicidal thoughts), Student F School 2, Student F School 3, Student D School 3, Student A School 3 (who admitted self harm)

[129] Student F School 2 line 95

[130] Student F School 3 line 245

The true effect of online abuse in students may be difficult to quantify, as it is rare for online abuse to occur in isolation. It is normally perpetrated on victims who are also suffering from traditional forms of abuse. [131] The circumstances which give rise to a young person's victimisation may also contribute to their distress, for example; confusion regarding sexuality and fear associated with stigma, may of itself be distressing and contribute to a victim's emotional state.[132] However where a victim suffers more than one source of distress, findings from the empirical research indicated an online abuse component contributed a significant proportion of that distress. Student F School 2 described that of all the bullying he suffered, he considered the online aspect the most distressing:

> 'Cyberbullying was worse
>
> **How was it Worse?**
>
> Because other people could see it too'. [133]

The combination of face-to- face and online abuse can be devastating for young people, with victims of both online abuse and traditional bullying, so called 'poly victims' having the highest risk for poor psychological functioning.[134]

2.3 Perpetrators and moral disengagement

Not only do victims of online abuse suffer, the execution of the abuse may of itself cause problems for mental health. Young people who engage in online abuse are more likely to suffer from anxiety and depression and have poorer psychosocial relationships than non-perpetrators. [135] There is evidence of links between illicit drug use in adults who were

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[131] Most victims of cyberbullying also indicated they suffered from traditional bullying: Tracy Waasdorp and Catherine Bradshaw, ' The Overlap Between Cyberbullying and Traditional Bullying' (2014) 56 Journal of Adolescent Health 487

[132] Joanna Almeida, Renee M Johnson, Heather L Corliss, Beth E Molnar and Deborah Azael 'Emotional Distress Amongst LGBT Youth: The Influence of Perceived Discrimination Based on Sexual Orientation' (2009) 38(7) Journal of Youth Adolescence 1001

[133] Student F School 2 line 227

[134] Dieter Wolke, Kirsty Lee and Alexa Guy, 'Cyberbullying: a storm in a tea cup' (2017) 26 European Child Adolescent Psychiatry 906

[135] Marilyn Campbell, Phillip Slee, Barbara Spears, Des Bulter and Sally Kift 'Do cyberbullies suffer too? Cyberbullies' perceptions of the harm they cause to others and their own mental health' (2013) 34 School Psychology International 622, quoting Courtney Wilton & Marilyn Campbell 'An exploration of the reasons why adolescents engage in traditional and cyberbullying' (2011) 63 Journal of Educational Sciences and Psychology 613, also see Kathleen Stassen Berger, 'Update on bullying at school: Science forgotten?' (2007)27 Developmental Review, Science Direct 103

childhood bullies.[136] There may be underlying causes for individual abusers who present with these problems, and their involvement in bulling or abuse as an adolescent may not be a leading cause for their poor life circumstances or health. However, this thesis argues that engaging in repeated online abuse increases or exacerbates the likelihood of poorer mental health and relationships due to its causal link to moral disengagement, a process where the abuser emotionally disassociates from their actions. This is a gradual process whereby an abuser become less troubled by each instance of aggressive behaviour,[137] as intellectual reasoning interacts with emotions such as guilt and shame.[138] A young person is likely to cognitively disassociate themselves from their participation in behaviour they know is likely to hurt someone. When a person's conduct does not reflect their moral standards, this results in uncomfortable self-condemnation, unless the person is able to mentally reconstruct the situation in such a way that the behaviour does not violate their moral code.[139] This is achieved by producing an internal narrative, which portrays the harmful behaviour as minimal, for example, that an act of bullying was a joke.[140] Perpetrators are able to justify their actions as 'having a laugh', and bullying incidents are reconstructed to blame the victim.[141] In contrast, if a victim is viewed with empathy,[142] it is difficult or uncomfortable to harm them. A young person who hurts another is likely to realise initially that the behaviour is wrong, but by changing the internal narrative the uncomfortable feeling of guilt is avoided. Eventually, after

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[136] S Niemela, A Brunstein-Klomek, LSillanmaki, H Helenius, J Piha, K Kumpulainen, I Moilanen, T, Tamminen, F Almqvist and A, Sourander, ' Childhood bullying behaviours at age eight and substance use at 18 among males, a nationwide prospective study' (2011) Addictive Behaviours 36(3) 256

[137] Gianluca Gini, Tiziana Pozzoli, Shelley Hymel, 'Moral Disengagement among children and youth: a meta-analytic review of links to aggressive behaviour' (2014) 40 Aggressive Behaviour, 64 quoting Bandura A. 'Selective Moral Disengagement in the exercise of moral agency' (2002) 312 Journal of Moral Education' 110

[138] Ersilia Menesini, Benedetta Emanuela Palladino, and Annalaura Nocentini, ' Emotions of Moral Disengagement, Class Norms and Bullying in Adolescence'(2015) 16(1) Merrill-Palmer Quarterly 124

[139] A Bandura, 'Moral Disengagement in the perpetration of inhumanities' (1999) 3 Personality and social psychology review 193

[140] Marilyn Campbell, Phillip Slee, Barbara Spears, Des Bulter and Sally Kift 'Do cyberbullies suffer too? Cyberbullies' perceptions of the harm they cause to others and their own mental health' (2013) 34 School Psychology International 622 quoting Courtney Wilton and Marilyn Campbell 'An exploration of the reasons why adolescents engage in traditional and cyberbullying' (2011) 63 Journal of Educational Sciences and Psychology 613

[141] For example as being too weak to handle what was only meant to be fun: Wanda Cassidy, Chantal Faucher and Margaret Jackson 'Cyberbullying among youth: A comprehensive review of current international research and its implications and application to policy and practice' (2013) 34 School Psychology International 582 quoting Kowalski R M, Limber SP and Agatson PW 'Cyberbullying: Bullying in the digital age (2nd Ed) Blackwell (2012) also, some research suggests that young people view victims of cyberbullying as bringing it upon themselves, by allowing themselves to be affected by the words of others, and that perpetrators of bullying are generally, only trying to have fun: Niamh O'Brien and Tina Moules 'Not stick and stones but tweets and texts: findings from a national cyberbullying project' (2013) 31 No 1 Pastoral Care in Education 59

[142] Albert Bandura, Claudio Barbaranelli, Gian Vittrio Caprara and Concetta Pastorelli 'Mechanisms of Moral Disengagement in the Exercise of Moral Agency' (1996) 71(2) Journal of Personality and Social Psychology 371

repeated incidents, no guilt is felt at all.[143] In these circumstances young people do not necessarily recognise that their actions constitute abuse.[144] Not only do negative feelings towards online abuse dissipate, positive feelings may emerge regarding the behaviour,[145] and the aggressor eventually considers the activity enjoyable.[146] The more often the act is undertaken successfully, the more the behaviour is engrained as part of the young person's character. If a person continues to engage in bullying behaviour, without repercussions, then the behaviour is likely to persist with greater frequency.[147] The detachment experienced by bullies is arguably a symptom indicating damage to a young person's growing perceptions of appropriate social communications and moral standards.[148] The process of moral disengagement arguably subverts a basic human experience of feeling compassion and empathy for another person's suffering, and may have great impact on that person's ability to form satisfactory relationships.[149]

2.4 Prevalence

While studies designed to report upon the prevalence and severity of online abuse amongst students vary, there is enough consistency in published research to conclude a moderate proportion of secondary school students in England have experienced some form of online abuse,[150] and many students suffer harm as a result of online abuse.[151] The prevalence of online

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[143] Angela Mazzone, Marina Camodeca and Christina Salmivalli, ' Interactive effects of guilt and moral disengagement on bullying, defending and outsider behaviour' (2016) 45(4)Journal of Moral Education 419

[144] Gianluca Gini, Tiziana Pozzoli, Shelley Hymel, 'Moral Disengagement among children and youth: a meta-analytic review of links to aggressive behaviour' (2014) 40 Aggressive Behaviour, 58 referring to: Pornari C D & Wood J 'Peer and cyber aggression in secondary school students: the role of moral disengagement, hostile attribution bias and outcome expectancies' (2010) 36 Aggressive Behaviour 81-94

[145] When individuals learn that cyberbullying is anonymous and negative consequences are unlikely to occur, cyberbullying is likely to occur: Christopher P Bartlett 'Anonymously Hurting Others Online: The Effect of Anonymity on Cyberbullying Frequency' (2013) 2 Psychology of Popular Media Culture 70

[146] 'It has been shown that students who cyberbully reported that their main motive was to make themselves feel good': Campbell and Phillip Slee (n140) 622

[147] Bartlett (n145) 70

[148] Gianluca Gini, Tiziana Pozzoli, Shelley Hymel, 'Moral Disengagement among children and youth: a meta-analytic review of links to aggressive behaviour' Aggressive Behaviour, Volume 40 issue 1 January (2014) 64 quoting Bandura A. 'Selective Moral Disengagement in the exercise of moral agency' (2002) 312 Journal of Moral Education', 110

[149] Sarah-Jayne Blakemore, 'The Developing Brain: Implications for Education' (2010) 65 (6) 744

[150] 'Hundreds of scientists questioning thousands of children in dozens of nations have found that virtually every child has experience as bully, victim, and or observer'. Kathleen Stassen Berger, 'Update on bullying at school: Science forgotten?' (2007) 27 Developmental Review, Science Direct 98

[151] 37% of children 11-16 surveyed described they had been 'trolled' in the previous 12 month (sarcastic, unkind negative comments online) Clarie Lilley, Ruth Ball, Heather Vernon, 'The experiences of 11-16 year olds on social networking sites' (2014) NSPCC, 17% of adolescent respondents had experienced what they would describe as 'cyberbullying' Ditch the Label Annual Bullying Survey (2017), and see Ann Hagell, John Coleman and Fiona Brooks, AYPH and Public Health England, 'Key Data on Adolescence' (2015) where it was found 17.9% of 11-15 year olds described being bullied or harassed online in the 8 weeks leading up to the survey.

abuse was reflected in the empirical research, with 94% of students interviewed indicating they had experienced online abuse,[152] and 29% of students interviewed reporting they had suffered significant harm as a consequence including suicidal ideation or self-harm.[153]   The evidence regarding the prevalence of online abuse, and its effects upon those involved, indicates this is a problem worthy of research dedicated to providing better solutions for the overall reduction in online abuse.

2.5 Age and developmental factors

Online abuse may be prevalent between adolescents due to social and cognitive developments which occur during this time in a young person's life.[154] Adolescence is broadly defined as between 12 and 20 years of age, and during this period communication amongst peers escalates in terms of frequency and intensity, with friendships providing critical opportunities for the development of social and relationship skills.[155]

2.5.1 Social and cognitive development

Social contacts maintained through social media are important to young people, and when difficulties occur with these relationships, this causes them distress. [156] As children move from childhood to adulthood, the adolescent brain is malleable, and one of the features of the adolescent brain which undergoes the most change, relates to their social cognitive skills, with dramatic brain reorganisation taking place. [157] During adolescence the prefrontal cortex responsible for impulse control is continuing to develop, and areas of the brain involved in mature and reasoned decision-making, are the last to develop.[158] Events which occur at this age impact the young person's cognitive, emotional and social progression which may have on-going effect in their adult life. [159] Young people may be more vulnerable than adults in an online environment, particularly those new to social media who may encounter content and

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[152] See Appendix 2- Quantitative Data

[153] These students included: Student A School 1 (who admitted suicidal thoughts), Student F School 2, Student F School 3, Student D School 3, Student A School 3 (who admitted self harm)

[154] Katie Davis and Lucas Koepke, ' Risk and factors associated with cyberbullying: Are relationships or rules more protective?' (2016) 41(4) Learning Media and Technology 521

[155] Madeleine J George, Candice L Odgers, 'Seven Fears and the Science of How Mobile Technologies May be Influencing Adolescents in the Digital Age' (2015) 10(6)Perspectives on Psychological Science 833

[156] The level of distress depends upon factors such as the length of the social media relationship or whether the young person knows the contact in real life: Jennifer L Bevan, Pei Chern Ang & James B Fearns, 'Being Un-friended on Facebook: an application of Expectancy Violation Theory (2014) 33 Computers in Human Behaviour 171

[157] Sarah-Jayne Blakemore, 'The Developing Brain: Implications for Education' (2010) 65 (6) Neuron 744

[158] Raphael Cohen-Almagor, 'Social Responsibility on the Internet: Addressing the Challenge of Cyberbullying' (2018) 39 Aggression and Violent Behavior 42

[159] Sarah-Jayne Blakemore, 'The Developing Brain: Implications for Education' (2010) 65 (6) Neuron 744

communications which do not suit their age or their social and cognitive skills, leaving them less able to cope with difficult experiences.[160] In adolescence, young people learn how to negotiate with their peers, however when a social situation is challenging, adolescents are likely to emotionally disengage.[161] As bullying behaviour naturally peaks between pre-adolescence to adolescence, moral disengagement is more prevalent.[162]

2.5.2 Peer Hierarchy

Attitudes towards victims have been found to be the most negative at approximately 14-15 years of age, which may be associated with a peak time in which young people try to position themselves safely in their peer hierarchy, and this may include distancing themselves from victims.[163] For many young people, being accepted by their peer group, and positioning themselves to avoid risking rejection from their peer group, preoccupies their conscious and subconscious thoughts. Friendships and intimate interactions are important and can protect the young person from bullying.[164]

The schooling system brings together students of similar ages at similar stages of cognitive and emotional development. When people spend time together in groups, certain social behaviours are expected, including some level of aggressive behaviour between individuals, and activities evidencing of inequalities of power.[165] The secondary school environment pools together hundreds of children of a similar age, who are all transitioning through adolescence. Schools in many ways create the perfect environment for bullying and online abuse, in that it facilitates hectic interrelationships with a great number of young participants.[166] It is not

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[160] Department for Education: The Bailey Review Reports: Letting Children Be Children Progress Report (24 May 2013) Letting Children be Children (6 June 2011) <https://www.gov.uk/government/collections/bailey-review>

[161] Kathleen Stassen Berger, 'Update on bullying at school: Science forgotten?' (2007) 27 Developmental Review, Science Direct 103

[162] 'Consistent with Bandura's idea that moral disengagement develops over time as a result of behaving in contrast to internal moral values, it was expected that the relation between MD (moral disengagement) and aggression would be stronger in adolescence as compared to childhood'. Gianluca Gini, Tiziana Pozzoli, Shelley Hymel, 'Moral Disengagement among children and youth: a meta-analytic review of links to aggressive behaviour' (2014) Volume 40 issue 1 January Aggressive Behaviour, 58

[163] Ken Rigby, Giulio Botolozzo, ' How schoolchildren's acceptance of self and others relate to their attitudes to victims of bullying' (2013) 16(2)Social Psychology of Education 181

[164] Camilla Forsberg and Robert Thornberg, 'The social belonging: Children's perspectives on bullying' (2016) 78 IJER 13

[165] Peter K Smith, *Understanding School Bullying* (Sage Publishing 2014) 103

[166] Leonidas Kyriakides, Bert Creemers, Dona Papastylianou, Marietta Papadatou-Pastou, 'Improving the School Learning Environment to Reduce Bullying: An experimental Study'' (2014) 58(4) Scandinavian Journal of Educational Research 453

surprising that such problems develop between secondary school students in such peer intensive social environments.[167]

2.6 Online abuse is a social problem

Technological elements associated with online abuse affecting the behaviour of students will be addressed further in this chapter, and in Chapter 5. However in the first instance, it is argued that while technology has added to the complexity of dealing with aggressive behaviour between students, social factors often cause both face-to-face and online abuse. [168] Consequently, strategies to reduce online abuse should address such social factors to impact overall abusive behaviour.

2.6.1 Bullied offline, bullied online

A significant proportion of students suffer traditional forms of bullying not carried out online,[169] with research indicating student victims of online abuse also regularly suffer from traditional forms of bullying.[170] It appears uncommon for students to suffer exclusively from online abuse without also suffering another type of traditional bullying.[171] This is partially corroborated by the findings in the empirical research, where 94% of student participants reported online abuse, and 58% admitted also suffering forms of traditional bullying.[172] Students interviewed who experienced the most distress evidenced by self- harm or suicidal ideation, all experienced online abuse and face-to-face bullying.[173]

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[167] H Wesley Perkins, David W Craig, and Jessica M Perkins, 'Using social norms to reduce bullying: A research intervention among adolescent in five middle schools' (2011) 14(5) Group Processes and Intergroup Relations 703

[168] Tracy Waasdorp and Catherine Bradshaw, ' The Overlap Between Cyberbullying and Traditional Bullying' (2014) 56 Journal of Adolescent Health 487

[169] Traditional Bullying is a term used for bullying which is not conducted online and can include bullying which is physical, verbal or relational (as in excluding someone from a group) see Tracy Waasdorp and Catherine Bradshaw, ' The Overlap Between Cyberbullying and Traditional Bullying' (2014) 56 Journal of Adolescent Health 483 and see Ann Hagell, John Coleman and Fiona Brooks, AYPH and Public Health England, 'Key Data on Adolescence' (2015) which reported 34% of 11-15 year olds suffered from traditional bullying in the 8 weeks leading up to the survey and the DTL Report which reported 54% of respondents had been bullied

[170] Most victims of cyberbullying also indicated they suffered from traditional bullying: Tracy Waasdorp and Catherine Bradshaw, ' The Overlap Between Cyberbullying and Traditional Bullying' (2014) 56 Journal of Adolescent Health 487

[171] Most victims of cyberbullying also indicated they suffered from traditional bullying: Tracy Waasdorp and Catherine Bradshaw, ' The Overlap Between Cyberbullying and Traditional Bullying' (2014) 56 Journal of Adolescent Health 487 and see also Dieter Wolke, Kirsty Lee and Alexa Guy, 'Cyberbullying: a storm in a tea cup' (2017) 26 European Child Adolescent Psychiatry 906

[172] Refer to Appendix 2- Quantitative Data

[173] Student A School 1 experienced suicidal ideation, Student F School 2, Student A School 3 and Student F School 3 all engaged in self-harm which they attributed to a combination of face-to-face and online abuse

Online abuse amongst secondary school students is not only a consequence of new technology, it is a new form of bullying,[174] which has emerged alongside traditional bullying and has not necessarily created new victims.[175] As discussed at 2.2 above, young people who are both victims of online and offline abuse are most likely to develop significant psychological symptoms.[176] Interventions designed to reduce traditional bullying have positive effects on online abuse[177] due to the commonality of their causes. This thesis argues that social factors are instrumental in the formation of abusive behaviour as normative in both online and offline environments, and these are examined below.

2.6.2 Normative social influence

Later chapters in this thesis examine how online abuse may be regulated by legal frameworks, school disciplinary policy and technical architecture. However behaviour is also influenced by social norms,[178] where failure to adhere to a social norm risks disapproval by a social group.[179] As social influences perform the function of regulation where norms promote pro-social behaviour, norms may also encourage anti-social behaviour. This thesis argues the encouragement of overall pro-social behaviour should form part of any solution. Both bullying and online abuse are social events, in that on-going bullying and online abuse involve the acquiescence of a perpetrator, a victim and an audience.[180] It is accepted there are also influences which appear on an individual level. A perpetrator may lack affective empathy which increases their likelihood to engage in acts of bullying,[181] and there may be individuals who are

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[174] Gabriella Olsson, Sara Brolin Laftman and Bitte Moden, ' School Collective Efficacy and Bullying Behaviour: A Multilevel Study' (2017) 14(12) International Journal Environmental Research and Public Health 1607

[175] It has been argued that cyber-bullying creates very few 'new' victims see: Dieter Wolke, Kirsty Lee and Alexa Guy, 'Cyberbullying: a storm in a tea cup' (2017) 26 European Child Adolescent Psychiatry 899

[176] Dieter Wolke, Kirsty Lee and Alexa Guy, 'Cyberbullying: a storm in a tea cup' (2017) 26 European Child Adolescent Psychiatry 906

[177] Peter K Smith, 'School based interventions to address bullying' (2016) Estonian Journal of Education 4(2) 154 referring to a meta analysis conducted by: Robin M Kowalski, Gary W Giumetti, Amber N Schroeder and Micah R Lattanner 'Bullying in the digital age: a critical review and meta analysis of cyberbullying research among youth' (2014) 140(4) Psychological Bulletin 1073

[178] Pathetic dot theory as described by Lawrence Lessig whereby social norms, architecture, the market and the law regulate behaviour, architecture is discussed in Chapter 5: Lawrence Lessig *Code 2.0* (Basic Books, 2006) 200

[179] Pieter Keleve and Richard De Mulder, 'Code is Murphy's Law' (2005) 19(3) International Review of Law, Computers and Technology 317

[180] Doug Risner, 'Bullying Victimisation and social support of adolescent male dance students: an analysis of findings' (2014) 15(2) Research in Dance Education 179

[181] Individuals who bully may have a lack of affective empathy, as observed in: Inger M Endresen and Dan A Olweus, 'Self reported empathy in Norweigan adolescents: Sex differences, age trends and relationship to bullying' in AC Bohart and DJ Stipek (Eds) *Constructive and Destructive Behaviour: Implications for family school and society* (American Psychological Association 2001)

more vulnerable to attack, such as a person suffering from low self esteem.[182] However this thesis argues that social norms greatly contribute to behaviours which can either support or discourage online abuse behaviour, which is significant as these may be influenced more readily by methods of regulation than individual personality traits.

A single act of aggression involves an imbalance of power between the perpetrator and victim.[183] However prolonged and unchallenged acts of abusive behaviour depend upon the supporting social structure surrounding perpetrator and victim.[184] Subjective norms[185] are influenced by the perception of what is the prevailing standard of behaviour in a young person's peer group, school environment and home. Both schools and the young person's home-life are instrumental in creating an environment, which inhibits norms facilitating abusive behaviour.

2.6.3 The School Environment

The school environment facilitates the rigorous internalisation of social norms due to intense, intimate and daily peer contact,[186] where young people develop emotional responses to one another's behaviour. [187] Social norms are collectively recognised rules of conduct that prescribe socially acceptable behaviours in a given situation.[188] Schools can offer young people a predictable and stable facility in which to establish important friendships and social groups,[189] and provide a backdrop for the creation of social norms. However within these environments

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[182] 'For victims, a lack of social skills, peer rejection are medium level predictors. For students who are both bullies and victims, low self esteem, low academic confidence, poor school climate are considered relevant'. Peter K Smith, Understanding School Bullying (Sage Publishing 2014) 107 and also see: The Ditch the Label 2017 annual bullying survey where it indicated bisexual and homosexual people may be more likely to be bullied, 72% of respondents identifying as homosexual and 82% who identified as lesbian reported being bullied

[183] Claire F Garandeau, Ihno A Lee and Christina Salmivalli, 'Inequality Matters: Classroom Status Hierarchy and Adolescents' Bullying' (2013) 43 (7) Journal of Youth and Adolescence 1123 referring to D Olweus, *The Revised Olweus Bully/Victim Questionnaire* Research Centre for Health Promotion, University of Bergen (1996)

[184] Kathleen Stassen Berger, 'Update on bullying at school: Science forgotten?' (2007 27) Developmental Review, Science Direct 91

[185] The subjective norm is the perception of what others think of the behavior and is formed by normative beliefs: Sara Pabian, Heidi Vanderbosch, 'Using the theory of planned behavior to understand cyberbullying: the importance of beliefs for developing interventions' (2014) 11(4) European Journal of Developmental Psychology 463

[186] H Wesley Perkins, David W Craig, and Jessica M Perkins, 'Using social norms to reduce bullying: A research intervention among adolescent in five middle schools' (2011) 14(5) Group Processes and Intergroup Relations 717

[187] Raul Lopez-Perez, 'Aversion to norm breaking: A model' (2008) 64(1)Games and Economic Behavior 237

[188] Simon Gachter, Martin Sefton, Daniel Nosenzo, 'Peer Effects in Pro-Social Behaviour: Social Norms or Social Preferences?' (2013) 11(3) Journal of the European Economic Association 548

[189] Gabriella Olsson, Sara Brolin Laftman and Bitte Moden, ' School Collective Efficacy and Bullying Behaviour: A Multilevel Study' (2017) 14(12) International Journal Environmental Research and Public Health 1607

negative patterns of behaviour may also emerge. For adolescents, their peer group is the most important developmental influence, and subjective norms regarding online abuse will be strongly influenced by peer group behaviour.[190] If a young person perceives their peer group would approve or not object to online abuse behaviour this will assist in the creation of a social norm which permits such behaviour.[191] Evidence suggests only a minority of children are involved in bullying behaviour and online abuse, with the majority of students holding pro-social views, and abhorring cruelty to others.[192] Yet young people do not perceive this to be the peer norm.[193] Negative behaviour receives a disproportionate amount of attention and creates a sense that this behaviour is common, which is exacerbated by media articles focusing on negative adolescent behaviour.[194] Consequently, despite the moral standards of an individual, the mechanisms guiding a student's behaviour also exist at an environmental level,[195] and the perception that bullying and online abuse is common is instrumental in its acceptance, creation and perpetration. The belief that online abuse is rife leads to young people developing an accepting attitude towards online abuse, even if they are victims.[196] Student A School 3 described how receiving abusive messages and accepting the abuse negatively changed her perception of herself:

> 'because everything that was posted, and everything that was said, you kind of believed'.[197]

Whilst at school and during the course of socialisation with their peers, students construct their own moral standards, which serve as guides and deterrents for behaviour. If students perceive their peers and teachers at school informally 'permit' bullying and aggressive

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[190] Ana Almeida, Isabel Correla and Sylvie Marinho, 'Moral Disengagement, Normative Beliefs of Peer Group and Attitudes Regarding Roles in Bullying' (2009) 9(1) Journal of School Violence 23

[191] H Wesley Perkins, David W Craig, and Jessica M Perkins, 'Using social norms to reduce bullying: A research intervention among adolescent in five middle schools' (2011) 14(5) Group Processes and Intergroup Relations 717

[192] Peter K Smith, 'School based interventions to address bullying' (2016) Estonian Journal of Education 4(2) 143. In the fieldwork, the majority of the students interviewed regarded their own behavior as pro-social whilst being critical of the behavior of others.

[193] H Wesley Perkins, David W Craig, and Jessica M Perkins, 'Using social norms to reduce bullying: A research intervention among adolescent in five middle schools' (2011) 14(5) Group Processes and Intergroup Relations 717

[194] ibid 703

[195] Ersilia Menesini, Benedetta Emanuela Palladino, and Annalaura Nocentini, ' Emotions of Moral Disengagement, Class Norms and Bullying in Adolescence'(2015) 61(1) Merrill-Palmer Quarterly 124

[196] Niamh O'Brien and Tina Moules 'Not stick and stones but tweets and texts: findings from a national cyberbullying project' (2013) 31 No 1 Pastoral Care in Education 53 where it was noted, 'just over half of the total sample said they did not worry about cyberbullying'.

[197] Student A School 3 line 75

behaviour, their moral standards may shift to accommodate bullying, for example by blaming the victim, and imagining the victim deserved it.[198] Student C School 3 described how he became abusive towards the mother of another student within a group chat, and he felt entitled to behave in this way as he perceived her behaviour as deserving an aggressive response:

> '**What did you say to her**?
>
> You dirty little orange cow, just leave me and my friends alone. Piss off
>
> **because she was being mean?**
>
> Yes'. [199]

Student F School 2 provided another example of engaging in anti-social behaviour which the student initially justified on the basis of the behaviour of the victim. Student F posted naked images of boys online who had been harassing him about his sexuality and race.[200] A further example is Student A School 3 who threatened to post naked images of a boy in retaliation for him posting pictures of her friend.[201]

Norms forming at the classroom level may be critical, even if bullying took place as online abuse or elsewhere. If bullying is normative in the classroom itself, not only will bullying be accepted, the bullies may be well liked,[202] and victims may gradually become disliked or ignored by other young people in the victim's school or community. [203] It may be necessary for a bystander to distance themselves from the victim to disengage from their own responsibility, and lessen their empathic discomfort.[204] If the prevailing normative behaviour permits, young individuals may perform mildly harmful acts of bullying or online abuse which they can tolerate, such as sharing a humiliating image of a fellow student.[205] Personal responsibility is minimised for hurtful action taken by a group,[206] and individuals morally disassociate from

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[198] Albert Bandura, Claudio Barbaranelli, Gian Vittrio Caprara and Concetta Pastorelli 'Mechanisms of Moral Disengagement in the Exercise of Moral Agency' (1996) 71(2) Journal of Personality and Social Psychology 364
[199] Student C School 3 line 96
[200] Student F School 2 line 109
[201] Student A School 3 line 439
[202] Tick Ngee Sim, and Miranda Meizhen Tan, ' Behavioural Norms, Moral Judgements, and Social Approval of Participant Roles in School Bullying in a Singapore Sample' (2011) 45(2) Youth and Society 184
[203] Children who are disliked by their classmates become even more disliked over time: Marie-Louise Obermann, 'Moral Disengagement Among Bystanders to School Bullying' (2011) 10(3) Journal of School Violence 239
[204] Marie-Louise Obermann, 'Moral Disengagement Among Bystanders to School Bullying' (2011) 10(3) Journal of School Violence 239
[205] This occurred to Student A School 3, whereby she fell down the stairs which was photographed and the images 'went a bit viral' (line 36)
[206] Minimising one's agency role as described by Bandura and referred to in: Shelly Hymel and Rina A Bonanno, 'Moral Disengagement Processes in Bullying' (2014) 53 Theory into Practice 285

their actions to avoid feeling uncomfortable. [207] A student affected by an anti-social environment may understand on a cognitive level [208] that bullying another student may be wrong and it may cause them harm, however if the aggressor has disengaged there may be little affective empathy to temper their behaviour.[209] Moral disengagement is not inevitable due to a negative behavioural environment. Many students have high levels of morally responsible reasoning and find it more difficult to reconstruct bullying behaviour as harmless. For those students, harming another person remains a painful experience they will avoid,[210] as they are able to powerfully experience the emotions of another person with whom they have contact.[211] In the example of Student F School 2 referred to above, seconds after he posted the images of the naked boys online, he removed the images, and immediately proceeded to the pastoral care officer of his school to confess, in anguish over his behaviour.[212] Although he felt driven to act in a hurtful manner which he attempted to blame on his victims, he had not morally disengaged from his behaviour. As a result, he experienced extreme distress. Perceived normative behaviour may not be as influential for some individuals, and as such, they do not become morally disengaged despite social norms.[213] These individuals are unlikely to become perpetrators of abuse, however they may still witness online abuse and feel unable to intervene in the interests of self-protection, by not acting out against the observed norm of acceptance.[214] In an environment where young people believe bullying is accepted, even if they do not perpetrate abuse themselves and may secretly wish to intervene to help victims, fear of their

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[207] Gianluca Gini, Tiziana Pozzoli, Shelley Hymel, 'Moral Disengagement among children and youth: a meta-analytic review of links to aggressive behaviour' Aggressive Behaviour, Volume 40 issue 1 January (2014) 64 quoting Bandura A. 'Selective Moral Disengagement in the exercise of moral agency' (2002) 312 Journal of Moral Education', 110

[208] Cognitive empathy refers to a person understanding their actions may hurt someone, it is not that bullies do not understand their actions are harming others:
Ana Almeida, Isabel Correla and Sylvie Marinho, 'Moral Disengagement, Normative Beliefs of Peer Group and Attitudes Regarding Roles in Bullying' (2009) 9(1) Journal of School Violence 23

[209] So that the would-be aggressor is not forced to 'share' the negative experience with the victim: Ruth Castillo, Jose M Saluero, Pablo Fernandez-Berrocal & Nekane Balluerka, 'Effects of an emotional intelligence intervention on aggression and empathy among adolescents' (2013) 36 Journal of Adolescence, 883

[210] Lucinda BC Pouw, Carolien Reffe, Paul Oosterveld, Bibi Huskens, Lex Stockman, 'Reactive/proactive aggression and affective/cognitive empathy in children with ASD' (2013) 34 Research in Developmental Disabilities 1258

[211] Julia Barlinska, Anna Szuster & Mikolaj Winiewski, 'Cyberbullying among Adolescent Bystanders: Role of the communication Medium, Form of Violence and Empathy' (2013) 23 Journal of Community and Applied Social Psychology 40

[212] Student F School 2 line 111

[213] In an individual, it may be that moral disengagement can be predicted by the strength of a student's moral reasoning: Xingchao Wang, Li Lei, Dong Lui, and Huahua Hu, ' Moderating effects of moral reasoning and gender on the relation between moral disengagement and cyberbullying in adolescents' (2016)98 Personality and Individual Differences 244

[214] Dr Marlene Sandstorm, Heather Makover and Maria Bartini, 'Social context of bullying: Do misperceptions of group norms influence children's responses to witnessed episodes?' (2013) 8(2-3)Journal of Social Influence 196

actions being out of step with accepted behaviour will stop many students from taking positive action,[215] and this of itself contributes to the overall decline in behaviour.

2.6.4 The role of staff as responders

While it is likely the majority of staff encourage students to get along with each other and develop pro-social moral reasoning,[216] as has been depicted above, sometimes norms do not form in a positive way, and action must be taken. Staff are often relied upon as first responders to instances of online abuse or bullying.[217] The success of their involvement may be determined by their individual skill level and knowledge of bullying and victimisation, and the amount of time and resources at their disposal. When incidents are dealt with appropriately this not only helps the victim, but it may inhibit the perception that online abuse is normative. Yet young people are often reluctant to approach adults when they experience online abuse, in fear that either they will not take action, or that the action the adult chooses will make their situation worse.[218] A staff member's anticipated response is key in a young persons decision to confide in them.[219] With respect to online abuse there may be the perception that teachers treat physical threats of violence seriously, but hidden forms of bullying are not regarded as important.[220] Student D of School 1 described how he reported a distressing incident of online abuse to a teacher, and the teacher did very little in response, which indicated to the student the teacher did not perceive the incident as significant. This changed the view of Student D about the reliability of confiding in staff, and he revealed that he would be unlikely to confide in this teacher again:

> **'Do you think if something was to happen again, would you go and see him** I probably wouldn't go and see him'.[221]

Young people want to be taken seriously when they experience online abuse, and the ability for a young person to have a relationship of trust with a teacher, who has the time to listen to

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[215] ibid

[216] Ronald B Jacobson, 'On bullshit and bullying: taking seriously those we educate' (2010) 39(4)Journal of Moral Education 438

[217] Jodi Burrus Newman, Karin S Frey and Diane Carlson Jones *Handbook of Youth Prevention Science* Beth Doll, William Pfohl, Jina Yoon (eds) (March 2010) Routledge Handbooks online

[218] Kathleen Stassen Berger, 'Update on bullying at school: Science forgotten?' (2007) 27 Developmental Review, Science Direct 112

[219] Faye Mischna, Iolanda Scarcello, Debra Pepler and Judith Weiner, ' Teachers' Understanding of Bullying' (2005) 28(4) Canadian Journal of Education 719

[220] Michael J Boulton, 'Teachers views on bullying: definitions attitudes and ability to cope' (1997) 67(2) British Journal of Educational Psychology 223

[221] Student D School 1 line 365

their concerns and to take meaningful action, may be far more effective than a ban on mobile devices within school. [222] A perceived nonchalant attitude from school staff may contribute to the creation of an environment which accepts bullying. Student D School 3 described an environment where teachers saw her being mistreated by classmates, however it was treated as a minor incident:

> 'in school, if something has happened to me in class and its obvious, teachers do not pay attention…they will just see it as someone having a bit of banter they don't see it as something really serious'.[223]

The process of mentoring, giving advice and providing meaningful assistance, rather than focusing on punitive approaches, reinforces a social construct which provides a school and its inhabitants protection from anti-social behaviour.[224] Staff member B School 2 described positive experiences in dealing with perpetrators of online abuse. Staff member B was responsible for the pastoral care of the students, and preferred to approach instances of conflict between students with a restorative approach. When she dealt with students about online abuse, she was often able to elicit cooperation from the student and resolve the issue.

> 'to be fair, when you ask them to delete it, they just delete it'.[225]

Young people who infringe social norms are frequently ready to acknowledge they are in the wrong, to apologise and take responsibility, if they perceive they will be treated fairly and with respect.[226] When a student is of the view a staff-member genuinely cares about their situation, and can be trusted to speak about their experiences, the teacher is more likely to be respected. [227]If a student has felt confidence in a staff-member to report a matter to them, this of itself is a good indication the staff-member may be able to guide the young person as to what to do next.[228] The individual skills of school staff vary depending on their personal strengths,

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[222] Ronald B Jacobson, 'On bullshit and bullying: taking seriously those we educate' (2010) 39(4) Journal of Moral Education 446

[223] Student D School 3 line 470 and 478

[224] This is consistent with a moral education, which takes a social pedagogical approach, focuses beyond a programme, to a relationship between student and teacher: Ronald B Jacobson, 'On bullshit and bullying: taking seriously those we educate' (2010) 39(4)Journal of Moral Education 437

[225] School 2 Teacher B line 126, This type of approach was also confirmed with Teacher B School 3

[226] Roger Smith, *Doing Justice to Young People: Youth Crime and Social Justice* (Willan Publishing London 2011) 77

[227] Chris Kyriacou and Antonio Zuin, 'Cyberbullying and moral disengagement: an analysis based on social pedagogy of pastoral care in schools' (2016) 34(1) Pastoral Care in Education 39

[228] Faye Mischna, Iolanda Scarcello, Debra Pepler and Judith Weiner, ' Teachers' Understanding of Bullying' (2005) 28(4) Canadian Journal of Education 727

confidence and level of training.[229] While many teachers are comfortable in responding to physical bullying, online abuse is more difficult as may require investigation, and time to ascertain the truth of the situation.[230] School staff and children often have different perceptions of the same incident.[231] Staff perceptions of bullies may be incorrect, in that they may perceive bullies are typically someone with low social skills who lacks self esteem, whereas some bullies are often socially adapt manipulators.[232] A student who is being repeatedly bullied may be viewed as responsible for their own victimisation, and this will effect the amount of support the staff-member is willing to offer and the amount of empathy they have towards a victim.[233] Student B of School 1 indicated she was reluctant to go back to staff when they had already helped her with an online abuse problem, as she was concerned this would annoy her teachers:

> **'You are a little bit reluctant to go back to them again?**
> Yeah, as you don't want to be seen, as if you are a weak person'. [234]

As indicated by Student B, students may not wish to repeatedly ask for help in respect of the same online abuse incident. Although she felt she could ask for help once, she perceived asking for help again was not conventional and somehow would reflect badly upon her.

This highlights the importance of appropriate training for school staff to identify and act appropriately in respect of online abuse and bullying, and follow up incidents to ensure they are resolved.

2.6.5 Parents

Parents play a significant role in encouraging pro-social behaviour. Parental expectations affect children's psychological adjustment, with young people who have positive parental

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[229] Jodi Burrus Newman, Karin S Frey and Diane Carlson Jones 'Factors Influencing Teacher Interventions in Bullying Situations' in *Handbook of Youth Prevention Science* in Beth Doll, William Pfohl, Jina Yoon (eds) Routledge Handbooks online 2010

[230] Dealing with online may involve teaching staff speaking to several students, their parents, reviewing evidence of online abuse, asking students to write statements about the incident. Teachers may find it particularly taxing when there are different reported versions of an incident: Faye Mischna, Iolanda Scarcello, Debra Pepler and Judith Weiner, ' Teachers' Understanding of Bullying' (2005)28(4) Canadian Journal of Education 727

[231] Faye Mischna, Iolanda Scarcello, Debra Pepler and Judith Weiner, ' Teachers' Understanding of Bullying' (2005) 28(4) Canadian Journal of Education 727

[232] Faye Mischna, Iolanda Scarcello, Debra Pepler and Judith Weiner, ' Teachers' Understanding of Bullying' (2005) 28(4) Canadian Journal of Education 721

[233] The study referred to a teacher's remark that a boy 'wants to be a victim' and 'fake cries': Faye Mischna, Iolanda Scarcello, Debra Pepler and Judith Weiner, ' Teachers' Understanding of Bullying' (2005) 28(4) Canadian Journal of Education 726

[234] Student B School 1 line 175

expectations regarding their pro-social behaviour more likely to behave in a positive manner.[235] When adolescents anticipate corresponding positive and negative parental responses to pro-social and anti-social behaviour, such young people are less likely to engage in bullying and online abuse.[236] Parental influences provide a basis for a young person's developing moral code.[237] A strong parent-child relationship provides more effective protection against involvement in online abuse more than the parent placing restrictions on the use of SNS.[238] When a young person has a valued relationship with a parent which permits honest communication, they are less likely to engage in online abuse if they perceive their parent would disapprove,[239] and they are more likely to ask their parent for help if they are a victim.

2.7 The online factors

There are differences between online and offline abuse related to the technical nature of online abuse, which have a significant impact on behaviour of perpetrators and the harm caused to victims. Those aspects include; physical separation between perpetrator and victim, a perception of anonymity, intense connectivity between SNS users, public repetition of abuse, and technological features unique to some SNS such as ephemeral messaging ('the online factors'). There are indications some young people may bully others online despite not otherwise engaging in traditional bullying. The online factors provide easier access to victims, and they remove some of the discomfort associated with hurting another person.[240] The online factors are also associated with multiple negative outcomes not experienced as a result

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[235] Belen Mesurado, Maria Cristina Richard, Maria Vicenta Mestre, Paula Samper-Garcia, Ana Tue-Porcar, Santiago Alberto Morales Mesa, and Edison Francisco Viveros, 'Parental Expectation and Pro-Social Behaviour of Adolescents From low-income backgrounds: A cross cultural comparison between three countries-Argentina, Colombia and Spain' (2014) 45(9) Journal of Cross Cultural Psychology 1471

[236] Jennifer M Wyatt and Gustavo Carlo, 'What will my parents think? Relations Among Adolescents' expected parental reactions, pro-social moral reasoning and pro-social and anti-social behaviours' (November 2002) Digital Commons at University of Nebraska- Lincoln, where a study was conducted comprising of 80 adolescents and 76 of their mother and 58 of their fathers

[237] Pabian and Vanderbosch (n185) 463

[238] 'Adolescents who reported stronger parent relationships and a positive school climate were less likely to report someone said something nasty to them, compared to students who reported low-quality parent relationships and a negative school climate'. Katie Davis and Lucas Koepke, ' Risk and factors associated with cyberbullying: Are relationships or rules more protective?' (2016) 41(4) Learning Media and Technology 536

[239] Sara Bastiaensens, Sara Pabian, Heidi Vandebosch, Karloien Poels, Katrien Van Cleemput, Ann DeSmet and Ilse De Bourdeaudhuij, 'From Normative Pressure to Social Pressure: How Relevant Others Affect Whether Bystanders Join in Cyberbullying' (2016) 25(1) Social Development 193

[240] Wanda Cassidy, Chantal Faucher & Margaret Jackson, 'Cyberbullying Among Youth: A comprehensive review of current international research and its implications to policy and practice' (2013) 34 School Psychology International 579 at 581 where it was noted: 'Being cut off from the emotional impact of one's behaviour may create a disconnect that blunts the emphatic response elicited by seeing the pain one causes'.

of traditional bullying.[241]   For example, distress regarding online abuse may be intensified due to its replication.[242]   Online abuse victims feel anxiety associated with not knowing who else has witnessed the abuse or the potential size of the audience.[243]   Although this thesis argues that online abuse is a social problem, it is acknowledged that the online factors facilitate and exacerbate the problem.

2.7.1 Anonymity and connectivity

There are established links between anonymity facilitated by SNS and how this may embolden the behaviour of an online perpetrator,[244] with aggressors feeling able to attack a victim in circumstances where they might not have done with their identity on display.[245]   SNS which allow users to post anonymously, have been linked to serious cases of online abuse, where victims committed suicide.[246] Anonymity facilitates de-individualisation and the diminution of a sense of responsibility towards a victim, and influences the severity of impact upon victims,[247] who do not know who they are dealing with and can not physically avoid that person by choice.[248]   However anonymity is not an essential feature of online abuse, and many victims are aware of their abuser's identity.[249]   Arguably, anonymous harassment is pointless between young people as usually they are aiming for a social result such as strengthening their position in their peer hierarchy.[250]   It appeared students interviewed were more concerned with the ease at which abusers could contact them, caused by the intense connectivity between SNS members as a result of platform architecture. Young people were often troubled when they

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[241] Cyber-victimisation was identified as an additional risk factor: Sonja Perren, Julian Dooley, Therese Shaw, Donna Cross, 'Bullying in school and cyberspace: Associations with depressive symptoms in Swiss and Australian adolescents' (2010) 4 Child Adolescent Mental Health 23

[242] Student A School 3 described her distress about a situation where images of her falling down some stairs 'went a bit viral', line 38

[243] This was specifically mentioned by Student F School 2, who indicated cyberbullying was worse, because 'other people see it', line 228

[244] Fabio Sticca & Sonja Perren' Examining the Differential Roles of Medium, Publicity, and Anonymity for the Perceived Severity of Bullying' (2013) 42 Journal of Youth Adolescence 747

[245] Bartlett (n145) 70

[246] The deaths of 4 UK teenagers in 2013 were all linked to a SNS which allowed users to post anonymously see Jill Edwards 'Users on this website have successfully driven nine teenagers to kill themselves' *Business Insider* (16 September 2016) https://www.businessinsider.com/askfm-and-teen-suicides-2013-9?IR=T accessed 1 September 2018

[247] This study demonstrated that anonymity was more important than the medium of the bullying for the perception of bullying severity: Fabio Sticca & Sonja Perren' 'Is cyberbullying worse than traditional bullying? Examining the Differential Roles of Medium, Publicity, and Anonymity for the Perceived Severity of Bullying' (2013) 42 Journal of Youth Adolescence 747

[248] Anonymity increases the level of fear since potentially anyone could be the bully: Fabio Sticca & Sonja Perren' 'Is cyberbullying worse than traditional bullying? Examining the Differential Roles of Medium, Publicity, and Anonymity for the Perceived Severity of Bullying' (2013) 42, Journal of Youth Adolescence 741

[249] Bartlett (n145) 70

[250] Ruth Festl, Thosten Quandt, 'Social Relations and Cyberbullying, The Influence of Individual and Structural Attributes on victimisation and perpetration on the internet' (2013) 33(1) Human Communication Research 101

were tracked down via SNS by those they knew.[251] This was described by Student D School 3, who was approached online by a boy whom she knew from her school:

'I had this guy text me when I was at home… he said he had cameras in my house'. [252]

Student D was not friends with the boy, and he was much older then her. The ease at which he was able to find her contact details and connect with her contributed to her distress over the incident.

Student A School 1, enjoyed watching and creating YouTube videos at home, however he was constantly interrupted by unwanted communications from other users via the platform, some of which were instigated by students from his school who he knew, but did not know well:

'I would be sitting watching YouTube and I would get a message and I would just (audible sigh) just because I knew it was a horrible message for me'.[253]

He continued to receive these messages until he disabled YouTube comments on his account. The bombardment of messages experienced by Student A is associated with the connectivity between users of the platform, he appeared less concerned about anonymity.

Participant students often described their online abusers as known to them, or they were people who did not necessarily conceal their identity. For example, a person who was not known to them, sent what was believed to be a genuine image of themselves.[254] Consequently while anonymity may be a factor in some cases of online abuse, it appears online abuse can also flourish without it, due to other social and online factors such as connectivity.[255] The issue of how SNS encourage connectivity through platform design, and its relationship to online abuse is further examined in Chapter 5.[256]

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[251] It was found that the negative feelings associated with cyberbullying were enhanced when the victims felt that they could be reached anywhere and at anytime: Fabio Sticca & Sonja Perren' Examining the Differential Roles of Medium, Publicity, and Anonymity for the Perceived Severity of Bullying' (2013) 42, Journal of Youth Adolescence 747

[252] Student D School 3 line 22

[253] Student A School 1 line 87

[254] Such as Student D School 2, who told of how she would receive video calls from men on Oovoo: line 150

[255] Gianluca Gini, Tiziana Pozzoli, Shelley Hymel, 'Moral Disengagement among children and youth: a meta-analytic review of links to aggressive behaviour' (2014) 40 (1) Aggressive Behaviour 64 quoting Bandura A. 'Selective Moral Disengagement in the exercise of moral agency' (2002) 312 Journal of Moral Education', 110

[256] See 5.5.2

2.7.2 Separation from the victim

The physical separation between aggressor and victim facilitated by SNS interferes with the ability of the aggressor to feel empathy for their victim.[257] Online abuse taking place via a device may assist to disconnect those acts with real life consequences,[258] and adolescents already struggle with understanding the relationship between behaviour and consequences.[259] This separation encourages pupils to engage online with a sense of omnipotence, and without reflecting on the limits of their actions.[260] Technology mediated communication interferes with affective empathy, so that an aggressor is less likely to feel what the victim is feeling,[261] even if that young person is cognitively empathic and understands what they are doing is wrong.[262] Making a deliberately offensive comment to a peer's face is likely to become uncomfortable upon being confronted by the victim's reaction, whereupon the aggressor may feel guilt or shame,[263] However, with physical separation an aggressor may become emboldened,[264] and as the victim's reaction is not observed, shame is less likely to follow.[265] The lack of immediate feedback from the victim can lead to even harsher bullying.[266] This was demonstrated in an account by Student A, School 3 where she was photographed falling down the stairs, and the images and associated comments 'went a bit viral'.[267] This incident had a profound effect on Student A, however it is unlikely the individual students who made

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[257] Students who participate in face to face bullying are more likely to feel guilty than those that engage in cyberbullying: Sebastian Wachs 'Moral disengagement and emotional and social difficulties in bullying and cyberbullying: differences by participant role' (2012) 17 Emotional and Behavioural Difficulties 357

[258] Colette Langod, Rick Sarre, 'Responding to Cyberbullying: the Case for Family conferencing' (2015) (20) Deakin Law Review 305

[259] Raphael Cohen-Almagor, 'Social Responsibility on the Internet: Addressing the Challenge of Cyberbullying' (2018) 39 Aggression and Violent Behavior 42

[260] Chris Kyriacou and Antonio Zuin, 'Cyberbullying and moral disengagement: an analysis based on social pedagogy of pastoral care in schools' (2016) 34(1)Pastoral Care in Education 35

[261] So that the would-be aggressor is not forced to 'share' the negative experience with the victim: Ruth Castillo, Jose M Saluero, Pablo Fernandez-Berrocal & Nekane Balluerka, 'Effects of an emotional intelligence intervention on aggression and empathy among adolescents' (2013) 36 Journal of Adolescence, 883

[262] It is not that bullies do not understand their actions are harming others
Ana Almeida, Isabel Correla and Sylvie Marinho, 'Moral Disengagement, Normative Beliefs of Peer Group and Attitudes Regarding Roles in Bullying' (2009) 9(1) Journal of School Violence 23

[263] Campbell and Slee (n140)633

[264] 'When the cyberbully is not physically present…they are less sensitised to feel any empathy and remorse for their actions, and this may be even more so when the images are posted on social networking sites rather than being sent directly to the victim' Chris Kyriacou and Antonio Zuin, 'Cyberbullying and moral disengagement: an analysis based on social pedagogy of pastoral care in schools' (2016) 34(1) Pastoral Care in Education 35

[265] Gianluca Gini, Tiziana Pozzoli, Shelley Hymel, 'Moral Disengagement among children and youth: a meta-analytic review of links to aggressive behaviour' (2014) 40(1) Aggressive Behaviour 64 quoting Perren S & Sticca F 'Bullying and Morality: are there differences between traditional bullies and cyberbullies?' (2011)

[266] Cyber-victimisation was identified as an additional risk factor: Sonja Perren, Julian Dooley, Therese Shaw, Donna Cross, 'Bullying in school and cyberspace: Associations with depressive symptoms in Swiss and Australian adolescents' (2010) 4 Child Adolescent Mental Health 23

[267] Student A School 3 line 38

comments on her image, or who shared her image, emotionally accessed the level of devastation she felt. It is argued their physical separation from Student A at the time of their communications was instrumental in her abuse.

2.7.3 Re-posting abusive content

Online abuse can be repeated without additional involvement of the original aggressor.[268] A message or image can be viewed, shared and commented upon hundreds if not thousands of times by different individuals, with the result being the victim suffers repeatedly.[269] In traditional bullying, the notion of repeated acts of aggression is associated with the original aggressor, and once the words are said they disappear.[270] In online abuse, repetition creates secondary victimisation, as the content is re-shared involving negative reactions from a wider audience,[271] which increases the harm flowing from online abuse.[272] The broadcasting of the abuse heightens a victim's feeling of powerlessness,[273] maximising feelings of fear and shame.[274] The data indicated the secondary victimisation effect made online abuse worse than face-to-face bullying. Student F School 2 described why he suffered greater pain as a result of online abuse than face-to-face bullying at school:

> 'Cyberbullying was worse.
>
> **How was it worse?**

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[268] Wanda Cassidy, Chantal Faucher & Margaret Jackson, 'Cyberbullying Among Youth" A comprehensive review of current international research and its implications to policy and practice' (2013) 34 School Psychology International 579

[269] Niamh O'Brien and Tina Moules 'Not stick and stones but tweets and texts: findings from a national cyberbullying project' (2013) 31 No 1 Pastoral Care in Education 59

[270] The words fade into the air: Oren Soffer, 'The Oral Paradigm and Snapchat' (2016) 2(3) Social Media and Society 1

[271] Secondary victimistion may include re-sharing of the abusive content and negative reactions from other people: Isabel Correia, Helder Alves, Ana Tomas De Almeida, D'jamila Garcia, ' Norms Regarding Secondary Victimisation of bullying victims: do they differ from the victims categorisation?' (2010) 51 (2) Scandinavian Journal of Psychology 1649

[272] Chris Kyriacou and Antonio Zuin, 'Cyberbullying and moral disengagement: an analysis based on social pedagogy of pastoral care in schools' (2016) 34(1) Pastoral Care in Education 37

[273] Colette Langod, Rick Sarre, 'Responding to Cyberbullying: the Case for Family conferencing' (2015) (20) Deakin Law Review, 307

[274] Katja Machmutow, Sonja Perren, Fabio Sticca & Francious D Alsaker 'Peer victimisation and depressive symptoms" can specific coping strategies buffer the negative impact of cybervictimsation?' (2102) 17(3) Emotional and Behavioural Difficulties 414

> Because other people could see it too. Sometimes they would post something on my wall for instance. As in "You're really fat and ugly" "I hope you're never happy" blah blah. And people would see it. But no one would say anything. No one would defend me'.[275]

The knowledge that others were silently observing his abuse intensified his negative feelings. This was also the case of the viral image of Student A School 3 falling down the stairs described above. It also appears that not only does the pain associated with the incident intensify with the number of witnesses, but as the number of bystanders increase, it is less likely anyone will step in and intervene. Where online abuse is witnessed by numerous users, each individual's perceived portion of personal responsibility decreases.[276] Those witnessing the abuse do not feel compelled to step in because no one else is taking action, and witnesses are reluctant to help a victim in case they become the subject of attack.[277] A witness is not likely to view this activity as participating in the bullying of a person,[278] however their acquiescence is necessary to provide a permissive environment for the abuse to perpetuate.

2.7.4 Ephemeral messages

SNS such as Snapchat provide an ephemeral communication system, which automatically deletes messages within seconds of the recipient opening them. Such 'self destructing' images provide the temptation to make these types of images more controversial or elicit. There is evidence that the use of ephemeral communications for sexting is regarded as normative behaviour amongst young people,[279] with sexting occurring as part of a decentralised norm creation process which is not controlled by individuals but rather spread within the social environment.[280] Student A School 2 describes sexting as common behaviour on Snapchat,

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[275] Student F School 2 line 227

[276] Lydia Barhight, Julie A Hubbard, Stevie Grassetti and Michael Morrow, 'Relations Between Actual Group Norms, Perceived Peer Behaviour and Children's Intervention to Bullying' (2017) 46(3) Journal of Clinial and Child Adolescent Psychology 394

[277] Dr Marlene Sandstorm, Heather Makover and Maria Bartini, 'Social context of bullying: Do misperceptions of group norms influence children's responses to witnessed episodes?' (2013) 8(2-3) Journal of Social Influence 196

[278] Julia Barlinska, Anna Szuster & Mikolaj Winiewski, 'Cyberbullying among Adolescent Bystanders: Role of the communication Medium, Form of Violence and Empathy' (2013) 23 Journal of Community and Applied Social Psychology 38

[279] 'The mundanity of sexting was clear from this research' South West Grid For Learning, 'Young People and Sexting- Attitudes and Behaviours Research findings from the United Kingdom, New Zealand and Australia' (2107)

[280] Niva Elkin-Koen, 'Copyrights in the Cyberspace- Rights without laws' (1998) Chi Kent Law Review 1155 as referred to in David Prost, 'What Larry Doesn't Get: Code, Law, and Liberty in Cyberspace' <http://www.temple.edu/lawschool/dpost/code.html#N_1_ undated>

which she explained was the application most suited for these type of images to be exchanged, due to the temporary nature of communications.

> 'If you do it (exchange nudes) on Snapchat then its safer, it only lasts for 2 seconds, it was made for nudes and all that jazz'. [281]

Sexting may not amount to online abuse as it is defined in this thesis, however Snapchat and ephemeral messaging is linked to online abuse behaviour including young people receiving unsolicited naked images, or becoming victims of revenge pornography.[282] Young people who use disappearing messages to explore their sexuality is a controversial issue, with tension evident between its regulation and the literature which indicates it may be part of a normal teenage behaviour pattern.[283] Most children do not suffer from harm as a result of sexting,[284] and those that do, may be vulnerable due to other life circumstances.[285] While it is accepted it is normal for teenagers to be interested in sex,[286] ephemeral messaging may be linked to criminal or risky communications.[287] It is argued Snapchat users may erroneously perceive social norms to include hazardous or sexual exchanges via SNS, as it appears with such frequency on the platform. Sexting by using this technology may also contribute to the commodification of the bodies of young people, particularly girls, where they are encouraged to provide sexual images based on what they perceive as normal behaviour,[288] and to accept negative experiences associated with sexting as normative.[289] Chapter 5 will address technological architecture which may help to reduce the impact of the online factors.

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[281] Student A School 2 line 518

[282] Chapter 3 examines the criminal regulation of sexting and Chapter 5 examines regulation via technology, and how young people rely on the tool of ephemeral messaging for sexting, where it is also common to 'screen shot' messages before they disappear.

[283] The tension between regulation and the literature is further explored in Chapters 3 and 4. 'Hegemonic childhood discourses construct a binary between the worlds of the adult as a hierarchical power- in this binary, children are socially constructed as innocent, immature, dependent and powerless in relation to the independent, mature powerful critical thinking adult': Jennifer Charteris, Sue Gregory and Yvonne Masters, ' Snapchat' youth subjectivities and sexuality: disappearing media and the discourse of youth innocence' (2018) 30(2) Gender and Education, 208

[284] As referred to in: Jessica Ringrose, Rosalin Gill, Sonia Livingstone and Laura Harvey 'A Qualitative study of children, young people and sexting, a report prepared for the NSPCC'(2012) 11

[285] ibid 15

[286] Sexting behaviour may be conducive of normal adolescent advancement involving performative acts constituting what it is like to be adult: Gabriel Fleur,' Sexting, Selfies and Self Harm: Young People, Social Media and the Performance of Self Development' (2014) 151 Media International Australia 104

[287] For example students continually viewing shocking naked images via snapchat may assume this is normal: Andrew Yockey, Keith A King, Rebecca Vidourek, Michelle Burbage, Ashley Merianos, 'The Depiction of Sexuality Among University Students on Snapchat' (2018) Sexuality and Culture (14 July 2018)

[288] Charteris (n283) 2

[289] In a 2012 survey 27% of teenagers reported that bullying by way of sexting was normal behaviour which they saw regularly. *Sharing Personal Images and Videos Among Young People, Full Report* (2012) South West Grid For Learning <http://www.swgfl.org.uk/Staying-Safe/Sexting-Survey> last accessed 1 July 2017 which was

2.8 Pro-social solutions

The role of parents and school staff in the creation of an environment encouraging pro-social norms was discussed above at 2.5. Schools, teachers and parents also have an opportunity to address anti-social behaviour when it takes place, assist victims, and engage in pro-active measures to prevent online abuse.

2.8.1 Parents as a support network

Parents also play a role in identifying and helping victims of abuse. In terms of identifying abuse, parents who live with their children or spend time with them, have the opportunity to monitor the general well being of their child. A young person who is suffering from abuse may become withdrawn, appear anxious and avoid school, at which time a parent may have the opportunity to recognise the young person is experiencing difficulty, and intervene.[290] However some young people are reluctant to confide in their parents about online abuse, and such children who go to great lengths to hide their situation from their parents, may miss out on vital support. Student F of school 2 described how he had a valued relationship with his mother, however as she suffered from depression, and his online abuse was related to victimisation for being a bisexual Muslim, he was keen to protect her from the shame he perceived this would cause, as a result he was not able to be honest with his mother and did not seek her help.

> **'you couldn't tell your mum everything?**
> Exactly, that's why I told my friends, I didn't want to make my mum feel worse
> **If you were not bisexual would you have told your mum everything?**
> Yes'.[291]

It was unfortunate Student F of School 2 in this instance, felt he was unable to turn to his mother for help. Had his mother been able to support him, it is possible he may have suffered less in connection with his online abuse. Parents can provide important emotional support to a young person experiencing bullying. However, the victims of online abuse have

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repeated in the later report: South West Grid For Learning, 'Young People and Sexting- Attitudes and Behaviours Research findings from the United Kingdom, New Zealand and Australia' (2107)

[290] Raphael Cohen-Almagor, 'Social Responsibility on the Internet: Addressing the Challenge of Cyberbullying' (2018) 39 Aggression and Violent Behavior 42

[291] Student F School 2 line 424, 426

a greater tendency than victims of traditional bullying to not speak to anyone about the event and not to seek any help.[292] When it comes to online abuse, young people may hesitate to confide in their parents, as there is a fear their parents may over-react or make their situation worse.[293] There is a perception amongst both young people and parents alike that parents are not equipped to deal with an online abuse situation,[294] and young people fear that their parent will respond to the situation in a way that may have an even more negative impact, such as having their technology removed, or calling the police.[295] For many young people, having electronic devices taken away is perceived as a more negative consequence than the bullying itself,[296] as described by Student A of School 1:

> 'My biggest worry that they would take my iPad off me, when you have an iPad, you have all of your videos on there, everything that makes yourself you, its there, so if they took the iPad off me, that would be the worst thing that could happen'.[297]

The concern regarding a negative reaction by parents prevents some students from seeking vital support.

Many parents have little knowledge of what kind of online content their children generate or how they communicate using social media,[298] and some parents are not confident using social media.[299]Children are aware their parents lack this knowledge.[300] This lack of technical knowledge on the part of a parent may contribute to young victims feeling helpless when

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[292] Dehue F Bolman & Vollink, 'Cyberbullying: Youngster's experiences and parental perception' (2008) 11 Cyber-psychology & Behaviour, 217-332

[293] Kathleen Stassen Berger, 'Update on bullying at school: Science forgotten?' (2007) 27 Developmental Review, Science Direct 112

[294] Wanda Cassidy, Chantal Faucher & Margaret Jackson, 'Cyberbullying Among Youth" A comprehensive review of current international research and its implications to policy and practice' (2013) 34 School Psychology International 585

[295] 'As one of the respondents quoted her mother's reaction after being bullied by someone she met on the internet. Her mother reacted by calling the police. That is why the respondent did not confide in her again' Veronika Sleglova and Alena Cerna 'Cyberbullying in Adolescent Victims: Perception and Coping' 2011) 5(2) Journal of Psychological Research on cyberspace Cyberpsychology 4

[296] Veronika Sleglova and Alena Cerna 'Cyberbullying in Adolescent Victims: Perception and Coping' 2011) 5(2) Journal of Psychological Research on cyberspace Cyber-psychology Article 4

[297] Student A School 1 line 148

[298] Sahara Byrne, 'Peers, Predators and Porn: Predicting Parental Underestimation of Children's Risky Online Experiences' (2014)19 Journal of Computer Mediated Communication 215

[299] Claire P Monks, Jess Mahdavi, Katie Rix, 'The Emergence of cyberbullying in childhood: Parent and teacher perspectives' (2016) 22 Psicologia Educativa 39

[300] Sahara Byrne, Sherri Jean Katz and Theodore Lee, 'Peers, Predators, and Porn: Predicting Parental Underestimation of Children's Risky Online Experiences' (2014) 19 Journal of Computer Mediated Communication 215

they experience online abuse,[301] and may prevent young people from approaching their parents even if they are experiencing difficulty:

> 'If it's something I feel like I can talk to my Dad about, but if it's about the internet, he doesn't really get it'. [302]

However, the data also included examples of students who successfully turned to their parents for advice and support. There was evidence amongst the sample which suggested having a positive parental relationship, where a student felt safe to share their problems was instrumental in assisting a young person to cope with online abuse, and take steps to deal with it:

> **'Do you talk to your mum about this type of thing?**
>
> Yes and she helps me to deal with it
>
> **Does she get over-protective? Or are you happy with how she helps?**
>
> Yes I am, if I tell her something, she deals with things the way I want her to, if I tell her something, she will ask me how I want to deal with it'. [303]

Often a parent is the first adult a student will confide in:

> 'If it got out of hand I would tell my mum
>
> **Would you tell your mum before (you told) school?**
>
> Yes'. [304]

The students who reported being able to talk to their parents rated their parent's involvement during their online abuse problem as being a positive factor, as parents often helped the student to formulate a sensible plan of how to approach the problem, and generally helped by easing their concerns.

> 'My mum would just stay calm…I showed her the messages and the screen shots, she said "ok its all going to calm down, things happen in school that are huge for a

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[301] Veronika Sleglova and Alena Cerna 'Cyberbullying in Adolescent Victims: Perception and Coping' 2011) 5(2) Journal of Psychological Research on cyberspace Cyber-psychology Article 4
[302] Student C School 1
[303] School 2 Student C
[304] School 2 Student D

week, and then next week it goes calm'. [305]

During adolescence, a shift occurs in the role of the parent from unilateral authority to a combination of unilateral and cooperative authority. Social issues are discussed in a reciprocal way. Instead of imposing rules on their children's social media, efforts to engage in conversation with their children about SNS may be more useful.[306] This may allay a young person's fear about being banned from their electronic devices, [307] and allow channels of communication to reinforce pro-social behaviour, and strategies for when things do go wrong. Overall, despite lack of technical knowledge displayed by parents, young people may be happier when able to speak to their parents and have their support.

2.8.2 Providing consequences for online abuse

One of the themes emerging from the student data, is the complaint that when they do suffer from abuse online, there are often no consequences for the perpetrator. [308] This may contribute to the perception that online abuse is acceptable as a behaviour. The lack of consequences for online abuse is a matter which may be addressed by parents, schools and in some serious cases the police and youth justice sector. The potential role of the police and the criminal law is explored in Chapter 3.

A large proportion of young people are likely to experience online abuse either as a perpetrator, victim or as a witness. [309] Repeated exposure to behaviours which feature a lack of consequences for the perpetrator, a lack of support for the victim, or interference by witnesses, assist the young person to form a view such behaviour as normal.[310] The lack of consequences for the harmful act implies that online bullying does not demand the same level of rationalisation as traditional bullying, which may be acted upon more regularly as it is more

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[305] Student C School 3 line 156

[306] Katie Davis and Lucas Koepke, ' Risk and factors associated with cyberbullying: Are relationships or rules more protective?' (2016) 41(4) Learning Media and Technology 525

[307] Sigak Eden, Tali Heiman, Dorit Olenik-Shemesh, 'Bully versus victim on the internet: the correlation with emotional-social characteristics' (2016) 21 Education Information Technology 701

[308] This is explored during the data analysis at 4.4.2 Examples include a student refusing to report his online abuse to school as he perceived they were unlikely to do anything about it: Student A School 1 line 131, a student being disappointed after he reported a parody account to staff and nothing was done: Student D School 1 line 343, and a student where bullying was reported and she was told the school would only act if something else happened: Student F School 3 line 82

[309] Ditch the Label Annual Bullying Report (2017) 65% of respondents had experienced cyberbullying as a victim

[310] South West Grid For Learning, 'Young People and Sexting- Attitudes and Behaviours Research findings from the United Kingdom, New Zealand and Australia' (2107) <http://www.nspcc.org.uk/Inform/resourcesforprofessionals/sexualabuse/sexting-research-report_wdf89269.pdf>

visible to adults.[311] Young people may understand that online abuse is wrong and hurtful behaviour,[312] but the lack of ramifications for the behaviour, distorts the perception of the act, and permits the behaviour to perpetuate.[313] Each time a young person is victimised online without negative consequences for the perpetrator, this creates knowledge in the victim, the aggressor and the bystander about the outcomes for future incidents.[314] This was observed in the data whereby students complained about abuse either to their school or to the SNS facilitating the abuse, and nothing was done:

> 'This school wouldn't do anything if you told them'.[315]

In the above case, Student A School 1 stated he did not tell his school about his online abuse as he considered it was well known that no action would be taken.

When online abuse occurs, the options available to students to instigate consequences for an abuser and a resolution of the incident, include reporting the matter to their school, speaking to their parents or reporting the matter to the SNS involved. Technological responses to online abuse are addressed in Chapter 5. With respect to parents, as indicated already in this chapter, they play a pivotal role in supporting their child, however they may lack the technical, legal and practical knowledge necessary to intervene. Parents also do not have the ability to address the matter directly with their child's bully, particularly if it is another child. Consequently schools play a vital role in providing consequences to online abuse.

While there appears to be a correlation between a lack of negative consequences and the perpetration of online abuse, a policy advocating harsh punishment as a reaction to the behaviour may also create problems. Direct punishment and an authority-based approach has been linked to short term behavioural change, with indications it may be counter-productive

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[311] Gianluca Gini, Tiziana Pozzoli, Shelley Hymel, 'Moral Disengagement among children and youth: a meta-analytic review of links to aggressive behaviour' (2014) Volume 40 issue 1 January Aggressive Behaviour, 58 quoting Pornari C D & Wood J, 'Peer and cyberagression in secondary school students: the role of moral disengagement, hostile attribution bias and outcome expectancies' (2010) 36 Aggressive Behaviour 81-94
[312] It is not that bullies do not understand their actions are harming others
Ana Almeida, Isabel Correla and Sylvie Marinho, 'Moral Disengagement, Normative Beliefs of Peer Group and Attitudes Regarding Roles in Bullying' (2009) 9(1) Journal of School Violence 23
[313] Lucinda BC Pouw, Carolien Reffe, Paul Oosterveld, Bibi Huskens, Lex Stockman, 'Reactive/proactive aggression and affective/cognitive empathy in children with ASD' (2013) 34 Research in Developmental Disabilities 1264
[314] 'Attacking others online: the formation of cyberbullying in late adolescence' Barlett CP & Gentile DA (2012) 1 Psychology of Popular Media Culture 123-135
[315] Student A School 1 line 131

in some cases as it is shown this type of approach increases more subtle types of abuse such as relational bullying.[316] It has been found that students of schools which enforce rules punitively around mobile devices, may be more likely to experience aggressive online abuse than schools which had less punitive policies.[317] However there are indications the use of restorative approaches used by schools, may have a positive impact.

2.8.3 Restorative Justice approaches

Restorative Justice ("RJ") is a practise which attempts to facilitate communication between those harmed by crime or conflict and those responsible for harm. This process may enable the parties to engage in dialogue, whereby the impact of harm can be acknowledged and constructive steps may be negotiated, aiming to address the injury.[318] The use of RJ is relevant to the argument of this thesis that online abuse is a social problem, as the method is concerned with transforming the conditions that allowed negative behaviour to develop.[319]

The process is guided by fundamental principles including that; the primary aim is to address and repair harm, participation is voluntary and based on an informed choice, the process is fair and unbiased, it is safe for all participants, it is not discriminatory and it is respectful to all participants[320] (the "key principles").

RJ is explored in this thesis as a potential response to situations of online abuse in the school setting,[321] where school-staff or school-based police facilitate meetings between students involved in incidents of online abuse. RJ conferences may occur at schools under the supervision of a trained staff-member or police officer to discuss how the problem arose, and its potential resolution, which may involve an apology or reparation. Such conferences should be subject to the willingness of the students involved to participate, and the availability of

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[316] Relational bullying may be more subtle and involve for example excluding someone from a group: Christoph Burger, Dagmar Strohmeier, Nina Sprober, Sheri Bauman and Ken Rigby, 'How teachers respond to school bullying: and examination of self reported intervention strategy use, moderator effects and concurrent use of multiple strategies' (2015) 51 Teaching and Teacher Education 191

[317] Katie Davis and Lucas Koepke, ' Risk and factors associated with cyberbullying: Are relationships or rules more protective?' (2016) 41(4) Learning Media and Technology 536

[318] G McCluskey, G Loyd, J Stead, J Kane, S Riddell & E Weedon, 'I was dead restorative today: from restorative justice to restorative approaches in school' (2008) 38(2) Cambridge Journal of Education 199

[319] John Braithwaite, 'Setting Standards for Restorative Justice' (2002) 42 British Journal of Criminology 563

[320] Restorative Justice Council (UK) 'Principles of restorative justice' (2015) <https://restorativejustice.org.uk/resources/rjc-principles-restorative-practice> last viewed 2 April 2019

[321] Fran Thomson, Peter K Smith, 'Effectiveness of Anti-Bullying Strategies in Schools' Department for Education Research Report DFE-RR098 (2011)

trained school staff or a school-based police officer, qualified to facilitate such meetings. Chapter 3 will address the issues related to school-based police using RJ in schools at 3.5.5.

In respect of how online abuse behaviour is managed in schools, the data identified that victims often complain that little or no meaningful action is taken.[322] As indicated above, the literature also indicates that harsh punishments and strict controls around technology may be counterproductive.[323] RJ is a strategy which may provide meaningful consequences to anti-social behaviour, and be instrumental in interfering with online abuse forming as normative behaviour in a manner which may avoid the negative consequences associated with harsh punishment.

RJ is a strategy which focuses upon the needs of those involved rather than enforcing penalties for broken rules. Staff trained in RJ practices may encourage students who have caused harm to take responsibility, and make amends, as opposed to apportioning blame and assigning punishment, with the focus being on resolving conflict and repairing harm. [324] Students are given the opportunity to take responsibility and apologise for their behaviour, and parties are able to air grievances with adults on hand to intervene if necessary. Teachers interviewed as part of the empirical research regarded restorative justice meetings as effective tools for addressing online abuse between students. [325]

Staff-member A of School 2 described how this method was used for an online abuse dispute involving a boy making homophobic remarks about another student:

> 'Was this resolved, kind of quickly?
> Yes they sat in here for about 45 minutes'. [326]

Such meetings allow the consequences of online abuse to be addressed while encouraging empathy between students.[327] For many situations including those involving online abuse,

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[322] See 4.4

[323] See 2.8.2 and also 3.5.4

[324] Youth Justice Board, 'National Evaluation of the Restorative Justice in Schools Programme' (2004)

[325] 'Yes so I got Peter in with John, sat them down, they had a really good friendship underneath it'. Teacher A School 2 line 217 also see Teacher B School 3 line 152

[326] This concerned 2 students who had experienced an extreme relationship breakdown due to issues of sexuality being played out over SNS: Teacher B School 2 line 224

[327] Restorative approaches emphasise the hurt to the victim instead of the broken rule. RJ approaches have been shown to significantly reduce bullying and produce higher emphatic attitudes and self esteem: Peter K Smith, 'School based interventions to address bullying' (2016) 4 (2) Estonian Journal of Education 154

school initiated RJ may be effective in resolving issues between students, and reducing the impact upon the victim.[328]

For the process to be successful within the school context, significant resources and time must be applied to secure respect for the process by staff and students alike. RJ should be established within the values of respect and dignity for all participants,[329] and administered with regard to its key principles. RJ which does not adhere to the key principles is more likely to inflict undesirable results and even harm students involved.[330] Poor RJ practises are a danger to young people, and may worsen their situation.[331] This highlights the desirability for school staff to receive qualifications and on-going training to perform RJ, and the desirability of maintaining standards relating to school-based RJ which involve regular reflection by those involved, and evaluation of the practice. Processes for RJ in schools should evolve according to such assessments in order to provide maximum benefit to students and the school community, and be carefully administered to ensure the intervention does not exacerbate problems in the relationship between the students involved. It is noted that even RJ administered according to contemporary standards and principles may nonetheless have diverse consequences, depending upon the practitioner, the students involved, and the nature of the online abuse.[332] The administration of RJ within schools by staff may be interpreted and applied in different ways,[333] producing varying outcomes.

Students interviewed did not always that agree restorative approaches were useful, and there were indications in the data that school staff may coerce young people to take part in RJ, which undermines one of its key principles that participants must be willing:

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[328] Published data indicates restorative justice programmes are regarded as effective at reducing juvenile recidivism: Jennifer S Wong, Jessica Bouchard, Jason Gravel, Martin Bouchard and Carlo Morselli, ' Can at risk youth be diverted from crime?' A meta analysis of restorative justice diversion programs (2016) 43(10) Criminal Justice and Behaviour, 1310 also see the Shapland Report: Joanna Shapland, Anne Atkinson, Helen Atkinson, James Dignan, Lucy Edwards, Jeremy Hibbert, Marie Howes, Jennifer Johnstone, Gwen Robinson and Angela Sorsby, Ministry of Justice: The Shapland Report: 'Does restorative justice affect reconviction?' (2008)

[329] Dorothy Vaandering, 'Relational Restorative Justice Pedagogy in Educator Professional Development' (2014) 44(4) Curriculum Enquiry 508

[330] John Braithwaite, 'Restorative Justice and Responsive Regulation' in Michael Tonry and Norval Morris (eds) *Studies in Crime and Public Policy* (Oxford University Press 2002) 152

[331] An instance of bad practice observed in this article included a RJ conference culminating with the child agreeing to wear an 'I am a thief' t-shirt: John Braithwaite, 'Setting Standards for Restorative Justice' (2002) 42 British Journal of Criminology 564

[332] Heather Strang and Lawrence Sherman, 'The morality of evidence: the second annual lecture for Restorative Justice: An International Journal' (2015) 3(1) Restorative Justice An International Journal 11

[333] ibid

'You have to have a conversation about it. And I'll be like, I don't actually want to be here right now'.[334]

RJ's key principles maintain that young people should not be compelled by adults into the meeting or the potential consequences of such a meeting such as reparation. In the context of the school environment where a young person is accused of online abuse, and school staff have intervened to address the problem, it is possible staff could pressure students involved to participate in order to finalise the matter.[335] This may be more likely where RJ is offered as an alternative to traditional punishments such as detention, suspension or exclusion. To alleviate such a problem, not only should there be an adult present who views themselves as a supporter of the victim, there ought to be an adult supporting the offender. [336]

There are some types of online abuse matters which by their nature may not be suited to RJ facilitated by school staff. If students assert different versions of events, or if the student who has been accused of online abuse only partially admits wrongdoing, the success of RJ is diminished considerably.[337] Restorative justice is more effective in circumstances where offenders are cognitively and developmentally mature enough to comprehend the consequences of their actions, and this should be considered in determining whether it is appropriate.[338]

As will be discussed in Chapters 3 and 4,[339] students may be reluctant to speak about matters involving sexting in front of school staff, due to the disclosure triggering potential safeguarding issues.

While there are limitations upon the use of RJ, and while it may not be appropriate in all circumstances, there is evidence that participants often regard the process as beneficial and that overall it appears to have a positive impact.[340] In the context of complaints by victims

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[334] Student A School 2

[335] Dorothy Vaandering, 'Relational Restorative Justice Pedagogy in Educator Professional Development' (2014) 44(4) Curriculum Enquiry 516

[336] John Braithwaite, 'Setting Standards for Restorative Justice' (2002) 42 British Journal of Criminology 566

[337] Avery Calhoun and William Pelech, 'Responding to young people responsible for harm: a comparative study of restorative and conventional approaches' (2010) 13(3) Contemporary Justice Review 1477

[338] Masahiro Suzuki & William Wood, 'Is restorative justice conferencing appropriate for youth offenders?' (2018) (18) 4 CCJ 460

[339] See 3.6 and 4.3.5

[340] Joanna Shapland, 'Forgiveness and Restorative Justice: Necessary? Is it Helpful?' (2016) 5 Oxford Journal of Law and Religion 104

that there is a lack of meaningful action taken in respect of online abuse by schools,[341] RJ presents as a viable alternative.

2.8.4 The 'Whole School' Approach

Due to the importance of staff interactions with students to effectively deal with online abuse, and the variety in skill and confidence of individual staff-members, it is important that schools have a coherent strategy to assist their staff to effectively deal with bulling and online abuse. The most commonly prescribed strategy involves what is termed a 'whole school approach', which focuses on promoting a pro-social school environment throughout the school to reduce bullying, rather than relying upon rule-making or interventions around digital media.[342] This type of programme relies on the concept that bullying and online abuse is a social construct, and forms part of a peer culture, [343] and a bullying peer culture must be tackled from all sides in order for it to change. A whole school approach involves bringing the values of the community into the school, rather than designating the school as a separate entity for which a special set of rules must be made.[344] If a school reflects the values of the society in which it is situated, students are more likely to graduate with pro-social attitudes and at ease with their community,[345] and they are less likely to engage in behaviour such as bullying. These types of programmes have already been implemented in schools to good effect all over the world. The Olweus bullying prevention programme[346] was implemented in 42 Norwegian schools and underwent a 2.5 year evaluation, which resulted in a 50% reduction in reported cases of bullying as well as a reduction in anti-social behaviour such as vandalism theft, fights and truancy.[347] The KiVa programme, based in Finland is also based upon the premise that bullying is a group phenomenon which includes bystanders as well as the bully and victim. There is evidence the programme has been successful in reducing several types of indirect and hidden forms of bullying such as social exclusion, social manipulation which might not be

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[341] See 4.4

[342] Katie Davis and Lucas Koepke, ' Risk and factors associated with cyberbullying: Are relationships or rules more protective?' (2016) 41 (4) Learning Media and Technology 525

[343] Kathleen Stassen Berger, 'Update on bullying at school: Science forgotten?' (2007) 27 Developmental Review, Science Direct 113

[344] John Dewy, 'My pedagogic creed' in R. R. Reed and T. W. Johnson (eds) *Philosophical Documents in Education* (2nd Ed) (New york Addinson-Wesley Longman 2002)

[345] John Dewy, *Moral Principles in Education* (Southern Illinois University Press 1975)

[346] The Olweus Bullying Prevention Programme is a whole school bullying programme focussing on the individual, the classroom, the school and the community:
http://www.violencepreventionworks.org/public/olweus_bullying_prevention_program.page last visited 7 March 2018

[347] NoBullying.com 29 March 2017 <https://nobullying.com/bullying-in-norway/>

easily observed by school personnel.[348] In KiVa popular pupils are targeted to help create the change, and even the school bus driver is involved. The Steps to Respect programme originating in the United States focuses on addressing promoting pro-social beliefs and incorporating social-emotional learning within the curriculum and this has produced a notable reduction in playground bullying, with the expectation that as long as student skills could be built upon, and adult efforts sustained, the programme would gather momentum.[349]

In England, whole school approaches are also favoured. Behaviour policies examined of the participating schools found there was emphasis on encouraging students to act as good citizens of the school, and to show each member of the school respect and kindness.[350] Schools implement behaviour and anti-bullying policies or programmes of their choosing, according to their individual school's available resources and strategic plan. There are a number of organisations in England which assist schools with behaviour strategies, online abuse and bullying, such as the Dianna Award, [351] Zap anti-bullying awareness and assertiveness workshops[352], Bullies Out, [353]the National Bullying Helpline[354] Bullying UK,[355] The revenge porn helpline[356] the SWGFL[357] the UK Safer Internet Centre,[358] and The 360 degree Safe Tool.[359] Restorative justice approaches may also form an important mechanism within a whole-school approach, in encouraging students to take responsibility for their behaviour. [360] However, despite research indicating whole-school social programmes are effective, and such programmes being available, schools continue to use discipline based interventions.[361] As has been discussed, harsh disciplinary methods are contra-indicated for pro-social behaviour in

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[348] Christina Salmivalli, Antti Karna and Elisa Pokiparta, 'Counteracting bullying in Finland: The Kiva programme and its effects on different forms of being bullied' (2011) 35(5) International Journal of Behavioral Development 405

[349] Karin Frey, Miriam Hirschstein, Jennie Snell, Leihua Van Schoiack, Elizabeth MacKenzie and Carole Broderick, ' Reducing Playground Bullying and Supporting Beliefs: 'An experimental Trail of the Steps to Respect Programme' (2005) 41(3) Developmental Psychology 479

[350] For example School 1 employed a rewards based behaviour programme encouraging students to be an 'excellent friend' and an 'exceptional citizen'

[351] The Dianna Award provides training for young people and professionals on how to tackle bullying; <https://diana-award.org.uk>

[352] Kidscape <https://www.kidscape.org.uk/projects/zap-anti-bullying-and-assertiveness-workshops/>

[353] Bullies out provides anti-bullying training and workshops on peer mentoring <https://bulliesout.com>

[354] National Bullying Helpline<http://www.nationalbullyinghelpline.co.uk>

[355] Bullying UK <https://www.bullying.co.uk>

[356] The Revenge Porn Helpline <https://revengepornhelpline.org.uk>

[357] South West Grid for Learning<https://swgfl.org.uk>

[358] UK Safer Internet Centre <https://www.saferinternet.org.uk>

[359] 360 Degree Safe Tool Developed by the SWGFL <https://360safe.org.uk>

[360] Fran Thomson, Peter K Smith, 'Effectiveness of Anti-Bullying Strategies in Schools' Department for Education Research Report DFE-RR098 (2011)

[361] The regulatory responsibilities of schools to control online abuse are discussed at length in Chapter 4

schools,[362] as they tend to disrupt the relationship of respect between teacher and student. While there is general agreement in the literature for schools to incorporate anti-bullying behavioural policies which may include punitive elements, these policies are put into practise throughout England in an *ad hoc* manner, and they do not necessarily reflect a researched based educational theory such as the whole school approach,[363] and schools in England implement any mixture of whole school and discipline based policies. Secondary Schools in England produce their own disciplinary policies based on broad guidelines provided within legislation, which results in schools across England implementing different types of behavioural strategies. These strategies and the framework facilitating them are examined further in Chapter 4.

Whole school approaches are difficult to implement. While such programmes are often initially very successful, they tend to lose momentum. School staff report that these programmes are labour and time intensive,[364] and it is difficult to maintain the focus on shifting a social change at school, whilst also tending to the other educational and welfare needs of the young people in their care.[365] School often do not have the staff available to administer the programmes due to funding concerns,[366] and programmes are often administered within individual schools with little assistance to ensure a continuity in awareness and resources, to achieve a long term change. The Anti-bullying Alliance in England works to share resources between the numerous anti-bullying organisations, however the Anti-Bullying Alliance is itself a charity, requiring constant fundraising to continue its work. Cost and resources are a significant factor in the success and sustainability of these programmes.[367] For these programmes to create further impact which may successfully be maintained, substantial resources in time and staff must be allocated by government, local authorities and schools. However schools often lack the additional budget required for dealing with pastoral matters

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[362] Christoph Burger, Dagmar Strohmeier, Nina Sprober, Sheri Bauman and Ken Rigby, 'How teachers respond to school bullying: and examination of self reported intervention strategy use, moderator effects and concurrent use of multiple strategies' (2015) 51 Teaching and Teacher Education 191

[363] Chris Kyriacou and Antonio Zuin, 'Cyberbullying and moral disengagement: an analysis based on social pedagogy of pastoral care in schools' (2016)34(1) Pastoral Care in Education 35

[364] Donna Cross, Helen Monks, Margaret Hall, Therese Shaw and Yolanda Pintabona, ' Three year results of the Friendly Schools whole of school intervention on children's bullying behaviour' (2011) 37 (1) British Education Research Journal 105

[365] Carole Phillips, 'the Olweus Bullying Prevention Programmer a Whole System Change Approach to Combat Bullying' (2014) <https://www.wcmt.org.uk/sites/default/files/report-documents/Phillips%20C%20Report%202014%20Final%20v2.pdf>

[366] Donna Cross, Helen Monks, Margaret Hall, Therese Shaw and Yolanda Pintabona, ' Three year results of the Friendly Schools whole of school intervention on children's bullying behaviour' (2011)37(1) British Education Research Journal 105

[367] Peter K Smith, 'School based interventions to address bullying' (2016) 4(2) Estonian Journal of Education 160

such as bullying and online abuse. Currently 91% of schools are faced with an average annual budget cut of £185,000 per school.[368] It is argued these types of constraints are fatal for meaningful long term policy change within schools. Whole-school approaches remain a viable contribution to the improving the school environment and reducing online abuse, as long as schools receive adequate funding and support.

2.9 Conclusion

Adolescence can be a difficult time for young people as they negotiate their place within the peer structure in secondary school. Due to aspects of normal adolescent cognitive and behavioural development, and the intense social environment of school, online abuse is a common phenomenon amongst students. Online abuse may be linked to prevailing social conditions facilitating normative beliefs regarding the acceptance of anti-social behaviour. The majority of young people prefer to act kindly towards one another, however they may be reluctant to confront abusive behaviour for fear of displacement in the social hierarchy.

Online abuse potentially causes psychological harm in victims which may have implications for their enjoyment of life, education, and in the most serious cases it may contribute to self harm and suicidal ideation. It is also a problem for perpetrators, disturbing cognitive processes at a crucial time in development affecting empathy and relationships. Elements unique to the online element of the abuse exacerbate the impact of online abuse, and increase the suffering for the young person who experiences it. Schools and parents play an important role in the encouragement of pro-social behaviour at a crucial developmental phase of adolescence, and the reinforcement of cooperative behaviour may be more effective than punitive, discipline based solutions. Whole-school programmes and restorative justice approaches may be more useful. The provision of support by schools and parents is important in identifying victims of online abuse, and adequately addressing a young person's problem. Schools are positioned to make improvements in the outcomes for online abuse victims, however their efforts may be constrained by the availability of resources and staff with suitable skills.

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[368] School Cuts, National Education Union https://schoolcuts.org.uklast viewed 1 July 2018

3

Criminal law response to online abuse

3.1 Introduction

This chapter investigates the relevance of the English criminal law to online abuse, and considers the role of school-based police in contributing to reducing and managing online abuse. The Chapter is divided into 3 parts. Part 1 concerns the applicability of the criminal law to young people. It considers the potential for young people to be prosecuted for online abuse offences, and examines policy arrangements aimed at protecting the welfare of young offenders, and policy which restricts the prosecution of online abuse offences. Part 1 examines the *mens rea* and *actus reus* of criminal legislation which potentially captures incidents of online abuse, including; the Public Order Act 1986 ("POA"), the Communications Act 2003, the Malicious Communications Act 1988 ('MCA'), the Criminal Justice and Courts Act 2015 ('CCJA'), the Criminal Justice Act 1998 ('CJA'), the Protection of Children Act (1978) ('POCA'), and the Protection from Harassment Act 1997 ('PfHA'). This part will highlight the possibility that many online abuse behaviours between young people constitute offences, yet they not eligible for prosecution under prosecutorial policy. Specific difficulties regarding the application of the POCA to sexting between young people will be scrutinised.

Part 2 considers alternatives to prosecution where young people commit offences, examining the role of school-based police officers, and diversionary measures available to police when dealing with an online abuse incident. The compulsory recording of online abuse offences by school based police as part of the National Crime Recording Standard, will be considered in light of problems this may cause.

Part 3 analyses the empirical research in relation to findings in Parts 1 and 2. It identifies 22 online abuse behaviours from the data, and considers whether these behaviours constitute prosecutable crimes, and whether policy affects how such crimes are dealt with. Discussion includes whether the online abuse behaviours found in the sample could be managed by diversionary measures facilitated by the police, and what the potential impact this may have on resolving incidents of online abuse.

PART 1

Prosecution Frameworks and Criminal Legislation

3.2 Frameworks impacting prosecutions

The application of the criminal law to children is tempered by policy requiring thorough consideration is given to the welfare of young offenders. The prosecution of young people for online abuse offences is further restricted by the application of CPS social media policies. The cumulative effect of this policy framework reserves prosecution of young people for only the most serious of online offences, and when it is the most appropriate response in the circumstances.

3.2.1 Youth welfare policies and legislation

Policy and legislative frameworks restrict the prosecution and conviction of young offenders on the basis of protecting their welfare.[369] In the event a young person is referred by the police for prosecution, the Code for Crown Prosecutors,[370] requires the prosecutor to consider the well-being and future prospects of a young person before making the decision to prosecute.[371] Section 37 of the Crime and Disorder Act 1998, requires youth justice agencies to prioritise the prevention of youth offending[372] over other outcomes associated with the criminal law, such as punishment and retribution.[373] In respect of minor offences, the prosecutor is obliged to consider diversionary alternatives such as cautions,[374] and in circumstances where diversion

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[369] Frameworks as set out in CPS 'Youth Offenders' Legal Guidance Youth Crime
https://www.cps.gov.uk/legal-guidance/youth-offenders last visited 2 July 2018, also 'recognising that the young, owing to their early stage of human development require particular care and assistance', also see the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 29 November 1985, and United Nations Human Rights Office of the High Commissioner: Convention of the Rights of the Child Article 40: 'States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society'.
[370] CPS The Code for Crown Prosecutors (January 2013) 4.12 (d)
[371] Section 44 Children and Young Person Act 1933 requires the Courts to have regard for the welfare of a young person
[372] Section 37 Crime and Disorder Act 1998 requires the principle aim of agencies involved in Youth Justice be the prevention of offending
[373] Regulatory offences as associated with punishment and retribution as noted by: Nicola Lacey, 'Criminalisation as Regulation: the Role of the Criminal Law' in Christine Parker, Colin Scott (eds) *Regulating Law* 144 Oxford Legal Studies Research Paper No 50 (OUP 2004) 145
[374] CPS Minor Offenses Legal Guidance https://www.cps.gov.uk/legal-guidance/minor-offences last viewed 4 July 2018

is not appropriate, the prosecutor must satisfy themselves that the cost of the prosecution to the offender is not disproportionately high compared to the harm caused by the offence.[375] A prosecutor who fails to consider the totality of such matters together with the circumstances of the offender, and the public interest in pursuing a prosecution risks the decision to prosecute being quashed.[376]

3.2.2 CPS social media policy

The CPS 'Guidelines on Prosecuting Cases Involving Communications Sent via Social Media',[377] ('SNS Guidelines') requires a high evidentiary threshold to trigger a prosecution of communications offences under Section 1 of the MCA or Section 127 of the Communications Act.[378] The SNS Guidelines indicate matters should only be pursued where interference with freedom of expression as protected by Article 10 of the European Convention on Human Rights,[379] is 'unquestionably prescribed, necessary and proportionate'. The SNS Guidelines state that offences which involve offensive, rude or shocking communications should only be prosecuted in circumstances of compelling evidence, where it is in the public interest such a prosecution occur, despite the protections normally afforded under Article 10.[380] The CPS Cybercrime Prosecution Guidance, [381] ('the Cybercrime Guidance') also indicates that communications which are grossly offensive, indecent, obscene or false will be subject to a high threshold, and emphasises that cases will rarely meet the public interest required for prosecution. The Cybercrime Guidance demarcates such communications from more serious online behaviour such as credible threats of violence, targeted harassment, and disclosing sexual images without consent. Therefore less serious online behaviour involving grossly offensive, false, obscene, rude and indecent communications are hereinafter referred to as 'low-level bad behaviour'. It will be argued in this Chapter many of the offences committed by secondary school students comprise of low -level bad behaviour, and are unsuitable for prosecution according to the current frameworks.

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[375] CPS Minor Offenses Legal Guidance https://www.cps.gov.uk/legal-guidance/minor-offences last viewed 4 July 2018

[376] See *R (on the application of E, S and R v DPP* [2011] EWHC 1465 (Admin)

[377] Crown Prosecution Service, Guidelines on prosecuting cases involving communications sent via social media, Legal Guidance (21 August 2018)

[378] These Offences are discussed below in this Part

[379] Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (signed 4 November 1950) ETS 005

[380] SNS Guidelines paragraphs 26-31

[381] Crown Prosecution Service, Cybercrime-prosecution Guidance (undated) https://www.cps.gov.uk/legal-guidance/cybercrime-prosecution-guidance last viewed 10 September 2018

In the context of online abuse, the combined affect of welfare and social media policy frameworks prioritises the protection of young people from criminalisation, and reduces the likelihood of a young person being prosecuted.

3.2.3 Potential harm of prosecution

Applying the criminal law cautiously to young people is justified due to evidence regarding the link between early criminalisation of young people, the exacerbation of offending long term, [382] and the potential harm to young offenders.[383]   Young people who are diverted from prosecution and conviction may have a greater potential to avoid future interaction with the criminal justice system.[384] As outlined in Chapter 2, as young people continue to experience cognitive and social development, they are relatively vulnerable compared to adults and inexperienced in dealing with complex social situations.[385] This is reflected in a recent review of the youth justice system[386] in England and Wales where it was stated:

> 'It is right that children who break the law are dealt with differently to adults. Children act impulsively and often do not appreciate the consequences of their actions; they are not emotionally developed and may struggle to communicate effectively'.[387]

Behaviours which may constitute offending, particularly low-level bad behaviour is naturally prevalent amongst adolescents, and most young people develop more pro-social behaviour as they mature with no formal intervention.[388] Rude and offensive exchanges between young people are arguably a normal part of adolescent life, making it inappropriate for police to interfere.[389] However, it remains that if a young person's behaviour and intent translates into

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[382] Diversion strategies as an alternative to prosecution have been shown to be successful in helping juveniles avoid further offending, although choosing the correct diversionary mechanism is vital for the success relating to a particular individual: James C Howell, Mark W Lipsey, John J Wilson *A Handbook for evidence based Juvenile Justice Systems* (Lexington Books 2014)

[383] There is a consistent pattern of mistreatment involving children in custody which reflects an excessively punitive approach as noted in: Roger Smith, *Doing Justice to Young People: Youth Crime and Justice* (Willan Publishing 2011)

[384] Laura Kelly and Vicki Armitage, 'Diverse Diversions: Youth Justice Reform, Localised Practises, and a 'New Interventionalist Diversion'?' Youth Justice (2015) 15(2) Youth Justice 117

[385] As discussed in 2.5

[386] The Youth Justice System is a system overseen by the Youth Justice Board for managing 10-17 year olds at risk of offending, or who have offended established by the Crime and Disorder Act 1998. The principle aim of agencies involved in the youth justice system is to prevent offending by young people: Section 37 of the Crime and Disorder Act 1998

[387] Charlie Taylor Ministry of Justice 'Review of the Youth Justice System in England and Wales' (December 2016)

[388] Andrew Rutherford, *Growing Out of Crime: the New Era* (Winchester Waterside Press 1986)

[389] Ryan Broll, ' "Just being mean to somebody isn't a police matter" Police Perspectives on Policing Cyberbullying' (2015) 14(2) Journal of School Violence 163

a criminal offence, this creates the potential for intervention by the police. It will be argued in Part 3 that some of the 22 online abuse behaviours described in the empirical research constitute online abuse offences. The following part examines the criminal law relevant to online abuse behaviour which may initiate the involvement of the police and the youth justice system.

3.3 Criminal Legislation relevant to online abuse

The majority of the criminal laws applicable to online abuse to be discussed in this Part, were created prior to the existence of SNS, but remain relevant as they are not limited to face-to-face behaviour and can capture online behaviour. Some laws have been developed recently in response to concern over certain online behaviours for example; revenge pornography.[390] Criminal laws potentially apply to all young people in English secondary schools as the age of criminal responsibility is 10 years.[391] It is argued the following Acts create offences which are relevant to online abuse behaviours amongst young people, which may either be used to prosecute young people in respect of serious matters, or justify the involvement of the police and the youth justice system.

3.3.1 The Public Order Act 1986 (the "POA")

The POA was drafted to address threats to the harmony of the community through a person's behaviour or words. Section 4A of the POA creates an offence in respect of threatening, insulting or abusive behaviour where a person displays words intending to cause another harassment, alarm or distress,[392] and section 5 of the POA creates a less serious offence,[393] where a person displays threatening or abusive words, not intending for harm to occur, yet the person is nevertheless aware their words or behaviour are of a threatening or abusive nature.[394]

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[390] The Criminal Justice and Courts Act 2015
[391] s50 Children and Young Persons Act (1933) Until 1998 children under 14 were treated under the presumption of *doli incapax* however Section 34 of the Crime and Disorder Act 1998 removed the presumption, making the criminal law applicable to all children over 10
[392] 4A of the POA:
 Intentional harassment, alarm or distress
(1) A person is guilty of an offence if, with intent to cause a person harassment, alarm or distress, he—
(a) uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or
(b) displays any writing, sign or other visible representation which is threatening, abusive or insulting,
thereby causing that or another person harassment, alarm or distress.
[393] Section 4A carries a penalty including imprisonment whereas Section 5 is limited to a fine
[394] Section 6 of POA requires that for Section 5 offences, the defendant must have had been aware, or intended for their actions to be threatening, was abusive or disorderly.

Sections 4A and 5 of the POA create offences potentially applicable to online abuse behaviour involving young people using confrontational or unpleasant language. An offence under the POA requires proof the threatening or abusive writing was displayed within the sight of a person likely to be caused harassment, alarm or distress. The medium of SNS provides an excellent basis for compiling evidence of such writing. It is not necessary that harm occurred as a result of the words displayed. Section 4A creates a more serious offence, with the mental element requiring the perpetrator intended[395] for the victim to feel harassed.[396]It is not enough to argue the natural consequences of a perpetrator's actions would be to cause distress.[397] The behaviour must have been virtually certain to result in the victim feeling alarm and distress, and in addition to that, the perpetrator was aware their behaviour was effectively certain to cause harm.[398] For a Section 5 offence, the mental element is less onerous, requiring only that the offender knew the words themselves were threatening words, even if the offender did not intend for the victim to feel threatened. Immature and rash behaviour associated with adolescence,[399] may be more easily captured under Section 5, including communications taking place in the heat of the moment, or by students in circumstances oblivious to the wider potential audience and consequences.[400]

The Courts have held racial or religious abuse occurring via SNS,[401] could be captured under the POA, with Courts deciding that referring to an Asian person as a 'fucking Islam' is abusive under the POA,[402] and placing pubic posters of black men along with the words 'immigrant scum' has also been found abusive.[403] In the case of *Taylor v* DPP[404] calling a person a 'fucking nigger' was of itself, presumed by the Court likely to offend anyone who heard it. If such racial abuse occurred online it could be captured by the POA. Courts interpret the use of words including racist language using their natural and ordinary meaning.[405] The context in

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[395] Where the perpetrator had considered the potential consequences of their actions and nevertheless pursued the action, in accordance with the definition in *R. v. G and another* [2003] UKHL 50

[396] *R v Nedrick* [1986] All ER 1

[397] Section 8 Criminal Justice Act 1967

[398] *R v Woollin* [1997] Crim LR 519

[399] Raphael Cohen-Almagor, 'Social Responsibility on the Internet: Addressing the Challenge of Cyberbullying' (2018) 39 Aggression and Violent Behavior 42

[400] Such as cruel comments being posted about photographs,[400]images of a student falling down the stairs and breaking her ankle posted with derogatory comments[400] also see Nicola Haralambous & Neil Geach 'Online Harassment and Public Dis-Order' Criminal Law and Justice Weekly (2 July 2010)

[401] Racial and Religious abuse as contemplated under Section 32 of the *Crime and Disorder Act 1998* as an aggravating factor

[402] *R (on the application of the DPP) v Humphrey* [2005] EWHC 822

[403] *Kendall v DPP* [2008] EWHC 1848

[404] [2006] EWHC 1202 (Amin)

[405] *Brutus v Cozens* [1972] 2 All ER 1297 also, the Court will not apply a narrow interpretation to the use of words *Gough v DPP* [2013] EWHC 3267 (Admin)

which such words are displayed are relevant, [406] when determining whether or not the language justifies the involvement of the police for a potential contravention of the POA.

Section 4A is the only criminal provision defining circumstances where 'insulting'[407] words can constitute a criminal offence, restricted to the circumstances where the offender deliberately caused harassment, alarm or distress. As will be indicated in the data in Part 3, students often use insulting words towards each other via SNS. This type of offence would be reserved for severe circumstances where malicious intent was evident.

3.3.2 Section 127(1) of the Communications Act 2003 (Section 127(1))

Section 127(1) was created to deter people from using a public communications network in an inappropriate way,[408] in particular, using a public electronic communications network to send a message or other matter which is grossly offensive, indecent or of a menacing character.[409] In establishing an offence under Section 127(1), the threshold for intent is silent and whether or not the elements of the offence are made out will be determined by the content of the message and the context. While section 127(1) is silent as to *mens rea*, the state of mind of the perpetrator nevertheless remains relevant, as clarified in *DPP v Collins*,[410] when Lord Bingham referred to *Sweet v Parsley*: 'Parliament did not intend to make criminals of persons who were in no way blameworthy in what they did'. [411] The purpose of the communication must be to cause annoyance, inconvenience or needless anxiety, arguably a lower bar than other statues relevant to online abuse offences which require for example, an intent to cause a fear of violence,[412] or distress.[413] The *actus reas* component of the offence, is to send a communication which is of itself 'indecent' or 'grossly offensive'.

The meaning of the word 'indecent' includes to cause offence by showing too much of the body or involving sex'.[414] When deciding whether an image is indecent, courts are guided by

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[406] *Southard v DPP* [2006] EWHC 3449 (Admin): where the Court considered the context of using the words "fuck you" and "fuck off" as to whether they were abusive

[407] To 'insult' is to say or do hurtful or disrespectful things to another person, synonyms include; to be rude, to call someone names, offend, bitchy- Maurice Waite and Sara Hawker (eds) *Oxford paperback Dictionary and Thesaurus* Third Edition (2009)

[408] The original purpose of the CA was to update the Post Office Amendment Act (1935) passed to deter people from wasting a public communications facility to send obscene communications. The 2003 version incorporates the misuse of the internet as a public communications network in under Section 127

[409] Section 127(1) Communications Act 2003

[410] [2006] UKHL 40

[411] [1970] AC 132, 148

[412] The Protection from Harassment Act 1997 Section 4

[413] Public Order Act Section 4A

[414] Maurice Waite and Sara Hawker (eds) Oxford paperback Dictionary and Thesaurus Third Edition (2009)

the recognised standards of propriety, which may vary from age to age.[415] 'Offensive' means; 'causing someone to feel upset, insulted or annoyed'[416]. 'Grossly' may be defined as 'very obvious and unacceptable'.[417] It is argued the legislation refers to behaviour which crosses a line of what is culturally or socially acceptable, in an improper, vulgar way. In *DPP v Collins*[418] Lord Bingham stated that in determining what is meant by "grossly offensive", the standards of an 'open and just multi-racial society, must be applied, taking account of their context and all relevant circumstances… The test is whether a message is couched in terms liable to cause gross offence to those to whom it relates'.[419] The purpose of the provision, is to protect a public communications network from being used to transmit communications which contravene the basic standards of our society.[420]

DPP v Collins involved offensive messages being left on an answering machine including the terms 'wogs' 'pakis' and 'black bastards'. [421] The case suggests students who use such terms to each other via SNS would be at risk of committing an offence. As soon as such a communication is sent the offence is committed. It is irrelevant as to whether the recipient of the message was offended, or if they received the communication.[422] As such, while it is not necessary for the offender to have intended harm or that actual harm was caused, the offender must have meant to use the SNS to communicate a grossly offensive or indecent message. This provision could apply to grossly offensive posts made by students on SNS which are viewable by the public or by their contacts, which are not targeted to upset any particular person. While is for to the Court to determine as a question of fact whether a message was grossly offensive,[423] if the police become aware of a young person communicating with language which is considered to be grossly offensive, in a context where the offender meant to cause annoyance or needless anxiety to a recipient, this may justify intervention in respect of some communications.

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[415] *R v Stamford [1972]* 2 All ER 427
[416] Maurice Waite and Sara Hawker (eds) *Oxford paperback Dictionary and Thesaurus* Third Edition (2009)
[417] ibid
[418] *DPP v Collins* [2006] UKHL 40
[419] ibid per Lord Bingham at paragraph 9
[420] ibid per Lord Bingham at paragraph 8
[421] 'I conclude that the respondent's messages were grossly offensive and would be found by a reasonable person to be so': ibid per Lord Bingham at paragraph 13
[422] Nor was it relevant at to whether Mr Collins had any idea or cared, whether a person would pick up his telephone message would be offended: David Goldberg 'When is a Public Communication "Grossly" (Including Racially) Offensive?' (2006) 8 IRIS Extra
[423] David Ormerod, 'Telecommunications: sending grossly offensive message by means of a public electronic network' Criminal Law Review (2007) January 98-100

The leading case of *Chambers v DPP*,[424] provides insight into the meaning of 'menacing' communications under Section 127(1). The Defendant, Mr Chambers, using Twitter stated he would blow up an airport after expressing frustration over a flight being delayed. In *Chambers* the Lord Chief Justice stated:

> 'the mental element of the offence is directed exclusively to the state of mind of the offender, and that he may have intended the message as a joke, even a poor joke in bad taste, it is unlikely that the mens rea required before conviction for the offence of sending a message of a menacing character will be established'.

Consequently students making empty threats as genuine attempts at jokes do not contravene Section 127(1). While Section 127(1) is silent as to intent, it remains necessary the offender be aware their message conveyed malicious content.

3.3.3 Section 127(2) False or persistent communications with intent

Section 127(2) of the Communications Act 2003 ("Section 127(2)") is designed to capture nuisance communications,[425] where a perpetrator either sends false or persistent communications for the purpose of causing 'annoyance, inconvenience or needless anxiety'. Actual harm need not be established, but the offender must have intended to cause annoyance and inconvenience. This section could apply to online abuse between students which involve the creation of fake profiles, impersonating others as well as spreading false rumours online in order to cause distress or humiliation.

3.3.4 The Malicious Communications Act 1988 ('MCA')

The MCA is relevant to online abuse where the perpetrator sends an indecent, or grossly offensive or threatening or false communication to another person, with the intent to cause the victim stress or anxiety. This offence captures conduct which specifically targets an

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[424][2012] EWHC 2157 (Admin), [2013] 1 All ER 149
[425] CPS Guidelines 'Communications Offences'
<http://www.cps.gov.uk/legal/a_to_c/communications_offences/>

individual with harmful behaviour.[426] Consequently the MCA is not applicable to students using SNS to post grossly offensive messages or images to their contacts or the public. General posts such as these may captured by Section 127(1), while an MCA offence requires intent to cause harm to a specific person. The MCA requires the perpetrator to have sent the offending communication with the intent to cause distress and anxiety. An offence under the MCA may be dealt with by the Crown Court, reflecting the serious nature of the crime. If proven at a trial on indictment, the potential sentence is 4 times longer than available sentence associated with Section 127(1),[427] reflecting the impact of this offence upon victims.[428] The MCA could be used to deal with online abuse where students have deliberately used SNS to send disturbing messages or images, for the purpose of causing a specific person distress or anxiety. The case law demonstrates the type of communication captured by the MCA, would not be typical adolescent teasing or banter. The MCA would only be relevant to the most serious of incidents. In one of the leading cases regarding the MCA, *Connolly v DPP,*[429] the defendant was charged after sending photographs of aborted foetuses to pharmacists selling the morning after pill. The court determined the photographs were of themselves, indecent and grossly offensive,[430] and also determined that the purpose for which they were sent was to shock those who received them, in order to deliver a powerful message. [431] Therefore only powerful shocking messages designed to hurt are the type which may be prosecuted under this Act.

3.3.5 Section 33 The Criminal Justice and Courts Act 2015 ("CJCA")

Section 33 of the CJCA addresses the phenomenon of so-called 'revenge pornography', where a person discloses[432] without consent, a private sexualised image of another person with the intention to cause that person distress. This is relevant to some cases of sexting abuse between

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[426] Jacob Rawbottom 'To rant, vent and converse: protecting low level digital speech' (2012) 71(2)Cambridge Law Journal 355-383

[427] Section 1 of the MCA allows a maximum sentence of 2 years imprisonment on indictment compared to Maximum of 6 month imprisonment on summary conviction contemplated under Section 127(3) Communication Act (2003)

[428] 'The sending of abusive messages or material online can cause absolute misery for victims and we need to make sure that the people who commit these awful crimes be punished'. Ministry of Justice, Press release from Chris Grayling; 'Internet Trolls to face 2 years in prison' 20 October 2014

[429] [2007] EWHC 237 (Admin)

[430] ibid per Dyson LJ at paragraph 11

[431] 'They are shocking and disturbing. That is why Mrs Connolly sent them to the pharmacists': *Connolly v DPP* [2007] EWHC 237 (Admin) per Dyson LJ at paragraph 11 also see Graeme Broadbent, 'Malicious Communications Act 1988: Human Rights' (2006-2007) 71 Journal of Criminal Law 288, also see Laura Scaife 'The DPP and social media: a new approach coming out of the Woods?" (2013) 1 Communications Law 5

[432] 'Disclosure' is defined in section 34(2) of the CJCA whereby a person 'discloses' something by any means they give, show or make it available to a person

students.[433] The offence is similar to the MCA in that it is concerned with the intention to cause harm to a particular individual,[434] and attracts similar sentencing provisions.[435] In the case of revenge pornography, a perpetrator commits an offence when they send a private and sexual image[436] to another person, besides the person depicted in the image, for the purpose of causing distress to the person depicted in the image.[437] While this offence is relevant when a young person discloses a sexual image of another person for the purpose of causing humiliation, it is not relevant to consensual sexting between young people.

3.3.6 Section 160 of the Criminal Justice Act 1998 (CJA)

The CJA creates an offence for a person to possess a photograph or a pseudo-photograph portraying an indecent image of a child. It is a defence under the CJA if the person who received the image did not request the image, and did not keep the image.[438] This is relevant to where a person receives, without solicitation, an indecent image of a child, such as when a student receives a naked image from another student which they do not delete from their device. This type of offence may be relevant with respect to online abuse as defined by this thesis where receiving the image is of itself distressing. However it is also associated with the potential criminalisation of children who receive unsolicited naked or sexualised images.

3.3.7 The Protection from Harassment Act 1997 ("PfHA")

The PfHA creates an offence where a perpetrator intentionally[439] causes harassment to a victim on more than one occasion, constituting a course of conduct.[440] The PfHA does not require the course of harassment be inflicted exclusively online or face-to-face,[441] and may be a combination of the two, and could be used to deal with persistent cases of online abuse between young people which involves elements of repeated bullying including a combination

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[433] Sexting abuse is defined in Chapter 1 of this thesis

[434] Alisdair A Gillespie, 'Trust me, its only for me' : "revenge porn" and the criminal law (2015) 11 Criminal Law Review 866

[435] On indictment a term of imprisonment not exceeding 2 years and on summary judgment a term not exceeding 12 months MCA 1(4)

[436] The meaning of private and sexual is defined in Section 35 of the Criminal Justice and Courts Act 2015

[437] Section 33 (1) of the Criminal Justice and Courts Act 2015

[438] Criminal Justice Act 1998 160(2)(c)

[439] Conduct which he knows or he ought to know constitutes harassment Section 1(b) PfHA

[440] Protection from Harassment Bill HL Deb 24 January 1997 vol 577 col 917

[441] The case of 18 year old Keeley Houton involved incidents where she had harassed her victim including face to face threats and online threats which the Court determined were a course of conduct constituting harassment under the PfHA: *R v Houton* Unreported (2009) Worcester Magistrates Court, Helen Carter, 'Teenage Girl is First to be jailed for bullying on Facebook' *The Guardian* 21 August 2009 http://www.theguardian.com/uk/2009/aug/21/facebook-bullying-sentence-teenage-girl>

of face-to-face harassment and online abuse.[442] In determining whether a particular incident constitutes harassment, the specific incidents of the offender's behaviour must be calculated to alarm a victim to a point which is unreasonable or oppressive,[443] beyond everyday irritations, annoyances and even a measure of upset, crossing from behaviour which may be regrettable, but part and parcel of every day dealings with people, to the unacceptable.[444]   Consequently the PfHA would only be applicable to serious and repeated incidents of online abuse between young people. Harassment behaviour which is racially or religiously motivated can be treated as an aggravating factor, potentially increasing the applicable term of imprisonment.[445]

3.3.8 The Protection of Children Act (1978) ("POCA")

The POCA was designed to protect children from being abused by adults, prohibiting images of children being created, kept or distributed for the purposes of sexual exploitation.[446] However the POCA also creates an offence in circumstances where young people have taken indecent images of themselves and shared these images voluntarily, and images which they have taken of themselves kept on a device and not shared. Any young person who creates an indecent image of themselves or anyone else, distributes those images, or stores those images, commits an offence under the POCA.[447] While the provision was designed to prevent the exploitation by adults of children, the POCA does not preclude the prosecution of children who create and distribute sexual images of other children, nor does it preclude the prosecution of children who create and distribute images of themselves.[448] Other legislative provisions specifically target behaviour by adults only. For example, 15A of the Sexual Offences Act 2003[449] creates an offence if a person over the age of 18 asks or encourages a child to create naked photographs, however it does not apply to children making requests for naked images from other children.[450] There may be scope to argue the POCA could be amended to target adults exploiting children only. When the original legislation was enacted, and when it was updated in 1994 to include electronic images, sexting between adolescents using SNS is

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[442] As noted in this article, the Act allows persistent conduct to be viewed as a totality when assessing the distressing nature of the intention: Judith Gowland 'Protection from Harassment Act 1997: The 'New' stalking offences' (2013) 77 Journal of Criminal Law 389
[443] *R v Curtis* [2010] 3 All ER 849
[444] *Majrowski v Guys and St Thomas's NHS Trust* [2006] 3 All ER 849 at 855
[445] Section 32 Crime and Disorder Act
[446] As described in the Second Reading Speech for the Protection of Children Bill, per Mr Cyrill D Townsend, HC Deb 10 February 1978 vol 943 cc 1826-922
[447] Section 1 POCA
[448] ibid
[449] As amended by Section 67 of the Serious Crime Act 2015
[450] This provision is relevant where a young person, under the age of 16, is in a relationship with another person who is 18- 15A Sexual Offences Act 2003

unlikely to have been contemplated.[451] Nevertheless, the consensual exchange of naked or semi-naked images between young people are captured. There is evidence that sexting between young people is not uncommon,[452] with an estimated 20% of 15-16 year olds admitting having received a sexual message in the last 12 months. Sexting is not analogous with online abuse, it can be associated with normal adolescent behaviour, such as a desire to give a partner a 'sexy present' or to make friends laugh.[453] Sexting may form a normal part of contemporary culture,[454] with young people not necessarily viewing the behaviour as controversial.[455] While sexting can lead to problems for a young person,[456]research indicates many children do not suffer from harm as a result of sexting,[457] and those that do, may have encountered problems due to other life circumstances.[458] Consensual sexting activities, while illegal under the POCA, do not constitute online abuse as defined in this thesis, yet sexting is correlated with online abuse due to the potential for sexting to place a young person in danger from suffering online abuse or sexual exploitation. A moral panic[459]relating to sexting has ensued caused in part by media reports of over-sexualised teenagers placed at risk due to sexting using SNS.[460] Whilst there is some increased risk of negative outcomes associated with consensual sexting it is argued the response to adolescent involvement in such activities, may be excessive, or counterproductive.[461]

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[451] In 1994 the POCA was updated to include images made by electronic means which appears to be a photograph Section 84 Criminal Justice and Public Order Act 1994

[452] During 2016-2017 Police Forces in England recorded 6,238 incidents of teenage sexting: BBC News ' Police Investigate 17 child sexting cases a day' 6 November 2017 http://www.bbc.co.uk/news/uk-41880500 also see Jessica Ringrose, Rosalind Gill, Sonia Livingstone, Laura Harvey, 'A Qualitative Study of Children, Young People and Sexting' A report prepared for the NSPCC (2012) in the study 10% of students aged 13-14 had seen or received a sexual message and 20% of 15-16 year old had seen or received a sexual message in the past 12 months

[453] Naked Photos: Why do it? *The Wireless Report* (2014) http://ditchthelabel.org/downloads/wireless2014.pdf p24

[454] Alisdair A Gillespie 'Adolescents, Sexting and Human Rights' (2013) 13(4) Human Right Law Review 623

[455] Alyce Mc Govern, Thomas Crofts, Murray Lee, Sanja Milivojevic, 'Media, legal and young peoples discourses around sexting' (2016) 6(4) Global Studies of Childhood 428

[456] Including vulnerability to bullying, blackmail, exploitation, and emotional distress NSPCC 'Sexting' https://www.nspcc.org.uk/globalassets/documents/online-safety/sexting-understanding-the-risks.pdf last viewed 27 June 2018

[457]As referred to in: Jessica Ringrose, Rosalin Gill, Sonia Livingstone and Laura Harvey 'A Qualitative study of children, young people and sexting, a report prepared for the NSPCC'(2012) 11

[458]ibid 15

[459] Renold and Ringrose refer to the media treatment of sexting as a media filled moral panic which thrives on theories of girls' sexual excess, set against a middle class norm of developmentally appropriate heterosexuality: Emma Reynold and Jessica Ringrose, ' Schizoid subjectives? Re theorizing teen girls' sexual cultures in an era of 'sexualisation' (2011) 47(4)Journal of Sociology (2011) 402

[460] Sexting is often seen as a technological, legal, sexual and moral crisis as discussed in: Adele Hasinhoff '*Sexting Panic, Rethinking Criminalisation, Privacy and Consent*' (University of Illinois Press 2015)1, also see Rossalyn Warren 'Girls are Being Slut Shamed on GossipGirl Inpired Instagram Pages' *BuzzFeed News* 22 January 2016

[461] Sexuality associated with adolescents is seen as inherently risky: Adele Hasinhoff, *Sexting Panic, Rethinking Criminalisation, Privacy and Consent* (University of Illinois Press 2015)

The genuine concern regarding the risks of consensual sexting, does not justify the current format of the POCA which criminalises sexting between young people whether they are intending to abuse one another or not, nor does it justify the criminalisation of naked or sexual images taken by a young person of themselves and stored on their own device. It will be argued throughout this thesis that the current format of the POCA and the associated monitoring and interfering with sexting between young people causes a drain on resources, disproportionately monopolising the time of school staff and school-based police. It is argued the POCA may be re-drafted so that consensual sexting behaviour does not form an offence, and an example of a potential amendment is attached at Appendix 3. There are also problems associated with the confusion surrounding how POCA offences are recorded by the police, and what happens to this information as part of the National Crime Recording Standard. This is addressed in Part 2 of this Chapter.

3.4 Prosecutions of young people

Offences represent standards of behaviour or conduct which society has stated it will not accept.[462] Criminal laws are principally created to punish and deter adults,[463] yet they also apply to children over the age of criminal responsibility.[464] Young people regularly engage in anti-social behaviour online,[465] including threatening and harassing each other, sending offensive material and sending each other naked images, sometimes without consent,[466] all of which are potentially captured by criminal legislation as set out in this part. Yet young people are rarely prosecuted for such offences.

Data obtained via the Freedom of Information Act[467] reveals secondary school students are rarely charged cautioned or prosecuted for online abuse offences. A 2017 Freedom of Information request detailed 259,792 incidents in schools recorded as a crime in the previous 3 years, and provided detail as to the type of offences committed in school, such as theft, sexual offences, arson, robbery, criminal damage, vehicle offences, drug offences and 362 recorded incidents of public order offences. In the crimes listed, there were no

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[462] The role of the criminal law in regulating societal norms: Nicola Lacey, 'Criminalisation as Regulation: the Role of the Criminal Law' (2004) in C Parker et al (eds) Regulating Law (OUP 2004) 144 Oxford Legal Studies Research Paper No 50

[463] David L Myres, 'Adult Crime, Adult Time: Punishing Violent Youth in the Criminal Justice System' (2003) 1(2) Youth Violence and Juvenile Justice 173

[464] The age of criminal responsibility is 10 years old: Section 50 of the Children and Young Persons Act (1933) and Section 34 Crime and Disorder Act 1998

[465] As referred to in Chapter 2: Ditch the Label Annual Bullying Survey (2017)

[466] These behaviours are derived from the fieldwork and considered in Part 3 of this Chapter

[467] Freedom of Information Act 2000 which provides public access to information held by public authorities

communications offences mentioned under the Communications Act 2003 or the MCA.[468] In a police disclosure log regarding revenge pornography, it was revealed that between April 2015 and March 2018 one young person was cautioned for a revenge pornography offence.[469] A disclosure log regarding sexting offences under the POCA revealed that 2015, 115 young people were charged under the POCA, however this figure dropped to 90 in 2016 and dropped further to 24 in 2017. In 2017 only one young person was issued with a youth caution in respect of a sexting offence.[470] This would suggest the policy frameworks described in Part 1, are effective in discouraging prosecutions of young people. By reference to other sources,[471] including the empirical research to be discussed in Part 3, it is argued online abuse has not reduced in line with the figures obtained in the disclosure logs. Offences are still being committed, however the young people involved are being diverted from the youth justice system. Consequently if the policy framework prevents young people from being prosecuted for behaviour which constitute crimes, their behaviour must be managed in other ways. Chapter 4 will address the powers and responsibilities of the school to manage online abuse behaviour, and Chapter 5 will address the role of SNS and ISPs, however, there are also other alternatives accessible through the role of the police. The following chapter will continue to investigate the role of the police in managing behaviour outside of the criminal courts.

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[468] West Yorkshire Police Freedom of Information Disclosure Log FOI 1289-18 Incidents in School April 2018 Offences under the POCA are classified as a sexual offence, it was not possible to distinguish in the FOI application whether an offence listed was related to the POCA or whether the offence was sexual assault or rape, however other FOI applications referred to in this Part provide information about POCA offenses
[469] West Yorkshire Police Freedom of Information Disclosure Log FOI 2104-18 Revenge Porn May 2018
[470] West Yorkshire Police Freedom of Information Disclosure Log FOI 4550-17 Sexting Under 18s March 2018
[471] As referred to in Chapter 2: Ditch the Label Annual Bullying Survey (2017)

PART 2

Police Protocols

3.5 The Safer Schools Police Officer

The following examines protocols applicable to school-based police where online abuse behaviour meets the elements required to establish a crime. This Part argues that while it is appropriate to discourage the prosecution of young people for many online abuse offences, alternate measures to prosecution are available via school-based police which may assist in better outcomes such as a reduction in online abuse behaviour. The 3 participating schools had access to a Safer Schools Police Officer ("SSPO"), as part of a nation-wide Safer Schools Partnership between secondary schools and local police.[472] The objectives of a SSPO are couched in the wider aims of the youth justice system, which aims to reduce offending by young people. [473] SSPOs work with schools to minimise anti-social behaviour, truancy and criminality, and to create closer working relationships between schools and police.[474] Safer Schools Partnership models vary, however statements made by the interviewed SSPO indicated his role was likely to be part of what is referred to as a 'light touch' Safer Schools Partnership model, where officers are responsible for several schools. [475] The participating SSPO covered 6 schools alone, and was responsible for 8500 students. SSPOs are funded by the police, who are currently under budgetary restrictions, [476] which may impact the numbers of SSPOs available in schools.

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[472] Safer School Partnership Guidance produced for the Department for Children Schools and Families, the Association of Chief Police Officers, the Youth Justice Board and the Home office (2009)

[473] The Youth Justice System is a system overseen by the Youth Justice Board for managing 10-17 year olds at risk of offending, or who have offended established by the Crime and Disorder Act 1998. The principle aim of agencies involved in the youth justice system is to prevent offending by young people: Section 37 of the Crime and Disorder Act 1998

[474] Roger Bowles, Maria Garcia Reyes & Rima Pradiptyo, Youth Justice Board, 'Safer School Partnerships' (2005)

[475] Police Officer A line 199. This statement indicated he was likely to be part of what is referred to as a 'light touch' model of Partnership: Youth Justice Board Roger Bowles, Maria Garcia Reyes & Rima Pradiptyo, Youth Justice Board, 'Safer School Partnerships' (2005)

[476] Funding arrangements for SSPOs vary with some positions being funding entirely by the police and some shared between the school and the police. Roger Bowles, Maria Garcia Reyes & Rima Pradiptyo, Youth Justice Board, 'Safer School Partnerships' (2005), However budgetary restrictions upon police forces are widespread in the UK, with spending on police falling by 14% between 2014-2015, which steadied in 2016-17, but meant in real terms revenues for police forces continued to fall. The number of police officers in England and Wales fell by 14% between 2009 and 2016: Richard Disney and Polly Simpson, Institute for Fiscal Studies, Police Workforce and funding in England and Wales IFS Briefing Note BN208 (2017)

The following examines the disposal options available to school-based police, rules governing the recording of offences by police, and diversionary mechanisms available instead of prosecution.

3.5.1 Disposal Options for SSPOs

If a criminal offence committed by a student comes to the attention of a SSPO, they must decide how to deal with the incident in accordance with the ACPO Youth Offender Case Disposal Gravity Factor Matrix,[477] (the "ACPO Matrix") and the Youth Out-Of Court Disposals Guide for Police.[478] Disposal options include no further action, community resolution[479], youth caution, youth conditional caution, and to charge the young person with an offence.[480] A SSPO may also issue an early harassment notice in respect of on-going online harassment.[481]

If a SSPO investigates a matter concerning a student, which is finalised with 'no further action', the SSPO is nevertheless likely to engage in conversation with the young person involved about their behaviour as part of their dealings with them. It is argued that for a young person, having a SSPO informally admonish or counsel them about their behaviour may still be an effective response, and is preferable to no response at all. As discussed in Chapter 2, a lack of consequences for online abuse is instrumental in establishing norms which cause the victim to acquiesce, and the offender to engage in such behaviour in the future.[482] Involvement by a SSPO in this manner for minor offences would arguably provide an opportunity to interfere with such a pattern forming.

Within the ACPO Matrix, offences are rated with a gravity score between 1 and 5, and those with a gravity score of 3 or below are indicated for diversion and not prosecution.[483] Online abuse offences such as those captured under the MCA, and Section 127(1) attract a gravity

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[477] Association of Chief Police Officers youth offender case disposal gravity factor matrix (2013)

[478] Ministry of Justice and the Youth Justice Board 'Youth Out-Of-Court Disposals Guide for Police and Youth'

[479] Section 101 of the Anti-Social Behaviour, Crime and Policing Act 2014

[480] Youth Justice Board, Guidance, Use of out of court disposals: https://www.gov.uk/government/publications/use-out-of-court-disposals/use-out-of-court-disposals-section-1-case-management-guidance last visited 2 April 2018

[481] Early Harassment Notices (EHN) are discussed separately at 3.7.8 when considering online abuse behaviours (OAB) identified in the data, in particular OAB 20 and OAB 21 (described at 3.7). EHN are not a formal disposal or form of community resolution

[482] As discussed in 2.8.2

[483] Youth Justice Board, Guidance, Use of out of court disposals (15 October 2014) https://www.gov.uk/government/publications/use-out-of-court-disposals/use-out-of-court-disposals-section-1-case-management-guidance last visited 2 April 2018

score of 2, unless there is an aggravating factor raising the score to 3,[484] which designates these offences for diversion such as a community remedy, also referred to as a community resolution.[485]

3.5.2 Community Resolution

Community resolutions are informal mechanisms which may be used for minor offences as an alternative to the criminal justice process. The Office of the Police and Crime Commissioner for the County in which the 3 schools were interviewed has produced a community remedy document,[486] outlining out- of-court disposals available to the police, which can be used in conjunction with a caution or on their own.[487] These include apologising to the victim, the offender signing an acceptable behaviour contract, paying compensation to the victim, and a parenting contract where the carer of the offender agrees to address their behaviour. Victims should be consulted and agree to a community resolution being used.[488] The correct community resolution to apply would depend upon the circumstances of the offence, and the potential application of these to school-based online abuse shall be explored in Part 3.

The findings of Chapter 2 indicate parenting contracts as a remedy for combating online abuse may be counterproductive. As was discussed in Chapter 2, a student's greatest fear in having online abuse matters reported to their parents, is the threat their device will be taken away from them. [489] A parent faced with a contract regarding online abuse may be forced to remove a student's device, as otherwise they have little control or knowledge over what their child does online. It may create distrust between the young person and the parent, and may allow negative online behaviour to secretly perpetuate. [490] A young person who is forced to keep their online activities secret from their parent may be discouraged from seeking out their parents as a source of help or advice when difficulties arise. Whilst a parent removing a device from a young offender would prove effective in changing behaviour in the short term, in the long

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[484] For online offenses relevant aggravating factors may include: vulnerability of the victim, the offender was motivated by discrimination against race/religion/ethnicity/sexual orientation, and exploitation of the victim

[485] The Police may consider charging the young person with an offence if there is a gravity score of 3, however it may also be disposed of with a caution: Youth Justice Board, Guidance, Use of out of court disposals: https://www.gov.uk/government/publications/use-out-of-court-disposals/use-out-of-court-disposals-section-1-case-management-guidance

[486] Community Remedies were introduced by the Anti-Social Behaviour, Crime and Policing Act 2014

[487] Office of the Police and Crime Commissioner West Yorkshire, Community Remedy for West Yorkshire https://www.westyorkshire-pcc.gov.uk/media/119269/community_remedy.pdf last viewed 12 July 2018

[488] Home Office: Anti-Social Behaviour, Crime and Policing Act 2014: Anti-Social Behaviour Orders Statutory Guidance for frontline professionals (December 2017)

[489] As described by Student A School 1 line 148

[490] Veronika Sleglova and Alena Cerna 'Cyberbullying in Adolescent Victims: Perception and Coping' 2011) 5(2) Journal of Psychological Research on cyberspace Cyberpsychology Article 4

term it is argued based on the evidence in Chapter 2,[491] it may only serve to encourage more clandestine behaviour. The potential use of other community resolution options in respect to online abuse behaviours are discussed in Part 3.

3.5.3 Youth cautions and conditional cautions

If in the view of the SSPO, the matter is more serious than deserving a community resolution, a youth caution may be issued. A SSPO may give a youth offender a caution[492] if the officer is of the view there is sufficient evidence to charge the young person with the offence, the person admits the offence, but in the view of the officer it is not in the public interest to prosecute, [493]or the circumstances do not warrant a charge.[494] Factors police must take into account before charging or cautioning a young person include whether the offence is admitted, previous history of offending, the welfare of the young person, the age of the young person, and whether it is in the public interest to prosecute or caution the young person.[495] Once a young person has been issued with a youth caution they must be referred to a youth offending team to assess the young person for any relevant rehabilitation programme.[496] A youth conditional caution is a similar disposal option, applicable to where an offender has admitted an offence, and includes conditions to which the offender agrees.[497] If the young person breaches the conditions attached to the conditional caution, the matter may be referred for prosecution. In respect of online abuse, it may be useful for a conditional caution to include that the offender refrain from contacting the victim. There is evidence that diversionary measures such as cautions and conditional cautions are more likely to facilitate desistance in young people than prosecution and conviction.[498] The policy of keeping young people out of the courts not only diverts young people from sanctions, this policy may divert young people from potential future crimes facilitated by their premature engagement with the youth justice system. Young people who are prosecuted are more likely to reoffend than young people who

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[491] As discussed at 2.8.1

[492] Sections 66ZA and 66ZB Crime and Disorder Act 1998

Youth Justice Board and the Ministry of Justice, 'Youth Cautions – Guidance for Police and Youth Offending Teams' 8 April 2013

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/354050/yjb-youth-cautions-police-YOTs.pdf>

[494] 66ZA Crime and Disorder Act (1998)

[495] The ACPO Youth Offender Case Disposal Gravity Factor Matrix (2013) paragraph 1.2

[496] 66ZB Crime and Disorder Act (1998)

[497] 66A Crime and Disorder Act (1998)

[498] Susan McVie and Lesley McAra, 'Youth Crime and Justice : Key Messages from the Edinburgh Study of Youth Transitions and Crime' (2010)10(2) Criminology and Criminal Justice 180

are dealt with by a diversionary measure.[499] While measures such as cautions are available to school-based police, evidence which was referred to in Part 1 above and Part 3 below indicate they are rarely used.[500] One of the reasons for this may be that while cautions may be associated with less negative impact on young people than charges and prosecutions, the use of formal cautions are also associated with adverse impact on young people.

3.5.4 Impact of formal diversionary measures

Formal diversionary measures such as youth cautions may exacerbate negative behaviour amongst young people,[501] and cause disproportionate harm to the young offender.[502] Cautions and conditional cautions remain a serious consequence to offending, can appear on a young person's criminal record, and involve formal referral for assessment. The involvement of these processes may have personal and social implications associated with criminalisation, labelling the cautioned individual as deviant, along with negative stigma and consequences.[503] When a young person is cautioned and referred to the youth offending team, there is argument this type of intervention and supervision, while technically diverting youth away from punishment, still resembles punishment.[504] Young people who are dealt with from an early age within a formal justice system may be more likely to have increased future interactions with the youth justice system,[505] which may have the unintentional effect of encouraging young people to commit further offences.[506] However less formal diversionary measures such as community resolution may be effective for some types of offending, without the stigmatisation of being

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[499] Empirical research suggests contact with formal criminal justice systems is counter productive; Laura Kelly and Vicki Armitage, 'Diverse Diversions: Youth Justice Reform, Localised Practises, and a 'New Interventionalist Diversion'?' Youth Justice (2015) 15(2) Youth Justice 117

[500] In Part 1, Paragraph 3.4 of this thesis refers to Police Disclosure Logs, Part 3 details 22 potential offences from the data, out of which 1 student was cautioned

[501] Sean Creany, 'Beyond pre-emptive criminalisaton: towards a child-friendly youth justice' (2013) 12(3) Safer Communities 101, referring to Roger Smith 'Where now for Youth Justice' (2011) 9(1/2) BJCJ 69: 'There is an array of evidence highlighting how damaging interventions in the system can be for young people, Smith accurately described how youth justice policy and practise is harmful and counterproductive'.

[502] For example the damaging effect of a Youth Caution being disclosed to a future employer was considered in *R(T) v Greater Manchester Chief Constable (CA)* [2013] EWCA Civ 25

[503] Laura Laura Kelly and Vicki Armitage, 'Diverse Diversions: Youth Justice Reform, Localised Practises, and a 'New Interventionalist Diversion'?' Youth Justice (2015) 15(2) Youth Justice 117

[504] Sacha Darke 'The Enforcement approach to crime prevention' (2011) Critical Social Policy 31(3) 417

[505] Simon Hoffman and Stuart Macdonald, 'Tackling Youth Anti-Social Behaviour in Developing Wales: A Study of the Tiered Approach in Swansea' (2011) 11(2) Youth Justice 155

[506] 'Young people who are drawn into the net or formal youth justice intervention can suffer from the stigmatising and labelling effects of being criminalised… The process of desistance and unintentionally encourage young people to commit further crime by reinforcing the label and reducing non-deviant options': Sean Creany, 'Beyond pre-emptive criminalisaton: towards a child-friendly youth justice' (2013) 12(3) Safer Communities, 101, referring to: Barry Goldson 'Early Intervention in the youth justice sphere: A knowledge based critique' in Maggie Blyth and Enver Solomon (eds) *Prevention and Youth Crime: Is Early Intervention Working*? (Policy Press University of Bristol 2008)

criminalised. Informal community based approaches, may not attract the same negative stigma and consequences as cautions and conditional cautions. [507]

3.5.5 Restorative Justice administered by police

Restorative justice ("RJ") in the form of victim-offender mediation, is a mechanism available in the youth justice system, [508] which may be used in conjunction with any disposal, including community resolution, however it is not a disposal in its own right.[509] RJ as administered by school-staff was discussed as a potential method for dealing with online abuse in schools at 2.8.3. It may also be facilitated within schools by suitably trained warranted police including a SSPO. It may be used in incidents where an offender has accepted responsibility, and the victim agrees to such a meeting.[510] While RJ may form part of a police-initiated community resolution, this is not currently an option in all police jurisdictions across England.[511]

Although this thesis will advocate that the use of RJ practices by SSPOs is beneficial, the use of RJ facilitated by police in schools, is to be approached with caution. The process is not equally beneficial to all types of offenders and all types of offences. As RJ is not routinely used in respect of online abuse matters, there is little data available to indicate the potential success of such an intervention. The use of RJ in schools by police to address cases of online abuse is largely theoretical and untested,[512] and assessment of such practises in schools is required to ascertain the true benefit. [513] Police-facilitated RJ should only take place in schools where systems allow for constant evaluation of procedures and outcomes, to ensure the measures are helping young people, and at the minimum, not making matters worse.[514]

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[507] Rather than criminalising young people for committing minor crimes or displaying criminal tendencies and introducing them to harmful formal justice processes, informal community based services seem much more promising: Sean Creany, ' 'Beyond pre-emptive criminalisaton: towards a child-friendly youth justice' (2013) 12(3) Safer Communities, 101 referring to Barry Goldman 'Beyond Formalism: Towards informal approaches to youth crime and youth justice' in T Bateman and J Pitts (Eds) *The Russell House Companion to Youth Justice* (Dorset Russell House 2005)

[508] Lode Walgrave, 'Investigating the Potentials of Restorative Justice Practice' (2011) 36 Washington University Journal of Law and Policy 92

[509] Youth Justice Board, Guidance, Use of out of court disposals (15 October 2014) page 7

[510] Association of Police officers, Guidelines on the Use of Community Resolutions Incorporating Restorative Justice (2012)

[511] For example, restorative justice is not available as part of the community remedies available through the West Yorkshire Police: See Office of the Police and Crime Commissioner West Yorkshire, Community Remedy for West Yorkshire <https://www.westyorkshire-pcc.gov.uk/media/119269/community_remedy.pdf > last viewed 12 July 2018

[512] Strang (n332)11

[513] Walgrave (n508) 92

[514] John Braithwaite, 'Setting Standards for Restorative Justice' (2002) 42 British Journal of Criminology 564

RJ has also been associated with increasing the punitive power of the police in a manner which is potentially dangerous for offenders. Police facilitators may be tempted to use the role to manipulate the outcome. [515] RJ facilitated by police affords the SSPO a great deal of power over the resolution of incidents where they already control processes of arrest, detention and investigation.[516] As the process emphasises reparation to victims, RJ may ignore the interests and legal rights of offenders who may be dominated by a victim-led process, and as such it may erode the legal rights of offenders. [517] These types of criticisms may be particularly applicable in the case of RJ administered by police at schools, where young people may feel compelled to admit to an offence in circumstances where they are unlikely to receive counsel from an independent adult or a solicitor. Students may feel pressure to admit an offence where there has been an accusation, even in circumstances where there is little evidence. [518] Participation in RJ in principle is voluntary, however willingness to take part and agree to the outcomes of the conference may be influenced by social pressure or the threat of being referred to court. [519]

Finally, criticisms of RJ include that it may trivialise crime, by dealing with criminal offences and offenders with a 'softer' approach, which may not seem commensurate with the hurt or damage they have caused. [520] This is because youth RJ is associated with diverting young people from the hardships of the criminal justice system.[521] However in this thesis, RJ is proposed as an alternative to the existing conditions where the police take little or no action in respect of a vast number of school-based online abuse cases,[522]rather than as an alternative to prosecuting young people. Consequently it is argued that in the case of online abuse, RJ would serve to convey a sense of significance to the behaviour that currently may be absent in schools. [523]

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[515] Richard Young, 'Just Cops Doing "Shameful" Business?: Police-led Restorative Justice and the Lessons of Research' in Allison Morris and Gabrielle Maxwell, (eds) *Restorative Justice for Juveniles* (Hart Publishing, Portland Oregon 2001) 195

[516] ibid

[517] Allison Morris, Critiquing the Critics, a Brief Response to Critics of Restorative Justice' (2002) 42 British Journal of Criminology 596

[518] Barbara Hudson *Justice in the Risk Society* (Sage Publications London, 2003) 207

[519] Walgrave (n508)96

[520] Morris (n517)596

[521] Simon Little, Anna Stewart, Nicole Ryan, 'Restorative Justice Conferencing: not just a Panacea for the overrepresentation of Australia's Indigenous Youth in the criminal justice system' (2018) 62(13) International Journal of Offender Therapy and Comparative Criminology 4067

[522] See 3.4

[523] Morris (n517) 596

It is argued that there may be positive gains to be made by RJ facilitated by SSPOs, where the officer is trained and the outcome of such mediations are reflected upon as part of wider processes to ensure no harm is being done. The key principles of RJ as discussed at 2.8.3 should be observed, to generate a restorative conclusion. Retribution and inflicting negative consequences upon a perpetrator is not reflective of RJ.[524] The process may encourage offenders to understand the impact of their crimes by putting a human face to the consequences of their actions.[525] Community based RJ programmes have been strongly linked to reducing juvenile recidivism.[526] In South Australia, restorative justice meetings are used to address situations of online abuse in the context of family conferencing, with some reports of success.[527] Whilst the evidence regarding recidivism after using family conferencing is mixed, the satisfaction of the victim after participating in such a conference is improved, and this itself is a measure of effectiveness.[528] It is acknowledged by the Association of Chief Police Officers that restorative justice can lead to significant improvement in a victim's satisfaction with the resolution of an incident, it can lead to a reduction in reoffending, and can restore a sense of community cohesion which may be disrupted by more formal processes.[529] Such processes potentially restore respect and dignity to the victim by providing them with a space where their voice can be heard, where the process is geared to repair their hurt,[530] and restore their power.[531] On some occasions, if the perpetrator has committed an offence while themselves a victim of negative social, economic or family conditions, this may be illuminating for the victim and assist them to understand how the behaviour of their attacker may have manifested.[532]

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[524] Young (n515) 195

[525] Jung Jun Choi, Diane L Green, Michael J Gilbert, 'Putting a Human Face on Crimes: A qualitative Study on Restorative Justice Processes for Youths' (2011) (28) Child Adolescent Social Work 335

[526] Jennifer S Wong, Jessica Bouchard, Jason Gravel, Martin Bouchard and Carlo Morselli, ' Can at risk youth be diverted from crime?' A meta analysis of restorative justice diversion programs (2016) 43(10) Criminal Justice and Behaviour, 1310 also see the Shapland Report: Joanna Shapland, Anne Atkinson, Helen Atkinson, James Dignan, Lucy Edwards, Jeremy Hibbert, Marie Howes, Jennifer Johnstne, Gwen Robinson and Angela Sorsby, Ministry of Justice 'Does restorative justice affect reconviction?' (2008)

[527] Conference discussions are based in the offending behaviour and the impact on the victim, and are aimed at achieving an outcome which may involve the offender entering into an undertaking to ender into an undertaking to carry out a form of reparation, apology: Collette Langos & Rick Sarre, 'Responding to Cyberbullying: The Case for Family Conferencing' (2015) (20) Deakin Law Review, 299

[528] Colette Langod, Rick Sarre, 'Responding to Cyberbullying: the Case for Family conferencing' (2015) (20) Deakin Law Review, 317

[529] Association of Police officers, Guidelines on the Use of Community Resolutions Incorporating Justice (2012)

[530] John Braithwaite, 'Commentary: Law, morality and restorative justice' (1997) 5(1) European Journal on Criminal Policy Research 843

[531] John Braithwaite, 'Setting Standards for Restorative Justice' (2002) 42 British Journal of Criminology 564

[532] For example in this article it was described that victims of a theft discovered through RJ the offenders were neglected children of drug affected parents. The victims described their wish to save the offenders from going to Children's Court, as recounted in: Strang (n332) 6

If both victim and offender are both involved with addressing the online abuse behaviour, then it may be more likely they will view the process as valid. There is evidence that offenders do not find participation in RJ conferences oppressive, and that participants perceive police involvement as legitimate. [533] RJ may lend itself to both victims and offenders feeling more fairly and respectfully treated. [534] Processes which involve follow-up and support for the offender after the conference may further reduce recidivism.[535]

The outcome of RJ may involve an apology. This is an opportunity for the victim to forgive their attacker, and be relieved of the burden of anger and bitterness resulting from unacknowledged emotional pain. [536] An apology and an acknowledgment of such an apology signifies that the victim and the offender recognise each other as part of the same moral community. [537]

It is argued there is evidence to consider RJ as a useful mechanism to be used by police within community resolutions, however as will be discussed in Part 3, there may be issues with its delivery due to inadequate resources.

3.6 The National Crime Recording Standard

The National Crime Recording Standard[538]and the Home Office Counting Rules for Recorded Crime, compels police to record all victim-related incidents which fit the description of an offence as a crime, where there is no credible evidence available to dispute the offence. An exception applies to incidents occurring in schools, referred to as the Schools Protocol.[539] A SSPO is not obliged to record a crime if it occurred on school grounds during school hours, where it is recorded by the school in their internal systems,[540] and dealt with as a behavioural issue by school. However a large proportion of online abuse does not occur at school, nor is

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[533] Young (n515)195, referring to 'The Canberra Reintegrative Shaming Experiments' as detailed in: Lawrence Sherman , Heather Strang and Daniel Woods, *Recidivism Patterns in the Canberra Reintegrative Shaming Experiments* (Centre for Restorative Justice, Research School of Social Sciences, ANU Canberra, 2000)

[534]Walgrave (n508)120

[535]ibid 91

[536] Heather Strang, 'Restoring Victims of Young Offenders: the Centrality of Emotional Harm and Restoration' in *Restorative Justice for Juveniles,* Allison Morris and Gabrielle Maxwell (eds) (Hart Publishing, Portland Oregon, 2001) 183

[537] Joanna Shapland, Forgiveness and Restorative Justice: Necessary? Is it Helpful?' (2016) 5 Oxford Journal of Law and Religion 111

[538] Home Office Crime Recording General Rules (April 2018)

[539] This is an exception to the Home Office Counting Rules for Recorded Crime: Crime Recording General Rules (Schools Protocol) Annex B 1 of 2 (2016)

[540] Such as Child Protection Management Systems <http://www.cpoms.co.uk> referred to by Teacher A School 1 line 109

it perpetrated during school hours, consequently it does not meet the criteria for the Schools Protocol, and must be recorded as a crime by the SSPO.[541] There is evidence of panic about how crimes committed by students are recorded, and what happens to such information. [542] This is relevant to the likelihood of schools and students reporting matters to the SSPO, which will be explored further in Part 3.

A 2018 update to the Home Office Counting Rules for Recorded Crime confirms examples of where crimes would be recorded, including where young people have taken images of themselves and shared images voluntarily.[543] The accurate recording of crime is necessary, amongst other reasons, to provide an accurate report on crime in England, to facilitate policy and resource allocation.[544] However this thesis argues some incidents of online abuse should not be classified as an offence, and should not be recorded as a crime under the recording standard. This concern applies particularly to sexting incidents involving the creation and distribution of images of a young person of themselves, contrary to Section 1 of the POCA. As discussed in Part 1,[545] the POCA was principally designed to protect young people from being exploited by adults. Whilst it is rare for a student to be charged with an offence under the POCA, it nevertheless captures consensual sexting as well as sexting abuse, which must be recorded as a crime pursuant to the National Crime Recording Standard.[546] It is questionable as to whether it is a proportionate response[547] to have incidents such as consensual sexting recorded, as these incidents may be disclosed on a DBS Certificate relating to the young person in the future. [548] This argument may also be applicable to other low-level bad behaviour

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[541] Home Office Counting Rules for Recorded Crime: Crime Recording General Rules (Schools Protocol) Annex B 1 of 2 (2016)

[542] See for example: Lucy Sherriff, ' Terrifying case emerges of a boy 'too young' to be revenge porn victim, so instead criminalised for snapchat selfie' *Huffington Post* (3 September 2015) http://www.huffingtonpost.co.uk/2015/09/03/schoolboy-criminal-sexting-naked-selfie-sent-around-not-victim_n_8081618.html and Nadia Khomami 'Boy, 14 added to the police database after sexting female classmate naked image' *The Guardian* (3 September 2015) http://www.theguardian.com/uk-news/2015/sep/03/boy-14-added-to-police-database-after-sexting-female-classmate and Nadia Khomami 'Boy, 14 added to the police database after sexting female classmate naked image' *The Guardian* 3 September 2015 <http://www.theguardian.com/uk-news/2015/sep/03/boy-14-added-to-police-database-after-sexting-female-classmate>

[543] Home Office Counting Rules for Recorded Crime, Miscellaneous Crimes Against Society, 'Obscene Publications' (April 2018)

[544] Home Office Counting Rules for Recorded Crime: Vision and Purpose Statements for Crime Recording NCRS and HOCR (April 2014)

[545] See 3.3.8

[546] The SSPO interviewed indicated sexting incidents were always recorded in accordance with the National Crime Recording Standard: Police officer A line 322

[547] Alisdair A Gillespie ' Adolescents, Sexting and Human Rights' (2013) 13(4) Human Right Law Review 623-643

[548] Government advice states that there are "no guarantees" a sexting incident would never be disclosed on a DBS Certificate Sexting in School And Colleges: responding to incidents and safeguarding young people UKCCIS (August 2016) page 10

particularly where young people engage in conduct without intending to cause harm to another person.[549]

The Schools Protocol could be expanded to include online abuse offences which do not occur at school or during school hours. This would increase the discretion of the SSPO as to whether to record the incident as a crime. Chapter 4 will explore the cultural ethos within schools which indicates a relationship of cooperation between students and staff is paramount, and often facilitates a resolution to online abuse. Policies which compel the recording of the behaviour of secondary school students as a crime arguably promotes a secretive and uncooperative school environment which may generally hamper efforts to promote pro-social behaviour by the SSPO and school. As discussed in Chapter 2,[550] young people who infringe social norms are often ready to acknowledge they are in the wrong, to apologise and take responsibility.[551] There may be a disincentive for schools to seek the advice or the assistance of the SSPO, where there is uncertainty regarding a criminal record, and even more disincentive for the young person to report it.

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[549] Such as communications offences under S127(1) of the Communications Act 2003
[550] Discussed at 2.6.4
[551] Roger Smith, *Doing Justice to Young People: Youth Crime and Social Justice* (Willan Publishing London 2011) 77

PART 3
Data Analysis

3.7 Potential offences and responses

This part draws upon the empirical research to identify how the criminal law, policy frameworks and police protocols could apply to real online abuse behaviours experienced or witnessed by participants in the study. 22 online abuse behaviours (OAB) were identified in the data.[552] The OAB are examined in the context of the criminal law and CPS policy to ascertain whether they constitute a prosecutable offence. Otherwise the OAB is considered in the context of mechanisms available under police diversionary frameworks, as to whether these may potentially contribute to a positive impact upon reducing online abuse or improving outcomes for young people.

Online abuse behaviours

OAB 1	student making threats of physical violence towards another student[553]
OAB 2	a student sending out threatening messages to himself from the iPads of other students after hacking into them[554]
OAB 3	a student spreading false rumours via SNS to humiliate someone[555]
OAB 4	a student asking another student to send naked photos[556]
OAB 5	a student sending another student naked images[557]
OAB 6	naked images distributed without consent as a joke[558]
OAB 7	naked images being distributed without consent carried out in an act of revenge[559]
OAB 8	a student threatening to post naked images of her ex-boyfriend[560]
OAB 9	images of a student falling down the stairs and breaking her ankle posted online without consent, along with derogatory comments about the student[561]

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[552] The OAB are displayed in the order in which they were identified by the researcher
[553] School 2 Student A line 369
[554] Policeman A line 258
[555] School 2 Student A line 113
[556] School 2 Student A line 528
[557] Student B School 2 line 525
[558] Policeman A line 186
[559] School 3 Student A line 209
[560] Student A School 3
[561] School 3 Student A line 36

OAB 10	parody fake SNS accounts created making fun of the student named in the account[562]
OAB 11	homophobic insults posted about a bisexual student[563]
OAB 12	Referring online to a student of mixed race a 'Paki' and that she had 3 nipples[564]
OAB 13	a student sending threatening messages to another student, pretending he had placed cameras in her house, and sending her disturbing images from a horror movie[565]
OAB 14	an image circulated of a young person photo-shopped to appear pornographic[566]
OAB 15	video being circulated through the school population of a student engaged in bestiality[567]
OAB 16	taunting, insulting comments to a young person with learning disabilities: 'People call me a dick'[568]
OAB 17	provocative, derogatory comments to a year 8 female student: 'oh you are such a slag, you go out with a year 12" "he must be a paedophile'.[569]
OAB 18	students mocking a student about his mother being a lesbian 'your mum is a lettuce licker'[570]
OAB 19	a student witnessing a video of a baby being thrown on the floor, which he found distressing, not directed at him personally but posted publicly[571]
OAB 20	on-going campaigns of face-to-face and online abuse lasting years[572]
OAB 21	a case where a student continued to harass another student despite school and police involvement warning her to stop[573]

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[562] School 1 Student A line 112
[563] School 2 Student F line 150
[564] Student D School 3 229
[565] Student D School 3
[566] School 2 Teacher B line 43
[567] School 2 Teacher B line 62
[568] School 3 Student E line 100
[569] Student D School 3 line 61
[570] School 3 Student E line 131
[571] School 2 Student G line 199
[572] Student F School 3
[573] Police Officer A line 418

OAB 22	a student told the mother of another student over a group message that she was a 'dirty orange little cow' [574]

Of these 22 identified online abuse behaviours, 6 matters were reported to the police,[575] of these, 1 matter resulted in a student being cautioned,[576] 1 matter resulted in a student being charged with an offence in respect of online abuse,[577] and one student was issued with an early harassment notice.[578] No students were ultimately prosecuted or convicted of an offence.

3.7.1 OAB involving threats
OAB 1 involved a threat of physical violence to Student D of School 2.

> 'This girl messages me all the time, because she broke up with her boyfriend and now I go out with him, so she keeps saying she's going to come to the school, she's going to get me, telling me to watch my back..
> **Do you find that quite scary?**
> No. Because she's said it before and she's never done anything
> **You don't think she's going to do anything, she's all talk?**
> Yes'. [579]

Other students stated such threats were common online:

> 'Threats happen on Facebook all the time… people film fights and that starts people off, they react saying "Ill knock you out" you see it all the time, it gets pretty deep pretty quick'.[580]

Students report it is rare for actual physical harm to result from such threats,[581] which lessens their fear attached to them, as described by Student D School 2 above.

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[574] Student C School 3 line 95
[575] OAB; 2, 6, 8, 13, 15 and 21
[576] OAB 13
[577] OAB 2 charged but not prosecuted
[578] OAB 21
[579] Student D School 2 line 40 ,55 and 77
[580] School 2 Student A line 369
[581] 'You might say to someone, 'I'm going to knock you out' and then they say, 'oh she's going to knock them out' when I am not, and then you're best friends the next day'. Student A School 2 line 374

Student D School 2 did not report the threat to the police, or to her school. Physical threats of violence are relevant to the POA,[582] which captures threatening or abusive writing displayed within the sight of a person likely to be caused harassment, alarm or distress, not that such harm actually occur. Section 4A of the POA applies where the perpetrator intended[583] for their victim to feel harassed.[584] In this case, intent may be difficult to establish, particularly in light of Student D's lack of concern. It is not enough to establish the natural consequences of a perpetrator's actions would be to cause distress,[585] the behaviour must have been virtually certain to result in the victim feeling alarm and distress, and in addition to that, the perpetrator must have been aware their behaviour was effectively certain to cause harm.[586] However section 5 of the POA arguably captures this offence. For a Section 5 offence, it is necessary for the offender to know the words used were of a threatening nature, but not for the offender to intend to cause fear. An empty threat as described in OAB 1 arguably constitutes an offence, however it may also be the type of low-level bad behaviour referred to in the SNS Guidelines, being behaviour prosecuted rarely, in circumstances which demand a high level of public interest. It is unlikely the circumstances outlined in OAB 1 would meet the public interest threshold, and it may not be commensurate with safeguarding the welfare of a young offender to prosecute in these circumstances.[587] The circumstances described by Student D indicate a culture where empty threats are considered normative behaviour. If the matter was reported to the SSPO, the officer could intervene by speaking to the offender about her threats, without taking formal action. This type of action by an SSPO may assist in interrupting a pattern forming where threatening behaviour is considered normative. A formal caution may cause disproportionate problems for the young offender by involving them in youth justice processes, which may exacerbate future bad behaviour.[588]

3.7.2 OAB involving homophobic or racial insults

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[582] Outlined in 3.3.1

[583] Where the perpetrator had considered the potential consequences of their actions and nevertheless pursued the action, in accordance with the definition in *R.* v. *G and another* [2003] UKHL 50

[584] *R v Nedrick* [1986] All ER 1

[585] Section 8 Criminal Justice Act 1967

[586] *R v Woollin* [1997] Crim LR 519

[587] Prosecutors are required to consider the welfare of the young person in accordance with the Code for Crown Prosecutors as discussed at 3.2.1

[588] Impact of formal diversionary measures are discussed at 3.5.4

The POA may be relevant to OAB 11 which involved homophobic insults,[589] and OAB 12, which referred to calling a student a 'Paki'[590] in a derogatory context. Under the POA racial and homophobic language motivated by hatred are regarded as more serious offences.[591] However in these cases the motivation and intention of the offenders are unknown. It is arguable these incidents more easily satisfy the elements required for a Section 5 offence in the POA, where the students are likely to have been aware the language they used was abusive or offensive.

Section 127(1) may also be relevant to OAB 11 and 12 as homophobic abuse and racial slurs could be considered grossly offensive.[592] Under Section 127(1) an offence is made out as soon as the communication is sent, and it is irrelevant as to whether the student victims were offended, or even if they received the communications.[593]

Under the ACPO Youth Offender Case Disposal Gravity Factor Matrix,[594] racial slurs such as OAB 12 may increase the gravity of the POA offence from a 2 to a 3 allowing the SSPO to consider charging the perpetrator,[595] or issuing a caution.[596] It may be the view of the SSPO that it is not in the public interest to refer such matters for prosecution, or in the interests of the young offender to issue a caution, particularly if the incident is isolated. However, online abuse involving homophobic abuse and racial slurs are potentially serious, and a failure to provide consequences for such behaviour risks its continued perpetration. It may be this incident would be suitable for a community resolution to be applied such as an apology. Restorative justice would only be appropriate if Student D agreed, and the abusers admitted responsibility in respect of the incident. A restorative justice meeting may enable Student D to confront the offender in a safe environment, and for the offender to have the opportunity to apologise. In this particular case a SSPO facilitated restorative justice is not an option as restorative justice is not included in the relevant police force's Community Remedy

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[589] Student F School 2 line 259

[590] Student D School 3 229

[591] Actions motivated by a persons sexual orientations is an aggravating factor under Section 146 of the Criminal Justice Act 2003 and Actions motivated by racial aggravation are treated as an aggravating factor for sentencing purposes under Section 145 of the Criminal Justice Act 2003

[592] David Ormerod, 'Telecommunications: sending grossly offensive message by means of a public electronic network' (2007) (January) Criminal Law Review 98-100

[593] The applicability of Section 127(1) to online abuse is discussed at 3.3.2

[594] Association of Chief Police Officers youth offender case disposal gravity factor matrix (2013)

[595] The Courts have said that referring to an Asian person as a "fucking Islam" was held to be abusive under the POA see R *(on the application of the DPP) v Humphrey* [2005] EWHC 822 (Admin)

[596] Youth Cautions were introduced by section 135 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the 2012 Act) which inserts section 66ZA and 66ZB into the Crime and Disorder Act 1998 (the 1998 Act)

Document.[597] Consequently restorative justice could only be accessed if offered within school. Although the Community Remedy Document did not include restorative justice meetings as an available measure, it is a measure which may be added in the future.

3.7.3 OAB involving abusive or insulting terms

OAB 16 and 18 concerned Student E at School 3 who suffered from learning disabilities, whose mother was in a relationship with a woman. He suffered taunts: 'they call me a dick'', "they said my mum is a lettuce licker'.[598] These statements are arguably, abusive or insulting writing displayed within the sight of another person likely to be caused distress by those messages (namely the victim), as contemplated by sections 4A and 5 the POA. 4A is the only legislation capturing insulting communications however this only occurs if they are calculated to cause distress.[599] The learning difficulties of Student E of School 3 are relevant to the context of the abuse,[600] and may impact how such behaviour towards him is interpreted if an SSPO was alerted to such an incident (in this case Student E did not inform anyone about the incidents). He stated such statements upset him, however the intent surrounding the taunts are unknown. Those making the statements ought to have known their statements were insulting and potentially abusive. This is also the case in OAB 17 where a 13 year old girl was called a 'slag', and it was suggested that her older boyfriend may be a paedophile.[601] These types of statements may also be relevant to Section 127(1), in that they are arguably communications an indecent, obscene or menacing character, however if they were meant to be jokes in poor taste, this would remove them from the ambit of Section 127(1) according to *Chambers v DPP*.[602]

Whilst the above behaviour may be relevant to criminal offences, from a public policy perspective, it would not be in the public interest to charge or caution all students who insult or use abusive language towards each other. This is the type of low-level bad behaviour is the type likely contemplated by the SNS Guidelines,[603] identified as acts which should not be prosecuted unless there are extra-ordinary factors involved which make a compelling case to

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[597] Office of the Police and Crime Commissioner, West Yorkshire, Community Remedy for West Yorkshire (undated)
[598] Student E School 3 line 168
[599] Section 4A is discussed at 3.3.1
[600] In Southard v DPP [2006] EWHC 3449 (Admin) the Court considered the context of using the words 'fuck you' and 'fuck off' as to whether they were abusive
[601] Student D School 3
[602] [2012] EWHC 2157 (Admin)
[603] As discussed at 3.2.2

prosecute. Low-level bad behaviour lacking genuinely harmful intent is common at secondary school.[604] This was noted by Student D of School 1:

> 'We tend to joke around on messenger sometimes, and that can come across as mean. **So you might say an insult, and you don't mean it as an insult, you mean to be funny**
>
> Yes
>
> **Do you think sometimes people take it the wrong way?**
>
> I do think people take it the wrong way, but it cant be helped. Sometimes it happens'.[605]

OAB 22 involved Student C from School 3 entering into a heated exchange with the mother of a fellow student. The incident occurred within a WhatsApp[606] conversation involving several of his school friends. Student C said;

> 'You dirty little orange cow, can you just leave me and my friends alone, piss off…we renamed the group "Psycho Mum", which she didn't like
>
> **Did you rename it 'psycho mum'?**
>
> Yes'. [607]

This is another example of low-level bad behaviour which may, on the face of it, be captured by Section 5 of the POA or Section 127(1), but is unlikely to be prosecuted due to the SNS Guidelines and prosecutorial policies which inhibit prosecutions where such a response would be disproportionate and inappropriate in the context. The context in this case was that Student C had teased a boy in his class about his new haircut and the boy's mother become involved in the student WhatsApp group, sending a message telling the children 'I will hunt you down and kill you'.[608] Compared to the statement made by Student C, the mother's threat is much more likely to be interpreted as a communication comprising of genuine menace, [609]and was

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[604] Andy Phippen and Margaret Brennar ' "Doing more" to End Sexting- Facts figures and challenges in the policy debate' (2017) Ent LR 28(3) 91. For example, if someone were to post 'I hate you' to a contact on a social media site, the supporting sentiment may be nefarious if they meant to cause upset. However, the supporting sentiment may be different; with the person posting the words 'I hate you' as a part of a joke which only understood in the context and relationship between the parties involved

[605] School 1 Student D line 368

[606] WhatsApp is a social networking application used particularly for group messages: <https://www.whatsapp.com>

[607] Student C School 3 line 95

[608] Student C School 3 line 176

[609] Jenifer Agate, Jocelyn Ledward 'Social Media: how the net is closing in on cyber bullies' (2013) Entertainment Law Review 24(8), 263-268

arguably worthy of intervention by the police. The response of Student C was immature and thoughtless, however it is unlikely to establish the requirements necessary for a prosecutable offence.

Apart from the prosecutorial policy considerations, there are practical limitations preventing the involvement of an SSPO in incidents of low level bad behaviour. As discussed at 3.5, the Safer Schools Programme may involve officers working with several schools,[610] with the participating SSPO responsible for 6 schools. He acknowledged he was unable to spend a significant amount of time working with one school,[611] and that it was likely he was unaware of 90% of online abuse incidents.[612] A SSPO is assigned to assist schools with all criminal matters affecting their students, including theft, assault, and drug related crime, and it is likely the most serious incidents will consume their time, whether it be online abuse or other types of offences.[613] As a consequence, due to the lack of availability of school-based police, low-level bad behaviour demonstrated in OAB 1, 16, 17, 18 and 22 are unlikely to be dealt with by a SSPO. Instead these incidents, if they are ever reported, are normally dealt with by schools internally as a disciplinary matter. The regulation of online abuse through school disciplinary policy is examined in Chapter 4.

3.7.4 OAB involving sending grossly offensive images

Section 127(1) may also be used to deal with offenders sending more serious communications such as grossly offensive, indecent images via SNS.[614] This offence may be relevant to OAB 15 where video was circulated of a student engaged in bestiality. The incident was filmed by another student who distributed it to other students, and the video was then further distributed by those students. Had any of the students who had distributed the video been prosecuted under Section 127(1), it is likely the video would have been interpreted by the Court as a communication of a grossly offensive, indecent character by reference to the standard referred to in *DPP v Collins*.[615] School 2 referred the matter to the SSPO, who did not recommend any of the children who shared the video be prosecuted for communications offences. School 2

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[610] Funding arrangements for SSPOs vary with some positions being funding entirely by the police and some shared between the school and the police. Roger Bowles, Maria Garcia Reyes & Rima Pradiptyo, Youth Justice Board, 'Safer School Partnerships' (2005)

[611] Staffing Workload issues were noted: Emily Lamont, Shona Macleod and Anne Wilkin National Foundation for Educational Research Report: 'Police Officers in School: A scoping study' (2011) page 32

[612] Police Officer A line 337 corroborated by safeguarding officer at school A Teacher A School 1 line 127

[613] Police officer A line 198

[614] Section 127(1) Communications Act 2003

[615] *DPP v Collins* [2006] UKHL 40 per Lord Bingham at paragraph 8

did not provide information regarding the outcome in terms of the student who filmed the incident and initially distributed the video. The student featuring in the video was charged with a crime relating to the bestiality, not the communications aspect. It is argued the student who filmed and initially distributed the video committed a serious prosecutable offence. This behaviour could be captured under 127(1) as an improper use of a public communications network,[616] or the POCA as it contained a naked and sexual image of a child.[617] An offence under the CJCA for revenge pornography, may be relevant depending upon the context of the distribution of the video, including whether the person shown in the video consented.[618] This offence will be discussed below under sexting offences. It is argued that OAB 15 does not constitute low-level bad behaviour contemplated by the SNS Guidelines, and the offence is arguably one which should be pursued in the public interest due to the potential harm to the student appearing in the video, and the animal. The staff member describing this incident indicated it had occurred some years ago and the student shown in the video continues to suffer from notoriety associated with the incident. After the video was shown the student had to be removed from main- stream education due to the sensation his presence caused in school. The serious and complex nature of the incident justified the involvement of the SSPO and it is argued the communication element of the offence warranted a caution for the student who created and initially distributed to video, and the on-going involvement of the youth offending team instigated by such a disposal.[619] As highlighted in Chapter 2, it is important such a serious incident be dealt with to confirm that such conduct falls firmly outside of normative online behaviour.[620]

OAB 19 involved Student G of School 2 who witnessed a video shared by one of his friends of a baby being thrown on the floor. He found this distressing and reported the incident to the SNS concerned but not the police.[621] While this video was not targeted at him specifically, it is likely the video was distributed due to its shocking content. There is no suggestion that the friend who posted the video had any involvement in its creation. It is unlikely the person sharing the video intended to specifically cause Student G distress, as it was posted generally to the public. It is argued that posting a video of a baby being thrown on the floor is likely to satisfy the elements of section 127(1), as the person is likely to have known the content of the

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[616] Improper communications under the Communications Act 2003 are discussed at 3.3.2
[617] An offence under the POCA is discussed at 3.3.8
[618] The CJCA and revenge pornography is discussed at 3.3.5
[619] As discussed under 3.5.5
[620] The importance of consequences for online abuse is discussed at 2.8.2
[621] School 2 Student G line 199

video was shocking and offensive. However this is a matter unlikely to be prosecuted as a communications offence due to SNS Guidelines and prosecutorial policy. It is argued Student G acted correctly by reporting the matter to the SNS involved. However had the SSPO been informed, they may have had the opportunity to investigate as to whether the video was already known to the police for the sake of the welfare of the baby, and otherwise talk to the student concerned about contributing to the spread of such material on SNS. The incident is serious in that it arguably contributes to the development of social norms where sharing such shocking material is accepted.

OAB 9 refers to an incident where Student A at School 3 fell down the stairs at school. Students took photos of the incident and the aftermath of her situated at the bottom of the stairs in distress with a broken ankle. These images were posted online along with derogatory comments making fun of her misfortune,[622] the images 'went a bit viral'.[623] The intent behind the images and commentary is unknown, however it is likely those posting had disregard for the feelings and privacy of Student A. The images which depict her with an injury and in pain, together with humiliating comments may constitute grossly offensive communications contrary to Section 127(1) as discussed in *DPP v Collins*.[624] While OAB 9 may constitute an offence under Section 127(1), it may not include a prosecutable offence. Student A was unable to recall the exact wording of the comments. Compared to the bestiality example, it is less clear how the images and comments would be interpreted by a prosecutor in determining whether to proceed. The most appropriate action would depend upon the image itself, the wording of the derogatory comments, and the circumstances of how these were published. Whilst OAB 9 may not be suitable for prosecution, SSPO involvement was arguably warranted in respect of the students who initially created and posted the images. The circumstances of the incident indicate an indifference for Student A, who suffered great distress as a result of the images being posted. It may be a community remedy including an apology could have been applied, including a restorative justice meeting facilitated between Student A and those who created and posted the images. This may have had the effect of bringing the consequences of posting the images to the attention of the offenders, and may have helped Student A by providing her an opportunity to address those who had created and published the images.

3.7.5 OAB involving false messages or profiles

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[622] School 3 Student A line 36
[623] Student A School 3 line 38
[624] *DPP v Collins* [2006] UKHL 40 per Lord Bingham at paragraph 8

Section 127(2) is designed to capture nuisance communications,[625] where a perpetrator either sends false or persistent communications for the purpose of causing 'annoyance, inconvenience or needless anxiety'. This offence could apply to OAB 2, which involved a student who hacked into the devices of other students, and caused those devices to send threatening messages to himself.[626] The student performed this deception over a period of time and caused much distress for the students whose devices he hacked into. It is likely the offender deliberately meant to cause harm, as he continued to interfere with devices over time even after innocent students were wrongly accused of sending abusive messages. The incidents were reported to the SSPO who discovered the deception, and he recommend the young person be charged with an offence. Section 127(2) does not preclude misuse of a public telecommunications system which belongs to another person, the offence is created by the perpetrator sending a fake message, and is not related to the ownership of the device which sent the message.[627] In this case the young person was not prosecuted due to other issues related to his welfare. The SSPO indicated that in his view, the behaviour was serious enough to warrant a charge due to the amount of distress the student caused, however it was determined at the prosecutorial level that bringing charges against the student would have a detrimental effect on his wellbeing. The involvement of the SSPO was nevertheless instrumental in stopping the online abuse behaviour, and demonstrates the value of schools having access to an SSPO who is able to skilfully investigate and intervene in such serious matters.

In the case of OAB 10, a student created fake profiles to humiliate Student D of School 1, who stated the profile caused him humiliation and shame. He complained to his school, who did not take any action, however when he asked the perpetrator to take down the account they complied. Student D's distress appeared to be linked to the school's inaction as much as the offence. It is argued that the cooperation of the offender indicates this case may be regarded as low-level bad behaviour had it been reported to the police. The offender's swift removal of material may indicate the lack of intent to cause harm such as needless anxiety, and is likely to have been created as a joke in poor taste rather than a false communications offence carried out for the purpose of causing annoyance or inconvenience as contemplated under S127(2). It is argued that whilst the behaviour and the motivations behind OAB 10 may not be clear

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[625] CPS Guidelines 'Communications Offences'
<http://www.cps.gov.uk/legal/a_to_c/communications_offences/>
[626] Policeman A line 258
[627] Another offence relevant to this incident is created under Section 1 of the Computer Misuse Act 1990 regarding unauthorised access to devices.

enough to pursue a charge, this incident may have been suitable for a restorative justice meeting. This may have provided Student D with a suitable outlet to communicate his feelings about the incident, and provided an opportunity for the offender to be confronted with this first hand. It is unknown as to whether the offender continued to create more parody accounts of other students, however it is argued that a restorative justice in respect of OAB 10 may have had the effect of interrupting the creation of parody accounts to humiliate others as a normative behaviour.

In respect of OAB 3, spreading of false rumours over SNS may also be caught by Section 127(2), if there is a level of detrimental intent behind the communication. Student A School 2 described a situation where a fellow student had spread rumours over SNS that Student A had engaged in sexual relations with her boyfriend, which was not true.[628] Student A stated that this caused trouble, with other students thinking badly of her, and otherwise sending her unkind messages, expressing anger for doing something she had not done. It is argued the person who initiated the rumour is likely to have had the intention of causing annoyance and inconvenience for Student A. This type of false rumour, on the face of it, satisfies the elements of Section 127(2). It is unlikely this matter would be graded any higher than a 2 on the ACPO Matrix, and would be suitable for diversion rather than caution or charge, had the matter been reported. However it was found during the interviews that students are reluctant to involve the SSPO or any other adults in matters related to sex. For example, School 2 utilised restorative justice meetings between victims and offenders as part of their disciplinary measures, however Students A and B of School 2 stated restorative justice processes for this type of incident would not work due to the sexual context of the rumours. Students may feel unable to speak honestly and openly in school or to the SSPO about the true nature of disputes which involve sex.[629] Whilst this may be a result of natural reluctance caused by embarrassment on the part of the students involved, it may be due to mandatory crime recording by the SSPO, and the triggering of school safeguarding mechanisms involving school communications with parents. The effect of school safeguarding mechanisms affecting the ability of young people to be candid with staff and SSPOs are discussed in Chapter 4.

3.7.6 OAB involving targeted, malicious attacks against a person

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[628] School 2 Student A line 113

[629] 'They put us in a room and let us have an RJ… and you'll be like, I don't actually want to be here right now'. Student B School 2 line 403

Offences under the MCA captures indecent, grossly offensive or threatening communications which specifically targets an individual with the purpose of causing harm.[630] The MCA may be relevant to behaviours referred to in; OAB 1 where students made threats of physical violence towards each other, [631] OAB 2 involving the student who sent threatening messages to himself from other student's iPads,[632] and OAB 13 where a student sent threatening messages to a fellow student, pretending he had placed cameras in her house.[633] With respect to OAB 2, in this unusual case, the student caused a message to be sent for the purpose of causing stress and anxiety, not to the recipient (himself) but to the students whose iPads he had accessed. This incident may be captured under the MCA which is not restricted to the recipients of communications, but also anyone else who the sender intended to make aware of the communication.[634] He arguably intended for the owners of the iPads to be aware of the contents of his message and to cause trouble and anxiety. On this basis, it is argued a crime under the MCA may be established.

OAB 13 involved Student D School 3, where a boy from school sent messages to her directly, indicating he had placed cameras in her house.[635] Student D was 13 at the time of the incident. He also sent images to her from horror films, in behaviour potentially calculated to cause Student D stress and anxiety, as the images themselves were of a shocking nature.[636] The threats described by Student D were arguably powerful and disturbing,[637]as contemplated by the MCA.[638] This behaviour was not reported to the SSPO, but to the County Police by Student D's grandmother. Student D was unclear as to the outcome, however she indicated the boy responsible received a caution for his behaviour, and she received an apology. It is argued this incident satisfies the elements of the MCA, and the sinister nature of the communications warranted intervention by the police. The delivery of a caution is only possible where the officer is satisfied there is enough evidence to establish an offence, and the offender admitted the offence. In the event there was any doubt over the intention to cause

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[630] Jacob Rawbottom 'to rant, vent and converse: protecting low level digital speech' (2012) Cambridge Law Journal 71 (2), 355-383.
[631] School 2 Student A line 369
[632] Policeman A line 258
[633] Student D School 3 line 22
[634] MCA(1)(b) is guilty of an offence if his purpose…in sending it is to cause stress or anxiety to the recipient or to any other person to whom he intend that its contents or nature should be communicated
[635] Student D School 3 line 22
[636] *Connolly v DPP* [2007] EWHC 237 (Admin) per Dyson LJ at paragraph 11
[637] Graeme Broadbent 'Malicious Communications Act 1988: Human Rights' (2006-2007) Journal of Criminal Law (71) 288 also see Laura Scaife 'The DPP and social media: a new approach coming out of the Woods?" (2013) Communications Law (1) 5-10
[638] 'They are shocking and disturbing. That is why Mrs Connolly sent them to the pharmacists' as noted in: *Connolly v DPP* [2007] EWHC 237 (Admin) per Dyson LJ at paragraph 11

Student D distress, the perpetrator could have been charged under section 127(1) for sending messages of a menacing nature, or the POA for sending messages of a threatening nature. A single instance of sending such messages carries a gravity factor of 2,[639] however as Student D was 13 years old, the perpetrator was an older student and the images were sent to Student D with some persistence, it may be this raised the gravity of the offence to enable the officer to consider charging the offender, which ultimately resulted in a caution. Student D had been frightened by the actions of the offender, and expected the offender to be charged. Instead she was told he was going to apologise by way of community remedy, and he had been cautioned:

> '…the police man said, basically this is what we have done with him, we have given him a caution, he's signed it, and he showed me it, and he said and I am going to get him to ring you up and give you an apology. So we did that. I had to be ok with it. I thought it should have been taken further'. [640]

Student D School 3 was left feeling as though she had no choice to accept the apology from the offender, which is contrary to the Community Resolution Document requiring the victim agrees with this course of action, and guidelines for frontline professionals issued by the Home Office. [641] The offender did cease harassing Student D after the action by the police officer, so while Student D may have had misgivings about her treatment, the action may have been effective in affecting offender behaviour.

The MCA is potentially relevant to OAB 1 where a student makes a threat of violence towards another, however as has already been discussed above, the empirical data revealed some of these threats made over SNS lack true menace. [642] Only threats designed to shock and sound credible, can be caught by the MCA, as set out in *Connolly v DPP.[643]* Student D School 2 indicated these types of threats were considered normative. As such, the MCA is unlikely to be used to prosecute these types of offences as it is designed to capture serious, targeted offences.

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[639] CPO Youth Offender Case Disposal Gravity Factor Matrix (2013) 19.1 Table 2
[640] Student D School 3 lines 22-32 and 330
[641] Home Office: Anti-Social Behaviour, Crime and Policing Act 2014: Anti-Social Behaviour Orders Statutory Guidance for frontline professionals (December 2017)
[642] A threatening communication which was not intended to be taken seriously was referred to in an Exchange between Mr Butler and Mr Patten during the debate on the Malicious Communications Bill: HC Deb 12 February 1988 vol 127 col 607
[643] [2007] EWHC 237 (Admin)

3.7.7 OAB involving sexting, and sexting abuse

OAB 7 involved Student F of School 2 sharing naked images of two boys with the intention to cause the boys hurt and embarrassment. 'I wanted to humiliate them'. [644] Student F explained someone else had provided him with the images, and he had shared them on SNS. The boys depicted in the images had bullied Student F about his bisexuality, and he had wanted to hurt them as revenge. Student F stated he immediately regretted his actions, deleted the images within minutes, and confessed to his school's pastoral care officer. Student F indicated the pastoral care officer elected to take no action towards him for his behaviour, due to the short amount of time the photos had been online, and that the boys themselves did not know the images had been posted. The SSPO was not informed about the incident. This may have been a strategic decision on the part of the pastoral care officer, aware of the obligations of the SSPO to record such matters as crimes. When asked generally about such matters, Staff-member B at School 2 stated:

> 'We have a school based (police) liaison officer, however we have to be very careful when we use her, as if she hears something, and it's a crime, then we have to go down the criminal route
>
> **And it has to be reported**
>
> Yes'. [645]

As the images of the boys contained nudity and were of a private nature, it is argued that OAB 7 satisfies the elements of Section 33 of the CJCA, a revenge pornography offence.[646] It is not necessary for the images to portray a sexual act to satisfy the element of a sexual nature as required by the CJCA.[647] Student F stated his intent was to embarrass the boys, which arguably satisfy the *mens rea* of the CJCA offence. OAB 7 would also satisfy the offence created by section 1 of the POCA which captures the distribution of naked images of children. These matters do not fit the description of low-level bad behaviour as contemplated by the SNS Guidelines, and consequently, despite the swift removal of the images, the incident was

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[644] Student F School 2 line 109
[645] Teacher B School 2 line 66
[646] Crown Prosecution Service, Revenge Pornography- Guidelines on prosecuting the offence of disclosing private sexual photographs and films (24 January 2017)
[647] An image is sexual if it shows genitalia or was something a reasonable person would view as sexual: CJCA Section 35. While the CJCA requires images should be of a private and sexual nature, the images do not need to be of a person performing a sexual act: 'It does not seem to us that a sexual act should have to be portrayed in the image before an offence could be committed' per Lord Marks, HL Deb 21 July 2014 col 968

potentially serious enough to warrant the involvement of an SSPO. The student who disclosed the images to Student F[648] may have also committed an offence under the CJCA had the intent been to cause harm or embarrassment to the boys. Apart from the CJCA, in the case of Student F and the student who shared the images with him, an offence was committed under the POCA, as they had both distributed naked images of children. School 2 did not seek the advice of the SSPO in respect of this serious matter, and it is argued this this may have been due to concerns about protecting Student F from compulsory crime recording.

Had another student discovered the images on SNS before Student F was able to remove them, and then reposted the images, not to cause the boys harm but because the student thought it amusing to do so, this student would have committed an offence under the POCA. However it would not comprise an offence under the CJCA.[649]An offence under the CJCA requires the element of intention to cause distress.[650] It is not enough that the natural and probable result of the disclosure of the image would be to cause the distress to the boys depicted.[651]

Had the matter been reported by the pastoral care officer to the SSPO, it is argued it is unlikely Student F would have been charged. The ACPO Matrix[652] indicates this type of offence would be rated at a 3, however it also provides guidance as to the circumstances which mitigate the offence into a less severe category. The swift removal of the material, the immediate confession of Student F, his remorse, the circumstances of the boys' abusive behaviour towards Student F,[653] suggest a SSPO may have reduced the gravity score of this offence, and determined it was not appropriate for Student F to be charged. This argument is supported by data obtained from Police officer A, the SSPO for School 1 and 3. The SSPO stated he did not caution or charge students for sexting where the sexual communication was what he described as 'age appropriate.'[654] Police Officer A described that he considered sexual communications exchanged between young people of a similar age to be 'age appropriate',

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[648] If the purpose of disclosing the images to Student F was to cause hurt and embarrassment to the boys in accordance with Section 33 of the CJCA
[649] Felicity Gerry, 'Sentencing Messages; (2015) Criminal Law and Justice Weekly 179 JPN 649
[650] Peter Springfield and Jessica Pitt, 'Facing the Consequences' (2015) Family Law Journal 151 (Nov) 2-5
[651] Section 33(8) CJCA, and: 'It is not enough that a consequence comes about as a result of the natural and probable consequences of a defendant actions, it must be that the consequences were virtually certain', as observed in *R v Nedrick* [1986] 1 WLR 1025 referred to in *R v Woolin* [1999] 1 AC 82
[652] Association of Chief Police Officers youth offender case disposal gravity factor matrix (2013)
[653] Mitigating Factors to be considered under the ACPO Youth Offender Case Disposal Gravity Factor Matrix (2013)
[654] Police Officer A line 61

recognising it as a phenomenon regularly occurring between secondary school students.[655] The SSPO indicated his practise was not to charge a young person under the POCA even where a young person shares a naked image without the original person's consent.

> **'So situations where the boyfriend and girlfriend have broken up, and the boyfriend has then distributed photos?**
>
> No I would not recommend prosecution on that'. [656]

While the SSPO indicated this type of behaviour is unlikely to result in an arrest, it is argued this is behaviour which should nonetheless be further addressed by the police. Had School 2 reported OAB 7, the boys depicted in the images would have been informed of Student F's actions, and this may have caused distress to the boys, and to Student F. However the circumstances of this incident involve parties who all appear to have engaged in inappropriate behaviour. If reported, the SSPO may have had the opportunity to investigate Student F's allegations of homophobic bullying, as well as the sexting incident. Consequently, this matter may be suited to restorative justice rather than punishment in respect of Student F's actions alone. Whether this is an appropriate mechanism would depend upon the willingness of all students to participate, and the maturity of the students to understand the restorative justice process. [657] The nature of OAB 7 requires a suitable response to confirm posting such images is not acceptable behaviour, even in circumstances where Student F was distressed about homophobic insults. Restorative justice may be appropriate by allowing the circumstances of Student F's disclosure to be aired, while recognising the seriousness of his actions. The offenses of the boys involved would be recorded by the SSPO in accordance with National Crime Recording Standard.

In OAB 8, Student A School 3 admitted she had threatened to share intimate photographs of a 17 year old boy, when she was 15. She described how they had initially shared sexual images consensually. Student A stated the same boy had posted naked images of her friend online without her friend's consent, however he did not post Student A's images. During an argument, Student A had threatened the boy to post the images she possessed of him, although she did not do this. In the first instance, all images exchanged consensually between Student

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[655]UKCCIS: Sexting in school and colleges: responding to incidents and safeguarding young people' Annexure B (2016)

[656] Police Officer A line 303

[657] Masahiro Suzuki & William Wood, 'Is restorative justice conferencing appropriate for youth offenders?' (2018) (18) 4 CCJ 460

A and the boy would be captured under the POCA. With regards to the threat to post the images, as Student A did not actually post the images, the CJCA does not apply. However her threat which was communicated to the boy via SNS could still be captured under the MCA, as she arguably made a threat with the intention to cause another person distress or anxiety. Student A became involved in a criminal investigation into the boy's behaviour involving posting images of other students without consent. Student A admitted to the police she exchanged images with the boy and admitted threatening to post images of him. Student A stated the police informally admonished her after this admission, however she was not formally cautioned, and her laptop was taken for investigation. The informal admonishment did educate Student A as to the gravity of her threat to post images, and the illegality of exchanging images generally. She was counselled about her communications offences with no further steps taken against her. In accordance with the National Crime Recording Standard, the incident of providing naked images of herself to the boy, and her threat to distribute images of a 17 year old boy, should have been recorded as crimes, which may appear on future DBS certificate. [658] It is argued in the circumstances, a record of such a crime would have a negatively disproportionate affect upon student A.

Student A School 3 of OAB 8 and Student F School 2 of OAB 7 were the only participants from the participating 17 students interviewed who admitted to engaging in sexting, that is sending naked images to a partner consensually.[659] It is noteworthy that these two students also admitted to also committing sexting abuse, which appears to potentially contradict the research discussed in Part 1, suggesting sexting is less problematic and risky for students than is feared by adults. Whilst research suggests that sexting can form part of a healthy teenage experience ,[660] the examples of the two students would appear to support underlying sexting policy frameworks within schools discussed in Chapter 4[661] which are based upon the assumption that students who engage in sexting place themselves at risk. [662]

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[658] Government advice states that there are "no guarantees" a sexting incident would never be disclosed on a DBS Certificate Sexting in School And Colleges: responding to incidents and safeguarding young people UKCCIS (August 2016) page 10

[659] Student F School 2 and Student A School 3

[660] See Alisdair A Gillespie, 'Adolescents, Sexting and Human Rights' (2013) Human Right Law Review 13(4) 623-643, and Alyce McGovern, Thomas Crofts, Murray Lee, Sanja Milivojevic, 'Media, legal and young people's discourses around sexting' Global Studies of Childhood (2016) 6(4) 428

[661] See 4.3.5

[662] 'All staff should have an awareness of safeguarding issues that can put children at risk of harm. Behaviours linked to issues such as drug taking, alcohol abuse and sexting puts children in danger'. Department for Education, 'Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges' (September 2016)

OAB 14 included reference to an image of a student, photo-shopped to appear pornographic, which was circulated amongst the student population.[663] The image used a combination of a non-sexual image of a student photo-shopped with a pornographic image. Students sharing this image were dealt with by the school under their disciplinary policy and not the police. This type of image would not be captured under the revenge pornography provisions of the CJCA, even if the person creating the image meant to cause distress to the victim. Section 33(5) of the CJCA provides that images which have been altered in any way to appear sexual, including those combined with another image, are not private and sexual as required by the Act. The student who created this image committed an offence under section 1 of the POCA, which includes an offence of creating an indecent pseudo-photograph of a child.[664] Any student who shared the image after receiving would commit an offence under Section 1 the POCA for distributing a pseudo-photograph of a child. Students in possession of this image may commit an offence under Section 160 of the CJA which creates an offence for a person to have a pseudo-photograph portraying an indecent image of a child in their possession.[665] It is a defence under the CJA that a person who received the image did not keep it for an unreasonable amount of time.[666] It is unknown how long each student who received the image kept the image. The act of sharing the image could also be captured under Section 127(1) which relates to images sent of an indecent or obscene character, however these types of communications are also those highlighted by the SNS Guidelines and the Cybercrime Guidance as being rarely prosecuted. It is likely a SSPO would treat the creation of such an image as a more serious offence than keeping the image or sharing the image, however a prosecution for creating such an image would arguably have been a disproportionate response. A more reasonable resolution in the circumstances may have been for the person who created the image to apologise to the victim, which could have been instigated by way of community remedy. It is noted the school dealt with the incident through disciplinary measures, which may have provided an adequate response, and involvement by the SSPO may not have provided additional value. It may nevertheless have been appropriate for a SSPO to speak to students involved in the distribution of the image, to advise them of the serious nature of the matter, potentially reducing the likelihood of similar conduct being carried out in the future.

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[663] School 2 Teacher B line 43
[664] Section 1 of the POCA
[665] It is a defence under the Act if the person who received the image did not request the image, and did not keep the image Criminal Justice Act 1998 160(2)(c)
[666] Criminal Justice Act 1998 160(2)(c)

In OAB 5, other students admitted to receiving unsolicited naked images such as Student B from School 2:

> 'you will be talking to someone, having a nice conversation, and all of a sudden- boom! There is my willy. Ok you're deleted'. [667]

Student B describes immediately deleting the unsolicited image received, and therefore she did not store the image for the purposes of 1(1)(c) of the POCA or contrary to section 160 of the CJA. The boy who sent her the image however, assuming the boy was under the age of 18,[668] committed an offence under Section 1 of the POCA, even if had the image been of himself. While Student B School 2 did not wish to receive the image, and she found it distasteful, she did not indicate it caused her any distress. Student B did not report the matter to her school or to the police. This is an example of how this type of online abuse incident is often dealt with by students themselves. This type of behaviour, although constituting an offence, is unlikely to be prosecutable, due to the disproportionate harm this would cause the perpetrator. In the event the perpetrator continued to send Student B naked images, or she felt distressed receiving such images, the advice and intervention of an SSPO would be useful. It is argued the boy may be discouraged from sending such images if a SSPO informally admonished him for such behaviour.

In OAB 6, Policeman A describes a 15 year old girl who created naked and suggestive images of herself within her Snapchat story, and some of these images had been screen-shot and placed on an infamous 'slag shaming' website. It is not known who posted the image to the website, however the image had been widely distributed amongst the student population. The image appeared on Snapchat which provides information about the number of times an image is saved, which indicated 250 people had copied the image. [669] The student who created the images of herself committed an offence under the POCA, as had anyone who had saved or shared the image. Possession of the image would also have been contrary to Section 160 of the CJA. Police officer A indicated the concern in this case was for the emotional welfare of the girl involved, and although she committed an offence in creating and posting the images, no action was taken against her. The SSPO indicated no charges were made against anyone

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[667] Student B School 2 line 525
[668] Sexual Offences Act 2003 amended the definition of child for the purposes of the PCA from 16 to 18 years of age.
[669] Policeman A line 186

for sharing the images further. In line with the National Crime Recording Standard, the SSPO would have been obligated to record the incident,[670] including the original creation and distribution of the images to Snapchat by the 15 year old girl of herself. It is argued this type of incident is one where schools should seek the advice of police, and it would be unreasonable for a school to deal with such an incident internally. The incident had the potential to cause great distress to the female student, and involved a proportion of school students complicit in anti-social behaviour sharing the image. In this case the SSPO was instrumental in speaking to the students involved, and was alive to the welfare concerns associated with the female student. It is argued the Schools Protocol should be expanded to exclude the to the compulsory recording of a crime with regards to the girl in this instance. Schools should seek advice of an SSPO in such serious circumstances, without the added concern of a crime being recorded.

OAB 15, already discussed above, involved a video circulated of a student engaged in bestiality. Focusing on the communications aspect of the behaviour, if the video was distributed without consent, to embarrass and cause distress to the student featured, the behaviour would be captured under Section 33 of the CJCA. Even without the intent to cause harm, any behaviour which involved sharing the video would be captured under the POCA. The student who filmed and initially distributed the video engaged in serious behaviour involving the creation and distribution of pornographic material featuring a child, prohibited by the POCA.[671] As discussed above, the serious nature of the incident necessitated the involvement of the SSPO. Arguably, this incident may meet the high public interest threshold required to consider charging the student who initially created and distributed the video with an offence. With regards to the students who shared the video, while it is argued it would be disproportionate to pursue criminal charges against these students, the SSPO could fulfil an important role by speaking to the students involved, to explain the seriousness of the incident, and interrupt potential norm creation which permits SNS to be used to distribute grossly offensive and shocking material.

3.7.8 OAB involving prolonged repeated abuse

The PfHA is relevant to sustained attacks against students which may involve a combination of online abuse and face-to-face abuse.[672] The empirical research found a significant number

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[670] The National Crime Recording Standard is discussed at 3.6
[671] Section 7 POCA refers to film and video featuring children
[672] The PfHA is discussed at 3.3.7

of students who suffered from online abuse also suffered from face-to-face abuse. [673] OAB 20 concerns Student F from School 3 who was harassed throughout years 7-10 by a group of 4 girls from her school, whereby she was abused both online, and face-to-face within school. The on-going harassment caused Student F distress, which led to Student F being absent from school, and self-harming. The school noticed her poor attendance and attempted to address the abuse, including placing her on a separate lunch break to the rest of the student body so she did not come into contact with the girls.[674] Sporadic incidents of bullying by different students would not amount to a course of conduct,[675] however Student F described being bullied consistently by the 4 girls over a period of time. The abuse continued both face-to-face and online , and the bullying and online abuse only abated when her aggressors left school. The police were not involved. It is argued the incidents of online and face-to-face abuse which Student F endured over a period of years at school, are likely to satisfy the elements required to constitute an offence of harassment under the PfHA. Student F's situation was considered serious enough by her school to take steps to protect Student F, yet the abuse continued. Arguably, the students harassing her would have known or ought to have known their actions harassed Student F, particularly after she was placed on separate lunches. In this case, Student F was harassed over a long period, and interventions by Student F's school were ineffectual in protecting her from the girls. It is argued it may have been in the public interest to charge the girls who harassed Student F, as they demonstrated an unabated interest in inflicting distress on Student F. A SSPO was not involved in this matter. Had her school referred the incident to the SSPO, they may have decided to issue an Early Harassment Notice (EHN). [676] While an EHN is issued by the police, is it not a formal legal warning.[677] Its purpose is to make people aware that their actions may be considered to constitute harassment as it is defined in the PfHA, and that further acts of harassment could result in a charge.[678] To issue an EHN, the SSPO must be satisfied there has been more than one occasion of harassment where the person ought to have known their conduct amounted to harassment.[679]

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[673] Qualitative Data Appendix 2- 58% of student participants were bullied face to face

[674] This decision by the school to segregate Student F will be discussed in further detail when considering the behavioural policy of the school in Chapter 4

[675] *R v Curtis* [2010] 3 All ER 849

[676] House of Commons Library: 'Harassment: "Police Information Notices" or "Early Harassment Notices" in England and Wales', Number 06411 (11 October 2016)

[677] House of Commons Library, 'Harassment: "Police Information Notices" or "Early Harassment Notices" in England and Wales' (29 June 2018)

[678] House of Commons Library: Harassment: Police Information Notices or Early Harassment Notices in England and Wales, Number 06411 (11 October 2016)

[679] West Yorkshire Police, 'Stalking and Harassment' (2 June 2018) https://www.westyorkshire.police.uk/sites/default/files/2018-06/stalking_and_harassment.pdf last viewed 30 November 2018

In this case, the 4 aggressors ought to have known their behaviour was detrimental to Student F. It is argued this action may have had the effect of interrupting the pattern of harassment. The SSPO is not required to take into account any denial by the aggressors, nor does an EHN infer guilt. It is known that the SSPO responsible for School 3 utilised EHNs, as the officer described issuing such a notice for a student engaged in similar behaviour at school 1 in OAB 21 (discussed below).[680] It may be the issuing of an EHN is under-utilised due to matters of severe harassment not being reported to the SSPO.

Otherwise it is argued the behaviour reported by Student F in OAB20 may have comprised of a prosecutable offence, which may have been in the public interest to prosecute. While a trial may have had a detrimental affect on the offenders, it is argued the persistence of the aggressors together with the harm suffered by Student F,[681] suggests pursuing the matter with a charge and prosecution, may have been proportionate in these circumstances.[682] In making a decision to prosecute a matter against a young person, the prosecutor must have regard to all minors involved in the matter, including the victim.[683]

OAB 21 involved severe, on-going harassment where the SSPO involved described issuing a student with an EHN. The SSPO indicated he issued the EHN after the student engaged in persistent, and severe online abuse against another student, which did not cease after the involvement of school disciplinary procedures, parental involvement and speaking to the student concerned on several occasions. The SSPO indicated the possibility of charging the student under the PfHA, however at the time of interview this has not yet occurred. This matter is an example of the rare occasion where an SSPO may consider charging a young person with an offence, however it appears this is only done as a last resort, in severe circumstances. In these cases, where school disciplinary policy and parental intervention has proved unsuccessful, it is important that schools have access to school-based police to provide advice, and to take necessary action in respect of serious matters.

3.8 CONCLUSION

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[680] Police Officer A line 408

[681] Student F self harmed in response to her abuse

[682] School bullying which is persistent and used to induce fear is given as an example of a matter which may be suitable for prosecution: CPS Youth Offenders Legal Guidance https://www.cps.gov.uk/legal-guidance/youth-offenders last viewed 2 May 2018

[683] For example the DPP must consider the impact of the prosecution upon the victims, as discussed in: *R (on the application of E and Ors) v DPP* [2011] EWHC 1465 (Admin)

The English criminal law is directly relevant to online abuse, capturing a broad range of behaviour, however it is rarely used in respect of young people. Charges and prosecutions relating to young people engaged in online abuse behaviour are negligible, and this may be attributable to the current prosecutorial policy framework, rather than the number of offences being committed. There are sound reasons for discouraging the prosecution of children in respect of online abuse, with the research indicating a premature introduction to the youth justice system potentially exacerbates anti-social behaviour. The current policy regime provides discretion and guidance to the investigating officer and the prosecutor, to only pursue a charge against a young person for online abuse where to do so would be in the public interest, meeting a high evidentiary threshold and where it is the interest of all young people involved. This thesis does not advocate for more young people to be charged with offences, and it is acknowledged that many offences committed in schools comprise of low-level bad behaviour. Less severe types of online abuse behaviour occurring between students, such as insulting or abusive language and the publication of false profiles or rumours, are unlikely to be referred to a school-based police officer. While it would rarely be appropriate for students to be charged with an offence in these matters, low-level bad behaviour may still meet the criteria for a criminal offence, which would justify the intervention of a SSPO. Online abuse must be addressed to interfere with this behaviour becoming normative, and interventions by schools and parents may not always be successful. SSPOs may have a role to play in this process, which does not necessarily involve charging an individual. An objective of the Safer Schools Partnership which provides school-based police, is to reduce youth offending. It remains within the purview of the SSPO to investigate and speak with students engaged in low-level bad behaviour, which may be useful to disestablish anti-social norms online. In respect of more serious behaviour, such as sustained online abuse against an individual, the expertise of a SSPO may be crucial in effectively dealing with an incident. Early harassment notices may be used where earlier interventions by the perpetrator's school and parents have failed. For all types of online abuse, community remedies including restorative justice and apologies may assist young victims in recovering from their experience, and may provide appropriate consequences for bad behaviour. The data demonstrated that in some serious matters of online abuse, a SSPO was not consulted. It is argued this is attributable to inadequate numbers of SSPOs in schools and compulsory crime recording inhibiting relations between schools and police. Removing these barriers between schools and police may provide an effective contribution to reducing online abuse.

The applicability of the POCA to children taking and sharing images of themselves does not correlate to the purpose for which the Act was created, and criminalises young people engaged in consensual sexting behaviour, potentially monopolising resources which could be better used to deal with sexting abuse and online abuse. An alternative draft of the POCA reducing the impact upon young people is attached at Appendix 3.

4

Civil law response to online abuse

4.1. INTRODUCTION

This chapter considers how effectively schools carry out their responsibilities to implement regulation relevant to online abuse, and it is divided into 3 parts. Part 1 explores the common law and the historical evolution of why schools have a duty to keep students safe from online abuse, and will refer to illustrative examples in the empirical research of how schools' common law duties remain relevant. Part 2 examines the educational statutory framework relevant to online abuse and school powers to; implement behaviour control, safeguard students, forcibly search and delete content from student devices, and manage sexting. Part 3 is dedicated to data analysis. Examples in the data are used to consider how schools implement the law, and otherwise whether schools effectively use powers provided by the law to reduce online abuse, and fulfil their responsibilities. Part 3 contains a school-based case study, a student based case study, and two policy-based studies, focusing upon the without consent search of students for devices suspected of being used in online abuse[684] and sexting policy. The analysis will form the basis for policy-based recommendations aiming for better outcomes on online abuse.

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[684] Search and Delete Powers as provided under the Education Act 2011, which have been referred to in Chapter 3

PART 1

The Common law

4.2 Common law development

The position of schools in the common law is demonstrative of the central role they play in England for keeping young people safe, as well as providing education. The common law is relevant to online abuse where a school fails in their duty of care to a student and a student suffers harm as a result of online abuse.

4.2.1 The standard of the duty of care

The standard at which a duty of care is measured in order to ascertain whether a breach was occasioned by a school, has significantly changed in the last century in line with evolving societal expectations as to how carefully children should be safeguarded, and to what extent child safety is a school responsibility. Since the 19th century the common law has recognised the special relationship between school and pupil, where students are cared for in *loco parentis*, [685] in the same manner a parent would care for their own child. The legal responsibility of school staff to care for the welfare of students was initially predicated upon a delegated authority from parent to school-master,[686] and vicarious liability of the school for employees.[687]

This changed upon the establishment of the duty of care and the tort of negligence.[688] The relationship between school and student was reinterpreted as one of proximity giving rise to the school having a duty of care for students, [689] due to the nature of the relationship of schoolmaster and pupil. [690] The test as to whether a duty of care had been satisfied was

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[685] 'the schoolmaster was bound to take such care of his boys as a careful father would take of his boys, and there could not be a better definition of the duty of a school master' *Williams v Eady* (1893) 10 TLR 41 per Lord Esher

[686] *Fitzgerald v Northcote* (1865) 4 F 656 at 689

[687] The concept of vicarious liability having been established since 1849 *Reedie v London and North Western Railway Co (*1849) 4 Exch 244 where it was held that an Employer Acts through their employees, while *Smith v Martin* (1911) 2 KB 775 and *Rickets v Erith Borough Council* [1943] 2 All ER 629 established that schools and school authorities were liable for the failure of a member of staff

[688] *Donaghue v Stevenson* [1932] All ER Rep 1: This was a seminal case establishing the tort of negligence and setting out the elements of when a duty of care was owed to another person

[689] The Australian case of *Ramsay v Larsen* [1964] HCA 40 observed the proximate relationship between teachers and students

[690] 'In the absence of a special arrangement to the contrary, it is, I think, the necessary inference of fact from the acceptance of a child as a pupil by a school authority, whether the authority be a Government or a corporation or an individual, that the school authority undertakes not only to employ proper staff but to give the child reasonable care', per Kitto J in *Ramsey v Larsen* [1964] HCA 40

normally ascertained via the 'reasonable person' test. However in cases alleging negligence by a school, the test applied was to consider what a 'reasonably careful parent' would have done in the circumstances. [691] The common law interpreted the responsibility of the school at a level which arguably reflected social norms at the time. For example, the 1954 case of *Clark v Monmouthshire County Council*,[692] concerned a boy injured by a knife during a scuffle at school. Staff at the school were aware students occasionally brought knives into the classroom from home, however it was held this was reasonable in the circumstances and the school-master was not found to be negligent in determining the level of supervision. At the time, schools were not expected to be on a constant look out for danger,[693] particularly when the incident involved older children. [694] According to the courts at the time, reasonably careful parents allowed their children freedom, [695] and consequently this was the expectation of schools, which were not always held responsible for a student's injury, even if a more rigorous regime of supervision could have prevented it. [696] Subsequent cases gradually increased the expectation upon schools in exercising their duty of care, reflecting the change in social norms. This evolved to a situation where schools were expected to undertake more careful supervision of students.[697] Whilst expectations escalated for schools, the heightened expectations did not apply to parents, [698] despite the test as to whether a duty was breached remaining as the 'reasonably careful parent' test. This caused some practical difficulty for courts in applying the

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[691] *Rawsthorne v Ottley* [1937] 3 All ER 902

[692] (1954) 52 LGR 246

[693] 'Boys of 14 and 16 at a public school are not to be treated as if they were infants at crèches, and no headmaster is obliged to arrange for constant and perpetual watching out of school hours' as observed by Goddard LJ in *Camkin v Bishop* [1941] All ER 713

[694] See *Carmarthenshire County Council v Lewis* [1955] 1 All ER 565 and the Australian case of *Ramsay v Larsen* (1964) CLR 16, where the duty of a school master was described 'to protect him (the student) against that very kind of folly which is apt to be exhibited when a boys adventurous spirit is unchecked by a more mature judgment than he himself possesses'.

[695] 'In my view, it is not the law and never has been the law, that a schoolmaster should keep boys under supervision during every moment of their school lives.' *Rawsthorne v Ottley* [1937] 3 All ER 902 per Hilbery J

[696] 'It seems to me that is cannot be said that it is the duty of a reasonable, careful and solicitous parent to endeavour to put a child into a straight jacket or to seek to remove from his reach anything which may conceivably been used by him to indulge his mischievous propensity' as observed in: *Rich and Another v London County Council* [1953] All England Law Reports (Vol 2) 376

[697] The 1982 Australian High Court case of *Commonwealth v Introvigne,* (persuasive but not binding on English Courts) first saw the shift in measuring the standard of the duty of care owed to students away from measuring it against the reasonable parent. The Court in *Introvigne* distinguished *Rawsthorne* on the basis that although the boys were older, some 900 pupils were in the school grounds at the time the accident occurred, necessitating supervision. 'It would be unreal to suggest no supervision was called for', per Mason J in *Commonwealth v Introvigne* [1982] 150 CLR 258

[698] 'It does seem somewhat remarkable if the school is to be judged by a standard which the parent is neither bound to adopt or even to consider', per Justice Croom Johnson in *Van Oppen v The Clerk to the Trustees of Bedford Charity (Harpur Trust)* [1990] 1WLR 235 at 267

test. [699] A school employing professional, trained staff, caring for hundreds if not more than a thousand students, was not easily compared to the circumstances of a parent caring for one or a small number of their own children. [700] English courts contorted the reasonable parent test, recognising schools operated in different circumstances, and that they possessed specialist knowledge[701] not available to even prudent parents. [702] Cases began to indicate the true duty of a school was to ensure 'the health and safety of the child as is reasonable in all the circumstances.'[703] This is now arguably the current position, which more accurately accounts for schools' specialist knowledge, and does not involve a convoluted hypothesis of how a parent would act similarly circumstanced. This position has not been confirmed by a Superior English court, however there are good indications the reasonably careful parent test no longer applies.

4.2.2 The common law position of the English Courts

In 2016 the case of *Murray v McCullough*[704] in Northern Ireland stated the relevant test in school negligence cases is not what a reasonably careful parent would do but rather what amounted to reasonable care in all the circumstances. In 2017 this position was affirmed by another High Court case in Northern Ireland, *Goulding v Doherty*.[705] While High Court cases from Northern Ireland are not binding upon English Courts, they are persuasive. The UK Supreme Court decision of *Woodland v Essex County Council* [706] *("Woodland")* stopped short of dispensing with the reasonable careful parent test, however in dicta the court indicated schools have a more

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[699] 'In considering the facts of a case like this, one has to visualise a parent with a very large family, because 50 children playing about in a yard if of course, a different thing to four or five children playing about together in a garden', per Tucker J in *Ricketts v Erith Borough Council and Another* [1943] 2 All ER 629 at 631

[700] Time Petts 'Visualising a parent with a very large family: the liability of teachers for accidents at school' Journal of Personal Injury Law (1) (2017) 13. In this article the author argued it is unhelpful to compare the duty of schools, regulated with trained staff and responsible for hundreds if not more than a thousand children, to that of untrained parents whose attentiveness is founded in maternal and paternal instincts and love, whilst caring for very few or even just one child.

[701] The 2002 case of *Chittock v Woodbridge School* [2002] ELR 753 , stated the standard of care expected of a teacher, supervising a student on a school skiing trip as the same care of a careful parent, but a careful parent with experience in skiing and knowledge of the student's ability

[702] *Simon Richard Van Oppen v The Clerk to the Trustees of Bedford Charity (Harpur Trust)* [1990] 1 WLR 235: 'the duty of care which the school owes to its pupils is not simply that of the prudent parent. In some respects it goes beyond mere parental duty, because it may have special knowledge about some matters which the parent does not or cannot have. The average parent cannot know of unusual dangers which may arise in the playing of certain sports, of which rugby football may be one'.

[703] *Kearn-Price v Kent County Council* Lord Dyson [2002] EWCA 915

[704] *Murray v McCullough* [2016] NIQB 52 Stephens J disapproved of *Rich v London CC[704]* the seminal case establishing standard of care being referred to that of a 'prudent father'. He branded the test paternalistic, and stated that a duty of care is owed to a student, not based on benevolence, but as of right.

[705] Stating that the standard of care was reasonable care, not what a would a reasonably careful parent would have done: *Goulding v Doherty* [2017] NIQB 47

[706] The Court stated the standard of care was 'at least the duty of care which reasonable parents owe to their children, but it may owe to them more than that'. *Woodland v Essex County Council* [2013] 3 WLR 1227

extensive duty than that of a parent. The decision of *Woodland* confirmed that in some circumstances, schools are not able to delegate their duty of care for a student in circumstances where a third party is engaged to carry out school welfare and educational responsibilities. A duty of care in the common law is normally expressed as personal duty of a tortfeasor, and it is rare for liability to be created when damage is done by a third party.[707] *Woodland* describes the distinctive relationship between school and pupil, originating from the vulnerability of the pupil, in circumstances where schools are expected to provide a safe haven for its students. Schools rely on third party providers to provide specialist support to students to deal with online abuse, or social, psychological and emotional difficulties which are associated with such abuse.[708] In such situations, on the basis of *Woodland,* schools remain responsible for the welfare of the student whilst in the care of third party providers. The research data provided an example of where this is relevant to online abuse. In School 3, staff noticed Student A was suffering from mental health difficulties which were in part caused by her online abuse, and referred Student A to a third party for counselling services. The student attended numerous counselling sessions off school premises, every week for nearly 2 years between years 7 and 9, and then again for several months in year 10. Student A explained she did not feel as though she benefited at all from the therapy. She was passed frequently between different counsellors and did not establish a rapport with any of them. During a period of intense counselling, she felt distressed:

> 'He (the counsellor) …He was quite horrible….I was not fully opening up to him because I didn't trust him. They had wasted three years of my life'.[709]

According to *Woodland,* in terms of liability, School 3's responsibility towards student A did not cease when she was referred to the third party counsellor. If Student A had suffered loss or damage such as psychological difficulties as a result of her failed therapy sessions, it is argued this would form the basis of a claim against her school for failing in their duty of care.

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[707] Non delegable duties have been established in other special cases, involving high levels of care, such as such as hospitals being responsible for the actions of independent consultants per Denning LJ in *Cassidy v. Ministry of Health* [1951] 2 KB 343, at 363

[708] Teacher A School 1 confirms his role in dealing outside agencies such as social care, the police and CEOP (Child Exploitation and Online Protection Centre);Teacher A School 2 line 7 describes the process of referring students for anger management, self harm, family problems, substance abuse, and the contact which regularly occurs with outside agencies.

[709] Student A School 3 line 366

It is not enough under the common law for schools to take action to protect a student, the action must be appropriate, and consequential.[710]. The empirical research indicated that while schools took action in respect of online abuse in the majority of cases, often this action was ineffective. Of the 17 students interviewed, 15 indicated they had experienced online abuse, of those 13 confirmed that action of some kind was taken by the school. Of those 13 students, 10 stated at least some of the action taken in relation to their matter was not effective, or that it failed to solve their problem.[711] Specific examples will be discussed further in Part 3. It is the argument of this thesis that in line with the House of Lords decision of *Phelps v Hillingdon LBC; Anderton v Clwyd County Council; Re G (a minor); Jarvis v Hampshire County Council* ('*Phelps*'), the common law in England requires meaningful action be taken in respect of student welfare, and this includes online abuse.

4.2.3. Duty to provide an education

The common law has clarified that schools not only have a duty to keep young people safe, but they have a duty to provide an adequate education.[712] The duty to educate arises through the assumption of responsibility inherent in the school/pupil relationship.[713] The arguably obvious purpose and duty of a school to provide a student with an education, went without formal acknowledgment until it became an issue in negligence litigation.[714] The Courts have recognised a duty of care not only extends to a student's well being, but to their educational needs,[715] as the very reason a student attends school is to receive an education.[716] This duty is relevant to online abuse, where it causes a disruption to a young person's schooling, and where

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[710] *Phelps v Hillingdon LBC; Anderton v Clwyd County Council; Re G (a minor); Jarvis v Hampshire County Council* [2000] 4 All ER 504 (HL)

[711] For example, Student D School 1 complained of parody SNS accounts whereby no action was taken (line 327) this inaction lead to Student Ds distress (line 334); Student F School 2 suffered face to face and online homophobic bullying, his perpetrators were allowed to draft their statement together 'I was treated like it was me who did something wrong' (line 91); Student A School 3 involved the police regarding an online abuse incident which involved Student A having her lap top taken for evidence during her A levels and causing Student A distress, Student A acted out due to this incident and was nearly expelled; Student D School 3 complained of racist abuse and her aggressors were not disciplined (line 216); Student F School 3 was being bullied and in response her school placed her on lunch breaks on her own, whereas school policy indicated her 4 bullies ought to have been removed from the normal timetable (line 167)

[712] *Barrett v Enfield London Borough Council* [2001] 2 AC 550

[713] The following article observed that the duty does not depend upon, or run counter to, any statutory obligation: Jack Rabinowicz, Laura Berman and Samantha Russell, 'Education Negligence' 2001 13(1) Education and the Law 51

[714] 'A school which accepts a pupil assumes responsibility not only for his physical well being but his educational needs. The education of a pupil is the very reason for which the child goes to school' per Lord Wilkinson in *X (minors) v Befordshire* [1995] 2 AC 633 at 726

[715] 'We also accept the point, that the school duties arise because of its educational duties towards the child' *Shaw v London Borough of Redbridge* Bean J [2005] ELR 320 at 337

[716] 'A school which accepts a pupil assumes responsibility not only for his physical well being but his educational needs. The education of a pupil is the very reason for which the child goes to school' per Lord Wilkinson X (minors) v Befordshire [1995] 2 AC 633 at 726

it may interfere with future earning potential. A breach in a school's duty may result in the student suffering from mental harm,[717] or a loss of education and subsequent economic loss arising from interference with a student's potential to enter the job market. When negligence concerns a failure to provide adequate education, the standard of care is measured by the *Bolam* principle[718] whereby the standard of care is that which is reflected by a professional body of peers.[719]

Phelps included a claim for economic loss where an education authority failed to appropriately act in respect of a student suffering from dyslexia. It is argued that if a school fails to act in respect of online abuse, and this causes disruption to a student's studies in a manner which effects their health and future prospects of employment, this may form the basis of a claim for economic loss. No such cases are known in England involving online abuse, however it is argued *Phelps* may be used to sustain such a claim. The empirical data gave examples where online abuse was not dealt with adequately and the on-going consequences impacted their studies.[720] Student A School 1 suffered a temporary drop in grades during a period of online abuse. Student A at School 1, normally excelled academically. He had ambitions of attending Oxford University and becoming a lawyer. He found himself with falling grades in the midst of a prolonged episode of bullying:

> 'I was really sad. My grade levels went way down. I was really upset. There was one time I just started screaming in the middle of class, I just couldn't take it anymore'.[721]

Student A School 3 took time off school as she was afraid to attend school due to online and face-to-face bullying.

> 'I ended up taking a lot of time off…from Christmas to April I took a lot of time off… I would just stay in bed constantly'.[722]

In the cases of Student A School 1 and Student A School 3, the abuse abated without the

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[717] Tim Petts 'Visualising a parent with a very large family: the liability of teachers for accidents at school' Journal of Personal Injury Law (1) (2017) 13

[718] *G (a child) v London Borough of Bromley* [1999] EWCA Civ 1490

[719] The Bolam Principal establishes the test of the appropriate standard of care involving skilled professionals, that is the standard is that determined by responsible body of their peers See *Bolam v Friern Barnet Hospital Management Committee* [1957] 2 All ER 118, [1957] 1 WLR 582

[720] For example, Student A School 3 who took time off school, and Student A School 1 whose grades suffered while he was experiencing online abuse

[721] Student A School 1 line 181

[722] Student A School 3 lines 103, 122 and 126

intervention from their schools, and these students were able to refocus upon their schooling. However it is argued had this not occurred, and had either of these students suffered long term disruption to their schooling, this may have formed the basis of a negligence claim.

4.2.4 Loss and harm caused by negligence

Phelps recognised economic loss arising from negligence. However the harm typically flowing from online abuse relates to a student's mental health.[723] As described in Chapter 2, the effects of online abuse may manifest as; increased aggression, lower grades, low self-confidence, anxiety, reduced attendance, self-harm and behavioural issues in school.[724] The empirical data offered many examples of students suffering from social and emotional difficulties as a result of online abuse.[725] In some cases, the effects were serious and life threatening:

> **'Did you ever think about hurting yourself?**
>
> The answer is yes I did'.[726]

Four of the seventeen students interviewed stated that they had self-harmed in response to bullying and online abuse.[727]

> 'I just thought that, to take the pain off, I would cause more pain, to take my mind off it. It did not'.[728]

Not all mental-health related symptoms of online abuse will be sufficient to sustain a claim of negligence.[729] Claims in negligence based on psychological harm must refer to a diagnosed psychological injury associated with the abuse.[730] Symptoms of temporary distress as described by some of the research participants,[731] would not be adequate. However, some of the symptoms described by research participants, particularly those which relate to self- harm may be indicative of such a diagnosable injury. Online abuse which proceeds unabated, may also

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[723] Nicole Bluett-Boyd, Bianca Fileborn, Antonia Quadara and Sharnee Moore 'The role of emerging communication technologies in experiences of sexual violence' Australian Institute of Family Studies, February 2013, research report 23

[724] Michele P. Hamm, Amanda S. Newton, Annabritt Chisholm, Jocelyn Shulhan, Andrea Milne, MLIS1; Purnima Sundar, Heather Ennis, Shannon D. Scott, Lisa Hartling, 'Prevalence and Effect of Cyberbullying on Children and Young People A Scoping Review of Social Media Studies' JAMA Pediatrics (2015) August 169 (8)

[725] For example, Student F School 3 who spent periods away from school due to her distress

[726] Student A School 1 line 181

[727] Those students were; Student 1 School 1, Student F School 2, School 3 Student D and School 3 Student F

[728] Student F School 3 line 245

[729] Julia Davis, 'Legal Response to Cyberbullying by Children: Old Law or New?' UNISA Student Law Review (2015) 1

[730] *Vernon v Bosley (No 1)* [1977] 1 All ER 577

[731] For example, Student A and B School 2 described distress over 'falling out' with friends over SNS

involve the worsening of symptoms which may eventually present as a recognised psychological condition, on which a claim may be based.

4.2.5 Duty of care for online abuse occurring outside of school

Online abuse often involves behaviour perpetrated outside of school hours and outside of school grounds, raising uncertainty regarding how far the school duty of care extends. Superior courts have not considered a school's duty of care outside of school in the context of mobile technology and SNS, however courts have confirmed that a school's duty of care may extend to incidents beyond the school gates.

The 2000 case of *Cotton v Trafford Borough Council*[732] held that a school's duty of care extends to activities which take place off school premises such as school excursions and outside activities. The case of *Bradford-Smart v West Sussex CC*[733] concerned a claim for damages for psychological injury which arose as a result of bullying which took place outside of school. The claimant's case failed due to the particular facts of her claim, however the court confirmed that a school may have a duty to act to protect a child being bullied outside school. The standard of care in the case was decided in accordance with the *Bolam* principal, and it was declared that a reasonable Headteacher should investigate and act upon an incident outside of school if it had a "*deleterious*" effect on a victim, however overall these incidents were uncommon.[734] It should be noted the case was decided in 2002 and concerned bullying which occurred between 1990-1992. It is argued the opportunity for schools to intervene in bullying incidents occurring outside of school are more frequent today. The rarity with which school-life in 1992 crossed with home life, fails to correlate with contemporary society, and the intense connectivity in which students engage after school hours. Students now have the ability to connect with each other twenty four hours a day. [735]

It is argued that if a school is made aware of a student suffering from harm as a result of online abuse, the school has a duty to act even if the abuse occurred outside of school. As recently as 10 years ago, the more severe consequences of online abuse may not have been foreseeable.

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[732] Unreported, Manchester County Ct, Holman J, 6 October 2000. Enquiries by the writer with the Manchester County Court revealed that all transcripts of judgments in 2000 have been destroyed see confirmed by email from Manchester Civil Court (Barry Grundy) dated 11 August 2017

[733] [2002] EWCA Civ 7

[734] 'A school might on occasion be in breach of duty for failing to take such steps as were within its power to combat harmful behaviour of one pupil towards another even when they were outside school, however those occasions would be few and far between', per Judge LJ Bradford-Smart v West Sussex CC [2002] EWCA Civ 7

[735] 'I would get messages during the school holidays. It was constant and all the time'. Student A School 1 line 90

However schools in England are now well-versed in the realities of online abuse, and as will be discussed in Part 2, educational regulation frameworks require staff to be competent in respect of recognising and dealing with online abuse.[737] Schools are expected to effectively manage bullying in all forms, including bullying perpetrated online.[738] It is argued that if an incident of online abuse is reported, a failure to adequately investigate a student's wellbeing and take the appropriate action, may place a school at risk of a negligence claim by not acting upon a foreseeable risk of harm.[739] Consequently it is likely a court would determine it is fair just and reasonable to establish a duty of care for the welfare of students in relation to online abuse occurring outside of school. How well schools manage this duty is assessed in Part 3.

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[736] The first known prosecuted case of cyberbullying occurred in 2008 in the United States when Lori Drew was prosecuted for causing the death of Megan Meir by pretending to be a boy on social media platform My Space: Guy Adams, 'First "cyber-bully" trial opens' *The Independent* (21 November 2008) <http://www.independent.co.uk/news/world/americas/first-cyber-bully-trial-opens-1028257.html>

[737] Standards set by government inspection body Ofsted include that Teachers are expected to be able to intervene in online abuse situations, and facilitate appropriate support to a victim; Department for Education Behaviour and Discipline in Schools, Advice for headteachers and Staff (January 2016), DfE advice: Preventing and Tackling Bullying (July 2017)

[738] Ofsted Inspectors visiting schools are to assess: 'rates and patterns of bullying and the effectiveness of the school's actions to prevent and tackle all forms of bullying and harassment - this includes cyber-bullying and prejudice-based bullying related to special educational need, sexual orientation, sex, race, religion and belief, gender reassignment or disability' Ofsted, Guidance, 'School Inspection Handbook' (15 June 2015)

[739] *Caparo Industries PLC v Dickman* [1990] 1 All ER 568 HL

PART 2

Legislative and Policy Framework

4.3. Powers and responsibilities of schools

Whilst the common law established schools' duty of care, government policy and statutory frameworks deliver specific responsibilities for schools to carry out in respect of children relevant to online abuse, as well as powers with which to carry out those responsibilities. These are provided by Department for Education ('DfE') statutory guidance,[740] and legislation[741] regarding children and education. Non-statutory guidance[742] also provides advice to schools as to how to use their powers, and while these do not form part of the legal framework, they play a role in its implementation.

4.3.1. Power to discipline

Chapter 3 demonstrated it is rare for the criminal law to be used in dealing with online abuse between students. Online abuse is largely managed in schools as a disciplinary matter. Section 89 of the Education and Inspections Act 2006 compels schools to manage online abuse amongst students. Under Section 89, the head-teacher must determine measures[743] to prevent bullying in all forms, and encourage respect and good behaviour. Section 89(6) requires that the measures be set out in school policy documentation, and published to students and parents.[744] Following the obligation to deal with poor behaviour, action taken by a school to

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[740] When carrying out their statutory duties, including protecting students from online abuse, those operating schools including Governing Bodies and the Local Education Authorities (LEAs) are compelled to have regard to statutory Guidelines issued by the Secretary of State: For example, Section 72 of the Education and Inspections Act 2006 compels the LEA to have regard to Guidance by the Secretary of State Statutory guidance including: Behaviour and Discipline in Schools, Guidance for Governing Bodies (2012); Exclusions September 2017, Working together to safeguard children: a guide to inter agency working to safeguard and promote the welfare of children (March 2015)

[741] Including the Education and Inspections Act 2006, the Education Act 20011

[742] Such as; DfE advice: Behaviour and Discipline in Schools, Advice for headteachers and Staff (January 2016), DfE advice: Preventing and Tackling Bullying (July 2017), DfE advice: Searching, screening and confiscation: Advice for head teachers, school staff and governing bodies (February 2014), DfE and UKCCIS Sexting in schools and colleges: responding to incidents and safeguarding young people (2016).

[743] The term 'measures' includes the formulation of rules and disciplinary measures as stated in Section 89(4) of the Act

[744] The requirement to publish school disciplinary policy is found in Section 89(6) Education and Inspections Act 2006. Other requirements for a legal punishment are set out in Section 91 of the Education and Inspections Act 2006 and include that the punishment be reasonable, and not in breach of any statutory requirement. For all independent schools similar powers are found in the Education (Independent School Standards) (England) Regulations 2014, SI 2014/3283

impose a disciplinary measure will be lawful in the circumstances where the penalty does not contravene any statutory requirement and it is reasonable in the circumstances. The decision to impose the penalty should made at school by a person having lawful responsibility of the student.[745] Section 91 provides a legal defence to staff in carrying out reasonable disciplinary action in response to online abuse.

Non-statutory advice issued by the DfE has been developed to provide guidance to schools concerning the implementation of their responsibilities and powers.[746]The 'Preventing and Tackling Bullying Advice for Headteachers, Staff and Governing Bodies ('Bullying Advice'), encourages use of disciplinary measures for all types of bullying and notes the seriousness nature of bullying: 'schools should apply disciplinary measures to pupils who bully to show clearly that their behaviour is wrong'.[747] The Bullying Advice indicates schools have a responsibility to make appropriate provision for the victims of bullying, including speaking to the victim, liaising with parents and referring the student to children's services where appropriate, noting the potential effect upon a student's mental health.[748]

The Bullying Advice also highlights the potential criminality of online abuse behaviour, and appears to encourage the reporting of incidents to the police:[749]

> '…it is important to bear in mind that some types of harassing or threatening behaviour – or communications – could be a criminal offence, for example under the Protection from Harassment Act 1997, the Malicious Communications Act 1988, the Communications Act 2003, and the Public Order Act 1986. If school staff feel that an offence may have been committed they should seek assistance from the police'.

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[745] Section 91 of the Education and Inspections Act 2006 determine an action by a staff member will be lawful
On the basis the punishment is lawful as determined by conditions set out in Sections 91(3)-(5)
[746] DfE 'Preventing and Tackling Bullying, Advice for headteachers, staff and governing bodies (July 2017)
[747]ibid page 11 and 13
[748]ibid page 13
[749]ibid page 6

This advice potentially conflicts with CPS advice discussed in Chapter 3, the Youth Crime Guidance, which indicates schools must accept responsibility for dealing with less serious offences:

'All schools should have internal procedures and strategies for dealing with these incidents. It may be necessary to explore with the police and the Youth Offences Team whether certain schools are in fact accepting their responsibility in this area fully'.[750]

This is echoed by NPCC statements to the effect that that low- level bad behaviour ought to be dealt with by schools themselves:

'The NPCC (the National Police Chief Council) stressed that it would encourage schools to deal with low level offending themselves…the government has begun to make moves to address this by referencing for a 'whole school approach' to the prevention of abuse in schools… it must go further however…schools must incorporate innovative approaches'.[751]

It is argued that it may not be clear to staff whether an incident falls into a less serious category whereby they must accept responsibility, or whether it is an incident which warrants police intervention. It is argued that staff are not legal experts, and they should be able to seek advice from police or their SSPO in respect of any incident which could amount to a criminal offence.

It is noted the powers to discipline do not include a mandatory responsibility to facilitate restorative justice approaches. While Chapter 3 discussed the desirability of SSPO intervention for online abuse in the form of community remedies, schools may also implement restorative justice approaches for breaches of behavioural policy. As discussed in Chapter 2,[752] school staff may use this approach to resolve conflict between students, and there is evidence this method is effective as an alternative to traditional disciplinary regimes of blame apportionment and punishment.[753] The Bullying Advice does not include recommendations relating to restorative justice approaches being used for resolving bullying and related conflict between students. It remains a method available to schools, which is not formally incorporated into

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[750] CPS 'Youth Crime, legal guidance' "School Bullying" https://www.cps.gov.uk/legal-guidance/youth-offenders last viewed 3 July 2018
[751] Karen Mc Veigh 'Sexting offences increasing in schools, say senior police officers' The Guardian (9 June 2016)
[752] At 2.8.3
[753] Youth Justice Board, ' National Evaluation of the Restorative Justice in Schools Programme' (2004)

school disciplinary responsibilities, nor is there any requirement that staff must be trained in restorative justice practices. As a result, only a small proportion of staff are trained in the practice.[754]

4.3.2 Discipline for behaviour outside school

Online abuse is different to other types of poor student behaviour, in that it often does not occur on school premises at all. The statutory regime provides schools with the appropriate powers to deal with online abuse, even if it occurs outside of school and outside of school hours. Section 89(5) of the Education and Inspections Act 2006 provides power for schools to impose disciplinary penalties for behaviour which occurs outside of school, on the basis the penalty was reasonable in the circumstances, and the decision to impose the penalty was taken during school hours.[755] Originally these powers, drafted when online abuse was in its infancy,[756] were described to apply to scenarios such as work experience and journeys to and from school.[757] After the Education and Inspections Act (2006) came into force, the House of Commons Educations and Skills Committee released a report referring to Section 89(5) being relevant to incidents of 'happy slapping', a type of online abuse whereby acts of physical violence are filmed, uploaded and shared on social media.[758] This type of behaviour was discussed as fitting within the legislature's intended remit for Section 89(5).[759] Statutory guidance issued to governing bodies specifically addresses the question of punishment for bullying off premises:

> 'Q: Should I discipline pupils for bullying outside of the school?
>
> A: Yes. If an incident of bullying outside of the school premises or online is reported to the school, it is important that it is investigated and appropriate action is taken'. [760]

Schools have a lawful basis to deal with online abuse behaviour which takes place outside of the school. However as will be discussed in Part 3, it was noted during an examination of the behaviour policies published by participating schools, that none stipulated their power to

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[754] Fran Thomson, Peter K Smith, 'Effectiveness of Anti-Bullying Strategies in Schools' Department for Education Research Report DFE-RR098 (2011) page 103

[755] Sections 90 and 91 Education and Inspections Act (2006)

[756] In 2005/2006 social media and mobile camera devices were popular, however mobile internet connectivity was not widespread: Jeremy Roche, C-Net 'Best mobile phones of 2006' 14 August 2008

[757] Education and Inspections Act 2006 Explanatory Notes see 444

[758] House of Commons, Education and Skills Committee, Third Report of Session 2006-07 "Bullying". Printed 5 March 2007.

[759] Explanatory Notes, Education and Inspections Act 2006 s 89

[760] DfE 'Exclusion from Maintained Schools, academies and pupil referral units in England' (September 2017) Page 8 point 4

punish students for behaviour which took place outside of school hours or off school grounds. This may be contrary to obligations found in Section 89(6) of the Education and Inspections Act 2006, compelling schools to publish their disciplinary measures. Potentially, a school issuing a punishment for behaviour taking place off school grounds may be challenged on the basis the measure was not set out in accordance with Section 89(6) of the Education and Inspections Act 2006. In any event, it would be prudent for schools to take the opportunity afforded by their policies to be forthright with parents and students, highlighting that pupil conduct may be regulated by school, even if it occurs at home.

4.3.3 Safeguarding legal framework

Approximately 8.5 million children in England and Wales attend school.[761] Schools represent a logistical opportunity for government to address aspects concerning child welfare. All schools in England must carry out their functions with a view to protecting the welfare of the their students.[762] This responsibility is further expanded upon in the statutory guidance,[763] 'Keeping Children Safe In Education'[764] ("the KCS Guidelines) to which schools must have regard when carrying out their functions. Unlike a common law duty of care for a school to ensure the safety of the child in all the circumstances,[765] the KCS Guidelines specifies standards to be achieved in respect of aspects relating to safeguarding, such as safe recruitment of staff and the prevention of child neglect,[766] along with suggested actions as to how those standards can be achieved. Few parts of the KCS Guidelines indicate compulsory standards with respect to online abuse.[767] The only obligation in the KCS Guidelines relating to online abuse, relates to ensuring school internet systems are fitted with technology enabling filtering and

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[761]National Statistics, Schools, Pupils and their characteristics (2017)
https://www.gov.uk/government/statistics/schools-pupils-and-their-characteristics-january-2017 last visited 8 June 2018
[762]As required by Section 175 of the Education Act 2002, the Education (Independent School Standards) Regulations 2014 and the Education (Non-Maintained Special Schools) (England) Regulations 2011. For maintained schools, Section 175 of the Education Act 2002 requires schools to make arrangements to ensure their functions are carried out with a view to safeguarding and promoting the welfare of children, in addition a legislative vehicle for safeguarding resides in section 11 of the Children's Act 2004 which compels local authorities (which includes schools run by local authorities) to safeguard and promote the welfare of children in their care
[763] Pursuant to Section 175 of the Education Act 2002, the Educational (Independent School Standards) Regulations 2014, and the Non Maintained Special Schools (England) Regulations 2015, schools and colleges must have regard to statutory guidelines when carrying out their duties
[764] DfE, 'Keeping Children Safe in Education Statutory Guidance for schools and colleges' September 2016
[765] As discussed at 4.2.1 and referred to in *Kearn-Price v Kent County Council* [2002] EWCA Civ 1539 per Lord Dyson at paragraph 38
[766] Department for Education, 'Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges' (September 2016) Page 10
[767] Examples of compulsory standards include the mandatory reporting cases of female genital mutilation and performing Disclosure and Barring Service Checks: ibid

monitoring.[768] This is applicable to online abuse being perpetrated at school using the school's internet or internal technology systems. Beyond that, the language used in the KCS Guidelines relevant to online abuse describes a recommended standard for schools to achieve. For example, relevant to being able to identify online abuse, the KCS Guidelines state: 'staff **should** be aware of all the types of abuse and neglect',[769] and 'all staff **should** be aware of emotional abuse which can result from peer on peer bullying and online abuse'.[770] This is stated as an expected standard,[771] and not a mandatory action. An example of a mandatory action is the compulsory reporting of female genital mutilation.[772] These safeguarding targets, and whether these are met are measured when schools are inspected approximately every three years by The Office for Standards in Education, Children's Services and Skills ('Ofsted').[773] The relevance of such inspections will be discussed in Part 3 as part of the School 1 case study. Ofsted appraisals are relevant to assessing the effectiveness of how schools deal with online abuse.[774]

4.3.4. Search and Delete Powers

In 2012, the Education Act 2011 introduced new powers for schools to perform without consent searches for objects including electronic devices where there is a reasonable suspicion on the part of a staff member a device has been used in connection with a criminal offence, [775] or to harm another person.[776] After inspecting the device, the powers permit an authorised staff member to dispose of the device, retain the device or delete files from the device[777] ('the search and delete powers'). Prior to the Education Act 2011, schools already had powers to search students for prohibited items, which were banned by statute or the school rules.[778]

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[768] ibid

[769] ibid 7

[770] ibid 11

[771] ibid 7

[772] Examples of compulsory standards include the mandatory reporting cases of female genital mutilation and performing Disclosure and Barring Service Checks: ibid

[773] In independent schools this task is performed by the Independent School Inspectorate

[774] As well as assessing the quality of education provided by the school, Ofsted's role is to assesses and inspect the quality of safeguarding and child protection in schools, to ascertain if schools are carrying out their statutory functions as described in the *Children's Act 2004* and the KCS Guidance.
Ofsted 'Raising Standards, improving lives: The office for Standards in Education, Children's Services and Skills Strategic Plan 2014 to 2016

[775] The Education Act 2011 amends 550ZA and 550ZB of the Education Act 1996

[776] Section 2 Education Act 2011

[777] Section 2(4)(b) Education Act 2011 which amends Chapter 2 Part 10 of the Education Act 1996 (punishment and restraint of pupils)

[778] Prior to the Education Act 2011 schools already had powers to search students for 'prohibited items', and items banned in the school rules Prohibited items include; alcohol, an offensive weapon, a controlled drug and any item, which staff reasonably suspects may have been used in connection with an offence: Section 550ZA *Education Act 1996* (as amended by the Apprenticeships, Skills Children and Learning Act 2009), In 2012, relevant to the exchange of sexual images between students, the Schools (Specification and Disposal of

However the search and delete powers expanded this authority, and was heralded by the Government of the day as a step forward in the efforts to tackle online abuse, as a press release issued by the DfE about the Education Act 2011 suggests:

> 'Teachers also now have greater powers to tackle cyber-bullying by searching for and deleting inappropriate images on mobile phones and tablets'.[779]

The intent of the legislature behind the new powers are stated in the second reading speech by Michael Gove, the then Secretary of State for Education:

> 'We will ensure that they have the power to search students for items that may cause violence or disorder in the classroom'.[780]

The search and delete powers may be used if a staff member suspects a student has used their device in connection with a criminal offence. As was demonstrated in Chapter 3, the type of online activity which may constitute a criminal offence, potentially triggering the search and delete powers, is expansive.[781] A non-statutory advice, the 'Searching, screening, and Confiscation Advice for Headteachers, School Staff and Governing Bodies (the "Screening Advice"),[782] provides guidance to schools about the circumstances where schools may search for electronic devices. The Screening Advice explains what the legislation already states itself, in a less formal format, and seeks to reassure staff about their right to search students.[783] In some cases, the advice strays beyond the content of the legislation itself to offer practical tips about searching and confiscating, the usefulness of which is uncertain, such as warning schools that older students expect more privacy.[784] The Screening Advice may provide some reassurance to schools by confirming that the school does not require parental consent to search for a device where there is good reason to believe it has been used in respect of a

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Articles) Regulations 2012, SI 2012/951 was amended to include pornographic material on a list of items prohibited at school

[779] DfE Press release 'Bullying in School Plummets' (15 November 2015)

[780] Second reading Education Bill, Michael Gove, HC Deb 8 February 2011 col 163

[781] As discussed under 3.3

[782] DfE 'Searching, screening, and confiscation' Advice for Headteachers, school staff and governing bodies (January 2018)

[783] For example, the advice states that the powers are valid even if a staff member searches a student and does not find any prohibited item

[784] For example, advice which may be helpful is the suggestion staff may use CCTV footage to form the decision of whether to perform a search. Advice which may be less useful is: when searching a student staff are reminded that 'a pupils expectation of privacy increases as they get older' however the advice does not clarify what is meant by this, whether staff should hesitate in performing a without consent search on an older student: Paragraph 6 Establishing Grounds for a Search Searching, Screening and Confiscation, Advice for Headteachers, school staff and governing bodies (2018)

criminal offence,[785] to harm someone, or break the school rules. If pursuant to a search, content is discovered relating to a criminal offence, the Screening Advice indicates the device must be given to the police,[786] if no content is found relating to a criminal offence, they may decide to delete data or to retain the device.

While Part 3 of this Chapter will discuss the implementation of this power, there are obvious practical difficulties with the execution of the power itself as it relates to online abuse in schools. Staff will often not be able to access a device without consent due to the common requirement of passcodes required to access a device, and often offending data will not be stored on the device itself but on SNS,[787] which may require further usernames and passcodes to access accounts hosting the offending material. As will be discussed in Part 3 of this Chapter, teachers often deal with online abuse by asking students to delete data, as teachers ask students to voluntarily delete the offending data from their SNS or device themselves, and this is carried out in a manner outside of the search and delete powers.   The data collected in this study indicates that the search and delete powers are used rarely by schools, if at all. Part 3 will examine the implementation of these powers through findings from the empirical research, and consider the relevance of the search and delete powers in the context of improving outcomes for online abuse.

4.3.5. Framework regarding sexualised images

Sexting is referred to as the sending of sexually suggestive images including nude or semi-naked photographs via text or social media.[788] As discussed in Chapter 3, all sexting between

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[785] The Screening Advice also confirms without consent searches can be performed if schools have banned mobile devices in the school rules. School 2 bans mobile devices in their school rules.

[786] Section 2(4) (b) Education Act 2011 inserting 6A into Chapter 2 Part 10 of the Education Act 1996

[787] For example, Images uploaded to Facebook are not stored on the device which views them, images stored on Facebook are contained in Facebook data centres such as the data storage facilities in Ireland, Sweden and the United States: Simon Bisson 'How Facebook Does Storage' *The Newshack* 15 January 2015 https://thenewstack.io/facebook-storage/; Lisa Eadicicco 'Your Facebook Data is stored inside this beautiful Spartan warehouse' *Time* 28 September 2016 http://time.com/4508165/facebook-data-center-photos-2016

[788] Sexting in School And Colleges: responding to incidents and safeguarding young people UKCCIS (August 2016) 6, 'sexting' as it is used in this Thesis is defined in the Terminology section of Chapter 1.

young people constitutes a criminal offence under the POCA.[789]   The only statutory framework referring to sexting, is the KCS Guidance which states:

> 'All staff should have an awareness of safeguarding issues that can put children at risk of harm. Behaviours linked to issues such as drug taking, alcohol abuse and sexting puts children in danger'.[790]

As has been discussed previously in this thesis, there is evidence sexting is not always a dangerous activity for young people, and that it may form a normal part of adolescent sexual curiosity.[791] More detailed guidance for schools appears in the non-statutory advice applicable to implementation; 'Sexting in Schools and Colleges: Responding to incidents and safeguarding young people,'[792] (The Sexting Advice"). The Sexting Advice confirms that sexting between young people is illegal,[793] and states all child participants of sexting, whether they be the creators, distributors or recipients of sexting, should be treated under the under the safeguarding framework of the KCS Guidelines and Section 175 of the Education Act 2002.[794] According to the advice, parents must be informed of their child's involvement in a sexting incident, unless there are exceptional circumstances. The Sexting Advice also confirms that if a young person admits sexting, a crime will be recorded against their name in accordance with the National Crime Recording Standard, and states there are 'no guarantees' a sexting incident would never be disclosed on a Disclosure and Barring Service ('DSB') Certificate,[795] when that student seeks employment in the future.[796] It is argued this advice provides little reassurance to a child's school or to parents about the long term impact of reporting a sexting incident, and the data discussed in Part 3 will suggest, this impacts greatly on whether or not schools involve SSPOs. Conversely, the Sexting advice also advises schools are not required to report

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[789] Section 1 of the POCA

[790] Department for Education, 'Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges' (September 2016)

[791] As discussed in 3.3.8 of this thesis and as referred to in: Jessica Ringrose, Rosalin Gill, Sonia Livingstone and Laura Harvey, 'A Qualitative study of children, young people and sexting, a report prepared for the NSPCC' (2012) 11

[792] UKCCIS and the Department for Education, 'Sexting in school and colleges: responding to incidents and safeguarding young people' (2016)

[793] Serious Crime Act 2015 and the Protection of Children Act 1978

[794] Section 175 of the Education Act 2002, requires schools to make arrangements to ensure their functions are carried out with a view to safeguarding and promoting the welfare of children, in addition a legislative vehicle for safeguarding resides in section 11 of the Children's Act 2004 which compels local authorities (which includes schools run by local authorities) to safeguard and promote the welfare of children in their care

[795] The Disclosure and Barring Service checks a person's criminal record for a prospective employer: https://www.gov.uk/government/organisations/disclosure-and-barring-service/about last viewed 23 November 2018

[796] Sexting in School And Colleges: responding to incidents and safeguarding young people UKCCIS (August 2016) page 10

sexting to police where the incident involves children over the age of 13, whereby the school may deal with matters on their own.[797] It is suggested schools are placed in a difficult position whereby they are cognisant the policy framework regards sexting as a serious safeguarding matter, yet the school risks compromising a student's employment prospects by seeking the advice of an SSPO, and allowing the matter to possibly arise in the context of a future DSB check. The indication that schools are provided with discretion for sexting matters if the student is over 13 also does not marry with the Screening Advice discussed above, which states that if a teacher finds evidence of a criminal offence during a without consent search, the staff member must deliver the device to the police.[798] As already argued in Chapter 3, the POCA could be redrafted to decriminalise consensual sexting between young people, or the production of indecent images of a young person of themselves, which may alleviate some of these issues. Chapter 3 also refers to a potential amendment to the Schools Protocol for recorded crime under the Home Office Counting Rules,[799] to allow SSPOs discretion when recording online abuse incidents between secondary students. With respect to reporting to parents, it is argued that the emphasis of the Sexting Advice should change so that schools are permitted to inform parents of sexting incidents if the staff member considers it in the best interest of the child involved, rather than requiring parents be informed unless there are exceptional circumstances. The basis for this argument will be explored in the data analysis in Part 3.

Overall, the advice given to schools in the Sexting Advice and KCS Guidelines potentially creates conflict in light of the compulsory recording of sexting as a crime by a SSPO.[800] The advice that sexting is always a dangerous activity triggering welfare mechanisms and parental involvement, may unnecessarily monopolise school resources, and potentially reduces the efficiency of how schools and teaching staff treat online abuse overall.

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[797] Sexting Advice page 11

[798] As stated in the Education Act 2011 2(4)(b) Amending 550ZC of the *Education Act 1996*.

[799] This is an exception to the Home Office Counting Rules for Recorded Crime: Crime Recording (Schools Protocol) Annex B 1 of 2 (2016)

[800] SSPOs must record all incidents of sexting as a crime: Home Office Counting Rules for Recorded Crime, Miscellaneous Crimes Against Society (April 2018)

PART 3

Data analysis

4.4. Effectiveness of school regulatory responses

The qualitative interviews of 17 students, 5 staff and 1 police officer, were analysed in conjunction with the common law, relevant legislation, statutory and non-statutory guidelines, the behavioural policies of each participating school and their latest published Ofsted report. The purpose was to ascertain how well the three schools met their responsibilities, and how effectively they used powers provided to reduce online abuse and its impact on victims. In this part the behavioural polices of participating schools 1 2 and 3 will be reviewed to ascertain whether they adequately address issues as statutorily required. As this study is concerned with the perspective of the secondary school student, an overview of how students perceive the school response to online abuse is considered, after which 4 case studies will be presented. A study of School 1 will consider how this school used its powers to reduce online abuse overall. Next, a student based study of Student F from School 3 will discuss how effectively her school used their powers to reduce the impact of her on-going online abuse. Two policy-based studies will analyse the research data in the context of specific policy frameworks; search and delete powers[801] and finally sexting policy.[802]

4.4.1. Participating School policies

As required by section 89 of the Education and Inspections Act 2006, individual school policies must set out measures for how schools intend to regulate inappropriate behaviour, which includes online abuse. There is no standard school policy, and all schools are permitted to apply the requirements as set out in the legislation and statutory advice in their own way. As a result, policy documents obtained from participating schools varied greatly in language, style and content. However, the policies of the 3 schools did address similar issues. All had; safeguarding policies which describe the welfare of the child as a priority of the school; behaviour policies which described desirable behaviour within school (for example 100% attendance) and undesirable behaviour (for example, bullying). The behaviour policies set out penalties or actions resulting from a breach in the behaviour standards, including

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[801] Search and Delete Powers as provided under the Education Act 2011, which has been referred to in Part 2
[802] As discussed in 4.3.5

circumstances causing exclusion from school; and identified that online abuse was behaviour which was unacceptable. Unacceptable behaviours were descried as being dealt with in a manner commensurate with the gravity of the incident. The policies of the participating schools meet the requirements of Section 89 of the Education and Inspections Act 2006.

However it was noted none of the school policies specified disciplinary action for online abuse, or any other behaviour, which occurred outside of school hours and school grounds, could be dealt with by the school. The data indicated however that schools recognised their responsibility and power to deal with online abuse when it occurred after hours and outside of school. As stated by the Safeguarding Officer of School 1:

> 'If a child is having an argument at 1 o clock in the morning, is that a parent issue or is it a school issue? Well the way it works is if school are told about it, then we have to deal with it'. [803]

As discussed in Part 2, this thesis argues the law is clear that schools do have the power to deal with behaviour outside of school, and consequently a failure to mention this in a school policy is unlikely to make punishment for behaviour outside of school unlawful. However, the law also requires behaviour measures be published to students and parents, and as such, it would be prudent for schools to be transparent about this power, and include this in their policies. Likewise, as discussed in Part 2, schools are provided with powers to search and delete in order to combat online abuse, and schools are also provided with guidelines in respect of sexting as part of their safeguarding responsibilities. None of the schools specifically mention their power to search students for mobile devices, and delete content from the devices,[804] nor do any of the school policy documents specifically mention measures which will be taken in respect of sexting. [805] This thesis argues schools ought to include such measures in their behavioural and safeguarding policies which clearly communicates to students and parents the measures which may be taken, which would more accurately comply with school obligations under Section 89 of the Education and Inspections Act 2006 regarding the publication of measures. However a failure to be so specific does not place schools at odds with their statutory responsibilities, which are framed broadly. Overall, the 3 schools behavioural policies met the minimum required framework.

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[803] Teacher A School 1 line 78
[804] As provided by the *Education Act 2011* and as discussed in Part 2
[805] Action taken by schools in respect of sexting touches upon both the criminal law and a school's responsibility to safeguard, as discussed in Part 2

4.4.2. Overview- Students' perceptions

The data showed that students were often critical of their school and their effectiveness at dealing with online abuse, however, they were also keen to recognise when the school had provided valuable assistance in respect of online abuse. Positive feedback on school response within the qualitative data was particularly linked to the input of pastoral staff[806] who had the time to listen and take action:

> 'Schools been helpful, as I didn't deal with it very well, as when I came here I had a lot of mental health problems, so they kind of dealt with them, and they reported them to the people that they should have reported them to'.[807]

Students were happy to describe when a staff member had improved a situation:

> **'And what did she do?**
> She sorted out the problem, and made sure everyone was ok with what was happening'.[808]

While pastoral staff often featured in positive comments, some students also had an affinity with certain teaching staff, who they chose to confide in, and often these teachers provided thoughtful and valuable assistance:

> 'I told my dance teacher, who was very, very supportive, in fact, the whole performing arts department here is supportive as a whole'. [809]

Students confirmed instances where staff made themselves available to speak about the abuse, and followed through with steps to deal with the perpetrators of the abuse. In instances such as these, students readily admitted action taken by their school was often effective. This type of action taken by staff accords with the Bullying Advice[810] regarding the implementation of behavioural policy, including that schools should make it easy to report bullying so they can

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[806] Pastoral Staff are staff members who have no or limited teaching roles in the school, and are tasked with matters associated with student welfare
[807] School 3 Student A line 304
[808] School 1 Student B line 92
[809] School 2 Student F line 95
[810] DfE Preventing and Tacking Bullying, advice for headteachers, staff and governing bodies (July 2017) pages 11 and 13

be assured incidents will be acted upon, and to provide support for the victim appropriate to the circumstances, and apply disciplinary measures to the bully.

While there were indications that delivery of pastoral support was the most appreciated form of response, pastoral support for online abuse or bullying is not specifically provided for in legislation or statutory guidelines. It is referred to fleetingly in the non-statutory Bullying Advice, instructing schools that students may require anything from a 'quiet word from a teacher that knows them well', to a referral to mental health services. The statements above from students indicate their positive experience associated with a proactive and supportive approach to online abuse, and suggests the guidance in the Bullying Advice[811] is a valid approach. From a common law perspective, providing pastoral care to victims of bullying or online abuse is commensurate with adequately exercising a duty of care for the welfare of the students involved.

While positive examples were found, overall the data revealed a high level of criticism by students indicating a deficiency in practical responses to online abuse incidents.[812] Analysis of the data uncovered evidence of schools failing to implement their behavioural policies on online abuse. Including; online abuse involving abusive messages not being dealt with adequately,[813] students not feeling comfortable informing teachers about some types of online abuse,[814] students reluctant to make repeat complaints about online abuse in the event they are labelled as 'weak',[815] teaching staff not adequately investigating complaints about online abuse,[816] and teaching staff not consistently applying school policy in respect of online abuse.[817]

The overarching theme of the complaints made by students, was that while schools did take action in respect of online abuse in nearly every instance, this action was often minimal, inadequate, did not meaningfully address the online abuse and did not properly (in their view) discipline the perpetrator. Students reported that staff would listen to reports of online abuse, and provide a sympathetic ear, but they did not necessarily know what to do in a practical

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[811] ibid, page 10

[812] It is noted, as has been referred to in the methodology section, the overall negative response of students may be due to the voluntary nature of participant recruitment, where dissatisfied students may have been more motivated to volunteer for the study

[813] Student D complained of a parody SNS account and the teacher did not take any action: School 1 Student D line 327

[814] 'there are certain things you can't say in front of adults'. School 2 Student A line 409

[815] 'yeah you don't want to be seen, as a weak person'. School 1 Student B line 176

[816] 'she didn't put him in red for being racist'. School 3 student D line 217

[817] Where the school placed the victim on separate lunches and not the bullies: School 3 Student F line 174

sense, or otherwise did not take action. From a common law perspective as identified in Part 1 above, schools do not discharge their common law duty of care duty by taking meaningless action. [818]

Illustrative data indicating schools offered sympathy, but not necessarily practical advice, is offered from Student F of School 3:

> '**Did you find the head of year good to talk to?**
> A little, but I don't think she was that understanding, she really didn't do much, she was just someone to talk to'. [819]

This was also observed in a statement made by Student D of School 1:

> '**I get the impression from talking to other students, that Mrs White[820] is a good person to talk to if things happen**
> She's a good person to talk to, but she's not the best person to deal with things'. [821]

Action taken was often perceived by the student as the school 'being seen' to take action, while not dealing with the problem in a meaningful sense. As stated by Student C School 2:

> 'when I say things to my team leader, sometimes it is like, they say, to write a statement, so you write a statement, and then they say they are going to deal with it, and you never her from them again[822]… they say, come and talk to us, but when we do, it feels like we are being a pain, because they don't like, deal with it like we want them to, they just leave it…it feels like they are always busy and they never have time to talk to you'.[823]

The data indicated that while staff often initiated processes following a report of online abuse, victims were not always dealt with sensitively, as stated by Student F School 2:

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[818] *Phelps v Hillingdon LBC; Anderton v Clwyd County Council; Re G (a minor); Jarvis v Hampshire County Council* [2000] 4 All ER 504 (HL)
[819] School 3 Student F line 101
[820] Mrs White is a pseudonym used to anonymise the transcript
[821] School 1 Student D line 284
[822] School 2 Student C line 138
[823] School 2 Student C line 249

'well they kind of make it look like they were dealing with it, and like, write a statement of what happened, and then they (the perpetrators) were sat outside the office together, writing their statement together with no teacher present. I was treated like I was the one who had done something wrong'. [824]

The data overall revealed a general discontent with the type of action taken by schools in response to online abuse, and evidence which indicated schools did not follow their own behaviour policies, or the Bullying Advice. Schools received reports of abuse, and had procedures in place in respect of abuse, however they did not take meaningful action from the perspective of the victim, particularly in respect of disciplining the perpetrator. It may be that the deficiencies identified by students in respect of staff response to reports of online abuse, may be related to inadequate staffing levels caused by reduced education funding, identified in Chapter 2.[825]

4.5. Case Study School 1

A case study of School 1 is provided to offer an in-depth examination analysing whether school policy complied with the statutory framework, whether empirical data confirmed appropriate application of policy and duty of care, and whether School 1 carried out its statutory duties in respect of online abuse. 4 students and the Safeguarding Officer were interviewed at School 1 and asked about their experiences of online abuse. The Ofsted Report of School 1 is also analysed to ascertain the inspector's view as to how well this school handled bullying incidents, and this is compared to the empirical data. An overview of the experiences of interview participants is followed by a discussion as to this school's effectiveness at dealing with online abuse.

4.5.1 School 1's Policies

School 1 has a behaviour policy which complies with Section 89 of the Education and Inspections Act 2006 in that it sets out measures for unacceptable behaviour in the classroom and around the school. The measures describe an escalating scale of verbal warnings, short detention, longer detention, isolation, removal from school activities and finally exclusions and permanent exclusion, with persistent bullying cited as a reason for considering exclusion and permanent exclusion. Online abuse as a type of bullying is not mentioned in the behaviour

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[824] School 2 Student F line 87
[825] As discussed in 2.8.4, Schools have been faced with an average annual budget cut of £185,000 per school

policy. School 1 has a separate safeguarding policy, which alerts staff to the possibility of peer on peer online abuse as a source of safeguarding concern. School 1 does not set out procedures for dealing with bullying or online abuse in policy documentation, and it does not have a published policy regarding school measures for online abuse which occurs away from school premises. As discussed above while this is arguably a desirable inclusion, it is not a legal requirement. School 1's website provides information to parents about reporting safeguarding issues to CEOP (Child Exploitation and Online Protection), information as to how to contact the safeguarding coordinator, and how to contact the local police. Overall the policies comply with legislative requirements.

4.5.2 The Ofsted Report
Ofsted's most recent report regarding School 1 relevant to online abuse states that:

> 'Occurrences of bullying are few and dealt with effectively. Leaders carefully document and scrutinize any form of bullying. Some parents consider bullying is not dealt with effectively by the school. These allegations are not substantiated by evidence'.[826]

It is not known what methods or evidence was drawn upon by Ofsted to formulate the statement that parents' concerns about bullying were unsubstantiated. Its relevance is addressed in the discussion section below.

4.5.3 Student A School 1
Student A, a 13 year old boy, had suffered from a period of constant online abuse, which affected his ability to complete his school work and at one point, made him contemplate suicide. Student A admitted he did not tell staff about his predicament, because he formed the view he would not be provided with assistance. This view was formed after attending an e-safety assembly where he stated, students were told children under the age of 14 should not have a Facebook account, and consequently no student under this age should complain about Facebook.[827]

> 'the school wouldn't do anything if you told them, the school is really bad when it comes to dealing with this kind of stuff

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[826] Ofsted report for School 1 2017
[827] School 1 Student A line 137

So you didn't tell the school because you knew they wouldn't do anything?

Yes. They tell you at assemblies that you shouldn't have those accounts, and that if you complain that so and so is saying something on Facebook, then basically they are not going to do anything, because you shouldn't have those accounts. Basically, they don't care'. [828]

Student A indicated that despite not informing staff about his situation, there were warnings which perhaps ought to have been noticed by teaching staff, including that he screamed hysterically in the middle of class one day, which did not attract any action from staff. He stated that his grades which were normally excellent, dropped considerably.   Student 1 overcame the online abuse through the use of blocking, privacy settings and deleting SNS accounts. He also was assisted by the emotional support and practical advice he received from an older pupil.

4.5.4 Student B School 1

Student B, a 13 year-old girl, described an online abuse incident and stated School 1 provided her with practical and effective assistance to deal with the issue, and the perpetrators were punished with a detention. Student B chose not to provide details of the abuse, apart from stating that it had upset her, and she was content with the action taken. Student B described how School 1 provided pastoral support, in the form of a member of staff who was employed specifically to assist students, which Student B specified was helpful. However, she then stated that once the main incident was dealt with, she felt could not complain again when her abusers did not stop entirely. Student B acknowledged there was no reason School 1 ought to have recognised the abuse continued, other than they failed to ask. While the situation for student B resolved itself with time, she felt as though she was left to deal with the situation on her own after the school's initial involvement.

'**Do you think the school deals with incidents properly?**

Not exactly thoroughly. They sort out the main bits

What more could they do?

They could, after a period of time, come to you and ask if you are alright…you don't want to be seen as a weak person'. [829]

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[828] School 1 Student A line 134
[829] Student B School 1 line 171

4.5.5 Student C

Student C, a 13 year old girl reported little if no experience with online abuse. She presented as a student with a mindful attitude towards social media, cognisant of potential dangers. Even though she had not experienced online abuse, she indicated she had used the pastoral support at the school when she was lonely, and found it helpful.

4.5.6 Student D

Student D a 14 year old boy, described an incident where another student had set up a fake Instagram account in his name, posting offensive messages, which caused him great distress. Student D reported the incident to staff and the response was to tell Student D, to tell the perpetrator to take down the account, and wait to see if the account was taken down. This approach did result in the material being taken down, but nonetheless this advice perplexed and angered Student D:

> 'Someone did set up a fake Instagram account about me, but the head of year just set it aside, and said, well, as long as they take it down, I am not too bothered… I didn't know what to think. I was a bit annoyed… when something happens he's quite lenient. And he really doesn't do anything about it'.[830]

Student D expressed concern about the lack of consistency in the application of school policy, as he had known of students receiving detention for setting up fake accounts, and yet in his case, no action was taken. Although the incident resolved itself with the perpetrator taking down the account, Student D describes how he was upset about the incident for months afterwards, which lead him to seeking the assistance of pastoral support. Like Student B and C Student D was comforted by the presence of pastoral care at the school, and stated it was good to be able to talk to someone about the incident. Student D pointed out that the staff member supplying pastoral care also did not help him in a practical sense, however he appreciated being able to talk to someone who was sympathetic about his problem.

4.5.7 The Safeguarding officer

The Safeguarding officer at School 1 acts as the e-safety lead, and not only deals with online

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[830] School 1 Student D line 355

abuse but any type of incident affecting the welfare of students.[831] He admitted online abuse was a frequent, consistent occurrence stating he dealt with up to two incidents a day.[832] 'Just imagine there are 1500 kids in this school. There is a lot of traffic in an evening'.[833] He also stated he was only aware of a fraction of the online abuse which occurred at school:

> **'From what you are saying, probably most of them (online abuse) you don't know about?**
> Yes'.[834]

The Safeguarding officer also stated it was difficult to ascertain, of the many incidents which occurred every day, which incidents could be defined as online abuse and which ought to be actioned:

> 'You have to look at the intent, is it sustained… they said they wouldn't do it again and then they did it again, that's when you get into the cyberbullying range'.[835]

This highlights the difficult task staff have in assessing what action to take, if any, when a student reports an incident they say is online abuse. However when it came to sexting, the Safeguarding officer indicated this caused him particular concern due to the risk he associated between sexting and sexual exploitation. He described Snapchat[836] as 'the most dangerous App I have ever come across', [837] due to for sexting amongst secondary school students, and his anxiety at having to deal with numerous incidents which required spending time with the students, with parents, and the school police to deal with the matter.

> 'It's endemic, they said its 49% of people have sent them one, well that's 750 kids in my school… it's a bloody mess. It's an absolute bloody mess'.[838]

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[831] School 1 staff 1 line 15, 28
[832] School 1 staff 1 line 23
[833] Staff member A School 1 Line 127
[834] School 1 Staff member A
[835] School 1 Staff member A line 134
[836] (Snapchat is discussed in Chapter 5, it is an application where images are sent with a short, pre-determined viewing time for the recipient, after which they automatically delete)
[837] Staff member A School 1 line 163
[838] Staff member A School 1 line 182

The Safeguarding Officer explained how bullying incidents are recorded, by using a child protection online management system called CPOMS. At the time of interview, he admitted the figure of 1 online abuse incident in the past two months logged onto the system for his school.[839] In light of his other statements, the figure of 1 seems implausible. However he stated that all bullying incidents are logged.[840] When asked whether it was possible not all bullying incidents were recorded, or that staff do not act upon every incident, he was cautious in his reply;

> **'Would there be a situation where a teacher has formed the view its 'just an argument' and told the child to sort it out themselves? As in you don't act on every single thing?'**
>
> Sometimes. But most of the time if the kids are having an argument we do our best to deal with it, and we deal with it successfully. However sometimes there are arguments that do on that we don't know about'.[841]

4.5.8 Discussion

With regards to student A, as he did not report his online abuse to staff, his account cannot be used to ascertain how effectively staff at School 1 respond to reported online abuse. However he may have had a valid complaint where he described that no one acted when his distress was apparent, particular in light of his falling grades, and the occasion where he screamed in the middle of a class. Safeguarding regulations[842] require staff to be on the look out for signs students may be under distress. It would seem in Student As case, School 1 missed the opportunity to assist him. The Bullying Advice recommends schools make it easy for pupils to report abuse, and feel assured they will be listened to and their distress acted upon.[843] Student 1 reported his school did not provide this type of environment, by indicating they had been told at assemblies not to complain if they had been bullied on Facebook as at their age they should not have an account. Student 1's account of this cannot be verified, but if this were the case, School 1 did not provide an environment for Student A where he felt confident reporting abuse. At the time of interview, Student A presented as having largely overcome his difficulties through seeking support from his peers, and technological solutions. However his report that the inaction of the school contributed to suicidal thoughts, highlights

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[839] School 1 staff member A lines 112 and 116
[840] School 1 Staff member A line 109
[841] School 1 Staff A line 138
[842] Statutory Guidelines
[843] DfE Preventing and Tacking Bullying, advice for headteachers, staff and governing bodies (July 2017) 11

the gravity of ignoring students who show signs of abuse. School 1 was unaware of Student A's online abuse, but arguably ought to have acted upon visible signs of distress. It is possible School 1 failed in their common law duty of care to prevent foreseeable harm.[844] However as Student A recovered from the situation, there was no lasting damage to form the basis of a claim of negligence. School 1's safeguarding policy, requires staff to be vigilant in looking for a student at risk, and to be aware of the signs of cyberbullying, however the policy contains no detail as to what those signs may include. It is recognised that staff cannot always notice a student who is in trouble, and is reluctant to communicate their distress. However in this case, particularly in light of an actual scream for help which was ignored, and his reduced grades, it is suggested that School 1 failed Student A in the application of its safeguarding policy and failed to proactively look out for signs of emotional distress as recommended by the Bullying Advice.[845]

With regards to Student B, she was content with the initial response from her school, which complied with all expectations set out in the Bullying Advice,[846] and it appeared the online abuse incident was initially, successfully resolved. It appeared staff did not follow up with Student B to ensure the abuse had ceased, however following up a reported incident which has already been resolved by the school does not appear in any policy, statutory instrument or non-statutory guideline, nor does it appear in School 1's safeguarding or behavioural policy documents. It is unfortunate that Student B felt as though she could not speak up, and if there is a failing on the part of the school, it is that it did not provide an environment which made Student B feel comfortable about seeking help a second time, as per the Bullying Policy. School 1 arguably acted in accordance with all other common law duties and statutory obligations, as there were no obvious signs to notify the school Student B was still being bullied. It is difficult to criticise School 1 for failing in either its common law or statutory duty, however, this incident does reveal the importance of following up with a victim to check the action taken was appropriate, and that the harm has abated.

Student C had not experienced online abuse, however her appreciation for the pastoral care is indicative of a school meeting its statutory obligations of caring for the welfare of its students, and one exercising its duty of care.

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[844] *Shaw v London Borough Council* [2005] All ER (D) 230
[845] DfE Behaviour and Discipline in Schools, Advice for Headteachers and Staff (2016) 5
[846] By disciplining the students involved and providing some support to Student B

With respect to Student D, his main complaint was a report of online abuse which was not acted upon. Instead the staff member indicated he would act at a later time, if the parody account was not taken down, with Student D complaining other students had received detention for the same behaviour. Student D's complaint about the consistency of punishment is legitimate, as the Bullying Advice states that; 'Disciplinary measures must be applied fairly, consistently',[847] and 'where bullying outside school is reported to school staff, it should be investigated and acted on'.[848] In this case arguably disciplinary measures were not applied consistently, and there was no investigation. A fake Instagram account which publishes offensive material in the name of a student may fulfil the elements of a criminal offence,[849] and arguably warranted action being taken by the school in the form of disciplinary procedures being taken against the perpetrator. The safeguarding policy of School 1 includes the objectives of encouraging students to come forward to pass on information about themselves, and to 'ensure sensitive and appropriate treatment'. The response by the initial staff-member at School 1 was dismissive, and not in keeping with the safeguarding environment described in the school policy. Provision of pastoral care by Student D indicates that the person in the pastoral care role did provide an environment for Student D to allay his distress and fears, which was more aligned with school policy and the Bullying Advice. However the pastoral officer did not take steps to deal with the perpetrator of the abuse in line with the school's disciplinary policy, or offer practical help. While School 1 provided emotional support to Student 1, the failure of 2 staff members to instigate any disciplinary measures against the perpetrator of the online abuse, indicated School 1 failed to adhere to their own disciplinary policy with respect to bullying, and did not follow the Bullying Advice.

The statutory framework described in Part 2 provides School 1 with the power to deal with an incident such as this, where online abuse occurs outside of school. School 1's behavioural policy does not refer to their intention to use such powers however due to the clear statutory powers given to schools to deal with matters occurring outside of school, it is unlikely such an omission in policy documentation would affect the lawfulness of a school using its disciplinary policy for matters occurring outside of school. In terms of implementation, a policy which sets out the intention to use this power would be appropriate, and make clear the school's intention to deal with matters which may not occur at school.

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[847] DfE Preventing and Tacking Bullying, advice for headteachers, staff and governing bodies (July 2017) 13
[848] Ibid 6
[849] If the account was created to cause inconvenience or distress it would be an offence under Section 127(2) of the *Communications Act 2003,* if there was no intent to cause distress, the behaviour would still make out the elements of an offence under S127(1) of the Communications Act 2003

In terms of the school's common law duty, the school arguably discharged its duty by providing pastoral support to Student D, and ultimately Student D did not suffer long term harm with which to base a claim of negligence.

With respect to the safeguarding officer and the Ofsted report, it is noted the safeguarding officer was responsible for the welfare of 1500 students, a considerable task, and he dealt with a wide range of behavioural and safeguarding issues from arguments between students to serious incidents of child sexual exploitation. The Sexting Advice[850] indicates certain types of sexting for example; consensual sexting between students over the age of 13, need not be referred to the Police.   However the Safeguarding Officer expressed significant concern regarding sexting and its link to sexual exploitation, and the work which must be undertaken to investigate the incidents which were reported.   It is noted that even if sexting involved students over the age of 13, he would need to investigate and form a view as to whether the shared images posed a risk to the student.   In addition the Sexting Advice indicates that all sexting incidents should be reported to parents, regardless of whether the school had formed a view the incident was consensual and not a matter for the police.   It is understandable how dealing with sexting is time consuming and stressful for staff, and that this may impact on the time and priority given to non-sexting online abuse, such as the parody account complained of by Student D, or the bullying incident described by Student B which reoccurred, and which she did not feel confident in re-reporting.

The statement by Ofsted indicating School 1 has few incidents of bullying, dismissing the views it had canvassed from parents, does not appear well informed in the face of the data. From a cultural perspective and as discussed in Chapter 2, online abuse or face-to-face bullying is not a phenomenon isolated to particular schools.[851] While it is accepted that some schools will have more online abuse and bullying and some have less, bullying and online abuse occurs within all schools in England as a behaviour spread across the population.[852] It is unknown how the Ofsted Inspectors arrived at their conclusions regarding School 1 and bullying, however the report also referenced 'careful records' being kept. On the basis of the evidence

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[850] Non statutory advice produced by UKCCIS in conjunction with the DfE: 'Sexting in schools and colleges: responding to incidents and safeguarding young people' (2016)

[851] Online abuse is a cultural phenomenon which is not isolated to particular schools, see the studies referred to at 2.4

[852] 31% of young people have admitted to saying something 'nasty' online, 54% of young people stated they have been bullied: The Annual Bullying Survey, Ditch the Label (2017)

given by the Safeguarding officer at interview about the frequency of online abuse incidents, and the admission regarding the single online abuse incident being recorded over a two month period, comparing this to the empirical data it is suggested the recording of online abuse incidents at School 1 is not accurate. Ofsted's finding of a low level of bullying at School 1 and their view of School 1's proficiency at dealing with such incidents, is to be viewed critically.

4.6 Individual Student Case Study Student F, School 3

The case of student F was examined, as her experience included a prolonged period of online abuse and more than one intervention by her school. Student F, a 17 year old female described long episodes of bullying which included both face-to-face and online abuse. Student F described arriving at secondary school with a reputation for failing her exams in primary school, and students knew of her older brother which she says drew negative attention. Initially she was bullied face-to-face at school and not online, however mid way year 8, she was given a mobile phone by her parents, whereupon she began to be bullied via messenger as well as face to face.

> 'My number got out, I don't know how, and then everyone started texting me, just weird and horrible things'.

Initially she tried to ignore her bullies, and then she began to become frustrated, and lashed out at her attackers during school. She was initially disciplined for her behaviour, which forced her to reveal to her teachers that she was being bullied. She was told by her teachers they would act if the bullying continued:

> 'They wouldn't say anything (to the bullies) unless it happened again'.

When she continued to be bullied face-to-face and via messenger, she told staff who informed her mother. A group of bullies were disciplined and they were temporarily excluded from school, however upon their return, the bullying continued. Student F attempted to ignore the abuse, and turned to her friends for support. She said they made her feel better, but the bullying continued. She blocked the numbers which were being used to bully via messenger, but the messages continued. After 12 months she was forced to change her number to stop the abusive messages. Student F continued to be bullied face-to-face at school, and in year 9 her brother left school which she says made the situation worse as he was not there to protect

her. The main perpetrators at this stage were a group of 4 girls, who were different students to the ones excluded for bullying when Student F was in year 8. Student F stated that the teachers were aware of the bullying, but often nothing was done to prevent it. She pretended to be sick in order to miss school, and did not tell her mother she was still being bullied. When she missed many days of school, teachers contacted her mother, which is when Student F admitted her absences were related to bullying, and her school instituted a new plan which involved Student F taking lunch-breaks on her own, to separate Student F from her 4 bullies. However this strategy did not work, as the students found out where she took her lunch breaks. She considered leaving school, started to cut herself, and stated she contemplated suicide, which she did not reveal to anyone at the time. These students were not excluded at any time for harassing Student F, and the bullying continued until the girls involved left the school. As soon as her bullies left school, the life of Student F improved dramatically. At the time the interview, Student F was in year 12 and flourishing at school.

4.6.1 School 3's Anti Bullying Measures

School 3's policy for dealing with online abuse and bullying complies with Section 89 of the Education and Inspections Act 2006. It includes a detailed account of how staff may recognise cyberbullying and bullying in a victim, stating that 'all bullying will be acted upon'. The policy set out consequences for inappropriate behaviour depending upon its severity, including a 'Medium Level' procedure, which involved removing the bully from areas where bullying took place such as lunchrooms and the school bus, or removal from the timetable.[853] Of the 3 schools participating, School 3's procedures regarding online abuse were the most comprehensive, and the actions expected of staff in such situations were clearly defined.

4.6.2 Discussion

Student F's experienced an extended and deliberate attack both online and offline, by different groups of bullies. She suffered greatly for years until all her bullies left school. The case provides an opportunity to consider how her experiences of bullying could have been managed to achieve a more satisfactory outcome sooner for Student F. Student F experienced a poor start to secondary school due to her pronounced lack of academic achievement, and may have made her vulnerable. She subsequently struggled to cope with the negative attention attached to this. Her initial reaction, lashing out, was arguably demonstrative of an inappropriate

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[853] School 2 Policy for Anti-Bullying

response, likely arising from her age, lack of maturity and social skills.[854] This served to encourage the bullies and drew further attention to herself.[855] Student F also lacked supportive friendships, and her social isolation may have made her more vulnerable to bullying.[856] Student F was forced to report the first spate of online abuse and bullying when her own behaviour caused problems with teachers. After reporting this, the initial decision taken by her school was to do nothing and wait to see if it occurred again. This response ran contrary to school's behavioural policy and anti bullying procedure. She had already experienced bullying for a sustained period of time, and had demonstrated an inability to cope with it. When first notified of the bullying, staff should have instigated School 3's anti-bullying policy which states all bullying will be acted upon. When the bullying continued, the school did act in accordance with school policy and excluded the first cohort of bullies in accordance with a 'Medium Level' intervention. However, after the exclusion, the harassment of Student F continued, and went unchecked by staff, until the truancy began. School 3 did investigate why she was missing school, which was in accordance with the non-statutory Bullying Advice.[857] However, when informed of the online abuse, the school's response was to remove Student F from the normal timetable in order to distance her from her bullies. This directly contradicted school policy, which states those instigating abuse ought to be removed from the timetable.

As the interview with Student F was anonymous, it was not possible to verify with School 3 as to why the decision was made to segregate Student F rather than her bullies. When speaking of her segregation, Student F stated:

> 'I was annoyed because it made me feel like I was being punished, when it was them who should have been punished'.

The impact upon Student F demonstrates the importance of staff response to reports of online abuse and the potential implications inappropriate actions may have on the mental, emotional and physical well being of the victim.[858] It was at this time that Student F began to self harm

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[854] Age and developmental factors in online abuse are discussed in 2.5

[855] Sarah-Jayne Blakemore, 'The Developing Brain: Implications for Education' (2010) 65 (6) Neuron 744

[856] Camilla Forsberg and Robert Thornberg, 'The social belonging: Childrens' perspectives on bullying' (2016) IJER (78) p13

[857] DfE 'Preventing and Tackling Bullying, Advice for headteachers, staff and governing bodies (July 2017) page 13

[858] Kelly Tallon, 'Addressing Sexting in Schools' (2010) 30(4) Children's Legal Rights Journal 2: quoting Sarah G Boucek, 'Dealing with the Nightmare of Sexting' The School Superintendents Association http://www.aasa.org/SchoolAdministratorArticle.aspx?id=4386 last accessed 1 September 2018

and contemplate suicide. Student F was able to endure the situation long enough for the perpetrators to leave school. School 3 did make attempts to support Student F throughout her bullying ordeal, but these were inadequate, and potentially, this placed her health and safety at significant risk.

Reflecting on how staff dealt with her situation, she stated;

> 'teachers need to make time, if someone is not happy and not wanting to come to school, they are just going to fail. I think they need to make time to make sure people are ok'.

The school did intervene but their efforts were ineffectual because the bullying was not immediately acted upon, Student F was segregated rather than her bullies, and her situation was not adequately monitored so that when the bullying continued, this went unnoticed. From a common law perspective, schools must take meaningful action to protect the welfare of their student.[859]

As victims of online abuse are often reluctant to speak up[860] staff should confirm with the victim that online abuse has ceased after an intervention has been made. The importance of monitoring victims of abuse, was mentioned in the interview with School 3's anti-bullying coordinator:

> 'I make sure I go back to them a few days later, then a week later, then 3 weeks later, and by that time, they are fed up with me, which is fine, as that means, things have changed for them and they feel safe'. [861]

Unfortunately this did not occur in Student F's case. Had school 3 implemented this strategy for Student F from the beginning, she may have been spared her prolonged experience of bullying and online abuse.

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[859] *Phelps v Hillingdon LBC; Anderton v Clwyd County Council; Re G (a minor); Jarvis v Hampshire County Council* [2000] 4 All ER 504 (HL), - ineffectual action is not enough to discharge a duty of care
[860] Alena Cerna, Hana Machackova and Lenka Dedkova, 'Whom to trust: the Role of Mediation and Perceived Harm in Support Seeking by Cyberbullying Victims' (2016) 30(4) Children and Society, 265
[861] Staff B School 3 line 166

4.7 Search and delete powers- policy study

The search and delete powers available to schools have been set out above at 4.3.4. It was found during the research that none of the participating schools had used the search and delete powers to deal with online abuse. No participating school mentions search and delete powers in their behavioural policy. Across all schools, staff revealed the preferred method of dealing with a situation where it was suspected a student had inappropriate or offensive material on a device, the staff member would ask the student to delete it, and this was done with the cooperation of the student rather then under force.

In School 3, staff indicated they were unaware of the search and delete powers. When the powers were explained by the researcher, Staff-member B indicated his view that the powers extended beyond the type of response appropriate for school staff to carry out:

Staffmember B of School 3 stated:

> **'Do you think its useful? (the powers)**
> I think it's a step too far. I think the police should be able to do it…I am not sure schools should be doing that'.

Staff member B suggested the search and delete powers were incompatible with the school ethos of dealing with unacceptable behaviour by cooperation rather than force. He indicated that strategies employed in school to deal with prohibited content on student devices incorporated the student taking responsibility for their actions by deleting the undesirable content themselves when asked by staff. Staff-member B stated:

> 'There is something symbolic in turning to a person, they have their device, you are in a room with them, that they delete it
> **So they delete it rather than you take it off them?**
> Yes that's what we do, that's what we have always done, despite these powers'.[862]

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[862] School 3 Teacher B line 257-264

The data indicated trust and the relationship between the student and the staff member was considered by staff to be important, enabling staff to more effectively interact with students.[863]

In School 2, staff did sometimes review content on students' phones, however this was only done by consent,[864] and the powers to search and delete had not been used by staff. Staff-member A said:

> 'Its not something I have ever done. To be fair, when you ask them to delete it they just delete it, then you show the phone and say, look I have deleted it'.[865]

Staff were clear that in the vast majority of cases, students who engaged in online abuse were aware of what they had done, and were willing to comply with the request to delete an offending item from their device or social media account.

School 1 cited a similar position:

> **'Can you clarify though- have you ever known of a without consent search for device and delete of images done by staff at your school?**
> "We've never done that'.[866]

There are also practical problems associated with the search and delete powers exercised without the consent of a student, in that devices commonly require passcodes. In addition, content may not be stored on the device itself but stored on SNS which also require passcodes. Consequently if a staff-member was to seize a device as part of a without-consent search, it is unlikely they would be able to deal with the device without the cooperation of the student.

While staff indicated a preference for interacting with students about their devices with consent, they also indicated that where the matter was serious, they valued the skills of the SSPO to deal with the matter.

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[863] School 2 Staff A lines 99 and 120 and School 3 Staff B line 275
[864] School 2 Staff B line 53
[865] School 2 Staff A line 119
[866] School 1 Staff A Supplementary Interview

Staff-member B at School 2, a lead child protection officer, recounted an incident discussed in Chapter 3,[867] when devices were taken from students, after it emerged video was circulated of a student engaged in bestiality. In that instance, the school used the SSPO to confiscate the devices, and the search and delete powers were not used.[868] It is noted that while SSPOs have the power to search students for devices, they do not have power to interfere with the device.

Police Officer 1confirmed that SSPOs dealing with a student, do not have the power to delete data from devices at school.[869] If a police officer seizes a device which they suspect has been used in an offence, the device is not examined by the searching officer, but by specialist officers after the device is logged and sent to another location. When asked about procedures following the confiscation of a mobile device, Police Officer 1 responded:

> 'The phone would be booked into our property stores… we have teams of examiners that look through electronic devices, however that might take 3 months'.

The officer gave their view on powers to search and delete as used by schools:

> 'Members of staff have far more power than me to search a child…
> They are absolutely scared to death of it, I will show you how they search someone (for cigarettes) (Police officer A stands up, pats interviewer twice lightly on the arm) That's how they search someone. You know. Honestly
> **They are not trained ?**
> They are not. I understand that. But I think as a layman you can understand, you cannot expect to find anything doing that'.

Search and delete powers are quasi-policing powers, but ironically, police do not have equivalent powers in schools. Law enforcement style responses to dealing with student behaviour may be associated with a perception that schools which take such an approach, are taking the matter seriously.[870] School-based police officers are present in many schools in the UK, with evidence that their presence has an effect of decreasing criminal behaviour amongst

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[867] Discussed at 3.7.4 and 3.7.7
[868] School 2 Staff B line 65
[869] SSPO 1 of Schools 1 and 3
[870] Deborah Ahrens, 'Schools, Cyberbullies and the Surveillance State' (2012) 49 American Criminal Law Review 1674

students.[871] However providing school staff the powers of police officers, may not be as effective as employing more SSPOs.

Providing search and delete powers to school staff is arguably unreasonable, as the data indicated teachers may not be adequately trained, nor do they have the confidence and skill to do quasi-police work. Police Officer A also indicated there was a incorrect perception within schools by teachers and the students themselves that police had more power to search students for prohibited items.

Police officer A described how in school e-safety assemblies he would ask;

> 'who has the most power to search you in school?.. I guarantee that nearly all kids would say that yes it's the police officer. And then I would say, well you are wrong, I have some authority to do that, but no where near as much as members of staff…quite often I have a bit of difficulty with staff, I will come in and I will be standing at the side of them, and they will say to me 'we think they have cigarettes on them'. Well I will say, 'are you going to search them then?' and they will say 'I thought that's why you came'.[872]

The lack of training for school staff to search students, coupled with staff's preference to maintain a relationship of trust with their students, meant that staff tended to rely on student cooperation in producing a device which may contain or be linked to online abuse.

Teaching staff prefer not to search students, and on the rare occasion it is necessary, they prefer a school-based constable perform this task. This brings into question the effectiveness of the Screening policy and the search and delete powers.[873] The data highlights the extent to which schools rely on the school based police officer in serious and situations where cooperation may not be forthcoming. It is suggested that a more effective policy measure would to increase the availability of SSPOs to be on hand to deal with such matters. As discussed in Chapter 3, the SSPO interviewed in this research was the school based constable

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[871] Emily Lamont, Shona Macleod, Anne Wilkin 'Police Officers in schools: a scoping study' National foundation of Educational Research (October 2011)
<https://www.nfer.ac.uk/publications/PCOX01/PCOX01.pdf>
[872] Police-officer A line 514-529
[873] The Screening Police and the search and delete powers are discussed at 4.3.4

for both school 1 and school 3, and was responsible for 6 schools in total. Thus the data indicated that schools do not have a readily available SSPO. Policeman A described how his availability affected his impact in school:

'I will be honest with you, there is only me in all the schools, I can barely cope with the amount of crime and things we get. And while there are other police officers doing other things, and I can sometimes get some of them to do those things, its quite difficult, because it quite quickly becomes a ridiculously large volume of people I have to trace

So with all this investigation, its just you and you have 6 schools

8500 children

And you obviously don't just deal with cyberbullying, you deal with all sorts

Yes I deal with assaults, drugs

What proportion of your time is spent on cyberbullying and sexting

I would say, its hard to say as some weeks I might deal with nothing else. Other weeks I might not deal with one…look if I look at last week, I would say 2/5 days… but there have been weeks…I mean kids are just getting more and more ingenious…that type of things takes a lot of investigation time'.

Police officer A also indicated that initially, 2 SSPOs covered his 6 school region, however his co-worker left the position some 7 months previously and was not replaced.

'there is supposed to be 2 police officers in schools, but there has only been me for 7 months, which makes it practically…very difficult

Is that a budget thing?

Mmmmm yes'. [874]

Overall, it would appear Police Officer A was placed in a difficult position servicing 6 schools alone, and this impacted his effectiveness at assisting schools dealing with online abuse.

No evidence was found which indicated the search and delete powers were used by schools, and the analysis suggests the search and delete powers are not effective tools for combating online abuse. However it is accepted there may be cases where schools have used these

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[874] Police officer 1 line 353

powers, or there may be occasions where schools may need to resort to these powers, particularly in circumstances where a school has insufficient access to a SSPO and they are faced with a serious incident requiring a student to be searched. However it is argued these powers may only be appropriate as a backup measure, and schools should not be expected to exercise these powers as a matter of routine procedure, due to the lack of confidence and skill of staff. When faced with a serious matter requiring a student to be searched, schools benefit from the expertise of a SSPO.

4.8 Sexting policy study

The sexting policy framework is set out above at 4.3.5. There is no statutory obligation requiring schools to set out their intended response to sexting in their behaviour or safeguarding policies, and none of the participating schools did this. However the power to deal with sexting and sexting abuse, is adequately covered within the general power to discipline contained in Section 89 of the Education and Inspection Act 2006,[875] and the obligation to act to protect the welfare of students as contained in Section 175 of the Education Act 2002 and the KCS Guidelines.[876]

At all three schools, staff participating in the research made it clear that sexting incidents were taken seriously, as this statement from the Anti-bulling coordinator of School 3 suggests:

> '**Do you deal with incidents of sexting?** That I would be passing to the general manager, CEOPS, things like that, because of the nature of the images. I would not see them myself, I see that as a serious issue, I treat that as a serious issue…I see that as child protection, because if someone is putting up those types of images, I see that as child protection''.
>
> **Would it always involve parents?**
>
> Oh absolutely'. [877]

The treatment of sexting incidents as a serious, safeguarding issue is commensurate with the statutory KCS Guidelines. As discussed in previous chapters, sexting may be an activity

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[875] See 4.3.1
[876] See 4.3.3
[877] Teacher B School 3 line 205

associated with the natural process of adolescents exploring their sexuality.[878] However this is not how it is approached by the KCS Guidelines, and not how it is portrayed in the media, which depicts it as a spreading, worsening phenomenon[879] and police press releases[880] also describe it as an increasing and frightening phenomenon occurring between young people.[881] The use of such florid language around sexting, may incorrectly indicate an epidemic,[882] and this may affect those tasked to deal with sexting incidents.

School staff appear to agree with the risk minimisation approach recommended by the Sexting Advice, and indicated they feared for the safety of children involved in sexting, as indicated by the Safeguarding Lead at School 1:

> 'The Child exploitation risk on Snapchat is enormous, due to sexting…all it takes is for one person (an adult) to infiltrate the group, and they will pretend to be from another school'.[883]

Staff appear to find the complexities of dealing with young people, sex and sexting immense. While they are aware young people are naturally interested in sex, they see the practise of exchanging naked images as fraught with danger:

> **'So when you are dealing with sexting is it mainly Snapchat**
>
> Yes it's Snapchat or Facetime of Skype. Live Video. It's a bloody mess. It's an absolutely bloody mess. The way we look at it, is well, children explore their sexuality in school. That's normal. That's what young people do, growing up. And to be honest, if it's between two people, and they like each other, and they keep it to themselves, I know that's going to go on. That's fine. However what happens is, the reprisal situations. Where 'I have got these images of you…and I am going to send them to

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[878] 'Sexting is often seen as a technological, legal, sexual and moral crisis' Amy Adele Hasinoff, *Sexting Panic* (University of Illinois Press 2016) 1

[879] For example see: Judith Burns, 'Sexting among under 16s skyrocketing, says Labor' BBC News 22 March 2018, 'Thousands of children sexting, police say' BBC News 11 July 2017; 'Parents call for education to address sexting by children and young people' PSHE The association for PSHE teachers, leads and other practitioners (21 July 2016)

[880] Karen Mc Veigh 'Sexting offences increasing in schools, say senior police officers' *The Guardian* (9 June 2016)

[881] Deborah Ahrens, 'Schools, Cyberbullies and the Surveillance State' American Criminal Law Review (2012) 49, 1689

[882] A further similarity between pubic discourse around drugs and bullying is the use of florid language, drug use and cyberbullying and sexting are described as epidemic pandemic and contagious: Deborah Ahrens, 'Schools, Cyberbullies and the Surveillance State' (2012) 49 American Criminal Law Review 1669

[883] Staff A School 1 line 165

everybody else' and you end up with child pornography all over school. How do you shut that off? Well you can't. What you have to do is deal with the victim, who has to deal with the fact the whole school has seen them'.[884]

The concerns expressed by teachers are legitimate, and despite the literature indicating consensual sexting might be harmless in many cases, staff are justifiably concerned if they discover a child is involved, as all sexting involves a potential risk of the child losing control of their naked image online. However this thesis argues that the narrative sounding sexting may contribute to a culture primed to overreact to matters which associate teenagers and sex.[885] Most young people are not involved in sexting,[886] which is supported by the data collected in this study where 2 of the 17 students interviewed admitted sexting.

Data indicated staff routinely involved parents in sexting matters, even if students did not want their parents involved. This follows the non-statutory Sexting Advice which states that parents should always be informed of sexting incidents unless there are exceptional circumstances:

'Do you always talk to parents?

Yes. Without exception. And there are some very tricky conversations. And there are children who don't want us to, but from a safeguarding perspective, there is no choice'.[887]

Many children do not wish to disclose online abuse or sexting incidents to their parents, or any adults, for various reasons. Student A School 1 described the reasons why he did not feel comfortable speaking with his parents about social media:

'What about (your) parents?

I didn't tell them about it. My parents would not understand, and I am worried about what they would do because they would not understand. They would have freaked out,

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[884] Staff A School 1 line 182

[885] 'Hegemonic childhood discourses construct a binary between the worlds of the adult as a hierarchical power- in this binary, children are socially constructed as innocent, immature, dependent and powerless in relation to the independent, mature powerful critical thinking adult': Charteris (n283) 208, and see Amy Adele Hasinoff, *Sexting Panic* (University of Illinois Press 2016) 1: 'Sexting is often seen as a technological, legal, sexual and moral crisis'.

[886] This is admitted in the UKCCIS and the Department for Education, 'Sexting in school and colleges: responding to incidents and safeguarding young people' (2016) 'How much of this is really happening?' page 7

[887] Staff A School 1 line 224

my Dad especially…my biggest worry is they would take my iPad off me. You see when you have an iPad, and it has everything on there, all of your social media and videos, and basically everything that makes yourself you, its all on there in the one place. So if they took the i-pad off me, that's the worst thing that could happen'. [888]

One student described being involved in incidents of severe online abuse and sexting abuse, none of which he disclosed to his mother, as it would have meant revealing to her that he is bisexual. He stated that as a Muslim this was something which she would find particularly upsetting. His mother had poor mental and physical health at the time, and he chose not to tell her about his problems, which he was worried would have added to her mental deterioration.[889]

'If you were not bisexual, would you have told your mum everything*?*

Yes I would have'.

The data indicated sexting disclosure to staff is low, even when it involves sexting abuse. An issue must be serious before a student is willing to report a sexting matter to an adult,[890] and sometimes students indicated even serious issues cannot be discussed with adults. As indicated by 15 year old Student A of School 2:

'There are certain things you cannot say in front of adults'[891]

The reasons indicated for such secrecy, is that once a sexting incident is reported to an adult, a process begins involving other adults, and the students loses control of how the incident is dealt with. When a matter is reported normal processes involve disclosure to parents, and the child protection (or safeguarding) team, and the SSPO. An overarching theme emerging from the data, is that students in general, are wary of any adult involvement. If the matter is embarrassing or controversial to them they have a strong preference for secrecy. This is emphasised below by Student B of School 2:

'if you had a proper situation, you can't talk to an adult, they will say "we need to go

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[888] Student A School 1 line 141
[889] Student F School 2 line 426
[890] 'Sexting: the Teen epidemic' in Andy Phippen, *Childrens' Online Behaviour and Safety* (2017) Palgrave McMillan 93
[891] Student A School 2, line 407

to the police" So you can't tell an adult if you really, really don't want anyone to know about it'. [892]

Although sexting was identified as a common and stressful phenomenon by staff, the majority of the students interviewed denied being involved in sexting,[893] students also appeared to be aware of the risks of sexting, and some indicating a general disdain for the practise, such as 13 year old Student G of School 2:

'I think it's disgusting and I would never do that

Apart from "it's disgusting", why do you have that opinion

Because you might send it, they might screen shot it, and they might post it all over Facebook and it will never go away'. [894]

13 out of the 17 of students interviewed said they had received naked photos from other people, however these were often unsolicited photographs from strangers. Student responses indicated that receipt of unsolicited naked pictures from strangers was seen as commonplace:

'On Snapchat (being sent nudes) it is very very common..it's why I deleted Kick. People used to send me loads, I don't know, people would just find you, and all you would get are naked photos'. [895]

Being sent sexual or naked imaged without consent fits within the definition of online abuse defined in this thesis. The effect of receiving unsolicited images ranged from inconvenience to disgust:

'Yes, you might say hi back, and then they will send you a really weird message or a nude, and its like, erm I don't want that!' [896]

Four students who had received naked images admitted that they had received naked photo from peers their own age. While the students indicated they did not enjoy receiving unsolicited

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[892] Student B School 2 line 586
[893] 2 students out the 17 interviewed volunteered the information they sent other people naked images of themselves
[894] Student G School 2 line 129
[895] Student F School 2 line 302
[896] A and B combined interview School 2 line 467

images, they dealt with the issue by themselves by ignoring or deleting the message:

> 'I don't understand some people, you will be talking to someone having a nice conversation over say three days and then all of a sudden, boom! There is my willy. Ok, you're deleted'.[897]

Students interviewed stated they had received requests for naked photos from classmates which they declined as demonstrated by 15 year old Student A of School 2:

> 'I mean, boyfriends do try. The boyfriend I am with now knows not to but boyfriends they will drop you a text saying "can you send this?" and I am like "no bye bye". [898]

Two students admitted sending naked photos of themselves to other people.[899] Student A, School 3 experienced involvement with school and police as a result of the admission about sexting and sexting abuse to staff. These admissions triggered a thorough investigation involving the safeguarding team, and the police. Student A described how her laptop computer was seized by police as a result of the sexting admission, which created problems for her during her A Levels. While school staff were sympathetic, she was also criticised for her sexting activities, and she was admonished by police about her involvement in sexting. This upset the student, resulting in the student yelling at the teacher involved in helping her, and she was subsequently threatened with exclusion.[900] The incident resolved, however Student A stated that she only received criticism and trouble as a result of adult involvement.

Student F School 2 admitted sending a sexualised image as part of a romantic relationship. He stated that he did not reveal this to anyone, and the person who received the image did not distribute the image without his consent. The data indicated that while most teenagers do not engage in sexting, those that do are aware of risks, as described by Student F School 2:

> 'I have once, I only sent it as I trusted this person 100%. I mean you have to trust the person 100%.
>
> **Was it including your face?**
>
> No. Once it's out, it's out'. [901]

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[897] A and B combined interview School 2 line 523
[898] A and B combined interview School 2 line 529
[899] Student F, School 2 and Student A, School 3
[900] Student A School 3 line 288
[901] Student F School 2 line 326

Student F School 2 in a separate incident, also admitted perpetrating sexting abuse which was discussed in Chapter 3.[902] Student F distributed naked photos of two other students following a situation where those two students had subjected him to online and real life abuse connected to his bi-sexuality.[903] On this occasion, police and parents were not involved in the incident despite the student confessing the behaviour to a teacher. This data contradicts the statement received from School 2 that sexting incidents always involve parents, and is indicative that schools may be willing to use discretion in some circumstances. The student involved was Muslim, and as previously highlighted he was fearful of his mother finding out he was bi-sexual, which may have played some part in the school's decision not to inform his parents. The Sexting Advice states that schools may decline to inform parents about sexting if the disclosure has the potential to harm the student. In the incident involving Student F, he obtained images of two naked boys and posted these to Instagram for a very short time, and then deleted the images. His initial intention to 'get revenge',[904] and posted the images whilst in a highly emotional state. After posting he was immediately remorseful and upset, leading to a confession to a teacher. Due to the short length of time the photos appeared online, the images were not shared and the incident did not escalate. Although as argued in Chapter 3, Student F had committed an offence by posting the photographs, the length of time the photographs were published, the voluntary confession, the remorse shown, and the student's fears about revealing his sexuality to his parents, may have contributed to the staff member deciding to act discretely, which schools are permitted to do under the Sexting Advice. However it is noted that staff at School 2 dealt with this arguably complicated and serious situations internally, without the advice of their SSPO:

> 'My understanding is that, if she (their SSPO) becomes aware that something is a crime, it might not go to the enth degree, but it has to be logged. She can't hear it and forget it'. [905]

Had School 2 advised their SSPO, the officer would have had an obligation to crime the incident in accordance with the National Crime Recording Standard.

This demonstrates a somewhat difficult and contradictory situation for schools in dealing with

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[902] Discussed at 3.7.7
[903] Student F School 2 line 106
[904] Student F School 2 108
[905] Teacher B School 2 line 74

complex sexting issues, which potentially involve criminal offences. Young people are reluctant to speak to adults about sexting in the event they lose control over how the situation is dealt with. Reluctance to speak to adults is justified as sexting always involves a criminal offence which must be recorded by an SSPO. The only way this can be managed is by keeping the incident from the SSPO. However in some situations, schools need the advice of the SSPO to deal with the matter effectively. As discussed in Chapter 3, it is unlikely a young person involved in sexting will be charged with an offence, even if it involves sexting abuse. Yet the threat of having the matter arise in the context of a DBS check in the future is a potentially stifling condition, affecting the candour of students with staff, and staff with SSPOs.

In the context that many sexting incidents are not harmful, it is argued that a strategy with which to balance the potential risk to young people associated with sexting, with the reluctance of young people to speak to adults, is to provide schools and SSPOs maximum discretion to speak to young people abut sexting, without mandatory rules requiring it be reported to parents, or recorded it as a crime. It may be beneficial if school staff and SSPOs are able to make decisions about each case of sexting in conjunction with young person themselves, according to the best interests of the young people involved. This may encourage students to speak honestly with staff. As discussed in Chapter 2, a relationship of trust between teacher and student allows for productive communications, leading to the resolution of problems.[906] Disincentives to such honesty, such as the compulsory recording of online abuse offences may be removed through an amendment to the Schools Protocol of the Home Office Counting Rules for Recorded Crime, as discussed in Chapter 3.[907] School staff ought to be able to seek advice and support from their SSPO whenever they are concerned about an incident. While the Sexting Advice permits discretion not to inform parents in exceptional circumstances, it may be more effective if the emphasis was changed so that staff were only required to inform parents where there were exceptional circumstances, such a risk of harm to the student. By fostering an environment whereby students are able to access help from their school and SSPO with less fear, students may be more likely to confide in staff and access the help they require.

4.9 CONCLUSION

Schools are central institutions within our society, tasked with keeping children safe, as well as providing education. Schools have close and constant interaction with young people, and have

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[906] 2.6.3 and 2.6.4 discussed the role of teachers, also see Chris Kyriacou and Antonio Zuin, 'Cyberbullying and moral disengagement: an analysis based on social pedagogy of pastoral care in schools' (2016) 34(1) Pastoral Care in Education 39
[907] As discussed in 3.6

specialised knowledge and training about online abuse, to which parents do not have access. The common law and regulatory frameworks place high expectations upon school staff, with both the common law and legislation imposing legal responsibilities upon schools with respect to the management of online abuse. Legislation also provides power for schools to act, and protection to staff carrying out their duties. However schools experience difficulties in carrying out their responsibilities in a consistent manner, and this may negatively impact upon victims of online abuse. School staff are often the first adults to become aware of online abuse, and their response impacts upon the well-being of the victim, and how efficiently the issue is addressed. The case study of School 1 and the individual student case study of Student F School 3, highlighted that schools sometimes do not adhere to their own behaviour policies in dealing with online abuse and bullying, and tended to take less action than their polices set out. The case studies also revealed the potential for students to suffer significant harm when schools fail to act appropriately in respect of known, or obvious cases of abuse. Schools barely cope with the number of online abuse incidents which are reported, and a vast number of incidents remain unreported. This may be associated with the availability of staff, and a lack of confidence in staff to manage and follow up incidents. Students respond well to staff that have the time to listen to them, and students appreciate staff who are able to take practical steps to help. Dispute resolution mechanisms such as restorative justice meetings facilitated by school staff may be useful, however staff require training and time to implement such approaches.

The school policy document analysis revealed that schools do not effectively communicate measures to parents or students as to what methods may be taken regarding online abuse which occurs outside of school grounds. While all schools had published measures which met the minimum legislative requirements, the policies lacked the detail required to provide transparency about how far school powers extend in respect of dealing with online abuse. Transparency may play a part in promoting consequences for online abuse, a factor considered important for deterring anti-social behaviour discussed in Chapter 2.[908]

The duty of schools to ensure the safety of children in their care has developed in the common law to a level which now exceeds that of the careful parent, demanding schools be proactive in dealing with students who require assistance to meet their educational and welfare needs. If schools refer a student to a third party in order to care for the student's welfare, schools

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[908] See 2.8.2

may still retain the responsibility for the welfare of the student. Schools which fail to notice a student suffering harm due to online abuse, may be at risk of a negligence claim if the harm caused by online abuse results in a diagnosable psychological injury or interference with educational attainment leading to loss of earnings. While there is protection under the law for staff taking a reasonable disciplinary measure, there is no such protection to staff for failing to undertake a measure. This is relevant as the data indicated staff were more likely to under-react to an episode of online abuse, than over-react.

Conversely the sexting policy case study found that staff are more likely to over-react due to the regulatory framework associating sexting with danger to young people. The Sexting Advice and the KCS Guidelines advocate a heavy-handed approach to sexting which may make students reluctant to seek assistance. The data suggests schools take sexting matters seriously. This accords with schools' safeguarding legal responsibilities, and non-statutory Sexting Advice, which assumes that all sexting is a potential risk of exploitation or harm. There is no way of knowing which incidents of sexting will lead to exploitation or harm, and the fear staff have of students placing themselves at risk is reasonable. However the data and literature also suggests that some incidents of consensual sexting may form part of a normal teenage sexual exploration, not requiring safeguarding or disciplinary resources. Students prefer to limit adult involvement, as they are reluctant to lose control of an intimate and embarrassing situation. Students are aware that to disclose sexting to teachers will risk having their parents informed, and this affects how candid they may be with teaching staff. If schools were permitted discretion to deal with all sexting matters, young people may seek assistance earlier and more often, which may lead to better outcomes for victims. The reaction by schools to sexting abuse is in contrast to how students report their schools react to non-sexting abuse, [909] where action taken is considered tokenistic and ineffectual. It is argued the attention given to sexting potentially monopolises school resources.

The compulsory recording of sexting offences by school-based police in accordance with the National Crime Recording Standard, whether or not the behaviour was consensual, is problematic. This policy does not help maintain a relationship of trust between young people and adults. Schools are in a difficult situation in seeking the advice of a SSPO, where they are concerned a student's behaviour may be recorded as a crime, and potentially be included in a

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[909] Demonstrated above in Part 3, where students complained non sexting abuse was acted upon but only in a minimalistic sense which often had little impact

future DBS check. It may be useful if schools could access support and advice from their SSPO without the additional concern the student will be recorded as a crime suspect.

The search and delete policy study found that powers given to schools to search for and delete data from devices by the Education Act 2011 may be of little practical use. It was noted that passcodes required on most devices may render the search and delete powers ineffectual where the student does not consent. Staff strategies for dealing with student behaviour rely upon maintaining a culture of mutual respect, and the invasive powers under the Education Act 2011 are not commensurate with such a relationship. It was found that when staff act upon abusive or inappropriate content, they prefer to ask the student to voluntarily delete it. Where serious matters arise, or if students do not cooperate, teachers prefer to defer to the expertise and skills of the SSPO. However there are issues with delegating such matters to a SSPO, who is often unavailable due to a heavy workload, and who does not have the power to deal with devices. It was found the SSPO also relied upon students voluntarily cooperating with respect to their devices. It may be useful for SSPOs to be given powers to deal with devices, rather than rely on under-trained staff to interfere with student devices in situations where students do not consent.

5

Technical regulation

5.1 Introduction

This chapter considers the potential contribution of the technology sector in the management of online abuse amongst young people. The regulatory role of SNS and ISPs are examined, to ascertain their potential influence in reducing online abuse between young people through the use of technical architecture and the application of internal policies. The fieldwork identified the most popular SNS used by the student sample to be Facebook, Snapchat and Instagram, therefore analysis is focused around these platforms. The technical solutions offered by SNS including; blocking, privacy settings and in-application self-reporting of abuse will be examined to consider their effectiveness from the perspective of the student sample. Data from the empirical research will be used to provide illustrative examples of how students use technical tools, and identify difficulties associated with their use. Other code-based interventions available to SNS such as artificial intelligence, are discussed to consider their role in potential solutions. The effect of SNS platform design, including; the availability of ephemeral messaging, the instantaneous exchange of images and the ease of connectivity between users is examined to determine how these features impact the likelihood of online abuse occurring within the SNS used by the student sample.[910] The potential for intervention by ISPs is considered, in conjunction with organisations referred to as trusted flaggers, specialising in evaluating reports of online abuse. Finally, the potential problems with regulation via technology will be discussed including the pubic policy considerations of the technology sector influencing online behaviour.

5.2. Technology as regulator

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[910] While the most popular SNS were Facebook, Snapchat and Instagram, there were some accounts of student's use of You Tube, Oovoo, Vine and WhatsApp during the discussion of technical design of platforms and tools used to combat abuse

Regulation can be described as targeted public or private interventions aiming to influence the behaviour of others.[911] Chapter 2 discussed influences and constraints placed upon the individual by social norms, whilst Chapters 3 and 4 examined traditional law-making and enforcement institutions and the role of public policy in affecting changes to how online abuse is regulated. Architecture also operates as of a modality of regulation[912] with technical design impacting upon the behaviour of young people using SNS or mobile technology. Regulation by code refers to the software and hardware associated with technology affecting the ability of a person to carry out certain behaviours whilst using the technology.[913] In the offline environment, architecture such as a locked door regulates behaviour by restricting access to those with the correct key. In a similar fashion, the use of technological mechanisms, or code can architect cyberspace to encourage or prevent behaviour,[914] such as requiring the use of a passcode to prevent unauthorised access to content on a device.[915] With respect to the use of SNS, platform design implemented by code affects the online experiences of young people, and it can be used to either encourage or inhibit behaviour linked with online abuse and operate as an effective means of regulation.[916]

As well as technical architecture, the policy decisions of SNS affect how they deploy their code and design features, impacting upon how online abuse effects users.[917] SNS and other stakeholders in the technology sector such as IPSs make decisions directly impacting the user experience, and have great potential influence upon the prevalence and outcome of online abuse.[918] The technology sector may potentially wield more power to regulate online behaviour than the institutions of law enforcement, schools, parliament and courts.[919]

5.3 Student's use of SNS

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[911] Jeanette Hofmann, Christian Katzenbach, Kirsten Gollatz, 'Between coordination and regulation: Finding the governance in internet governance' (2017) 19(9) New Media and Society 1406

[912] Architecture is one of the modalities of regulation as conceptualised by Lawrence Lessig: Lawrence Lessig, *Code 2.0* (Basic Books, New York 2006) 246

[913] ibid

[914] Values can be protected or ignored: James Banks, 'Regulating Hate Speech Online' (2010) 24International Review of Law, Computers and Technology 227

[915] Andrew Murray, *Information Technology Law The law and society* (New York, Oxford University Press 2010) 62

[916] David Prost, 'What Larry Doesn't Get: Code, Law, and Liberty in Cyberspace' http://www.temple.edu/lawschool/dpost/code.html#N_1_ undated

[917] 'The policy decisions of SNS have significant privacy and reputational implications' Laura De Nardis, 'Hidden Levers of Internet Control' (2012) 15(5) Information Communication and Society 720

[918] Sonia Livingstone, John Carr, Jasmina Byrne 'One in Three: Internet Governance and Children's Rights' The Centre for Internet Governance Innovation (November 2015) 2

[919] Frank Pasquale '*From Territorial to Functional Sovereignty: the Case of Amazon*' Law and Political Economy 6 December 2017 <https://lpeblog.org/2017/12/06/from-territorial-to-functional-sovereignty-the-case-of-amazon/>

The fieldwork revealed the SNS used by students included; Facebook, Snapchat Instagram, WhatsApp, Twitter, You Tube, Ooovo and Vine, with many students active in multiple if not all applications. Facebook[920] Instagram[921] and Snapchat[922], were the most commonly used SNS in the fieldwork sample, corroborating the findings of the Ditch the Label Report 2017 ('DTL report').[923] The frequency of interactions amongst the student fieldwork sample with Facebook, Snapchat and Instagram is reflected in their accounts of online abuse incidents, and their reported use of the platforms themselves. Consequently this Chapter will concentrate on the tools and platform design of Facebook, Snapchat and Instagram to contextualise the narratives offered by the students.

5.3.1 Facebook

Facebook is the most popular SNS with approximately 1.7 billion active users.[924] Its platform comprises of a 'timeline' which includes a mixture of user-generated posts allowing users to publish videos, images and text. These posts are published to an audience according to privacy settings chosen by the user, which includes permitting posts to be viewed by anyone else using Facebook, and limiting the audience to pre-authorised Facebook contacts known as 'Facebook friends'. A Facebook friend is another user who has been pre-authorised to access 'friends only' content published by a user. Facebook friends have access to each other's profile and content.

In terms of online abuse, the DTL Report indicated 37% of its respondents had been bullied on the platform. Media reports indicate Facebook is becoming less popular[925] amongst young people,[926] however the fieldwork sample and the DTL report indicate Facebook remains highly popular, often used in conjunction with one or more other SNS. Facebook is mainly used by

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[920] 76% of the sample used Facebook (Appendix 2)

[921] 70% of the sample used Instagram (Appendix 2)

[922] 70% of the sample used Snapchat (Appendix 2)

[923] Ditch the Label is a UK based anti-bullying charity facilitating the annual Ditch the Label Report 2017, a survey of 10,000 young people aged 12-20 in the UK about social media use. The DTL Report indicated 60% used Facebook, and 78% used Snapchat.

[924] Statistica <https://www.statista.com/statistics/264810/number-of-monthly-active-facebook-users-worldwide/>

[925] Mike Write, 'Over 55s flock to Facebook as teenagers leave in droves for Snapchat' The Telegraph 12 February 2018 <http://www.telegraph.co.uk/technology/2018/02/12/55s-flock-facebook-teenagers-leave-droves-snapchat/>

[926] There is evidence that Facebook is useful to students as it provides a bridge between their education sphere and their social sphere, providing a space for spontaneous school based chat groups to communicate: Janus Aaen and Christian Dasgaard, 'Facebook Groups as a third space: between social life and school work' (2016) 41(1) Learning Media and Technology 160

young people to connect with a wider circle of family and acquaintances, and to follow favourite brands.[927]

5.3.2 Instagram

Instagram was purchased by Facebook in 2012,[928] and has 1 billion active users.[929] The platform is primarily a photo and video sharing application, comprising of a visual storyboard to produce a series of images and video created by the user.[930] Instagram is a streamlined application, enabling users to publish their own photographs using image editing and filtering tools. Its popularity has been bolstered by its accessibility to public content, particularly content posted by celebrities. [931]

5.3.3 Snapchat

Snapchat is becoming increasingly popular amongst young people in the UK and has 190 million users globally,[932] with its design and functionality making it appealing to a younger audience. [933] The most notable feature of Snapchat is the temporary nature of user communications which disappear within seconds of being viewed (the 'snap'). The second key feature of a snap is that it is taken in real-time with the camera tool within the application itself.[934] Snapchat's platform allows recipients of images to differentiate between images which had been stored on a user's device, and those which are sent instantaneously using the Snapchat camera ('real-time images'). If an image is sent from a device camera roll the recipient is notified.[935] The significance of this design feature is the sender of a snap is more likely to send genuine images of themselves and their surroundings.[936] Images can be sent to an

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[927] Kimberlee Morrison ' How is Gen Z Using Social Media?' *Adweek* 24 March 2016
<http://www.adweek.com/digital/how-is-gen-z-using-social-media/>
[928] Josh Constine and Kim-Mai Culter TechCrunch, 9 April 2012
<https://techcrunch.com/2012/04/09/facebook-to-acquire-instagram-for-1-billion/>
[929] Statistica <https://www.statista.com/statistics/253577/number-of-monthly-active-instagram-users/>
[930] Mike Murphy, ' Facebook earning call revealed' *QZ* (2 February 2017) <https://qz.com/901289/facebooks-fb-earnings-call-revealed-zuckerbergs-plan-for-taking-down-snapchat-before-its-ipo/>
[931] Jayson De Mers 'Why Instagram is the Top Social Platform for Engagement (and how to use it) *Forbes Magazine* 28 March 2017
[932] Statistica <https://www.statista.com/statistics/545967/snapchat-app-dau/>
[933] Popular features include 'Snapstreaks' a feature whereby users are encouraged to send a daily snap to each other, failure to do so breaks the streak: Forcefield, 'Is Snapchat Safe for kids? Its Complicated'
<https://forcefield.me/snapchat-safe-for-kids/> last accessed 1 September 2018
[934] <https://www.pocket-lint.com/apps/news/snapchat/131313-what-is-snapchat-how-does-it-work-and-what-is-it-used-for>
[935] Karissa Bell, 'Snapchat will no longer shame you with white borders around old photos' *Mashable* 25 January 2018 <https://mashable.com/2018/01/25/snapchat-update-camera-roll-in-stories-no-white-borders/?europe=true>
[936] Forums dedicated to Snapchat 'hacks' suggest there are ways to bypass this feature to allow a user to send an image from their device photo roll disguised as a snap, however feedback on such hacks suggest these do not

individual within a chat feature or broadcast to Snapchat Friends. The Snapchat platform encourages constant engagement[937] with features built to facilitate instant replies and reciprocal snaps,[938] the platform includes filters to edit user images[939], and is popular with students who use Snachat tools to make their photographs unique or amusing.[940] Snapchat is associated with daily use by young people to contact their close friends. [941]

5.4 Tools offered by Snapchat Facebook and Instagram

Snapchat, Instagram and Facebook offer similar tools to users to prevent and deal with online abuse including; options to limit the audience of users' posts and profile ('privacy settings'), options for users to block other users from contacting them through the platform ("blocking") and an in-application mechanism for users to report online abuse to the platform ("self-reporting").

The empirical research provided insight into students' use of these tools and how effective the students perceived the tools be in combatting online abuse. The data showed that 100% of students were aware they were able to adjust their privacy settings and had adjusted their privacy settings on SNS in some way, 82% of students were familiar with blocking and had used this feature, 52% of students interviewed had reported online abuse via an in-application self-reporting mechanism. In addition, 5% of the sample (one student) deleted SNS accounts to deal with abuse.[942] The DTL report stated 71% of respondents said they felt SNS did not do enough to combat cyberbullying. The qualitative interview process gave insight as to the circumstances surrounding the perceived effectiveness of the technological solutions. A deeper exploration revealed that from the students' perspective, use of privacy settings and the use of blocking were the most effective tools currently offered by SNS in reducing online abuse, while students conveyed that in-application self reporting to SNS was partially effective

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always work: Kartikay Bhutani, 'How to send any picture from camera Roll as NOMAL SNAP on SNAPCHAT!!' *YouTube* 9 January 2017<https://www.youtube.com/watch?v=pouizYg84Ro>

[937] Snapchat is associated with innovative interactive features such as the 'Snapchat Birthday Party' which allows followers to send unique messages only on a member's birthday: Amy-Mae Turner, '4 Snapchat default settings you need to change', Mashable 2 October 2016

[938] Nir Eyal, Hooked: How to Build Habit Forming Products, Portfolio Penguin, London (2014)

[939] For example, Snapchat tools are used to edit self taken photographic portraits colloquially known as 'selfies', making the image more pleasing to the user by removing imperfections from the images, or adding features to the image to make the image stand out

[940] Grace Palmer 'How to use filters on Snapchat and the Most Popular Ones' *The Telegraph* 30 June 2017 <http://www.telegraph.co.uk/technology/0/use-filters-snapchat-popular-ones/>

[941] Kimberlee Morrison ' How is Gen Z Using Social Media?' *Adweek* 24 March 2016 <http://www.adweek.com/digital/how-is-gen-z-using-social-media/>

[942] The quantitative data is contained in Appendix 2

to solve their online abuse situation, self reporting was often a source of frustration for students, as SNS did not respond to their reports in a timely manner, or the action taken was perceived as inadequate.[943] These mechanisms and the empirical data are discussed below.

5.4.1 Blocking

The empirical research indicated blocking was a method often used by the students[944] to combat online abuse. Blocking on SNS usually has the effect of stopping one user from directly contacting another, and blocking a user from viewing content posted by the user who blocked them.[945] Most students interviewed indicated they felt confident using the blocking facility on various applications.[946] There was evidence blocking provided the students with some autonomy over responding to a situation of online abuse in a timely manner:

'I have blocked loads of people on Facebook that I don't want to speak to'. [947]

There were two exceptions to students being satisfied with the use of blocking. This included where they were unsure as to how to use the blocking tools on different SNS, and where perpetrators of abuse created new accounts to overcome being blocked and continue the harassment. Student A School 2 revealed she struggled to understand how to use blocking, and required assistance from her friend:

'I don't know how to block people using an I-phone' Student B: 'yeah that's where I come in'. [948]

Student A admitted a lack of confidence with using technological skills. The confidence of a SNS user is relevant to the likelihood of young people engaging with the SNS tools on offer.[949] While SNS usually provide information about the use of their tools to deal with online abuse

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[943] This is discussed further at 5.4.3

[944] 82% of the students interviewed had used blocking to reduce online abuse Appendix 2

[945] The exception to this is that a blocked user may still view content which another user has published in a public format, for example; Snapchat: Remove and Block Friends https://support.snapchat.com/en-GB/a/remove-block-friends last viewed 28 July 2018

[946] The exception to this was young students or students new to social media, which will be discussed below

[947] Student C School 2 line 148

[948] School 2 Student A and B line 138

[949] The reported confidence of a user is relevant as shown in table 6a Danah Boyd and Eszter Hargittai, 'Facebook privacy settings :who cares?' (2010) 15(8)First Mind (2 August 2010) <https://firstmonday.org/article/view/3086/2589>

within their application or their website, there are no mechanisms to ensure new users read this information or that they are competent in using these tools.

With regards to perpetrators who set up new accounts to overcome being blocked, some of the students interviewed described frustration and a certain level of resignation about this tactic;[950]

'Yes I blocked him, but he kept making new accounts'. [951]

The complaint that perpetrators of online abuse could open another account to continue their abuse was a common complaint amongst the students when discussing the blocking feature.

'Can you block them?

Yes I do but they find a way around it, they will make another account'. [952]

In the event a perpetrator did not create new SNS accounts to continue online abuse, the intense peer environment of secondary schools,[953] may mean that blocking a person's account does not put an end to a campaign of harassment, particularly where the student maintains social connections that includes the perpetrator. Student D of School 2 received threats from her boyfriend's ex-girlfriend via Facebook and Snapchat, and she blocked this person on those networks. However the ex-girlfriend continued to issue threats and negative communications about Student D on SNS involving mutual acquaintances, which was then fed back to Student D.[954]

'she was calling me a slag… I blocked her

how did you know if you blocked her?

I blocked her but then it was on Snapchat

Do you have friends who tell you what shes saying?

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[950] 'I blocked them, straight away. And then, they created another Facebook account, just of themselves, just so they could do it again' School 2 Student F line 246

[951] Student C School 2 line 170

[952] For example see Student E School 3 line 193

[953] Schools facilitate the rigorous internalisation of social norms due to the intense peer environment: Wesley Perkins, David W Craig, and Jessica M Perkins, 'Using social norms to reduce bullying: A research intervention among adolescent in five middle schools' (2011) 14(5) Group Processes and Intergroup Relations 717

[954] School 2 Student D line 68

Yes they tell me and she keeps asking for my number'. [955]

In the case of Facebook, Instagram and Snapchat, persons are not notified if they are blocked, and will not realise they are blocked unless they attempt to contact or locate the person who has blocked them. In the case of Facebook, blocking another user means they are unable to locate the user's profile, however the perpetrator may still be able to view posts by their victim in other Facebook facilities, such as on pages or groups where both victim and perpetrator are a member.[956]   In Snapchat, blocking will stop a user from being contacted, however if both are within a group chat a blocked user will be able to view messages from a user who has blocked them.[957] Snapchat has included a feature which notifies users if they attempt to join a group with someone they have blocked,[958] then the user has a choice of whether they wish to belong to the group.   On Instagram, blocking someone stops that user from being able to locate the profile of the person who has blocked them. However blocking does not stop another user from mentioning the username of the person who has blocked them. The person who blocked them will be notified when someone they have blocked has mentioned their username on Instagram, and other users of Instagram will be able to see any comments made. While the user who has blocked someone, does not directly receive communications from the person they have blocked, they are notified of when their abuser is talking about them, and their followers are able to see what has been said. [959] This suggests that some aspects of the technical design within each application impacts upon the level of protection a user has from a person they have blocked. Blocking does not entirely protect a young person from coming into contact with their abuser online, particularly if they share online acquaintance links.

Despite these issues, overall blocking was reported by the students as being a highly utilised feature, used by 82% of the student participants.[960] Blocking gives young people a tangible and autonomous tool for quickly reacting to online abuse.

5.4.2 Privacy settings

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[955] Student D School 2 line 67

[956] Amelia Butterly, 'What people can still see after you block them online' *BBC Newsbeat* (15 October 2015)

[957] Snapchat Support: Blocking <https://support.snapchat.com/en-GB/a/block-friends>

[958] Snapchat Support: Privacy Settings <https://support.snapchat.com/en-GB/article/privacy-settings>

[959] Also people who are blocked are also able to view comments made by the user who blocked them if they are made on public pages: Instagram Help Centre <https://help.instagram.com/426700567389543>

[960] See Appendix 2

While there is evidence young people can be relaxed about the content they share on SNS and the audience of their content,[961] many young people also take steps to manage their privacy, and can be conscientious about taking measures to use privacy settings to protect themselves against online abuse.[962] Many young people are attuned to matters of reputational management, and privacy settings assist to that end.[963] Privacy settings for Facebook Snapchat and Instagram are assisted by the authorised contacts feature whereby the SNS user chooses an audience for their profile and posts, known respectively as 'Facebook Friends', 'Snapchat Friends' and 'Instagram Followers.'[964] Privacy settings are a technical tool all of the students interviewed reported as having used.[965] The default settings for privacy on SNS are those which are automatically installed upon a user opening a new account, and determine the audience of posts published by a new user who has not altered their privacy settings. Default settings differed between Snapchat, Facebook and Instagram.

In 2014 Facebook changed its default privacy settings from public to 'Friends only' meaning that upon creating a Facebook account, a user's posts were published to Facebook Friends instead of all Facebook users.[966] This is particularly useful for new users, as inexperienced members of the platform may not be sufficiently skilled in changing settings, or even be aware of the potential audience for their posts.

Likewise, the default setting in Snapchat restricts the audience of a user's posts to their Snapchat friends only.[967] However, this feature may be negated as Snapchat also allows users to add other users to their friends list without authorisation.[968] It is then up to the other user to remove them or block the user who added them.[969] The default for direct messaging within

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[961] For example many young people are comfortable publishing their email address, phone number, their school and images of themselves online: Mary Madden, Amanda Lenhart & Ors, 'Teens, Social Media and Privacy' *Pew Research Centre Internet and Technology Report* 21 May 2013

[962] Danah Boyd and Eszter Hargittai, 'Facebook privacy settings :who cares?' (2010) 15(8) First Mind (2 August 2010) https://firstmonday.org/article/view/3086/2589>

[963] Mary Madden and Aaron Smith, 'Reputation Management and Social Media: How people monitor their identity and search for others online' Pew Internet and American Life Project (Pew Research Centre 26 May 2010)

[964] Facebook Friends, Snapchat Friends and Instgram followers are other account holders of the same SNS previously authorised or accepted by the user, permitting those account holders access to parts of the User's profile and posts which have been designated through privacy settings as being visible or accessible by that audience

[965] School 1 Student A line 114

[966] Justin Lafferty, 'Facebook Changes Default Privacy Settings for New Users to Friends Only' *Adweek,* 22 May 2014

[967] Privacy Settings https://support.snapchat.com/en-GB/a/privacy-settings2 last viewed 28 July 2018

[968] Elise Moreau '10 Essential Privacy Tips for Snapchat Users' *Lifewire* 31 July 2017

[969] Lifewire, 10 Essential Privacy Tips for Snapchat Users, 19 July 2018 <https://www.lifewire.com/snapchat-privacy-tips-4117444>

Snapchat is set to private, so that a user must change this in order to allow their profile to be contacted by any user.[970] Student D School 1 indicated he found the privacy settings in Snapchat useful once he learned how to use them, however he indicated it was difficult at first when he was unfamiliar with the settings:

> 'they can see your story but they can't message you unless you accept it. Its quite a good site if you have your privacy settings done''[971] Initially, I didn't have these settings, it was quite complicated to work it all out at first'. [972]

Students generally appeared to appreciate the option of changing privacy settings to take control of their social media audience:

> **'So on Facebook can anyone message you?**
> Not now I have put it on private'. [973]

Instagram's default privacy settings allow a user's posts to be viewed by any other application user, and users must actively change their Instagram privacy settings to reduce the audience of their posts to Instagram followers only.[974] New users unsure of how to alter their privacy settings may unwittingly expose themselves to a wider audience than intended. This caused concern to Student B School 2 when her younger sister joined, and when she witnessed posts published by her friends who seemed unconcerned or naive about Instagram's default privacy settings, and expressed the view it was not clear to new users that these could be changed or how these settings could be changed:

> 'some people.. they just let ANYBODY see what they are doing…where they are… I actually had to stop my sister, because she didn't understand it was public...I had to teach her… I don't know why you wouldn't have it private, because its in very small writing, that you can make it private'.[975]

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[970] Snapchat Support https://support.snapchat.com/en-GB/a/privacy-settings last visited 19 February 2018
[971] Student D School 1 line 193
[972] School 1 Student D line 193
[973] Student G School 2 line 112
[974] Instagram Privacy Settings and Information <https://help.instagram.com/196883487377501>last viewed 21 February 2018
[975] 'What else did you do to stop the bullying?
I set my Instagram to Private so that you have to be friends with someone to see their pictures': School 3 Student B line 73

Student B makes the point that it was not obvious to new users that privacy settings could be changed to restrict the audience of posts. The extent to which users are able to adjust their privacy settings will depend upon their skill level and experience in altering the settings. The more skilled and experienced the user is, the more likely it is they have changed their privacy setting.[976]

Students stated that online safety briefings at school were useful for younger students, who were reported as being very naive about social media:

'You learn about it in like year 7 year 8, they teach you about strangers, your report button…they have no idea what to do'. [977]

Students are sometimes assumed to be technical or 'digital natives' comfortable with negotiating the technical landscape by virtue of having been surrounded by technology since a young age.[978] However the case may be that students know no more about technology and the intricacies of online help features than any other person, with a student's knowledge of the internet and SNS limited to their particular experience and education on the matter.[979] Students indicated they sometimes struggled on their own to learn how to operate privacy settings, particularly younger students or those new to SNS. Young people who are new to SNS and not familiar with privacy settings on their various SNS accounts are unlikely to adjust the audience of their posts.[980]

'When it first started happening (the online abuse) I didn't know much about social media accounts, so I was not sure what to do'. [981]

Student A School 3 recounted how when she first obtained SNS accounts she was unaware of the options available to make her accounts private. Student A suffered from online abuse

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[976] As shown in Table 5e1-2 in Danah Boyd and Eszter Hargittai, 'Facebook privacy settings :who cares?' (2010) 15(8) First Mind (2 August 2010) <https://firstmonday.org/article/view/3086/2589>
[977] Student B School 2 line 99 and 106
[978] This term was coined by Mark Prensky in 2001, which he applied to young people born after the year 1984; Mark Prensky, 'Digital Natives, Digital Immigrants' (2001) 9(5) On the Horizon MCB University Press
[979] Paul A Kirschner and Pedro De Bruyckere, 'The myths of the digital native and the muti-tasker' (2017) 67 Teacher and Teaching Education 135
[980] Danah Boyd and Eszter Hargittai, 'Facebook privacy settings :who cares?' (2010) 15 (8) First Mind (2 August 2010) <https://firstmonday.org/article/view/3086/2589>
[981] School 1 Student A line 135

for a prolonged period before staff at her school noticed she was suffering, and gave her a private coaching session to explain how to use privacy settings and otherwise reduce the level of abuse she received.[982]

Student G School 2 described how he was sent a naked photo when he was new to Snapchat:

> **'So how did he get through?**
> I had just got Snapchat and I didn't know anything about the settings, my sister did it for me…she showed us what to do if people do it and that's when I changed it'.[983]

Student D School 3 reported that privacy settings did not prevent other users from making repeated requests to 'follow' or 'friend' her, which described as source of anxiety. [984]   Student D had refused friend requests, but did not block the users attempting to friend her. Facebook and Snapchat permit multiple friend requests if a user has not blocked those making the request. This may be an architectural aspect which can be addressed by SNS.

Once students felt appraised of the technical options available to them, they indicated a confidence in being responsible for their safety online. There may be opportunity for SNS to address this lag in experience and technical skill through the use of privacy setting prompts and in-application tutorials.[985]

5.4.3 Self-reporting of abuse and the internal rule book

Self-reporting mechanisms within SNS allow a user to notify the SNS they have experienced online abuse. Facebook Snapchat, Instagram all provide mechanisms for the member to report the user concerned using an automated self-reporting link within the application. [986] While technological solutions such as blocking and privacy settings are user-controlled, the operation of in-application self-reporting mechanisms are linked to a user violating the platform's user terms of service, which are set out in the SNS's contract of service with each user. These incorporate SNS policies setting out acceptable use of the platform, referred to as

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[982] School 3 Student A line 42
[983] Student G School 2 line 120
[984] Student D School 3 Line 468
[985] Kyungisik Han, Hyunggu Jung, Jin Yea Jang, Dongwon Lee, 'Understanding User's Privacy Attitudes through Subjective and Objective Assessments: An Instagram Case Study' (2018) 51(6) Computer 18
[986] Facebook 'What should I do if I am being bullied, harassed or attacked?' <https://www.facebook.com/help/116326365118751>last viewed 13 February 2018

Community Guidelines or Standards.[987] The combination of such terms of service and guidelines of standards for SNS will be referred to as "SNS Terms".[988] If a reported post does not contravene the SNS Terms, the SNS is not contractually obligated to take action, however the SNS Terms for all three platforms are drawn broadly,[989] and arguably permit discretion by the SNS to take any action within their technical capacities in respect of any allegation of online abuse, including blocking or deleting content, temporarily suspending a user account and termination of a user's account. The SNS Terms also provide the option to take action even without an allegation of abuse, allowing the platforms to interfere with a user's content for any reason, at any time.[990] SNS Terms across platforms universally state users should not use the platform for threatening to harm a person,[991] bullying or harassment,[992] and threatening to post intimate images of others.'[993] Self-reporting links provided as a tool within the SNS allow the user to provide information about why they reported the post and these are ultimately flagged to content moderators.[994] When a user of an SNS makes an in-application report of online abuse, the report is graded and prioritised according to the software of the SNS. The urgency by which the report is viewed by an agent or employee of the SNS, depends upon the input of the user about the complaint, and the internal policies of the SNS regarding the type of behaviour reported, which is reflected in the code channelling the report.[995] The availability and number of moderators compared to reports affects the speed of decisions, and any internal policy to which moderators must adhere in adjudicating reports will affect their outcome. The decision to delete a post contravening SNS terms, suspend an account or cancel account due to online abuse, are taken by moderators or censors who make decisions according to the internal moderation guidelines of each SNS, which are separate from the SNS Terms. Facebook, Snapchat and Instagram publicly advise within the SNS Terms that the responses

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[987] Facebook's conditions for users are referred to as "Community Standards", while Snapchat and Instagram refer to similar terms as "Community Guidelines"

[988] The SNS Terms: Community Guidelines, Snapchat https://support.snapchat.com/en-GB/a/guidelines, Facebook's Terms of Use https://www.facebook.com/terms.php, Instagram's Terms of Use; https://help.instagram.com/478745558852511 and https://www.snap.com/en-GB/terms/#terms-row (last viewed 22 February 2018)

[989] ibid

[990] For example see Snapchat Terms of Use 'We reserve the right to refuse access to the Service to anyone for any reason at any time': Instagram Terms of Use

[991] For example see Community Guidelines, Snapchat <https://support.snapchat.com/en-GB/a/guidelines>

[992] Facebook Community Standards, Bullying and Harassment https://www.facebook.com/communitystandards#bullying-and-harassment last viewed 13 February 2018

[993] Instagraph Community Guidelines https://help.instagram.com/477434105621119 last viewed 13 February 2018

[994] Olivia Solon, 'Underpaid and Overburdened: the life of a Facebook Moderator' *The Guardian* (25 May 2017)

[995] For example, if there is risk of real world physical harm, this will be prioritized Chris Green 'What Happens when you report abuse? The Secretive Facebook Censors who decide what is, and What isn't abuse' *The Independent* 13 February 2015

available to reported abuse will depend upon a contravention of their terms and conditions, or acceptable use policies. These do not indicate how reports are processed or escalated. The details of the internal guidelines and how SNS moderators make their decisions are not transparent, with no hard data published.[996] This may be addressed in future transparency requirements proposed under a social media code of practice yet to be issued in accordance with the Digital Economy Act 2017.[997] Presently, information on such internal policy, and how it is applied is limited.[998]

In May 2017 the Guardian released several stories regarding 'leaked' reports of Facebook's 'secret rule book' regarding the activities of their censors. It revealed internal policy documents allegedly used by Facebook censors to make decisions upon in-application self-reported online abuse. The policy documents revealed by the Guardian included; Threats to cause harm, child abuse material[999] and revenge pornography. The report indicated that threats to cause harm on Facebook would only be deleted if the post met what was referred to as the 'Global Credibility Standard'[1000] on violent threats, with posts required to include specific details in order to qualify for censorship. The example given was:

'I'm going to kill you John!' would not be deleted, whereas 'I am going to kill you John! I have the perfect knife to do it' would be removed as the post specifies the use of a knife, which according to the Guardian report, complies with what was referred to the 'Global Credibility Standard' on a method of violence'.[1001]

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[996] The lack of transparency regarding internal policy was raised in HM Government, Internet Safety Strategy-Green Paper (October 2017), also: Nick Hopkins 'Revealed: Facebook's internal rulebook on sex, terrorism and violence' *The Guardian* 21 May 2017

[997] Proposed transparent reporting guidelines are addressed in a draft code of conduct annexed to: HM Government, Government response to the Internet Safety Strategy Green Paper (May 2018),

[998]For example, with respect to freedom of expression, Facebook has issued public comment indicating only serious contraventions of its terms will be moderated having regard to Section 19 of the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNT 171 (ICCPR), however such statements contain little detail: Facebook Newsroom, 'Hard Questions: Where do we draw the line on Free Expression?' (9 August 2018)

[999] Facebook Files 'Facebook's manual on non-sexual child abuse content' *The Guardian* 21 May 2017 <https://www.theguardian.com/news/gallery/2017/may/21/facebooks-internal-manual-on-non-sexual-child-abuse-content>

[1000] Apart from the reference to this Standard in the Guardian report, no other reference was located regarding the Global Credibility Standard in the context described by the article

[1001] Face book Files, 'Facebook Manual on credible threats of violence' *The Guardian*(21 May 2017) <https://www.theguardian.com/news/gallery/2017/may/21/facebooks-manual-on-credible-threats-of-violence>

With regard to revenge pornography, the Guardian report indicated for an image to qualify for removal, the image must be taken in a private setting, include a nude or near nude person or one who is sexually active, with the lack of consent confirmed by accompanying 'vengeful content'.[1002] With regard to general nudity or sexual activity being shown on the site, the report indicated that moderators were advised clothed and simulated sexual activity between adults was permitted, as well as pixelated sexual activity between adults.[1003] With no additional sources of data to verify the internal polices of Facebook, Snapchat and Instagram, it is not possible for the purpose of this study to draw conclusions regarding such policies let alone their effectiveness. However, evidence from the empirical research indicated Facebook's policy on revenge pornography caused reports to be escalated more quickly than other reports. Student A School 3 described an incident where her friend was the victim of revenge pornography and had naked images posted on Facebook, and these were reported and removed. The student described Facebook's action as 'quick' however then went on to clarify it took several days, up to a week for images to be removed.[1004] An example of policy relating to removal of images being given a lower priority, was highlighted in the research in relation to Instagram. Student B had an image of her posted on Instagram which she did not wish to be published, and did not give the person posting the content permission to publish. The image was not nude. She reported the image and reasons to Instagram, the removal took 'a long time', exactly how long Student B was unable to specify. However the length of time for Instagram to respond upset her at the time, as her peers at school were given a lengthy opportunity to view the image, evidenced by their 'liking' of the posted image on Instagram.

'She took a picture and put it on Instgram, I tried to report it, the people who run Instagram need to deal with things quicker… people who went to my school "liked" that photo!'[1005]

The task for moderators actioning reports is arguably complex, where it is necessary for the person making the decision to take into account the SNS internal policy, the input from the person making the report, the relevant community standards or guidelines, and the content

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[1002] Nick Hopkins, 'Revealed: Facebook's internal rulebook on sex terrorism and violence' *The Guardian* (21 May 2017) https://www.theguardian.com/news/2017/may/21/revealed-facebook-internal-rulebook-sex-terrorism-violence>

[1003] Nick Hopkins 'Facebook moderators: a quick guide to their job and its challenges' *The Guardian* (21 May 2017) <https://www.theguardian.com/news/2017/may/21/facebook-moderators-quick-guide-job-challenges>

[1004] School 3 Student A line 215-228

[1005] Student B School 3 line 113

itself. For the most part the line between what is acceptable and not acceptable may be difficult and nuanced,[1006] with different possible outcomes. The most common action taken by SNS to reports of online abuse is no further action.[1007] This may be due to the veracity of the majority of complaints made, however it is difficult to predict with certainty what type of content will be acted upon by SNS, as the SNS Terms are drawn broadly, internal policies relating to the specific actions of moderators are kept from the public domain, and the availability and number of moderators for each SNS is not clear. Facebook have announced they will be recruiting 20,000 more moderators to combat online abuse on its platform.[1008] It may be that if more moderators are available to respond to reports of online abuse, it is more likely that victim's complaints will be dealt with in a timely manner. However whether the user will be satisfied with how the report is dealt with, is another matter.

Within the DTL report, 19% of all young people who experienced online abuse reported it directly to the SNS, and of that proportion of young people, 50% indicated they were satisfied with the support received from SNS.[1009] Within the student sample, 52% of students self-reported abuse, and 44% of those students who reported were satisfied with the response by the SNS. There were examples in the data where students effectively used in-application self reporting to deal with online abuse;

> 'Instagram have a report button if they are really annoying me, just click that, I always report them off and them block them'. [1010]

However other accounts in the data indicated self reporting was often not successful, and this was ascribed by students to the SNS not responding to the complaint,[1011] or otherwise where the SNS did respond, it was not in a manner the student considered helpful. For example, sometimes the SNS may have reacted to the complaint by deleting abusive content, or closing the account of the perpetrator, however this did not necessarily equate to an effective result in

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[1006] Emily Taylor, The Privatisation of Human Rights: Illusions of Consent, automation and neutrality, CIGI Chatham House Paper Series 24 (2016)

[1007] Chris Green, 'What Happens When you Report Abuse? The Secretive Facebook Censors who decide what is and what isn't abuse' *The Independent* (13 February 2015)

[1008] 'we have not done enough to stop the abuse of our technology' (Facebook COO Sandberg) Aoife White, 'Facebook will do better to Stem Abuse, Sandberg Vows' *Bloomberg Buisinessweek* (23 January 2018)

[1009] In comparison, 90% of those who reported cyberbullying reported it to a family member, and 89% of those respondents were satisfied with the support.

[1010] School 3 Student C line 186

[1011] See Student A of School 1 '**Did you do any other reporting to Facebook?** Yes I did but I didn't really hear anything back' Student 1 Student A line 110

the view of the student, as their perpetrator sometimes went on to institute more online abuse via another online identity:

> 'One person I reported to Instagram I think got their account terminated. They just re-opened another account though'. [1012]

Students felt the perpetrators of online abuse largely went unpunished for the actions. The accounts of the students who stated they did not receive any direct or adequate communication from the SNS indicated a disappointment about the lack of resolution. Young people utilise technological interventions which prove beneficial to them, and when those interventions are not effective, they will be ignored despite their availability, and purported effectiveness as expounded by the SNS. [1013] Consequently while the empirical research suggests students sometimes successfully engage with technological solutions such as self-reporting to manage to online abuse, students often required further intervention than offered by the technology. The empirical research also indicated SNS do not address the distress the victims suffer in respect of the online abuse. Student F School 3 reported homophobic, racist and threatening abuse to Facebook, and the post was deleted, however as far as he was aware, no other action was taken against the perpetrator, and there was no follow up or resources directed towards him as a victim of a distressing incident of abuse:

> '**Did you report it as a homophobic incident?**
> Yes, or racial, I think there is one that says, like trying to threaten, and I don't think anything got done. I think the post got deleted, but nothing else got done'.[1014]

Students indicated an uncertainty about the results of self-reporting on Facebook despite the application offering a dashboard which would appear to address this very issue.[1015] The dashboard is a feature unique to Facebook, it is not available on Instagram or Snapchat, [1016] and tracks all self-reporting of online abuse, displaying the status of the user's report and the

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[1012] School 1 Student A line 104
[1013] Pieter Keleve and Richard De Mulder, 'Code is Murphy's Law' (2005) 19(3) International Review of Law, Computers and Technology 317
[1014] Student F School 2 line 259
[1015] Students interviewed were not asked about the Facebook Dashboard consequently it is not known if Facebook did report the result of the report in the dashboard and the student was unaware of the report, or whether as the student said, Facebook did not respond to the report at all
[1016] Josh Constine, 'Track your Facebook Abuse, Bullying, Spam Reports with Transparent New Support Dashboard' *Techcrunch* (26 April 2012) <https://techcrunch.com/2012/04/26/facebook-support-dashboard/>

outcome of any finalised incidents. The dashboard feature has been available since 2012, however it would appear the students were unaware of the dashboard's existence, or if they were aware they failed to check the facility, or they may have misunderstood the content of the dashboard. The dashboard, if known about, arguably provides an adequate facility where the user can check upon the status of a report and resolves some of the issues reported by students regarding uncertainty about what action has been taken, however its usefulness may be hampered by lack of prompts from Facebook identifying the tool to users, combined with a lack of knowledge on the part of Facebook users.

Complaints of inaction about self-reporting were not unique to Facebook. Allegations of inaction or less than adequate action on the part of the SNS was complained of across the board. In respect of Instagram:

> **'Did anything happen with the report?**
>
> No, nothing really happened. I think you get suspended from Instagram for a week or two'.[1017]

Consequently in this example, the student indicated their view that a suspension from Instagram for a couple of weeks equated to 'nothing really happened'. Arguably, Instagram in this instance acted substantively by suspending the account of the perpetrator, however in the view of the victim student, this did not address the problem, because the perpetrator either often opened another account, or was free to continue once the suspended account came back online.

Student A of School 1 reported a partial success with reporting to Facebook, after numerous Facebook accounts were made using his identity, all of which he reported. He confirmed many of the accounts were deleted by Facebook, however not all of them.[1018] In this case Student 1 indicated there was a lack of consistency with action taken in respect of reporting fraudulent parody accounts. The situation settled down and was resolved for Student A, when eventually the online abuse ceased from the remaining parody accounts. His problem with the parody accounts was therefore eventually resolved, but not by Facebook.

[1017] Student's accounts of the results following in-application self reporting were often lacking detail: School 3 Student C line 186, also see Student A School 1 'Besides reporting that it wasn't you, did you do any other reporting to Facebook? Yes I did but I didn't really hear anything back'.

[1018] 'There was about 15 of them, I am not sure what happened to the rest of them': Student A School 1 line 112

Like privacy settings, the use of technical tools such as self-reporting of abuse is hampered by lack of experience of the user, or where SNS change their policies or tools, and users are not aware. In the case of Snapchat, before June 2017 it was not possible to report online abuse to Snapchat while using the application. Prior to this, users could only report abuse via an online form accessible on the Snapchat website.[1019]

> **'Can you report on Snapchat?**
>
> I don't think you can, I think on Snapchat, if someone sends you something weird, then you un-friend them and then they can't send things to you again'.[1020]

5.5 Platform Design

An examination of the empirical research indicated platform design features of SNS, incorporated within platforms to attract users, may also be associated with either conditions which facilitate online abuse, or inhibit online abuse. Design features examined included; ephemeral messaging, real-time images and features which encourage connectivity between users.

5.5.1 Ephemeral Messaging and Real time Images

An examination of the data indicates conflicting findings, which suggest ephemeral[1021] and real-time images[1022] can have both the effect of facilitating abuse,[1023] and in some instances these features may lessen or prevent online abuse. Ephemeral and real time images are found within Snapchat,[1024] but not Instagram or Facebook. Consequently the discussion will focus on this application. Ephemeral and real-time images are a main feature of Snapchat, which allows a user to send a temporary snap either privately to a Snapchat Friend, or to an audience, the size of which depends upon the privacy settings chosen. Snap senders users take real-time images with the Snapchat camera, after which they are given the option of editing the image

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[1019] Andrew E. Freedman 'How to Report Bullying Abuse on Snapchat' *Toms Guide* (3 May 2016) <https://www.tomsguide.com/us/report-abuse-on-snapchat,review-3603.html>

[1020] Student A School 2 line 554

[1021] Ephemeral communications are transitory images and communications which automatically delete after a set time period, as described in 2.7.4

[1022] Real time images are those which are taken and shared instantaneously and described in 5.3.3

[1023] 'Young people in this study perceived that Snapchat can facilitate deviant behavior': J Mitchel Vaterlaus, Kathryn Barnette, Cesia Roche, JimmyYoung, 'Snapchat is more personal: an exploratory study on Snapchat behaviours and Young adult interpersonal relationships' (2016) 62 Computers in Human Behaviour 594

[1024] Examples include Wickr, Tigertext and Clipchat, none of which were cited by the student sample Daniel Bean, '7 Snapchat Alternatives with Super Self Destructing Messages' *Yahoo Finance* (28 May 2014)<https://finance.yahoo.com/news/7-snapchat-alternatives-with-super-secret-87031052364.html>

and to choose how long the image will appear on the recipient's screen, with the longest time available being 10 seconds.

With respect to real-time images, Student A School 2 described her faith in the ephemeral technology. She explained she had become friends with a boy who lived abroad, and indicated they had exchanged images of each other. When she was asked whether she was sure the images were true, and not a false identity she stated;

> 'yes that's why I Snapchat him, it doesn't allow you to send photos from your camera roll, it has to be the person there' [1025]

Real-time images provide some reassurance to the recipient of the physical identity of the person with whom they are communicating. This is more relevant to concerns about the exploitation of young people by adults. Real-time images may also be relevant to online abuse by making it difficult for users to claim a fraudulent identity.[1026] However, there are indications the users of Snapchat have developed methods of bypassing the technical design which requires snaps be taken in real time using the Snapchat camera. [1027] The claim by Snapchat that camera roll images and real-time images can be distinguished by the recipient may encourage behaviour by young people which may put them at risk, demonstrated by Student A School 2 embarking on an online friendship with a boy she had never seen emboldened by her confidence in the technology.

> 'I made a friend that popped up and said hello to me, his name is Hugh and he's from New Zealand.' [1028]

However on balance, it is argued real-time messaging is more reliable than a user trusting another user to identify and represent themselves honestly in digital images and video, which occurs on platforms such as Facebook and Instagram. Consequently it is likely the use of real-time images in communications tends to enhance the safety of young people online.

[1025] School 2 student A line 486
[1026] Contrary to the Section 127(2) of the Communications Act 2003 as discussed in Chapter 3
[1027] <https://www.youtube.com/watch?v=pouizYg84Ro>
[1028] Student B School 2 line 473

The ephemeral features of Snapchat communications also potentially limits online abuse particularly revenge pornography, by restricting the opportunity for controversial images including naked images to be copied and used by another person, as the image disappears within seconds of the recipient opening the image. However, if the recipient is quick enough, it is possible to 'screen-shot'[1029] and save an image before it disappears.[1030] The data shows students routinely use the screen shot feature of their device to capture controversial images or messages before they disappear,[1031] which is then stored permanently on their device as data, and can be shared again on Snapchat, or any other platform. Consequently the transitory nature also facilitates abuse, particularly revenge pornography, if a young person sends a naked image which they otherwise would not, in the belief the image is safe from redistribution. Arguably, the transient nature of a snap may create a false sense of security to students particularly those engaging in sexting.[1032] Student A at school 3 described how she sent explicit images to a boy, some of which he screen-shot. Fortunately for Student A, the boy concerned did not use those images against her.

> 'with Snapchat, you can have it for 1 second or 10 seconds, and I sent it for 10 seconds, and he screenshotted it
>
> **Because you are notified when someone screenshots**
>
> Yes. Then I changed it so he only got them for 3 seconds so in the end I think he only got that one. Whereas my friend sent hers through Facebook messenger so he had them'.[1033]

In this example, Student A sent the images via Snapchat for what she indicted to be the protection afforded by the transitory quality of the messages. Despite one of these images being screen-shot, she persisted in sending the explicit images, after reducing the number of seconds the image would appear. It would appear Student A School 3 felt sufficient confidence in the technical tool to accept the risk associated with sending the boy further

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[1029] A screen shot is a feature on most devices which allows the user to take a photograph of whatever appears on their screen at the time

[1030] If this occurs, Snapchat will notify the sender that a screenshot has been taken, however there are methods which by-pass this feature such as placing your device in flight-mode: Joyfull Thiek 'Save Snapchat: How to Save Snapchats videos photos and stories' *Snaptips* (13 January 2018) http://www.snapptips.com/save-snapchat-snaps/

[1031] Student G School 2 explained students regularly took screen shots of everything to be used as 'evidence' later if there is an argument: Student G School 2 line 163

[1032] Rachel Thompson 'Snapchat has changed sexting for forever, but not necessarily for the better' *Mashable* (7 February 2017) <https://mashable.com/2017/02/07/snapchat-sexting-revolution/#fLgRtLb.caqA>

[1033] Student A School 3 line 410

snaps. Her reference to her friend sending the same boy images via Facebook messenger, indicates her opinion that sending such images through Facebook messenger was risker than Snapchat.

This attitude was also demonstrated when Student A of School 2 student recalled a situation when a boy sent her nude images via Facebook messenger. The point the student appeared to make was that the boy had made a poor decision in using Facebook messenger to send such material, as images sent via messenger were able to be copied with ease and at leisure, whereas the transitory nature of Snapchat would have been the safer option for that type of material:

> 'there was a guy who liked me and kept trying to talk to me, he kept sending photos of his male anatomy, and it was on Facebook mail. I could have sent that to anyone. If you do it on Snapchat its safer, it was made for nudes and all that jazz'.[1034]

With respect to the transitory nature of a snap, the Snapchat Guide for Parents states that the temporary nature of snaps make for; a 'refreshing change from social media where you often become the sum of everything you have shared….because Snaps are not on display forever, there isn't the reputation anxiety of image curation fatigue people feel on other services' [1035]

There may be some truth to this, and there was an indication in the data the transitory nature of the application does reduce the impact of online abuse due to the negative or unwanted images being immediately removed without input by a user. One student confirmed she received online abuse occasionally via Snapchat, but it was easier to deal with there than on other platforms, as the image was not permanent.

> 'Once its been viewed, you can't view it again. If something horrible does come up, it wont last longer than 10 seconds'.[1036]

The transitory nature of Snapchat may more closely resemble in-person verbal abuse, as the image fades immediately like words fade into the air,[1037] which means that while the abuse causes distress, the pain is typically truncated to the time of the abuse itself, and not relived in

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[1034] School 2 Student A line 516
[1035] Snapchat 'A Parent's Guide to Snapchat' Snapchat Help Centre https://storage.googleapis.com/sc-support-web/safety/parents-guide-en.pdf last viewed 22 February 2018
[1036] School 3 Student A line 164
[1037] Oren Soffer, 'The Oral Paradigm and Snapchat' (2016) (1-4) Social Media and Society July-September 2016

the form of secondary victimisation.[1038] While Student A of School 3 above indicated the temporary nature of abuse received via Snapchat was a relief, the other side of the coin is that the temporary nature of snaps may encourage users to send snaps they would not normally send as a permanent communication, including snaps which could amount to online abuse.[1039] The empirical data provided examples linking Snapchat with sexting and sexting abuse,[1040] and Snapchat is regularly cited as a tool causing issues between young people due to online abuse. As described by the Safeguarding officer of School 1:

> 'We've blocked Facebook buts its not really for bullying… sometimes things happen but its Snapchat that's the big one'.[1041]

This is partially corroborated by the DTL report which cites 37% of young people using the Snapchat experienced online abuse.[1042] As discussed in Chapter 2,[1043] ephemeral messaging may be associated with girls being harassed by their peers to provide sexual images.[1044]

While this may suggest there is a link between online abuse and the design of the platform, Snapchat is also one of the most popular platforms amongst English secondary students, and consequently a proportion of online abuse is likely to occur within it. Disappearing messages act as a type of 'social steganography',[1045] where young people are able to exclude parents and teachers by use of such hidden messaging.[1046] It may also be used and also marginalise, tease or exclude peers. These types of messages may provide a medium for dynamic social mobility at a time in a young person's life where status and position in a peer hierarchy is paramount. [1047] As discussed in Chapter 2, for young people, their peer group is the most important

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[1038] Secondary victimistion may include re-sharing of the abusive content and negative reactions from other people: Isabel Correia, Helder Alves, Ana Tomas De Almeida, D'jamila Garcia, ' Norms Regarding Secondary Victimisation of bullying victims: do they differ from the victims categorisation?' (2010)51(2) Scandinavian Journal of Psychology 1649

[1039] Snapchat abuse has been described by the media as "a quick thrust of a dagger: 'Social Media app being used by cyberbullies to send terrifying messages of hate" *The Mirror* (23 December 2013) <https://www.mirror.co.uk/news/uk-news/snapchat-social-media-app-being-2242166>

[1040] Students who referred to Snapchat when discussing sexting included: Student A School 2, Student B School 2, Student A School 3, Student F School 2,

[1041] Teacher A School 1 line 42

[1042] Ditch the Label Report (2017)

[1043] As discussed in 2.7.4

[1044] Charteris (n283) 2

[1045] On 'social steganography' and the connection between disappearing messaging and social movement see: Jennifer Charteris, Sue Gregory, Yvonne Masters, 'Snapchat, youth subjectivities and sexuality: disappearing media and the discourse of youth innocence' 30(2) (2018) Gender and Education 207

[1046] Friendships and intimate interactions are important and can protect the young person from bullying Camilla Forsberg and Robert Thornberg, 'The social belonging: Childrens' perspectives on bullying' (2016)78 IJER 13

[1047] Charteris (n283) 2

developmental influence, and normative beliefs about online behaviour will be strongly influenced by their peers.[1048] It is arguable that the popularity of Snapchat and the volume of temporary messages which are exchanged may have the effect of shifting perceived normative behaviour[1049] to that of risqué communications which push the boundaries beyond pro-social conduct. This is arguably self evident in terms of sexting, where the prevalence of snaps which push limits in terms of sexual social behaviour, potentially cause Snapchat users to incorrectly perceive social norms include risky or sexually scintillating behaviour.[1050] Whether facilitating teenage sexual discourse in this manner is dangerous and linked to online abuse or whether it is part of a healthy teenage exploration is less clear. Sexting on SNS does not necessarily take young people from the normal path of self-development, as this behaviour is also conducive of aspects of normal adolescent advancement involving performative acts constituting what it is like to be adult.[1051]

Young people also use Snapchat for fun and to communicate and share content between each other. While there is evidence Snapchat is used for anti-social messaging, the proportion these types of communications make up of all communications is uncertain. However arguably if Snapchat was used predominantly for people to abuse each other, it would not be as popular. Ultimately, the temporary messages associated with Snapchat, are part of its appeal to young people.

While the empirical research indicated students engage in behaviour on Snapchat which arguably places them at risk, they also make decisions to manage this risk, and partially this is achieved through the use of tools such as ephemeral and real-time image messaging. Students who engage in risky communications appear to accept privacy in a networked sense, where they acknowledge their social media identity exists in a context where people within their network have the potential to abuse their privacy.[1052] Consequently, the risks associated with this type of platform design are not solved by suggesting the platform remove this type of

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[1048] Ana Almeida, Isabel Correla and Sylvie Marinho, 'Moral Disengagement, Normative Beliefs of Peer Group and Attitudes Regarding Roles in Bullying' 9(1) (2009) Journal of School Violence 23

[1049] Dr Marlene Sandstrom, Heather Makover and Maria Bartini, 'Social context of bullying: Do misperceptions of group norms influence children's responses to witnessed episodes?' (2013) 8(2-3) Journal of Social Influence 196

[1050] For example students continually viewing shocking naked images via snapchat may assume this is normal: Andrew Yockey, Keith A King, Rebecca Vidourek, Michelle Burbage, Ashley Merianos, 'The Depiction of Sexuality Among University Students on Snapchat' (2018) Sexuality and Culture (14 July 2018)

[1051] Gabriel Fleur,' Sexting, Selfies and Self Harm: Young People, Social Media and the Performance of Self Development' (2014) 151 Media International Australia 104

[1052] Eszter Hargittai and Alice Marwick, '"What can I Really Do?' Explaining the Privacy Paradox with Online Apathy'(2016) 10 The International Journal of Communication 3737

feature, as young people sometimes benefit from positive aspects associated with these tools. These features are also too central to the platform's popularity. Instead, the risks must be minimised by excellent technological tools for young people to use in order to respond and protect themselves when some users abuse the service, such as blocking, easy to adjust privacy settings, and timely responses to self-reporting supported by the availability of moderators.

5.5.2 Connectivity

The empirical data highlighted that students were often contacted by other users on SNS who they did not know, and some described such incidents; with indifference[1053], as 'frightening'[1054] as 'weird',[1055] and some as a pleasant experience leading to friendship.[1056] Anonymity facilitated by SNS architecture is relevant to online abuse,[1057] however the problem of anonymity did not emerge as a central concern for participants, and anonymity is not necessary for online abuse to occur. Instead, the data indicated anonymity formed part of a larger SNS mechanism supporting connectivity and accessibility between SNS members. As discussed in Chapter 2,[1058] one of the online factors contributing to student harm, was the ease by which they could be contacted on SNS, and this was not limited to strangers or anonymous contact. This chapter has already examined the issue of privacy settings as a tool to combat online abuse, however the general design of SNS platforms is to promote as many connections between users as possible.[1059] It is in the interests of an SNS to encourage connectivity between members, as the success of an SNS relates to retaining and growing active membership.[1060] In part, this is achieved through platform design encouraging new connections, to enable friends to find each other on the platform, encouraging connectivity between weak contacts and facilitating connections between complete strangers. The way in which connectivity may facilitate abuse, is that technology enabling connections between people who are not authentically committed to each other in the offline environment such as distant acquaintances and complete strangers,

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[1053] Student E School 2 line 212

[1054] Student D School 3

[1055] Student A School 2 line 209

[1056] Student B School 2

[1057] In particular anonymity facilitates the online dis-inhibition effect: Christopher Barlet, Douglas Gentile, Chelsea Chew, 'Predicting cyberbullying from anonymity' (5(2) 2016) Psychology of Popular Media Culture, 171

[1058] As discussed at 2.7.1

[1059] Facebook facilitates the cultivation of 'weak ties' and the fabrication of 'strong ties': Jose van Dijck, 'Facebook and the engineering of connectivity' (2012) (19) 2 Convergence: The international Journal of Research into New Media Technologies, 141

[1060] The SNS with the most users are also worth the most, with Instagram estimated to be worth $100 billion USD with 2 billion users: ChrisSnider Design, Social Media Statistics current as to 25 June 2018 https://chrissniderdesign.com/blog/resources/social-media-statistics/

may lack social responsibility towards each other.[1061] Instantaneous technology-mediated communication interferes with the ability to cultivate empathy for people we do not already know well,[1062] and this may cause apathy towards online abuse occurring on these platforms.

For example, on Facebook users who are not friends can be 'tagged'[1063] by another user which creates connectivity between users who were not previously connected:

> 'I was arguing yesterday.. I commented on my friend's picture because she tagged me in it, and then the other friend commented saying 'well you might as well be best mates then' and this was all because I commented on her picture'[1064]

In this example Student E from School 2 found herself attacked by a friend of her friend when Facebook created connections between them. When Student E was tagged on in an image on Facebook, the post became visible to all of their connections and to the connections of the original user who posted, encouraging a convergence of friendship groups which potentially have links in common. However the experience of Student E School 2 above indicates that sometimes having no real-life relationship with an online connection can facilitate misunderstandings and arguments.

Student B School 2 described how getting to know a stranger who had contacted her over SNS had risks, as things were able to escalate from pleasant to unpleasant quickly:

> 'you will be talking to someone, and having a nice conversation, over about three days and then all of a sudden- boom! There is my willy'.[1065]

A 'dick pic' is a colloquial term for men sending images of their own penises to women. SNS have facilitated a phenomenon whereby unsolicited dick pics are often sent to women the man

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[1061] Michael Formica, The False Face of Our Social Media Persona, *Psychology Today* (18 October 2010)
[1062] Alexis M Elder *Friendships, Robots and Social Media: False Friends and Second Halves* Part III Social Media: Potential Problems with Mediated Communication (Routledge New York 2017)
[1063] A Facebook tag connects a user name to another user's post, and this can be done without consent unless the user has specified in a change of privacy settings that they cannot be tagged in a post without permission. However, this will not prevent the post from being viewable in the original user's newsfeed: Facebook, 'How do I control who can see me in tagged posts?'
<https://www.facebook.com/help/267508226592992?helpref=faq_content> last viewed 30 July 2018
[1064] Student E School 2 line 71
[1065] Student B School 2 line 524

does not know but is able to access through social media,[1066] and this also occurs to young secondary school girls as shown in the data sample. By reference to the experience of Student B School 2, intense connectivity may in some cases encourage a more sexually aggressive approach to establishing relationships online, with the connectivity facilitating unsolicited naked images to be sent to young people:

> 'yes I got sent one the other day, by this boy, of his ex girlfriend… loads of people from school have got it'. [1067]

Otherwise, the ease by which young people found themselves sought out by other members was at times, unsettling. Student D School 3 described how choosing the most appropriate privacy settings had not protected her from harassment, as the SNS she was using continued to facilitate potential connectivity, which meant users who she had already declined to communicate with, continued to attempt to connect with her. She stated she had chosen private settings within SNS, but she found other users would repeatedly attempt to engage her on SNS to become her friend or follower despite constantly refusing their requests, and this made her frightened:

> 'Online, they should have a thing where, if someone keeps trying to follow you, you should have a limit on that, because that can be worrying'. [1068]

It may be that if Student D School 3 had also blocked these users it would have prevented them from contacting her repeatedly. However blocking can be regarded as an aggressive act,[1069] potentially creating more problems between Student D and her unwanted 'friends'.

Student C School 2 also described how she was harassed by a stranger on Snapchat when she thought she had her privacy settings adjusted so strangers could not contact her:

> 'He just popped up randomly on Snapchat

[1066] Rebecca M Hayes, Molly Dragiewicz, 'Unsolicited dick pics: Erotica, exhibitionism or entitlement' Unsolicited dick pics: Erotica, exhibitionism or entitlement' (2018) 71 Women's Studies International Forum 114

[1067] Student D School 2 line 126

[1068] Student D School 3 Line 468

[1069] 'Blocking on social media is the ultimate passive-aggressive act' Madeline Buxton 'How to find out who blocked you on Instagram, Snapchat and FB' *Refinery 29* 27 August 2018 <https://www.refinery29.uk/2018/08/208440/find-out-who-blocked-you>

don't you have to be friends on Snapchat?

That is what I thought but he still texted me anyway'

In this scenario, once the stranger had obtained Student C's details from Snapchat, he then proceeded to harass Student C and her friend via Facebook. The connectivity in this case spread between SNS;

'He ended up adding us both on Facebook as well

You were friends with him on Facebook?

We didn't accept it, but because he went on our wall, he got (my friend's) number from there'. [1070]

Student D School 2 described how she received unsolicited video calls via SNS called oovoo due to the ease of which connections could be made on this application;

'I will answer it to see who it is, but I turn my camera off, they will be like, Asian people, lying on the bed, showing me their body, so I just put it down"...they just show their belly. It happens loads of times'. [1071]

Within the SNS 'WhatsApp',[1072] there is no requirement for users to consent to being contacted by other users. A member of a WhatsApp group is able to view the mobile telephone number of anyone in that group and make contact with them.[1073] The data indicated that within schools, year groups tend to have their own WhatsApp group providing everyone in that group with access to one another. As described by Student D School 3:

'**…are you added because everyone gets added?**

Everyone gets added'. [1074]

And Student C School 3:

[1070] Student C School 2 line 92, 100
[1071] Student C School 2 line 148
[1072] WhatsApp messaging service: <https://www.whatsapp.com>
[1073] WhatsApp, 'Adding Contacts'< https://faq.whatsapp.com/en/wp/23741251/> last viewed 4 August 2018
[1074] Student D School 3 line 240

'Is that a common thing for loads of people from year 8 to be in a big group chat?

Yes there are normally big chat groups'.[1075]

Student D School 3 also indicated this occurs on Instagram, where she stated she had been added to a school group chat without her consent. This sometimes lead to her receiving abuse from students within the year group chat who did not like her:

'I will get added because the popular people talk to me sometimes, or they will rip on me and say stuff to me'.[1076]

In these cases, the student is not affected by anonymity but the intense connectivity afforded by such applications.

An application where relative anonymity intersects with intense connectivity is YouTube, a video sharing website which also can be accessed via application.[1077] YouTube allows users to post videos privately, however the platform design encourages users who create videos to set their content to a public channel. Videos with more views are placed more visibly on YouTube,[1078] and YouTube users who create popular videos are able to earn an income from their YouTube channel.[1079] When a YouTube user posts a video other users are be able to comment on the video,[1080] and user comments create a connectivity between other users who are often strangers to the creator of the video, and to each other. Student A School 1 described how this type of connectivity with other YouTube users created considerable distress. Student A told of how he enjoyed making videos for YouTube and another video sharing application, Vine[1081], however he was forced to disable his Vine account and disable comments on his YouTube account due to the volume of nasty messages he received:

[1075] Student C School 3 line 131
[1076] Student D School 3 line 257
[1077] You Tube<https://www.youtube.co.uk>
[1078] Google support You Tube Help: Tending on You Tube
<https://support.google.com/youtube/answer/7239739?hl=en>
[1079] BBC Newsbeat, 'Five ways YouTubers Make Money' (18 December 2017)
<http://www.bbc.co.uk/newsbeat/article/42395224/evan-edinger-the-five-ways-youtubers-make-money>
[1080] Unless this feature is disabled by the You Tube user
[1081] Vine: <https://vine.co>

'I would be sitting watching videos and I would get a message and I would just sigh because I knew it was another horrible message for me, it got to the point I was getting a dozen messages a day'. [1082]

However, some young people stated that they liked the connectivity feature of SNS, and were happy to make connections with people they did not know in real life. Students recounted examples of where they were contacted by other users and the interactions were friendly:

'You cant ignore them they might be genuinely a nice person! Its polite to just say hello'. [1083]

As described above, Student A School 2 was pleased about her ability to interact with Hugh from New Zealand, who was a stranger to her.[1084]

While students highlighted difficulties they faced with intense connectivity, they also indicated that the connectivity was very important to them, demonstrated by the fear discussed in Chapter 2 of having their device taken away from them,[1085] and the importance SNS has in their lives.[1086] Reducing the connectivity within these applications would have an unknown impact on their popularity and enjoyment, and a reduction in connectivity may reduce the success and utility of SNS. The solution to problems caused by intense connectivity may lie in providing students more control over their SNS experience via privacy settings as discussed above, in order to reduce the level and ease of accessibility to a young person, particularly if they are experiencing unwanted connections.

5.6 Other Technical Solutions

5.6.1 Artificial Intelligence

To refer to the words of British politician Jeremy Hunt, 'why it is you can't prevent the texting of sexually explicit images by people under the age of 18', and 'why can't we identify

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[1082] Student A School 1 line 89
[1083] Student B School 2 line 470 also see Student D School 1 line 176 'if I thought someone seemed like a nice person, I would say hello to them'
[1084] Student A School 2 line 479
[1085] 'My biggest worry is they would take my iPad off me, it's got all your social media and videos' Student A School 1 line 149
[1086] Student B School 3 indicated she did not socialise and preferred to connect with others via social media: Student B School 3 line 46

cyberbullying when it happens on social media platforms by word recognition, and then prevent it?'[1087] The answer may be that artificial intelligence is not good enough. For example, in terms of revenge pornography, while algorithms have been developed to detect nudity, current technology is not able to detect an image containing naked skin with enough accuracy to be relied upon, [1088] let alone detect an image which is abusive or illegal. [1089] In terms of cyberbullying, whilst current technology may detect specific words associated with online abuse activity, such as 'kill' and 'beat up', contextual interpretations and semantic inferences dramatically affect whether the communication is abusive or not, and it is these which are more difficult to programme. Further, it is difficult to determine a threshold whereby a SNS should intervene in communications between young people.[1090] Arguably, even it was possible to develop artificial intelligence capable of negotiating the nuances and complexities associated with human communication to accurately detect and deal with certain types of abusive material, it would also mean effectively appointing SNS as responsible for making decisions on highly sensitive and complex social situations including children, mental health, suicidal ideation and various levels of criminal activity. Appointing SNS to solve social problems is questionable social policy and is addressed further below in this chapter.

5.6.2 PhotoDNA

Facebook's COO indicated that Facebook planned to invest in artificial intelligence[1091] to combat online abuse, admitting more could be done to prevent abuse on the platform. Under an Australian pilot programme, Facebook has invited users to send images if a user felt concerned they may be the subject of a revenge pornography attack, in order for the images be 'hashed', where the images are converted into a unique digital fingerprint used to identify

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[1087] Jeremy Hunt Addressing the Health Committee as part of the Suicide Prevention Enquiry: Health Committee *Suicide Prevention* 300 Oral Evidence Questions 245-395 (29 November 2016)

[1088] 'Improving Nudity Detection and NSFW Image Recognition' *Algorithmia* 15 June 2016 https://blog.algorithmia.com/improving-nudity-detection-nsfw-image-recognition/ as referred to in: Andy Phippen, 'Doing More to End Sexting- Facts Fiction and Challenges in the policy debate on young people's sexting behaviour' (2017) Ent LR 28(3) 91

[1089] It has been argued that newly developed Convolutional Neural Networks harness enough characterisation aspects from a wide range of images to point out the presence of child pornography content in an image. This involves using a government controlled refinement of images to enable data driven filtering of sexually exploitative imagery, as opposed to innocuous every day imagery. This technology may address the current technology producing high numbers of false positives: Paulo Vitorino, Sandra Avila, Mauricio Perez, Anderson Rocha, 'Leveraging Deep neural networks to fight child pornography in the age of social media' (2018)50 Journal of Visual Communication and Image Representation 303

[1090] Andy Phippen, 'Doing More to End Sexting- Facts Fiction and Challenges in the policy debate on young people's sexting behaviour' (2017) Ent LR 28(3) 91

[1091] 'We have not done enough to stop the abuse of our technology' (Facebook COO Sandberg) Aoife White, 'Facebook will do better to Stem Abuse, Sandberg Vows' *Bloomberg Businessweek* (23 January 2018)

and block any further attempts to upload the same image.[1092]   This would potentially alleviate the usual pattern of a user having to report the post once it is already on the platform, and wait for Facebook to make a decision about the offending post. The pilot uses software known as PhotoDNA designed by Microsoft, which is offered for free to partnered organisations to control harmful user-generated images (but not video).[1093] It was initially developed to combat child abuse images appearing on the internet. The pilot is taking place in partnership with Australia's E-safety Commissioner, with users fearing they are at risk of revenge porn, being asked to complete an online request form on the E-safety Commissioner's website outlining their concerns. The Government department does not receive the image, instead a 'specialised team from the Facebook Community Operations team' reviews the image before hashing it. [1094] Facebook then notifies the person who submitted the photo to delete it from messenger, and the photo matching technology is deployed to ensure the same photo cannot be uploaded again. [1095]   The outcome of the pilot in Australia is unknown at the time of writing, however the use of PhotoDNA has been successfully used by web-based services such as Google and Facebook to filter a hashed library of known images of child abuse.[1096] By pre-blocking the hashed image, this pilot is a step beyond Facebook's current tools[1097]for targeting revenge pornography, which relies upon user reports of a harmful image to instigate the intervention of a human moderator to confirm the image contravenes its Community Standards.

However, there are some problems with the Facebook PhotoDNA proposal, including where the images involve young people. Sending naked images of children, even if children send the images of themselves, and possessing those images contravene Section 1 of the POCA,[1098]as discussed in Chapter 3. The illegality associated with the scheme would make it unworkable, at least in England, unless the POCA was amended. There is also public policy considerations as to whether it is appropriate or desirable to appoint a social media corporation as responsible

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[1092] Olivia Solon, 'Facebook asks users for nude photos in project to combat 'revenge porn', *The Guardian* (7 November 2017)

[1093] Microsoft PhotoDNA: <https://www.microsoft.com/en-us/photodna>

[1094] Megan Rose Dickey, 'Facebook defends revenge porn pilot that has people upload nude images of themselves' *TechCrunch* 9 November 2017

[1095] Olivia Solon, 'Facebook asks users for nude photos in project to combat 'revenge porn', *The Guardian* 7 November 2017

[1096] Facebook, Meet the Safety Team (1 August 2011) https://www.facebook.com/notes/facebook-safety/meet-the-safety-team/248332788520844 or see Sarah Perez 'Why the Gmail Scan that led to a man's arrest for child porn was not a privacy violation' *TechCrunch* 6 August 2014

[1097] Facebook may already have been using PhotoDNA technology, however Facebook has not confirmed this is the case: Antigone Davis 'Using Technology to Protect Intimate Images and Help Build a Safe Community' https://newsroom.fb.com/news/2017/04/using-technology-to-protect-intimate-images-and-help-build-a-safe-community/ last viewed 16 July 2018

[1098] As discussed in Chapter 3 the distribution of a naked image of a child is contrary to Section 1 of the POCA

for the storage and use of those images,[1099] and there is a copyright issue in the case of images which are taken by another person.[1100] While it provides a tool for a potential victim to deploy in order to protect themselves, at present it is not clear how the technology could be used to address the behaviour of attempting to share non-consensual sexual imagery in cases such as revenge pornography.[1101] Chapter 2 identified that a lack of consequences for online abuse behaviour contributed to its perpetration.[1102] An offender is more likely to form a moral disengagement from their actions in circumstances where anti-social behaviour is not adequately addressed. For a truly effective response, interventions connected with PhotoDNA should also address circumstances where a person attempts to use a hashed image for purposes of online abuse. While PhotoDNA provides a potential solution to the problem of images being used for revenge pornography, it does not address the underlying social condition instigating the behaviour.

5.6.3 Internet Service Providers

ISPs have the authority via contract to act against online abuse perpetrated by any of its customers using its services. Customers of ISPs are contractually bound to refrain from illegal conduct online, with a breach potentially leading to a suspension or cancellation of services. For example, customers of the Virgin Media Network and BT Broadband are contractually bound by the Virgin Media and BT Acceptable Use Policies,[1103] which include that customers must not use their services to deliberately cause distress to others. Acceptable use policies typically include discretion to issue a formal warning, suspend a customer's account, restrict access to all or part of a customer's services, or terminate a customer's account.[1104] In the case of young people who may engage in online abuse whilst at home, the account holder of the ISP used to facilitate the abuse, will often be a parent. Cancelling services to the parent of a young person is likely to be problematic, however it is argued ISPs may notify their customers

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[1099] Concerns have been raised about policy decisions affecting the UK would be made by 'faceless suits in California' Jonathan Haynes, 'No Jeremy Hunt, you can't use tech to ban sexting for the under 18s" *The Guardian* (30 November 2016)

[1100] Copyright residing with the taker of the image and not its subject: 'one potential abusers are aware of this, their approach will be to only show images for which they retain copyright' Andy Phippen and Margaret Brennan, 'Protecting yourself from revenge pornography-share your images before your abuser does!' (2018) 29(2) Entertainment Law Review 33

[1101] Such activity is contrary to section 33 of the Criminal Justice and Courts Act 2015

[1102] See 2.8.2

[1103] BT Acceptable Use Policy includes the condition users must not use their services to intentionally distress, offend or worry someone, or behave in a manner which may harm children: BT 'Acceptable Use Policy' https://www.bt.com/static/i/btretail/panretail/acceptableuse/ last visited 13 April 2018

[1104] Virgin Media Terms and Conditions http://store.virginmedia.com/the-legal-stuff/acceptable-use-policy.html> last visited 13 February 2018, Other ISPs incorporate similar terms into their contracts of service See for example, EE broadband Terms of Service http://ee.co.uk/content/dam/ee-help/help-pdfs/standard-broadband-and-fibre-broadband-plans-from-5-december-2017.pdf last viewed 27 February 2018

when online abuse is reported. This may reduce the anonymity sometimes associated with the perpetration of online abuse[1105] and in the case of young people, allows their parent to deal with the issue at home. Practical problems associated with this solution, is that online abuse which takes place via SNS does not ordinarily identify the ISP used by the perpetrator, and online abuse may be carried out using publicly accessed internet, or by connecting to an unsecured network. ISPs do not encourage direct reporting of online abuse from their customers, instead customers experiencing online abuse are asked to make a report to the relevant SNS.[1106] BT suggests its customers pay for a third party provided 'takedown service',[1107] or to report online abuse[1108] to specialised websites linked to the police.[1109] However ISPs are more likely to respond to reports of illegal content when alerted by specialised services experienced in determining what amounts to abusive or criminal content online, referred to as 'trusted flaggers'.[1110] Individuals and professionals working with young people, including schools, may make reports of online abuse to a trusted flagger, who may then report the abuse to the ISP. The EU Commission has recommended the use of trusted flaggers noting that such reports may be acted upon more quickly than notifications made by an individual.[1111] Trusted flagger organisations exist and relationships between trusted flaggers and ISPs are already in place, however it is likely these are under-utilised. Trusted flaggers are typically charities which are not well-funded and their capacity to review and respond to complaints is limited by their small size and limited resources.[1112]

ISPs are positioned to implement technical regulation to deal with online abuse, however it appears ISPs do not currently play a significant role in respect of online abuse between young people. The research indicated that when students seek a technical solution to their problem they contact the SNS. When asked about technical responses to online abuse incidents, none of the research participants mentioned they reported their online abuse to an ISP, or had any

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[1105] Bartlett (n145) 70

[1106] BT June 2018 <https://home.bt.com/tech-gadgets/internet/social-media/what-is-revenge-porn-how-sharing-without-consent-could-lead-to-2-years-in-prison-11364274990869>

[1107] Fact UK states it scans for 'infringing content' and is recommended by BT: *Fact (UK)* https://www.fact-uk.org.uk/services/scanning/ last viewed 13 August 2018

[1108] BT News <http://home.bt.com/news/news-extra/social-media-crime-complaints-soar-11363985250801>

[1109] True Vision is a police funded website designed <**http://www.report-it.org.uk/home**>

[1110] Such as the UK Professional Online Safety Helpline: <https://www.saferinternet.org.uk/professionals-online-safety-helpline> or in Ireland the IE hotline <https://www.hotline.ie/contact-us/report> and In Hope, International Association of Internet Hotlines<http://inhope.org/gns/home.aspx>

[1111] Commission, The European Economic and Social Committee and the Committee of the Regions, 'Tackling Illegal content Online, Towards and enhanced responsibility of online protection' COM(2017) 555 final

[1112] The Professional Online Safety Helpline which provides advice to schools throughout the UK has 1.5 full time staff members: South West Grid For Learning and the UK Safer Internet Centre 'Why do the helplines need funding?' Info-graphic (2017)

interaction with an ISP about online abuse. The DTL report did not include any data on reports to ISPs by young people as a mechanism to report abuse. Policy which facilitates and funds the work of trusted flaggers within the technology industry may better incorporate the power of ISPs and SNS to respond to online abuse. It may be there is an opportunity for schools to work more closely with trusted flaggers to streamline reports of abuse to both ISPs and SNS.

5.7. Solving social problems with code

Chapter 2 explicated the case that online abuse often formed part of a wider social problem.[1113] SNS may facilitate and exacerbate abuse, but technology does not necessarily instigate the behaviour. Just as technical design can facilitate such behaviour, it can be used to discourage online abuse, and provide valuable tools to allow young people to control their interactions online and enjoy using SNS. However, such design changes will always fall short of providing an entire solution, and cannot be relied upon to deal with the social aspects of the problem, including the impact of the abuse on the victim and future abusive behaviour on the part of the perpetrator. Technical regulation does not take into account the mental state of the victim or abuser, and may neglect to facilitate support systems to assist victims to recover from harm.[1114] Technical solutions do not assess and address the reasons behind the anti-social behaviour on the part of the abuser. While technology may 'punish' an abuser by restricting access to services, as was demonstrated in the discussion above, determined perpetrators are able to circumvent technical restrictions, in many cases simply by setting up a new account. A policy focus relying upon SNS to prevent or treat online abuse may prove ultimately flawed,[1115] if the social conditions creating the abuse, and the effects of the abuse are not also addressed.[1116]

It is arguably questionable public policy to place trust and responsibility for high-stakes matters such as mental health and crime, in SNS operating primarily as a profit-making entertainment facility. SNS are not publicly accountable institutions whose primary aim is to improve the

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[1113] See 2.6

[1114] Sonia Livingstone, Julia Davidson, Joanna Bryce 'Children's online activities, risks and safety, a literature review by UKCCIS Evidence Group' October 2017

[1115] A fundamental problem as seen by cyber-security expert Marcus Ranum includes attempts to solve 'social maladjustment via software' <https://www.ranum.com/security/computer_security/archives/security-trends.pdf>

[1116] Andy Phippen, '"Doing More" to end sexting, facts, fictions and challenges in the policy debate on young people's sexting behaviour' (2017) Ent LR 28(3) 91

welfare of young people, nor is their purpose to investigate and reduce crime.[1117] While the technology of private industry may be used to implement the public policy of reducing online abuse,[1118] there is currently inadequate transparency to effectively monitor the impact of mechanisms used by SNS. This argument is relevant in light of HM Government policy changes indicating a focus of delegating regulation of online abuse to SNS. HM Government has signposted future policy will include a requirement that SNS 'robustly' enforce rules of unacceptable content and conduct upon their users.[1119] Section 103 of the Digital Economy Act (2017) ("DEA") refers to a code of practice for the providers of online social media platforms.[1120] At the time of writing, only a draft code of practice has been issued.[1121] The draft code includes a description of best practises including that SNS should provide in-application reporting facilities, use a triage system to prioritise reports, and that notifications of online abuse should be acknowledged within 24 hours along with estimated timescales for resolution. The draft code contains similar measures to government guidance already in place particularising how SNS should respond to notifications of online abuse.[1122] The DEA does not set out a penalty or enforcement regime should SNS contravene the DEA or the code of conduct.[1123] Major SNS have already entered into a voluntary code of conduct[1124], agreeing to improve SNS responses to online abuse. The code of conduct incorporated into the Cyberbullying Action Plan instigated by the Royal Foundation, addresses best practises for reporting processes, the provision of emotional support for victims, and education.[1125] The success of voluntary arrangements such as the Cyberbullying Acton Plan as part of the Stop, Speak and Support Campaign[1126] are so far unclear, as at the time of writing, these have been implemented for less than 12 months. However pilot schemes have indicated a promising

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[1117] John Naughton, ' Theresa May thinks Facebook will police itself? Some Hope' *The Guardian* 11 February 2018 <https://www.theguardian.com/commentisfree/2018/feb/11/theresa-may-thinks-facebook-will-police-itself-some-hope

[1118] Laura De Nardis, 'Hidden Levers of Internet Control' (2012) 15(5) Information Communication and Society 720

[1119] HM Government, Government Response to the Internet Safety Strategy Green Paper' (May 2018)

[1120] Section 103 DEA

[1121] A draft code of practice is contained in: HM Government, Government Response to the Internet Safety Strategy Green Paper' (May 2018)

[1122] Department for Digital, Culture, Media and Sport, ' Child Safety Online: A practical Guide for Providers of Social Media and Interactive Services' (1 March 2016)

[1123] Department for Digital Culture Media and Sport Government, *Internet Safety Strategy* (Green Paper, October 2017)

[1124] The Royal Foundation, 'Cyberbullying Action Plan' (2017)

[1125] ibid

[1126] Stop Speak and Support Code of Conduct was launched by the Duke of Cambridge in 2017, Royal Foundation, Press Release (undated)<https://www.royalfoundation.com/duke-cambridge-launches-national-action-plan-tackle-cyberbullying/>

potential, [1127] and in addition, other schemes have reported success with a marked response by SNS under voluntary arrangements.[1128]   There are indications that compliance by SNS under the DEA could be enforced with fines as high as 20 million pounds, however this has not been confirmed as yet.[1129]   While fines for non-compliance may arguably provide motivation for SNS to take a robust approach to online abuse, there is evidence this type of enforcement can create problems. It is noted that in Germany, the Network Enforcement Act (2017) (NEA), a comparable statute, includes high fines for non-compliance by SNS,[1130] which has already resulted in controversially swift removal of material. There have been accusations the statute has caused an erosion of freedom of expression in Germany, with content being removed despite dubious evidence the material was unlawful. [1131] The imposition of high fines for failing to remove content within short time parameters, potentially interferes with the ability of SNS to make objective decisions to protect controversial but legal material, and opens up the debate about the regulation of speech, which is beyond the scope of this thesis. However this example indicates that the difficulties being experienced with the NEA serve as a warning as to the complications of compelling a profit sensitive SNS to deal with social problems.

5.8 CONCLUSION

Technological architecture has a great impact on user experience and behaviour. Findings from the empirical research corroborated by other published research intimates technical responses to online abuse such as blocking, privacy settings and self-reporting are commonly utilised by students, with blocking and privacy settings used most frequently. While blocking and privacy functions did not provide complete protection for students seeking to minimise online abuse, there was a high level of engagement reported with these tools, indicating that any future improvement to these tools would sound in benefits for users. It is essential however, that

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[1127] Duke of Cambridge Stop, Speak, Support Campaign: The taskforce includes major ISPs and SNS including Facebook and Snapchat. The Cyberbullying Action Plan instituted a pilot scheme between November 2017 and March 2018 whereby Facebook, Snapchat and the NSPCC will evaluate the escalation of reports to SNS, and a platform offering one to one counselling.

[1128] Facebook is also a signatory to the Code of Conduct on countering illegal online hate speech: European Commission https://ec.europa.eu/info/sites/info/files/code_of_conduct_on_countering_illegal_hate_speech_online_en.pdf A recent press release from the European commission indicated technology firms removed 70% of hate speech reported: European Commission, 'Countering illegal hate speech online' (19 January 2018)

[1129] Sam Shead, 'Facebook and Twitter could reportedly by fined up to £20million if they don't tackle online bullying' *UKBusiness Insider* (11 December 2017)

[1130] Fines of up to 5 million Euro may be issued under the Network Enforcement Act (2017)

[1131] This has included the deletion of statements made by a far-right politician and the suspension by Twitter of the account belonging to a German satirical magazine: Alexander Pearson 'German opposition parties call to replace online hate speech law' *dw.com* 8 January 2018, also see Bernhard Rohleder, 'Germany set out to delete hate speech online, instead, it made things worse' *The Washington post* 20 February 2018 also see Dr Andreas Spittgerber and Friederike Detmering, Reed Smith *Technology Law Dispatch*, 2 October 2017

students understand how to use tools provided by SNS, and they require assistance to keep abreast of constantly changing technology and platform design. While information regarding online tools is available, SNS may not do enough to ensure young people understand how to use the tools offered. The data suggested young people were often disappointed by the results of self-reporting, with action taken often not meeting their expectations, leading to confusion and frustration. The use of trusted flaggers may assist the success of the reporting process to SNS, which may also include reporting abuse to ISPs. Schools may play a role in using trusted flaggers to support students in dealing with incidents of online abuse.

Design features of the SNS platforms such as self-destructing messages and the facilitation of intense connectivity between users, may contribute to the frequency or likelihood of online abuse. However these aspects of design are also linked to the success of a platform, the enjoyment of users, and it is likely these features are also used for pro-social purposes. This emphasises the importance of user-managed technical tools such as self-reporting, blocking and privacy settings, so young people may engage with them effectively when design features such as ephemeral messaging and connectivity are abused. Other platform design features such as real-time images, may have a protective element against abuse. Technology utilising algorithms to identify and respond to abusive content has not been developed to a reliable standard, however advances such as the hashing of images to prevent revenge pornography has promising potential. Such innovations are fraught with public policy problems which have not been resolved. Voluntary codes of conduct whereby SNS have agreed to improve their response to online abuse have yielded encouraging results, however some of the schemes have not been implemented for long enough to produce informative data on their effectiveness. While technological architecture may have a powerful effect upon online abuse, technology companies operate within commercial values. Delegating complex social problems to be dealt with by the internal policies of SNS under threat of statutory penalty, or in a manner which otherwise establishes a legal liability for SNS who fail to respond to online abuse adequately, may produce an exaggerated and hasty response to online abuse from SNS, while neglecting the social problems underlying online abuse behaviour.

6

Conclusion and Prospective Solutions

6.1 Introduction

This chapter draws out key findings from the qualitative and documentary analysis, to address the central thesis of why online abuse is a problem for secondary school students, and how regulatory mechanisms within the criminal law, education and technology sectors[1132] may be used to improve outcomes for young people affected by online abuse. The conclusions and recommendations made as a result of the research and analysis are aimed at reducing online abuse and its associated harms to young people.

Young people may encounter online abuse more readily due to sociological vicissitudes typical for that age group. This is significant due to the potential psychological harm online abuse can cause both young victims and perpetrators. Whilst there are unique technical aspects to online abuse which may facilitate and exacerbate harm, the research highlighted that a thorough regulatory approach should address the social causes of the problem. The study identified schools as having a central role in the regulatory framework for online abuse amongst young people, however the qualitative analysis indicated these institutions may not effectively carry out their legal obligations to manage the issue. Young people report that schools sometimes deal with online abuse poorly. This may be explained by limited resources available to schools, and counterproductive legislative frameworks which inhibit cooperative relationships between staff and students. Difficulties faced by schools may be addressed by implementing legislative change to encourage honest discourse between staff, students and school based police, and by increasing the availability of pastoral staff and implementing whole-school social programmes. A more comprehensive response may include the youth justice[1133] and technology sectors. Increased availability of school-based police may improve outcomes through the application of diversionary measures to deal with serious incidents, and

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[1132] The technology sector as contemplated in this thesis includes Social Networking Sites and Internet Service Providers

[1133] The term youth justice sector refers to the individuals and bodies occupied with preventing youth crime as contemplated by Section 37 of the Crime and Disorder Act 1998, and includes school-based police

interrupting the formation of anti-social behaviour as normative. In addition, police may make a positive impact by providing appropriate and timely advice to school staff, who lack legal training and investigatory skills. Social networking sites can contribute by improving user engagement with technical tools governing application features such as audience control and blocking, to provide young people with autonomy over their online environment. Meanwhile, providing better funding for trusted flagger organisations[1134] may facilitate a more efficient notification process to internet service providers and social networking sites of unlawful behaviour online. The combination of these measures could potentially produce better outcomes for young people and reduce online abuse amongst secondary school students.

The exploration of the central thesis and findings from the research highlighted the following key conclusions:

1. Schools and the police already have ideal frameworks in place which may have a positive impact upon online abuse. School-staff manage problematic behaviour through disciplinary policy and pastoral care, whilst police have powers to intervene and act in respect of anti-social behaviour. However these mechanisms are sometimes poorly executed due to inadequate staff, insufficient training, or an excessive workload. Funding for schools and school-based police is currently inadequate to properly address online abuse.

2. The Home Office Counting Rules for Recorded Crime,[1135] the Protection of Children Act 1978, the Sexting Advice[1136], the Keeping Children Safe in Education Guidelines ('KCS Guidelines'), [1137] and the search and delete powers[1138] require amendment to facilitate honest dialogue and a cooperative environment in schools between students and staff, and between staff and school-based police.

[1134] Organisations specialising in reviewing reports of online abuse and communicating with social networks and internet service providers, such as the UK Professional Online Safety Helpline, the IE hotline and In Hope, International Association of Internet Hotlines

[1135] In particular the Schools Protocol which permits exceptions to the recording of crime at schools: Home Office Counting Rules for Recorded Crime: Crime Recording General Rules (Schools Protocol) Annex B 1 of 2 (2016)

[1136] Department for Education and UKCCIS Sexting in School And Colleges: responding to incidents and safeguarding young people (August 2016)

[1137] Department for Education, 'Keeping Children Safe in Education: Statutory Guidance for Schools and Colleges' (September 2016)

[1137] School 2 Teacher B line 43

[1138] Section 2(4)(b) Education Act 2011 which amends Chapter 2 Part 10 of the Education Act 1996 (punishment and restraint of pupils)

3. Regulation facilitated by technical architecture is effective, however the implementation of public policy regarding online abuse should not be entirely delegated to social networking sites and internet service providers. The commercial values of the technology sector conflicts with the complexities of social problems associated with online abuse, and algorithmic and automated technology is not currently adequate to deal with the issue.

These key conclusions are expressed within 12 policy-based recommendations proposed throughout this Chapter. Each research question will be addressed on the basis of conclusions drawn from the study.

6.2 Research questions and recommendations

The following states each research question, together with the main findings and recommendations for each chapter.

6.2.1 Research Question 1

Why is online abuse behaviour a problem amongst secondary school students?

Chapter 2 found that young people are susceptible to involvement in online abuse due to the proclivities of normal adolescent cognitive and social development, and the intense peer environment of secondary school.[1139] The documentary research and empirical data suggests online abuse contributes to serious issues for young people relating to mental health, social development and emotional wellbeing.[1140] These symptoms may be exacerbated in victims by factors unique to online abuse such as the public repetition of abuse on social networking sites.[1141] Perpetrators may also experience problems with cognitive development and psychosocial relationships associated with factors unique to the online environment, including physical separation from victims, facilitating moral disengagement.[1142] Findings from the empirical research indicated that of those students who experienced both face-to-face and online abuse, the online element appeared to generate the greatest distress, and these students suffered from the most serious harm.[1143] Whilst the majority of young people have pro-social

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[1139] See 2.5
[1140] See 2.2
[1141] See 2.7.3
[1142] See 2.3
[1143] See 2.2

attitudes, the perception of anti-social behaviour as normative creates a tolerance for its perpetration. The research indicated schools and parents may disrupt this pattern forming. Schools can provide a moral education, assisting a young person to develop the relationships and skills necessary to become a pro-social adult,[1144] while children of parents who are actively involved in their social development are less likely to become bullies offline and online.[1145]

Recommendation 1- Funding be made available for the provision and maintenance of whole-school programmes in secondary schools, and additional funding be allocated to the employment and training of pastoral staff

The research found that online abuse is a social problem, which may be facilitated by an environment where bullying behaviour is perceived as normative.[1146] In order to encourage a pro-social environment at school, it is recommended that funding be made available to schools to create and maintain whole-school programmes, where all staff, students and parents are involved in the formation of a safe and respectful school culture.[1147] While whole-school programmes are already implemented in some schools, these tend to lose momentum and effectiveness without constant reinvigoration and resources. The participation of parents is significant, as they play an important role in identifying their children's involvement in online abuse, offering emotional support, and reinforcing positive community mores. The opportunities parents have to support their children when stressful events occur at school should be highlighted, reassuring parents they provide a pivotal influence relevant to behavioural norm creation.[1148] Pro-social behaviour should be highlighted by parents, schools and the wider community, to emphasise that such conduct is the norm.

The data suggested the response of staff members had the potential to greatly improve the outcomes for students suffering from online abuse. Staff often act as first responders to online abuse, and as such it is necessary they are equipped with the appropriate knowledge and skills to deal with such situations.[1149] Inadequate response to online abuse encourages the behaviour,[1150] as it emboldens perpetrators and encourages victims to acquiesce. The empirical research found indications that schools may not have enough resources to properly implement

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[1144] See 2.6.4 and 2.8.3
[1145] See 2.6.5
[1146] See 2.6.2
[1147] See 2.8.4
[1148] See 2.6.5
[1149] See 2.6.4
[1150] See 2.8.2

behavioural policies, investigate reports of online abuse, and help victims.[1151] This may be due to overextended staffing caused by diminishing funding available to secondary schools.[1152] It is recommended that funding associated with pastoral support at schools be improved, and that all pastoral staff receive regular training in order to better deal with reports of online abuse, such as notifying trusted flaggers as discussed in Chapter 5,[1153] or by administering restorative justice meetings between students as discussed in Chapter 2.[1154]

6.2.2 Research Question 2

How is the English criminal law relevant to online abuse and can it be used to manage the problem of online abuse amongst young people?

Chapter 3 found that a wide range of online abuse behaviour is captured under the criminal law, [1155] providing the opportunity for the police to intervene and deal with such conduct where appropriate. Low-level bad behaviour occurs regularly amongst secondary school students, such as insulting each other online, sharing offensive images and spreading false rumours. [1156] Such behaviours may be captured by legislation such as Section 127(1) of the Communications Act 2003, and Section 5 of the Public Order Act 1986. More serious behaviour, which involves the intention to cause another person harm or distress, and sustained incidents of online abuse are captured by legislation such as the Malicious Communications Act 1988, the Criminal Justice and Court Act 2015 and the Protection from Harassment Act 1997.

The scope whereby young people may be charged and prosecuted for incidents of online abuse is narrow due to measures encapsulated in policies such the Crown Prosecution Service Social Media Guidelines[1157] ('SNS Guidelines'), the Code for Crown Prosecutors and the Youth Crime Guidance[1158] which diverts young people from the youth justice system. The SNS Guidelines specifically highlights that shocking, offensive and rude communications such as those caught by Section 127(1) of the Communications Act 2003, should only be pursued after meeting a high evidentiary threshold, and public interest consideration. Prosecutors are also

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[1151] See 2.6.4 and 2.8.4
[1152] See 2..8.4
[1153] See 5.6
[1154] See 2.8.3
[1155] See 3.3
[1156] See 3.7.3
[1157] Crown Prosecution Service, Guidelines on prosecuting cases involving communications sent via social media, Legal Guidance (21 August 2018)
[1158] CPS 'Youth Offenders' Legal Guidance Youth Crime

obliged to consider the welfare of all young people involved in the incident, before deciding whether prosecution is the most appropriate response. As a result, prosecutions of young people for online abuse rarely occur, even when the behaviour is serious. Publicly available statistics indicate young people are not regularly cautioned or charged by the police in respect of online abuse matters. [1159] This is corroborated by findings from the empirical research which indicate the police often do not charge a young person even if the online abuse matter involves causing intentional harm.[1160] It was argued the restriction of prosecutions for the majority of online abuse is appropriate due to the negative impact a premature involvement in the youth justice system may have upon young people, such as the potential exacerbation in anti-social behaviour.[1161] However Chapter 3 found the application of the criminal law could be used to invoke diversionary measures implemented by a school-based police officer, while keeping within the aims of the youth justice system, being to reduce youth offending. Such measures may have a less negative effect than more formal youth justice processes such as being cautioned, or charged with an offence. [1162] The use of community remedies and early harassment notices [1163]could be applied where schools are unable to adequately address online abuse behaviour with disciplinary policy.

There are difficulties with harnessing the benefit of these measures, as the data indicated school-based police officers may not be readily available to the schools for which they are responsible. The officer interviewed was responsible for 6 schools and 8500 students. [1164] Safer Schools Partnerships are funded by the police, and these programmes may be affected by budgetary restrictions impacting police forces.[1165] The data also revealed another problem associated with the effective use of school-based police concerned the reluctance of staff to seek advice due to staff concerns regarding a crime being recorded against a student.[1166] Staff are aware that students involved in sexting incidents will be recorded as a suspect if the matter is reported to the police. It was found schools sometimes deal with serious and sometimes criminal matters of online abuse as behavioural issues without the assistance of a school-based police officer.[1167]

[1159] See 3.4 which discusses Freedom of Information Disclosure logs

[1160] Police officer A indicated to 'age appropriate' sexting abuse offences would not invoke a charge See 3.7.7

[1161] See 3.5.4

[1162] See 3.5.5 Early harassment notices are discussed at OAB 20 and 21 in 3.7.8

[1163] House of Commons Library: Harassment: Police Information Notices or Early Harassment Notices in England and Wales Number 06411 (11 October 2016)

[1164] See 4.7 Police Officer A quotation

[1165] See 3.5 and 3.7.3

[1166] See 3.7.7

[1167] For example sexting behaviour See 3.7.7

Recommendation 2- the Schools Protocol in the Home Office Counting Rules for Recorded Crime be expanded to include online abuse committed by secondary school students outside of school grounds

It is argued the compulsory recording of online abuse offences in line with the National Crime Recording Standard, inhibits school dealings with school-based police officers. This is particularly relevant to sexting incidents. The research found that there is confusion as to what impact the recording of the incident as a crime will have on students in future, including whether the incident will be revealed in a disclosure and barring service check.[1168] It is recommended the compulsory recording of online abuse behaviour by secondary school students as a crime be relaxed to facilitate a more open dialogue between the school-based police officer and students, the school and the police, and students and their school. This could be achieved by an expansion of the exception in the Schools Protocol within the Home Office Counting Rules for Recorded Crime,[1169] to allow the school-based police officer discretion in recording a crime in respect of online abuse taking place between secondary school students, which occurs outside school grounds.

Recommendation 3- Funding for the provision of school-based police be increased

It is recommended that funding allocated for Safer Schools Partnerships be increased, to allow recruitment of more school-based police. It is argued that if additional police are made available to schools, there is potential for the police to make a more effective contribution to the management of serious matters of online abuse, by way of diversionary protocols which may currently be under-utilised. This would also allow school-based police to more consistently provide advice to schools dealing with complex behavioural matters, which may involve a criminal offence.

Recommendation 4- school-based police undergo training to provide restorative justice at schools

Restorative justice facilitated by police is a mechanism which may be used to address anti-social behaviour, while potentially causing less negative repercussions for the young person than a charge disposal, or a formal diversion such as a caution.[1170] Where the behaviour is

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[1168] See 3.6 and 4.8
[1169] Home Office Counting Rules for Recorded Crime: Crime Recording General Rules (Schools Protocol) Annex B 1 of 2 (2016)
[1170] See 3.5.5

not serious, charges and formal diversions risk stigmatising the young person and may worsen their future behaviour.[1171] It was found restorative justice approaches may be useful for matters which involve disputes between young people, as these can provide a more satisfactory outcome for the victim, and potentially assist the perpetrator to appreciate the consequences of their actions, and change their behaviour. There may be barriers to the effective use of restorative justice by school-based police, as not all police forces in England have restorative justice measures available as part of their repertoire of community remedies, including the jurisdiction in which participants were interviewed. Restorative justice may should only take place where the police officer has undergone suitable training, and where mechanisms are put in place to evaluate and monitor the impact of such practises in schools. It is recommended that funding be allocated for all school-based police to receive restorative justice training and evaluation, and that restorative justice mechanisms form part of the community remedies available to all police forces.

Recommendation 5- the Protection of Children Act 1978 be amended so it does not apply to people under the age of 18 making and distributing images of themselves

It is argued that the Protection of Children Act 1978 unjustifiably criminalises consensual sexting and incidents where naked or sexual images are created and stored by young people of themselves, potentially monopolising resources which could otherwise be used to deal with online abuse. While sexting is related to online abuse and the sexual exploitation of young people,[1172] it was also found that many young people who engage in sexting do not find it problematic, and that it may be a normal aspect of adolescence.[1173] Sexting which involves elements of online abuse, such as revenge pornography may be captured under alternative legislation such as the Criminal Justice and Courts Act 2015. It was found the criminalisation of such behaviour may encourage young people to be more clandestine about sexting, and not seek the advice of adults when problems arise.[1174] It is therefore recommended the Protection of Children Act 1978 be amended so that it does not to apply to persons under the age of 18 who make or distribute naked or sexual images of themselves. A suggested form of the Protection of Children Act 1978 which addresses this issue is included at Appendix 3.

[1171] See 3.5.4

[1172] It was noted that Student A School 3 and Student F School 2 were both involved in consensual sexting and sexting abuse (3.7.7) Staff-member A School 1 described his concerns regarding sexting and exploitation at (4.5.7)

[1173] Quotation from Student B School 2 on page 154, also 3.3.7

[1174] 4.8 and quotation from Student B School 2

6.2.3 Research Question 3

How effectively do schools carry out their civil law responsibilities relevant to online abuse?

Chapter 4 examined a catalogue of obligations which require schools to care for students and act in their interests with both the common law and legislation imposing legal responsibilities upon schools relevant to online abuse.[1175] Overall it was found schools struggle to meet their responsibilities with respect to online abuse regulation.[1176] The analysis of the empirical data including the results of the school case study and the individual student case study, indicated schools are not aware of the majority of online abuse incidents occurring between their students, [1177] and incidents which are reported to schools, may not be dealt with appropriately. Where schools fail in their duty and statutory responsibility to keep students from harm, students are placed at risk. The data highlighted incidents not being reported by students to staff. This may be related to a lack of available staff, [1178] a lack of confidence in staff who inconsistently apply disciplinary policies,[1179] or a fear that staff may report matters to parents or the police.[1180] When matters are reported, the data suggested that while pastoral staff provide a sympathetic ear, this did not always translate into practical assistance to online abuse victims. Schools often fail to take meaningful steps to prevent students suffering from online abuse, which may be required of them under common law[1181] and statutory frameworks.[1182] Overall participant students felt their school did not provide useful assistance when they reported online abuse.[1183] While it was found that schools took action in cases of reported abuse, the action was often insufficient from the student's perspective, and did not resolve the problem.

To address these issues, in line with **Recommendation 1**, the number of staff specialising in pastoral care should be increased in secondary schools. These staff should be trained in practical measures to deal with online abuse such as notifying trusted flaggers as discussed in

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[1175] As discussed at 4.2.2 and 4.3
[1176] This was argued during discussion of the data in Chapter 4 Part 3, for example 4.4.2
[1177] See 4.5.7 and 4.5.8
[1178] See 2.8.4
[1179] See 4.6.2
[1180] See 4.8
[1181] See 4.2.2
[1182] See 4.3
[1183] See 4.4.2

Chapter 5,[1184] or administering restorative justice meetings discussed in Chapter 2.[1185] When young people ask for support in respect of online abuse and anti-social behaviour, it is important there is adequate personnel and time for the relevant staff-member to follow up about incidents to ensure it has been resolved.

Schools have evolved to occupy a unique position in the community, tasked with educating children and keeping them safe. School staff have knowledge and training relevant to online abuse, and they are able to keep abreast of students' welfare through daily interaction. The duty of schools to ensure the welfare of children in their care has developed in the common law to a level which now exceeds that of the careful parent.[1186] A school failing to act in respect of a student suffering from online abuse, may be at risk of a negligence claim if the failure contributes to a diagnosable psychological injury or interference with educational attainment leading to loss of earnings.[1187] This may include situations where a student is under the care of a third party specialist after being referred by their school.[1188] So far negligence claims against schools are not commonplace, however there is sufficient precedent in the common law to support substantial claims against schools,[1189] commensurate with the loss and harm suffered by the young person. This is significant in the context of findings which indicate schools may not be carrying out their duty of care to the standard expected.

Schools have substantial powers to act upon the discovery of online abuse. Analysis of school policies revealed these did not advise students and parents of school powers to discipline young people for online abuse behaviour when it occurs at home. Policies also failed to mention the search and delete powers. However the search and delete policy study indicated these powers are not favoured by schools, and they prefer to refer serious matters requiring the search of a student or device, to a school based police officer. While police may search students, they cannot interfere with their device in the same manner with which schools are authorised. The educational statutory framework provides significant power for schools to search and interfere with student devices, above and beyond that of the school-based police officer, which is accompanied by legal protection if staff have acted in good faith.[1190] However

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[1184] See 5.6.3
[1185] See 2.8.3
[1186] See 4.2.2
[1187] See 4.2.4
[1188] See 4.2.2
[1189] See 4.2.2 and 4.2.3
[1190] See 4.3.1 and search and delete powers at 4.3.4

legislation does not provide legal protection for schools failing to take action to safeguard students.

The sexting policy study highlighted the current strategy of identifying and dealing with sexting as a dangerous behaviour. The advice given in the KCS Guidelines is commensurate to the policy of recording sexting as a crime under the Home Office Counting Rules for Recorded Crime, while the Sexting Advice recommends all sexting incidents should be reported to parents unless there are exceptional circumstances. Analysis from the sexting policy study suggests that the cumulative effect of these policies may discourage students from confiding in school staff.[1191] This stifling effect may make it more difficult for schools to be aware of issues occurring in student's lives, and to take steps to help them.

Recommendation 6- the Sexting Advice be amended to facilitate discretion for schools regarding informing parents about sexting incidents

It is recommended the Sexting Advice be amended to permit staff more discretion in making a decision to inform parents, and that the onus on schools be reversed so that parents are only informed if there is an exceptional circumstance making such a disclosure in the child's best interest. The research findings indicated that young people may benefit from having more confidence in disclosing sexting to staff. Such an approach may address the dual issues of sexting being a potentially dangerous activity for young people, while also being an activity which is within the bounds of normal teenage sexual exploration. Encouraging students to seek help whenever is necessary, whilst providing discretion is arguably appropriate in circumstances where sexting is a relatively normal behaviour in many respects. This may be encouraged by reversing the advice relating to disclosure to parents.

Recommendation 7- the Keeping Children Safe Guidelines be amended to state that while sexting can be dangerous, it can also form part of normal adolescent behaviour. While sexting may be linked with danger for young people, sexting is not always associated with harm, and can form part of normal adolescent behaviour.[1192] If the KCS Guidelines acknowledged the natural proclivities adolescents have towards sexual exploration, this may reduce the panic[1193] associated with sexting which is arguably monopolising school resources, and contributing to non-sexting abuse being dealt with poorly.

[1191] See 4.8
[1192] See 4.8
[1193] See 4.8

Recommendation 8- Guidelines be produced for school behavioural policy which accurately reflect school powers to manage online abuse occurring outside of school hours

The statutory framework provides that schools must set out the measures which they intend to use to promote good behaviour and discourage bullying. The research indicated school policies failed to correctly reflect the extent of school powers in respect of online abuse, in particular online abuse occurring outside of school.[1194] It is recommended that schools make students and parents aware within school polices that schools may discipline students for online abuse which takes place outside of school hours, to provide transparency as to the potential ramifications of online abuse behaviour. Such policies provide consequences for bad behaviour, essential for the disestablishment of anti-social norms.[1195] It is also recommended this type of policy remains couched in the wider terms of whole-school policies as outlined under Chapter 2, where schools should primarily encourage a cooperative school environment which fosters pro-social behaviour, involving the participation of the entire school community.

Recommendation 9- School-based police be given the power to deal with student devices

The data indicated powers given to schools to search for and delete data from devices by the Education Act 2011 may be of little practical use. Staff were unaware or uninterested in quasi-police powers permitting students to be searched.[1196] Strategies used by school staff in dealing with student behaviour rely upon maintaining a culture of mutual respect,[1197] and the invasive powers under the Education Act 2011 are not commensurate with such a relationship. It was found that when staff act upon abusive or inappropriate content, they prefer to ask the student to voluntarily delete it.[1198] Where serious matters arise, or students do not cooperate, staff defer to the expertise and skills of the school-based police officer, who paradoxically does not have the powers to deal with a student's device.[1199] It was found school-based police also relied upon students voluntarily cooperating with respect to their devices. In the rare circumstances where students did not cooperate, devices were sent by the school-based police for expert examination elsewhere, and this process involved lengthy delay. Where serious incidents

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[1194] See 4.4.1
[1195] See 2.8.2
[1196] See 4.7
[1197] See 4.7
[1198] See 4.7
[1199] See 4.7

develop, staff would benefit from being able to refer matters to a school-based police officer who has the power to deal with devices. It is recommended school-based police be given such powers. It is not recommended that the search and delete powers for schools be repealed, however they should be relegated to use by schools only in emergency situations, where a school-based police officer is not available. It is recommend that schools should not be expected to perform without-consent searches of students, or to make decisions about deleting data from devices as part of their ordinary daily procedures. In line with **Recommendation 3** it is argued the funding for school-based police be increased, and that more officers be made available. School-based police have the appropriate skills and knowledge to deal with serious issues requiring the search of a student, and it is more appropriate that police deal with student devices in respect of serious matters.

6.2.4 Research Question 4

What contribution can the technology sector offer to manage online abuse amongst young people?

Chapter 5 found that the technical architecture and the internal policies of social networking sites and internet service providers which govern the user experience have considerable potential to prevent online abuse. However the technology sector is poorly equipped to address wider social problems which may instigate online abuse, and it often fails to address the effects of online abuse on victims. Technological innovations such as PhotoDNA and artificial intelligence have promising potential for use by the technology sector, however policy issues have not been resolved with respect to PhotoDNA, and artificial intelligence is not yet reliable enough to moderate content in a consistently successful manner.

With respect to Snapchat, Facebook and Instagram, findings from the empirical research indicated young people benefited from the autonomy afforded by technological tools within social networking platforms designed to combat abuse, particularly blocking and privacy functions.[1200] However, it was also found some students did not know how to use these functions, reducing their effectiveness, and the quality and operation of these features differed between platforms. There were mixed findings as to the utility of self-reporting mechanisms offered by Snapchat, Facebook and Instagram. Students were often disappointed with

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[1200] See 5.4.1and 5.4.2

responses by social networking sites to self-reporting, with action taken in respect of reports failing to produce a resolution to their online abuse.[1201] However, young people admitted social networking sites did sometimes respond to reports by suspending accounts or deleting content. It appeared that there was a general misalignment between student expectation as to what action would be appropriate, and the eventual action taken by social networking sites.[1202]

Aspects of technological architecture in social networking sites may reduce or exacerbate online abuse. The data indicated that ephemeral messaging associated with Snapchat may encourage risky communications, in particular sexting.[1203] This may place young people at risk of online abuse linked to sexting such as revenge pornography. However ephemeral messaging is also an attractive and fun feature for young people, which is used for innocent and non-threatening communications. Consequently, this feature is unlikely to be removed voluntarily by Snapchat. The potential of technical architecture to be used for both positive and negative purposes, emphasises the importance of technical tools such as blocking, privacy settings and self-reporting, to manage online abuse.

Currently, internet service providers have little impact on online abuse amongst secondary students, however they could play a larger role by issuing notifications to accounts used to perpetrate online abuse. In the case of an account holder being the parent of a young person, notifications may inhibit online abuse behaviour by making the parent aware of their child's conduct and providing the opportunity for the parent to intervene. Current systems discourage direct reporting of online abuse to internet service providers.[1204] Trusted flaggers can investigate and verify abuse for internet service providers to act upon, and the use of trusted flaggers may also be relevant for more streamlined reports to social networking sites. However the data indicated it was rare for trusted flaggers to be accessed by victims of online abuse, due to the small operational capacity of such organisations.

Recommendation 10- Increased funding be allocated to trusted flaggers

The research indicated that trusted flaggers, normally charitable organisations, are under-resourced,[1205] and it is likely their reach to secondary school students is limited. It is

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[1201] See 5.4.3
[1202] See 5.4.3
[1203] See 5.5.1
[1204] See 5.6.3
[1205] The Professional Online Safety Helpline which provides advice to schools throughout the UK has 1.5 full time staff-members: South West Grid For Learning and the UK Safer Internet Centre 'Why do the helplines need funding?' Info-graphic (2017)

recommended the use of trusted flaggers to alert internet service providers and social networking sites about illegal content including online abuse be expanded, by increasing funding for organisations providing the trusted flagger service. Schools should be encouraged to work with trusted flagger services, and pastoral staff may assist students to make reports to these services.

Recommendation 11- Social networking sites communicate clearly with their users about the best use of technical tools

It is recommended that social networking platforms investigate methods for educating their users to successfully utilise tools to manage or prevent online abuse autonomously, and notify users when new tools are developed. This may be achieved by implementing interactive tutorials or prompts within platforms to provide some level of assurance to social networking sites that their users are aware of available options for privacy, blocking, and tools to notify platforms of online abuse. Further, as it was found the effectiveness of these tools varied between platforms,[1206]it is recommended that social networking sites should continue to strive to improve their tools to enhance user autonomy.

Recommendation 12- Caution be used in formulating policy which applies heavy penalties to social networking sites for failing to respond to reports of online abuse

The research cast doubt upon whether social networking sites should be used to administer public policy under threat of financial penalty. Regulation which demands social networking sites monitor or censor their users also requires social networking sites to police complex social situations which may involve serious crime and sensitive social and mental health issues.[1207] Legislative changes which potentially penalise social networking sites for failing to act upon online abuse remain to be finalised, however the legislative example provided by the German Network Enforcement Act 2017 indicated that while applying hefty fines had the effect of creating urgency around addressing online abuse complaints, this also instigated potentially injudicious decisions by social networking sites keen to comply with legislative parameters. The use of profit incentivised private industry to implement social policy may create unanticipated problems, and should be approached with caution. Close cooperative partnerships with social networking sites which monitor their response to online abuse may

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[1206] For example, Instagram's default privacy settings are set to public, which is less useful for new users learning to use the platform. Facebook and Snapchat default settings are for 'friends only'.
[1207] See 5.7

be less problematic than forcing social networking sites to respond within a rigid set of standards linked to financial punishments. Whilst the use of technical tools and architecture by social networking sites may form a vital part of any overall strategy for tackling online abuse, social policy should be formulated by traditional law-making establishments such as parliament, which are held accountable for the impact of policy decisions.

6.3 CONCLUDING REMARKS

Online abuse can have a range of impacts upon a young person, from mild temporary distress to life-changing devastation. The potential impact of online abuse on a young person's quality of life and normal development justifies the thorough examination given to the regulatory options in this thesis.

Online abuse is still a relatively new phenomenon, emerging as a more complex problem than traditional bullying. Technology and connectivity appeals to young people, while hazardous behaviour may be naturally more commonplace for this group, predisposing young people to problems. When online abuse becomes an issue, some young people can manage with minimal intervention using technical tools. However sometimes the negative effects are substantial, involving significant emotional distress and disruption to education. In these circumstances, normal support mechanisms for young people, including family and friends, may not easily address the technical, legal and social intricacies associated with online abuse.

Schools have a long history of caring for children. They have structures already in place to deal with negative behaviour, and to help students suffering from emotional distress. However the volume of online abuse incidents have overwhelmed staff, and these are only the incidents students have felt able to report. Students are reluctant to expose secrets to well-meaning adults, who have legal responsibilities to involve the police or parents. If formal processes are triggered by an admission to involvement in online abuse, communications become stifled. Changes to regulatory response may encourage, rather than inhibit, frank discourse between staff and students.

The school-based police officer is perhaps an unlikely protagonist in this story. The rigours of criminal justice are normally ill-suited to low-level bad behaviour committed by immature teenagers. However rather than using the criminal law to stigmatise young people, it may be used to intervene at a crucial time, and reinforce pro-social behaviour. Rather than punishment, breaches in the criminal law can be used to identify cracks in social norms which require attention and correction, particularly where action by parents and school staff have proven ineffective.

The technology industry produces exciting and engaging products for young people, geared to maximise social interaction and entertainment. Young people are naturally attracted to the benefits of social networking sites, and voluntarily expose themselves to a higher environment of risk. Although young people are thought of as technologically shrewd, they require assistance and reminders to manage potential hazards. Large social networking sites are sensitive to the enjoyment of their users, and voluntarily evolve their architecture and strategies to minimise negative experiences. Effective tools which provide the ability for young people to regulate their own online environment are an essential piece of the puzzle. It is entirely right that there should be vigilance surrounding social networking sites and their responses to online abuse. However social networking sites cannot be made unilaterally responsible for managing social problems. Targeted interventions by traditional law enforcement and educational institutions remain relevant to online abuse. Online abuse is a significant problem impacting upon the health and wellbeing of young people. It is worthy of a coordinated regulatory approach by the education, youth justice and technology sectors.

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Appendix 1

Fieldwork and Ethics Documentation

Schedule of fieldwork and ethics documentation

Original Application to the Ethics Committee dated 20/01/2014

UNIVERSITY OF LEEDS RESEARCH ETHICS COMMITTEE APPLICATION FORM [1]	

UNIVERSITY OF LEEDS

Please read each question carefully, taking note of instructions and completing all parts. If a question is not applicable please indicate so. The superscripted numbers (eg[8]) refer to sections of the guidance notes, available at www.leeds.ac.uk/ethics. Where a question asks for information which you have previously provided in answer to another question, please just refer to your earlier answer rather than repeating information.

Research ethics training courses: http://ris.leeds.ac.uk/EthicsTraining

To help us process your application enter the following reference numbers, if known and if applicable:

Ethics reference number:	**None**
Student number and/ or grant reference:	**200589710**

PART A: Summary

A.1 Which Faculty Research Ethics Committee would you like to consider this application?[2]

- ○ Arts and PVAC (PVAR)
- ○ Biological Sciences (BIOSCI)
- ◉ ESSL/ Environment/ LUBS (AREA)
- ○ MaPS and Engineering (MEEC)
- ○ Medicine and Health (Please specify a subcommittee):
  - ○ Leeds Dental Institute (DREC)
  - ○ School of Healthcare (SHREC)
  - ○ School of Medicine (SoMREC)
  - ○ Institute of Psychological Sciences (IPSREC)

A.2 Title of the research[3]

Who is responsible for cyberbullying? A qualitative study in secondary schools.

A.3 Principal investigator's contact details[4]

Name (Title, first name, surname)	Jo-Ann Pattinson
Position	Provisional PhD Student
Department/ School/ Institute	School of Law
Faculty	ESSL
Work address (including postcode)	School of Law, The Liberty Building, Belle Vue Road, University of Leeds, Leeds, LS2 9JT
Telephone number	07599807999
University of Leeds email address	lw10jamp@leeds.ac.uk

A.4 Purpose of the research:[5] (Tick as appropriate)

- ☑ Research
- ☑ Educational qualification: *Please specify:* _____PhD_____
- ☐ Educational Research & Evaluation[6]
- ☐ Medical Audit or Health Service Evaluation[7]
- ☐ Other

A.5 Select from the list below to describe your research: (You may select more than one)

- ☐ Research on or with human participants
- ☐ Research with has potential significant environmental impact.[8] If yes, please give details:

  _____

- ☑ Research working with data of human participants
  - ☑ New data collected by questionnaires/interviews
  - ☑ New data collected by qualitative methods
  - ☐ New data collected from observing individuals or populations
  - ☐ Research working with aggregated or population data
  - ☑ Research using already published data or data in the public domain
- ☐ Research working with human tissue samples[9]

A.6 Will the research involve any of the following:[10] (You may select more than one)

If your research involves any of the following an application must be made to the National Research Ethics Service (NRES) via IRAS www.myresearchproject.org.uk as NHS ethical approval will be required. There is no need to complete any more of this form. Contact governance-ethics@leeds.ac.uk for advice.

- ☐ Patients and users of the NHS (including NHS patients treated in the private sector)[11]
- ☐ Individuals identified as potential participants because of their status as relatives or carers of patients and users of the NHS
- ☐ Research involving adults in Scotland, Wales or England who lack the capacity to consent for themselves[12]
- ☐ A prison or a young offender institution in England and Wales (and is health related)[14]
- ☐ Clinical trial of a medicinal product or medical device[15]
- ☐ Access to data, organs or other bodily material of past and present NHS patients[9]
- ☐ Use of human tissue (including non-NHS sources) where the collection is not covered by a Human Tissue Authority licence[9]
- ☐ Foetal material and IVF involving NHS patients
- ☐ The recently deceased under NHS care
- ☑ None of the above
  You must inform the Research Ethics Administrator of your NRES number and approval date once approval has been obtained.

A.8 Will the participants be from any of the following groups? (Tick as appropriate)

☑ Children under 16[16]

☐ Adults with learning disabilities[12]

☐ Adults with other forms of mental incapacity or mental illness

☐ Adults in emergency situations

☐ Prisoners or young offenders[14]

☐ Those who could be considered to have a particularly dependent relationship with the investigator, eg members of staff, students[17]

☐ Other vulnerable groups

☐ No participants from any of the above groups

Please justify the inclusion of the above groups, explaining why the research cannot be conducted on non vulnerable groups.

The focus of the research is on young people who attend secondary school.   I also intend to interview young people between the ages of 16-18, and adults teachers.

If the University of Leeds is not the Lead Institution, or approval has been granted elsewhere (e.g. NHS) then you should contact the local Research Ethics Committee for guidance. The UoL Ethics Committee need to be assured that any relevant local ethical issues have been addressed.

A.7 Will the research involve NHS staff recruited as potential research participants (by virtue of their professional role) or NHS premises/ facilities?

☐ Yes   ☐ No

If yes, ethical approval must be sought from the University of Leeds. Please note that NHS R&D approval is needed in addition: www.myresearchproject.org.uk. Contact governance-ethics@leeds.ac.uk for advice.

It is the researcher's responsibility to check whether a DBS check is required and to obtain one if it is needed.
See also http://www.homeoffice.gov.uk/agencies-public-bodies/dbs and
http://store.leeds.ac.uk/browse/extra_info.asp?modid=1&prodid=2162&deptid=34&compid=1&prodvarid=0&catid=243.
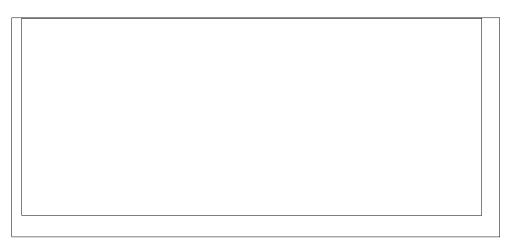
A.9 Give a short summary of the research[18]

*This section must be completed in **language comprehensible to the lay person**. Do not simply reproduce or refer to the protocol, although the protocol can also be submitted to provide any technical information that you think the ethics committee may require. This section should cover the main parts of the proposal.*

Cyberbullying via social media is a relatively new phenomenon. While some cyberbullying behaviour such as harassment perpetrated by adults is often dealt with as a criminal matter, it would seem that despite cyberbullying being common amongst secondary school aged young people, it is rarely dealt with as a crime when it involves people under the age of 18, and is instead dealt with by the young person themselves or by their school. The aim of the research is to create a clearer picture of how the different regulatory systems that exist within schools and the criminal law operate, how effective they are in dealing with cyberbullying amongst young people, and to ultimately make recommendations about the regulation of cyberbullying.

In respect of the law, this research will include analysis of legislation both prohibiting and protecting certain type of behaviour linked with cyberbullying. Such as; the prohibition of harassment under the Protection from Harassment Act 1997, freedom of expression under the Human Rights Act 1988 and the protection of dignity under the Charter of Fundamental Rights of the European Union. The legal research will also involve an analysis of reported and unreported cases involving cyberbullying behaviour to determine which types of behaviour and under what circumstances constitute a crime, or a breach of rights. Due to the lack of cases involving children this research will require an examination of cases involving adults as well as children. To ascertain how many children are prosecuted for cyberbullying crimes, an application will be made to the Home Office under the Freedom of Information Act, and these figures will be contrasted against published research detailing the prevalence of cyberbullying behaviours amongst young people. The aim will be to determine the extent to which the criminal system is used to deal with cyberbullyng amongst young people. Then the responsibility for children by parents and schools will be examined, in particular the legal responsibility of schools to regulate and punish cyberbullying behaviour, and protect victims.

The above analysis will then be examined against original empirical research focusing on interviews with young people and teaching staff at schools to find out about how cyberbullying is dealt with; by victims and perpetrators, by schools, by parents, by law enforcement and by social media organisations.

A.10 What are the main ethical issues with the research and how will these be addressed?[19]
Indicate any issues on which you would welcome advice from the ethics committee.

All interviews will be anonymised to protect the identity of the person being interviewed and the school with which they are involved.

Informed consent for young people taking part in interviews
Young people under the age of 18 cannot give consent for their data and information to be used without the consent of their parent. It will be necessary to obtain informed consent from at least one parent or guardian of the child prior to interview taking place. An information sheet will be provided to the young person and to their parents prior to the interview, and the young person will only be interviewed after; a parent has provided written consent and the young person themselves has confirmed they understand the information sheet and they also agree to participate in the interview.

Young people being interviewed
Young people may agree to participate in an interview because the researcher is an adult and they feel compelled to cooperate. It must be stressed to the young person that participation in the interview is their choice and that they are able to stop the interview at any time, or withdraw their consent at any time.

Informed consent
No interview will take place until the participant has read and understood the information sheet (or in the case of non readers or non English speakers, had the information explained or translated to them), and having done that agrees to take part in the interview.

Access to the anonymised interview transcript

The young person or the parent of the young person may ask for a copy of the interview transcript. It will be important to make it clear to the parent of the young person that the interview will only be provided to the young person (who may in turn share it with their parent) prior to the interview taking place. If a copy of the interview is provided then it must be in an anonymised format, and be a hard copy, not provided electronically.

Confidentiality and anonymity

All details which could identify the participating school or the interview participant will be removed. The participants will be informed of what steps will be taken to;

- Keep their personal details safe;
- Maintain their anonymity

by explaining to the participant the researcher's protocols for data storage and steps which will be taken to anonymise interviews. The researcher will ask the interview participant not to say their name during the audio recording of their interview prior to the interview commencing. The researcher will not communicate with the participant to discuss interview arrangements directly with the candidate via email.

In order to maintain anonymity of the interview participant, the researcher will refer to each individual as a number, with a master list identifying the participants to be held only on an encrypted USB drive or on the secure drive on the university's server.

Audio recording of data

It is essential that data is audio recorded rather than notes be taken of the interview to ensure that the researcher does not paraphrase the participant and in doing so alters the meaning of their words. The researcher will record the interview directly onto a portable laptop, and at the end of the interview, before leaving the place of the interview, the audio file will be immediately transferred onto an encrypted USB drive. Once the file is successfully transferred the audio file will be immediately deleted from the laptop. The audio file will be stored on the laptop only as long as it takes to record the interview. The laptop will be password protected.

Storage of Data

When the researcher has completed the interview and returned to university the encrypted USB drive will be stored at the school of law inside a locked cabinet in a room which may only be accessed by other research students with a keyfob. The encrypted USB drive will also contain the master list identifying the interview participants. Personal data may also be stored on the secure drive on the university's server.

Ability to withdraw

The interview participants will be told they are able to with draw from the interview process at any time, and they are able to withdraw their consent for their information to be used for up to 14 days from the time of the interview. The period of 14 days will allow the interview participant time to reflect on what was said in the interview. However after 14 days the researcher will have begun the process of transcribing and anonymisng the interview.

Illegal activity or concerns of self harm

The types of questions being asked during the interviews may reveal criminal activity or the potential of an interview candidate to harm themselves. It is important to tell the participant that the researcher will not breach confidentiality unless they receive information which makes them concerned for the physical safety of an individual.

Teachers being critical of their school

Teachers may be critical of their school's practices or policies in relation to cyberbullying, In that case it will be

particularly important to ensure that the teacher comments cannot identify the school concerned.

Other potential problems

As the researcher is asking schools to interview students at school on school premises, it is likely that the school will require a Disclosure and Barring Service Check (" DBS check" formerly a CRB check). The DBS service has advised the researcher that individuals are unable to apply for a DBS check, however if a school requires a check to be carried out an individual can subscribe to an update service within 14 days which means DRB checks can be carried over to other schools.

PART B: About the research team

B.1 To be completed by students only[20]

Qualification working towards (eg Masters, PhD)	PhD
Supervisor's name (Title, first name, surname)	Dr Subhajit Basu,
Department/ School/ Institute	Cyberlaw, School of Law, University of Leeds
Faculty	Law
Work address (including postcode)	G.16 The Liberty Building, School of Law, University of Leeds, Leeds, LS29JT
Supervisor's telephone number	0113 343 5031
Supervisor's email address	S.Basu@leeds.ac.uk,
Module name and number (if applicable)	

B.2 Other members of the research team (eg co-investigators, co-supervisors) [21]

Name *(Title, first name, surname)*	Dr Amrita Mukherjee
Position	Co-Supervisor
Department/ School/ Institute	International Law, School of Law, University of Leeds
Faculty	Law
Work address *(including postcode)*	1.07, The Liberty Building, School of Law, University of Leeds, Leeds, LS29JT
Telephone number	0113 343 5012
Email address	A.Mukherjee@leeds.ac.uk

Name (Title, first name, surname)	
Position	
Department/ School/ Institute	
Faculty	
Work address (including postcode)	
Telephone number	
Email address	

Part C: The research

C.1 What are the aims of the study?[22] (Must be in language comprehensible to a lay person.)

The aims of the study are to:
- Contribute to the understanding of how the law applies to cyberbullying behaviour amongst young people in England
- Consider whether certain cyberbullying behaviours perpetrated by children should be treated as a crime and if so under what circumstances.
- Comment on the legal responsibilities of schools to deal with cyberbullying and whether schools can be used as an effective regulatory framework

The objectives of this study are to:

- Undertake an analysis of laws operating in England which apply to cyberbullying behaviour
- Record experiences of young people and teaching professionals who deal with cyberbullying behaviour
- Analyse the law relating to schools to deal with the behaviour of young people
- Compare differing types of cyberbullying interventions (legal, school based, parent based) to determine their level of success in; deterring perpetrators of cyberbullying behaviour and providing relief to victims

C.2 Describe the design of the research. Qualitative methods as well as quantitative methods should be included. (Must be in language comprehensible to a lay person.)

Considering an aim of the study is to consider the role of schools in the regulation of cyberbullying, the research will involve qualitative methods using semi structured reflective interviews with secondary school students and teaching professionals.

Sample Size and Selection:

A total sample size of 20-30 participants comprising of;
- 15-20 students aged between 12-17 years of age
- 5-10 teaching professionals

The participants will be spread across 3-5 secondary schools. Participating schools will be chosen to reflect a representation of regional and city based schools, of different ethnic compositions and differing socio-economic typologies.

Students will be interviewed on the basis they have had experience with either being the victim or perpetrator of cyberbullying, and asked about ;

- interactions with teachers, parents police or the social media organisation or charities

- outcomes of their experience

Similarly, teaching professionals will be interviewed on the basis they have had to deal with either victims or

perpetrators of cyberbullying in their school. They will be asked about;

- the basis for their taking action in a particular case

- their interactions with students, police, the social media organisation or charities

C.3 What will participants be asked to do in the study?[23] *(e.g. number of visits, time, travel required, interviews)*

Participants will be asked to read an information sheet to decide whether or not they would like to take part in the study. In the case of students, if they decide to participate, then their parents will be asked to read an information sheet to decide whether they will consent for their child to participate. Signed consent forms will be taken from both parents and children participating. Teaching professionals who indicate they would like to participate will be asked to sign a consent form.

Participants will be asked to attend an interview at their school or workplace for approximately one hour. If the interview takes longer than an hour and the participant agrees to continue, the participant will be offered a break or the alternative of continuing the interview in another session, whatever is appropriate.

C.4 Does the research involve an international collaborator or research conducted overseas:[24]
(Tick as appropriate)
☐ Yes   ☑ No
If yes, describe any ethical review procedures that you will need to comply with in that country:

Describe the measures you have taken to comply with these:

Include copies of any ethical approval letters/ certificates with your application.

C.5 Proposed study dates and duration
Research start date (DD/MM/YY): ___1 October 2013_   Research end date (DD/MM/YY): 30 July 2016

Fieldwork start date (DD/MM/YY): ___1 May 2014 Fieldwork end date: December 2014

C.6. Where will the research be undertaken? (i.e. in the street, on UoL premises, in schools)[25]

The research will take place in secondary schools, in an office not shared with anyone else or an empty classroom, in an area where the participant can feel they are speaking in confidence.

RECRUITMENT & CONSENT PROCESSES

How participants are recruited is important to ensure that they are not induced or coerced into participation. The way participants are identified may have a bearing on whether the results can be generalised. Explain each point and give details for subgroups separately if appropriate.
C.7 How will potential participants in the study be:
(i) identified?

The researcher has personal contacts with secondary schools and cyberbullying charities. In the first instance a school will be approached through its safeguarding officer and headteacher and provided with a summary of the research and its aims. In the event the school is willing to participate the safeguarding officer will be asked to identify potential participants for interview, and to initially approach those students, parents of students and teachers to ascertain willingness to participate.

Further schools may be approached through contacts made at the first school, or through the researcher's connections with cyberbullying charities.

(ii) approached?

The safeguarding officer at the school will make the initial approach to the potential interview participant, and once a willingness to participate is established, the researcher will ask for contact details of the parents of the student, or the teacher identified. Parents will be provided an information letter by post drafted specifically for parents. A young people's version of the information letter will be given to the child via their school. In respect of teachers, I will also provide by post an information letter drafted specifically for potential teaching professional interview candidates. It will be made clear in all information letters that participation in the research is voluntary, all communications will be confidential, and use of the participant's data will be anonymised.

(iii) recruited?[26]

In terms of students, if a parent expresses willingness to consent for their child to participate, the parent will be contacted by telephone to discuss the arrangements for the interview itself, and to arrange for the parent to provide written consent. The consent will be provided via post with a self addressed stamped envelope, with the parent being asked to return the consent before the interview takes place. Once the consent from the parent is obtained, the researcher will ask for contact details of the student to arrange the interview, or this will be done via the safeguarding officer of the school. Prior to the interview commencing, the researcher will discuss the contents of the information letter with the student to ensure they understand its contents. If the researcher is sure the student wishes to participate, they will then be provided a consent form for signing.

If a teacher expresses a willingness to participate, they will be contact via telephone to discuss arrangements for the interview and advised that a consent form will be produced at the time of the interview for signing, The consent form will be provided prior to the interview for their perusal via post.

C.8 Will you be excluding any groups of people, and if so what is the rationale for that?[27]
Excluding certain groups of people, intentionally or unintentionally may be unethical in some circumstances. It may be wholly appropriate to exclude groups of people in other cases

I will not be interviewing adults who have been victims or perpetrators of cyberbullying as the study focuses on young people under the age of 18.

C.9 How many participants will be recruited and how was the number decided upon?[28]
It is important to ensure that enough participants are recruited to be able to answer the aims of the research.

There will be a minimum of 20 and a maximum of 30 participants, which is the number considered appropriate to properly investigate the relevant aim of the research within the timescale allowed. It is planned to allocate approximately 7 months for fieldwork, which will allow on average one week per interview. This will allow time for recruitment, obtaining consent forms planning for the individual interview, travel and conducting the interview.

Remember to include all advertising material (posters, emails etc) as part of your application

C10 Will the research involve any element of deception?[29]
If yes, please describe why this is necessary and whether participants will be informed at the end of the study.

No form of deception will be used in this study.

C.11 Will informed consent be obtained from the research participants?[30]
☑ Yes   ☐ No
***If yes, give details** of how it will be done. Give details of any particular steps to provide information (in addition to a written information sheet) e.g. videos, interactive material. If you are not going to be obtaining informed consent you will need to justify this.*

Participants will be provided an information sheet including;

- the identity of the researcher, the research supervisor and University
- a short summary of the proposed research
- the research aims
- under what circumstances the researcher may need to report criminal activity or threat to an individual's personal safety.

And that:

- participation is voluntary
- participants can withdraw at any time
- participants may withdraw their consent for their information to be used up until 14 days after the interview
- their interview will be anonymised,
- their data will be kept securely and confidentially

Prior any interview commencing I will ensure that the participant (and in applicable cases, the participant's parent) understands the information sheet by discussing the contents with them, and asking them if they understand it. The interview will only proceed once the researcher is satisfied the participant has provided informed consent.

If *participants are to be recruited from any of potentially vulnerable groups, give details of extra steps taken to assure their protection. Describe any arrangements to be made for obtaining consent from a legal representative.*

Children under the age of 16 (and any young person under the age of 18) will only be interviewed after;

- informed written consent is given by a parent or person with parental responsibility
- the young person has been provided with the information sheet prior to the interview, and then discussing the information sheet with the researcher prior to the interview commencing to ensure the young person is aware of the meaning of its contents, particularly that; they can stop the interview at any time and not participate

Copies of any written consent form, written information and all other explanatory material should accompany this application. The information sheet should make explicit that participants can withdraw from the research at any time, if the research design permits.
Sample information sheets and consent forms are available from the University ethical review webpage at http://ris.leeds.ac.uk/InvolvingResearchParticipants.

C.12 Describe whether participants will be able to withdraw from the study, and up to what point (eg if data is to be anonymised). If withdrawal is <u>not</u> possible, explain why not.

Participants will be able to withdraw at any time during the interview and up to 14 days after the interview takes place.
The period of 14 days is given to allow an appropriate time for the individual to reflect upon the interview, before the interview is transcribed and anonymised.

C.13 How long will the participant have to decide whether to take part in the research?[31]
It may be appropriate to recruit participants on the spot for low risk research; however consideration is usually necessary for riskier projects.

A period of 7 days will be allowed after the participant has received the information letter to ask further questions and consider whether or not to take part. If a participant would like further time to consider, then this will be allowed.
Participants will not be asked on the spot whether they would like to take part in the research.

C.14 What arrangements have been made for participants who might not adequately understand verbal explanations or written information, or who have special communication needs?[32] *(e.g. translation, use of interpreters etc. It is important that groups of people are not excluded due to language barriers or disabilities, where assistance can be given.)*

It is anticipated that most participants will be able to read and speak English. However if a participant or a parent of a participant is not able to read or speak English then assistance shall be arranged for the information sheet to be translated into the necessary language by a professional translation service, or for a professional interpreter to speak to the participant or participant's parent to explain the contents of the information sheet and enquire about consent after the person has had the opportunity to consider the information. If a participant or participant's parent can speak English but not read the information sheet then its contents will be explained and read to them.

C.15 Will individual or group interviews/ questionnaires discuss any topics or issues that might be sensitive, embarrassing or upsetting, or is it possible that criminal or other disclosures requiring action could take place during the study (e.g. during interviews or group discussions)?[33] *The [information sheet] should explain under what circumstances action may be taken.*

☑ Yes ☐ No   *If yes, give details of procedures in place to deal with these issues.*

It is anticipated that all of the interviews will involve discussion of the sensitive topic of bullying behaviour, which may cause the interview participant discomfort, embarrassment or upset. Participants will be advised that if they become distressed during the interview, they can ask to stop the interview for a break at any time, or alternatively they can withdraw from the interview.

Interviews with young people may include a perpetrator admitting criminal activity in terms of bullying and harassment, or a participant naming a perpetrator of bulling or harassment. The researcher will advise interview participants that all information will remain confidential unless information relates to an individual who's physical safety may be under threat.

Discussions with victims of cyberbullying may reveal a young person who is emotionally distressed and who may express suicidal feelings. The participant will be informed that if the researcher is concerned for the physical welfare of a young person, then those concerns may be reported. However any information which is not relevant to the reporting incident will remain confidential.

C.16 Will individual research participants receive any payments, fees, reimbursement of expenses or any other incentives or benefits for taking part in this research?[34]

☐ Yes ☑ No

If Yes, please describe the amount, number and size of incentives and on what basis this was decided.

RISKS OF THE STUDY

C.17 What are the potential benefits and/ or risks for research participants?[35]

Benefits:

1. In terms of young people, they will be able to tell their story to an individual not connected with their personal lives, which may be cathartic for the young person.
2. The purpose of my research is to create critical commentary upon the framework which exists to regulate cyberbullying. Participants may feel that sharing their experience can have a positive outcome in the future young people.
3. In terms of teaching staff, as one of the aims of the research is to analyse the role of schools in the regulatory framework, the individual may see their involvement as an opportunity to improve that system.
4. Being involved in a research project about cyberbullying may help progress an unresolved matter for an individual by allowing them the opportunity to think about the issue and discuss those thoughts with another person.

Risks:

1. Young people may be distressed by reliving a bullying experience during the interview.

C.18 Does the research involve any risks to the researchers themselves, or people not directly involved in the research? *Eg lone working*[36]

☐ Yes   ☑ No

If yes, please describe: _____

Is a risk assessment necessary for this research?

☐ Yes   ☐ No   If yes, please include a copy of your risk assessment form with your application.

NB: Risk assessments are a University requirement for all fieldwork taking place off campus. For guidance contact your Faculty Health and Safety Manager or visit http://www.leeds.ac.uk/safety/fieldwork/index.htm.

DATA ISSUES

C.19 Will the research involve any of the following activities at any stage (including identification of potential research participants)? (Tick as appropriate)

☐ Examination of personal records by those who would not normally have access

☐ Access to research data on individuals by people from outside the research team

☑ Electronic transfer of data

☐ Sharing data with other organisations

☐ Exporting data outside the European Union

☑ Use of personal addresses, postcodes, faxes, e-mails or telephone numbers

☑ Publication of direct quotations from respondents

☑ Publication of data that might allow identification of individuals to be identified

☑ Use of audio/visual recording devices

☑ FLASH memory or other portable storage devices

Storage of personal data on or including any of the following:

☑ Manual files

☑ Home or other personal computers

☐ Private company computers

☑ Laptop computers

C.20. How will the research team ensure confidentiality and security of personal data? E.g. anonymisation procedures, secure storage and coding of data.[37] Refer to http://ris.leeds.ac.uk/ResearchDataManagement for advice

All research data will be stored on an encrypted USB drive which in turn will be kept on university premises in a locked cabinet in a room which can only be accessed by authorised individuals with a keyfob.

The research participants will be informed of the steps taken to ensure confidentiality and securing of personal data, including that interview transcripts will be anonymised with participants only being identified by a number, with the master list identifying the interview participant being kept only on an encrypted USB drive or on the secure M drive on the university's server.

If times, dates and locations or other identifying features are referred to in the transcript, aliases will be used, and interview participants will be told not to identify themselves in the audio recording.

C.21 For how long will data from the study be stored? Please explain why this length of time has been chosen.[38]
RCUK guidance states that data should normally be preserved and accessible for ten years, but for some projects it may be 20 years or longer.
Students: *It would be reasonable to retain data for at least 2 years after publication or three years after the end of data collection, whichever is longer.*

_____5_ years,   _____ months

CONFLICTS OF INTEREST

C.22 Will any of the researchers or their institutions receive any other benefits or incentives for taking part in this research over and above normal salary or the costs of undertaking the research?[39]
☐ **Yes**   ☑ **No**
If yes, indicate how much and on what basis this has been decided
_____

C.23 Is there scope for any other conflict of interest?[40] *For example will the research funder have control of publication of research findings?*
☐ Yes   ☑ No   *If yes, please explain* _____

C.24 Does the research involve external funding? (Tick as appropriate)
☐ Yes   ☑ No   *If yes, what is the source of this funding?* _____

PART D: Declarations

Declaration by Chief Investigators

1. The information in this form is accurate to the best of my knowledge and belief and I take full responsibility for it.

2. I undertake to abide by the University's ethical and health & safety guidelines, and the ethical principles underlying good practice guidelines appropriate to my discipline.

3. If the research is approved I undertake to adhere to the study protocol, the terms of this application and any conditions set out by the Research Ethics Committee.

4. I undertake to seek an ethical opinion from the REC before implementing substantial amendments to the protocol.

5. I undertake to submit progress reports if required.

6. I am aware of my responsibility to be up to date and comply with the requirements of the law and relevant guidelines relating to security and confidentiality of patient or other personal data, including the need to register when necessary with the appropriate Data Protection Officer.

7. I understand that research records/ data may be subject to inspection for audit purposes if required in future.

8. I understand that personal data about me as a researcher in this application will be held by the relevant RECs and that this will be managed according to the principles established in the Data Protection Act.

9. I understand that the Ethics Committee may choose to audit this project at any point after approval.

Sharing information for training purposes: Optional – please tick as appropriate:

☐ I would be content for members of other Research Ethics Committees to have access to the information in the application in confidence for training purposes. All personal identifiers and references to researchers, funders and research units would be removed.

Principal Investigator

Signature of Principal Investigator: .... (This needs to be an actual signature rather than just typed. Electronic signatures are acceptable)

Print name: .... Date: (dd/mm/yyyy): ....

Supervisor of student research: I have read, edited and agree with the form above.

Supervisor's signature: _Subhajit Basu_ (This needs to be an actual signature rather than just typed. Electronic signatures are acceptable)

Print name: .Subhajit Basu.. Date: (dd/mm/yyyy): .27/01/2014......................................

Please submit your form **by email** to researchethics@leeds.ac.uk or if you are in the Faculty of Medicine and Health FMHUniEthics@leeds.ac.uk. **Remember to include any supporting material** such as your participant information sheet, consent form, interview questions and recruitment material with your application.

Favourable Opinion from Ethics Committee

Performance, Governance and Operations
Research & Innovation Service
Charles Thackrah Building
101 Clarendon Road
Leeds LS2 9LJ Tel: 0113 343 4873
Email: ResearchEthics@leeds.ac.uk

UNIVERSITY OF LEEDS

Jo-Ann Pattinson
School of Law
University of Leeds
Leeds, LS2 9JT

ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee
University of Leeds

23 May 2019

Dear Jo-Ann

Title of study:	**Who is responsible for cyberbullying? A qualitative study in secondary schools.**
Ethics reference:	**AREA 13-071**

I am pleased to inform you that the above research application has been reviewed by the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

Document	Version	Date
AREA 13-071 Ethics review 2 Signatures New.pdf	2	29/01/14
AREA 13-071 Fieldword 2 signatures.pdf	1	29/01/14
AREA 13-071 ability to withdraw.txt (email)	1	29/01/14
AREA 13-071 Information Sheet (parents).docx	2	29/01/14
AREA 13-071 Information Sheet (students).docx	2	29/01/14
AREA 13-071 Information Sheet (teachers).docx	2	29/01/14
AREA 13-071 Parental consent form.docx	1	29/01/14
AREA 13-071 Participants consent form.docx	1	29/01/14

Please notify the committee if you intend to make any amendments to the original research as submitted at date of this approval, including changes to recruitment methodology. All changes must receive ethical approval prior to implementation. The amendment form is available at http://ris.leeds.ac.uk/EthicsAmendment.

Please note: You are expected to keep a record of all your approved documentation, as well as documents such as sample consent forms, and other documents relating to the study. This should be kept in your study file, which should be readily available for audit purposes. You will be given a two week notice period if your project is to be audited. There is a checklist listing examples of documents to be kept which is available at http://ris.leeds.ac.uk/EthicsAudits.

We welcome feedback on your experience of the ethical review process and suggestions for improvement. Please email any comments to ResearchEthics@leeds.ac.uk.

Yours sincerely

Jennifer Blaikie
Senior Research Ethics Administrator, Research & Innovation Service
On behalf of Dr Andrew Evans, Chair, AREA Faculty Research Ethics Committee
CC: Student's supervisor(s)

Notice of Amendment to Application dated 29/09/15

UNIVERSITY OF LEEDS

Ethical review
NOTICE OF AMENDMENT

To be completed in typescript by the Principal Investigator in language comprehensible to a lay person and submitted to the FREC that gave the favourable opinion of the research. Further guidance is available at http://ris.leeds.ac.uk/EthicsAmendment.

Principal Investigator's details:	
Name:	Jo-Ann Pattinson
Address:	46 Wheatley Ave Ilkley West Yorkshire LS298PT
Telephone:	07599807999
Email:	lw10jamp@leeds.ac.uk

Full title of study:	Who is responsible for cyberbullying? A Qualitative study in secondary schools
Ethics reference number:	AREA 13-071
Date study commenced:	1 October 2013
Amendment number and date:	

Type of amendment (indicate all that apply in bold)

(a) Amendment to information previously given on the University of Leeds ethical review application form

Yes

If yes, please refer to relevant sections of the FREC application in the "summary of changes" section below.

(b) Amendment to the information sheet(s) and/or consent form(s) for participants, or to any other supporting documentation for the study

Yes

If yes, please submit all revised documents with new version numbers and dates, highlighting new text using a different colour font or the track changes feature.

Is this a modified version of an amendment previously notified to the FREC/ HIREC and given an unfavourable opinion?

No

Is this an amendment to a project, which underwent NHS ethical review?

No

If so has the amendment been submitted for <u>R&D approval</u>**?**

No

Is sponsor sign off required for the amendment?

No

Summary of changes

Briefly summarise the main changes proposed in this amendment using language comprehensible to a lay person. Explain the purpose of the changes and their significance for the study. In the case of a modified amendment, highlight the modifications that have been made.

If the amendment significantly alters the research design or methodology, or could otherwise affect the scientific value of the study, supporting scientific information should be given (or enclosed separately). Indicate whether or not additional scientific critique has been obtained.

<u>Incentives for interview participants</u>
As the fieldwork has begun the researcher has been able to more accurately gauge participant interest in this type of research. It has been found that teachers are generally willing to participate however students, while interested in the subject and curious about the research, are not necessarily willing to give up their lunch time or free period to sit with a researcher. Consequently it is proposed that participants of the research receive a small incentive or reward for their time in participating, that being a £10 gift voucher. This amount was chosen as it is not excessive yet still able to be used by the participant for something useful. Regarding what type of vouchers to be used, the researcher proposes any of the following be offered; iTunes, Café Nero or Pizza Express. It is accepted that the vouchers will be self funded by the researcher.

<u>Addition of categories of interviewees</u>
During the transfer process it was identified that semi-structured interviews with two more groups of interviewees would be necessary to complete the research aims; those groups being police officers who have experience in dealing with cyberbullying cases, and case workers employed by organisations dedicated to assisting cyberbullying victims or prevention of cyberbullying. The purpose of obtaining these interviews is to obtain evidence from those working outside the school environment (but with young people) as to the effectiveness of the current cyberbullying regulatory regime.

It is planned that 1-2 police officers will be interviewed who have experience in dealing with cyberbullying matters, and 1-2 cyberbullying case workers will be interviewed about their experience in dealing with incidents. As per the interviews to be conducted with students and teachers, the interviews with the professionals will be; confidential, conducted with informed consent with the participant being given the opportunity to withdraw up to 1 week after the interview. The identity of any children or schools associated with any cases discussed will be anonymised.

Interview schedules
Separate interview schedules for police and caseworkers have been attached to this amendment application.

Consent form and information sheets for 'professionals'
It is intended that the previously submitted consent form and information sheet for teachers be made redundant and instead one consent form and information sheet be used for; teachers, police and caseworkers ("professionals"). The new consent form and information sheet will be attached to this application.

Use of email to contact participants
The original application stipulated that email would not be used to contact participants due to a concern regarding confidentiality of interviewees. However now the researcher has begun fieldwork, it has become apparent that email is the preferred contact method by both interviewees and gatekeepers. Further, the researcher has found that participants have requested to scan and send consent forms via email, and also to ask the researcher questions prior to consent (in the case of adults being professionals or parents of students). Therefore it is proposed that email may be used to;
1. Allow adults participants and parents to ask questions of the researcher;
2. Contact interviewees once they have been recruited with a view to arranging interview times and locations; and
3. For the purpose of receiving consent forms and distributing information sheets and consent forms.

With regards to the original concern about confidentiality, it is proposed that the researcher could delete all emails once sent/received and also advise interview participants to do the same, in the event they choose to contact the researcher in this way.

Safe Data Storage
The original application refers to voice recorded interviews being recorded directly onto an encrypted lap top, and then the recording being transferred to an encrypted USB where upon the lap top file will be deleted, and the USB to be stored under lock and key in the research suite. This has proved impractical, particularly when the researcher is away from university grounds. It is proposed that voice recordings and transcripts be stored on the University's M drive and deleted from the hard drive of the laptop. (this amendment item was the topic of an email query between the researcher and Jennifer Blaikie, a copy of which is attached to this application).

All information sheets will be updated in track changes to reflect the change in how the data will be stored, except the "professionals" information sheet, which is new.

Parental Information Sheets
The researcher prefers different wording under the heading "Why has my child been chosen?" which is identified in the document with track changes.

Any other relevant information

Applicants may indicate any specific ethical issues relating to the amendment, on which the opinion of the REC is sought.

List of enclosed documents

Document	Version	Date
Information sheet (professionals) *new	1	1 Sept 2015
Consent form (professionals) *new	1	1 Sept 2015
Interview schedule (police)* new	1	1 Sept 2015
Interview Schedule (cyberbullying case worker) *new	1	1 Sept 2015
Information sheet (parents) *amended		1 Sept 2015
Information sheet (students) *amended		1 Sept 2015

Declaration

- I confirm that the information in this form is accurate to the best of my knowledge and I take full responsibility for it.

- I consider that it would be reasonable for the proposed amendment to be implemented.

Signature of Principal Investigator: *Pattinson*

Print name: JO-ANN PATTINSON

Date of submission: 29/9/15

Signature of supervisor of student project:

A. Mcg

Approval of Amendment

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Jo-Ann Pattinson
School of Law
University of Leeds
Leeds, LS2 9JT

ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee
University of Leeds

23 May 2019

Dear Jo-Ann

Title of study:	**Who is responsible for cyberbullying? A qualitative study in secondary schools.**
Ethics reference:	**AREA 13-071 amendment Sept 15**

I am pleased to inform you that your amendment to the research application listed above has been reviewed by the Chair of the ESSL, Environment and LUBS (AREA) Faculty Research Ethics Committee and I can confirm a favourable ethical opinion as of the date of this letter. The following documentation was considered:

Document	Version	Date
AREA 13-071 amendment Sept 15 Ethics Amendment form 29 Sept.pdf	1	30/09/15
AREA 13-071 amendment Sept 15 Information Sheet (parents) Track Changes.docx	1	30/09/15
AREA 13-071 amendment Sept 15 Information Sheet (professionals) 1.docx	1	30/09/15
AREA 13-071 amendment Sept 15 Information Sheet (students) Track Changes.docx	1	30/09/15
AREA 13-071 amendment Sept 15 Interview Schedule- case worker.docx	1	30/09/15
AREA 13-071 amendment Sept 15 Interview Schedule- police.docx	1	30/09/15
AREA 13-071 Ethics review 2 Signatures New.pdf	2	29/01/14
AREA 13-071 Fieldwork 2 signatures.pdf	1	29/01/14
AREA 13-071 ability to withdraw.txt (email)	1	29/01/14
AREA 13-071 Information Sheet (parents).docx	2	29/01/14
AREA 13-071 Information Sheet (students).docx	2	29/01/14
AREA 13-071 Information Sheet (teachers).docx	2	29/01/14
AREA 13-071 Parental consent form.docx	1	29/01/14
AREA 13-071 Participants consent form.docx	1	29/01/14

The Chair made the following comments about your application:

- Please plan the process for dealing with a distressed student in more detail. For example, think about what you would do if you get reports of ongoing bullying. Would you treat non-physical bullying or any other behaviour that nevertheless breaks the most serious child protection legislation (for example, section 12 of the Sexual Offences Act 2003) differently?

- The amendment itself seems fine, be careful not to promise confidentiality when you mean anonymity. Guidance on the distinction is available at http://ris.leeds.ac.uk/ConfidentialityAnonymisation.

Please notify the committee if you intend to make any further amendments to the original research as submitted at date of this approval as all changes must receive ethical approval prior to implementation. The amendment form is available at http://ris.leeds.ac.uk/EthicsAmendment.

Please note: You are expected to keep a record of all your approved documentation, as well as documents such as sample consent forms, and other documents relating to the study. This should be kept in your study file, which should be readily available for audit purposes. You will be given a two week notice period if your project is to be audited. There is a checklist listing examples of documents to be kept which is available at http://ris.leeds.ac.uk/EthicsAudits.

We welcome feedback on your experience of the ethical review process and suggestions for improvement. Please email any comments to ResearchEthics@leeds.ac.uk.

Yours sincerely

Jennifer Blaikie
Senior Research Ethics Administrator, Research & Innovation Service
On behalf of Dr Andrew Evans, Chair, AREA Faculty Research Ethics Committee

CC: Student's supervisor(s)

Final Information Sheet- Students

Information for students

CYBER-BULLYING RESEARCH

<u>Information for interview participants</u>

This information explains what you need to know about the research before you can decide if you want to take part. Take time to decide if you would like to be a part of the research.

<u>What the research is about</u>
Cyberbullying happens when a person is made to feel threatened, anxious or humiliated deliberately by someone else via the internet or text. It is still relatively new form of bullying, and we are still trying to understand the best way to deal with it. This study looks at how different laws apply to young people when they have bullied or harassed someone online. Some laws are about what schools should do to protect students. This study wants to find out if the laws about cyberbullying are effective and fair, or should the way young people are dealt with by their school or the police be changed.

<u>Why have I been chosen?</u>
You have volunteered to take part or expressed an interest in the research. The researcher will also be speaking to other students in other schools in England.

<u>Do I have to take part?</u>
No. The decision of whether or not to take part is up to both you and your parents. If you decide not to take part then that will be the end of your involvement in the research. If your parents do not want you to take part then that will also end your involvement in the research.

<u>What will happen to me if I take part?</u>
If you want to take part and your parents agree, then you and your parents will asked to sign a consent form. You will then be asked to take part in an interview at school in an office or classroom where you will sit at a desk with the researcher who will ask you questions about what happened to you. This will take about an hour. If you want to stop or have a break at any time this is up to you. The researcher will voice record what you say and later have it typed up, however when it is typed up your name will not be mentioned, and anything you have said which may make it obvious that it was you telling the story will be changed so that your identity is a secret. You do not have to tell anyone else that you took part in the interview.

You can still change your mind about taking part at any time, even during the interview. You can also change your mind about the researcher using your story after the interview, and you will have 1 week after the interview to tell the researcher if you have changed your mind.
<u>What are the disadvantages of me taking part?</u>
If you have experienced bullying, it may be upsetting to discuss these experiences

<u>What are the benefits of taking part?</u>
You may feel better being able to tell someone independent about your experiences. Your story may also help the researcher understand where the laws about cyberbullying need to be improved.

<u>Will my taking part in this study be anonymous?</u>
Yes you identity will remain anonymous. Your interview will be recorded and then kept on an encrypted disc drive. When the interview is printed your identity or the identity of your school or your friends will NOT be revealed in the printed copy.

<u>What about confidentiality?</u>
The only time that the researcher may have to tell anyone else (for example your school) something you have said is if you say you are going to physically hurt someone or hurt yourself.

<u>What will happen to the results of the research project?</u>
The research may be published in a legal article in the year or so after your interview. You will not be identified in the article, neither will your school or anyone else you have told the researcher about. You can obtain a copy of the article.

<u>Will I be recorded? And what will happen to the recording?</u>
The researcher will voice record the interview. The voice recording is strictly for the researcher to have an accurate copy of your interview answers. Your interview will be typed up with your name and identifying information removed, and this typed up record will be used in legal articles, and may be referred to in conference presentations. No one else will be allowed access to the original recording without your written permission.

<u>Contact for further information</u>

To contact the researcher you can ask _____ to ask the researcher to telephone you.

The researcher:	**Jo-Ann Pattinson**
Work Address:	**School of Law** **University of Leeds** **The Liberty Building** **Belle Vue Road** **Leeds LS2 9JT**
The researcher's supervisor	**Dr. Subhajit Basu**

Final Information sheet for Participants

CYBER-BULLYING RESEARCH

<u>Information for interview participants</u>

This information sheet explains what you need to know about the research before you can decide if you want to take part. The researcher will be following up shortly to see if you would like to participate.

<u>What the research is about</u>
This study examines how different regulatory policies and legislation effect young people when they have bullied or become a victim of bullying online. This study aims to find out if the law and policy relating to cyberbullying is effective, and whether the way young people are dealt with by their school or the police and social networking sites be changed.

<u>Why have I been chosen?</u>
You have been asked to take part because you are experienced in dealing with cyberbullying behaviour amongst young people. The researcher is interested in asking about incidents with which you have been involved.

<u>Do I have to take part?</u>
No. The decision of whether or not to take part is up to you.

<u>What will happen to me if I take part?</u>
If you agree to take part you will asked to sign a consent form. You will then be asked to take part in an interview in a place convenient to you, which could be your work place in a meeting room or a quiet coffee shop if you prefer, where the researcher will ask you questions about your experiences. Depending on what you have to say, it is expected that this will take about an hour. The researcher will voice record what you say and later have it transcribed. You can still change your mind about taking part at any time, including during the interview. You can also change your mind about the researcher using your story after the interview, and you will have 1 week after the interview to tell the researcher if you have changed your mind.

<u>Will my identity, and those I speak about remain anonymous?</u>
Yes. When your statement is transcribed your name will not be referenced, nor will the names of any people you have spoken about, nor the name of any school you may have spoken about. Anything you have said which may make it obvious that it was you in particular telling the story, or anything that will make it easy to identify a person will be changed so that all individual identities remain anonymous.

Any statement you make which appears in the research will only be identified as being made by person of your profession or qualifications.

<u>What are the disadvantages of me taking part?</u>

It will involve giving up your time. Depending on your story, it might mean that discussing an incident may be distressing for you.

What are the benefits of taking part?
Your interview may assist the researcher in understanding what improvements need to be made in the regulation of cyberbullying, and ultimately provide the evidence to base an argument for changes to occur.

Will my taking part in this study be confidential?
Anything you tell the researcher will be completely confidential, including if you tell the researcher something for which you could be criticised.
Your interview will be recorded and then kept on an encrypted disc drive. When the interview is printed your identity will not be revealed in the printed copy.

What will happen to the results of the research project?
The research may be published in a legal article in the year or so after your interview. You will not be identified in the article. You can obtain a copy of the article.

Will I be recorded? And what will happen to the recording?
The researcher will voice record the interview. The voice recording is strictly for the researcher to have an accurate copy of your interview answers. Your interview will be transcribed with your name and identifying information removed, and this record will be used in legal articles, and may be referred to in conference presentations. No one else will be allowed access to the original recording without your written permission.

Contact for further information

The researcher:	Jo-Ann Pattinson
Work Address:	School of Law University of Leeds The Liberty Building Belle Vue Road Leeds LS2 9JT
The researcher's supervisor	Dr. Subhajit Basu

Final Information Sheet - Parents

CYBER-BULLYING RESEARCH

<u>Information for the parents/guardians of interview participants</u>

This information sheet explains what you need to know about the research before you can decide if you want your child to take part. The researcher will be following up shortly time to see if you would like your child to participate.

<u>What the research is about</u>
Cyberbullying is when a person is made to feel threatened, anxious or humiliated deliberately by someone else via the internet or text. It is still relatively new form of bullying, and we are still trying to understand the best way to deal with it. This study looks at how different laws apply to young people when they have bullied or harassed someone online. This study wants to find out if the laws about cyberbullying are effective, or should the way young bullies and victims are dealt with by their school or the police be changed.

<u>Why has my child been chosen?</u>
We are asking if your child can take part because they have experienced cyberbullying. The researcher will also be speaking to other students in other schools in England.

<u>Do they have to take part?</u>
No. The decision of whether or not to take part is up to both you and your child. If your child does not want to participate, or if you decide you do not want them to participate, then they will have no involvement with the study.

<u>What will happen to if my child takes part?</u>
If you and your child agree to take part, you will both be asked to sign a consent form. Your child will then be asked to take part in an interview at school in an office or classroom at their school, where the researcher will ask them questions about what happened. This will take about an hour. If they want to stop or have a break at any time this is up to them. The researcher will voice record what they say and later have it typed up, however when it is typed up their name will not be mentioned, and anything they have said which may make it obvious that it was them telling the story will be changed so their identity will remain anonymous. Likewise if your child mentions other people or their school, the transcript will be changed so that the identity of everyone will remain anonymous.

You and your child can still change your mind about taking part at any time, even during the interview. You can also change your mind about the researcher using their story after the interview, and you will have 1 week after the interview to tell the researcher if you have changed your mind.

<u>What are the disadvantages of me taking part?</u>
It might be that talking about their experiences may upset your child.

<u>What are the benefits of taking part?</u>

Some children may feel better being able to tell someone independent about your experiences. Their story may also help the researcher understand where the laws about cyberbullying need to be improved, and provide the evidence to improve things for others in the future.

Will my child's taking part in this study be confidential?
Anything told to the researcher will be completely confidential, even if your child tells the researcher that they did something wrong. The only time the researcher may have to tell anyone else something they have said, is if they say someone is going to be physically hurt, or if they say they are going to hurt themselves. The interview will be voice recorded and then kept on an encrypted disc drive, which will be stored under lock and key in a safe location. The interview will be typed up as a transcript, however their identity or the identity of their school or friends will NOT be revealed in the transcript.

Your child will be given a copy of the transcript they request it, however to maintain the child's confidentiality we will not release individual transcripts to any person who was not an interview candidate. However if your child wishes to show someone else their transcript, this is their decision.

What will happen to the results of the research project?
The research may be published in a legal article in the year or so after the interview. Your child will not be identified in the article, neither will their school or anyone else they have told the researcher about. You will be able to obtain a copy of the article.

And what will happen to the recording?
The voice recording is strictly for the researcher to have an accurate copy of interview answers. The interview will be typed up with your child's name and identifying information removed, and this transcript will be used in legal articles, and may be referred to in conference presentations. No one else will be allowed access to the original recording without written permission.

Contact for further information

The researcher:	Jo-Ann Pattinson
Work Address:	School of Law University of Leeds The Liberty Building Belle Vue Road Leeds LS2 9JT
The researcher's supervisor	Dr. Subhajit Basu

Participant's Consent

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Cyberbullying in schools

1. I agree to participate with the research into 'Sustainable Community Resilience. An exploration of the role of social networks in generating transformation' which is being undertaken at the University of Leeds.

2. I confirm that I have either read the information sheet or had it read to me by an interpreter and understand the information that has been provided for this research.

3. I confirm that I have had the opportunity to ask questions before being involved in the research.

4. I understand that my participation is voluntary and that I am free to withdraw my contribution up to 7 days after I have been involved and that I will not need to give a reason.

5. I agree that if I am involved in a focus group that I will respect the views of others in the group and treat information and views offered in the group as confidential.

6. I understand that my contribution will be treated in confidence and that no individual or place will be identified in research publications.

7. I voluntarily agree to take part in the study.

Signature...

Name...

Date...

Parental Consent

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Cyberbullying Research

1. I agree for my child,
………………………………………………………………….to take part in
research into 'Cyberbullying. A Study' which is being undertaken by Jo-Ann
Pattinson at the University of Leeds.

2. I have either read the information sheet or had it read to me by an interpreter and
understand the information that has been provided for this research.

3. I understand that my child's participation is voluntary and that either my child or
myself are free to withdraw consent up to 7 days after the interview is complete and
that we will not need to give a reason.

4. I understand that what my child says in their interview will confidential, and that they
will not be identified in research publications.

5. I agree for my child to part in the study.

Signature..

Name..

Date..

Interview theme schedules- students and school staff

Students

1. How old are you/year you are in?
2. How long have you been at this school?
3. Do you live with both parents?
4. Do you like school? Grades?/Friendship groups?
5. Discuss outside school activities
6. What devices do you own?
7. What social media accounts do you have/use?
8. Favourite/Most used social media accounts?
9. Discuss cyberbullying incidents/why did you want to be interviewed?
10. Discuss involvement of peers in incidents
11. Involvement of school/parents/police
12. Social Media- blocking/privacy/reporting- how effective? Problems?
13. Impact of incident emotional/time off school/grades
14. Sexting involvement/understanding of legality
15. Happy with resolution/suggestions for improvements

School Staff

1. What is your role at school?
2. Length of time at school?
3. Describe involvement with cyberbullying/sexting/bullying generally
4. Example of incidents how they were dealt with
5. School procedures when incident reported
6. How recorded
7. Frequency of incidents
8. Use of Powers under the Education Act 2011 to search and delete
9. Sexting how is this dealt with/procedures/parents/police
10. Experiences in dealing with parents/the police/outside organisations
11. How do you support the victim/bully
12. Time spent of work day/week dealing with incidents
13. View on track record of the school in dealing with incidents
14. Potential improvements

Interview Schedule- Police

1.   Describe your role in working with victims or perpetrators of cyberbullying?

2.   Do you have experience working with particular schools in dealing with cyberbullying/sexting incidents which occur at that school? Give examples of those.

3.   Do you investigate criminal or potentially criminal matters relating to cyberbullying amongst young people. Give examples of those.

4.   Have you charged a young person with a criminal offence relating to cyberbullying? (which legislation, the circumstances)

5.   What was the outcome of the incident? For the bully and for the victim?

6.   Do you have interaction with parents regarding cyberbullying incidents? Can you describe an example of a typical interaction?

7.   Who do you interview when investigating an incident?

8.   Have you had any interaction with the relevant social networking sites themselves during an investigation?

9.   What type of incident is typically dealt with by a young persons school or parent and when is it typically referred to the police?

10.   Do schools refer matters to you that they cannot deal with? Can you describe such an incident and the outcome.

11.   Has there been a difference in the types of matters which you deal with since the CPS Guidelines on prosecuting cases relating to social media was issued?

Interview Schedule- Case Worker
(Case workers were not interviewed please refer to 1.6.5 for clarification)

1.   Describe your role in dealing with victims or perpetrators of cyberbullying.

2.   How do individuals and schools access your assistance?

3.   Who predominantly seeks your assistance? Schools? Parents? Children? (how do they make contact)

4.   Do you have experience working with particular schools in dealing with cyberbullying/sexting incidents which occur at that school?

5.   What is your role to play in managing or dealing with a cyberbullying incident which is referred to you?

6.   Have you ever referred a matter to the police?

7.   What was the outcome of the incident? For the bully and for the victim?

8.   Do you have interaction with parents regarding cyberbullying incidents? Can you describe an example of a typical interaction?

9.   Do you communicate with the relevant social networking sites themselves about a particular case? Describe that interaction.

10.   Can you refer to a specific case of where a social networking site has cooperated to provide a solution to an incident. Describe the outcome of that matter for the bully and victim.

11.   Can you refer to an incident where the social networking site has not provided meaningful assistance in a particular matter. Describe the outcome of that matter for the bully and victim.

12.   What type of incident is typically dealt with by a young persons school or parent and when is it typically referred to the police?

13.   Are you aware of incidents where schools have used their 'search and delete' powers under the Education Act (2011)?

Sample Nodes

Node	Secondary Node	Sub Nodes
Facebook	Tools	
Snapchat	Policy (internal)	
Instagram		
ISP	Terms- contractual	Trusted Flagger
Online abuse Incident	Facebook	Blocking
	Snapchat	Privacy
	Instagram	Self-reporting
		Connectivity
	Teachers/School	Un/sympathetic
		Pastoral
		Restorative justice
		Time taken
		Discipline
	Parent	Taking away device
		Knowledge/Support
	Effects/harm	Suicidal thoughts
		Self Harm
		Missing School
	Traditional Bullying	Poly victim
Sexting	Teachers	Procedures
	Students	Normative
		Secrecy
	Police	Age appropriate
	SNS	Ephemeral
Police	Sanctions	
	Budgetary Restrictions	
Students	Victimisation	Sexuality
		Parents
		Grades

Appendix 2

Quantitative Data extracted from fieldwork

Table A

Popularity of SNS and prevalence of bullying associated with the platform[1208]

Application	% of Students interviewed active	DTL report young people active	DTL report young people bullied using the platform
Facebook	76%	60%	37%
Instagram	70%	76%	31%
Snapchat	70%	78%	42%

Table B
Bullying trends, technological tool trends

Key: Letter- student identifier
Number- School identifier

	A/1	B/1	C/1	D/1	A/2	B/2	C/2	D/2	E/2
Bullied Online?	Y	Y	N	Y	Y	Y	Y	Y	Y
Bullied f2f	Y	N	N	N	Y	Y	Y	N	Y
Facebook	Y	Y	N	Y	Y	Y	Y	Y	Y
Snapchat	Y	N	-	Y	Y	Y	Y	Y	-
WhatsApp	Y	Y	-	-	-	-	-	-	-
Twitter	Y	N	-	N	N	N	N	N	-
Instagram	Y	Y	Y	Y	Y	Y	Y	N	-
Text	Y	Y	Y	Y	Y	Y	-	Y	-
Blocking	Y	N	N	Y	Y	Y	Y	Y	Y
Privacy option used	Y	-	Y	Y	Y	Y	Y	Y	Y
Deleting account	Y	-	-		N	N	N	N	-
Fake Account	Y	-	-	Yes	N	N	N	N	-
Report to SMS	Y	-	-		Y	Y	Y	_	-
Successful report SMS	Partial	-	-		N	N	Y	_	-
Adult intervention	N	Y	-	Y	Y	Y	Y	Y	Y
Adult successful	N	Y	-	Partial	N	N	Y	Y	Y

[1208] (DTL) Ditch the Label Annual Bullying Survey (2017) report

	F/2	G/2	A/3	B/3	C/3	D/3	E/3	F/3		
Bullied Online?	Y	Y	Y	Y	Y	Y	Y	Y		
Bullied f2f	Y	N	Y	N	N	Y	Y	Y		
Facebook	Y	Y	Y	N	N	N	Y	Y		
Snapchat	Y	Y	Y	Y	Y	Y	N	-	-	
WhatsApp	-	-	-	-	-	-	-	-		
Twitter	Y	Y		N	N	Y	N	Y	-	
Instagram	-	Y		Y	Y	Y	N	Y	-	
Text	Y	Y	-	Y	Y	Y	-	Y		
Blocking	Y	Y		-	Y	Y	Y	Y		
Privacy option used	Y	Y	Y	Y	Y	Y	Y	Y		
Deleting account	Y	N	-	-	-	-	-	-		
O/A Fake Account	Y	N	-	-	-	-	-	-	-	
Report to SMS	Y	Y	Y	Y	-	Y	-	_	-	
Successful report SMS	Y	Y	Y	N	-	N	-	_	-	
Adult Assist tech	Y	-	-	Y	Y	N	N	N		
Adult successful	Partial	-	-	Y	Y	N	N	N		

Table C Totals for SNS trends and technological tools

Totals	%	Notes
Bullied online	94%	
Bullied f2f	58%	
Use of: Facebook	76%	
Snapchat	70%	
WhatsApp	11%	
Twitter	29%	
Instagram	70%	
Text	76%	
Blocking	82%	
Privacy Options	100%	
Deleting Account	5%	
Fake Accounts	17%	
Report to SNS	52%	
Successful report to SNS	29%	23% students said the report dealt with the problem successfully and one student said the success was partial only 44% of sample who reported to SNS
Adult report	58%	
Successful adult intervention	47%	35% students said the report dealt with the problem successfully and two students said the success was partial only

Appendix 3

Suggested Draft Amendment for Section 1 of the POCA

(potential amendment in italics)

1 Indecent photographs of children

(1)   [Subject to sections 1A and 1B,] it is an offence for a person—

(a)   to take, or permit to be taken [or to make], any indecent photograph [or pseudo-photograph] of a child . . . ; or

(b)   to distribute or show such indecent photographs [or pseudo-photographs]; or

(c)   to have in his possession such indecent photographs [or pseudo-photographs], with a view to their being distributed or shown by himself or others; or

(d)   to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs [or pseudo-photographs], or intends to do so.

(1A) For the purposes of this Act, an offence in (1) does not apply if the indecent photograph [or pseudo-photograph] is taken, made or distributed by a person under the age of 18 of themselves.

(2)   For purposes of this Act, a person is to be regarded as distributing an indecent photograph [or pseudo-photograph] if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3)   Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

(4)   Where a person is charged with an offence under subsection (1)(b) or (c), it shall be a defence for him to prove—

(a)   that he had a legitimate reason for distributing or showing the photographs [or pseudo-photographs] or (as the case may be) having them in his possession; or

(b)   that he had not himself seen the photographs [or pseudo-photographs] and did not know, nor had any cause to suspect, them to be indecent.

(5)   References in the Children and Young Persons Act 1933 (except in sections 15 and 99) to the offences mentioned in Schedule 1 to that Act shall include an offence under subsection (1)(a) above.
(6), (7)   . .