Sortuz. Oñati Journal of Emergent Socio-legal Studies
Volume 13, Issue 2 (2023), 242–257
ISSN 1988-0847

Online harassment and cyberstalking. A case study

Iñigo Gordon Benito*

Abstract:

The evidence from some studies conducted until now reflects that the offenders' *conscious anger and hostility* toward the victim is the prevalent motivation behind the unwanted pattern of conduct that alarms and causes distress to another individual. From a legal-criminal perspective, even if a context-sensitive approach is still necessary, this could well amount to harassment or stalking, on a case-by-case basis. Intriguingly, *hostility* has always been the core term operating in hate crime legislation in England & Wales. Apart from what looks like a coincidence, how does the unhealthy and long-term fixation pattern with an individual intersect with hate crimes? How is the workability of all the above in the virtual environment? We will use *R v Joshua Bonehill-Paine* (2016), a racially aggravated online harassment case, as a vehicle to illustrate some concerns and broader thematic points of interest.

Keywords:

Harassment, stalking, hate crimes, hostility, cybercrime.

Resumen:

Según reflejan algunos estudios realizados hasta la fecha, la *ira consciente y hostilidad* de los agresores hacia la víctima sería la motivación predominante detrás del patrón de conducta no deseada que alarma y causa angustia a otro individuo. Desde una perspectiva jurídico-penal, aunque siga siendo imprescindible realizar una aproximación sensible al contexto, esto bien podría equivaler a hostigamiento (*harassment*) o acoso (*stalking*), en función del caso. Curiosamente, la *hostilidad* siempre ha sido el término central que opera en la legislación sobre delitos de odio en Inglaterra y Gales. Al margen de lo que parece más bien una coincidencia, ¿cómo relacionar el patrón de fijación enfermiza a largo plazo

* Lecturer in Criminal law and postdoctoral researcher at the UNESCO Chair for Human Rights and Public Authorities, University of the Basque Country (UPV/EHU). Currently, part of the Hate Crime Research Group working team, funded by the Spanish Ministry of Science and Innovation, which runs from 1 September 2021 to 1 September 2025 (Title of the Project: *Hate crimes in Spain: pending challenges*; Reference: I+D+I PID2020-115320GB-100). Email: inigo.gordon@ehu.eus

por un individuo con los delitos de odio? ¿Cómo es la operatividad de todo lo anterior en el entorno virtual? Utilizaremos *R v Joshua Bonehill-Paine* (2016), un caso de hostigamiento online agravado por cuestiones raciales, como vehículo para ilustrar algunas preocupaciones y puntos temáticos de interés más amplios.

Palabras clave:

Hostigamiento, acoso, delitos de odio, hostilidad, ciberdelito.

1. INTRODUCTION

Harassment and its aggravated form, stalking, refer to an unwanted pattern of conduct, course of conduct or series of incidents over time (e.g. persistently following someone, texting or calling someone obsessively, etc.), including speech incidents (e.g. verbal abuse) that cumulatively and context-dependently, and whether by one or more people,[1] pursue to intimidate and distress another individual[2]. Instead, the keys to understanding hate victimisation relate to a vulnerable group sharing an identity trait (e.g. race, ethnicity, sexual orientation, religion, etc.). The hate phenomenon has nothing to do with the individual taken in isolation, even though the latter may be the immediate victim (or the "scapegoat") in order for the offender to go further and achieve a supra-individual impact. Even so, the individual has to be chosen for belonging –or supposedly belonging– to a group systematically exposed to similar actions or expressions of hatred. Thus, while online harassment/cyberstalking violates the *individual*, cyberhate violates *social or ethnic groupings* (Wall 2001, 7). The offenders' *conscious anger and hostility* toward the victim has been said to be the main motivation driving stalking (Kienlen *et al.* 1997, Meloy 1998, 20). Quite interestingly, *hostility* is the core term used in hate crime legislation within English law.

Delving deeper into how the phenomena of cyberhate and online harassment/cyberstalking may intersect each other, we must note that stalking perpetrated by strangers is said to be more common on the Internet than it is in traditional stalking (Rapisarda and Kras 2023, 308), which has been often linked to stalking perpetrated against intimate partners within a relationship. The logic built around hate crimes has always pointed to the randomness of attack as an essential feature; that is, when the victim becomes immaterial to the perpetrator and the attack is against any interchangeable member of a vulnerable group to which the victim belongs (or is supposed to belong). Thus, a significant volume of violence against women would fall outside the scope of hate crimes, as it is violence perpetrated by someone in an intimate partner relationship. Therefore, it is no longer an interchangeable victim

[1] The "course of conduct" must involve conduct, which includes speech, on at least two occasions (s. 7(3) and 7(4) of the Protection from Harassment Act 1997 or PHA). The Criminal Justice and Police Act 2001 amended the s. 7 of the PHA by introducing the s. 7(3A) regarding collective harassment. From then on, the PHA protects a victim where two or more people separately carry out one harassment act each. In order to know the origins of such an amendment, a 2001 UK's Government strategy document about animal rights extremism must be consulted. In brief, there were some statutes, as was the case of the PHA, which were expected to fight against protest activities carried out by animal rights extremists (Home Office 2001, Monaghan 2013).

[2] Harassing a person includes alarming or causing the person distress, being the "person" always referring to an individual (ss. 7(2) and 7(5) of the PHA).

case. In short, technology has made it possible for stalkers to cross paths with random victims, making it easier to enter the realms of hate crimes. Moreover, because they often do not know cyberstalkers, victims have difficulty assessing the credibility of the threatening behaviour (Fodor 2022, 52–53).

In other respects, both harassment and stalking are activities against the law across the UK.[3] Despite differences across the three legal systems (English law, Scottish/Scots law and Northern Irish law), all the statutes contain offences that are perfectly applicable both to online and offline communications. Although originally designed for coping with hatred and hostility, among other issues of concern at that time,[4] they were not for dealing with online behaviour. Nonetheless, a digital age add-on has been placed in the harassment/stalking existing offences. Hence, it is referred to them as computer-assisted, mediated or related offences, insomuch as are offences comparable to conventional ones but committed by means of an information system (e.g. computer-assisted harassment). Cyberstalking may be considered a computer-facilitated crime as well. It is said to be a common way of starting any pattern of behaviour, whether it is continuing online or offline. As stalking and cyberstalking are so intertwined, most cyberstalkers soon engage in offline criminal activity (Cavezza and McEwan 2014, Dreßing *et al.* 2014). The Internet may exponentially grow these criminal phenomena' inherent harmfulness precisely because it often targets certain group members facing grievances based on social exclusion. For instance, LGBTQ community members are more likely to become targets of online harassment/cyberstalking (Nurse 2019, 672, Rapisarda and Kras 2023, 309). Anti-hate legislation seeks to protect precisely those groups that have been historically regarded as marginalised and vulnerable.

Apart from the harassment/stalking offences within the Protection from Harassment Act 1997 (PHA) applicable to England & Wales (English law), the point is that *racially or religiously aggravated* online harassment or cyberstalking cases, though possible to redirect them through s. 32 of the Crime and Disorder Act 1998 (CDA) as distinct offences,[5] are

[3] Note that the stalking offence burst onto the Northern Irish legislative scene for the first time when the Protection from Stalking Bill was formally introduced to the Northern Ireland Assembly on 18 January 2021. At that time, it was stated the offence would mention some acts associated with stalking that "may also relate to aspects of hate crime directed by speech or via online communication" (Marrinan 2020, par. 13.295). Protection from Stalking Act (Northern Ireland) 2022, which came into force in April 2022, has resulted in 88 arrests by the Police Service of Northern Ireland (PSNI) and charged 47 in its first anniversary of implementation. Victims' experiences during 2022/23 may help better understand stalking dynamics with the technology involved (cyberstalking): "On one occasion I had 155 WhatsApp messages in a few hours and was also receiving messages on two other platforms (phone messages and Facebook messenger) at the same time. With calls between"; "One night, although he was 15 miles away, music started playing through the Bose sound system in my house. He did this through the Spotify app and then selected which device he wanted to play it on. I woke in the middle of the night to music playing, significant songs from our wedding etc. It was terrifying as I thought he was in the house and I'd no idea how it was happening". See All Northern Ireland 2023.

[4] During the parliamentary debates of the Protection from Harassment Bill, Lord Mackay of Clashfern and Lord Thomas Gresford noted that passing the Act would protect victims of harassment in general, irrespective of the source of the harassment. They mentioned stalking behaviour, racial harassment and anti-social behaviour by neighbours. See: HL Debate, Vol. 577, Cols. 917 and 923 (January 15, 1997).

[5] The CDA established a new range of racially aggravated offences with an enhanced penalty for a number of already existing ones (ss. 28-32, in force since 30th September 1998). On 14th December 2001, and through religiously aggravated offences, the Anti-terrorism, Crime and Security Act 2001 extended the protection to religious groups. Also, note that it is misleading to name them *aggravated offences*, since they constitute a distinct wrong. Without wishing to play down the importance of some well-settled debates, such as whether the seriousness of the offence is more prominent due to greater harm (caused or threatened) or greater

extremely rare. So much so that, at least until end 2017, there were no reported cases of this sort with the technology involved (Bakalis 2018).[6] If we stick to how non-aggravated online harassment or cyberstalking offences were designed by law (ss. 2-4 and 2A-4A of the PHA), there might be no apparent reasons to explain such a low number of cases. Even if the official data available does not provide us with an insight into the online problem, there is evidence enough to claim that some critical points are damaging the implementation of PHA and, by extension, the aggravated variant of the mutually linked[7] offences contained in ss. 2 and 4 (that is, harassment in its basic and heightened form) and ss. 2A and 4A (that is, stalking in its basic and heightened form).

We now turn to consider Mr Justice Spencer's sentencing remarks in *R v Joshua Bonehill-Paine* (2016), held at the Crown Court on 8th December 2016, which will hereafter be our case study. Despite its unreported nature, the *Courts and Tribunals Judiciary of England and Wales* made the remarks available, and so can be used to discuss some concerns and broader thematic points of interest involving online harassment.

2. CASE STUDY: *R V JOSHUA BONEHILL-PAINE* (2016)

We will introduce now a case study, which is especially appropriate for asking ourselves some open-ended questions to find out the usefulness of harassment/stalking offences in the online environment and within the hate crimes domain. Later, together with a relevant and selected case law, it will be possible to properly deconstruct or critically analyse these offences. A final conclusive assessment is reserved for a later stage.

2.1. RELEVANT EVENTS AND BACKGROUND INFORMATION

Joshua Bonehill-Paine, 24, is an English far-right activist who, according to Mr Justice Spencer, has "amassed a formidable record of offences of hate crime using the Internet".

culpability, the wrongdoing is based on the different civic character of the newly devised offences (civic hatred). That are the exclusionary views, attitudes and treatments (verbal or material) to elude recognising victims as equal entitled citizens or members of a politically organised state. In other words, violating one's civic duty to the other. It is to remind them of their proper place, belittling their significance as members of the community worthy of respect. , a broadly defined citizenship also captures those who are not yet formally citizens but members *de facto* of the civic community (e.g. immigrants or refugees), and even those who are passing through (e.g. tourists), as they are guests meriting hospitality by the polity and its members (Duff and Marshall 2018, 126-127 and 133-134). In relation to exclusionary or alienating attitudes or views, they must inevitably lead to behaviour denoting the same idea. If this behaviour is verbal, its meaning will be much more explicit. Nevertheless, what really makes the difference is that the behaviour, whether verbal or not, must be of a collective nature and must target vulnerable groups. If so, the behaviour takes on the dimension of being "genuinely threatening". It is the context what enlivens the meaning that lies behind a behaviour. Without this becoming an obligation to criminalise certain prejudicial behaviour, it does provide a firm theoretical basis for doing so. It is no longer a question of criminalising an inner emotion, but the enactment of hatred, providing criminal relevance to the meaning that the behaviour carries (Duff 2018, 200-201 and 307-308).

[6] This does not mean that the PHA was never used in the online environment. In fact, the case that is usually cited as a pioneer dates back to 1999. See BBC News 1999.

[7] This close relationship between harassment and stalking (ss. 2-4 and 2A-4A), or among its aggravated equivalents (s. 32 of the CDA), also had its timely manifestation in the Magistrates' Court Sentencing Guidelines (MCSG) provided by the Sentencing Council for them all (Sentencing Council 2018a, 2018b). Even until relatively recently, when there was still no sentencing guidance for stalking offences and its aggravated equivalents, it was agreed that the guidelines relating to harassment were fully applicable to stalking offences as well (Richardson 2014, 167).

At the time of conviction, he was serving a 40 months' imprisonment sentence for stirring up racial hatred in late 2015.[8] He has been considered a racist Internet troll who was kept in jail after this new trial for harassing Luciana Berger, a Parliament of the UK member. He was convicted to two years of imprisonment for posting five anti-Jewish articles within a racist hate campaign that he embarked on against Ms Berger. The first article, entitled *Racist anti-white Jewish Labour MP Luciana Berger exposed*, was posted on 27th October 2014. The second article, *Is the Labour Party a Jewish party?*, came into existence the 4th November. The third article, *ZOG* [Zionist Occupied Government] *attacks Daily Stormer in retaliation to successful Berger campaign*, was posted on 18th of November. The fourth article, *Joshua Bonehill: On the eve of battle*, is dated barely two days after the third one. And the last article, *The legacy of operation filthy Jew bitch*, was finally posted on 24th January 2015. In summary, throughout three consecutive months, he made photographic montages with the face of the victim in a rat body while describing her as "a racist and a fascist who hated all white British people, a vile Jewish middle class anti-British pro-genocide rodent and a very evil woman who supported anything other than Britain"; he conformed sexualized images of the victim with Labour Party's colleagues; he spoke highly of the support campaign carried out by a well-known American neo-Nazi and white supremacist website (Daily Storm); he flaunted of Nazi's symbology, principles and core values, with constant racist references to the Jewish enemy; and he actively promoted this hatred campaign towards Ms Berger, as a result of which she received a chain reaction of numerous anti-Semitic messages in a three-day period.

Unfortunately, this was not new to Ms Berger. She had received other anti-Semitic messages long before this happened, resulting in the 21-year-old Nazi admirer Garron Helm being sentenced to four weeks in prison. On 7 August 2014, he tweeted a picture of her with a Holocaust yellow star superimposed on her forehead, with the hashtag "Hitler was right". Ms Berger was also referred to as a "communist jewess". The sentence imposed on Helm was not the end of Ms Berger's nightmare, no matter how much she claimed that "this sentence sends a clear message that hate crime is not tolerated in our country" (Perraudin 2014). Helm had many supporters who managed to create the #filthyjewbitch social media campaign. The campaign consisted of contacting and verbally abusing her as much as possible as if she were a rat-faced parasite. Even if it was all coordinated by a United States-based neo-Nazi website, Joshua Bonehill-Paine himself was one of those who prompted this aggressive campaign against Ms Berger.

As Ms Berger explained before the House of Commons on 18 April 2018: "In total, four people have been convicted since 2013 for the anti-Semitic abuse and harassment they have directed towards me. Three of those were imprisoned[9] (...). In the wake of one of those convictions [that is, Garron Helm's conviction], a far right website in the United States initiated the #filthyjewbitch campaign, which the police said resulted in me receiving over 2,500 violent, pornographic and extreme anti-Semitic messages in just one day alone. There is currently one more person on remand, having made threats to my life because of my faith" (Commons Chamber 2018). This person on remand was the 19-year-old Nazi-obsessed Jack Coulson, who would end up jailed on suspicion of verbally threatened to kill

[8] In January 2015, he promoted a mass protest for March of that same year in a predominantly Jewish area of London, aiming to defy and combat the Jewish menace. Bonehill-Paine failed to mobilise citizens for the anti-Semitic "Liberate Stamford Hill" rally, so the protest was cancelled.

[9] Apart from Garron Helm and Joshua Bonehill-Paine's cases, John Nimmo was the third person who was sent to prison after being convicted. See footnote 25 below. On the other hand, the one that was not imprisoned seems to be the 53-year-old music promoter Philip Hayes. See PA/The Huffington Post 2013.

her. He said he would "get the bitch" and "put two bullets in the back of her head". These claims forced the police investigation, despite being finally convicted of a terrorist offence (Harpin 2018b). Even by the end of 2018, the 29-year-old Nick Nelson received a 20-week suspended prison sentence for sending abusive emails to Ms Berger in which he described her as a "vile useless Tory cunt". Nelson's emails were not anti-Semitic, but he claimed that Ms Berger was "using Judaism as a weapon" (Harpin 2018a).

Now back to *R v Joshua Bonehill-Paine* (2016), it was difficult to conceive a worse racially aggravated harassment case according to Mr Justice Spencer's overall impression. However, this statement could be considered half-truth, since the course of conduct of the offender did not cross the threshold of the higher-level offence of s. 4 of the PHA (harassment causing fear of violence).[10] It resulted in being contrary to s. 32(1)(a) of the CDA (Crown Prosecution Service – CPS – 2017a), which is only related to the lower-level offence of s. 2 of the PHA (harassment). Does it mean that the course of conduct did not meet the legal requirements under s. 4 of the PHA (heightened form of harassment)? There are some grounds for discussion, but this case is a good example to reflect how narrowly envisaged s. 4 is in comparison with s. 2 of the PHA.

2.2. LEGAL REFLECTIONS AND CONCERNS ON A CASE OF SEEMINGLY UNQUESTIONABLE SERIOUSNESS

The clearest distinction between s. 2 (basic harassment offence) and 4 of the PHA (heightened harassment offence) is that the latter requires violence fear causation on the victim, while the former does not need any violence to be feared by the victim. Therefore, it hints at the possibility of a *conduct crime* under s. 2 of the PHA (Ormerod and Laird, 2021, 778) and, undoubtedly, a *result crime* under s. 4 of the PHA. However, it is also possible to claim that s. 2 of the PHA contains a result crime (Bakalis, 2018) by alluding to a Supreme Court's pronouncement in *Hayes v Willoughby* (2013). There, according to Lord Sumption, *"harassment is a persistent and deliberate course of unreasonable and oppressive behaviour, targeted at another person, which is calculated to and* ***does cause*** *that person alarm, fear or distress"* (emphasis added; see *Hayes v Willoughby* [2013] UKSC 17, par. 1). Even if law does not define it, *harassment* is a familiar and effortlessly recognisable English word that includes causation in the view of this former Justice of the Supreme Court.[11] However, this is just the tip of the iceberg among the many complexities to attend for a successful conviction on any of those offences under ss. 2 and 4 of the PHA.

[10] Note that s. 4 of the PHA does not formally refer to harassment when requiring a course of conduct that causes the victim to fear violence. In fact, "s. 4 represents a distinct offence focused not on harassment but on the graver wrong of creating fear of violence". However, from a hermeneutic view, the courts have preferred to give a unitary sense to the PHA. In doing so, s. 4 has become a progressively closer legal alternative to s. 2 because of their shared nature. Otherwise, s. 4, seldom if ever, "(...) would only be of practical significance if there are circumstances in which two or more incidents with a sufficient nexus caused a fear of violence without also being harassing" (Ormerod and Laird 2021, 779-780). For example, in *R. v Livesey* (2006) was considered how a judge who rules that there is no case to answer on s. 4 of the PHA should act regarding the alternative s. 2 of the PHA. In particular, whether that judge is effectively obliged to lead the jury to a not guilty verdict or should better guide the jury to an alternative s. 2 of the PHA verdict if he thinks there is a case to answer this way. What was finally commented on this point is that the judge may allow the jury to consider the alternative verdict of harassment under s. 2 of the PHA. See *R. v Livesey (Mark Ivan)* [2006] EWCA Crim 3344.

[11] On the contrary, despite referring to harassment as an easily understandable word, other prominent authors keep a very suggestive silence on the emphasised words pointing to causation: harassment involves "(...)

To start with, one-off communications make any course of conduct simply non-existent (s. 7(3) of the PHA). Furthermore, the course of conduct to which s. 4 refers could be completed on any occasion (s. 4(2) of the PHA) and, arguably, not limited in time, whereas s. 2 represents a more conditioned legal response regarding the time interval between the two minimum incidents. Without trying to oversimplify the important casuistic examination that must be carried out first,[12] it can be stated that the fewer the number of incidents and the greater remoteness between them, the less likely to envisage a course of conduct which amounts to harassment under the PHA. Plain incidents involving conduct against a particular victim require a greater connecting factor for a course of conduct to be established. Acting in the same vein at all times, or the acts having some typological connection between them, is a piece of good evidence, though it might still be insufficient. Sometimes the subtlest perception of the victim can be fundamental,[13] despite this logic may lead as well to certain very sensitive people to overreact at the slightest opportunity. In short, the versatile contexts shrouding the incidents are of invaluable significance.[14]

Beyond the same contextual information, a never-ending debate is whether the way of committing the offence (online or offline) does or does not matter.[15] Additionally, the offender knew or ought to have known[16] that the course of conduct amount to harassment of the other (s. 1(1) of the PHA), which includes alarming the person or causing the person distress (s. 7(2) of the PHA).[17] Nonetheless, the difficulty lies in the nuances of the

improper oppressive and unreasonable conduct that is targeted at an individual and calculated to produce the consequences described in s. 7 [alarm and distress]" (Ormerod and Perry 2020, 330). Taking the above as what it is, a legal and timeless reference work for the criminal courts to rely on, these exact terms were closely observed in *R v ZN* [2016] EWCA Crim 92, pars. 38-39.

[12] In any relevant course of conduct, the elapsed time between the two minimum and necessary incidents depends very specially on the circumstances of the case. Therefore, a case-by-case analysis becomes essential. However, beyond this initial premise, there will be other variables that will be equated in rank to the elapsed time between the incidents. For example, direct contact between harasser and harassee has, *a priori*, a greater intimidating force comparing with the use of technology.

[13] What is more, the reality is frequently of an unprovable subtlety: "Often it is not the overt act itself which is harassing but the known, but unprovable, motives of the person involved" (Lawson-Cruttenden and Addison 1997, par. 2.10).

[14] If two harassing phone calls were made to the same victim in one-year time, it does not necessarily mean that the course of conduct is accomplished. On the contrary, if the second call was made with a particular anniversary in mind, the evidence for the course of conduct might be conclusive. On this particular, see: *Lau (Sai) v DPP* [2000] Crim LR 580. Even the incidents of a course of conduct that the victim did not perceive to be harassing at first may still become part of it. The victim may identify those incidents within an ongoing process of harassing much later (Law Commission 2018, par. 8.38).

[15] In fact, there is research advocating for a criminal law oriented to the outcome of the conduct, no matter whether the conduct was carried out online or offline. Even if there might be different levels of harassment, there is no difference between receiving an unexpected Facebook message and receiving an unexpected letter via postal service. Thus, a neutrally worded and all-encompassing offence is needed (Geach and Haralambous 2009, 243-247).

[16] Taking a closer look at the act of negligence specifically, it would be considered reprehensible if a reasonable person in possession of the same information thinks the course of conduct amounted to harassment of the other (s. 1(2) of the PHA).

[17] Nevertheless, it seems unreasonable that a person could ever be convicted without knowing that he or she is actually causing any negative emotion to the unintended victim. It can also be stated that the PHA was originally designed to prevent behaviours from those who had no intention of threatening, abusing or insulting the victim, nor of causing any fear of violence. The problem is that their benign behaviour did often cause it. Thus, although the law does not expressly indicate the causation requirement, this scenario was surely noticed by the drafter. For example: "Someone who stands every day outside a house with a notice saying 'I love you' or who sends red roses to a person's place of work every day is certainly not being threatening, abusive or insulting but could still be causing harassment, alarm or distress" (Addison 2007, 116). For all this, some

application of the law in an effort not to take it literally. Otherwise, it would diverge quite a lot from the ordinary, logical and prevalent understanding of harassment among society, resulting in a source of perverse results.[18] Any course of conduct that causes alarm or distress does not amount to harassment out of necessity. There is a need to filter the kind of conduct that, apart from causing alarm or distress, is objectively oppressive and unreasonable.[19] Citing some words of Lord Nicholls of Birkenhead in *Majorowski v Guy's and St Thomas's NHS Trust* (2006), "(...) courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable" (*Majorowski v Guy's and St Thomas's NHS Trust* [2006] UKHL 34, par. 30). Once again, this nature would be highly dependent on the contextual circumstances of the series of incidents that has taken place. But, if all the above were not enough, there is one more requirement to attend. That is the sufficient seriousness of the conduct to overcome the criminal threshold while forcing the criminal justice system to intervene (*Conn v The Council of the City of Sunderland* [2007] EWCA Civ 1492, par. 12). Once surpassed, it seems that the seriousness of the offence must be weighed in relation to the harm caused and the offender's culpability.[20]

Returning to *R v Joshua Bonehill-Paine* (2016), our case study, Mr Justice Spencer remarked that Ms. Berger was sick, feared and more concerned or her safety than ever before. She said that she was aware that what happened online did not always stay online. Ms Berger also required police protection at home and in her Liverpool constituency. She felt under attack in a matter occupying all her attention. Also, the judge referred to a key contextualising element. Barely four and a half months had passed since the tragic event in which a British citizen who also belonged to a neo-Nazi group (National Alliance) murdered Jo Cox, her fellow Member of Parliament. Following the s. 4 of the PHA, the fear of violence that must be caused to the victim can be deduced more roundaboutly; for instance, from behaviour or threats not specifically directed to the victim, but his/her loved

authors are of the view that s. 2 of the PHA should be amended in order to require acting intentionally causing such emotions, or in a subjectively reckless way for them to happen (Geach and Haralambous 2009, 257).

[18] An example is given in the case *R. v Smith* (2012) to corroborate the pointlessness of following the law to the letter: "A person who habitually drives too fast in a built-up area may cause alarm to other road users, but conduct of that sort was not what Parliament was invited to consider and would not fall within the ordinary understanding of what is meant by harassment". See *R. v Smith (Mark John)* [2012] EWCA Crim 2566, par. 24.

[19] There is also a vague escape route provided by law. In fact, the prohibition of harassment does not apply to the course of conduct if the pursuer shows "that in the particular circumstances the pursuit of the course of conduct was reasonable" (s. 1(3)(c) of the PHA). In *R v Colohan* (2001) was made clear that the conduct has to be objectively reasonable for the jury or court. In case there was any doubt left, it is reassured that "there is no warrant for attaching to the word 'reasonable' or via the words 'particular circumstances' the standards or characteristics of the defendant himself". See *R. v Colohan (Sean Peter)* [2001] EWCA Crim 1251, par. 21.

[20] In fact, some factors were identified in *R. v Liddle & Hayes* (1999) for the sentencers to bear in mind concerning ss. 2 and 4 of the PHA: (1) if there was a history of disobedience to civil or criminal court orders by the offender; (2) the seriousness of the offence, ranging from actual violence through to threats, down to letters which may express a wish to harm, affection, etc.; (3) if it was a persistent misconduct or a solitary instance of misbehaviour; (4) if the conduct causes physical or psychological effect upon the victim and the risk posed to either the victim or their family; (5) the mental health of the offender and whether he was willing to undergo treatment; and (6) the offenders reaction to the proceedings, and if there is a plea of guilty, an evidence of remorse or a recognition of the need for help. See *R. v Liddle & Hayes* [1999] 5 WLUK 362.

ones (e.g. threats to his/her dog) or his/her properties (e.g. threats to burn down his/her house). There is no need for a specific threat of violence (Ormerod and Laird 2021, 780).

In summary, it is difficult to explain why the heightened form of harassment settled in s. 4 of the PHA was not applied at the time. Once again, as remarked by Mr Justice Spencer, it was difficult to conceive a worse racially aggravated harassment case. That being so, it is also difficult for us to envisage a clearer example than *R v Joshua Bonehill-Paine* (2016) where the offence under s. 4 of the PHA applies.

2.3. AN ASSORTMENT OF LEGAL PATHS FOR AGGRAVATED ONLINE HARASSMENT ON HOSTILITY GROUNDS THAT ARE BEYOND THE *PROTECTION FROM HARASSMENT ACT 1997*

As noted above, no specific or unmistakable threat of violence is needed under s. 4 of the PHA, which would have been the form of harassment that better fits in *R v Joshua Bonehill-Paine* (2016). In addition, it is noteworthy to mention that *threats to kill*, whether implied or express, and whether they will credibly come into being against the recipient or a third person but causing fear to the recipient, are diverted to the s. 16 of the Offences against the Person Act 1861 (OAPA). This is essential since, if that is the case,[21] the offence might be under the influence of the penalty enhancement sentencing provision on hostility grounds (s. 66 of the Sentencing Act 2020, to be considered at the *sentencing stage*),[22] never becoming an aggravated offence like would happen with ss. 2 and 4 of the PHA (see s. 32 of the CDA for the racially/religiously aggravated harassment, to be considered at the *liability stage*). Other threats of violence to the person may also fall to be considered under

[21] However, it is an uncommon scenario. The s. 16 of the OAPA has been applied very rarely to messages on social media. There are a number of public order offences that, even with no practical translation, at the very least they offer a broader scope for threatening behaviour (Barker and Jurasz 2019, 47-55).

[22] That is, the hostility of a prejudiced kind is considered once someone has already been convicted and for providing a penalty readjustment. Note also that the increase in the sentencing stage for online harassment based not on racial or religious hostility grounds but on disability, sexual orientation, or transgender identity grounds is perfectly possible. Even if few unreported cases are known, one of them is the case of Saul Nyland, a 25 year old man sentenced on 25th January 2016 to six weeks of imprisonment plus two more weeks due to a hate crime uplift over two harassment offences. The victim was 31 years old and had a noticeable speech impediment and some physical difficulties caused by a childhood accident. The offender and victim knew each other as they had worked together. The offender has harassed the victim on social media (e.g. posting photoshopped images of the victim and abusive messages on the victim's Facebook site) and by ringing his phone nightly while mocking and threatening to harm because of his disability (Manchester Evening News 2016). Finally, whenever a characteristic other than those covered by the penalty enhancement sentencing provisions (e.g. age or gender) results in being at stake in an online harassment case, courts may shift to consider the overarching principle of the seriousness of an offence. This principle's guideline governing the courts of England and Wales has been in force from 16th December 2004 until 1st October 2019, superseded by a new general guideline. Formerly the guideline expressly recognised that an offence motivated by hostility towards a minority group (or a member or members of it) and deliberately targeting vulnerable victims were factors indicating higher culpability. Now the general guideline likewise points to committing a crime against vulnerable victims as an aggravating factor. The rationale behind this non-statutory factor increasing the seriousness of the offence is still a hotly debated topic (Ashworth and Kelly 2021, 150-152). Even if the aggravating reason might be the greater culpability of the offender, it is also acknowledged that harm (e.g. physical or psychological harm) "is likely to be increased" due to the victim's vulnerability. In any case, the increase that is focused on culpability grounds is possible in three different situations: (i) if the offender "targeted a victim because of an actual or perceived vulnerability"; (ii) if the victim "is made vulnerable by the actions of the offender (such as a victim who has been intimidated or isolated by the offender)"; or (iii) if an offender "persisted in the offending once it was obvious that the victim was vulnerable (for example continuing to attack an injured victim)" (Sentencing Council 2019). This guarantees not leaving any stone unturned regarding other forms of victimisation that have not yet entered into the hate crime legislation.

the provisions of the Malicious Communications Act 1988 (s. 1 of the MCA)[23] or the Communications Act (s. 127 of the CA),[24] instead of the PHA.[25]

In general, both MCA and CA are said to have surpassed PHA as more narrowly defined and suitable options to counteract harassment on the Internet. Actually, "[i]n some instances, for example posting an offensive message on a person's wall on Facebook, there is duplicity in the possible offences that can be used—all three Acts [that is, MCA, PHA and CA] (...) could potentially apply. Obviously more than one message would need to be posted for the PHA 1997 to be applicable, but this highlights the necessity to dissect the conduct to establish what was done, via which communication medium and how many times" (Geach and Haralambous 2009, 253). With this in mind, some scholars have branded s. 4 of the PHA as a fall-back lesser offence, despite s. 2 and s. 4 being equally remedial for the online environment.[26] From a critical viewpoint, it is pointed to the Crown Prosecution Service's (CPS) unwillingness or inability to use the alternative routes enabled by the PHA for social media abuse (Barker and Jurasz 2019, 67). This is so even though the CPS has adopted a clear criterion of how to proceed. In particular, where there are interferences between communication offences (e.g. malicious communications or communications concerning the misuse of public electronic communications network) and substantive offences (e.g. harassment or stalking), giving priority to the latter would be appropriate (Law Commission 2018, par. 4.141). In short, only those electronic communications that cannot be charged under anti-harassment offences (ss. 2 and 4 of the PHA) would be so under the more specific ones linked to offensive comments (s. 1 of the MCA and s. 127(1) of the CA) (Clough 2015, 434). The fact is that this is not the case in current judicial practice.

[23] The s. 1 of the MCA deal with sending to another person a letter, an electronic communication, or an article which (1) conveys an indecent or grossly offensive message, a threat, or false information and is known or believed to be false by the sender; (2) whether in whole or in part, is of an indecent or grossly offensive nature. What lies behind any sending is the sender's intention to cause distress or anxiety (a) to the recipient or (b) to any other person to whom he intends that it or its contents or nature should be communicated.

[24] As a conduct crime, the actus reus of the offence rests exclusively in making a communication (s. 127(1)(a) of the CA), which necessarily involves a grossly offensive, indecent, obscene or menacing message, or making such a communication to be so sent (s. 127(1)(b) of the CA), with complete disregard for the recipient. Even if there were no recipients, criminalising the speech would still be possible. Despite likewise dealing with improper use of a public electronic communications network, there is a different offence under s. 127(2) of the CA, according to which it is punishable to send a message by a public electronic communications network that the offender knows to be false, or causes such a message or matter to be sent, or persistently makes use of a public electronic communications network, if it is done to cause annoyance, inconvenience or needless anxiety to another (s. 127(2) of the CA).

[25] The unreported and closely related case of John Nimmo would be proof enough. John Nimmo, 28, who has conducted cyberhate abuse campaigns before, was jailed on 10 February 2017 at the Newcastle Crown Court after sending some emails to Luciana Berger making anti-Semitic death threats. She told her she would "get it like Jo Cox", she sent a large knife warning her to watch her back, and she called her "Jewish scum". She finally pleaded guilty of nine offences, and there was a successful sentence uplift for some of them because of the offender's racial hostility motivation. According to CPS, Nimmo recognised four charges of sending a communication conveying a grossly offensive message, three conveying a threatening message and two of sending a communication conveying false information. See CPS 2017b, Laville 2017.

[26] *R. v Bradburn* (2017) is an example of an s. 4 conviction involving new technologies. From 13th August to 17th September 2016, the offender created a false Facebook profile to conceal his identity that was finally used to send friendship requests, indecent proposals, erect penis pictures, and numerous threats both to the victim and her daughter within a wider blackmail activity directed against them. For example, there was a threat of kidnapping the victim and her daughter, a threat of sexually assaulting her daughter, and threats about sending nasty pictures to her daughter. See *R. v Bradburn (Ashley)* [2017] EWCA Crim 1399, pars. 6-13 and 50.

One of the keys to understanding the PHA provisions' abandonment is that the MCA and the CA have, *de facto*, monopolised almost all the online communication landscape attending to the content (that is, an indecent, grossly offensive, threatening or menacing message, or a message containing false information).[27] For some, one more reason to implement the MCA before the PHA would be that the former attaches a higher punishment than the latter. In fact, the maximum penalties for offences under the MCA were recently increased by s. 32 of the Criminal Justice and Courts Act 2015. The significantly harsher penalties for trolling activity might be, whether rightly or not, more welcomed than those contained in the analogous PHA provisions (Kirk 2016, 130).

The PHA can only make use of a reduced space left. For example, the innocuous communication's nature for another observer which, actually, has an enormous significance to the victim due to the relationship with the offender. Moving ahead from the content perspective, other online activities, such as electronic surveillance (monitoring a person's communications and movements), are dealt with the PHA (Killean *et. al.* 2016, 15). Precisely this last activity is one of the many that, in particular circumstances, the PHA expressly associates with stalking.[28]

3. CONCLUSION

Harassment refers to an unwanted pattern of conduct (that is, conduct –which includes speech– on at least two occasions) from the victim's perspective and on a bilateral basis (s. 2 of the PHA), except for collective harassment, which might be two or more offenders involved. Harassment includes alarming or causing the individual distress. A more serious harassment offence is carrying out an unwanted pattern of conduct, putting people in fear of violence (s. 4 of the PHA). Stalking is an aggravated form of harassment that, apart from amounting to harassment, demands some acts/omissions related to stalking (s. 2A of the PHA). Such acts/omissions are associated with stalking in particular circumstances. In short, stalking implies abuse that has become an obsession. There is also an aggravated form of stalking, which involves fear of violence or serious alarm or distress (s. 4A of the PHA).

[27] For example, cyber-bullying (or using social media or other electronic means for bullying purposes) is adequately addressed with the range of offences of the PHA. The CA and the MCA would be likewise useful for tackling the referred online activity. For instance, the latter would be so if the communications involve grossly offensive messages with the intention of causing distress or anxiety to the picked victim (Law Commission 2014, par. 7.123; House of Lords 2014, 12, 24 and 30). In rebuttal, some may argue that there is no precondition for the nature of the conduct in the case of the PHA, as opposed to the MCA, so it must have been a more useful tool for the Internet (Geach and Haralambous 2009, 251).

[28] The s. 2A(3) of the PHA contains the acts or omissions that may well come with stalking behaviour. For example, to monitor the use by a person of the internet, email or any other form of electronic communication (s. 2A(3)(d) of the PHA). If we attend to the CPS guidance, the cyberstalking examples may include: a) threatening or obscene emails or text messages; b) spamming, where the offender sends the victim multiple junk emails; c) live chat harassment or flaming, a form of online verbal abuse; d) baiting or humiliating peers online by labelling them as sexually promiscuous; e) leaving improper messages on online forums or message boards; f) Unwanted indirect contact with a person that may be threatening or menacing such as posting images of that person's children or workplace on a social media site, without any reference to the person's name or account; g) posting photoshopped images of persons on social media platforms; h) hacking into social media accounts and then monitoring and controlling the accounts; i) sending electronic viruses; j) sending unsolicited email; and k) cyber identity theft (CPS 2023, par. 44).

Even though the racial issue –and concern– was in some way at the heart of the origin of all the harassment/stalking offences under the PHA, none was designed to address today's technological challenges in the digital agora of social media. Even though it is true that these offences have managed to be reinvented and adapted, their applicability to the online environment (online harassment/cyberstalking) has been residual. It is also incredibly problematic for these offences to absorb online hate through s. 32 of the Crime and Disorder Act 1998 (racially or religiously aggravated harassment/stalking offences), even if the offender is often driven by hostility. A communicative bridge shall be imposed from one individual (or many) to another. Racially or religiously aggravated online harassment/cyberstalking examples are scarce in case law, at least concerning cases that have been reported.

Harassment/stalking are context-dependent offences. We must check the time interval between the incidents, the number of incidents, etc. Moreover, we have noticed an endless and polarised debate surrounding causation. In other words, a discussion on whether the offence under s. 2 of the PHA is a conduct crime or a result crime. In fact, despite causing alarm or distress to someone, we also need to check if such conduct was objectively oppressing and unreasonable, as a kind of punishable filter. Interestingly, we have noticed that some scholars advocate for an amendment to outlaw acting intentionally to alarm a person or cause distress. Currently, no intentional element seems required under s. 2 of the PHA.

For all these reasons, and many others that are interwoven, there seem to be far more specific offences to which some harassment manifestations online are diverted. We can safely say that the usefulness of harassment and stalking offences on the Internet is minimal in terms of combating the sociological phenomenon of hate crimes. The Malicious Communications Act 1988 (s. 1 of the MCA) and the Communications Act (s. 127 of the CA) are monopolising the criminalisation possibilities for harassment and stalking cases online, which seems quite paradoxical. In addition, there are no apparent reasons that allow us to understand why in *R v Joshua Bonehill-Paine* (2016), being a manifest case of a *heightened* form of harassment (s. 4 of the PHA), the racially/religiously aggravated harassment offence is applied (that is, the offence under s. 32(1)(a) of the CDA, correlated with the *basic* harassment offence of s. 2 of the PHA). Whichever way one looks at it, the case study already discussed is particularly symptomatic of an illogical and confusing judicial praxis.

REFERENCES

Addison, N., 2007. *Religious discrimination and hatred law*. Abingdon/New York: Routledge-Cavendish.

All Northern Ireland, 2023. Over 80 alleged stalkers arrested in first year of NI legislation. *Police Service of Northern Ireland* [online], 24 April. Available at: https://www.psni.police.uk/latest-news/over-80-alleged-stalkers-arrested-first-year-ni-legislation

Ashworth, A., and Kelly, R., 2021. *Sentencing and criminal justice.* 7th ed. Oxford/Portland: Hart.

Bakalis, C., 2018. Rethinking cyberhate laws, *Information & Communications Technology Law*, 27(1), 86–110.

Barker, K., and Jurasz, O., 2019. *Online misogyny as a hate crime. A challenge for legal regulation?* Abingdon/New York: Routledge.

BBC News, 1999. Internet stalker faces jail. *BBC* [online], 8 September. Available at: http://news.bbc.co.uk/2/hi/uk_news/442280.stm

Cavezza, C., and McEwan, T.E., 2014. Cyberstalking versus off-line stalking in a forensic sample. *Psychology, Crime & Law*, 20(10), 955–970.

Clough, J., 2015. *Principles of cybercrime*. 2nd ed. Cambridge/New York: Cambridge University Press.

Commons Chamber, 2018. Anti-Semitism (17th April 2018). Luciana Berger excerpts. *Parallel Parliament* [online]. Available at: https://www.parallelparliament.co.uk/mp/luciana-berger/debate/2018-04-17/commons/commons-chamber/anti-semitism

Crown Prosecution Service (CPS), 2017a. Man who posted articles to MP 'littered with hate' convicted. *CPS News Brief* [online], 7 December. Available at: https://cpsuk.typepad.com/blog/page/10/

Crown Prosecution Service (CPS), 2017b. Man who sent anti-Semitic messages to MP and others jailed. *CPS News Brief* [online], 10 February. Available at: https://cpsuk.typepad.com/blog/page/9/

Crown Prosecution Service (CPS), 2023. *Guidance on prosecuting cases involving social media and other electronic communications* [online]. London: Crown Prosecution Service. Available at: https://www.cps.gov.uk/legal-guidance/social-media-and-other-electronic-communications

Dreßing, H., *et al.*, 2014. Cyberstalking in a large sample of social network users: prevalence, characteristics, and impact upon victims. *Cyberpsychology, Behavior, and Social Networking*, 17(2), 61–67.

Duff, R.A., 2018. *The realm of Criminal law*. Oxford/New York: Oxford University Press.

Duff, R.A., and Marshall, S.E., 2018. Criminalizing hate?. *In:* T. Brudholm and B.S. Johansen, eds., *Hate, politics, law. Critical perspectives on combating hate*, Oxford/New York: Oxford University Press, 115–149.

Fodor, J., 2022. Is hate against the law? Legal responses to cyberhate. *In:* J. Bacigalupo, K. Borgeson, and R.M. Valeri, eds., *Cyberhate. The far right in the digital age*, Lanham, London: Lexington Books, 43–64.

Geach, N., and Haralambous, N., 2009. Regulating harassment: is the law fit for the social networking age? *Journal of Criminal Law*, 73(3), 241–257.

Harpin, L., 2018a. Corbyn supporter sentenced for abuse against Jewish MPs. *The JC* [online], 10 December. Available at: https://www.thejc.com/news/uk-news/jeremy-corbyn-supporter-sentenced-for-antisemitic-threats-against-jewish-mps-luciana-berger-and-ruth-1.473818

Harpin, L., 2018b. Teen boasted he wanted to kill Jewish MP. *The JC* [online], 19 July. Available at: https://www.thejc.com/news/uk-news/luciana-berger-murder-boast-terror-offences-trial-1.467449

Home Office, 2001. *Animal rights extremism: Government strategy. A consultation document* [online]. Available at: https://wellcomecollection.org/works/seuxbmn3/items?canvas=1

House of Lords, 2014. *Social media and criminal offences. Select Committee on Communications. 1st report of session 2014-15* [online]. London: The Stationery Office. Available at: https://publications.parliament.uk/pa/ld201415/ldselect/ldcomuni/37/37.pdf [Accessed 7 May 2023].

Kienlen, K.K., *et al.*, 1997. A comparative study of psychotic and nonpsychotic stalking. *Journal of the American Academy of Psychiatry and the Law*, 25(3), 317–334.

Killean, R., *et. al.*, 2016. *Review of the need for stalking legislation in Northern Ireland* [online]. Available at: https://pureadmin.qub.ac.uk/ws/portalfiles/portal/123538801/Review_of_the_Need_for_Stalking_Legislation_in_Northern_Ireland..pdf

Kirk, E., 2016. Legislation and international frameworks tackling online islamophobia. *In:* I. Awan, ed., *Islamophobia in cyberspace. Hate crimes go viral*, Abingdon/New York: Ashgate, 123–136.

Laville, S., 2017. Internet troll who sent Labour MP antisemitic messages is jailed. *The Guardian* [online], 10 February. Available at: https://www.theguardian.com/uk-news/2017/feb/10/internet-troll-who-sent-labour-mp-antisemitic-messages-is-jailed

Law Commission, 2014. *Hate crime: should the current offences be extended? (Law Com. No. 348)* [online]. May. Available at: https://www.lawcom.gov.uk/app/uploads/2015/03/lc348_hate_crime.pdf

Law Commission, 2018. *Abusive and offensive online communications: a scoping report (Law Com. No. 381)* [online]. November. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/912203/6_5039_LC_Online_Comms_Report_FINAL_291018_WEB.pdf

Lawson-Cruttenden, T., and Addison, N., 1997. *Blackstone's guide to the Protection from Harassment Act 1997*. London: Blackstone Press.

Manchester Evening News, 2016. Facebook troll who subjected disabled man to 'tirade' of online abuses is jailed. *Manchester Evening News*, 28 January.

Marrinan, D., 2020. *Hate crime legislation in Northern Ireland. Independent review* [online]. Department of Justice (NI). Available at: https://www.justice-ni.gov.uk/sites/default/files/publications/justice/hate-crime-review.pdf

Meloy, J.R., 1998. The psychology of stalkers. *In:* J.R. Meloy, ed., *The psychology of stalking: Clinical and forensic perspectives*. Cambridge: Academic Press, 1–23.

Monaghan, R., 2013. Not quite terrorism: animal rights extremism in the United Kingdom. *Studies in Conflict & Terrorism*, 36(11), 933–951.

Nurse, J.R.C., 2019. Cybercrime and you: how criminals attack and the human factors that they seek to exploit. *In:* A. Attrill-Smith *et al.*, eds., *The Oxford handbook of cyberpsychology*, Oxford/New York: Oxford University Press, 663–690.

Ormerod, D., and Laird, K., 2021. *Smith, Hogan, and Ormerod's Criminal law*. 16th ed. Oxford/New York: Oxford University Press.

Ormerod, D., and Perry, D., 2020. *Blackstone's Criminal practice 2021*. 30th ed. Oxford/New York: Oxford University Press.

PA/The Huffington Post, 2013. Luciana Berger, Jewish MP, Subject To Anti-Semitic Tirade, Abuser Philip Hayes Found Guilty and Fined. *Huffington Post* [online], 9 January. Available at: https://www.huffingtonpost.co.uk/2013/01/09/luciana-berger-jewish-mp-antisemitic-abuse_n_2439941.html

Perraudin, F., 2014. Man jailed for antisemitic tweet to Labour MP. *The Guardian* [online], 20 October. Available at: https://www.theguardian.com/uk-news/2014/oct/20/man-jailed-antisemitic-tweet-labour-mp

Rapisarda, S.S., and Kras, K.R., 2023. Cyberstalking. *In:* D. Hummer and J.M. Byrne, eds., *Handbook on crime and technology*, Cheltenham/Northampton: Edward Elgar, 303–333.

Richardson, M., 2014. *Cyber-crime: law & practice*. London: Wildy, Simmonds & Hill.

Sentencing Council, 2018a. *MCSG. Harassment (fear of violence)/Stalking (fear of violence)/Racially or religiously aggravated harassment (fear of violence)/stalking (fear of violence)* [online]. 1 October. Available at: https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/harassment-fear-of-violence-stalking-fear-of-violence/

Sentencing Council, 2018b. *MCSG. Harassment/stalking/racially or religiously aggravated harassment/stalking* [online]. 1 October. Available at: https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/harassment-stalking-racially-or-religiously-aggravated-harassment-stalking/

Sentencing Council, 2019. *General guideline: overarching principles* [online]. 1 October. Available at: https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/general-guideline-overarching-principles/

Wall, D., 2001. Cybercrimes and the Internet. *In:* D. Wall, ed., *Crime and the Internet.* London/New York: Routledge, 1–17.

CASE LAW

Conn v The Council of the City of Sunderland [2007] EWCA Civ 1492.

Hayes v Willoughby [2013] UKSC 17.

Lau (Sai) v DPP [2000] Crim LR 580.

Majorowski v Guy's and St Thomas's NHS Trust [2006] UKHL 34.

R v Joshua Bonehill-Paine (2016) [online]. Crown Court, 8th December. Available at: https://www.judiciary.uk/wp-content/uploads/2016/12/spencer-j-sentencing-remarks-bonehill-paine-as-delivered-08-12-16.pdf

R v ZN [2016] EWCA Crim 92.

R. v Bradburn (Ashley) [2017] EWCA Crim 1399.

R. v Colohan (Sean Peter) [2001] EWCA Crim 1251.

R. v Liddle & Hayes [1999] 5 WLUK 362.

R. v Livesey (Mark Ivan) [2006] EWCA Crim 3344.

R. v Smith (Mark John) [2012] EWCA Crim 2566.