

## A freeB.E.A.G.L.E.S. briefing

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### Malicious Phone Calls

The two main pieces of legislation to be aware of are Section 43 of the Telecommunications Act 1984 and the Protection from Harassment Act 1997.

#### **Section 43 Telecommunications Act 1984**

- (1) A person who —
- (a) sends, by means of a public telecommunication system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or
  - (b) sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public telecommunication system,

shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale or both.

The offence therefore consists of either:

- a) sending a message or other matter that is grossly offensive or of an indecent, obscene or menacing character,
- b) sending a message known to be false for the purpose of causing annoyance, inconvenience or needless anxiety, or
- c) persistently making use of a public telecommunication system for the purpose of causing annoyance, inconvenience or needless anxiety.

#### **Notes**

- a) *Grossly offensive, indecent, obscene or menacing messages*

These words carry their ordinary meaning, and it would be a matter of fact for the magistrates to decide in any given case. However there is a definition for “obscene” used in the Obscene Publication Acts which also applies here. A message etc is deemed to be obscene if its effect is such as to tend to deprave and corrupt persons who are likely having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it!

The threshold for establishing an offence is certainly a higher one for the prosecution than that for a Section 5 offence (Criminal Justice Act) – more is needed than merely threatening, insulting or abusive words. The word “menacing” implies something more dangerous than merely threatening.

It appears from the wording that a message which would be merely offensive would not constitute an offence – it must be grossly offensive. The same guidelines apply here as to those to follow

regarding sending letters or e-mails. If you phoned up an HLS worker and told them that you thought they were an animal murderer this may be offensive but not grossly so. If you likened them to a Nazi this might be deemed to be grossly offensive. If you told them you would protest at the lab every day to let them know what you think this could not be deemed menacing, but if you promised a home demo it might well be.

The borderline between what is acceptable freedom of expression and what constitutes an offence will not always be clear. The Human Rights Act 1998 applies to this act as it does to any other piece of legislation, so it must be interpreted consistently with your European Convention right to freedom of expression.

The law does not make it an offence to make phone calls in the middle of the night. However the content of a phone call could be significantly affected by the time of the call. For example, a court might construe a single silent phone call to be menacing at 2am but not at 2pm.

b) *Sending a message known to be false for the purpose of causing annoyance, inconvenience or needless anxiety.*

Note here that the offender must actually know the message to be false. If you phoned HLS to convey the mistakenly held belief that Brian Cass was dead you would not be guilty if you believed this to be the case (even if such a belief were unreasonable) Note that the terms “annoyance, inconvenience or needless anxiety” imply that your false message does not need to cause a great deal of distress to constitute an offence.

c) *Persistently making use of a public telecommunication system for the purpose of causing annoyance, inconvenience or needless anxiety.*

This clearly covers situations where someone repeatedly calls the same number, for example in order to jam the phone line. No obscene words etc need to be said - the offence is constituted by the repeated phone calls themselves.

The repeated use need not be to the same number. If you spent the whole day ringing various extension numbers of a company in order to cause annoyance etc then the offence would be complete. Similarly, an offence would be committed by someone making repeated silent phonecalls to a list of separate residential numbers.

All of the above offences could be committed by sending text messages from a mobile phone or by sending faxes. The technique of sending a black fax would not be covered by the act unless it was done repeatedly.

None of the above offences require a victim who has been caused anxiety etc. The offence is complete if your intention is to cause such anxiety. For example if you left a message on an answer-phone which was intercepted by the police before the “victim” answered it, you could still be liable.

All offences are triable in the Magistrates’ court only, and are punishable by up to 6 months imprisonment. They are not “arrestable offences”. (NB offences under the Malicious Communications Act 1988 are not arrestable either).

## Sections 2 and 4, Protection from Harassment Act 1997

In order to cause an offence under Section 2 of the Protection from Harassment Act 1997, you must employ a course of conduct amounting to harassment of another. This charge might be preferable where it is difficult for the prosecution to show that you have sent a grossly offensive message etc, and simply need to show that you have caused harassment on more than one occasion.

However this act requires that there is an actual victim willing to give evidence that you have caused the harassment, and there is the statutory defence that your conduct was reasonable. So Section 2 of this act would probably not be the preferred choice for prosecuting.

Charges may be alternatively be brought under Section 4 of the act - a course of conduct causing fear of violence – in more serious cases. This carries a maximum penalty of 5 years' imprisonment. This would cover death threats and threats of bodily harm.

See the factsheet on the Harassment Act in the free B.E.A.G.L.E.S. legal booklet for more detail on this act..

### Sentencing

Sentencing, like with many minor public order offences, would depend very much on the circumstances and the amount of anxiety etc that you had actually caused. Prison would be unlikely in most cases, but a repeat offender with a history of public order offences would run the risk of a custodial sentence. For a first offence you would be most likely to get a conditional discharge or a fine.

Possible offences which could go to court are::

- 1) Repeated silent phone calls or text messages to an individual or numerous individuals – eg employees of a company
- 2) Ringing someone up with information you know to be false eg pretending to be a doctor from the hospital and saying that their spouse has been involved in an accident.
- 3) Sending a text message to an individual containing obscene language (indecent or obscene)
- 4) Phoning someone up and saying you will demonstrate at their house if they continue to work at HLS (menacing)
- 5) Phoning someone up and telling them they are no different from Nazis working in a concentration camp (grossly offensive)

There is no statutory defence that your conduct was reasonable, a defence which is available, for example, under the Malicious Communications Act 1988 or under Section 5 of the Public Order Act 1986. But, as with all legislation, the court has to interpret this law consistently with your

human rights and must therefore have regard to your freedom of expression when deciding whether or not you have committed an offence.

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