

Briefing for the Public Petitions Committee on petition PE2259: Create a criminal offence for targeted online character assassination and unnamed slander campaigns, lodged by Katrina Murray

Brief overview of issues raised by the petition

- The petitioner is calling for online character abuse to become a criminal offence. She argues that police do not currently intervene because they see this as a civil justice issue. She is particularly concerned about activities which do not name the victim but are still able to cause harm by using indirect means to make it clear who is being targeted.
- The term defamation in Scots law covers both the English law concepts of libel (written) and slander (spoken). The legal remedy for attacks on character of the type described by the constituent would usually be defamation action. This is a civil justice matter, meaning it would be up to the person affected to raise, and pay for, their own legal action. Civil Legal Aid is not usually available for defamation actions.
- Defamation occurs where a false statement is made about a person to a third party which causes – or is likely to cause – serious harm to that person’s reputation. A statement will be defamatory where it “causes harm to the person’s reputation (that is, if it tends to lower the person’s reputation in the estimation of ordinary persons)”¹. There are various defences to a defamation action, including that the statement is true.
- There are a range of existing criminal offences which may also be relevant to the situation the constituent describes. She highlights section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. This targets threatening or abusive behaviour (including communicating things). The offence is committed where:
 - a person behaves in a threatening or abusive manner;
 - the behaviour would cause a reasonable person to suffer fear or alarm; and
- the person intends their behaviour to cause fear or alarm, or is reckless about whether it would do so.

¹ Section 1(4) of the Defamation and Malicious Publication (Scotland) Act 2021.

- Section 127 of the Communications Act 2003 creates three offences covering improper use of an electronic communications network. They are:
 - sending (or causing to be sent) a message which is grossly offensive or of an indecent, obscene or menacing character;
 - sending (or causing to be sent) a message which is known to be false, for the purpose of causing annoyance, inconvenience or needless anxiety to someone else; and
 - persistently making use of a public electronic communications network, for the purpose of causing annoyance, inconvenience or needless anxiety to someone else.
- There are other potentially relevant interventions. The Protection from Harassment Act 1997 allows courts to issue non-harassment orders in both civil and criminal law contexts. The Online Safety Act 2023 places a duty of care on search engines and online platforms hosting user-generated content.
- There can be significant challenges to collecting evidence relating to online offences. People can easily hide their identity online. They may also use services in other countries. This can make it difficult to investigate and prosecute perpetrators.

Key Organisations

- Scottish Government
- Police Scotland
- Crown Office and Procurator Fiscal Service
- Law Society of Scotland/Scottish Solicitors Bar Association (representing criminal defence solicitors).

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