

# Disabled access day 2019—is the law fit to protect disabled people online?

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*Information Law analysis: On the eve of disabled access day 2019, we look at how effective current legislation is at protecting disabled users against abuse and discrimination in the online domain. Catherine Casserly, a barrister specialising in equality and discrimination at Cloisters, and Bela Gor, head of campaigns and legal at Business Disability Forum, come together to analyse the impact of a recent government report on the issue and how change can be achieved.*

## Original news

Disabled people not protected by online abuse laws, says Petitions Committee, [LNB News 23/01/2019 23](#)

*The House of Commons Petitions Committee has published its report '[Online abuse and the experience of disabled people](#)', revealing the extreme level of abuse disabled people receive online. The disabled people who took part in the inquiry were enthusiastic users of social media, yet many were driven from online platforms while their 'abusers went unchecked'. The inquiry was triggered by a petition started by Katie Price, who has a disabled child, which attracted 221,914 signatures before it closed early due to the 2017 general election.*

## What is the context of the report on online abuse law and disabled people and why was this angle in particular examined?

This report is the product of the inquiry into online abuse and disabled people. The inquiry was prompted by an online petition by Katie Price, whose son has multiple disabilities and has been the target of sustained 'trolling' on media sites. The inquiry revealed that this is not an isolated occurrence. Disabled people face a barrage of abuse online.

While disabled people are subject to the same type of abuse as other internet users, the report recognised that there is another layer and character to the abuse directed at disabled people. This includes abuse going to the very existence of a disabled person with comments about their specific disability, abusive terminology, being told that they would be better off dead, and repeated accusations of benefit fraud or being 'a drain on society'.

The inquiry and its report came in the wake of considerable work in this area.

In March 2014, the Culture, Media and Sport Select Committee's [report](#) on online safety stated that clarification or consolidation of the law on online bullying would be welcome.

In 2017, the Home Affairs Select Committee, in its report '[Hate crime: abuse, hate and extremism online](#)', criticised social media and technology companies for not doing enough to remove illegal content, review community standards or improve the quality and speed of their responses to reports of dangerous and illegal content. A further Home Affairs Committee inquiry on online abuse and hate crime was ongoing when this report was agreed.

Separately, in 2016, the Law Commission [consulted](#) on whether the law on online communications needed reform. In October 2017, it [stated](#) 'the failure of the law in this area disproportionately affects women and minority groups'. In November 2018, it [concluded](#) that the criminal law needed reform to protect victims from online abuse.

In October 2017, the government launched a [Green Paper](#) on an internet safety strategy. In May 2018, it [responded](#) to the [consultation](#) on the strategy with new proposals around a social media levy and a code of practice. The government's repeated answer to calls for legislation to tackle online abuse is that 'What is illegal online, is illegal offline'. This, however does not seem to be true in practice.

**How is online abuse currently being regulated by the law and why, particularly for disabled people, is it not adequate anymore?**

Under existing law, a range of offences can cover online abuse, including fraud, sexual offences and stalking and harassment, as well as specific communications offences under the [Communications Act 2003 \(CA 2003\)](#) and the [Malicious Communications Act 1988 \(MCA 1988\)](#).

[MCA 1988](#) and [CA 2003](#) cover communications that are menacing, grossly offensive, indecent, obscene or false. The committee, however, heard that defining 'grossly offensive' is difficult and often depends on context. There is also the right to freedom of expression under the European Convention on Human Rights which must be taken into account. And, to be criminal, a communication or comment must 'go beyond what could conceivably be tolerable or acceptable in an open and diverse society which upholds and respects freedom of expression'.

In short, it appears that the law is too fragmented to be effectively used to tackle the harm caused online. In addition, when looking specifically at disability issues, disability hate crime is not a specific offence—as racist hate crime is—but can only be used as an aggravating feature for sentencing ([section 146](#) of the Criminal Justice Act 2003).

### **What were the key recommendations for reform in the report and do these go far enough? How and who would enforce these reforms?**

The key reforms recommended by the committee were:

- consultation and involvement of disabled people—in digital strategy and hate crime law, as well as social media companies being proactive in searching for and removing hateful content, and working with disabled people to achieve this
- the government should recognise that marginalisation of disabled people offline contributes to the abuse they receive online. Stereotypes and prejudices about disabled people, particularly among children and young people, need to be challenged, and there should be proportionate representation of disabled people in its advertising
- disability hate crime is not fully recognised and perpetrators are not appropriately punished. The law on hate crime must give disabled people the same protections as those who suffer hate crime due to race or religion
- it must be possible to see if someone has been convicted of a hate crime on the grounds of disability before employing them to work closely with disabled people. If the government acts on our other recommendations, this should be possible through a Disclosure and Barring Service check
- the government must review the experience of disabled people when reporting crimes and giving evidence. Too many disabled people have not been treated seriously because frontline officers and staff do not understand disability. Training and support is needed to overcome this. Good practice is too often isolated to a few specially trained police officers and initiatives
- the government needs to review the law on exploitation within friendships or relationships. Social media companies need to review their processes and provide advice and support for those who identify as needing additional protection. In doing so, both government and social media companies must consult directly with disabled people and respect their rights to make their own decisions about their lives

The difficulty with many of these recommendations is that they rely upon education and promotion—both of which involve resources—at a time of government imposed austerity and on the verge of Brexit when the financial situation is unclear.

**Apart from changes to the law, what else could be changed eg should social media companies be held more accountable?**

The involvement of disabled people, though extremely important, is often expected on a pro bono basis. Disability-led organisations are increasingly short of funds and have few resources to meet the demands upon them. A ‘win win’ way forward, however, would be for social media companies to employ more disabled people. It widely accepted that if you want to attract a particular section of society as customers, it’s a good idea to have those potential customers involved in the design and delivery of your service. Who better to design accessible platforms for disabled people and to search for and remove hateful content against them than disabled people themselves?

**What will be some key challenges to reforming the law on online abuse, both for disabled people and more generally?**

Any change to the law must retain that balance between freedom of speech and preventing that very speech from being hateful. Social media companies are realising to some degree that they have greater responsibility now, but it is often too little too late. Disabled people, in particular, are often isolated and social media is a means—when used for good—of breaking that isolation.

It seems likely, however, that without a change to the legislation there will at some point be some ground breaking (but hopefully not tragic) cases in this area, given the significant impact that abuse is having on lives.

*Interviewed by Samantha Gilbert.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*

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