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R v Nimmo & Sorley (2014)

Kim Barker

R v Nimmo & Sorley (2014)¹ changed the perception of social media offences in England and Wales. The decision followed a short – but significant – period whereby social media abuses such as trolling and harassment although increasing in number, often remained outside of the focus of the criminal law. This decision saw the first custodial sentences issued to the defendants for their sustained abusive messages made via social media platform Twitter to two women – Caroline Criado-Perez and Stella Creasy – for campaigning to have women on banknotes.² It was the first decision handed down under the revised guidance on social media prosecutions from the Director of Public Prosecutions³ issued in light of *Chambers v DPP*⁴. Without doubt, *R v Nimmo & Sorley* is a legal landmark in the prosecution of social media offences. However, it is also a legal landmark *for women* because from this decision represents an important step forward in the recognition and tackling of online harassment, abuse and other forms of threatening behaviour, from which women who continue to suffer disproportionately.

Context

March 2006. Twitter is founded. Within a decade, the global micro-blogging site claims user numbers of over 300 million,⁵ with 500 million tweets a day.⁶ Along with other social media sites such as Facebook and Snapchat, Twitter has changed the way we interact with one another. However, it has not – it seems – changed *what* we say. Reports of social media harassment highlight that alongside perfectly pleasantly online interactions, there are a growing number of nasty and abusive comments.⁷ This is not Twitter's 'fault'. Online bullying takes a number of different forms and is particularly hard to define, but there are some common threads to such activity, including repetition, power imbalances, aggression and intention⁸ - factors relevant to the significance and impact of online abuses on victims. The rise of social media has been mirrored by an increase in social media offences. However, in some cases, these have simply added to the problems faced by those seeking to

¹ (2014) unreported.

² Alice Phillipson, (2013) 'Woman who campaigned for Jane Austen bank note receives Twitter death threats' (The Telegraph, London, 28 July 2013). <http://www.telegraph.co.uk/technology/10207231/Woman-who-campaigned-for-Jane-Austen-bank-note-receives-Twitter-death-threats.html>.

³ CPS (2013), 'Guidelines on prosecuting cases involving communications sent via social media.' http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/.

⁴ *Chambers v DPP* [2012] EWHC 2157 (Admin) (27 July 2012).

⁵ Rose McGrory, 'UK Social Media Statistics for 2016.' <http://www.rosemcgrory.co.uk/2016/01/04/social-media-statistics-2016/>.

⁶ Susanna Kim, 'Twitter's IPO Filing Shows 215 Million Monthly Active Users' *ABC News* (3 October 2013) <http://abcnews.go.com/Business/twitter-ipo-filing-reveals-500-million-tweets-day/story?id=20460493>.

⁷ The Telegraph, (2015) 'Five internet trolls a day convicted in UK as figures show ten-fold increase' (The Telegraph, London, 24 May 2015) <http://www.telegraph.co.uk/news/uknews/law-and-order/11627180/Five-internet-trolls-a-day-convicted-in-UK-as-figures-show-ten-fold-increase.html>.

⁸ Colette Langos, (2012), 'Cyberbullying: The Challenge to Define.' *Cyberpsychology, Behaviour and Social Networking*, June, 15(6) 285.

regulate the online arena.⁹ These challenges were recognised by the House of Lords Communications Select Committee, which noted in 2015 that there a number of terms – including cyber bullying, revenge porn, trolling, virtual mobbing – which are used to describe online abuse, many of which refer to one and the same thing.¹⁰

Of course, the trend in social media use – and abuse – was not something witnessed for the first time in *R v Nimmo & Sorley*. Other cases dealing with aspects of social media had already made their way before the courts – for example, the successful claim brought by Lord McAlpine in respect of a defamatory Tweet sent by Sally Bercow.¹¹ However, the most significant in the context of *R v Nimmo & Sorley* was the decision in *Chambers v DPP*, where the courts faced an appeal against a criminal conviction for sending a message of ‘menacing character’ in contravention of s127(1)(a) of the Communications Act 2003. The message in question concerned a jokey threat to blow up Doncaster Sheffield airport: “Crap! Robin Hood Airport is closed. You’ve got a week and a bit to get your shit together otherwise I’m blowing the airport sky high!” The relevance of the humorous nature of the communication was rejected at first instance: the message had been sent via a public electronic communications network (Twitter) and no specific intention is required for an offence under s127(1)(a). The decision was overruled by the Court of Appeal, which highlighted – in a similar vein to earlier judgments of the European Court of Human Rights – the need to balance free and robust speech and messages which pose a threat, or are of a menacing character.¹² In the words of Judge LCJ:

Satirical, or iconoclastic, or rude comment, the expression of unpopular or unfashionable opinion about serious or trivial matters, banter or humour, even if distasteful to some or painful to those subjected to it should and no doubt will continue at their customary level, quite undiminished by this legislation.¹³

In response, after a prolonged period of consultation, the Director of Public Prosecutions released updated guidance on social media prosecutions. This identified four categories into which potential prosecutions may generally fall:

- Communications which may constitute credible threats of violence to the person or damage to property;
- Communications which specifically target an individual or individuals and which may constitute harassment or stalking within the meaning of the Protection from Harassment Act 1997 or which may constitute other offences such as blackmail;
- Communications which may amount to a breach of court order;

⁹ Colette Langos, (2012), ‘Cyberbullying: The Challenge to Define.’ *Cyberpsychology, Behaviour and Social Networking*, June, 15(6) 285.

¹⁰ Communications Select Committee, *Social Media and Criminal Offences* (HL Paper 37, 2014-2015) <http://www.publications.parliament.uk/pa/ld201415/ldselect/ldcomuni/37/3704.htm>.

¹¹ *McAlpine v Bercow* [2013] EWHC 1342 (QB).

¹² *Jersild v Denmark* (1994) 19 EHRR 1; Damian Carney, (2012), ‘Football banning orders and Twitter – bomb joke on Twitter.’ *Police Journal* 255, 262.

¹³ *Chambers v DPP* [2012] EWHC 2157 (Admin) (27 July 2012) per Judge LCJ at para 28.

- Communications which do not fall into the categories above and which fall to be considered separately ... i.e. those which may be considered grossly offensive, indecent, obscene or false.¹⁴

A key context surrounding the imposition of custodial sentences in *R v Nimmo & Sorley* lies in the gender-focused abuse perpetrated by Nimmo & Sorley: the abusive messages were sent to two prominent women in the context of a campaign to increase the number of women appearing on banknotes in the UK.

The Landmark

In 2013, the Bank of England announced a change in to the ten-pound bank note.¹⁵ From 2017, the image of Charles Darwin would be replaced by one of Jane Austen. The announcement came after a short but intense period of campaigning, gaining over 35,000 supporters,¹⁶ led by Caroline Criado-Perez in response to the upcoming absence of women on banknotes following an earlier announcement that social and prisoner reformer, Elizabeth Fry, would be replaced by Winston Churchill on the five-pound note).¹⁷

However, despite their success, Criado-Perez and Stella Creasy MP, who supported the campaign, found themselves victims of multiple abusive messages sent through social media, including death and rape threats. At its height Criado-Perez received around 50 abusive Tweets an hour for a 12-hour period.¹⁸ This was partially a backlash against the notion of ‘swapping’ a man for a woman on a banknote to introduce a notion of equality, but is symptomatic of the wider prevalence and visibility of online abuse. The most severe threats to Criado-Perez and Creasy were sent by John Nimmo and Isabella Sorley who posted abusive messages on Twitter, publicly abusing Criado-Perez, and in turn, Creasy. This led to a sustained level of personal abuse against the women. The abusive messages, reported in the judge’s sentencing comments, are partially reproduced here to challenge the ‘tyranny of silence’ is important although it is recognized that such reproduction is not unproblematic. The abusive messages from Isabella Sorley included the following:

Fuck off and die ... you should have jumped in front of horses, go die;
I will find you and you don’t want to know what I will do when I do ...
kill yourself before I do; rape is the last of your worries; I’ve just got
out of prison and would happily do more time to see you berried [s;

¹⁴ CPS (2013), ‘Guidelines on prosecuting cases involving communications sent via social media.’ http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/.

¹⁵ BBC News, (2013) ‘Jane Austen to be face of the Bank of England £10 note’ (24 July 2013) <http://www.bbc.co.uk/news/business-23424289>.

¹⁶ <https://www.change.org/p/we-need-women-on-british-banknotes>

¹⁷ <https://www.theguardian.com/lifeandstyle/the-womens-blog-with-jane-martinson/2013/jul/04/women-bank-notes-bank-england>

¹⁸ <http://www.telegraph.co.uk/technology/10207231/Woman-who-campaigned-for-Jane-Austen-bank-note-receives-Twitter-death-threats.html>

seriously go kill yourself! I will get less time for that; rape?! I'd do a lot worse things than rape you.¹⁹

John Nimmo's Tweets were in a similar vein:

'Ya not that gd looking to rape u be fine; I will find you; come to geordieland (Newcastle) bitch; just think it could be somebody that knows you personally; the police will do nothing; rape her nice ass; could I help with that lol; the things I cud do to u; dumb blond bitch.'²⁰

Both Creasy and Criado-Perez reported the Tweets to the police – first via Twitter and later in person. However, despite the police's arguable *over-reaction* in *Chambers* their response was one of inaction and indifference. Creasy was told by her in response to that message that reporting abusive Twitter messages through Twitter to the police was insufficient to launch an investigation. Moreover, in deciding to charge Nimmo and Sorley under the Communications Act 2003 for improper use of a public communications network, the CPS focused on the medium of the messages, rather than the threats they contained. The messages could – and should – have been prosecuted under the Criminal Justice Act 1988 or the Offences Against the Person Act 1861. Threats made via Twitter are still threats. A prosecution under either of those pieces of legislation could have resulted in a custodial sentence of years rather than weeks.²¹

Fortunately, the courts – on this occasion – were more responsive. Nimmo and Sorley pleaded guilty to sending 'menacing' tweets and both received custodial sentences of eight and 12 weeks respectively. Commenting on their actions in his sentencing comments, Judge Howard Riddle, noted that ... the serious harm caused by the offending behaviour makes it inappropriate to impose anything other than an immediate custodial sentence ... The harm caused is very high'.²² Victim statements from Creasy and Criado-Perez underline the impact of Nimmo and Sorley's actions. Creasy had installed panic buttons in her home. For Criado-Perez the effects of the harassment were 'life-changing'. She spent time and money making herself untraceable, and describes the messages as 'imprinted' on her mind stated that she didn't think she 'will ever be free of them'.

¹⁹ *R v Nimmo and Sorley*, 24 January 2014 (unreported) per Riddle J <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-nimmo-and-sorley.pdf> 2.

²⁰ *R v Nimmo and Sorley*, 24 January 2014 (unreported) per Riddle J <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-nimmo-and-sorley.pdf> 2.

²¹ The fact that the threats were conveyed via Twitter was not only distracted the CPS and Police from the essence of the case, but also opened up the decision to prosecute to 'free speech' objections. See for example: Joseph H Rowbotham, (2012) 'To Rant, Vent and Converse: Protecting Low Level Digital Speech' 71(2) *Cambridge Law Journal*

²² *R v Nimmo & Sorley* (unreported) (2014), 'Sentencing Comments' per Howard Riddle, 24 January 2014. <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-nimmo-and-sorley.pdf>

What Happened Next

Before *Chambers* in 2012, there were just 25 prosecutions for social media offences. Since then the number of prosecutions has more than doubled. 55 cases were brought in 2013 alone. Indeed, the explosion in prosecutions for social media abuses is so great that the 'Working to Halt Abuse Online' group has stopped calculating online harassment cases.²³ (That said, Crown Prosecution Service figures suggest, the number of offences reaching a court hearing was in decline by 2014.)²⁴ There are three reasons for this increase in prosecutions. First, the prominence of the (largely negative) coverage in mainstream media that trolls and social media abuses now receive. It is also attributable, secondly, to the revised and clearer DPP guidance on prosecuting social media offences. And finally, in light of both of these, social media platform providers like Twitter are beginning to take steps to protect their users and become involved in the policing of their own platforms,²⁵ although it has taken a significant amount of time to reach this point.

There have been a number of other high-profile cases dealing with similar issues. In just over six months in 2012, community orders or custodial sentences were imposed in relation to racially abuse of retired footballer Stan Collymore,²⁶ and the (then) seriously ill footballer Fabrice Muamba²⁷ as well as abusive messages on Facebook concerning Madeline McCann and April Jones.²⁸ However, while all of these cases involve abuse via social media, and in many the abuse is directed against various protected characteristics – typically race or sexuality – none have considered in the same way the gender-based, misogynist abuse seen in *Nimmo & Sorley*. And so, while the sentencing in these latter cases recognises the harm caused by abusive messages, there is less indication, despite *Nimmo & Sorley*, that online gender harassment is recognized and taken seriously. The application of existing law is spasmodic.

Moreover, in all these cases, the law applied is not specific to abuse via social media. In 2014, the House of Lords Communications Select Committee noted that, whilst there may be a basis for legislative changes, they saw no reason to alter existing legislation. In the opinion of the Committee, the legal provisions appear to be working well enough to remain unchanged: 'Although we understand that "trolling" causes offence, we do not see a need to create a specific and more severely punished offence for this behaviour'.²⁹ This position has been criticised by prominent figures state such as the Children's Commissioner for

²³ WHO@, 'Online Harassment / Cyberstalking statistics.' <http://www.haltabuse.org/resources/stats/>.

²⁴ Communications Select Committee, *Social Media and Criminal Offences* (HL 2014-2015, 35) <http://www.publications.parliament.uk/pa/ld201415/ldselect/ldcomuni/37/3704.htm>.

²⁵ BBC News, (2016) 'Twitter announces more tools for dealing with abuse' (15 November 2016) <http://www.bbc.co.uk/news/technology-37987058>.

²⁶ Claire Duffin, (2014), 'Police criticise Twitter over Stan Collymore racial abuse case.' (The Telegraph, London, 29 July 2014). <http://www.telegraph.co.uk/news/uknews/crime/10999000/Police-criticise-Twitter-over-Stan-Collymore-racial-abuse-case.html>.

²⁷ Steven Morris, (2012), 'Student jailed for racist Fabrice Muamba tweets.' (The Guardian, London, 27 March 2012). <http://www.theguardian.com/uk/2012/mar/27/student-jailed-fabrice-muamba-tweets>.

²⁸ BBC News, (2012), 'April Jones: Matthew Woods jailed for Facebook posts.' (8 October 2012). <http://www.bbc.co.uk/news/uk-england-lancashire-19869710>.

²⁹ Communications Select Committee, *Social Media and Criminal Offences* (HL 2014-2015, 32) <http://www.publications.parliament.uk/pa/ld201415/ldselect/ldcomuni/37/3704.htm>.

Wales, Keith Towler, who has called for legal changes to be made to address the distinction between offline and online activity.³⁰ Feminist politicians – including Yvette Cooper MP and Natalie McGarry MP – have also called for change.³¹ The ‘Reclaim the Internet’ campaign was launched by Cooper in 2016, supported by a number of women’s organizations including the Fawcett Society, EAW and Women’s Aid, with the aim of ‘taking a stand against online abuse’.³²

Significance

Nimmo & Sorley is significant because it is the first case imposing custodial sentences for misogynistic Twitter abuse. It shone a light onto the murky world of online misogynist abuse and the harm it inflicts on its victims. It is significant because it brought the issue of gender-based online abuse into the mainstream. It made women, and the abuse of women who campaign for women, visible. And it made clear that it was wrong.

Its most significant legacy then is, perhaps, the ongoing debate that has arisen at all levels – from the House of Lords to the social media users and platform providers, in the mainstream media, academic journals and class rooms – about how to challenge and end all forms of misogynistic abuse – whether online or offline.

Further Reading

Kim Barker (2016), ‘Virtual spaces and virtual layers – governing the ungovernable?’ *Information and Communications Technology Law*, 25 (1), pp. 62-70.

Andy Phippen, and Jennifer Agate, ‘New Social Media Offences Under the Criminal Justice and Courts Act and Serious Crime Act: The Cultural Context’ (2015) *Entertainment Law Review* 26(3) 82.

Laura Scaife, ‘The DPP and Social Media: A New Approach Coming Out of the Woods?’ (2013) *Communications Law* 18(1), 5.

³⁰ BBC News, (2013), ‘Cyberbullying law needed, says children’s commissioner for Wales.’

<http://www.bbc.co.uk/news/uk-wales-24525491>; Brown, M (2014), ‘Labour calls for better laws to stop cyberbullying.’ (The Guardian, London, 30 January 2014).

<http://www.theguardian.com/technology/2014/jan/30/labour-calls-for-better-laws-to-stop-cyberbullying>.

³¹ Katie Forster, (2016), ‘Jo Cox Death: Calls for violent threats against female MPs to be taken more seriously’ (The Independent, London, 17 June 2016). <http://www.independent.co.uk/news/uk/home-news/jo-cox-dead-violent-threats-online-abuse-natalie-mcgarry-trolls-a7086436.html>.

³² <http://www.reclaimtheinternet.com/>