

Responding to the impact of TikTok on your school community

Attacks by students on their teachers and their schools through the medium of TikTok is causing considerable distress and anger for teachers and leaders. Is there anything that can be done legally?

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Many schools seem to be suffering at the moment from attacks by students on their teachers and their schools through the medium of TikTok. This is causing considerable distress and anger for teachers and leaders who feel bombarded by these faceless criticisms that are flung out without apparently any accountability on behalf of the individuals posting them, or the organisation that provides the platform for their distribution.

Is there anything that can be done legally?

Identifying the poster

The first thing to do is to see if it is possible to identify the originator. If you are fortunate enough to be able to do this then the recourse is through the school's own Behaviour policy. Check that the policy covers this particular misdemeanour and that there is no doubt that students will have had the opportunity to be aware of and to understand the school's position on posting comments to the platform that are derogatory or disrespectful about either an individual or the institution itself. If the posts made are such as to warrant exclusion under your policy, this is something that you can do.

Legal recourse

If an individual can be identified there are a number of possible actions open to the school or an individual.

Defamation is the first – to be successful it is necessary for the content to meet certain criteria, it:

1. was first published within the previous 12 months;
2. lowers the School/staff member in the estimation of right-thinking members of society;
3. has caused, or is likely to cause, serious harm to the School/staff member; and
4. is not the truth or honest opinion, nor does it benefit from another of the established defences

Serious harm needs to be measurable, so a falling roll which could be linked directly to the post or the loss of a job or failure to get a job because of posted comments, both resulting in quantifiable financial loss is a straightforward example. But this is probably going to be hard to achieve.

A further possibility is Harassment – this requires at least two instances of harassment, where an individual feels serious distress and alarm, usually associated with physical violence. Where the person making the post feels it is in jest, but the person named interprets the post as a threat, it is the recipient's perspective that matters. As with defamation the threshold is high to be able to bring a successful claim.

It goes without saying that most individuals posting derogatory comments will be keen to remain anonymous because this is what gives them power over the people and school that is being targeted. So, if you cannot identify an individual what else can you do?

Anonymous posts

Where you cannot identify the individual, look to see if you can deal with the problem through the TikTok app itself. This allows you to report an account, a specific video, a comment and a chat message. The idea is that this report will be considered by TikTok and if the post is considered inappropriate, it will be removed. If this is unsuccessful you can make an independent report via [this link](#).

TikTok and accountability

What responsibility does TikTok have to bear in this scenario where they are possibly as much to blame as the students themselves, maybe more in the sense that they are making commercial gain from the naivety and thoughtlessness of young impressionable children. It is the case that most social media platforms are protected by laws which do not make them liable for content which is posted on their sites and so unfortunately pursuing any action against TikTok itself is unlikely to be successful. TikTok state in their [terms of service](#) that they are not liable for any content posted by its users.

Another element about TikTok is that they are a Chinese company and accordingly there is a question of jurisdiction. Whilst not directed at TikTok, recent judgements concerning international crime jurisdiction have sought to apply English criminal law where a substantial measure of the activities constituting the crime took place in England, and the crime is serious enough. Thus, a possible argument that any pursuit of a breach of TikTok's terms and conditions over acceptable use would have to take place under Chinese jurisdiction, may not be upheld.

Options

Given the above, what else can you do? Depending on how bad the position is it is possible that the police could require TikTok to give information of the poster for purposes of prosecution. The police would make the request that the comment/video etc was traced and the poster's details given to them. This might play particularly in the case of hate crime where the video's subject a teacher to comments or judgements about their sexuality or another protected characteristic.

Is there any hope going forward?

Whilst the benefits of online communication have been recognised over the last 18 – 24 months most people recognise that there is a darker side to the technological development. It appears to be unrestrained with the current legislation inadequate to deal with what many people are experiencing on a daily basis as an invasion of their privacy by way of unevidenced allegations by anonymous persecutors who can create a popular following without accountability and without any consideration of the implications for their victims.

The Online Safety Bill is currently going through Parliament. Its purpose is to consider the safety of individuals using online services. It also seeks to protect those that are harmed by 'user to user services' (where services allow users to generate, upload and share content with other users). The emphasis is on the service providers to have a duty of care to adults who could be significantly harmed (physically or psychologically) from posted content. Providers must create reporting functions and complaints procedures that can be used by individuals who wish to challenge the content online. The provider will be required to specify in their Terms of Service how users are protected from unwarranted infringements of privacy and they will be required to carry out an impact assessment of their proposed policy and safety procedures. The Bill requires Ofcom to create a Code of Practice for providers and requires the providers to produce a Transparency Report which can include information on the incidence of content that is harmful to adults – how much there is and what they are doing about it. In terms of enforcement, Ofcom can give a technology warning notice to the provider; they can investigate the providers failings; require interviews; and enter and carry out inspections. The penalty that Ofcom can enforce will be up to 10% of worldwide revenue or £18m whichever is the biggest. It is also important to note that the bill is intended to cover services provided both within and outside the UK providing that the servicer has links with the UK, meaning broadly a significant number of UK users or where the UK forms a target market for the service.

Inevitably, the challenge will be the threshold of harm and the providers need to balance privacy within the democratic right of freedom of expression. There is no particular detail included.

Collective voice

This is the time, whilst the Bill is being considered, to lobby your MP's. Individually and collectively. Ask for assistance from your unions and anyone else that is applicable to lobby for greater support for the sector in dealing with abusive and intimidating behaviour which if

not made anonymously would have repercussions for the perpetrators, that currently goes unpunished. Perhaps what would make the biggest difference is for the service providers to pledge to provide the identity of the poster providing unacceptable and harmful content, as opposed to illegal content. The ability of the provider to do this could of itself have the effect of tempering the content as the poster would be called upon to evidence their opinions and statements. Many schools have a behaviour policy that provides for sanction where pupil's actions bring the school's reputation into disrepute outside of school hours. All schools are asking for is the ability to exercise their own behaviour code.

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