

# BIG BROTHER WATCH

## **Careless Whispers:** How speech is policed by outdated communications legislation

A Big Brother Watch report

February 2015

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## Foreword - John Cooper QC

Big Brother Watch has been a significant force since 2009 in raising public appreciation of the encroachment upon our freedoms and liberties by those who purport to exercise authority over the citizen and it is with those impressive credentials firmly in place that they have turned their attention to the Social Media.

It is incredible to reflect that Facebook only burst onto the scene in 2004, closely followed by Twitter in 2006. What this means is that the vast majority of legislation now being utilised to police the Social Media was enacted before both Facebook and Twitter were available.

When I addressed the House of Lords Select Committee on Communications in 2014 I argued that we have more than enough law to deal with potential criminal offences on the Social Media, the problem was that they were scattered over legislation placed on the statute book between 1861 to 2003, which led to confusion and inconsistency. There is also a lack of training in many police forces and the CPS as to how this older law applies to a very modern medium which means that application of the law to the facts is misconceived, resulting in the notorious prosecution of Paul Chambers in the so called Twitter Joke Trial where I posited the question to the Lord Chief Justice that if my client was guilty then Sir John Betjeman would be turning in his grave after penning 'Come friendly bombs and fall on Slough'.

This Report does us all a great service in highlighting in clear terms the problems that the present criminal law has with adapting to the fresh and vibrant world of Social Media. It sets into context the urgent need for a rationalisation of existing law to reflect the new mediums at a time when cash strapped Police Forces across the Country are struggling to cope with Social Media related complaints.

Perhaps the most palpable effect of this powerful Report will be to remind all of us that for the law to be respected and trusted, it must be both relevant and above all fit for purpose.

Big Brother Watch have made an important contribution to this debate.

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## Key Findings

All figures are for the period 1<sup>st</sup> November 2010 and 1<sup>st</sup> November 2013.

- **6,329 people were charged or cautioned** under Section 127 of the Communications Act 2003 and the Malicious Communications Act 1988
  - At least **4,259** people were **charged**
  - At least **2,070** people were **cautioned**.
- These figures can be broken down as follows:
  - **2,666 charges** and **1,236 cautions** under **Section 127**.
  - **1,163 charges** and **605 cautions** under the **Malicious Communications Act 1988**.
  - **430 charges** and **229 cautions** were **not broken down** in responses.
- Of these at least **355 cases involved social media**.<sup>1</sup>
- Charges, cautions and instances of **cases involving social media have increased**. (See Tables 2-4)

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<sup>1</sup> Police forces often didn't record this information: see the *Cases Involving Social Media* section for more detail (Page 7-8).

## Table 1 – Top Ten Police Forces

*The total relates to charges and convictions for 127 Communications Act and Malicious Communications Act offences*

	<b>Police Force</b>	<b>Total</b>	<b>Can breakdown cases involving Social Media?</b>
1	<b>Avon and Somerset Police</b>	555	Yes – 44 cases
2	<b>Lancashire Constabulary</b>	539	No - Information not recorded
3	<b>Suffolk Constabulary</b>	523	Yes - 136 cases
4	<b>Northumbria Police</b>	452	Refused on cost and time
5	<b>Greater Manchester Police</b>	441	No - Information not held
6	<b>West Yorkshire Police</b>	425	Yes - 16 cases
7	<b>West Mercia Police</b>	340	Refused on cost and time
8	<b>Sussex Police</b>	294	No - Information not held
9	<b>Staffordshire Police</b>	193	Yes - 12 cases
10	<b>Gwent Police</b>	188	Removed due to cost and time

## Executive Summary

The social media revolution has changed the way people communicate with each other. Yet, whilst our communications have evolved the way crimes are dealt with has not and so we find ourselves using archaic legislation to police modern day crimes. Without exception, the laws that regulate what is said on social media platforms were passed before companies such as Facebook, Twitter and Ask FM became widely used. The laws used to police our communications are woefully out of date.

As this report shows, there has been an increase in charges and convictions and cases involving the use of social media. It is therefore important that the legislation which is used by police and prosecutors is examined to ensure it doesn't become obsolete in light of new technology.

The outdated nature of the legislation is evident when you examine its history. **Section 127 of the Communications Act 2003** can be seen as the successor to a litany of legislation started by the *Post Office (Amendment) Act 1930*. The Act focused on stopping abuse towards telephone operators. It was followed by the **Telecommunications Act 1984**, which contains very similar wording to *Section 127*. This legislation enables a court to convict you based on whether it deems a message to be "*grossly offensive or of an indecent, obscene or menacing character*".

It is arguable that the outdated nature of the law is why we are seeing an increase in legal cases involving comments made on social media. The most notorious example is the case of **Chambers v DPP**, also known as the "**Twitter joke trial**". This case saw **Paul Chambers** convicted of using a "*public electronic communication network*" to send a "*message of menacing character*". Specifically he stated:

*"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 conviction was later overturned by the High Court, stating that "*there was no evidence to suggest that any of the followers of the appellant's "tweet"... found it to be of a menacing character or, at a time when the threat of terrorism is real, even minimally alarming.*"<sup>2</sup>

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<sup>2</sup> High Court of Justice, *Chambers v DPP*, 27<sup>th</sup> July 2012 <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/chambers-v-dpp.pdf>

Paul Chambers and his legal team attracted high profile support from public figures like Al Murray and Stephen Fry who Tweeted their support. Murray Tweeted:

*"In 100 years there will be an operetta about this - about how ridiculous we were at the start of the 21st century. I'm a big fan of absurdity but this is taking the biscuit."*

Arguably it was these high profile legal cases, and the fact that none of the legislation deals with social media cases directly, which led to the **Crown Prosecution Service (CPS)** publishing guidelines in June 2013 on how to prosecute cases which involve social media.<sup>3</sup>

However, these guidelines have been subject to criticism. In a submission to the CPS's public consultation on the guidelines Big Brother Watch highlighted a number of concerns, including the failure of the guidelines to address the problems that the relevant legislation already faced; that it had effectively been rendered obsolete by the advent of social media.

Little has changed since these guidelines were produced. It is therefore the view of Big Brother Watch that there needs to be serious reform in this area, to ensure that the laws are brought up to date. Alongside this, it is now vital that the police begin to adopt a standardised approach to recording and combatting social media crime. It is imperative that a clear evidence base is established so that the use of these powers can be properly scrutinised.

If these policy recommendations are not achieved, then it is almost inevitable that there will be further individuals who are arrested, charged and prosecuted unnecessarily under these laws.

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<sup>3</sup> Crown Prosecution Service, *Guidelines on prosecuting cases involving communications sent via social media*, 20<sup>th</sup> June 2013: [http://www.cps.gov.uk/legal/a\\_to\\_c/communications\\_sent\\_via\\_social\\_media/index.html](http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/index.html)

## The Legislation

### Section 127, Communications Act 2003

**Section 127** was created to deal with “improper use of public electronic messages” defined as being either “grossly offensive or of an indecent, obscene or menacing character”. The most famous use of the Act was in the case of **Chambers v DPP**, or the so-called “**Twitter joke trial**”. It is likely to be the most widely used piece of legislation in terms of social media crime.

One of the primary criticisms of **Section 127** is its outdated nature, due to it preceding the launch of social network sites such as Facebook (2004), Ask.fm (2010) and Twitter (2006).

Two major problems with **Section 127** are:

It was drafted to deal with one-to-one communications rather than one-to-many communications. This becomes clearer when the origin of its wording is considered, with most of it being drawn almost exactly from **Section 43 of the Telecommunications Act 1984** which was drafted when most malicious communications would have taken the form of letters or phone calls.

It is designed to cover activity on a “public electronic communications network”. Defining social media sites as “public” is contentious and in many ways misleading. The precedent for seeing the internet as a public utility was set during the High Court’s **Chambers v DPP** case. The judgement upheld the Crown Court’s view that the fact that Twitter was a private company was “irrelevant.”<sup>4</sup> Treating companies like Twitter or Facebook that are privately funded and run on privately held servers as a public utility created and run with public money is a misleading and even dangerous idea.

This report highlights that between 2010 to 2013 the number of times an individual was charged under its provisions rose from 506 to 708. This is equivalent to a 40% increase. In terms of cautions under **Section 127**, there has been a 212% increase, from 147 cases to 458.

Clearly the figures show a rapid rise in the number of times the legislation has been used. This makes the need for a review and reform of the law all the more urgent.

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<sup>4</sup> *Chambers v DPP*, Approved Judgement, Paragraph 23



## Malicious Communications Act 1988

This Act was first created to deal with “poison pen letters” or hate mail and was subsequently expanded in 2001 to cover electronic communications.

The Act was used in the “**poppy burning case**” of 2012. The case involved a man who was arrested for posting an image of a burning poppy on a social network site around Remembrance Day.<sup>5</sup>

The problem of one-to-one communication as opposed to one-to-many communications exists with this Act as well as in **Section 127. Clause 1.1 (a)** specifically states that the act applies to “Any person who sends to another person”. In other words there is no specific clause that deals with one-to-many communications. Although there have been subsequent rulings that apply the Act to these type of communications it is misleading to argue that this has in any way fixed the problem. It is wrong to assume that legislators in the late 1980s could have predicted or even imagined with any degree of accuracy the change that social media has made to the way we communicate.

A further issue is that the legislation doesn't apply to Scotland, which makes it difficult to ensure that these crimes are punished evenly across the UK.

Our research shows a more varied result than the findings for the Communications Act, with **charges under the Act having increased by 146 or 70%, whilst cautions rose by 57.**

Overall the Act is used less regularly than **Section 127**. However it should be viewed with equal if not greater concern given the strides in technology that have occurred since 1988.

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<sup>5</sup> The Guardian, Kent man arrested after picture of burning poppy posted on internet:  
<http://www.theguardian.com/uk/2012/nov/12/kent-man-arrested-burning-poppy>

## Crown Prosecution Service Guidelines

In order to deal with an increase in the number of social media cases the **Crown Prosecution Service (CPS)** published a set of guidelines on how to prosecute cases which involve social media in June 2013.<sup>6</sup> It included:

- A high threshold for “*evidential sufficiency*” or the level of evidence that was necessary before a prosecution could take place.
- Prosecutors were also required to demonstrate that the case would be in the public interest before any trial proceeds.
- A recommendation for early cooperation between the police and prosecutors was encouraged.
- The warning that “*the context in which interactive social media dialogue takes place is quite different to the context in which other communications take place.*”

However, the guidelines have been subject to some criticism. For example **Laurence Eastham**, the editor of *Computers & Law*, was sceptical of the impact they would have, calling them a “*quick fix.*”<sup>7</sup> **Adam Wagner**, a barrister specialising in civil liberties and human rights, singled out the public interest threshold for criticism. He argued that he couldn’t think of a single case that could be brought in the public interest which wouldn’t have a “*disproportionate chilling effect on free speech.*”<sup>8</sup>

In a submission to the CPS’s public consultation on the guidelines, Big Brother Watch highlighted a number of potential issues. We stated that:

- The document failed to address the problems that the relevant legislation already faced.
- It had effectively been rendered obsolete by the advent of social media.
- Out-of-court disposals, particularly cautions, wouldn’t be subject to the guidelines.

<sup>6</sup> Crown Prosecution Service, *Guidelines on prosecuting cases involving communications sent via social media*, 20<sup>th</sup> June 2013: [http://www.cps.gov.uk/legal/a\\_to\\_c/communications\\_sent\\_via\\_social\\_media/index.html](http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/index.html)

<sup>7</sup> L. Eastham, *Social Media Prosecutions: Guidelines Not Enough*: <https://www.scl.org/site.aspx?i=bp27827>

<sup>8</sup> A. Wagner, *New prosecution guidance on offensive speech online: sensible, but the law is still out of date*: <http://ukhumanrightsblog.com/2012/12/19/new-prosecution-guidance-on-offensive-speech-online-sensible-but-the-law-is-still-out-of-date/>

As this report shows, a year on from the publication of the guidelines, these points remain areas of concern. As more cases occur, these issues will remain unless real and effective reform is undertaken as a matter of urgency.

### **Social Media Cases**

The lack of standardisation across police forces when it comes to recording, and presumably tackling social media offences is a key concern in our findings.

**Just 25 of the 42 forces could provide full year by year breakdowns** of their use of the two acts. **Only 13 could release a comparable set of information relating to the use of social media in these cases.**

Of the 35 forces who gave at least a partial amount of the information, only 18 were able to give any information on the number of times social media had been a factor in the use of the legislation. Some responses included vague information such as “*1 mention in records*”<sup>9</sup> between 2010 and 2013.

It is therefore difficult to build up a truly accurate picture of how **Section 127** or the **Malicious Communications Act** are being used to prosecute individuals for social media crimes. Before a real and informed debate on the applicability of this legislation takes place there needs to be an effort to begin recording accurate statistics.

On a more practical level, poor record keeping will inhibit the ability of the police to tackle what seems to be an increasing problem. Without accurate figures forces will be unable to properly allocate resources.

Big Brother Watch’s research shows that in spite of the lack of available data, the number of times social media has featured in relevant cases has increased. **8 of the 13 forces with accurate records recorded rises. Only 1 recorded a drop.**

**Overall the number of cases involving social media rose from 41 to 130, an increase of 89 or 217% respectively.** These figures underline the concern that there needs to be a review of how social media law operates as well as better record keeping in order to help the Police and CPS effectively tackle the issue.

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<sup>9</sup> *South Yorkshire Police* - viewable Table 1: Police Forces that used Financial Year breakdowns.

## Geographic Spread

Interestingly there is **no strong correlation between the population of a force area and the amount of times the Acts have been used**. For example:

- **In Gwent and Dfayed-Powys;** neighbouring forces with similar populations, Gwent charged 145 people, whilst Dfayed-Powys charged only 52. A similar situation can be found when looking at cautions. Gwent handed out 43 whilst Dfayed-Powys handed out 10.
- When **West Yorkshire Police** and **Thames Valley Police** both with a population of 2.2m are considered, the lack of a correlation is shown again. West Yorkshire charged 308 people under the legislation, whereas Thames Valley only charged 121. If we look at cautions, we find that West Yorkshire handed out 117 opposed to Thames Valley who handed out 51.

## What Other Legislation Can Be Used To Prosecute Social Media Offences?

Due to cost and time restrictions allocated under Freedom of Information law, this report has only dealt with the two pieces of legislation that are most commonly applied to cases involving social media. There are a number of other Acts that could and have been used.

- **Section 18, Public Order Act 1986:** Can be applicable in cases which involve “*racially aggravated public order offences*.”<sup>10</sup>
- **Crime and Disorder Act 1998:** Used in the case of Liam Stacey who was found guilty of making “*racially aggravated comments*” towards the footballer Fabrice Muamba on Twitter.<sup>11</sup>
- **Protection from Harassment Act 1997:** Has been used to charge individuals who have sent a number of abusive messages to other social network users.
- **Coroners and Justice Act 2009:** This Act amended the *Suicide Act 1961*; made it a crime to encourage others to take their own lives. Section 11 of a 2010 Ministry of Justice circular states that the Act should reassure people that incitement via websites would be punishable.<sup>12</sup>

<sup>10</sup> L. Edwards, *Section 127 of the Communications Act 2003: Threat or Menace?*: <http://blogs.lse.ac.uk/mediapolicyproject/2012/10/19/section-127-of-the-communications-act-2003-threat-or-menace/>

<sup>11</sup> Ibid

<sup>12</sup> Ministry of Justice, *Encouraging or Assisting Suicide: Implementation of Section 59 of the Coroners and Justice Act 2009*: [http://www.ealaw.co.uk/media/uploaded\\_files/circular-03-2010-assisting-encouraging-suicide.pdf](http://www.ealaw.co.uk/media/uploaded_files/circular-03-2010-assisting-encouraging-suicide.pdf)

- **Criminal Law Act 1977:** The CPS guidelines state that it would be “*more appropriate*” to charge bomb hoaxes made via a public electronic communications network under this legislation.<sup>13</sup>
- **Section 16, Offences against the Person Act 1861:** The *CPS Guidelines on prosecuting cases involving communications sent via social media* refers to this Section in cases where a “*threat to kill*” is included in the message.

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<sup>13</sup> Crown Prosecution Service, *Guidelines on prosecuting cases involving communications sent via social media*: [https://www.cps.gov.uk/legal/a\\_to\\_c/communications\\_sent\\_via\\_social\\_media/](https://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/)

## Policy Recommendations

### **1. A full review of the legislation governing communications on social media.**

There is a plethora of legislation that can be applied to offences on social media, which can lead to complication and confusion when the police receive complaints and seek to arrest individuals. Confusion also exists amongst the public about what is and isn't a crime.

The legislation currently used is out of date. The laws were formulated before social media existed, with the intention of addressing the issue of one-to-one communications, not the one-to-many communications platforms that now exist.

### **2. Repeal Section 127 of the Communications Act 2003**

The legislation doesn't cover any specific crimes and is all too often used to get an easy conviction. As our report has already highlighted, this legislation is out of date and as such, it is vital that it is taken off the statute book.

### **3. The removal of the phrase "grossly offensive" from the Malicious Communications Act 1988**

The phrase "grossly offensive" is highly subjective and causes more problems than it solves. More importantly it shouldn't be a crime to cause offence. The wording sets a very dangerous precedent, without a clear definition it is very difficult to ensure a standardised approach across police forces in the types of cases that require their attention.

### **4. A common approach to enforcing legislation.**

Our research has demonstrated that in part, there is a lack of standardisation in applying the relevant legislation. The number of charges and cautions vary wildly between forces.

On a more basic level there are differences in the way that offences under the legislation are recorded. Some forces were able to give us information whilst others were not. This raises concern regarding uncovering the scale of the issue. There should be a clear system put in place to educate officers and prosecutors how best to deal with social media crime.

**Table 2: Police Forces which used Financial Year breakdowns**

Police Force	Section 127 Communications Act 2003						Malicious Communications Act 1988						Cases involving social media		
	Charges			Cautions			Charges			Cautions			2010 /11	2011 /12	2012 /13
	2010 /11	2011 /12	2012 /13	2010/11	2011 /12	2012 /13	2010 /11	2011 /12	2012 /13	2010/11	2011 /12	2012 /13			
<b>Bedfordshire Police</b>		63			18			17			18		Refused: Cost and Time		
<b>Cheshire Constabulary</b>	Information not held <sup>14</sup>														
<b>Cumbria Constabulary</b>	Information not held														
<b>Derbyshire Constabulary</b>		9			4			2			0			2	
<b>Devon and Cornwall Police<sup>15</sup></b>	55	54	47	36	71	94	0	0	1	0	1	1	11	10	23
<b>Dorset Police<sup>16</sup></b>	20	20	14	Unkn own	1	6	0	4	4	Unkn own	0	4	Information not provided		
<b>Dyfed Powys Police</b>	9	15	11	0	4	4	7	6	4	0	1	1	3	0	0
<b>Essex Police<sup>17</sup></b>	Non-Recordable Offences - Information not held														
<b>Greater Manchester</b>	96	104	74	8	11	18	32	39	39	7	8	5	Information not held		

<sup>14</sup> Response notes that the "offences are not recordable".

<sup>15</sup> Response notes that social media figures were returned after keyword searches on "Facebook", "Twitter" and "Blog".

<sup>16</sup> FOI stated that the Force was "unable to provide Caution data prior to June 2012 due to a change in the relevant ICT system being used".

<sup>17</sup> Response notes that offences are "not recordable under Home Office Counting Rules and are therefore not recorded on the Essex Police Crime Recording System".

<b>Police</b>																
<b>Hampshire Constabulary<sup>18</sup></b>	Refused: Cost and Time															
<b>Hertfordshire Constabulary</b>	1	39	66	2	51	90	1	3	4	2	3	2	0	18	27	
<b>Humberside Police<sup>19</sup></b>	Information not held															
<b>Merseyside Police</b>	7	30	43	4	2	12	4	20	18	0	8	8	3	10	11	
<b>Metropolitan Police<sup>20</sup></b>	Refused: Cost and Time															
<b>Norfolk Constabulary</b>	4 people charged for 'Malicious communications'														1 <sup>21</sup>	
<b>North Wales Police</b>	0	0	0	0	0	0	0	0	3	0	0	1	0	0	2	
<b>North Yorkshire Police</b>	6	10	11	1	1	1	2	6	3	2	0	4	1			
<b>Northamptonshire Police<sup>22</sup></b>	Information not broken down															
<b>Nottinghamshire Police<sup>23</sup></b>	Information not broken down															
<b>Police Scotland<sup>24</sup></b>	Not included in FOI															

<sup>18</sup> Response stated that there were over 500 instances of cautions or charges for the “*improper use of a public electronic communications network*”.

<sup>19</sup> Response notes that “*offences are non-notifiable*”.

<sup>20</sup> Response notes that 36,696 records under relevant Home Office offence codes.

<sup>21</sup> Response states this was in relation to Twitter.

<sup>22</sup> Response states that there was 1 charge under the “*data communications act*”, 4 charges and 3 cautions for “*malicious communications*”, 1 charge and 1 caution under the “*Misuse of Telecommunications Act*” and 2 charges for “*Telecommunications act offences*”.

<sup>23</sup> Response states that there was 1 charge under the “*data communications act*”, 4 charges and 3 cautions for “*malicious communications*”, 2 charges for the “*misuse of Telecommunications Act*” and 1 charge for “*Telecommunications act offences*”.

<sup>24</sup> The Malicious Communications Act does not apply in Scotland and it has therefore been exempted.



<b>South Wales Police</b>	4	8	11	2	4	12	0	2	1	0	4	4	11		
<b>South Yorkshire Police</b>	35	38	21	3	3	1	8	6	3	0	1	0	1 mention in records		
<b>Sussex Police</b>	44	50	27	14	21	5	26	27	31	19	19	11	Information not centrally held		
<b>West Yorkshire Police</b>	8	30	29	11	18	15	41	91	109	21	22	30	2	4	10
<b>Wiltshire Constabulary<sup>25</sup></b>	Refused: Cost and Time														
<b>Yearly Totals</b>	<b>285</b>	<b>398</b>	<b>354</b>	<b>81</b>	<b>187</b>	<b>258</b>	<b>121</b>	<b>204</b>	<b>220</b>	<b>51</b>	<b>67</b>	<b>71</b>	<b>19</b>	<b>42</b>	<b>73</b>
<b>Totals</b>		<b>1109</b>			<b>548</b>			<b>564</b>			<b>207</b>			<b>150</b>	

<sup>25</sup> Response notes “This particular offence is a summary offence rather than notifiable”.

**Table 3: Police Forces which used Calendar Year breakdowns**

Police Force	Section 127 Communications Act 2003									Malicious Communications Act 1988							Cases involving Social Media			
	Charges				Cautions					Charges				Cautions			2010	2011	2012	2013
	2010	2011	2012	2013	2010	2011	2012	2013	2010	2011	2012	2013	2010	2011	2012	2013	0	1	2	3
<b>Avon and Somerset Police</b>	46	36	52	37	16	15	15	10	51	44	44	21	49	38	40	41	11	9	13	11
<b>Cambridgeshire Constabulary</b>	4	35	51	13	1	8	4	1	1	17	15	8	0	6	3	7	Information not held			
<b>Cheshire Constabulary</b>	Information not held																			
<b>City of London Police</b>	0	0	0	1	0	0	1	0	0	1	1	0	0	5	1	3	0	0	0	0
<b>Cleveland Police<sup>26</sup></b>	Information not provided																			
<b>Cumbria Constabulary</b>	Information not held																			
<b>Durham Police</b>	6	20	42	20	2	10	15	10	1	17	6	7	3	8	8	4	Information not held			
<b>Essex Police</b>	Non-Recordable Offences - Information not held																			
<b>Gwent Police</b>	14	22	41	21	1	6	7	6	7	10	16	14	3	4	8	8	Removed - cost/time			
<b>Hampshire Constabulary</b>	Refused - Cost/Time																			
<b>Humberside Police</b>	Information not held: Non-notifiable offences																			

<sup>26</sup> Response notes that 158 offences under Section 127 of the Communications Act 2003 and 36 under the Malicious Communications Act 1988 have “*proceeded by way of Summons*”.

<b>Kent Police</b>	Information not provided				1	22	15	11	Information not provided				1	10	8	9	Removed - cost/time			
<b>Lancashire Constabulary</b>	87	94	106	45	18	18	36	23	11	28	30	18	11	4	5	5	Information not Recorded			
<b>Leicestershire Police</b>	Offences not broken down: See 3rd table.															0	2	6	2	
<b>Lincolnshire Police</b>	1	10	12	5	0	3	1	1	1	2	2	0	0	0	2	1	0	0	0	0
<b>Metropolitan Police</b>	Rejected: Cost and Time																			
<b>Northamptonshire Police</b>	Information not broken down																			
<b>Northumbria Police</b>	10	52	58	49	4	31	42	42	7	47	43	33	5	8	7	14	Removed - Cost/Time			
<b>Nottinghamshire Police</b>	Information not provided - not held in retrievable format																			
<b>Police Scotland</b>	No included in FOI																			
<b>Staffordshire Police<sup>27</sup></b>	33	40	23	18	13	11	7	3	9	5	9	2	6	4	8	2	2	3	5	2
<b>Suffolk Constabulary</b>	Offences not broken down: See 3rd table.															9	47	40	40	
<b>Surrey Police</b>	3	40	31	25	4	17	27	18	0	2	1	0	0	1	1	3	Refused - Cost and Time			
<b>Thames Valley Police<sup>28</sup></b>	See Note		50	45	See Note		12	23	See Note		9	17	See Note		3	13	Refused - Cost and Time			
<b>Warwickshire Police<sup>29</sup></b>	2	13	10	5	0	3	3	0	0	5	6	7	1	3	3	3	0	0	1	2

<sup>27</sup> Response notes that all cases involving social media were on Facebook.

<sup>28</sup> Response notes: "We are unable to provide data prior to 15<sup>th</sup> May 2012 due to a change in our Custody Recording System."

<sup>29</sup> Response notes that social media data relates to searches for "Facebook", "Twitter" and "Blog".

<b>West Mercia Police</b>	12	67	54	49	6	42	42	49	0	1	4	3	1	4	4	2	Refused - Cost and Time								
<b>West Midlands Police</b>	3	17	6	21	0	4	5	3	1	5	4	6	1	2	1	3	Information not provided <sup>30</sup>								
<b>Wiltshire Constabulary</b>	Refused - Cost and Time involved in accessing information																								
<b>Yearly Totals</b>	22	44	53	35	66	19	23	20	89	18	19	13	81	97	10	11	22	61	65	57					
<b>Totals</b>	1	6	6	4		0	2	0		4	0	6			2	8									
		1557					688					599					398					205			

<sup>30</sup> Response notes this would have exceeded cost and time limits.

**Table 4: Police Forces that failed to break down disposals between legislation**

Offence not broken down	Charges				Cautions			
	2010	2011	2012	2013	2010	2011	2012	2013
Gloucestershire Constabulary	2	10	18	12	3	6	2	4
Leicestershire Constabulary	2	9	27	13	0	9	15	4
Suffolk Constabulary	18	113	117	89	6	65	78	37
<b>Total</b>		<b>430</b>				<b>229</b>		

**Table 5: Police Forces that failed to break down legislation between disposals<sup>31</sup>**

Disposal not broken down	Section 127 Communications Act				Malicious Communications Act 1988			
	2010	2011	2012	2013	2010	2011	2012	2013
Gloucestershire Constabulary	4	14	14	12	2	4	9	4
<b>Total</b>		<b>44</b>				<b>19</b>		

<sup>31</sup> Recorded cases

**Table 6: Results by Population**

The population information shown in this table is taken from estimates by the ONS.

Police Force	Mid 2010 Population (000)	Section 127 Communications Act 2003 Charges	Section 127 Communications Act 2003 Cautions	Malicious Communications Act 1988 Charges	Malicious Communications Act 1988 Cautions	Cases Involving Social Media
<b>Metropolitan Police</b>	7813.5	Refused: Cost and Time				
<b>West Midlands Police</b>	2655.1	47	12	16	7	Data not organised
<b>Greater Manchester Police</b>	2629.4	274	37	110	20	Information not held
<b>Thames Valley Police</b>	2253.5	95	35	26	16	Refused - Cost/Time
<b>West Yorkshire Police</b>	2249.5	67	44	241	73	16
<b>Hampshire Constabulary</b>	1884.2	Refused: Cost and Time				
<b>Essex Police</b>	1738	Non-Recordable Offences - Information not held				
<b>Kent Police</b>	1684.1	Information not Provided	49	Information not Provided	28	Removed cost/time
<b>Devon and Cornwall Police</b>	1680.4	156	201	1	2	44
<b>Avon and Somerset Constabulary</b>	1623.2	171	56	160	168	44
<b>Sussex Police</b>	1574	121	40	84	49	Information not centrally held
<b>Lancashire Constabulary</b>	1449.3	332	95	87	25	Information not recorded

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<b>Northumbria Police</b>	1431.5	169	119	130	34	Removed - Cost/Time	
<b>Merseyside Police</b>	1353.4	80	18	42	16	24	
<b>South Yorkshire Police</b>	1328.3	94	7	17	1	1	
<b>South Wales Police</b>	1260.5	23	18	3	8	11	
<b>West Mercia Police</b>	1192.7	182	139	8	11	Rejected cost/time	
<b>Surrey Police</b>	1127.3	99	66	3	5	Refused - Cost/Time	
<b>Hertfordshire Constabulary</b>	1107.5	106	143	8	7	45	
<b>Nottinghamshire Police</b>	1086.6	Information not provided: Not held in a retrievable format					
<b>Staffordshire Police</b>	1071.4	114	34	25	20	12	
<b>Derbyshire Constabulary</b>	1010.6	9	4	2	0	2	
<b>Cheshire Constabulary</b>	1009.3	Information not held					
<b>Leicestershire Police</b>	993.9	Offences not broken down					10
<b>Humberside Police</b>	921.2	Information not held					Refused - Cost/Time
<b>Norfolk Constabulary</b>	862.3	4 charges for 'Malicious Communications'					1
<b>North Yorkshire Police</b>	802.2	27	3	11	6	1	
<b>Cambridgeshire Constabulary</b>	789.7	103	14	41	16	Information not held	
<b>Suffolk Constabulary</b>	719.5	Offences not broken down					136
<b>Dorset Police</b>	715	54	7	8	4	Information not provided	
<b>Lincolnshire Police</b>	703	28	5	5	3	0	
<b>Northamptonshire</b>	687.3	Information not broken down					Refused -

Police						Cost/Time
<b>North Wales Police</b>	678.5	0	0	3	1	2
<b>Wiltshire Police</b>	661.6	Refused: Cost and time of accessing information				
<b>Bedfordshire Police</b>	614.8	63	18	17	18	Refused - Cost/Time
<b>Durham Constabulary</b>	611.6	88	37	31	23	Information not held
<b>Gloucestershire Constabulary</b>	593.5	Offences not broken down				
<b>Cleveland Police</b>	563.5	Information not provided				
<b>Gwent Police</b>	561.4	98	20	47	23	Removed cost/time
<b>Warwickshire Police</b>	536	30	6	18	10	3
<b>Dyfed-Powys Police</b>	506.1	35	8	17	2	3
<b>Cumbria Constabulary</b>	494.4	Information not held				
<b>City of London Police</b>	11.7	1	1	2	9	0
<b>Total</b>	<b>55240.5</b>	<b>2666</b>	<b>1236</b>	<b>1163</b>	<b>605</b>	<b>355</b>



## Appendix 1: Methodology

A Freedom of Information request was sent to all Police Forces in England and Wales on the 6<sup>th</sup> January 2014. We asked how many cautions and charges had been made under Section 127 of the Communications Act 2003 and the Malicious Communications Act 1988.

We received a 100% response rate. However a number of forces were unable to provide some or all of the required information. **4** forces (Cheshire Constabulary, Cumbria Constabulary, Essex Police and Humberside Police) did not hold the information. Another **1** (Nottinghamshire Police) didn't hold the information in a retrievable format. **4** forces (Hampshire Constabulary, Lincolnshire Police, the Metropolitan Police and Wiltshire Constabulary) refused the request entirely, citing the time and cost that would be incurred.

Looking specifically at the final question, **7** forces requested to exclude the question entirely; this would allow them to bring the remainder of the request under the cost and time limits. Another **6** did not hold information relating to question 5 and were therefore unable to respond.

A number of forces asked to be given key words that could then be used to search records. The words given in each case were "Facebook", "Twitter" and "Blog".

## Appendix 2: Freedom of Information Request

Dear Sir or Madam

I am writing to you under the Freedom of Information Act 2000 to request information about your force's use of Section 127 of the Communications Act 2003 and the Malicious Communications Act 1988, specifically I am asking for;

1. The number of people charged under Section 127 of the Communications Act 2003.
2. The number of people charged under the Malicious Communications Act 1988.
3. The number of cautions that have been issued for an offence under Section 127 of the Communications Act 2003.
4. The number of cautions that have been issued for an offence under the Malicious Communications Act 1988.
5. The number of the above cases which have involved social media.

I request that the time period covered is 1<sup>st</sup> November 2010-1<sup>st</sup> November 2013. I also request that the information be broken down by either calendar or financial year: whichever format the data is stored in.

I understand under the Freedom of Information Act that I am entitled to a response within twenty working days. I would be grateful if you could confirm this request in writing as soon as possible.

## About Big Brother Watch

Big Brother Watch was set up to challenge policies that threaten our privacy, our freedoms and our civil liberties, and to expose the true scale of the surveillance state.

Founded in 2009, we have produced unique research exposing the erosion of civil liberties in the UK, looking at the dramatic expansion of surveillance powers, the growth of the database state and the misuse of personal information.

We campaign to give individuals more control over their personal data, and hold to account those who fail to respect our privacy, whether private companies, government departments or local authorities.

Protecting individual privacy and defending civil liberties, Big Brother Watch is a campaign group for the digital age.

**If you are a journalist** and you would like to contact Big Brother Watch, including outside of office hours, please call +44 (0) 7505 448925 (24hrs). You can also email [press@bigbrotherwatch.org.uk](mailto:press@bigbrotherwatch.org.uk) for written enquiries.

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