

POTENTIAL CRIMINAL OFFENCES

1. This appendix contains a brief outline of some of the more common criminal offences EPUT staff may encounter during the course of their work. Further information can be obtained from the Trust LSMS.

2. **Common Assault: Section 39 Criminal Justice Act 1988**

*An assault is committed when a person intentionally or recklessly causes another to apprehend the immediate infliction of unlawful force.*

*A battery is committed when a person intentionally and recklessly applies unlawful force to another.*

3. **Assault occasioning actual bodily harm, contrary to section 47 of the Offences against the Person Act 1861. (Wounding/GBH)**

The offence is committed when a person assaults another, and causes actual bodily harm. Bodily harm is *any hurt calculated to interfere with the health or comfort of the victim: such hurt need not be permanent, but must be more than transient and trifling.*

4. **Unlawful wounding/inflicting grievous bodily harm, contrary to section 20 of the Offences against the Person Act 1861 (Wounding/GBH)**

The offence is committed when a person *unlawfully and maliciously, either, wounds another person; or inflicts grievous bodily harm upon another person.*

NB. While the nature and extent of any injury is the main factor used to determine the correct offence to be charged, there will be some overlap, e.g. an ABH with minor injury may be charged as a common assault (assault by beating/battery).

5. **Threats to Kill contrary to section 16 of the Offences against the Person Act 1861**

*'A person who without lawful excuse makes to another a threat, **intending that the other would fear it would be carried out**, to kill that other or a third person shall be guilty of an offence...'*

This offence is usually only charged in serious cases. The main difficulty in proving such an offence is in showing that circumstances surrounding the incident mean (i) that the person who receives the threat actually fears it will happen, rather than viewing it as part of a menacing incident, **and** (ii) that it is the intention of the person making the threat that it should be believed. It is not necessary that the person who receives the threat is the same person at whom the threat is directed.

6. **Section 2 Violent Disorder**

Violent Disorder involves *three or more people who are present together and use or threaten unlawful violence so that the conduct of them (taken together) would cause a*

*person of reasonable firmness present at the scene to fear for his or her personal safety.*

The offence may be committed in a public or private place. The relevant conduct may be directed against a person or persons or against property.

**7. Section 3 Affray**

*Affray takes place where a person uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety.*

The actions must involve conduct which is more than just words or violent conduct towards property. The offence may be committed in a public or private place.

It is not enough for the prosecution to prove that unlawful violence has been used. There has to be violence of such a kind that a bystander would fear for his safety.

**8. Section 4 causing fear or provocation of violence, often known as ‘threatening behaviour’**

*This offence is committed where a person uses towards another person, threatening, abusive or insulting words or behaviour, or distributes or displays to another person any writing, sign or other visible representation which is threatening, abusive or insulting, and with intent to cause that person to believe that immediate unlawful violence will be used against him or another by any person, or to provoke the immediate use of unlawful violence by that person or another, or whereby that person is likely to believe that such violence will be used or it is likely that such violence will be provoked.*

**9. Section 4A causing intentional harassment, alarm or distress**

*This offence is committed where a person, with intent to cause a person harassment, alarm or distress, uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening, abusive or insulting, and actually causes that or another person harassment, alarm or distress.*

**10. Section 5 threatening, abusive or insulting words or behaviour likely to cause harassment, alarm or distress.**

*This offence is committed where a person uses threatening, abusive or insulting words or behaviour, or disorderly behaviour, or displays any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.*

Offences under 4, 4A and 5 can take place in a public or private place but not where the offender or potential victim(s) are in a dwelling.

By virtue of section 31 (1)(c) of the Crime and Disorder Act 1998 (as amended by the Anti-Terrorism, Crime & Security Act 2001) sections 4, 4A and 5 are all capable of being charged as separate racial or religiously aggravated offences.

**11. Obstructing Emergency Workers**

The Emergency Workers (Obstruction) Act 2006 contains two offences:

- I. Obstructing or hindering certain emergency workers who are responding to an emergency situation; and*
- II. Obstructing or hindering those who are assisting emergency workers responding to emergency circumstances.*

In relation to the NHS this offence is most likely to involve ambulance crew and other staff assisting them.

**12. Offence of causing nuisance or disturbance on NHS premises**

Section 119(1) of the Criminal Justice and Immigration Act 2008 (CJIA 2008) creates a new offence of *causing without reasonable excuse and while on NHS premises, a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with work and refuses to leave when asked to do so.*

It will not apply to those who are legitimately present for the purposes of seeking treatment, care or advice unless they have been refused treatment, care or advice within a set time.

**13. Protection from Harassment Act 1997**

The PHA was brought into force on 16 June 1997 and was amended by the Protection of Freedoms Act 2012 to include two new specific offences of stalking, through the insertion of sections 2A and 4A. A court dealing with a person convicted of any offence, including those under sections 2, 2A, 4 or 4A of the PHA, may make a restraining order prohibiting the defendant from doing anything described in the order. This order can be made in addition to a custodial sentence or other sentence. The order can be especially useful in preventing continued stalking and harassment by defendants, including those who are given sentences of imprisonment.

To prove a section 2A it needs to be shown that a perpetrator *pursued a course of conduct which amounts to harassment and that the particular harassment can be described as stalking behaviour.* Stalking is not legally defined but the amendments include a list of example behaviours which are following, contacting/attempting to contact, publishing statements or material about the victim, monitoring the victim (including online), loitering in a public or private place, interfering with property, watching or spying. This is a non-exhaustive list which means that behaviour which is not described above may also be seen as stalking. A course of conduct is 2 or more incidents.

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Section 4A is *stalking involving fear of violence or serious alarm of distress*. Again serious alarm and distress is not defined but can include behaviour which causes the victim to suffer emotional or psychological trauma or have to change the way they live their life.

The PHA includes the following provisions:

- Harassment (section 2): a summary only offence, carrying a maximum of six months' imprisonment and/or a level 5 fine;
- Stalking (section 2A): a summary only offence, carrying a maximum of six months' imprisonment and /or a level 5 fine;
- Fear of violence (section 4): an either way offence, carrying a maximum of five years' imprisonment and/or a fine on indictment;
- Stalking - involving fear of violence or serious alarm or distress (section 4A): an either way offence, carrying a maximum of five years' imprisonment and/or a fine on indictment;
- Breach of a civil injunction (section 3(6)): an either way offence, carrying the same penalty as for the section 4 offence;
- Breach of a restraining order (section 5(5)); an either way offence, carrying the same penalty as for the section 4 offence;
- a civil tort of harassment, created by section 3.

Guidance and support in relation to stalking and harassment can be given by the Trust LSMS. Other supportive information can be found here on the Intranet:

[Risk Management – Local Security Management Specialist – Stalk & Harassment](#)

### 14. **Communications Act 2003**

#### **Section 127 - Improper use of public electronic communications network.**

*(1) A person is guilty of an offence if he:*

*(a) sends by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or*

*(b) causes any such message or matter to be so sent.*

*(2) A person is guilty of an offence if, for the purpose of causing annoyance, inconvenience or needless anxiety to another, he:*

*(a) sends by means of a public electronic communications network, a message that he knows to be false,*

*(b) causes such a message to be sent; or*

*(c) persistently makes use of a public electronic communications network.*

*(3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.*

The term 'electronic communication' includes:

- Landline telephone conversations
- Mobile telephone conversations
- Messages left on answering machines
- Messages that have to be retrieved from an answering service
- Text messages
- Faxes
- Emails and other online messaging services.

The network must be publicly accessible, i.e. not using an organisations internal network.

15. **Malicious Communications Act 1988**

(As amended by the Criminal Justice and Police Act 2001 and the Communications Act 2003)

*(1) Any person who **sends** to another person*

*(a) A letter, electronic communication or article of any description which conveys –*

*(i) A message which is indecent or grossly offensive*

*(ii) A **threat** or*

*(iii) Information which is false and known or believed to be false by the sender; or*

*(b) Any article or electronic communication which is, in whole or part, of an **indecent or grossly offensive nature**.*

*Is guilty of an offence **if his purpose** or one of his purposes, in sending it is that it should so far as falling within paragraph (a) or (b) above, **cause distress or anxiety** to the recipient or to any other person to whom he intends that it or its contents or nature should be communicated.*

*(2) A person is not guilty of an offence by virtue of subsection (1)(a)(ii) above, if he shows:*

*(a) That the threat was used to reinforce a demand made by him on reasonable grounds; and*

*(b) That he believed, and had reasonable grounds for believing, that the use of the threat was a proper means of reinforcing the demand.*

*(2A) In this section 'electronic communication' includes:*

*(a) Any oral or other communication by means of an electronic communications network; and*

*(b) Any communication (however sent) that is in electronic form*

*(3) In this section references to sending include references to delivering or transmitting and to causing to be sent, delivered or transmitted and 'sender' shall be construed accordingly.*

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*(4) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standards scale, or to both.*

NB This offense covers not only electronic communications, but also letters and articles of 'any description'. As there is no reference to 'public', it is possible that offences could be committed via internal message/postal systems.

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- Landline telephone conversations
- Mobile telephone conversations
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- Messages that have to be retrieved from an answering service
- Text messages
- Faxes
- Emails and other online messaging services.

### 16. **Postal Services Act 2000**

#### **Section 85 - Prohibition on sending certain articles by post.**

*(1) A person commits an offence if he sends by post a postal packet which encloses any creature, article or thing of any kind which is likely to injure other postal packets in course of their transmission by post or any person engaged in the business of a postal operator.*

*(2) Subsection (1) does not apply to postal packets which enclose anything permitted (whether generally or specifically) by the postal operator concerned.*

*(3) A person commits an offence if he sends by post a postal packet which encloses:*

*(a) any indecent or obscene print, painting, photograph, lithograph, engraving, cinematograph film or other record of a picture or pictures, book, card or written communication, or,*

*(b) any other indecent or obscene article (whether or not of a similar kind to those mentioned in paragraph (a)).*

*(4) A person commits an offence if he sends by post a postal packet which has on the packet, or on the cover of the packet, any words, marks or designs which are of an indecent or obscene character.*

*(5) A person who commits an offence under this section shall be liable.*

*(a) On summary conviction, to a fine not exceeding the statutory maximum,*

*(b) On conviction on indictment, to a fine or to imprisonment for a term not exceeding twelve months or to both.*

Under this act there is no requirement to prove any intention behind the sending of such articles, and the offence is widely drafted so as to include almost any item that is indecent or obscene.

**For further information and advice around potential criminal offences committed against EPUT staff, property or assets – please contact the Trust LSMS directly.**