OFFENSIVE/MALICIOUS/NUISANCE COMMUNICATIONS

Communications Act 2003

127. - (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.

Maximum Sentence:

Communications Act, section 127(3)
Summary Only: 6 months imprisonment or a fine not exceeding Level 5 (£5,000) or both

Assessment of Offence
(Starting points and ranges based on 1ˢᵗ time offender convicted following contest)

Nature of Offence		Starting Point	Sentencing Range
Offence under Article 127(1)	Single communication	Community Order + Compensation Order	Community Order 2 months Custody + Compensation Order + Restraining Order
	Multiple communications	Community Order + Compensation Order	Community Order to 6 months Custody + Compensation Order + Restraining Order
	Threat of physical or sexual violence	4 months Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order + Restraining Order
Offence under Article 127(2)	Persistent calls over short period to private individual causing inconvenience or annoyance	Community Order + Compensation Order	Fine to Community Order + Compensation Order + Restraining Order
	Single hoax call to public or private organisation resulting in moderate disruption or anxiety	1 month Custody	Community Order to 3 months Custody + Compensation Order + Restraining Order
	Series of hoax calls to public or private organisations resulting in moderate disruption or anxiety; OR Single hoax call resulting in major disruption or substantial public fear or distress	3 month Custody	Community Order to 6 months Custody + Compensation Order + Restraining Order

Examples of Possible Aggravating Factors of Offence	Examples of Possible Mitigating Factor of Offence
1. Planning or pre-meditation	1. Provocation

2. Intention is to cause distress to victim 3. Offender involves other persons to assist in the offence 4. Offence took place over a protracted period 5. Offence caused children to be distressed/frightened 6. Offence committed in the context of bullying at college/university/workplace/etc. 7. Victim particularly vulnerable 8. Evidence of previous instances of actual violence by the offender against the victim 9. Demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.* 10. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying)	

Relevant Cases:

NI Cases:
N/A

English Cases:
1. R v Judge [2009] 1 Cr App R(S) 74
2. R v Debnath [2006] 2 Cr.App.R.(S.) 25
3. R v Buxton and others [2011] 2 Cr.App.R.(S.) 23

Notes:
1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a 'Restraining Order' prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order
3. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' where it relates to displaying any or other thing which is threatening,, abusive or insulting – Section 44 of the Justice Act (NI) 2011