

BIG BROTHER WATCH

DEFENDING CIVIL LIBERTIES, PROTECTING PRIVACY

Big Brother Watch's Briefing on the Online Forums Bill 2018

October 2018

About Big Brother Watch

About Big Brother Watch Big Brother Watch is a cross-party, non-party, independent non-profit organisation leading the protection of privacy and civil liberties in the UK. We expose and challenge threats to people's privacy, freedoms and civil liberties at a time of enormous technological change in the UK.

Contents

Summary	2
Background	3
The reasoning behind the Bill	3
Briefing	5
Making administrators and moderators legally liable for other users' content would result in over-censorship	5
The importance of online private groups	6
Relevant laws already exist	7
Freedom of expression, freedom of information and privacy in the UK	8
Conclusion	9

SUMMARY

- **Big Brother Watch calls on Members of Parliament to oppose the Online Forums Bill.**

The Online Forums Bill would:

- Unacceptably place legal responsibility on internet users for other users' expression
- Encourage erratic citizen policing of speech on online forums, including the censorship of lawful expression
- Create a barrier to community discussion and organising for groups through the banning of private forums and imposition of legal liability for administrators, with a particularly negative impact on marginalised communities such as addiction and recovery groups, sexual abuse victim groups, and community or campaigning groups organising their work.
- Have a chilling effect on free expression online

BACKGROUND

The **Online Forums Bill** is a Private Members' Bill introduced to Parliament by Lucy Powell MP, with cross-party support,¹ under the Ten Minute Rule on Tuesday 11 September 2018.² The Bill proposes “to make administrators and moderators of certain online forums responsible for content published on those forums” and “to require platforms to publish information about such forums”.³

In anticipation of the second reading of the Online Forums Bill on **23rd November 2018** we set out the fundamental flaws with the Bill in this briefing.

This Bill would unacceptably place legal responsibility on internet users for other users' expression. This misplacement of legal responsibility would have a serious chilling effect on free expression online, especially community organising and group discussions. It would also result in citizen censorship, likely to feature arbitrary and inconsistent restrictions of people's right to freedom of expression online.

We urge Members of Parliament to oppose this Bill to protect people's rights to freedom of expression, freedom of information and privacy online.

The official summary of the Bill is as follows:

“A Bill to make administrators and moderators of certain online forums responsible for content published on those forums; to require such administrators and moderators to remove certain content; to require platforms to publish information about such forums; and for connected purposes.”

The reasoning behind the Bill

Lucy Powell MP criticised the fact that “online groups... are not held to any standards, nor are they accountable. It is about time the law caught up.”⁴ She stated that there is a need to combat “online radicalisation”, such as the kind that resulted in the Finsbury Park Mosque

¹ The Bill was presented by Lucy Powell, Nicky Morgan, Robert Halfon, Robert Neil, Mr David Lammy, Anna Soubry, Mr Jacob Rees-Mogg, Ruth Smeeth, Luciana Berger, Stella Creasy and Jess Phillips.

² Lucy Powell MP, 'Online Forums Bill', First Reading, House of Commons, 11 September 2018 (<https://hansard.parliament.uk/commons/2018-09-11/debates/BC2267F0-86BB-4746-B822-D6D8A55F31BF/OnlineForums#contribution-5EE382FF-A545-463E-A1DE-8BFB07AAA9BD>)

³ <https://services.parliament.uk/bills/2017-19/onlineforums.html>

⁴ Lucy Powell MP, 'Online Forums Bill', First Reading, House of Commons, 11 September 2018 (<https://hansard.parliament.uk/commons/2018-09-11/debates/BC2267F0-86BB-4746-B822-D6D8A55F31BF/OnlineForums#contribution-5EE382FF-A545-463E-A1DE-8BFB07AAA9BD>)

attack in June 2017, as well as “the spreading of hate, racism, misogyny, antisemitism or misinformation”.⁵

She stated that the Bill would “make those who run large online forums accountable for the material they publish” and would “stop groups being completely secret”.⁶ She believes that “by establishing legal accountability for what’s published in large online forums”, that will “force those who run these echo chambers to stamp out the evil that is currently so prominent”.⁷

Lucy Powell MP used the example of Facebook groups, which “range from a few members to hundreds of thousands”, which “are run by administrators and moderators, who are charged with upholding Facebook’s community standards”.⁸ She acknowledged the common uses of these groups, such as those that are “set up to help old school or university friends keep in touch, and for people with a common hobby or interest.”⁹ However, she also used examples of groups that are “frequently awash with appalling racist content, white supremacy, jokes about the holocaust”, as well as groups full of misogyny and rape threats.¹⁰ Lucy Powell MP argued that if people “regularly read posts espousing unacceptable or wrong content that go unchecked, it can alter their perceptions”.¹¹ She also pointed to the lack of action taken by internet companies to deal with this.

She argued that this Bill is “not about censorship” or “small private gatherings”, but about “accountability for powerful and large-scale publishing and sharing”, and states that if “1000-plus people met in a town hall to incite violence towards a political opponent, or to incite racism or hate, we would know about it and deal with it” but that “[t]he same cannot be said of the online world.”¹² She acknowledged that the Communications Act 2003 is used to deal with “grossly offensive messages online” but stated that the law was enacted before Facebook even began, and that “[o]ur laws desperately need to catch up”.¹³

5 Lucy Powell MP, ‘Online Forums Bill’, First Reading, House of Commons, 11 September 2018 (<https://hansard.parliament.uk/commons/2018-09-11/debates/BC2267F0-86BB-4746-B822-D6D8A55F31BF/OnlineForums#contribution-5EE382FF-A545-463E-A1DE-8BFB07AAA9BD>)

6 *Ibid*

7 By establishing legal accountability for what’s published in large online forums, I believe we can force those who run these echo chambers to stamp out the evil that is currently so prominent.

8 *Ibid*

9 *Ibid*

10 *Ibid*

11 *Ibid*

12 *Ibid*

13 *Ibid*

BRIEFING

The issues this Bill raises are serious. However, despite being well-intentioned, this Bill is deeply misguided.

While the internet and the online forums it hosts can be characterised as places of disinformation and misinformation, full of hateful, abusive, and violent threatening messages. the internet is also, at its best, a powerful democratising force. The internet and online forums have allowed the open sharing of information; they have provided a platform for many to speak truth to power and to uncover wrongdoing; they have connected people to share views and to politically organise.¹⁴ Online forums have become central sites for citizens to discuss, debate and access information.

The harms described by Lucy Powell MP are not exclusive to the internet; the internet is merely a mirror of society and the issues of radicalisation, hate speech and misinformation also exist in the physical world.

In placing legal liability on administrators and moderators for the content that others post on online forums, and prohibiting closed groups online, the Bill would have an extremely harmful impact on people's rights to freedom of expression, freedom of information and privacy.

Making administrators and moderators legally liable for other users' content would result in over-censorship

The Online Forums Bill proposes to “make those who run large online forums accountable for the material they publish” and to “stop groups being completely secret”.¹⁵ Lucy Powell MP stated that the Bill is “not about censorship” or “small private gatherings” - but the Bill would undoubtedly result in over-censorship by administrators and moderators concerned about potential legal consequences.

Forcing administrators and moderators – who are, in the vast majority of cases, ordinary members of the public unqualified in law – to accept legal liability for content and communications on online forums would incentivise them to be overly cautious in their approach and to over-censor content in order to avoid liability. Misplacing legal liability on members of the public for speech, communications and online content that they themselves

¹⁴ UN Human Rights Council, 'The promotion, protection and enjoyment of human rights on the Internet', 4 July 2018 (<https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/203/73/PDF/G1820373.pdf?OpenElement>)

¹⁵ *Ibid*

haven't created would forcibly turn them into speech police, which would be a socially ostracising position for anyone to take. The social impact on, for example, a legally liable administrator of a student group would be significant. Such legal responsibility would also likely result in arbitrary, inconsistent and possibly biased decisions, and the censorship of expression that is in fact lawful.

The importance of online private groups

The Online Forums Bill also proposes to actually prohibit private groups of more than 500 members online – such a group would have to be public.¹⁶ However, this will have a significant and unacceptably restrictive effect on people's right to privacy, as well as their right to freedom of expression and information.

The former UN Special Rapporteur on Freedom of Expression, Frank La Rue has made clear that “throughout history, people's willingness to engage in debate on controversial subjects in the public sphere has always been linked to possibilities for doing so anonymously”,¹⁷ while the current UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression has expressed “the importance of privacy as a gateway to freedom of expression”.¹⁸

Many groups rely on the privacy and safety afforded by a closed group in order to communicate – particularly those who experience discrimination, are vulnerable or otherwise marginalised. Many people only feel able to express themselves on the basis that their identity, what they are saying and to whom, stays within certain specific circles. This includes marginalised groups, addiction and recovery groups, sexual abuse survivor groups, and community or campaigning groups organising their work. The burden of legal liability would deter most communities from maintaining their online groups.

The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated that “affinity-based groups” should be encouraged, given their “value in

¹⁶ The Guardian view on Facebook: extremism needs moderation – Editorial, The Guardian, 11 Sept 2018: <https://www.theguardian.com/commentisfree/2018/sep/11/the-guardian-view-on-facebook-extremism-needs-moderation>

¹⁷ UN Special Rapporteur, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. 16th May, A/HRC/17/27. (www.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

¹⁸ <https://freedex.org/wp-content/blogs.dir/2015/files/2018/05/G1809672.pdf>

protecting opinion, expanding space for vulnerable communities and allowing the testing of controversial or unpopular ideas.”¹⁹

The offline version of this proposal in the Bill would be to prevent groups of over 500 people from meeting or discussing issues privately – a clearly ridiculous proposition.

Relevant laws already exist

Indeed, the problem of hate crimes that Lucy Powell MP’s Online Forums Bill aims to deal with could, we believe, be dealt with by existing laws.

The UK already has a wide range of laws to deal with different forms of expression – which can be applied to speech and content online. This includes laws prohibiting speech that causes harassment, alarm, distress, or fear; speech that is deemed grossly offensive; or speech that incites hatred on the basis of race, religion or sexual orientation.

The Protection from Harassment Act 1997 criminalises conduct – including speech – that causes a person “alarm or distress”,²⁰ or causes another to fear that violence will be used against them,²¹ and stalking that causes a person “serious alarm or distress” or to fear violence.²² The Crime and Disorder Act 1998 added the additional aggravated offence of harassment which is “racially or religiously aggravated”.²³

The Public Order Act 1986²⁴ prohibits the use, publication or display of threatening words, behaviour or written material which is intended to incite – “stir up” – hatred on the basis of race, religion or sexual orientation.²⁵ The Act also criminalises the use of threatening and abusive words, behaviour or writing which causes “harassment”, “alarm” or “distress”,²⁶ “fear” for their “personal safety”,²⁷ or fear of violence.²⁸

The Malicious Communications Act 1988 prohibits the sending of “electronic communications” that are indecent, grossly offensive, threatening or knowingly false.²⁹ The Communications Act

19 <https://freedex.org/wp-content/blogs.dir/2015/files/2018/05/G1809672.pdf>

20 Sections 1, 7(2) and 7(3). The offence must involve conduct on at least two occasions.

21 Section 4

22 Section 4A

23 Section 32, Crime and Disorder Act 1998

24 As amended by the Racial and Religious Hatred Act 2006 and the Criminal Justice and Immigration Act 2008

25 Part 3 and 3A

26 Sections 4A, 5

27 Sections 1, 2, 3

28 Section 4

29 Section 1

2003 criminalises the sending of “public electronic communications” that are “grossly offensive”, “indecent”, “obscene” or “menacing”, or the sending of persistent or knowingly false messages for the purpose of causing “annoyance”, “inconvenience” or “needless anxiety”.³⁰ The 1998 and 2003 Acts are currently under review by the Law Commission to determine whether they are up to date with current technology, and whether the term “grossly offensive” causes problems for legal certainty.³¹

The Terrorism Act 2006 criminalises making statements which directly or indirectly encourage or “glorify” terrorism.³²

In 2017, the Director of Public Prosecutions (DPP), Alison Saunders, said that hate crimes committed on social media would be treated “with the same robust and proactive approach used with offline offending”, which would “undoubtedly lead to an increase in prosecutions”.³³

It is clear that there is already a wide range of laws that can be used to prosecute violent, hateful and harmful forms of speech and behaviour online.

Freedom of expression, freedom of information and privacy in the UK

International human rights covenants to which the UK is a signatory, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the European Charter of Human Rights; and national human rights laws, specifically the Human Rights Act 1998, impose a duty on the UK to ensure an enabling environment for, and to protect, people’s rights to freedom of expression and information, and to privacy.³⁴ This Bill would frustrate that obligation due to its extremely restrictive effect on free expression and privacy online.

30 Section 127

31 <https://www.lawcom.gov.uk/project/offensive-online-communications/>

32 Terrorism Act 2006, Section 1

33 <https://www.independent.co.uk/news/uk/politics/hate-crimes-social-media-crown-prosecution-service-home-office-prejudice-a7903166.html>

34 Human Rights Act 1998, Schedule 1, Article 8 and Article 10

CONCLUSION

The Online Forums Bill may be well-intended but is deeply misguided. The Bill aims to target misinformation, online radicalisation and hate speech in all its many forms. While these problems are serious, they cannot be solved by Lucy Powell MP's proposals, which would only deepen issues with free expression online.

The effect of this Bill would be to significantly restrict people's ability to speak freely and organise around specific issues online, and potentially to further marginalise communities. A future in which online forums are forcibly policed by ordinary members of the public afraid of legal ramifications is not one in which expression will be reliably free, open or democratic. This Bill would significantly undermine free expression online and we urge Members of Parliament to oppose it.

Silkie Carlo

Griff Ferris