Neutral Citation Number: [2012] EWHC 2157

Case No: CO/2350/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/07/2012

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE OWEN
MR JUSTICE GRIFFITH WILLIAMS

- -

Between :

Paul Chambers	**Appellant**
- and -	
Director of Public Prosecutions	**Respondent**

- -
- -

John Cooper QC and Sarah Przybylska (instructed by **David Allen Green Preiskel & Co LLP**) for the **Appellant**
Robert Smith QC (instructed by **Director of Public Prosecutions**) for the **Respondent**

Hearing date: 27th June 2012

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Approved Judgment

The Lord Chief Justice of England and Wales, Lord Judge:

This is the judgment of the Court.

Introduction

1. This is an appeal by way of case stated from the decision of the Crown Court at Doncaster (Her Honour Judge Davies and Justices) on 3rd March 2011 upholding the conviction of the appellant in the Magistrates Court for sending by a public electronic communication network a message of a "menacing character" contrary to s.127(1)(a) and (3) of the Communications Act 2003 (the Act).

2. Section 127 of the Act addresses the problem of the unlawful use of the public electronic communications network. It provides:

> "(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. …"

3. Section 32 of the Act provides that electronic communications network means:

> "(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description: and
>
> (b) such of the following as are used, by the persons providing the system and in association with it, for the conveyance of the signals –
>
> (i) apparatus comprised in the system;

> (ii) apparatus used for the switching or routing of the signal; and
>
> (iii) software and stored data.
>
> (2) In this Act "electronic communications service" means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service…
>
> (3) In this Act –
>
> a) References to the provision of an electronic communications network include references to its establishment, maintenance or operation …
>
> (7) In sub-section (2) "a content service" means so much of any service as consists in one or both of the following –
>
> (a) The provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network;
>
> (b) The exercise of editorial control over the contents of signals conveyed by means of such a network.

4. Section 151(1) is an interpretation section. It provides

> (1) In this Chapter …
>
> "Public electronic communications network" means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public;
>
> "Public electronic communications service" means any electronic communications service that is provided so as to be available for use by members of the public;".

The facts

5. We take the essential facts from the case stated.

6. The appellant was 26 years old at the time with which the court is concerned, a well educated young man of previous good character, holding a responsible job as an administration and finance supervisor.

7. The appellant was, and is, a registered user of the "Twitter" social networking platform, owned and operated by Twitter Inc., an American Corporation, typically accessed by a registered user by means of the internet. "Twitter" was not invented until 2006, that is after the enactment of the Act, but, as is the way with modern means of communication, its daily use by millions of people throughout the world has rocketed.

8. Each registered user adopts a unique user name or "Twitter handle". The appellant used his own name for this purpose and was registered as "@PaulJChambers", with a personal photograph as his account picture.

9. In very brief terms "Twitter" enables its users to post messages (of no more than 140 characters) on the "Twitter" interne and other sites. Such messages are called "tweets". "Tweets" include expressions of opinion, assertions of fact, gossip, jokes (bad ones as well as good ones), descriptions of what the user is or has been doing, or where he has been, or intends to go. Effectively it may communicate any information at all that the user wishes to send, and for some users, at any rate, it represents no more and no less than conversation without speech.

10. Those who use "Twitter" can be "followed" by other users and "Twitter" users often enter into conversations or dialogues with other "Twitter" users. Depending on how a user posts his "tweets", they can become available for others to read. A "public time line" of a user shows the most recent "tweets". Unless they are addressed as a direct message to another "Twitter" user or users, in which case the message will only be seen by the user posting the "tweet", and the specific user or users to whom it is addressed, the followers of a "Twitter" user are able to access his or her messages. Accordingly most "tweets" remain visible to the user and his/her followers for a short while, until they are replaced by more recently posted "tweets". As every "Twitter" user appreciates or should appreciate, it is possible for non-followers to access these "public time lines" and they, too, can then read the messages. It is also possible for non-users to use the "Twitter" search facility to find "tweets" of possible interest to them.

11. Using "Twitter" the appellant met another user of "Twitter", identified as "Crazy Colours", on line. She is a woman who lives in Northern Ireland. They started communicating using "Twitter", and a romance developed. The appellant was due to fly to Belfast from Doncaster Robin Hood Airport to meet "Crazycolours" on 15 January 2010.

12. On 6 January 2010, following an alert on "Twitter", the appellant became aware of problems at Doncaster, Robin Hood Airport, due to adverse weather conditions. He and Crazycolours had a dialogue on "Twitter". Two messages were referred to in the Crown Court. They were:

> "@ Crazycolours: I was thinking that if it does then I had decided to resort to terrorism":
>
> "@ Crazycolours: That's the plan! I am sure the pilots will be expecting me to demand a more exotic location than NI".

In context, this seems to have been a reference to the possibility of the airport closing, but the picture was incomplete because no reply from Crazycolours was produced. Some two hours later, when he heard that the airport had closed, he posted the following message:

> "Crap! Robin Hood Airport is closed. You've got a week and a bit to get your shit together otherwise I am blowing the airport sky high!!"

The message was posted onto the public time line, which meant that it was available to be read by some 600, or so, of the followers of his "Twitter" postings.

13. There was no evidence before the Crown Court to suggest that any of the followers of the appellant's "tweet", or indeed anyone else who may have seen the "tweet" posted on the appellant's time line, found it to be of a menacing character or, at a time when the threat of terrorism is real, even minimally alarming. In fact nothing was done about it by anyone until 11 January 2010, some five days later when the duty manager responsible for security at Robin Hood Airport, while off duty at home, found it. Mr Duffield did not see this "tweet" on the appellant's time line, and it was never sent to him or to the airport. Rather he was at home searching generally for any "tweets" which referred to Robin Hood Airport. In cross examination he said that he did not know whether the "tweet" was a joke or not, but as even a joke could cause major disruption it had to be investigated. Accordingly he referred the "tweet" to his manager, Mr Armson. Mr Armson was responsible for deciding whether any perceived threat to the airport should be graded as "credible" or "non-credible". If "credible", it was to be referred immediately to the Ministry of Defence, but if "non-credible", as a matter of standard practice it was to be reported to the airport police. Mr Armson examined the appellant's "tweet". He regarded it as "non-credible", not least because it featured the appellant's name and, as he noted, the appellant was due to fly from the airport in the near future. Nevertheless in accordance with airport procedure he passed this "tweet" to the airport police. The airport police themselves took no action, presumably for exactly the same reason, but they decided to refer the matter on to the South Yorkshire police.

14. The South Yorkshire police arrested the appellant, while he was at work, two days later, on 13 January on suspicion of involvement in a bomb hoax. It was now seven days since the offending message was "tweeted". The appellant was interviewed under caution. When interviewed, and indeed in his evidence, the appellant repeatedly asserted that this "tweet" was a joke or meant to be a joke and not intended to be menacing. He said that he did not see any risk at all that it would be regarded as menacing, and that if he had, he would not have posted it. In interview he was asked whether some people might get a bit jumpy and responded "yah. Hmm mmm".

15. On 10 February 2010, when the police investigation was completed, one of the investigating officers recorded the following observation on the South Yorkshire Police Crime Management System:

> "Male detained re making threats to Doncaster Robin Hood Airport. The male in question has been bailed and his phone/computer has been seized – there is no evidence at this stage to suggest that there is anything other than a foolish comment posted on "Twitter" as a joke for only his close friends to see."

16. The police sought the advice of the Crown Prosecution Service. As a result the appellant was charged with the offence of which he now stands convicted.

17. On the basis of these facts the Crown Court was "satisfied" that the message in question was "menacing per se". The court took the view "that an ordinary person

seeing the "tweet" would see it in that way and be alarmed. The airport staff did see it and were sufficiently concerned to report it".

18. The Crown Court went on to hold "that the required mens rea … is that the person sending the message must have intended the message to be menacing, or be aware that it might be taken to be so …" The court was satisfied that the appellant was, at the very least, aware that his message was of a menacing character.

19. The Crown Court posed the following very wide ranging issues for the decision of the High Court:

> "THE QUESTIONS FOR THE HIGH COURT
>
> (1) In order to prove that a message is "of a menacing character" within the meaning of Section 127(1)(a) (read according to conventional canons of construction or with the benefit of Article 10 ECHR and Section 3 of the Human Rights Act 1998) is the prosecution required to prove, as part of the *actus reus* of the offence, that the person sending the message intended, *"to create a fear in or through the recipient"* (per Sedley LJ in Collins *supra*) or, were we correct to conclude that the question whether a message if *"of a menacing character"* is an objective question of fact for the Court to determine?
>
> 1(a) In order to prove that a message is of a *"menacing character"* within the meaning of Section 127(1)(a) (read according to conventional canons of construction or with the benefit of Article 10 ECHR and Section 3 of the Human Rights Act 1998), is the Prosecution required to prove that the person sending the message intended to create a fear in or through the recipient (Sedley L.J., in Collins *supra*, having defined a menacing message as *"a message that conveys a threat … which seeks to create a fear in or through the recipient that something unpleasant is likely to happen"*) or were we correct to conclude that the question of whether a message is *"of a menacing character"* is an objective question of fact for the Court to determine applying the standards of an open and just society and taking account of the words, context and all relevant circumstances?
>
> 1(b) Is the *actus reus* of the offence (Lord Bingham in Collins supra), *'the sending of a message of the proscribed character by the defined means'*, as we found, or does the *actus reus* include a requirement that the person sending the message intended the message to '*create a fear in or through the recipient*'?

(2) What is the *mens rea* for an offence of sending a message of menacing character contrary to Section 127(1)(a)? In particular:

(a) Is Section 127(1)(a) (read according to convention canons of construction or with the benefit of Article 10 ECHR and Section 3 of the Human Rights Act 1998) a crime of specific intent?

(b) Is the Prosecution required to prove as part of the *mens rea* of the offence that the person sending the message *intended* to put another person in fear?

(c) If the answer to (b) is no, is it sufficient for the Prosecution to prove that the person sending the message realised that his message *may or might* be taken as menacing, or must the prosecution prove that he realised that it *would* be taken as menacing by a person of reasonable firmness aware of all the relevant circumstances?

(3) Did the Court act lawfully (within the meaning of Section 6 of the Human Rights Act 1998) in convicting and sentencing the Appellant as it did? In particular:

(a) Did the Appellant's act in posting the message engage his right to freedom of expression under Article 10(1) ECHR?

(b) If so, did his conviction and sentence amount to an '*interference*' with the exercise of that right?

(c) If so, was that interference necessary in a democratic society for one of the reasons listed in Article 10(2)?

(4) In all the circumstances, was the Court correct to conclude that the message sent by the Appellant crossed the threshold of gravity necessary to constitute a message '*of a menacing character*' so as to amount to a criminal offence within the meaning of Section 127(1)(a) and (3) and was the Court correct to convict the appellant on the evidence and sentence him as it did?"

20. We propose only to deal with the issues necessary to decide this appeal.

Public electronic communications network

21. It was agreed before the magistrates that the appellant's message was sent using the "Twitter" social networking site which fell within the description of a "public electronic communications network". It was, however, a ground of appeal to the

Crown Court that the message was not sent by a public electronic communications network. By the date of the hearing in the Crown Court there was a formal admission in these terms:

> "Twitter is a privately owned company which operates via a public electronic communications network. Messages which are posted on the Public Timeline of Twitter are accessible to all those who have access to the internet".

Nevertheless Mr John Cooper QC on behalf of the appellant sought to argue that the appellant's message was not sent by means of a "public electronic communications network". He submitted that this was a "tweet" found by means of a subsequent search, and so should be treated as no more than "content" created and published on a social media platform rather than a message sent by means of a communications network. It would, he submitted, be a dangerous development to extend the ambit of s.127(1) of the Act to "Twitter". He relied on the words used by Lord Bingham of Cornhill in the context of "grossly offensive" telephone messages under consideration in *Director of Public Prosecution v Collins* [2006] 1 WLR 308 (Divisional Court) and [2006] 1 WLR 2223 (House of Lords) that the section addressed "a service provided and funding by the public for the benefit of the public". Therefore, he contended, the section was primarily concerned with such messages sent by the telephone system and so with voice telephony.

22. When we examined the issue in argument, Mr Cooper accepted that a message on public "Twitter" is accessible to all who have access to the internet, and therefore, by inference, to the public, or to that vast section of the public which included anyone who chose to access a timeline consisting of any of the posted key words by use of a search engine.

23. In her judgment in the Crown Court Judge Davies addressed this issue when rejecting a submission that there was "no case" for the appellant to answer. She said:

> "The "Twitter" website although privately owned cannot, as we understand it, operate save through the internet, which is plainly a public electronic network provided for the public and paid for by the public through the various service providers we are all familiar with … The internet is widely available to the public and funded by the public and without it facilities such as "Twitter" would not exist. The fact that it is a private company in our view is irrelevant; the mechanism by which it was sent was a public electronic network and within the statutory definition … "Twitter", as we all know is widely used by individuals and organisations to disseminate and receive information. In our judgment, it is inconceivable that grossly offensive, indecent, obscene or menacing messages sent in this way would not be potentially unlawful"

24. We agree with this approach. As Mr Robert Smith QC submitted on behalf of the Crown, the potential recipients of the message were the public as a whole, consisting of all sections of society. It is immaterial that the appellant may have intended only

that his message should be read by a limited class of people, that is, his followers, who, knowing him, would be neither fearful nor apprehensive when they read it.

25. In our judgment, whether one reads the "tweet" at a time when it was read as "content" rather than "message", at the time when it was posted it was indeed "a message" sent by an electronic communications service for the purposes of s.127(1). Accordingly "Twitter" falls within its ambit. We can now come to the heart of the case.

Actus Reus

26. This is the first occasion when this court has been required to address the ingredients of the offence created by s.127(1) of the 2003 Act in the context of messages of a menacing character. As we have seen, however, the section has been considered in the context of "grossly offensive" messages in *Director of Public Prosecutions v Collins*.

27. It is perhaps difficult for anyone nowadays to remember the time when the telephone system was at the forefront of communications technology of which "Twitter" is a modern example. Nevertheless as long ago as the Post Office (Amendment Act) 1935, s.10(2)(a) introduced a prohibition against the misuse of the telephone to communicate indecent, obscene or menacing messages, and because of the limited technology available at the time, these messages would largely be communicated to a single, often deliberately targeted recipient like telephone operators, who were subjected to indecent, obscene or menacing messages. Unsurprisingly, no one thought that was appropriate and statutory prohibitions against such messages were accordingly introduced. Section 127(1) of the Act has simply updated the protection to be provided from the misuse of technology. This once took the form of a telephone system and has now advanced to the present electric communications networks which, notwithstanding that "Twitter" was not invented at the date when the 2003 Act came into force, includes messages of the proscribed description sent by "Twitter".

28. The 2003 Act did not create some newly minted interference with the first of President Roosevelt's essential freedoms – freedom of speech and expression. Satirical, or iconoclastic, or rude comment, the expression of unpopular or unfashionable opinion about serious or trivial matters, banter or humour, even if distasteful to some or painful to those subjected to it should and no doubt will continue at their customary level, quite undiminished by this legislation. Given the submissions by Mr Cooper, we should perhaps add that for those who have the inclination to use "Twitter" for the purpose, Shakespeare can be quoted unbowdlerised, and with Edgar, at the end of King Lear, they are free to speak not what they ought to say, but what they feel.

29. It is elementary, and unsurprisingly there was no dispute before us, that the offence of which the appellant was convicted cannot be proved unless the content of the message was of a "menacing character". Given that there is "disappointingly little coherence in English law's approach to threat offences" (Smith and Hogan's Criminal Law, 13th edition, at p951) we do not think that an analysis of the numerous other offences based on threats, including blackmail, takes the interpretation of this statutory provision any further. We were told that the word "menace" is defined in the shorter Oxford dictionary as "a thing threatening danger or catastrophe; a dangerous or

obnoxious thing or person; a great inconvenience", and that as an intransitive verb, to "menace" was to "utter menaces; be threatening". Mr Smith submitted that no more, and no less, was needed than the application of ordinary language to the context in which any particular message was expressed and to all the relevant circumstances. Mr Cooper suggested that for a message to be of a menacing character it must, on an objective assessment, contain a threat of such a nature and extent that the mind of an ordinary person of normal stability and courage might be influenced or made apprehensive. Our attention was drawn to *DPP v Collins*, in the Divisional Court, while considering the meaning to be given to "grossly offensive" within the section, Sedley LJ identified the four different classes of message proscribed by s.127(1)(a). In the context of a menacing message he observed:

> "… fairly plainly, is a message which conveys a threat – in other words, which seeks to create a fear in or through the recipient that something unpleasant is going to happen".

30. The attraction of the argument, implicit in the development of Mr Cooper's submission, that it is a necessary requirement of this offence that the message must be credible as an immediate threat to the mind of an ordinary person of normal stability and courage does not quite penetrate to the heart of the problem. The telephone operator in the 1930s and 1940s may not have believed that the person using the telephone to threaten violence would or could implement the threat, but that would not extinguish its menacing character. After all a message which cannot or is unlikely to be implemented may nevertheless create a sense of apprehension or fear in the person who receives or reads it. However unless it does so, it is difficult to see how it can sensibly be described as a message of a menacing character. So, if the person or persons who receive or read it, or may reasonably be expected to receive, or read it, would brush it aside as a silly joke, or a joke in bad taste, or empty bombastic or ridiculous banter, then it would be a contradiction in terms to describe it as a message of a menacing character. In short, a message which does not create fear or apprehension in those to whom it is communicated, or who may reasonably be expected to see it, falls outside this provision, for the very simple reason that the message lacks menace.

31. Before concluding that a message is criminal on the basis that it represents a menace, its precise terms, and any inferences to be drawn from its precise terms, need to be examined in the context in and the means by which the message was sent. The Crown Court was understandably concerned that this message was sent at a time when, as we all know, there is public concern about acts of terrorism and the continuing threat to the security of the country from possible further terrorist attacks. That is plainly relevant to context, but the offence is not directed to the inconvenience which may be caused by the message. In any event, the more one reflects on it, the clearer it becomes that this message did not represent a terrorist threat, or indeed any other form of threat. It was posted on "Twitter" for widespread reading, a conversation piece for the appellant's followers, drawing attention to himself and his predicament. Much more significantly, although it purports to address "you", meaning those responsible for the airport, it was not sent to anyone at the airport or anyone responsible for airport security, or indeed any form of public security. The grievance addressed by the message is that the airport is closed when the writer wants it to be open. The language and punctuation are inconsistent with the writer intending it to be

or to be taken as a serious warning. Moreover, as Mr Armson noted, it is unusual for a threat of a terrorist nature to invite the person making it to ready identified, as this message did. Finally, although we are accustomed to very brief messages by terrorists to indicate that a bomb or explosive device has been put in place and will detonate shortly, it is difficult to image a serious threat in which warning of it is given to a large number of tweet "followers" in ample time for the threat to be reported and extinguished.

32. It seems to us unsurprising, but not irrelevant, that none of those who read the message during the first days after it appeared thought anything of it. In our view, the Crown Court read too much into the observation of Lord Bingham in his judgment in the House of Lords that the criminality of the sender cannot depend upon whether a message is received by A or by A's reaction. Lord Bingham was saying no more than that a message proved by an objective assessment, applying the standards of an open and multi-racial society to be of a prescribed kind, does not cease to be so just because it was not received or because the person who received it was not, in the context of the present prosecution, menaced. The effect of the message on those who read it is not excluded from the consideration. Among the many followers who would have read the appellant's "tweet" there would surely have been some who would have reported such a threat if any one of them thought it was to be taken even half seriously. It is not, of course, a requirement of this offence that the threat should immediately have been reported to the police, but given the nature of the "threat", namely, that an airport would be blown up, it would be surprising if the reasonable member of the public of normal fortitude, alert to the risks of terrorism faced by our society, would have chosen to ignore it. More important, because they would have been quite uninfluenced by their knowledge of the appellant deduced from his previous messages, the two gentlemen responsible for the safety of the airport showed no anxiety or urgency in dealing with it. It was treated and addressed as if it was not a credible threat. The airport police took no action. No evidence was provided to suggest that even minimal consequential protective measures were taken at the airport, or that the level of perceived threat was heightened. Indeed, notwithstanding the nature of the "threat", we can detect no urgent response to it. Police action was not exactly hurried. After the investigation, the South Yorkshire Police concluded that the appellant presented no threat. Although this conclusion reflected the outcome of the investigation rather than the immediate reaction to the text of the message, it was in fact entirely consistent with the attitude and approach of those who had seen the message before the investigation began.

33. We are of course well aware that the Crown Court concluded, as a matter of fact, that the message sent by the appellant was of a menacing character. Proper respect must be paid to such a finding. However, the findings do not address the unbroken pattern of evidence to be derived from the responses of those who read or must have read the message before the South Yorkshire Police investigated it. No weight appears to have been given to the lack of urgency which characterised the approach of the authorities to this problem, while the fact that those responsible for security at the airport decided to report it at all, which was treated as a significant feature, rather overlooked that this represented compliance with their duties rather than their alarmed response to the message. By contrast, disproportionate weight seemed to be placed on the response of the appellant in interview to how "some" people might react, without recognising that the care needed to approach such a widely phrased question in context. The

response was part of the interview as a whole, when looking back at what the appellant admitted he had done and his assertions that it was a joke. The question based on what "some" people might think embraced everyone, included those who might lack reasonable fortitude. This entirely equivocal response added nothing which supported the contention that the message was of a menacing character.

34. We have concluded that, on an objective assessment, the decision of the Crown Court that this "tweet" constituted or included a message of a menacing character was not open to it. On this basis, the appeal against conviction must be allowed.

Mens rea

35. As the message lacked the characteristic required for the purposes of this offence, the issue of the appellant's state of mind when he sent it, and whether it was criminal, does not arise for decision. We shall therefore deal very briefly with this question.

36. By contrast with the offences to be found in s.127(1)(b) of the Act and s.1 of the Malicious Communications Act 1988 which require the defendant to act with a specific purpose in mind, and therefore with a specific intent, no express provision is made in s.127(1)(a) for mens rea. It is therefore an offence of basic intent. That intent was examined by the House of Lords in *DPP v Collins*. While it is true that the examination was directed to grossly offensive messages, it would be quite unrealistic for the mens rea required for the different classes of behaviour prohibited by the same statutory provision to be different in principle, the one from the other, or on the basis of some artificial distinction between the method of communication employed on the particular occasion. In consequence we are unable to accept that it must be proved that, before it can be stigmatised as criminal, the sender of the message must intend to threaten the person to whom it was or was likely to be communicated, or that such a specific purpose is a necessary ingredient of the offence. That would, in effect involve an offence of specific intent which Parliament elected not to create.

37. In *DPP v* Collins, Lord Bingham emphasised that:

> "… Parliament cannot have intended to criminalise the conduct of a person using language which is, for reasons unknown to him, grossly offensive to those to whom it relates, or which may even be thought, however wrongly, to represent a polite or acceptable usage".

He continued:

> "On the other hand, a culpable state of mind will ordinarily be found where a message is couched in terms showing an intention to insult those to whom the message relates or giving rise to the inference that a risk of doing so must have been recognised by the sender. The same will be true where facts known to the sender of the message about an intended recipient render the message peculiarly offensive to that recipient, or likely to be so, whether or not the message in fact reaches the recipient".

38. We agree with the submission by Mr Robert Smith QC that the mental element of the offence is satisfied if the offender is proved to have intended that the message should be of a menacing character (the most serious form of the offence) or alternatively, if he is proved to have been aware of or to have recognised the risk at the time of sending the message that it may create fear or apprehension in any reasonable member of the public who reads or sees it. We would merely emphasise that even expressed in these terms, the mental element of the offence is directed exclusively to the state of the mind of the offender, and that if he may have intended the message as a joke, even if a poor joke in bad taste, it is unlikely that the mens rea required before conviction for the offence of sending a message of a menacing character will be established. The appeal against conviction will be allowed on the basis that this "tweet" did not constitute or include a message of a menacing character; we cannot usefully take this aspect of the appeal further.