**Embedding the harm principle in online regulation: the old age concern of freedom of expression versus the right to privacy**

In June 2021, the Law Commission released its final recommendations to revamp current communication offences, in particular, the Malicious Communications Act 1988 and section 127(1) of the Communications Act 2003. The Commission recommend the repeal of both these legal provisions and the enactment of a new offence: the harms-based model. In essence, the Law Commission recommend it to be an offence to send a harmful communication to a likely audience without reasonable excuse – yet the meaning of ‘harm’ is left ill-defined by the Commission.

Embedding the Law Commission’s recommendation into the wider harms-based literature, this paper will expose how a harms-based approach to online regulation fails to adequately balance the right to freedom of expression and the right to privacy. Issues are raised with the vagueness inherent in the term ‘harm’ and how, if enacted in its current format, there runs the real risk of not only the overcriminalisation of speech, but a failure to adequately understand the complex nature of criminalising online communications. The paper will conclude by highlighting the issues that are still glaringly apparent with the Commission’s recommendation to revamp this area of the law, demonstrating how a harms-based approach is not necessarily the answer to the increase in online abuse.