

The implications of freedom of expression for government twitter accounts

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TMT analysis: A lawsuit in the US argues that President Trump's Twitter account is a 'public forum for speech by, to, and about the President' and that critics who were blocked from his account have therefore had their constitutional rights violated. Christina Michalos, barrister at 5RB, considers how similar legal issues might be dealt with in the UK.

In the US, Twitter is considered a public forum that is supposedly protected by the First Amendment. Are there similar laws and legislation in place in the UK for social media platforms?

There are a bundle of laws and statutes that protect freedom of expression which apply to social media platforms, just as they do to print media or broadcasts. In that sense, there is nothing special about a social media platform.

The US First Amendment protects a number of rights including freedom of expression, freedom of the press and freedom of religion. In the UK, freedom of expression is protected by Article 10 of the European Convention on Human Rights which is given practical effect by the [Human Rights Act 1998](#). In addition, the application of many other laws takes into account freedom of expression—for example, under the [Defamation Act 2013 \(DA 2013\)](#), truth, honest opinion and public interest are all defences to a defamation claim. There are special provisions that exempt website operators from liability if various criteria are met under [DA 2013, s 5. Section 32](#) of the Data Protection Act 1998 provides data protection exemptions for processing for journalistic purposes. Even the [Protection from Harassment Act 1997](#) provides a defence if the conduct was reasonable, which would include fair comment or genuine exercise of freedom of expression.

Can the content posted by official accounts, particularly officials such as Theresa May, the government or the Home Office, be considered official statements? If so, does blocking public users from viewing these accounts interfere with their democratic rights?

Yes of course content posted by authorised accounts can be considered official statements. The question is who is the person or entity responsible for publication. The person responsible may be the person who authorises the publication under their name even if they are not actually writing it themselves.

If a government account blocks a public user, in simple practical terms it does amount to an interference with their democratic rights because they are denied access to that published information.

The more interesting question is whether blocking would be open to legal challenge. The first step would be to ask for a review of the decision and for reasons why the user was blocked. If the decision was unfair or irrational, it may amount to an abuse of power that is open to challenge by way of judicial review.

In the UK, the right to freedom of expression gives the public a right to receive information. This is a citizen's right not to be impeded by the state in the exercise of such right of access to information as they may already have—*Kennedy v Charity Commission* [\[2014\] UKSC 20](#), [\[2014\] All ER \(D\) 240 \(Mar\)](#). Blocking may very well be contrary to the right to freedom of expression.

This is particularly so because if a user simply does not like a stranger's tweets to them, Twitter offers a 'mute' option. This means that the stranger's tweets do not appear in their feed but the stranger can still read the user's own tweets. Blocking is the most draconian step and arguably for official accounts unnecessary because of the mute option.

What is the effect of deleting material on Twitter or social media platforms posted by official accounts?

Deleting material is not a magic wand that cures all wrongs but it may help to limit the effect. If it's been published on Twitter, it's been published. In terms of legal damage, the longer a publication has been visible the greater the damage to the claimant is likely to be. This principle applies to most causes of action including defamation, invasion of privacy and copyright or trade mark infringement. The more people that view or see the material, the more damage there is likely to be, so taking it down quickly is usually a good idea if it is legally suspect.

In the recent case *Monroe v Hopkins* [\[2017\] EWHC 433 \(QB\)](#), [\[2017\] All ER \(D\) 94 \(Mar\)](#), the media personality and columnist Katie Hopkins was ordered to pay the claimant £16,000 in respect of a defamatory tweet that was deleted after

about two hours. Precise readership figures were not available but the court was prepared to accept an estimate that around 20,000 had read it.

It's worth noting though that if an official account is going to delete a controversial tweet, before it does so it should record the analytics in respect of the Tweet. Once a Tweet is deleted, the analytics are lost. The court in the *Monroe v Hopkins* case emphasised the responsibility on parties to retain analytics material that may become disclosable. Failure to do this now going forward may result in criticism by a court.

Finally, there are whole [Twitter accounts](#) and [websites](#) devoted to Tweets deleted by politicians—so someone may have taken a copy of it anyway. In the case of someone with the profile of Donald Trump, the chances of a deleted Tweet going unnoticed or unrecorded is zero.

With social media playing an increasing role in politics with officials/politicians using it as a primary means of communication, do such accounts require new rules and laws in order to align with other legislation?

No, I don't think so. The existing laws are adequate as cases involving social media have demonstrated. It may be that the governments, political parties and politicians need to have tighter clearer [guidance and policies](#) as to how social media should be used in terms of the official and personal divide but there is already quite a lot out there.

Are there any legal grounds to challenge an official's decision to block members of the public?

As noted above, acts of public authorities in blocking individuals from social media accounts may possibly be open to challenge by way of judicial review. Whether a challenge would succeed would depend on whether there were rational grounds to block someone. Repeated abuse or harassment may well provide rational grounds.

When considering an official's decision to block, it would depend on whether the account was an official government account or a personal account of an individual not acting in a public capacity. Difficulties may arise where the boundaries are blurred. For those in public office, it is usually advisable to have two separate accounts:

- an official account used only for official business
- and a personal account for other use

However, it would be important to religiously stick to that division which is not how President Trump has operated his personal account which in turn has given rise to the lawsuit complaining that he has blocked certain users and alleging this is unconstitutional.

How do you see this area of law developing in the future?

I don't see this is likely to be an immediate problem in the United Kingdom where there is more rigid adherence to formal norms of political behaviour.

President Trump obviously enjoys Twitter and as he himself has said: 'It's a different kind of presidency.' On 1 July 2017, President Trump tweeted via his personal account [@realDonaldTrump](#): 'My use of social media is not Presidential—it's MODERN DAY PRESIDENTIAL'. It is fair to say that it is unusual for someone occupying such high office to be so directly and personally engaged with the public on Twitter rather than solely through the official account for the President of the United States [@POTUS](#). On the one hand, many people may consider this to be a good thing as it promotes a greater public engagement with politics and politicians which have traditionally been viewed with apathy in recent years. On the other hand, it gives rise to difficulties when an official then wants to block particular members of that electorate.

The outcome of the US lawsuit against President Trump for blocking users will be of interest to lawyers and future generations of politicians who do not remember life before social media. But in the short term at least, it is very much an issue that arises out of President's Trump unique style of public engagement and not a wider problem.

Christina Michalos is a barrister at 5RB, 5 Gray's Inn Square, London (www.5rb.com) practising in defamation, media and information law. She is particularly known for her specialism in legal issues surrounding social media and internet user generated content.

Interviewed by Alex Heshmaty.

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