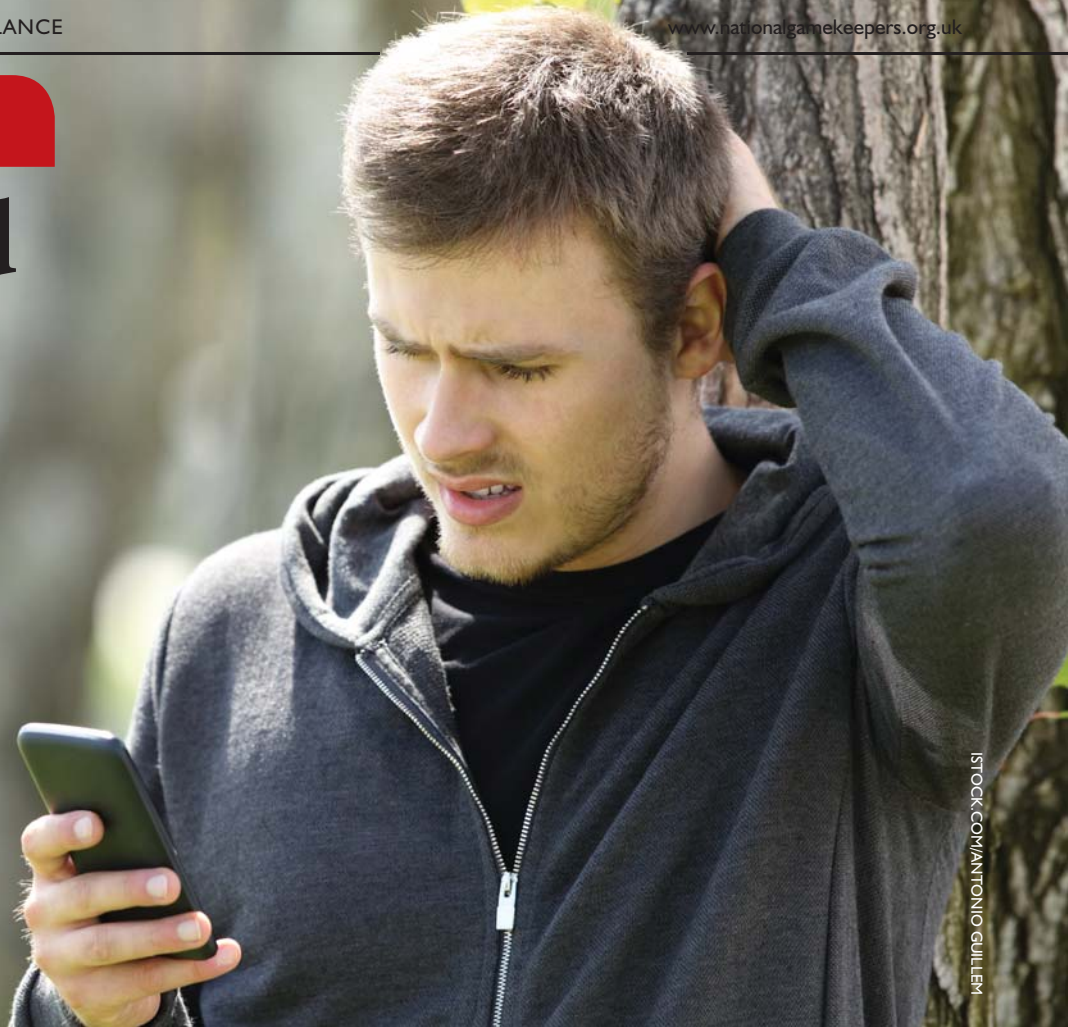


Legal

Sticks and stones



by Matthew Knight,
Senior Partner,
Knights Solicitors.



ISTOCK.COM/ANTONIO GUILLEM

GAMEKEEPERS AND OTHERS ASSOCIATED WITH shooting are increasingly being targeted as individuals. If you or one of your friends or family find that you or they are in this position what ought you to do?

If it is sensible to do so, the first thing is probably to call the Police and report it formally. Ask for a Crime Number and get the name and number of whoever you speak to. The next thing to do is to make a note of what has occurred, including the call to the Police, in a paper or electronic diary. Then take photographs and, assuming that the Police have declined to attend, bag up any physical evidence, label it and put it somewhere safe.

Then report what has happened to your employer, estate manager, head keeper or land agent and ask for a meeting to discuss and agree next steps in the hope that a plan can be implemented to prevent the bullying, harassment or vandalism from getting any worse.

INCITEMENT TO COMMIT CRIMINAL DAMAGE TO TRAPS

There are certain instances when an offence can be committed even though the acts comprise no more than planning of that act, even if the act itself was never carried out. These are known as 'inchoate offences'.

Part 2 of the Serious Crime Act 2007 creates three inchoate offences of intentionally encouraging or assisting an offence; encouraging or assisting an offence believing it will be committed; and encouraging or assisting offences believing one or more will be committed.

Furthermore, under the Criminal Attempts Act 1981 a person will be guilty of an offence if they do an act, which is more than preparatory to committing the offence, with the intention of committing the offence. In each case it will be a question of fact as to whether the accused has gone far enough towards the full offence having been committed to constitute 'an attempt' in law. In the case of saboteurs, it is likely that an offence would be committed if a saboteur entered onto land with intent to cause criminal damage; however, merely planning the offence and purchasing tools will probably not be enough.

There is also another offence of conspiracy: where two or more people agree to carry out a criminal scheme, that agreement constitutes a criminal offence itself and nothing need be done in pursuit of that agreement. Withdrawal from the agreement does not absolve the person from committing the crime, but it can be used in mitigation.

INTIMIDATION INCLUDING THROUGH SOCIAL MEDIA

Various offences can be committed through the use of threatening language, including via social media. For example, it is an offence under the Offences Against the Person Act 1861 to threaten to kill, and it is an offence under the Criminal Damage Act 1971 to threaten to cause criminal damage. Harassment is also an offence under the Protection from Harassment Act 1997; however, to constitute 'harassment' the activity must be a course of conduct, ie. not a one off. Therefore, a single letter, social media post or email would probably not constitute harassment.

Under the Malicious Communications Act 1988 it is an offence for any person to send another person a letter, electronic communication or article of any description that conveys a message which is indecent or grossly offensive, threatening or containing information that is knowingly untrue. It is a defence to show that the threat was made to enforce a reasonable demand, and the sender believed the threat was a proper means of reinforcing the demand. It would also not be an offence if the sender did not intend to cause distress or anxiety to the recipient even if he in fact did

so. For an offence to be committed the communication must have been sent to a recipient. Therefore, a post to a website or to a blog may not be an offence.

However, there is also another offence under the Communications Act 2003 of improper use of the public electronic communications network. Under this Act it is an offence for a person to send by means of electronic communication a message or other matter that is grossly offensive, indecent, obscene or menacing in character. It is also an offence for a person to send a message that is knowingly false with the intent of causing annoyance, inconvenience or needless anxiety. There is no need for the message to be sent from one person to another – an offence is caused as soon as the message is sent or posted and will therefore cover posting to a blog or even the re-posting of a message by another.

CRIMINAL DAMAGE

The Criminal Damage Act 1971 is the primary source of offences involving damage to property. The Act makes it an offence knowingly or recklessly to destroy or damage property belonging to another. The term ‘damage’ is not defined by the Act; however, the Courts have interpreted this liberally and have included non-permanent damage such as smearing mud. The term ‘property’ is defined and includes anything of a tangible nature



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It is likely that an offence would be committed if a saboteur entered onto land with intent to cause criminal damage.

including wild animals that have been tamed or that are ordinarily kept in captivity, or any other wild creatures or their carcasses. This only applies if they have not been lost or abandoned. The law, therefore, covers gamebirds in cages but not once they are released.

It is an offence to threaten to damage or destroy someone else’s property. It is also an offence for someone to have in his custody without lawful excuse any item with which he is intending to destroy or damage property belonging to another person – for example a known

saboteur or activist with bolt cutters, a hacksaw or a sledgehammer on open access land.

UNLAWFUL SURVEYS

Anyone entering onto private land to conduct surveys without permission will amount to a Trespass at Common Law. This is also the case for open access land, because the Countryside & Rights of Way Act 2000 expressly prohibits this.

DEFAMATION

Posting photographs and film to social media showing a legal activity and stating that it is illegal is an actionable Libel. There have been examples of this involving gamekeepers and game shooting during the last year or so.

Similarly, publishing a press release alleging an illegal activity is an actionable Libel. However, fair comment on a matter of public interest is not actionable and nor is a report, however adverse, that is true.

DEMONSTRATIONS AND PUBLIC PROTESTS

There is a well-established right to demonstrate support for or opposition to an individual or company or an activity at Common Law and the Human Rights Act 1998 has confirmed and amplified this in the last 20 years or so. Demonstrations and protests which degenerate into violence or criminal damage are likely to result in arrest, prosecution and conviction.

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NOTE IT!

KNIGHTS SOLICITORS
 Matthew Knight is the Senior Partner of Knights Solicitors. He has been advising gamekeepers and others targeted by animal rights activists since 1984. Knights Solicitors is a specialist litigation practice well-known for representing clients with animal and countryside interests on a national level. The company provides the NGO with a legal helpline service (see below). Tel: 01892 537311, www.knights-solicitors.co.uk. Ask for Matthew Knight, Richard Atkins or Jonathan Manser.

NGO FREE LEGAL HELPLINE
 NGO members in need of emergency legal advice relating to gamekeeping and field sports can call the helplines below. Up to 30 minutes telephone advice is available free of charge as a benefit of your NGO membership.

For those in the South: Matthew Knight, Richard Atkins and Jonathan Manser, Knights Solicitors (Tunbridge Wells), 01892 537311 (24hr line).

For those in the North, Scotland and Wales:
 Michael Kenyon, Solicitor (Macclesfield), 01625 422275 or 07798 636460.

