



Law
Commission
Reforming the law



Model Law Commission Report 2022



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Foreword note by the BVL Chief Executive Officer

BVL is a social mobility charity, which aims to inspire young people from non-fee paying schools to pursue a career in the legal profession. To achieve this aim, we give students the opportunity to experience what a legal career involves. One such opportunity is the Model Law Commission (“MLC”).

The MLC is a three-month long project that provides our students with the chance to simulate the work of the Law Commission. We split our pool of students into four groups, each tasked with the reform of one of the following areas of law: (1) Family, Trusts or Land Law; (2) Criminal Law; (3) Commercial and Common Law; or (4) Public Law. This year, the students considered the law on Wills, Cybercrime, Non-Fungible Tokens and Immigration Law. This report is the culmination of this year’s students’ reform ideas.

I am delighted that this year’s MLC is the 10th anniversary. Since the inception of the MLC in 2013, BVL has enabled over 700 students to learn about the law and devise their own idea of how our laws should be shaped. As a result of LexisNexis’s support, in publishing the reports, the students’ reform proposals dating back to December 2013 remain available on BVL’s website.¹ Looking at the back catalogue, you will see that our students have considered a huge range of topics: Domestic Violence, Genetic Confidentiality, Electoral Law, Prison Law, Automated Vehicles – the list is hugely varied and we (and our students) never shy away from a tricky topic.

It is also not uncommon for our students to be one step ahead of Parliament. In 2014, the students considered what laws should apply to the emerging issue of revenge porn. The following year, section 33 of the Criminal Justice and Courts Act 2015 was enacted to criminalise deliberately disclosing private sexual images, with intent to cause distress. It comes as no surprise to me that young people have an important perspective that law makers should be listening to. I have no doubt that after reading this report, you will agree.

Of course, our students’ journeys do not end with these reports. The alumni of the last ten years of MLC students have already gone on to do brilliant things. Many have now graduated from excellent universities and are either training or have qualified as solicitors and barristers. Only a few months ago while at a conference, I came across a former student who is currently studying for his Bar exams. The next generation of lawyers and BVL alumni is quite literally walking among us—at law firms, chambers and in court. With them they bring an important diversity of perspectives and insights, which will benefit their clients, employers and crucially, our legal system.

I’m also proud that the benefits of the MLC have been expanded to a wider group of students in recent years. In 2020, at the start of the pandemic, we moved online and began for the first time to offer our opportunities to students from across England and Wales. We have continued to offer the MLC to students outside of London, with over half of our students in this year’s cohort coming from outside of the capital.

I offer my overwhelming thanks to everyone that made this possible. Not just the fantastic organisations and volunteers we work with now, but every single person who has contributed to the last ten years of MLCs. I look forward to many more years of this project and hope it continues to grow, allowing even more students to gain an invaluable insight into a legal career.

In the meantime, it is with great pride that I now present the report of the MLC students of 2022; I hope you enjoy reading it.

Victoria Anderson, CEO

¹ <https://www.bvl.org.uk/publications>

Introduction

BVL

BVL is a social mobility and legal education charity, which seeks to engage young people from non-traditional backgrounds between the ages of 16 and 18 years old with law and legal policy, with the aim of assisting them in entering the legal profession should they choose to pursue a career in law. To further this aim, we take students from non-fee paying schools and provide them with opportunities to give them insight into the law, such as the Model Law Commission.

Since BVL's inception in 2011, BVL has gone from a small student-run organisation, to a registered charity and continues to grow, reaching out to more students each year. We now run a total of six main programmes, namely: a Mooting Competition with the UK Supreme Court, an Introduction to the Legal System project, also in association with the UK Supreme Court, a Summer School in association with Linklaters LLP, the Model Law Commission and a two-day student barrister experience with Radcliffe Chambers.

From 2020 onwards, as a result of the Covid-19 pandemic, BVL took its projects online and has offered the last two years' projects, including the Model Law Commission, to students across the whole of England and Wales. As result of our growth to a national charity, in 2021 we changed from 'Big Voice London', to 'BVL'.

We are delighted to be able to name BamLegal, Eversheds Sutherland LLP, the Magdalen College Trust, Oxford and the PTL Foundation as financial donors and sponsors of the charity, in addition to ongoing support from LexisNexis, Linklaters LLP, Radcliffe Chambers, the Law Commission, the University of Law, Schillings International LLP and Deka Chambers. We also extend our appreciation to the UK Supreme Court for its continued support of our objectives.

Model Law Commission 2022

The Model Law Commission is a three-month long project that provides A-Level students with the chance to simulate the work of the Law Commission. We split our pool of students into four groups, each tasked with the reform of one of the following areas of law: (1) Family, Trusts or Land Law; (2) Criminal Law; (3) Commercial and Common Law; or (4) Public Law. From October to December, the young people undertook a five-stage process: research, formulating recommendations, consulting with their peers, reporting on their proposals and devising their legislation.

Each year, the Model Law Commission begins with a two-day conference, which again this year was hosted entirely online via Zoom. It is over the course of these two days that our students were introduced to their respective topics by experts in the field who spoke to them from all over the country. The young people then took that information and over the following weeks discussed reform ideas with each other, their Group Leaders and their peers. Finally, in November, individuals from the Law Commission itself spoke to our students and advised on the difficulties in reforming the law and how to write a law reform report.

The results of these months of hard work are contained within this report. This is a reflection of what these young people believe should be the law governing these particular issues and is written entirely in their own words.

Our students

When recruiting students, our only requirement is that applicants come from non-fee paying schools, we do not set grade boundaries or have entrance exams, we only ask that students be keen to learn and commit to the project.

All the students that participate in the Model Law Commission apply to this project entirely independently. It is not a school run activity; these are students who want to learn about and have their voices heard in the law. With sessions run every week in the evenings after school, this is not a small commitment to undertake alongside studying for all-important A-Level exams. We hope that as we expand, we will be able to provide this valuable opportunity to more ambitious young people.

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Finally, we would also like to thank the BVL Management Board for their assistance in bringing the Model Law Commission to life.

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Disclaimer

The work, recommendations and opinions contained in this report are solely those of the student authors listed. The views expressed do not represent those of any other external organisation or individuals, including guest speakers listed in this report, the UK Supreme Court and the Law Commission. BVL is an entirely independent organisation, and while we value the ongoing support and guidance of many organisations all views expressed are our own.

Part One: Property, Family & Trusts

Recommendations on the laws governing Wills.

Compiled with thanks to:

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Wills

Introduction

A testator is someone who can write a will. However, there are many requirements that determine the question of who can be a testator. Section 2 of the Mental Capacity Act 2005 provides a definition and guidelines to protect vulnerable people over the age of 16 who are not deemed capable to make decisions for themselves:

“a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of the mind or brain”.

This Act protects those over the age of 16, so why can people not write a will at 16? Is there a “right” age to write a will? Most people put it off as it can be a difficult process, but should the age be lower? How can you really know if someone is of the right capacity to decide what to write in their will?

Unpopular, outdated and rather unfair, inheritance is the concept which introduced the quote *“tax on the dead (rather than the living); on giving (rather than receiving)”*.² Inheritance tax is a 40% tax applied on the estate of someone who has died, including money, possessions and property. For now, the inheritance tax threshold remains frozen at £325,000, though that is subject to current change.³ This law has been heavily argued against, but is there anything we can do about it?

When someone with assets dies without having created a will, they are said to have died intestate, and their property must be shared according to the rules of intestacy. If someone makes a will but it is not legally valid, it is the rules of intestacy that decide how the estate will be shared out, not the wishes expressed in the will. The inflexibility of the intestacy rules means that it is only spouses or civil partners, and some other close relatives such as children, that can inherit from the intestate person. With a significant number of people not considering a will necessary unless they are married or with children, the rules of intestacy have been criticised as disproportionately affecting LGBTQ+ couples. Should there be more flexibility for those who do not meet the criteria of the typical nuclear family?

Intestacy Rules and Distribution of Assets

The structure of intestacy follows that if a person dies intestate, having both children and a spouse, the allocation of assets would go as follows: £270,000 of assets and all personal possessions to spouse, while

² Intergenerational Commission, *Options For Reforming Inheritance Taxation* (Resolution Foundation, May 2018).

³ AgeUK, 'Inheritance Tax' (AgeUK, 20 September 2022) <<https://www.ageuk.org.uk/information-advice/money-legal/income-tax/inheritance-tax/>> accessed 28 November 2022

children receive half of the remaining property beyond the £270,000. The full allocation is set out in the Administration of Estates Act 1925, amended by the Inheritance and Trustees' Powers Act 2014.⁴

65% of the UK is currently without a will.⁵ The purpose of intestacy is to effectuate the probable intent of the deceased, and it must be questioned whether this role is fulfilled.⁶ Given the average estate is worth £69,000, many circumstances arise where no estate is left to children.⁷ This creates inequality in the apportionment of an estate under intestacy, which is significantly dependent on the value of total estates and thus people's income brackets. Those with higher total estate value leave more to their children than those with lower estate value.

Meanwhile, the rules of intestacy where there is no spouse or children stipulate that the estate is left to the next closest relative (by an applicable hierarchy drawn out in the Act).⁸ Although family structures and relations are unpredictable, it can be said that in general relations such as those of siblings and parents can be deemed to be of a relatively similar nature, and as such it would be logical to allocate assets to the closest group of relations, as opposed to making assumptions on an individual's preference of their parents over their sibling(s). This follows the duty theory, which presents how society, and its general understanding of family structure, believes that assets should be apportioned.⁹

Proposal

Children and spouses are to be allocated property and assets in percentages, meaning a spouse inherits 50% of property and assets, while children inherit the remaining 50%. As well as this, family brackets are introduced under intestacy. Thus, if you have siblings as well as parents, the assets are equally shared between the two, as this would follow the natural grouping of relations of the average person more accurately.

Cohabitation

There is a need for reform of intestacy rules. The rules are set out in the Administration of Estates Act 1925. There have been changes to this Act, however, the rules remain in need of modernising. In particular need of reform are two groups: cohabiting couples and same-sex couples. Cohabiting couples are not automatically entitled to any property or assets of their partner unless it was jointly owned, no matter how long they have been together. From 1996 to 2021 the number of cohabiting couples has increased 144%,¹⁰ yet these relationships are still not provided for. In addition, the number of same-sex couples who decide to marry had decreased by 6.8%.¹¹ Considering this it is clear to see that as society's familial and relationship structures evolve, the intestacy rules should reflect this.

The need for reformation to the current intestacy rules to allow for cohabiting partners to benefit has been considered.

Critics of the view that intestacy rules need major reforming in order to facilitate all cohabiting couples may argue that it would undermine the interests of family members of the deceased, and even their children.¹² In addition, marriage has traditionally been championed as an institution that fosters stability due to the level of formal commitment needed to enter into one. In contrast, cohabiting couples in their first year of living together are eight times more likely to end their relationships than those who were married - though, note this

⁴ Administration of Estates Act 1925, section 46.

⁵ Opinium Research 'Political Polling' (22-25 September 2017) accessed 15 November 2022.

⁶ American Bar Association, 'Real Property, Trust and Estate Law Journal Vol. 49, No. 3' (Winter 2015) pg 574, last accessed 15 November 2022.

⁷ HMRC, 'Inheritance Tax Statistics' (19 September 2019) <<https://www.gov.uk/government/collections/inheritance-tax-statistics>> accessed 14 November 2022.

⁸ Administration of Estates Act 1925, section 46.

⁹ Gerry W. Beyer 'Are Parents Getting Too Much When Their Children Die Intestate?' (January 2007) <https://lawprofessors.typepad.com/trusts_estates_prof/2007/01/are_parents_get.html> last accessed 17 November 2022.

¹⁰ House of Commons Library, "'Common law marriage' and cohabitation' (03 November 2022) <<https://commonslibrary.parliament.uk/research-briefings/sn03372/#:~:text=The%20total%20number%20of%20cohabiting,and%20same%2Dsex%20cohabiting%20couples.>> last accessed 25 November 2022.

¹¹ Office for National Statistics, 'Marriages in England and Wales: 2019' (19 May 2022) <<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2019>> last accessed 25 November 2022.

¹² House of Commons Women and Equalities Committee, 'Rights of cohabiting partners: Government's response to the committee's second report' (19 October 2022) <<https://committees.parliament.uk/publications/31430/documents/176284/default/>> last accessed 25 November 2022.

journal is from 2003, and figures may have changed since.¹³ Such reforms may therefore allow people to inherit estates even where their relationships lack longevity and stability. As one Family Law Judge commented, “*half of all family litigation is a matter of family breakdown among the unmarried*”.¹⁴

As of May 2022, the divorce rate in the UK is estimated at 42%.¹⁵ This suggests that marriage does not necessarily breed stability and its strength as an institution is slowly waning. The essential inquiry when reforming the intestacy rules for cohabiting couples should be “*whether the relationship is of such a nature as to be treated akin to marriage*”.¹⁶

Those cohabiting and willfully living together should be seen acting “*as if they were his/her wife or husband*”.¹⁷ For instance, couples that are cohabiting may decide to have children a year into their relationship, which may serve as an indicator that they are committed and thus should be facilitated under the intestacy rules. Couples, including married couples, rarely enter into a relationship thinking about what might happen if their partner dies. This is evidenced by 31 million people in the UK having no will.¹⁸

Proposal

We would provisionally propose that all couples should have greater protection under intestacy rules. We would propose that, if there were assets that had been acquired after their cohabitation began, it is only fair that the partner of the deceased gets access to some of them as they may have significantly contributed to obtaining them. Therefore, a cohabiting couple in the early stages of a relationship should still be facilitated under the intestacy rules relative to their contribution towards assets obtained after the relationship began, and relative to the time they had lived together as this shows “*emotional and economic commitment*”.¹⁹ Failure to do so can leave bereaved cohabitants financially vulnerable during very difficult circumstances.

It is proposed that cohabiting couples could be provided for protection if they have lived together for five or more years and allow them to have provision under the rules of intestacy.

Age and capacity

The age of capacity under the Mental Capacity Act 2005 (MCA) in England and Wales is 16. Therefore, it begs the question why the age to create a will is 18.

In 2017, the Law Commission held a public consultation whereby one of the points included lowering the age of a will to 16.²⁰ A testator could very well have assets prior to turning 18, so surely it would make sense to give the opportunity for people who are under 18 to disperse their assets as they wish—rather than going straight to their parents or guardians. Assets may include a car or something of sentimental value which they may want to go to specific individuals as opposed to their parents.

Although many 16 to 18 year olds have likely not thought of creating a will, this would offer people between 16 and 18 the choice to create a will if they feel necessary. Due to the current law, those under the age of 18 are prevented from doing so.

Proposal

Our survey shows that many people agree that 16 is an appropriate age to create a will or when you have any assets of either monetary or sentimental value which is indeed possible prior to becoming 18.

¹³ Georgina Binstock, ‘Journal of marriage and family’ (2003) <<https://www.jstor.org/stable/i282727>> accessed 12 November 2022.

¹⁴ Steve Doughty, ‘Cohabiting couples should not be given married rights says top family court judge’ Daily Mail (London, 24 December 2014).

¹⁵ Ljubica Stojcheva, ‘Divorce statistics for the UK’ (Cybercrew, 15 May 2022) <<https://cybercrew.uk/blog/divorce-statistics-uk/>> accessed 11 November 2022.

¹⁶ *VV v VV* [2022] EWFC 46.

¹⁷ See, for example, *Ghaidan v Godin-Mendoza* [2002] EWCA Civ 1533.

¹⁸ Thomas Stansfield, ‘Some facts and figures about wills’ (Confidence wills, 08 April 2022) <<https://confidencewills.co.uk/knowledge-centre/some-facts-and-figures-about-wills/>> accessed 10 November 2022.

¹⁹ *Jones (Appellant) v Kernott (Respondent)* [2011] UKSC 53, (2011) EWCA Civ 578i.

²⁰ Law Commission, *Making a will* (Consultation Paper 231), pg 168, consultation question 41.

Arguably, lowering the age of creating a will to 16 in the UK would be extremely beneficial to people who are interested in creating a will. Lowering it to 16, has no negative effects so long as said 16 year olds still have the mental capacity which is needed to create a will.

Should the testamentary capacity be governed by the capacity test in the MCA or *Banks v Goodfellow*?²¹

Banks v Goodfellow sets the current test for testamentary capacity:

"It is essential to the exercise of such a power that a testator shall understand the nature of the act and its effects;... extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; ... that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties... no insane delusion shall influence his will on disposing of his property, and bring about a disposal of it which would not have been made otherwise".²²

The current test has the advantage of providing a comprehensive overview of the law relating to testamentary capacity. This means that it is understood and respected by professionals because it is practiced frequently. Second, the current test articulates the information relevant to the decision to make a will in simple and concise terms. This means that the testator will feel less overwhelmed while drafting their will since the rules are simpler to understand.

On the other hand, the MCA sets out, at section 2, when a person is not able to make decisions for themselves. Section 2 states that a person will be unable to make a decision for themselves when they cannot understand information relevant to making a decision; cannot retain that information; cannot "use or weigh" the information to make a decision; or cannot communicate their decision.²³

One advantage of using the test outlined in the MCA is that it is more stringent in defining what is meant by testamentary capacity. As a result, there is less room for the testator to be unduly influenced because they are perceived to be of sound mind. Second, the MCA obliges the individual to comprehend all relevant information before making a decision. The *Banks* test, on the other hand, does not go quite that far, requiring the testator to understand the claims to which he should be giving effect but not necessarily to remember and grasp the entirety of the surrounding relevant information. As a result of using the MCA, the testator will not be surprised by any information received regarding the will, as they will have all the information required and will therefore feel confident when writing.

Proposal

We propose that the test included in the MCA is used going forward, and that, drawing on the data we have collected from our survey, the age for testamentary capacity should be set at 16, not 18.

Inheritance Tax

Inheritance tax is the payment of someone's estate. It is money, possessions as well as property being paid after your death. Citizens are entitled to a tax-free allowance starting from £325,000 which is called the nil-rate band, there is also an annual exemption of £3,000 with no taxes required. One can also guarantee a gift of £250 to as many people you want to, donate to charity, give your children up to £5,000 and half towards your grandchildren, and £1,000 to anyone you choose. There are also many negative aspects about inheritance tax which questions whether the tax is fair or not for example in the years 2019 to 2020 3.76% of deaths in the UK resulted in IHT; due to COVID-19, increasing slightly by 0.02 percentage points since the previous tax year, 2018 to 2019.

Inheritance tax has been rated as the UK's least fair tax.²⁴ This is for multiple reasons, one being that we pay taxes throughout our lives. However, there are multiple loopholes to avoid paying inheritance tax. One is by

²¹ (1870) LR 5 QB 549.

²² *Banks v Goodfellow* (1870) LR 5 QB 549.

²³ Mental Capacity Act 2005, section 3(1)(a) to (d).

²⁴ "Unpopular, ineffective and unfair: why inheritance tax should be ..." 22 Dec 2021, <<https://theboar.org/2021/12/inheritance-tax-2/>> accessed 28 November 2022. <<https://www.willpack.co.uk/law-commission-making-will-consultation/>> accessed 11 November 2022.

gifting inheritance whilst you are still alive—where a person offers part of their estate to a loved one. As long as they do not pass away within the next seven years, tax is avoided. This is also known as the seven-year rule. The results of a survey we put together and sent out to multiple people suggested that they believe inheritance tax should be scrapped altogether. The reason for that is it does not seem fair for the government to charge 40% on inheritance as it seems rather insensitive seeing as a family member or someone you love has just passed away.

Proposal

Instead, it would make more sense for loved ones to gain 100% of what they are inheriting as the deceased has already paid taxes. However, there are arguments that suggest inheritance tax is needed. For example—it sees an increase in donations to charities. Many wealthier people donate to charitable causes as a way to reduce their overall net worth thus reducing their tax liabilities after death. Although this is beneficial for the wealthy, it is also beneficial for the charities who are able to help more people because of the money they receive.

Conclusion

In conclusion, inheritance tax has both its positives and negatives—although, we would propose that the negatives outweigh the positives. We have identified the reasons that the system is criticised for being unfair, controversial, and rather poor overall. We do not believe that we should have to resort to a legal loophole in order to avoid paying inheritance tax—this is just one reason it should be reformed. A revised inheritance tax must consider the scope of any charge, exemptions for spouses and civil partners and special reliefs. More general questions, such as the rate of tax, should also be considered. Should the tax be progressive or flat? At what amount should tax start to apply? These are all crucial parts of considering the reform of inheritance tax, and they are an excellent starting point for involving all socio-economic backgrounds.

Overall, the compelling argument to lower the age of writing a will is an important and relevant one. We should not restrict the age someone should write a will to the age of 18 when the MCA 2005 protects those over 16 and more of our laws (for example, the age of consent) also recognise 16 as the age of maturity. It would certainly be more beneficial to have the age lower if an individual wishes or needs to write a will than not have the opportunity to do so. Additionally, where mental capacity is concerned, as our society evolves and we as humans have a better understanding of ourselves and our capacity it would be better to follow the test of the MCA, as it is more definite in the understanding and guidelines of testamentary capacity which thus protects those individuals that do not have the capacity to make decisions for themselves and furthermore helps protect them from undue influence of others.

To conclude, the argument to reform the flexibility of the intestacy rules is an important and credible one. With the only tangible thing separating a cohabiting couple from one that is married being formal documents, and the fact that a cohabiting spouse may contribute to the assets obtained by the deceased, it is very compelling to argue that we should allow cohabiting couples provision under the rules of intestacy if they have lived together for five or more years. It would certainly be more encompassing of non-traditional familial relationships, and those uneducated on the topic of intestacy rules, to do so. Furthermore, where children and spouses are concerned, it must be questioned whether the role of intestacy to effectuate the probable intent of the deceased has been fulfilled.

Part Two: Commercial & Common Law

Recommendations on the laws governing NFTs.

Compiled with thanks to:

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Katie Fry-Paul, Taylor Wessing

NFTs

Introduction

In 2021, the term 'NFT' was among the top trending Google searches, its global interest being so high that by December 2021, it was searched more than 'crypto'.²⁵ 'Bored Ape Yacht Club' and 'Crypto Punks' are some of the most popular NFTs. But, what truly is an NFT, and is the hype here to stay? NFTs, or non-fungible tokens, are digital assets that represent real-world objects like art and music, which are unique and cannot be exchanged. Their value is derived from factors including scarcity, uniqueness, and desirability. Although there is a social media buzz around NFTs that is deemed positive, this contrasts with how NFTs are perceived in the legal sector, as consumers are not well enough educated about NFTs to understand the risks when acquiring one. Additionally, there is not enough legal understanding on how regulation will be used to effectively safeguard against high risk-taking and potential illegal usage, for example through money laundering. Environmentally, there is simply not enough evidence to suggest how harmful NFTs can be due to the high levels of electricity they require. Our aim for this project is to outline ways to increase the legal understanding and regulation of NFTs.

Background Survey Results

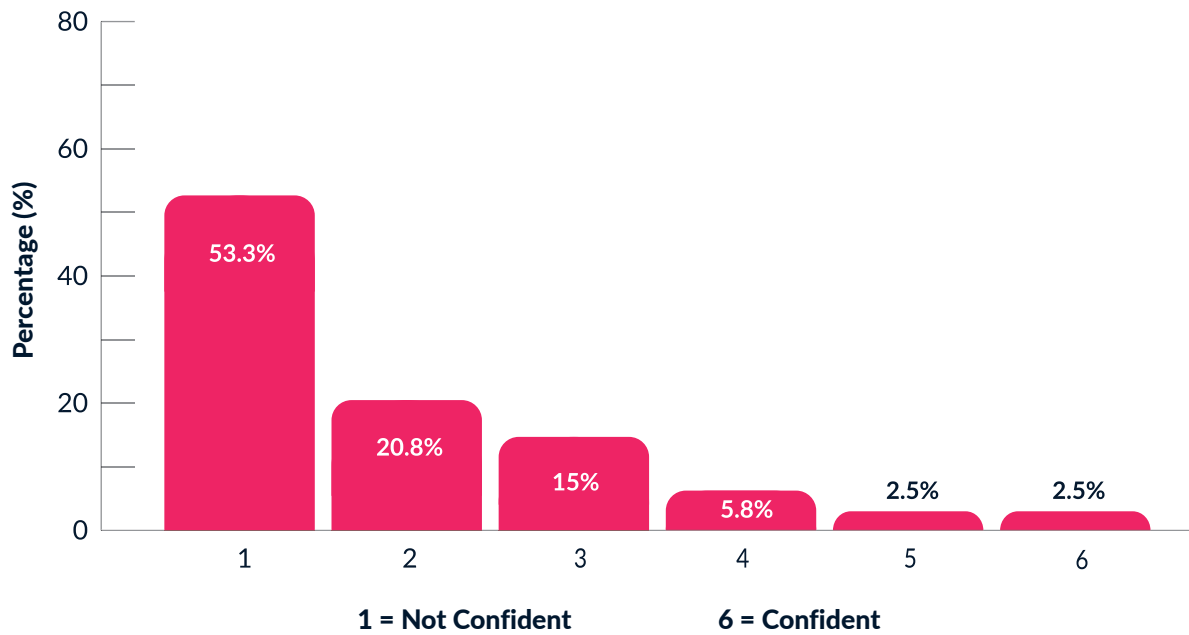
Students formed 72.4% of respondents to the survey submitted to members of the public, and 67.2% were under 18, suggesting a potential bias in survey results, as the majority of respondents have not completed formal education. Only 25.8% had no pre-existing knowledge of NFTs, however, respondents generally felt less confident in defining NFTs, possibly suggesting that contradictory or unclear definitions exist across sources. Most first encountered NFTs on social media, the unreliable nature of which implies a potential need for more formal education surrounding them.

Around half of respondents agreed that there should be more education on NFTs, most selecting schools as the favoured environment. The vast majority of respondents were not NFT owners, around half having no confidence in investing in NFTs. Furthermore, most respondents found NFTs unsafe in their current state. This could highlight that current protection available for NFTs is insufficient, and feeling unsafe is a large contributor to why many people choose not to invest in NFTs. 13.7% of responses suggested consumer rights should be a personal responsibility, an answer perhaps influenced by the lack of knowledge around NFTs displayed through the survey.

²⁵ Adele, "“NFT” Google Searches Overtook “Crypto” for The First Time This Week", (NFT Evening, 21 September 2022) <<https://nftevening.com/nft-google-searches-overtook-crypto-for-the-first-time-this-week/>>, accessed 10 November 2022.

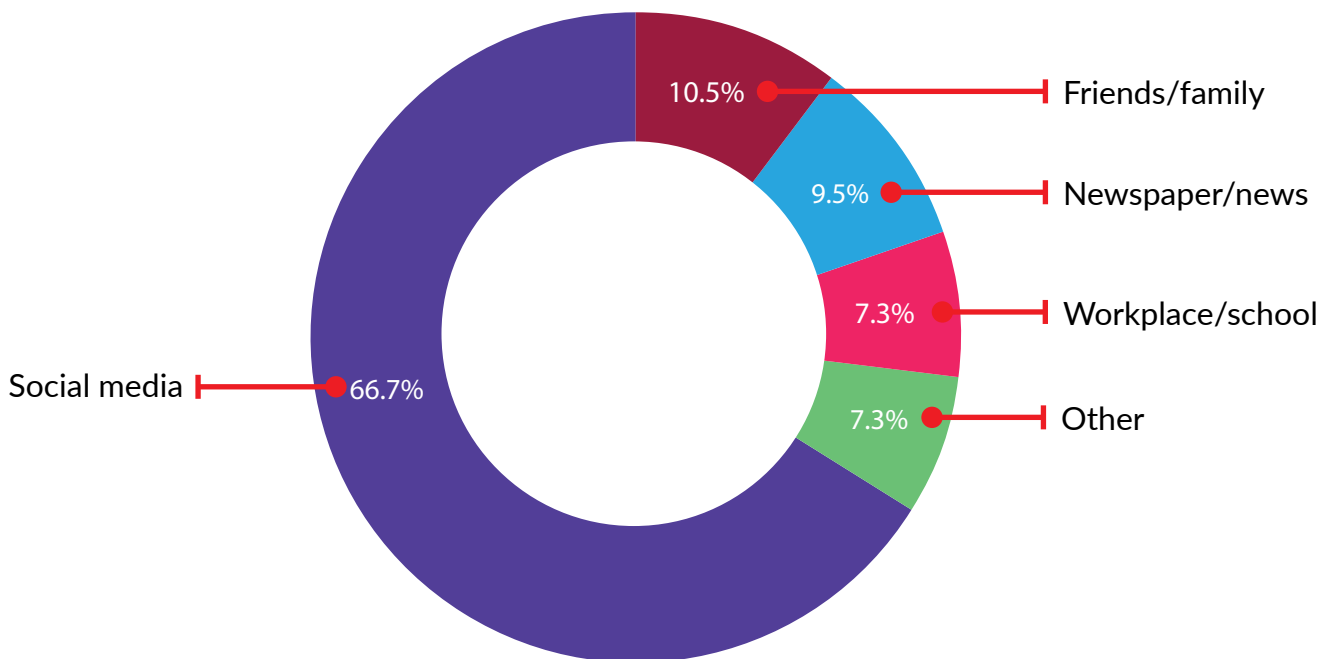
Would you feel confident investing in NFTs?

120 responses



If you do know what NFTs are, where did you first come across them?

105 responses



What are NFTs?

NFTs (Non-fungible tokens) are unique assets that represent real world objects, such as artwork, that have grown in popularity and intrigue over recent years. NFTs are considered property and therefore can be inherited. There are also fees attached to the NFT, such as royalty fee exchange.

NFTs can be appealing to people, especially as many are rare, such as limited collectibles. People may also have an emotional attachment to their NFTs. Some NFTs can be made for awareness, tickets for events, music albums, internet memes, artwork, and are also created after video games or movies. The price of the NFT generally depends on the artist and rarity.

After a person buys an NFT, the transaction and ownership will be shown on the blockchain, a system which records the transactions and ownerships of NFTs. The NFT will then be transferred to their personal digital wallet which has specific identifying numbers.

NFTs are similar to cryptocurrency as they both use the blockchain for ownership verification and they are both digital assets. However, in contrast to cryptoassets, each specific NFT is unique and limited, so cannot be interchanged or traded unlike cryptocurrency.

Current Legislation on NFTs

NFTs are regulated as cryptoassets, therefore, they fall under three categories: security tokens; e-money tokens; or unregulated tokens. Security tokens may be specified as investments, under the Financial Services and Market Act 2000.²⁶ Conversely, NFTs labelled as e-money tokens are legislated under the Electronic Money Regulations 2011.²⁷ Most NFTs fall under these first two categories, however, if they do not, they are deemed 'unregulated', thus triggering no current legislation.

If issuing or exchanging NFTs in the form of business from within the UK, they must be registered with the FCA under the Money Laundering Regulations.²⁸ Generally, NFT transactions are legislated under sanctions laws or the forthcoming Markets in Crypto-Assets Regulation—a plan to provide a pan-EU regulatory regime for cryptoassets, including NFTs.²⁹

Despite this, the exact status of NFTs has yet to be officially decided and thus there remains a lack of clarity on whether NFTs are able to be legislated in accordance with the Financial Conduct Authority Guidance.³⁰ In short, there is currently a lack of legislation regarding NFTs, more is needed, and this is something accentuated by the intergovernmental Financial Action Task Force.³¹

Other Countries' Responses to NFTs

As NFTs are a relatively new phenomenon, affecting different countries in different ways, it is natural to see variations in approaches towards this contentious area of law.

Blocs like the EU currently lack NFT regulation policies. However, the EU has drafted the Markets in Crypto-assets Regulation to regulate other crypto-assets, which could be seen as a move towards increasing the level of NFT regulation.³² However, there is currently no mention of requirements to publish assets with a white paper (a document providing an insight into an NFT and how it can be utilised). Furthermore, European nations, such as Germany, are showing little attentiveness towards defining and regulating crypto-assets domestically.

In Japan, the generalisation of crypto-assets is somewhat more damaging, as NFTs will not qualify under this umbrella term, limiting the nation's current regulation of NFTs.³³

Overall, there is a general level of attention towards crypto-assets, but in most areas, this term is yet to be refined to the point of NFT inclusion, therefore limiting the ability for NFTs to be explicitly regulated under current policy developments worldwide.

²⁶ Gherson LLP, 'Non-fungible Token (NFT) Regulation in the UK' (Gherson: 05 April 2022) <<https://www.gherson.com/blog/non-fungible-token-nft-regulation-uk/>> accessed 10 November 2022.

²⁷ *ibid.*

²⁸ Herbert Smith Freehills, 'How are NFTs regulated in the UK and EU?' (Fintech Notes: 19 July 2022) <<https://hsfnotes.com/fintech/2022/07/19/how-are-nfts-regulated-in-the-uk-and-eu/>> accessed 10 November 2022.

²⁹ 'Proposal for a Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937' [2020] European Commission 2020/0265 (COD).

³⁰ Syedur Rahman, 'NFT's (Non-Fungible Tokens) - Risks, Regulation and The Law' (Rahman Ravelli Solicitors) <<https://www.rahmanravelli.co.uk/expertise/nfts-non-fungible-tokens-risks-regulation-and-the-law/>> accessed 10 November 2022.

³¹ *ibid.*

³² European Commission (see [4]).³

³³ Clifford Chance, 'NON-FUNGIBLE TOKENS: THE GLOBAL LEGAL IMPACT' (Thought Leadership: June 2021) <<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/06/non-fungible-tokens-the-global-legal-impact.pdf>> accessed 15 November 2022.

Potential Areas of Reform

When entering the world of NFTs there are many issues that need to be addressed as it is an unknown and innovative area. There is ambiguity regarding their uses, differences, the scams they encounter, their environmental impact and who should bear responsibility for them. There is also repeated scepticism around distinguishing whether NFTs are simply a worthless digital screenshot or if they are valuable assets protected through proof of ownership.

NFTs can be attractive as they empower artists to earn independently and maintain creative control, alongside creating a sense of collectibility for individuals in terms of digital assets. However, there is cautiousness around promoting NFTs as they bring risks of scams, such as phishing (done through false advertisement) and wash trading (where an investor is responsible for both sides of buying and selling an NFT as a way to manipulate the market value). When conducting our survey, the majority (42.7%) believed that a regulating body should be in charge of ensuring that the consumer's rights are protected, advocating for the appointment of a government authority that can manage the security issues that come with NFTs.

Education

Increasing Education on NFTs

NFTs can be used in a number of different ways such as investments, certificates, and collectibles. However, there seems to be unease around the safety of purchasing NFTs, as many respondents to our survey stated that they do not believe NFTs are safe. As the digital world progresses and we see NFTs becoming more common, those not feeling secure about the safety of NFTs will be excluded from this progress. One of the main ways this issue can be solved is through education.

According to the survey, education should preferably come through schools and NFT platforms. In terms of curriculum, this could be included in computer science to ensure all people have some knowledge of NFTs or by external speakers. On platforms, this could be in the form of informational guides or tutorials that must be completed upon sign up. Although this would ensure more people are educated on responsible uses of NFTs, this may also bring some negatives. For example, if more people are aware of and use NFTs, there will be greater environmental impacts and potentially more criminal activity surrounding them, increasing the risks.

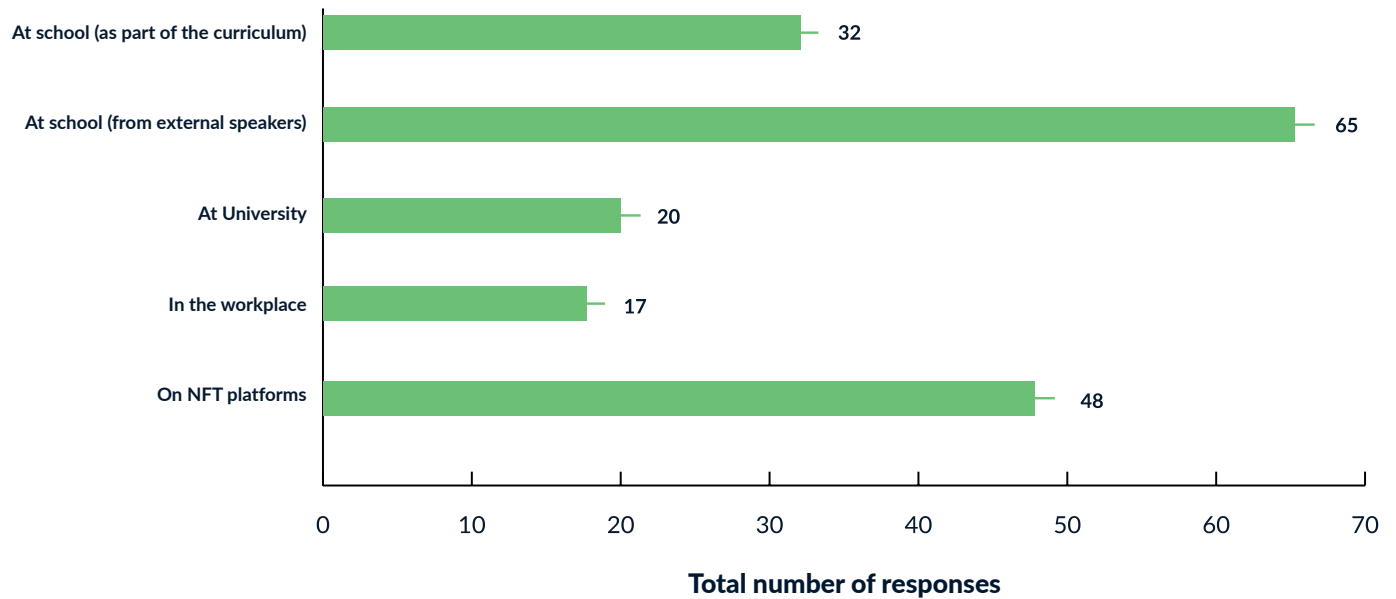
Do you think NFTs are safe?

117 responses



How should NFTs be taught?

118 responses



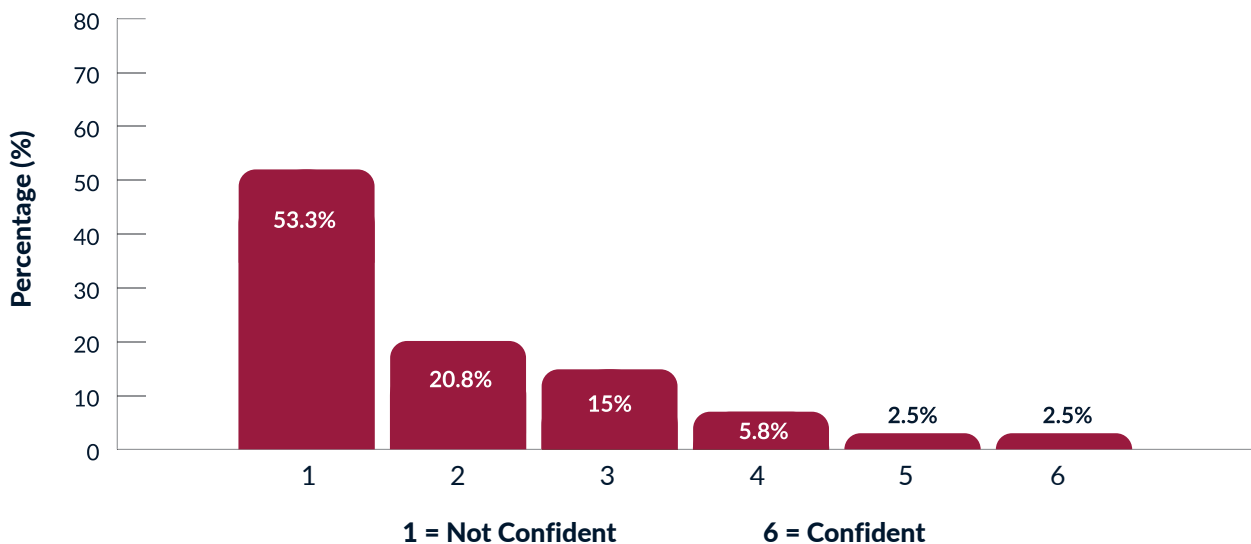
Increasing Confidence in NFTs

After submitting a survey to members of the public, it was clear from the data that many people lack a positive mindset and confidence surrounding NFTs. Therefore, as a society, we need to implement ways to improve the opinions of the public as the advancements of NFTs are continuous. When asked 'How confident do you feel about investing in NFTs?' 64 people (53.3%) voted 1 for their confidence in investing, implying the need to implement strategies to keep people and their mindsets up to date with the evolving topic of NFTs.

After discussing as a group, we believe a potential way to improve the societal outlook on NFTs could be by adding snippets of information on NFTs into the School Curriculum. However, after speaking with experts on NFTs, they have mentioned the negative responses to introducing the investment of NFTs into the education system, therefore this may be optional for individual schools. Another method of improving the public's knowledge could be providing websites or helplines to allow people to access advice before they consider investing, especially if NFTs begin replacing physical documents and tickets etc.

Would you feel confident investing in NFTs?

120 responses



Potential Disruptive Effect of Education on NFTs

NFTs as a tool for education could widen the class divide in education. In China, for example, NFTs are being used to make lessons more interactive, tailored to individual needs and a means to track student progress.³⁴ So, those in higher class areas have access to better opportunities causing inequality. NFTs as part of education could also lead to the promotion of money laundering; providing knowledge on NFTs exposes students to their benefits regarding money laundering. This is because through NFTs you can buy and sell physical art while resolving problems of physical transportation (representing a far easier way of money laundering).³⁵ Implementing NFTs in education also contradicts the DfE's environmental obligations to the government's 25-year environment plan and net-zero strategies. Since the execution and validation of NFTs require more energy than the entire country of Argentina on an annual basis,³⁶ NFTs provoke sustainability issues. Therefore, NFTs being part of education contradicts the government's pledges. Moreover, educating on NFTs could also take away the focus from more necessary subjects within education, possibly causing a decline in student competence in these subjects.

Other Potential Negative Effects of Education on NFTs

As the cost of living increases, education leaders will struggle to keep staff numbers up, resulting in the deterioration of the education sector.³⁷ Government funding for schools has rampantly decreased following the 2010 general election³⁸ and is continuing to decrease amid the current state of the economy: nine out of ten schools will run out of money by the end of the 2022 school year.³⁹ As shown in the survey, most people tend to agree that there should be more education regarding NFTs. However, can the government afford to split their resources between an already diminishing sector to fund what can be regarded as risky technology and a "waste of time"?

Moreover, according to a DfE report, the number of newly qualified teachers is expected to fall each year,⁴⁰ possibly because of the introduction of drastic pay cuts due to inflation.⁴¹ The UK government's extreme lack of funding for the education sector and disregard for teachers presents an interesting dilemma regarding the education of NFTs: if the government cannot afford to provide sufficient funding for the current curriculum, who will provide the money required to educate students on NFTs and above all, who will be qualified and willing to teach?

³⁴ Katrin Anderson, 'Changing The Face Of Education In China' (Bein optimist How to website, 27 June 2022) <<https://www.beingoptimist.com/nfts-changing-the-face-of-education-in-china/>> accessed 17 November 2022.

³⁵ Clifford chance, 'Non Fungible Tokens the Global Legal Impact' (Clifford Chance, June) <<https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/06/non-fungible-tokens-the-global-legal-impact.pdf>> accessed 11 November 2022.

³⁶ Allie Garnett, 'NFTs and the Environment' (Investopedia, 14 October) <<https://www.investopedia.com/nfts-and-the-environment-5220221>> accessed 11 November 2022.

³⁷ Zoe Tidman, 'Third of primary school teachers 'struggling to buy food' as cost of living crisis sparks fears for education' (The Independent, 02 October 2022) <<https://www.independent.co.uk/news/education/education-news/food-cost-of-living-education-teachers-b2177278.html>> accessed 15 November 2022.

³⁸ Luke Sibieta, 'School spending per pupil set to remain below 2009 levels' (Institute for Fiscal Studies, 02 September 2021) <<https://ifs.org.uk/news/school-spending-pupil-set-remain-below-2009-levels>> accessed 15 November 2022.

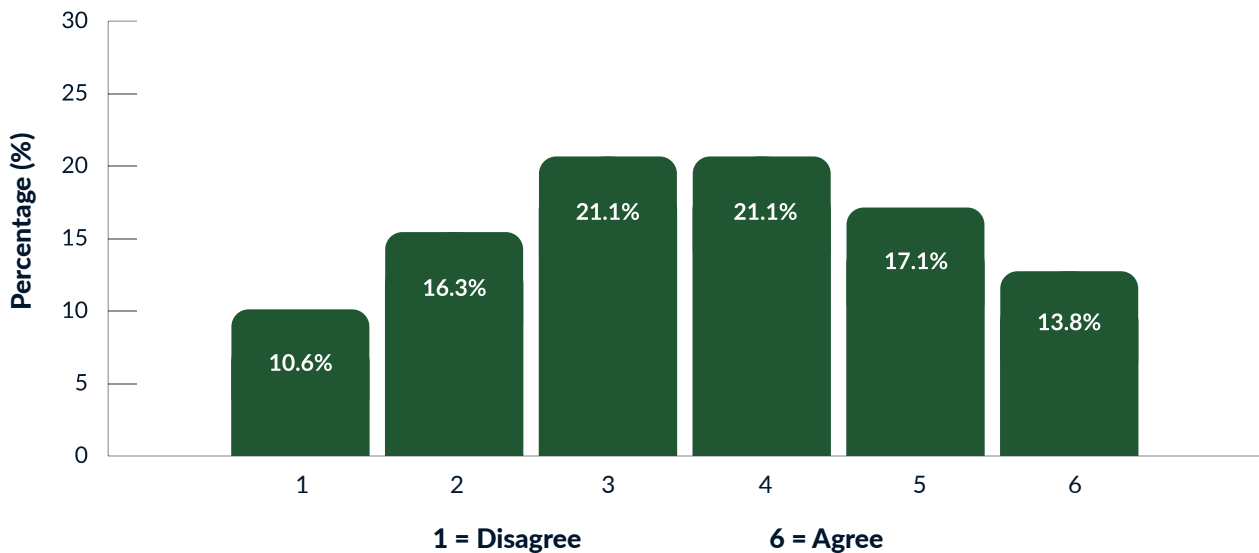
³⁹ Anna Fazackerley, '90% of schools in England will run out of money next year, heads warn' (The Guardian, 22 October 2022) <<https://www.theguardian.com/education/2022/oct/22/exclusive-90-of-uk-schools-will-go-bust-next-year-heads-warn>> accessed 15 November 2022.

⁴⁰ Dave Speck, 'Teacher numbers will drop until 2022, DfE predicts' (Tes Magazine, 06 February 2020) <<https://www.tes.com/magazine/archive/teacher-numbers-will-drop-until-2022-dfe-predicts>> accessed 16 November 2022.

⁴¹ Aletha Adu, 'Thousands of teachers will have suffered '£7,000 pay cut' by 2023 as inflation skyrockets' (The Mirror, 11 March 2022) <<https://www.mirror.co.uk/news/politics/thousands-teachers-face-7000-pay-26433811>> accessed 16 November 2022.

How far do you agree that there should be more education on NFTs?

123 responses



Positive Effect of Education on NFTs

Although NFTs can be stigmatised to cause more harm than good, the positive impacts that NFTs can have on education shouldn't go unknown. These non-fungible tokens guarantee ownership and authenticity to students as NFTs bestow originality and value on digital assets. NFTs are based on blockchains that allow creators to have their entitled right of ownership of a digital product that they rightfully own.

Equally, technology impacted online learning during the pandemic and how technology is significantly, positively changing over time. An advancement of technology during covid was the addition of educational materials like textbooks and revision notes onto platforms, which allowed a more flexible use for remote learning where learners could continue to master content outside of school. As NFTs provide a right of entitlement and ownership to creators, teachers and staff can monetise their work rightfully as their own, reducing plagiarism that goes unscathed in the educational system. NFTs can also be used as other means of certification that state if students are ideal candidates based on their progress and performance through proof of skills and qualifications that are needed for students to secure a place in a certain job or degree.

Regulation

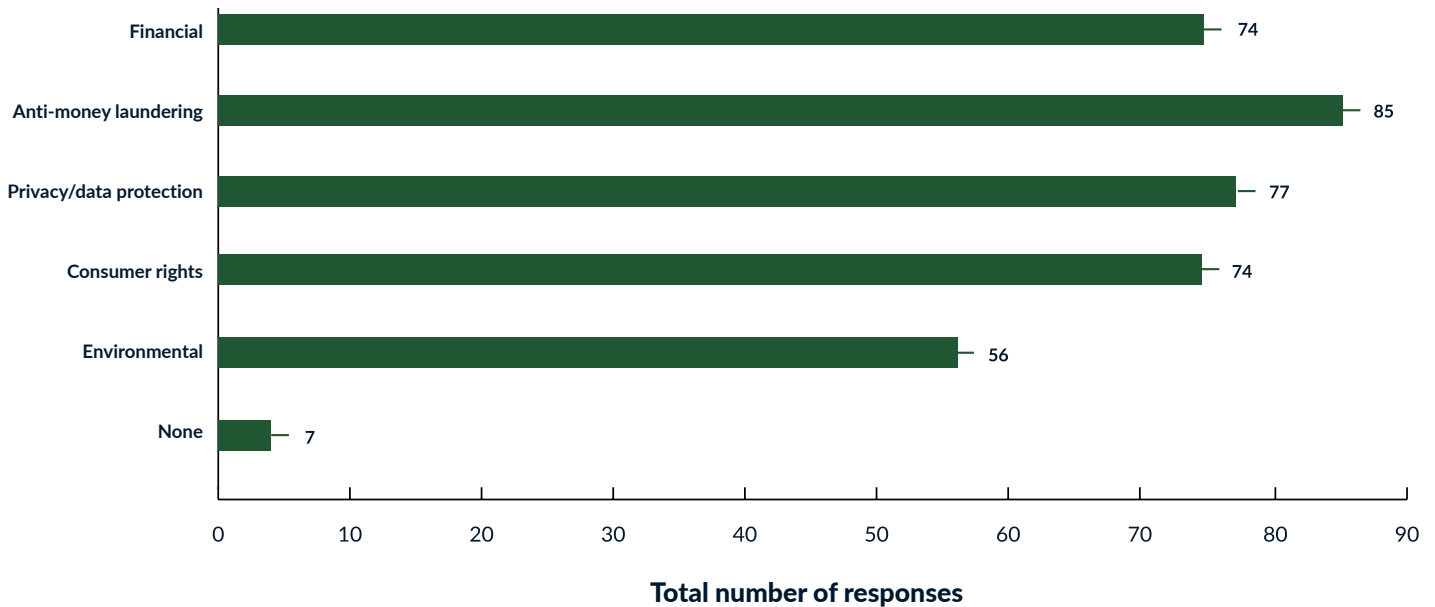
Types of Regulation

The rise in the popularity of NFTs has raised the greater importance to discuss what types of regulations should apply to them. NFTs' complexities mean there is little legal protection for those who create, invest and trade with them. Legal issues concerning NFTs include data protection, intellectual property rights, transactional sales, and taxation.

Our survey results show 89% agreed NFTs should be regulated: 75.9% selected anti-money laundering regulations; followed by 68.8% for privacy and data protection; and financial and consumer rights regulations were selected by 66.1% of people. Society is concerned about financial security and wants more regulation to increase clarity and certainty. It further highlights issues of data protection, and rights for purchasers were also a high priority for people to ensure NFTs become a market that safely works for both businesses and consumers. Interestingly, 50% selected environmental regulations implying the negative environmental impacts of NFTs are becoming a growing concern. With only one person selecting scam prevention, this suggests that people have a lot of trust in the NFTs platform providers. Ultimately, after speaking to Legal and Cyber experts and taking into account the data from the survey it seems soft regulations are best for NFTs—allowing growth flexibility with greater certainty.

What types of Regulations should apply to NFTs?

112 responses



Reasons not to Regulate NFTs

The regulation of NFTs could become redundant, limit growth and innovation within a developing and unpredictable industry. Given this, the finite detailed understanding of NFTs invades the success of regulation. Numerous lawyers, who specialise in commercial law, lack comprehension on the nature of NFTs; there is still evolving research into their characteristics, suggesting that legislators' acts today could harm the digital financial world moving forward. As opposed to relying on legislation to regulate NFTs, we should consider looking at the creators and innovators that mint NFTs to discuss the risk of regulations. One may regard NFTs as self-regulating due to social media growth; 66.7% of responses, from our created survey, state that they discovered NFTs from media platforms, suggesting that NFTs widely develop alone through the media. In regards to regulation, this could imply that NFTs are not dependent on government intervention as they are capable of individual expansion. The speculative, inflated nature of the NFT market prohibits implemented laws from remaining positively impactful, for example, many of the 75.8% of people who do not own NFTs could be as a result of the possible infringement of privacy, regulations may make the use of NFTs less popular. This could result in an end to the futuristic market.

Environmental Impact of NFTs

NFTs are surrounded by much controversy due to their effects on their environment. NFTs are increasing pollution and causing damage to the environment.⁴²

An NFT uses up power, and ultimately that usage of power means that it generates pollution. For example, the NFT Space Cat has a carbon footprint (the total amount of greenhouse gases that are generated by us) equivalent to 2 months of an EU resident's electricity usage. However, on average 18,000 NFTs emitted a lower carbon footprint than space cats.⁴³ The cryptocurrency Ethereum when sold on the block chain or purchased on the blockchain causes carbon emissions. However recently Ethereum has changed and managed to reduce their energy consumption by 99.5%.⁴⁴

However, some NFTs may have perks that benefit the environment as they do not use the blockchain and therefore have a much lower carbon footprint.

⁴² Justine Calma, 'The Climate Controversy Swirling Around NFTs' (The Verge: March 2021) <<https://www.theverge.com/2021/3/15/22328203/nft-cryptoart-ethereum-blockchain-climate-change>> accessed 18 November 2022.

⁴³ *ibid.*

⁴⁴ *ibid.*

White Paper Regulations

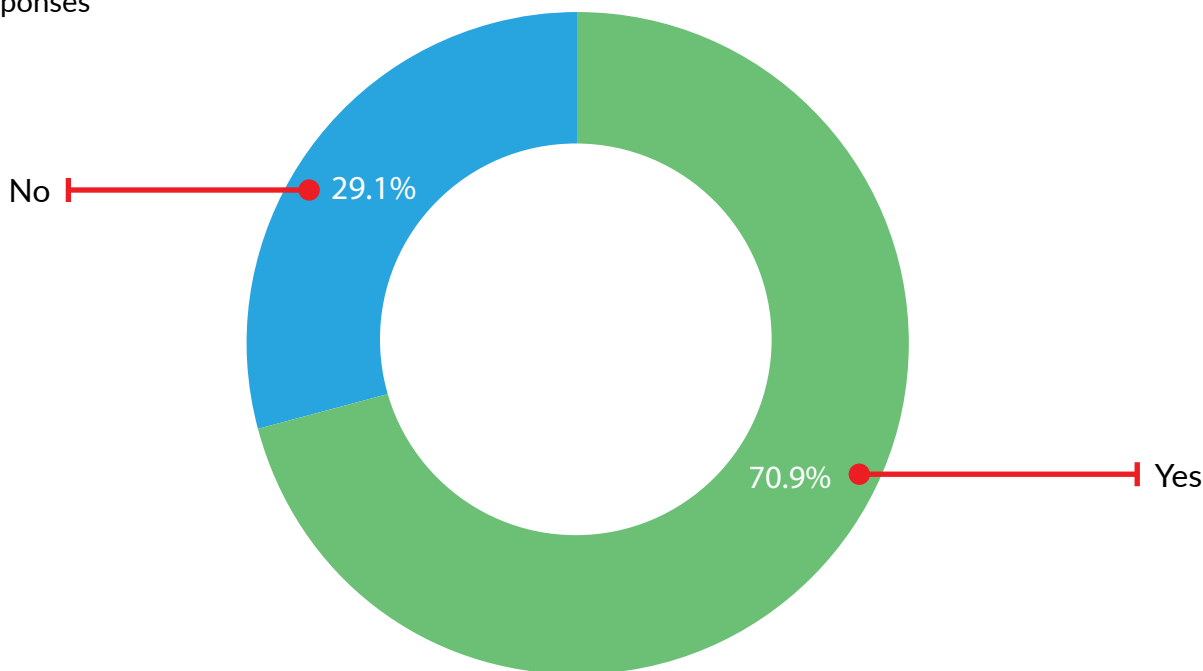
A current issue that is preventing NFTs from further growth is the lack of consumer confidence. One potential method of increasing consumer confidence would be the use of white papers. A white paper acts similarly to a business plan as it serves to communicate an NFT project's vision by presenting a demonstration of how the NFT will work to solve an existing problem. It may also outline things such as perks and benefits owners will receive, and a roadmap of their plans for the project. Legally requiring projects to include a white paper could be a solution. However, this proposes another problem linked to the definition of an NFT. Are NFTs considered regulated financial instruments or unregulated products? If we were to consider them as regulated financial instruments, white papers would become defunct and, NFT projects must submit for approval a prospectus that must follow the strict rules⁴⁵ of the EU Prospectus Regulation. It is clear that currently the NFT market is too unsafe for many potential investors and lacks regulation. However, before the regulation can be introduced related to white papers, the UK and EU parliaments must catch up to the everchanging, innovative movement that is Web3.

Smart Contracts and Vulnerabilities of NFTs

An ongoing issue with NFTs is the complications surrounding smart contracts. Smart contracts are used to issue ownership of NFTs. Issuing a smart contract as proof of purchase and ownership strings along a number of vulnerabilities such as the lack of complete cybersecurity and the fact that there is currently no specialised legislation in the UK addressing smart contracts. Smart contracts are not fully secure as it is essentially just code, which can be hacked into due to some instances of poor coding. Ethereum has reported that over 34,200 smart contracts are vulnerable to hacking due to poor coding. This defeats the idea of trust being inessential, because the contract is still at risk on the blockchain after purchase due to poor coding,⁴⁶ potentially leading to the NFT being stolen. Following the increase in popularity of NFTs, the possibility of NFTs (smart contracts) being used to issue exam results and passports increases which appears to simplify the pre-existing method of issuing these, however, our survey showed that when asked if people felt protected, 70.9% of people answered no to this question showing that it is not something that replacing physical contracts with smart contracts may not be a comfortable transition to NFTs for the majority of people.

Do you think using NFTs in place of physical contracts, tickets, documents etc. provides more user protection?

117 responses



⁴⁵ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

⁴⁶ Samantha Chang, 'Ethereum Smart Contracts Vulnerable to Hacks: \$4 Million in Ether at Risk' (Investopedia, 25 June 2019) <<https://www.investopedia.com/news/ethereum-smart-contracts-vulnerable-hacks-4-million-ether-risk/>> accessed 17 November 2022.

Consumer Rights

Currently, as reinforced by the FCA, 'There are no consumer protections for those who buy any cryptoassets and NFTs, and they are not FSCS protected.'⁴⁷ Arguably, this poses a vast threat to consumers, thus presenting the argument that there is need for regulation of NFTs. Despite The Consumer Rights Act 2015 highlighting that all goods should be of a satisfactory quality, this is difficult to enforce in regards to NFTs. This is due to widespread debate surrounding whether or not they can be considered 'property', in accordance with the law. The question is posed as to whether NFTs can really be considered 'property' in both a theoretical and literal sense when they are not tangible objects. As a result, issues surrounding ownership of NFTs are significant to consider and address when creating a market in which consumers will be willing to invest, provided that legislation is in place to protect them. To support this issue, clarity surrounding the consumer rights of NFTs as well as inclusive definitions as to what 'property' is, is critical moving forwards.

Privacy, Security, & Data Protection

Current legislation does cover most misuses of NFTs for the likes of criminal offences such as money laundering⁴⁸ or the misuse of data collected at points of transit for NFTs such as in purchase or at sale⁴⁹ though there are issues like the right to erasure⁵⁰ as the very nature of the blockchain requires that every transaction be recorded so it may be publicly scrutinised for validity checking, however this seems to be covered by how the data is constantly in use for its collected purpose and thus cannot be erased in accordance to the GDPR. The main sticking point with NFTs is wallet security, this can be placated through means such as two factor authentication for crypto wallets, but as seen with the recent FTX CEO⁵¹ fraud case causing frustration over who a crypto wallet may belong to as it may simply be held locally on a provider's website with the user presuming it to be safe, where in actuality the website's owner may be able to take items from someone's crypto wallet. This could be side-stepped via use of a hardware wallet, not a software wallet, however this is costly to the consumer as it forces unnecessary cost whereas regulation to providers' security could step in, forcing the hands of providers to provide safety on the consumers behalf.

Future of NFTs

It is clear that the NFT space is growing exponentially, with the landscape of how they could affect mainstream society still not clear. Clearly this report has assessed a wide range of areas which need to be considered, and no matter our personal opinion on the usefulness of NFTs, the potential they have alongside the rapidly progressing technological scene cannot be ignored. From our survey, it was clear that whilst some people were aware of NFTs (42%), a much smaller percentage could actually provide a definition of what they are (9%). Much of the current knowledge on NFTs appear to be predominantly associated with the 'Bored Ape' style, gaining mass interest through social media which is aimed at a younger demographic. However, there are number of tangible examples of how NFTs could be used in day-to-day life on a global scale—from passports to exam results. It is possible a type of personal crypto 'wallet' could be used and stored on the decentralised public ledger (blockchain), where a record would be kept of all 'transactions'—creating an immutable personal identity with all essential documents. The possibilities are endless, and when implementing potential reform, it is important to not stunt the growth of such a potentially lucrative piece of technology.

⁴⁷ FCA, 'FCA reminds consumers of the risks of investing in cryptoassets', (FCA, May 2022), <<https://www.fca.org.uk/news/statements/fca-reminds-consumers-risks-investing-cryptoassets>>, last accessed 10 November 2022.

⁴⁸ Proceeds of Crime Act [2002], s327(1), <<https://www.legislation.gov.uk/ukpga/2002/29/section/327>>, last accessed 10 November 2022.

⁴⁹ Data Protection Act [2018], s66, <<https://www.legislation.gov.uk/ukpga/2018/12/section/66/enacted>>, last accessed 10 November 2022.

⁵⁰ General Data Protection Regulation [2016], ch3, art17, s3, <<https://uk-gdpr.org/chapter-3-article-17/>>, last accessed 10 November 2022.

⁵¹ Shubber, et al, 'New FTX chief says crypto group's lack of control worse than Enron', (The Financial Times: November 2022), <<https://www.ft.com/content/7e81ed85-8849-4070-a4e4-450195df08d7>>, last accessed 10 November 2022.

Conclusion

After considering the surveyed results, which indicated a lack of confidence and knowledge regarding NFTs in the majority of the participants, we argued that providing education on NFTs would be beneficial. This issue, then, can be tackled accordingly through financial incentives for students and by tokenizing educational qualifications such as degrees.

In line with our thesis that NFTs must be regulated, we found that NFTs are perceived to be unsafe to invest in due to the lack of regulation around them, yet the legal system must align with the growing web3 so as to allow the regulation to occur in the first place. Support for such a change stem from the potential utilities that NFTs can provide, such as aiding in the distribution of exam results and the digitalisation of passports. It is clear that such unharnessed potential can only be grasped if the current issues surrounding NFTs, such as the concerns on consumer rights and data protection, can only be tackled with the regulation of NFTs, and for the benefit of the general public, through the implementation of education on NFTs.

Part Three: Public Law

Recommendations on immigration law.

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Immigration Law

Introduction

Following the devastation of World War II, in 1951 the League of United Nations (UN) created the Refugee Convention (UNHCR).⁵² This sets out what constitutes a refugee (‘one that has fled due to war, violence or persecution’) and their entitlements. It also defines who is responsible for allocating safety to individuals from countries where their life may be at threat. The UK has a responsibility “to receive and decide applications for asylum in this country under the terms of the 1951 UN Convention relating to the Status of Refugees and its 1967 Protocol.”⁵³

However, the UK's compliance with this obligation has been under question. Beyond inefficiency and offshoring responsibility, the asylum system can be hard to understand for refugees, making it inaccessible. Furthermore, the UK lacks safe routes for asylum seekers to enter as an island. Following the European refugee crisis in 2021, 27 refugees died crossing the channel.⁵⁴ Evidently, the Refugee crisis is one issue which severely affects the lives of asylum seekers. Thus, this report aims to analyse the most pressing issues rooted in asylum law, those being: International Obligations, Accessibility, Accountability and the lack of legal routes into the UK. We will then suggest logical reforms for these issues.

Preface: International Obligations

The Refugee Convention defines a refugee as someone fearing persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, or those who are unable to, or owing to such fear, unwilling to avail themselves to the protection of that country.⁵⁵ The Convention describes the treatment refugees are deserving of, and the protection all should receive without discrimination, creating a precedent for the level of compassion the UK should operate at when reacting to humanitarian crises: without question and instantly.

However, the trend in the UK has been heading in a very different direction. The Hostile Environment policy of the 2010s and the passing of the Nationality and Borders Act in 2021 show that the UK's focus has shifted to undermining the right to seek asylum so as to protect our own economy from rising migration levels. Arguably, the UK has fallen short of its international obligations to provide protection for persons who need it, now with the directive of keeping people out and preventing an ‘invasion’ of ‘illegal’ refugees, as stated in a controversial message from Home Secretary Suella Braverman.

⁵² UNHCR, ‘The 1951 Refugee Convention’ <<https://www.unhcr.org/1951-refugee-convention.html>>

⁵³ UNHCR, ‘Frequently asked questions for asylum seekers and refugees in the UK’ <<https://www.unhcr.org/uk/frequently-asked-questions-for-asylum-seekers-and-refugees-in-the-uk.html>>

⁵⁴ United Nations, ‘Drowning of 27 migrants in English Channel is worst disaster on record: IOM’ (UN News: Global perspective Human stories, 25 November 2021) <<https://news.un.org/en/story/2021/11/1106562>>

⁵⁵ UNHCR, ‘The 1951 Refugee Convention’ <<https://www.unhcr.org/1951-refugee-convention.html>>

This attitude is reflected in the Home Office's attitude towards human trafficking. Despite their stated concerns about human trafficking and desire to 'break the business model' of people traffickers, the Home Office failed to offer adequate support for trafficking victims within the asylum system. There is no leave to remain associated with a positive Conclusive Grounds decision, leaving survivors stuck and increasing risks of re-exploitation⁵⁶ and potential statelessness, undermining Article 4 of the European Convention on Human Rights and failing to fulfil Article 9 of the Palermo Protocol.

The Home Office's policy of working hard to deem certain applications invalid separates families, and, combined with the way that it keeps people in such inhumane conditions, directly contradicts human rights we have promised to uphold. The Rwanda scheme as a response to rising migration levels is equally controversial, having chosen a country with such recent human rights violations. The 2021 country report on the state of human rights in Rwanda highlights the many unlawful killings committed by the Rwandan government in recent years: forced disappearances and the torture/cruel treatment of those meant to be protected by the state.⁵⁷ If this was the UK's legal solution to the huge problem of migration, it is very questionable whether our international obligations as stated by the European Convention for Human Rights are still being honoured.

Accessibility and accountability

Individuals seeking asylum are met with many barriers regarding the accessibility and accountability of the Home Office in dealing with immigration law and cases. The gov.uk website is difficult to navigate and inaccessible for non-English speakers, while the Home Office faces no repercussions for its clear dismissal of appeals and failure to compensate for this.

Issues with accessibility

There are fundamental flaws regarding the provisions of the gov.uk website for immigration laws. At the moment there is no translational help available on the government website. As 51% of asylum seekers speak little to no English,⁵⁸ this presents a barrier for those using immigration services and wishing to know their rights. Private translations cost around 10-16p per word, meaning paying for a translation of an 1000 word document could cost someone £100- £160 or more,⁵⁹ yet another clear barrier to those seeking asylum. Having easy access to these resources encourages fast applications to get visas and support asylum seekers in being aware of their rights and entitlements when immigrating. Further issues with the gov.uk website include the presentation of the website itself. The numbering system used to organise and display the information is unclear. This becomes an issue when rules begin to cross reference each other. For example, section R-LTRP has rules that cross reference requirements set out in section E-LTRP and EX.1.⁶⁰ For an individual without legal knowledge to navigate this is challenging and may act as a barrier for them in application for asylum, as to fully understand this one must have read the entire report.

Furthermore, the nature of immigration law is that it falls under delegated legislation, this allows the Government to make changes to a law without needing to push through an entirely new Act of Parliament.⁶¹ Rules are subject to a negative resolution procedure, meaning each statement of changes is laid before Parliament and will take effect as set out in the statement, though the entire statement can be withdrawn by a resolution of the House within 40 days.⁶² As a result, changes to immigration law are frequent, meaning an individual that applies for asylum under one rule or policy may have their application determined under another.

⁵⁶ Human Trafficking Foundation (2016) Day 46: Is there life after the Safe House for Survivors of Modern Slavery?

⁵⁷ House of Commons Home Affairs Committee, 'Immigration Detention: Fourteenth Report of Session 2017-2019', (12 March 2019) <<https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/913.pdf>>

⁵⁸ The Migration Observatory, 'English language use and proficiency of migrants in the UK' (Briefings, 29 July 2019) <<https://migrationobservatory.ox.ac.uk/resources/briefings/english-language-use-and-proficiency-of-migrants-in-the-uk/>>

⁵⁹ BusinessWest, 'How much does translation cost?' (12 July 2019) <<https://www.businesswest.co.uk/blog/how-much-does-translation-cost>>

⁶⁰ Colin Yeo, 'How complex is UK immigration law and is this a problem?' (Fee Movement, 24 January 2018) <<https://freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-this-a-problem/>>

⁶¹ UK Parliament, 'Delegated legislation', (Glossary) <Delegated legislation - UK Parliament <<https://www.parliament.uk>> site-information > glossary>

⁶² 'UK Immigration authorities and sources of law - overview' UK_immigration_authorities_and_sources_of_law_overview

Issues with accountability

Those looking for refuge in the UK are given a verdict on if they are permitted to stay; however, if rejected, they are still eligible to appeal against the choice in an immigration court. Figures released by the Guardian show that almost 70% of the final appeals that the Home Office made regarding rulings that allowed migrants and asylum seekers to stay in the UK were dismissed. The low success rate of the Home Office's court processes is worrying, as it shows that they are putting people through the court process, despite little chances of success. From April 2017 to March 2018 '11,974 cases were determined in court, with 4,332 of the Home Office's decisions being overturned.'⁶³ The Home Office then referred 1,235 of the decisions granting leave to remain, to the upper tribunal for [further] appeal, which followed with 73% of appeals being declined by an independent judge. These statistics regarding the dismissal of appeals is concerning, given that after the first dismissal of an appeal you are considered 'appeal rights exhausted', meaning your asylum support is stopped.⁶⁴ Subsequently, this puts you at greater risk of detention and the Home Office can legally try to remove you from the UK. Those who do not have the resources to appeal to an upper tribunal are thus placed in a vulnerable position.

In some cases, there is a wait of more than a year for just the initial appeal to be heard. If there is then subsequent dispute between the judge and Home Office, whereby they do not agree on the same decision, it could be at least another year before the second hearing. This major issue of the length of time it takes for decisions to be made leaves asylum seekers in a state of limbo by the Home Office. This becomes a blatant accountability problem considering the Home Office's stark neglect in considering the worry and uncertainty felt by the asylum seekers, which could have adverse effects on their mental and physical health—this should not be the treatment of the people who have made the treacherous journey to come to the UK, fleeing war and conflict.

Further to this, the issue of detention is a major one; the UNHCR detention strategy states that detainees should be held for a reasonable period of time. However, 13% of 24,500 people were held in detention centres for more than 28 days. Under Schedule 2 of the 1971 Immigration Act, detainment is to be used sparingly as a rarity⁶⁵—these figures do not corroborate this. The UK is the only country in Europe to not have a limit for detention—perhaps this is a power that is misused.

The Home Office has also failed in accounting for the living costs of asylum seekers. In a shocking review of the UK asylum system, it has been found by the Equality and Human Rights Commission that those seeking asylum do not have access to sufficient healthcare.⁶⁶ In this instance, the Home Office are in direct violation of Article 12 of the General Comment No.14 in the UN Committee on Economic, Social and Cultural Rights (CESR),⁶⁷ which states that 'all humans have the right to the highest attainable standard of health'; and Article 9 of the General Comment No.19, which states that every human has the 'right to social security'.⁶⁸ In a significant case study, one pregnant asylum seeker had to undergo frequent visits to the hospital, but she could not afford to pay £20 for the travel costs.⁶⁹ People living on asylum support under the Home Office are also only receiving £6 a day (according to the Refugee Council,⁷⁰ so she is £14 in debt every time she visits the hospital. This reinforces the idea that the Home Office has not considered the conditions and treatment of asylum seekers in the UK fully and wholly—perhaps that the system in place now is to fulfil the UK's international obligations on a superficial level and not a provision that enables the safety and security of asylum seekers.

A more effective and considerate system, such as a legally-binding time-scale on the processing of asylum-seekers could help to tackle the efficiency of the Home Office, and enable asylum seekers to achieve a decision without having to put years of their lives on hold and be stranded in these dire conditions.

⁶³ Diane Taylor, Home Office loses 75% of its appeals against immigration rulings, (The Guardian, 2018). <<https://www.theguardian.com/uk-news/2018/sep/03/inhumane-three-quarters-of-home-office-asylum-appeals-fail>>

⁶⁴ Right to remain, 'Asylum: if you are "appeal rights exhausted"' (Right to Remain, 15 November 2022) <<https://righttoremain.org.uk/toolkit/asylum-are/>>

⁶⁵ UNHCR - Detention (no date) <<https://www.unhcr.org/detention.html>>, accessed 18 November 2022.

⁶⁶ Equality Human Rights Commission, Asylum Seekers in Britain are unable to access healthcare, (EHR Commission, 2018) <<https://www.equalityhumanrights.com/en/our-work/news/asylum-seekers-britain-unable-access-healthcare>>

⁶⁷ Office of the high commissioner for human rights, 'CESCR General Comment No 14: The Right to the Highest Attainable Standard of Health (Art 12)' (Refworld, 11 August 2000) <<https://www.refworld.org/pdfid/4538838d0.pdf>>

⁶⁸ UN Committee on Economic, Social and Cultural rights (CESR), 'General Comment No 19: The right to social security (Art 9 of the Covenant)' (Refworld, 04 February 2008) <<https://www.refworld.org/docid/47b17b5b39c.html>>

⁶⁹ Dr Laura B Nellums, Kieran Rustage, Dr Sally Hargreaves, Prof Jon S Friedland Imperial College London Anna Miller, Dr Lucinda Hiam, Deman Le Deaut Doctors of the World UK, 'The lived experiences of access to healthcare for people seeking and refused asylum' (Equality Human Rights Commission, November 2018) <<https://www.equalityhumanrights.com/sites/default/files/research-report-122-people-seeking-asylum-access-to-healthcare-lived-experiences.pdf>>

⁷⁰ Council R, "The Truth about Asylum" (Refugee Council 21 September 2022) <<https://www.refugeecouncil.org.uk/information/refugee-asylum-facts/the-truth-about-asylum/>>

Proposals for Reform

Our first set of proposals would be a change to the Government website to improve accessibility for asylum seekers. This would include having the option of translation on the website, so that they may understand the law and what it requires from them. As a starting point we would propose that there would be translations into the main languages across the globe and the main languages spoken by asylum seekers in the United Kingdom. Over time the Government should add on different languages also spoken by immigrants.

Furthermore, the website must be clear to read. We propose that all documents relating to the one read are clearly labelled by name either at the end or throughout the website, and when selecting to see it they are sent to a different tab where their previous page has not been deleted. In addition, any delegated legislation passed by the Government should be passed in a clear document that includes previous rules. There must be a section showing any new legislations or amendments to previous ones, to avoid individuals accessing outdated ones.

Our second set of proposals regard the accountability of the Home Office when dealing with asylum cases. This would include introducing quicker waiting times for asylum seekers in the application process. By prioritising asylum claims over immigration claims (as they are often in more vulnerable positions), waiting times can be reduced to a maximum of 6 months, rather than often over a year for the appeal to be heard. This reduces the risk to those seeking asylum and allows for more fluid integration into the UK. Furthermore, we suggest providing greater support for those who are 'appeal rights exhausted'. Extending the 21 days notice until your asylum support ends to 40 days may give you the opportunity to find more evidence for a fresh claim⁷¹ and secure asylum.

Legal routes into the UK to claim asylum

Issues with the law

Article 1a of the Refugee Convention defines a refugee as someone with a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, and is outside the country of his nationality unable or, owing to such fear, is unwilling to avail himself of the protection of that country.⁷²

Refugees are currently facing uncertainty due to safe and legal routes not being implemented for them. In 2020 8,400 people attempted to cross the English Channel between the UK and France.⁷³ This dangerous trip puts families and vulnerable people at immediate risk, this figure has increased from 1,835 in 2019. Most who arrived in the UK immediately applied for asylum in the UK. Refugees fail to find safety often lacking basic hygiene and living in destitution. Two thirds of asylum seekers need international protection, the government is paying millions to reduce legal routes to enter the UK.

At present, refugees are only able to claim asylum once they have already physically entered the UK. The only two exceptions to this are family reunion visas and specific resettlement schemes such as the Afghan and Ukrainian schemes. Furthermore, the Immigration Carriers Liability Act 1997 states that those operating boat or airline companies that allow people to travel without a valid visa can be prosecuted. The recent Nationality and Borders Act 2022⁷⁴ will remove family reunion rights for thousands of vulnerable people, leaving many with no safe and legal way to enter the UK. The government has a responsibility to not only reduce the number of incoming migrants but also provide a more humane and fairer route that is in line with international standards.

71 Right to Remain, 'Making a Fresh Claim (new evidence after the appeals stage)' (The Right to Remain Toolkit: A guide to the UK immigration and asylum system) <fresh claim>

72 The Refugee Convention 1951 (The travaux preparatoires analysed with a commentary by dr paul weis) <<https://www.unhcr.org/4ca34be29.pdf>>

73 'A Safe and legal route from France to the UK through a humanitarian scheme' <<https://www.jcwi.org.uk/a-safe-and-legal-route-from-france-to-the-uk-through-a-humanitarian-visa-scheme>>

74 Nationality and Borders Act 2022, UK Parliament <<https://bills.parliament.uk/bills/3023>>

Proposals for reform

Asylum should be accessible for everyone if they are at risk of persecution, meaning people should not be forced to meet certain requirements to enter the country. Other countries such as Italy have achieved this, where people can enter the country and apply for asylum at a later date. Italy has implemented the Humanitarian corridors, which are used to avoid boat trips through the Mediterranean Sea and to grant people in vulnerable conditions legal entry with humanitarian visas and the opportunity to apply for asylum later. It avoids countless deaths, exploitation by human traffickers to provide people with a legal and safe entry, and helps refugees become self-sufficient by offering a year of support including housing, legal aid, and language classes. This has been successful as in less than four years, 2,000 people have been brought to Italy and 350 more into France.⁷⁵ It is based on a model of solidarity, meaning that it can be replicated and is something that the UK should implement.

Many organisations advocate for reform of the current system, such as the Refugee Council⁷⁶ and Amnesty International.⁷⁷ They propose reforms that would constitute a humanitarian visa system that will allow people to apply for visas to enter the UK for the sole purpose of claiming asylum. Article 31 of the Refugee Convention 1951 states that even if a refugee has entered the UK illegally, they should not be prosecuted if they are claiming asylum. If refugees were able to apply for asylum before entering the UK, this would streamline the process and create access to a safe and legal route. By observing what has worked for other nations, we can find solutions that can be applied to the UK's asylum system.

Our proposal to reform is to provide a safe and legal route from France to the UK, introducing a new visa system providing a travel permit. This will be available to anyone with a claim for international protection. A strength of this is that it would provide safety and an alternative to the costly chaos of the current legal paths that are leaving many asylum seekers lost and vulnerable.

Reforms to scheme for Afghan refugees

Issues with the current Afghan scheme

There are clear disparities between the schemes for refugees from Ukraine and Afghanistan seeking asylum, creating an unfair and seemingly biased system which should be reformed in order to achieve equality. Despite the Home Office's claims that it is helping both nations and that it is "wrong to set these vulnerable groups against each other", the evidence suggests otherwise. Besides accepting more Ukrainians, the Home Office has dedicated more staff to assist with arrivals and they have been housed in more satisfactory accommodation than their Afghanistan counterparts. The resettlement scheme for vulnerable Afghanistan citizens was announced by Home Secretary Priti Patel on 18 August 2021 and was still not in operation by the end of the year. In contrast, the Homes for Ukraine scheme was set up within 4 weeks of announcement and included a sponsored home for Ukrainian scheme, only available through charities (not the government) for Afghans. In comparison, in just under 6 months, 107,900 Ukraine visa holders have arrived in the UK, almost 12 times as many as Afghan arrivals under ARAP over the course of a full year.⁷⁸ In light of these disparities, we recommend that UK policies towards Afghans be brought in line with those for Ukrainians.

⁷⁵ 'Humanitarian corridors in Italy: A legal and safe alternative' <<https://raisd-h2020.eu/project/humanitarian-corridors-in-italy-a-legal-and-safe-alternative/>>

⁷⁶ 'Refugee Council: Save Routes Save Futures' <<https://www.refugeecouncil.org.uk/get-involved/campaign-with-us/safe-routes-save-futures/>>

⁷⁷ 'Amnesty International UK: Safe and Legal Routes to the UK' <https://www.amnesty.org.uk/files/2021-01/Amnesty%20International%20UK%20-%20Safe%20and%20Legal%20Routes%20Briefing_0.pdf>

⁷⁸ 'Research Society of International Law: A Two-Tier System: Afghan and Ukrainian Arrivals in the UK' <<https://rsilpak.org/2022/a-two-tier-system-afghan-and-ukrainian-arrivals-in-the-uk/>>

Causes of inefficiency with the Afghan scheme and disparity with the Ukrainian scheme

Whilst the population of Ukraine is marginally larger than that of Afghanistan and the proximity of the Russo-Ukrainian war to United Kingdom resources might add a dimension of urgency to the response of the Home Office, these factors do not quite balance the 100,000 differentials between the numbers of visa-holding refugees. The Home Office stated that it was the “brutal and barbaric” nature of Putin’s takeover that led to the creation of their refugee program, seemingly denigrating the suffering of the millions of Afghan citizens living through innumerable human rights violations. One woman even reported that families are forced to sell their small children to make up for the wages they have not been paid in months,⁷⁹ yet there have been no ‘Homes for Afghans’ or intensive humanitarian visa schemes. So, what could be alternative explanations for the contrasting experiences of Afghan and Ukrainian refugees?

The misinformation surrounding false allegations alongside the lack of reprimand done allows the public to create the assumption that discrimination of Muslims and therefore refugees from Afghanistan, and anywhere else in the world, is tolerated and accepted.

Differences in media coverage are also important to note. As Charlie D’Agata and other Western news pundits disregard the conflict in Middle Eastern countries due to their “decades[-long]” nature,⁸⁰ they highlight the importance of protecting Ukrainians (the Russo-Ukrainian War dating back to 2014). This incites sympathy and a sense of urgency in the Western public, leading to disproportionate support and preferential treatment towards Ukrainians. According to a survey we conducted, it was not uncommon for respondents to respond that they were “not sure” in response to questions on recent affairs associated with immigration law. Educating the public on what the immigration system is and the true reasons why people seek asylum in the UK will be a step towards a country which is more welcoming to refugees.

Proposals for reform

We propose stricter laws concerning impartial delivery of urgent news and a singular Home Office approach, bringing the attitude towards and treatment of Afghan refugees more in line with that of Ukrainian refugees. A more unified response designed to respond to a refugee crisis, whilst allowing for amendments depending on the requirements of the specific situation, would deal much more fairly with the injustice facing Afghans today.

Permission to work for asylum seekers

Issues with the law

The current asylum-seeking process forbids asylum seekers from undertaking paid employment until their asylum claim has been processed, something that the Refugee Council have reported takes as long as three years. Instead, the government provides an unsustainable £40 a week living allowance to refugees and temporary accommodation. The current provisions made by the UK government fail to ensure that asylum seekers have enough money to support themselves; the Joseph Rowntree Foundation estimates that an average single person needs £157 to maintain a minimum standard of living in the UK.⁸¹ Restricting asylum seekers from accessing the labour market aims to make the lives of asylum seekers difficult with the aim of deterring hopeful migrants. However, data from The Migration Observatory at the University of Oxford⁸² shows that the number of asylum seekers in the UK has increased from 32,344 in 2014 (since the policy was implemented by the Cameron government under then Home Secretary Theresa May) to 56,495 in 2021, an increase of 75%. Forbidding asylum seekers from working is, therefore, ineffective in restricting the number of asylum seekers to the UK and unnecessarily burdensome on the lives of refugees. Despite the failures of the current

⁷⁹ Nelufar Hedayat, ‘The Response to Ukraine Is Laudable. But as a British Afghan, I’m a Little Jealous’ <<https://www.theguardian.com/commentisfree/2022/mar/19/response-ukraine-laudable-british-afghan-jealous-kabul-crisis>>

⁸⁰ Sonali Kolhatkar, ‘Why Don’t We Treat All Refugees as Though They Were Ukrainian?’ <<https://www.minnpost.com/community-voices/2022/03/why-dont-we-treat-all-refugees-as-though-they-were-ukrainian/>>.

⁸¹ ‘Cost of life in the UK’ (March 2010) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/28268/Cost_living_UK.pdf>

⁸² ‘The Migration Observatory: Asylum and refugee resettlement in the UK’ (19 August 2022) <https://migrationobservatory.ox.ac.uk/resources/briefings/migration-to-the-uk-asylum/>

measures, the measures cost the UK £898 million, up from £456 million in 2016.⁸³ Allowing asylum seekers to work would not only aid in helping them to integrate into society but also allow them to earn enough income to support themselves while supporting the UK economy and reducing the burden on government finances.

Proposals for reform

The Refugee Council found that the number of people waiting more than a year had increased tenfold between 2010 and 2020,⁸⁴ with the percentage of individuals having their claims processed within the government's intended 6 months reduced to just 20% in 2020. The current legislation⁸⁵ states that only after a delay of 12 months, which the Home Office has determined is not attributable to the asylum seeker, can permission to work be granted. During those 12 months, individuals are encouraged to volunteer to help integrate into their communities. However, we suggest that working a paid job would offer these same benefits whilst improving the UK's economy and combating the stereotype that refugees are 'burdens' on the system, a stigma causing mental health problems⁸⁶ with no evidence of deterring asylum seekers from coming to the UK, therefore improving the wellbeing of asylum seekers under UK protection.

We propose that the time taken before an asylum seeker is granted permission to work whilst a decision is made on their claim be reduced to 6 months. A maximum period of 6 months before permission to work is granted would deter economic migrants from claiming asylum simply to work, but would not detrimentally impact refugees looking to assimilate. This shorter delay-period is used in countries comparable to the UK; EU law requires member-states to grant access to labour markets after 9 months; there is no waiting-period in Canada and Australia; and there is only 6 months of delay in the USA.⁸⁷

Conclusion

To conclude, the UK's procedures towards immigration policy have been of unsatisfactory quality. The current law supports a framework which nullifies the state's accountability, existing alongside a slow and inefficient Home Office. We have suggested that refugees should be granted a temporary visa to work in the UK while their application is being processed. We take issue with the 'hostile environment' aimed to deter refugees, contradicting the UK's international obligation under the UNHCR and forcing refugees to undertake dangerous routes to enter the UK. To reduce deaths caused by refugees travelling the channel, we propose that the UK must provide sufficient, legal and safe means of accessing the island. In addition, the system in its current state is largely inaccessible as the asylum application system is hard to understand and only accommodates those who understand English or Welsh. A simple solution for this would be to create an option to translate the website to a much wider range of languages and to format the website in a clearer way. Finally, we condemn the notable differences between the Afghan and Ukrainian refugee schemes. We propose that the Afghan scheme be brought into line with the Ukrainian scheme, preventing preferential treatment of refugees based on background.

⁸³ The UK aid budget and support for refugees in the UK in 2022 <<https://commonslibrary.parliament.uk/research-briefings/cbp-9663/#:~:text=An%20increa>>

⁸⁴ Andy Hewett 'Living in Limbo: a decade of delays in the UK asylum system (The Refugee Council, 02 July 2021) <<https://www.refugeecouncil.org.uk/wp-content/uploads/2021/07/Living-in-Limbo-A-decade-of-delays-in-the-UK-Asylum-system-July-2021.pdf>>

⁸⁵ Part 11B of the Immigration Rules, paragraph 360

⁸⁶ Cornelius Katona, 'Mental health implications of detaining asylum seekers: systematic review' (The British Journal of Psychiatry, 2009)

⁸⁷ Melanie Gower, 'Asylum seekers: the permission to work policy' (21 January 2021) <<https://commonslibrary.parliament.uk/research-briefings/sn01908/>>

Part Four: Criminal Law

Recommendations on the law governing cybercrime.

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Cybercrime

Introduction

Cybercrime is a large, complex, and evolving challenge to society. Between March 2021 and 2022 alone, there were 1.6m cases of computer misuse in the UK.⁸⁸ This report will suggest possible reforms and policies that could educate on, prevent, and deter cybercrime. The primary relevant legislation, the Computer Misuse Act 1990 (CMA 1990), was passed 30 years ago, and whilst it continues to function, it requires significant review to keep up with the changing nature of cybercrime. Questions on appropriate sentencing and the importance of education must be addressed in order to protect individuals, companies and government.

This report will propose increasing education to limit the risk of cybercrime, reforming sentencing, and modernising existing legal frameworks in order to ensure that the problem of cybercrime is tackled head on.

Education

Education surrounding cybercrime in recent years has expanded, with programmes being spearheaded by the National Crime Agency (NCA) growing from the rise in school cybercrime attacks, especially during the COVID-19 pandemic. This was created to deter young people from committing cybercrime-related offences, as it has become more accessible for people to commit these offences from the comfort of their homes. Some say there is no need for these programmes, however, according to the NCA's National Cyber Crime Unit, 'there was a 107 per cent increase from the police cyber prevention network of students as young as nine deploying distributed denial of service attacks from 2019 to 2020'.⁸⁹ This clearly demonstrates that more education is needed. Regarding education, there are significant discrepancies between the north and south of the country. Many children, especially in the north of England, are severely disadvantaged when education is viewed on a national level because of the vast differences in funding, resource availability, quality of resources, and teaching staff. This inequality makes educating the youth harder on a national level.

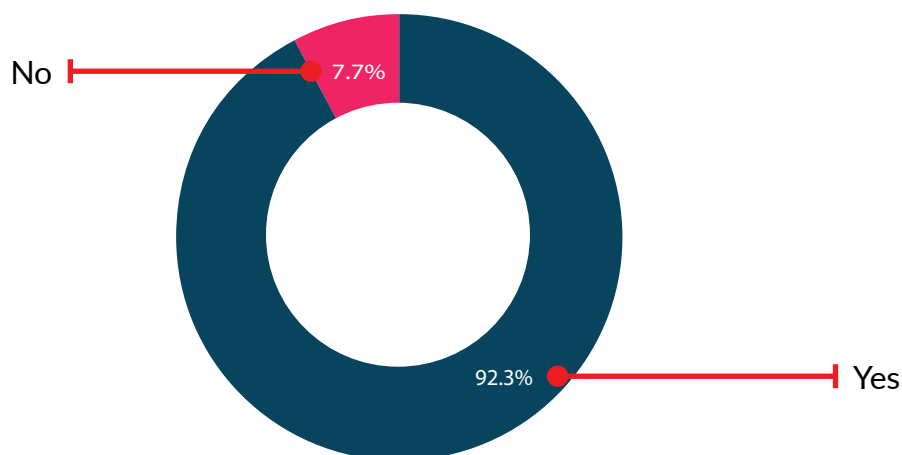
Our survey results overwhelmingly support the idea that people believe the government should invest more money and time into cybercrime.

⁸⁸ Office for National Statistics, 'Nature of fraud and computer misuse in England and Wales: year ending March 2022' (Office for National Statistics, 26 September 2022) <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/natureoffraudandcomputermisuseinenglandandwales/yearendingmarch2022>> accessed 17 July 2022.

⁸⁹ National Crime Agency, 'Rise in school cybercrime attacks sparks NCA education drive' (National Crime Agency, 17 January 2022) <<https://www.nationalcrimeagency.gov.uk/news/rise-in-school-cyber-crime-attacks-sparks-nca-education-drive>> accessed 17 November 2022.

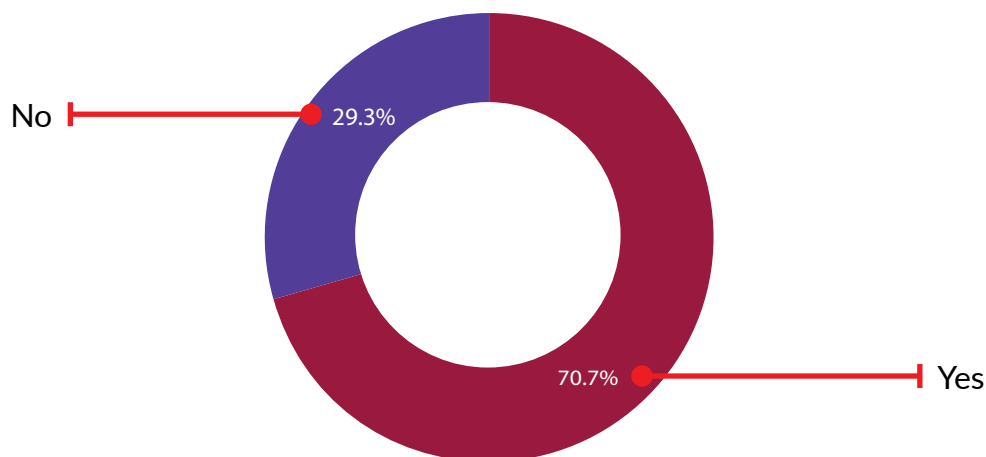
Do you think that more funding, resources, and time should be invested in cybercrime?

155 responses



Education was seen by over 70% of participants as an area of great importance.

Would you willingly engage in education on cybercrime?



Education for cybercrime is so crucial, and with young people dominating the internet, this puts them largely at risk. Some elderly people have a lack of understanding and anyone can be a victim of a cyberattack. However, although education is an area that needs great focus and reform, it brings upon challenges. The current cost of living crisis has caused many issues and the education sector is an area that has been further affected. School bills have jumped by almost double and there is said to be a spending decrease of 3% per student by 2024/2025.⁹⁰ These numbers outline the challenges that are being faced by an already underfunded sector. Currently, cybercrime is costing the UK government an estimate of over £27bn annually.⁹¹ This is a large and scary number and despite education not being a whole solution, it will make a massive difference. Education allows passion to grow for innovation of future prevention software, it allows protection for vulnerable people and it makes people feel more comfortable with the ever-changing and adapting digital world. Education heavily relies on engagement and interest, but with such a topical subject and key elements that meet the interests of several demographics, education will have a huge impact. Therefore, despite the challenges, there should be a major focus of time, effort, and investment into education.

⁹⁰ Sally Weale, 'Schools in England face a funding crisis as costs soar, study warns' (The Guardian, 2022) <<https://www.theguardian.com/education/2022/aug/02/schools-in-england-face-funding-crisis-as-costs-soar-study-warns>> accessed 17 November 2022.

⁹¹ Dan May, 'How Much Cybercrime Costs the UK Economy' (Ramsac, 2022), <<https://www.ramsac.com/blog/cybercrime-costs-27-billion-to-uk-economy-every-year/>> accessed 17 November 2022.

Cybercrime acts as a great downfall to the internet—a place with an incredibly extensive amount of opportunities which could benefit so many. Despite this, the current shift towards a more digital lifestyle for the majority of society, including businesses and schools, has increased the threat of cybercrime and created a much larger platform in which vulnerable people can be attacked. Statistics reveal that in 2015, almost 80% of European companies experienced at least one cybercrime incident,⁹² demonstrating the huge scale to which cybercrime has now grown. As well as this, the 2016 Eurobarometer showed that 61% of Europeans worry that elections could be affected by cyberattacks,⁹³ putting into perspective how current and how relevant this issue is in the eyes of the general public. Despite some legislative frameworks in place to deter criminals and keep online users safe such as the CMA 1990, the main issue lies within education about cybercrime. Education must be provided to not only the younger generation who are being brought up in this digital world, but also older people who are highly vulnerable to falling victim to a cybercrime attack. In this context, knowledge is power and educating groups of people through workshops or implementing cyber-safety within school curriculums will allow users to have a safe and enjoyable experience when using the internet and be able to reap the benefits it provides without the fear of being under cyberattack.

Curriculums in schools must be adjusted to incorporate courses relating to cybersecurity to reduce the risk of young people falling victim to scam communications. Schools could introduce a system that tests children on their ability to recognise online scams and educate them if they lack basic knowledge. For example, the NCA and School Broadband established a new initiative aimed to educate students attempting to access websites associated with cybercrime on school computers.⁹⁴ Instead of being blocked from the page, they are given a warning message and redirected to the Cyber Choices website,⁹⁵ which informs them about legislation such as the CMA 1990, cybercrime, and its consequences.

Young people must be engaged in this type of education early to prevent them from over-trusting content available to them on their devices. Therefore, programmes of this nature should be inaugurated in primary schools and should continue into secondary schools to further reiterate the importance of being aware of the dangers present on the internet.

Our survey results suggested that another popular reason why people used electronic devices was to access work documents and communication platforms. Employees of businesses relying on online services may have a poor understanding of contemporary technology, therefore being more susceptible to scams. Efforts must be made to educate them on how to protect themselves and their employer. Staff should receive regular, adequate cyber training to strengthen resistance to possible scams and mitigate breaches.

Older, more vulnerable groups such as the elderly could be more likely seen to fall victim to cyber-enabled crimes such as online fraud or internet theft. Age UK reinforces this through statistics from the 2018-2019 financial year,⁹⁶ which revealed that cybercriminals embezzled a total of over £4m from the older generations, and a further Freedom of Information request showed that the police received around 4,173 reports of cybercrime from adults aged over 55 during April 2018 to March 2019. Thus, in order to prevent cybercriminals taking advantage of the recent influx of older people who now rely on the internet more following the pandemic, relevant education needs to be incorporated and sufficiently adapted as a focal target towards this demographic. Whilst relevant resources and information are already in development within schools and workplaces as a preventative resource—as seen through the works of agencies like Action Fraud,⁹⁷ the UK's national reporting centre for fraud and cybercrime—further education is needed to ensure widespread access to such deterrent measures. Thus, we could create outreach through social media platforms like Facebook or perhaps email advertisements to disincentivise people who fall victim to these cyber-dependent scams. Furthermore, visual guidance integrated within the wider community such as classes or clinics that cater to the elder demographic could be utilised as an additional collective tool for education.

⁹² Kelly Stremel, 'Cyber News Roundup' (CyberOregon, 06 September 2019) <<https://cyberoregon.com/2019/09/06/cyber-news-roundup-80-of-businesses-experienced-a-cybersecurity-incident-what-to-do/>> accessed 17 November 2022.

⁹³ Miriam Dalli, 'Education as a tool against cybercrime' (European Files, 18 March 2019) <Education as a tool against cybercrime - The European Files> accessed 17 November 2022.

⁹⁴ National Crime Agency, 'Rise in school cyber crime attacks sparks NCA education drive' (NCA, 17 January 2022) <<https://www.nationalcrimeagency.gov.uk/news/rise-in-school-cyber-crime-attacks-sparks-nca-education-drive>> accessed 17 November 2022.

⁹⁵ National Crime Agency, 'Cyber Choice: Helping you choose the right and legal path' (NCA, 2022) <<https://nationalcrimeagency.gov.uk/what-we-do/crime-threats/cyber-crime/cyberchoices>> accessed 17 November 2022.

⁹⁶ Age UK, 'UK elderly people were main victims of cybercrime last year, losing over £4m' (Age UK, 14 October 2020) <<https://www.bateman-group.co.uk/uk-elderly-people-were-main-victims-of-cybercrime-last-year-losing-over-4m>> accessed 17 November 2022.

⁹⁷ National Crime Agency, 'Rise in school cyber crime attacks sparks NCA education drive' (National Crime Agency, 17 January 2022) <<https://www.nationalcrimeagency.gov.uk/news/rise-in-school-cyber-crime-attacks-sparks-nca-education-drive>> accessed 17 November 2022.

Current cybercrime laws and proposed changes

The Home Office Research Report defines two types of cybercrime: cyber-enabled crime and cyber-dependent crime.⁹⁸ Cyber-enabled crime is a term used to describe traditional crimes which are increased by the use of technology, whereas cyber-dependent crimes are crimes which are only committed via use of technology. Fraud or malicious communications are types of cyber-enabled crimes. Hacking is cyber-dependent because it can only occur digitally. In terms of legislation, the CMA 1990 focuses on the intent of the person who committed the crime as well as the actual extent of it, as opposed to the initial type of crime it was. This is a factor which needs considering because ultimately, cyber-dependent crimes like computer hacking can be considered as more dangerous—perhaps due to the knowledge and expertise required to commit an elaborate cybercrime. Though cyber-enabled crimes may also require some knowledge of technology, these can be regarded as less serious as they have been previously committed without using technology. This means that legal enforcement is familiar with crimes of this nature. However, as technology is evolving, the world of cyber-dependent crimes, for example within the infamous ‘dark web’, has made the future of crime difficult to determine. As people get more affiliated and comfortable with using technology, cyber-dependent crimes have and will start to become the new norm, requiring law enforcers to remain updated on the rapid nature of technological advancement.

Many current laws regard the issue of cybercrime as any offence being committed online. One of the biggest acts is the CMA 1990.⁹⁹ This legislation was introduced partly from a decision made in *R v Gold & Schifreen*.¹⁰⁰ This Act makes any unauthorised access relating to a computer a criminal offence, which can be productive. However, there are downfalls to consider in relation to this Act. It does little to prevent or deter people from committing these offences. For example, the Act could be considered broad, as it refers to it being a computer crime, not anything else. Additionally, it does not give guidance on the ‘lack of protection for justified hacking’.¹⁰¹ This emphasises how this legislation can affect people who are doing their jobs such as UK cybersecurity professionals doing intelligence work for defence evidence or research that is relevant to backing something up based on crime. Their work could reveal significant third-party criminal activity, a situation which is not mentioned in the act with appropriate clarity. In addition, depending on which section of the Act has been breached, some penalties or punishments are harsh on individuals who did not intend to cause any damage. With all this in mind, it is advisable to introduce reforms concerning the arising, ongoing problems of crime, especially online.

In addition to the CMA 1990, there are also other legislations that can be applied to cybercrime.¹⁰² Examples of these are the Theft Acts of 1978 and 1967, the Forgery and Counterfeiting Act of 1981, and the Proceeds of Crime Act of 2002. Not only are these Acts too broad and vague to be sufficient to combat cybercrime in our current society, but the age of these Acts is another reason why it is necessary to introduce reforms to the legislation around cybercrime. Although the CMA 1990 has been adapted, it has simply not caught up with the vast changes in the use of technology across 32 years. An example of this is that, nowadays, the use of computers has increased so much that combatting cybercrime has become a part of people’s careers. However, the CMA 1990 does not suit this change in lifestyle, and as stated by a group of CyberUp campaigners in 2020, ‘its current wording effectively criminalises the work of ethical hackers and security researchers’.¹⁰³ This is just one example of how the CMA 1990 has not followed societal changes. Therefore, it is important to introduce reforms within cybercrime so that the laws can become suitable to our society today.

Ethical hacking and its legality is a prolific discussion concerning cybercrime reform. In various sections of the CMA 1990, a hacker may be found guilty if they possess intent or recklessness when carrying out an act, leaving no legal standing for ethical hackers who intended to act in the interest of the public, companies and the greater good—referred to as ‘white hat hackers’. Of course, security threats of any nature are unfavourable to an organisation, but white hat hackers strengthen defences when violating Section 1 or 3, to prevent black hat hackers from violating Section 3ZA. For example, Leitschuh found a vulnerability in Zoom on Apple Macs

⁹⁸ Home Office, *Cyber Crime: A review of the evidence* (Research Report 75, 2013) ch 4.

⁹⁹ Computer Misuse Act 1990 s 1, s 2, s 3, s 3 (a), s 3 (za).

¹⁰⁰ (1988) 1 AC 1063 [HL].

¹⁰¹ Peter Yapps, ‘The 30-year-old Computer Misuse Act is not fit for purpose’ (SCL, 30 March 2020) <<https://www.scl.org/articles/10854-the-30-year-old-computer-misuse-act-is-not-fit-for-purpose>> accessed 17 November 2022.

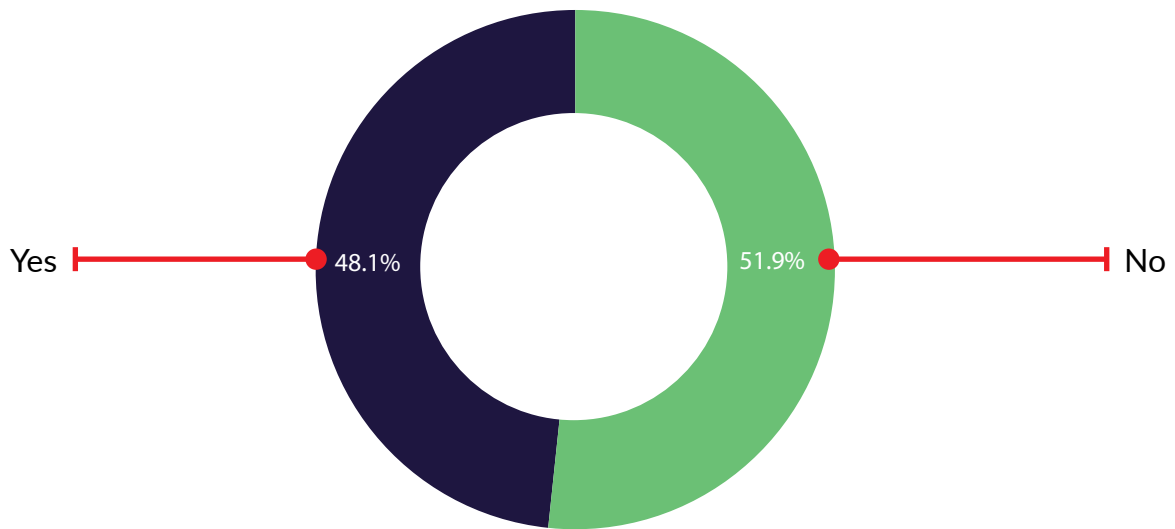
¹⁰² Crown Prosecution Service, ‘Cybercrime prosecution guidance’ (CPS, 26 September 2019) <<https://www.cps.gov.uk/legal-guidance/cybercrime-prosecution-guidance>> accessed 17 November 2022.

¹⁰³ Alex Scroxton, ‘Report reveals consensus around CMA 1990 reform’ (Computer Weekly, 15 August 2022) <<https://www.computerweekly.com/news/252523826/Report-reveals-consensus-around-Computer-Misuse-Act-reform>> accessed 17 November 2022.

in 2019, which would allow its users' cameras to be accessed by a malicious party, alongside potential DoS attacks.¹⁰⁴ Amid the global pandemic, Zoom hosted 300 million daily meetings,¹⁰⁵ endangering an abundance of users had the vulnerability not previously been exposed to Apple and Zoom. Campaigners for CMA 1990 reform CyberUp state 80% of cybersecurity professionals worry about unintentionally breaking the law, and propose that the courts use broad principles to rule on cyber cases.¹⁰⁶ This would be achieved using a framework considering: the harm-benefit that the hack provided, the proportionality (how cautious the hacker was to minimise risks of harm), their intent and their competence. Backed by the CBI (an insider pressure group), the campaigners provoked a pending review of the CMA 1990 by the Home Office in May 2021,¹⁰⁷ indicating widespread support for its reform.

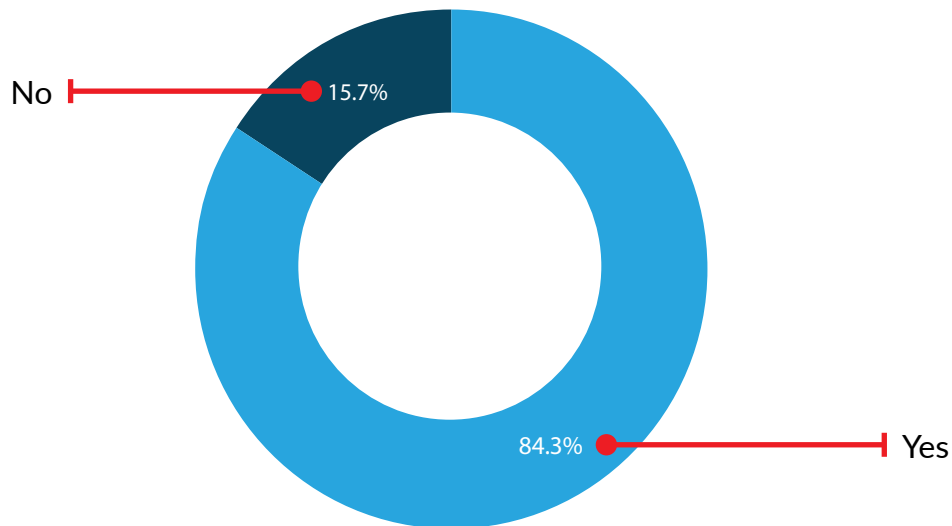
Do you think it is a crime to hack in the interest of the public i.e. for the public good?

156 responses



At the moment, public interest is not a defence to justify cybercrime. Do you think there should be a public interest defence to enable cyber-threat professionals to explore networks and provide better protections against cyber-attacks and computer misuse?

153 responses



¹⁰⁴ Adithi Jain, 'Ethical Hacking Case Study: Times When Hackers Avoided Setbacks' (KnowledgeHut, 13 July 2022) <<https://www.knowledgehut.com/blog/security/ethical-hacking-case-study>> accessed 17 November 2022.
¹⁰⁵ Mansoor Iqbal, 'Zoom Revenue and Usage Statistics' (Business of Apps, 30 June 2022) <<https://www.knowledgehut.com/blog/security/ethical-hacking-case-study>> accessed 17 November 2022.
¹⁰⁶ CyberUp Campaign, Protecting legitimate cyber security activity: A proposal for a principles-based framework for the application of a statutory defence under a reformed Computer Misuse Act (2021).
¹⁰⁷ CyberUp Campaign, 'Industry Supporters' (CyberUp Campaign, 13 July 2022) <<https://www.knowledgehut.com/blog/security/ethical-hacking-case-study>> accessed 17 November 2022.

As technology becomes more and more advanced, it raises a question: are the laws imposed from an early stage in technological development still relevant to a modern-day society? Legislation such as the CMA 1990 has been introduced, which establishes the prosecution of those who have accessed a computer without someone's permission¹⁰⁸ and further used it to cause harm to documents or the sanctity of a person's health.¹⁰⁹

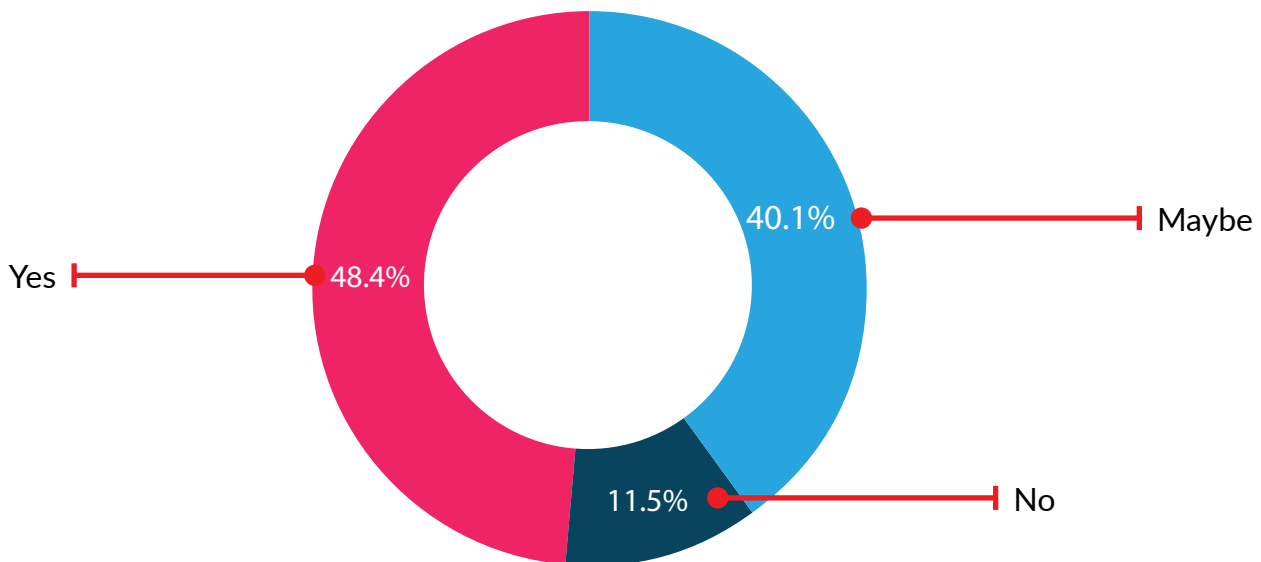
It could be argued that these forms of dictating prosecution have no room for loopholes. This could provide implications to those that commit an offence; they might actually be doing so as a means of benefitting the overall community and still be condemned to a substantial punishment. A recent survey demonstrates how data breaches have been mostly committed by those who are holistically doing so with malicious intent.¹¹⁰ However, there are also those that accidentally encounter data insecurity or access a database to provide evidence that their data is not secure and the company should change the way they operate. This has left people in a position of prosecution even though they have done so with "moralistic intent" but still have managed to break the law. The government is currently developing new legislation around 'making improvements in the way organisations report cyber security incidents and reforming legislation so that it is more flexible and can react to the speed of technological change'.¹¹¹ This proves that there is acknowledgement that our current laws are heavily outdated.

Current sentences for cybercrime and proposed changes

Scams are currently considered under the Fraud Act 2006 (FA 2006), which determines the length of punishments. Currently, the FA 2006 states that the maximum penalty for offences under sections 1, 7, and 9 is 12 months' imprisonment on summary conviction¹¹² whilst minimum punishments include ancillary orders such as restraint orders which freeze assets, reparation orders which require offenders to complete agreed activities for the victim's benefit, and community and confiscation orders. Despite these lengths of punishment, questions have been asked about whether this is sufficient and effective. From our survey, 48% of respondents believe that stricter penalties should be enforced, believing that the current system is ineffective in reducing scams.

Do you think we should have stricter penalties for those who commit cybercrime?

157 responses



¹⁰⁸ Computer Misuse Act 1990, s 1.

¹⁰⁹ Computer Misuse Act 1990, s 1(2) & (3).

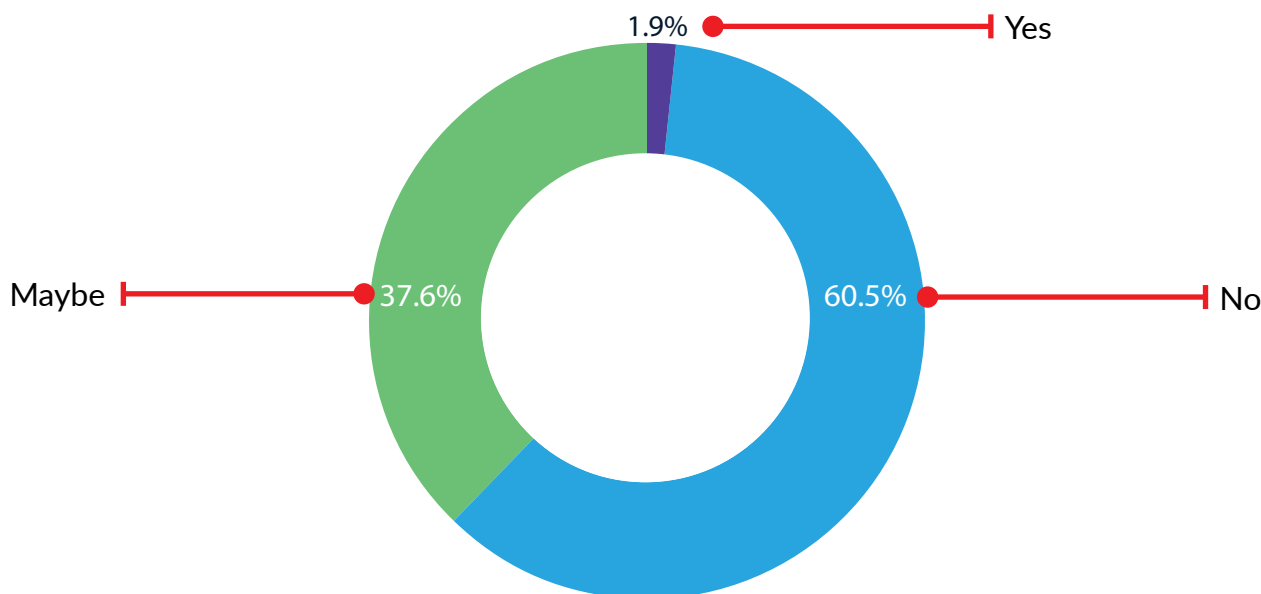
¹¹⁰ Department For Digital, Culture, Media and Sport, 'Cyber Security Breaches Survey' (Gov.uk, 2022) ch 5:2 <<https://www.gov.uk/government/statistics/cyber-security-breaches-survey-2022/cyber-security-breaches-survey-2022#chapter-5-incidence-and-impact-of-breaches-or-attacks>> accessed 19 November 2022.

¹¹¹ Department For Digital, Culture, Media and Sport, 'New Laws Proposed To Strengthen The UK's Resilience From Cyber Attacks' (Gov.uk, 2022) <<https://www.gov.uk/government/news/new-laws-proposed-to-strengthen-the-uks-resilience-from-cyber-attack>> accessed 19 November 2022.

¹¹² Ashmans Solicitors, 'What Are the Penalties for Online Bank Fraud?' (Ashmans Solicitors, 17 October 2022) <<https://www.ashmansolicitors.com/articles/what-are-the-penalties-for-online-bank-fraud/>> accessed 17 November 2022.

Do you feel that enough is being done to tackle cybercrime?

157 responses



Since 2006, the use of technology has advanced greatly,¹¹³ and as much as this has improved our day-to-day lives, a positive correlation has been found between technology use and the frequency of scams.¹¹⁴ In 2022, it has been reported that over £249.1m has been stolen by authorised push payment fraud¹¹⁵—where the customer is tricked into authorising a payment—and this number is increasing with cyber fraud becoming the fastest growing crime in the world.

The current punishments are not working as deterrents, although in most criminal cases, serious measures are being taken. However, current punishments for cybercrime aren't deemed adequate; this is because cybercriminals are more likely to then utilise complex programming, meaning they will have a better chance to succeed. If cybercriminals have the skills or are able to utilise advanced technology, they have a better chance of finding a suitable target to accomplish their goal, which is to re-offend.¹¹⁶

As a result, if severe punishments are not deemed suitable to deter cybercriminals from offending, one way to tackle this problem is to make sure the public has accurate internet knowledge. This is because carelessness while using the internet can lead to financial loss and thus security awareness training may be highly useful.¹¹⁷ Although we cannot eradicate cybercrime immediately, a combination of advanced and clever technology alongside security awareness can manage such dangerous threats.¹¹⁸ However, some argue such issues cannot be fought by education and the only way to solve the issue of cybercrime is by encouraging collaboration between national law enforcement agencies. Despite this, investments in education will be a much better way to prevent the dangerous acts of cybercriminals.¹¹⁹

The maximum offenders would typically serve is dependent on the level of the crime: Level 1 is 'unauthorised access to computer material' which is punishable by up to two years in prison,¹²⁰ Level 2 is 'unauthorised access with intent to commit or facilitate commission of further offences' which comes with a maximum sentence

¹¹³ Emma Williams, Amy Beardmore, and Adam Joinson, 'Individual Differences in Susceptibility to Online Influence: A Theoretical Review' (2017) 72 Computers in Human Behavior 412.

¹¹⁴ *ibid.*

¹¹⁵ UK Finance, 'UK Finance Calls for Urgent Action from All Sectors as Fraud Continues to Threaten the UK' (UK Finance, 2022) <<https://www.ukfinance.org.uk/news-and-insight/press-release/uk-finance-calls-urgent-action-all-sectors-fraud-continues-threaten>> accessed 17 November 2022.

¹¹⁶ Adi Gaskell, 'Strict punishments for cybercrime are useless. Here is why' (Cybernews, 28 September 2021) <<https://cybernews.com/editorial/strict-punishments-for-cybercrime-are-useless-here-is-why/>> accessed 17 November 2022.

¹¹⁷ Channi Sachdeva, 'Harsh punishments can deter cybercriminals' (The Tribune, 07 August 2021) <<https://www.tribuneindia.com/news/archive/ludhiana/harsh-punishments-can-deter-cyber-criminals-448318>> accessed 17 November 2022.

¹¹⁸ The Defence Works, 'Why Cybercrime is Difficult to Eradicate?' (The Defence Works, 31 July 2019) <<https://thedefenceworks.com/blog/why-cybercrime-is-difficult-to-eradicate/>> accessed 17 November 2022.

¹¹⁹ Azeez Nureni Ayofe and Barry Irwin, 'Cyber security: Challenges and the way forward' (2010) Comp Sci & Telecomm 29(6).

¹²⁰ DPP Law, 'Maximum Penalty for Hacking: Cyber Crime Solicitors' (DPP Law, 26 April 2022) <<https://www.dpp-law.com/services/criminal-defence/hacking/>> accessed 17 November 2022.

of five years in prison,¹²¹ and Level 3 is 'unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.' which may result in a ten-year prison sentence.¹²² It could be argued that punishments for cybercrimes do not go far enough. This is a valid argument as, if sentence terms were increased, offenders would be incarcerated for longer and will have limited and closely-monitored internet access. Additionally, people would be discouraged from committing cybercrime and more likely to learn their lesson, possibly putting their skill to beneficial use to eliminate risk of prosecution.

On the contrary, some may argue that if sentencing is harsher, cyberattacks may become more frequent and more efficient at being undetected. This is because, in 2020, there were only 45 prosecutions for computer misuse offences.¹²³ As a result, there were 43 convictions, with the average custodial sentence being 15.7 months, and the average fine just £1,203.¹²⁴ It is thought that if the jail penalty is greater, offenders will want to minimise the risk of being prosecuted. As a result of a relatively low average custodial sentence, fears are that we could see more widescale cyberattacks. An example of widescale cyberattacks would be that in 2014, when hotel chain Marriott was breached and around 340m guest records were exposed.¹²⁵ This incident was undetected until September 2018 and led to a £14.4m fine from the UK Information Commissioner's Office.¹²⁶

Cybercrime rates have drastically increased within recent years, with retribution being the main form of punishment when tackling these issues. In general, there are flaws in the criminal justice system with a 39% reoffending rate. The 2021 crime survey for England and Wales has shown an 18% increase in total crime, driven by a 54% increase in fraud and computer misuse offences.¹²⁷ But could the reoffending rate be reduced if there were rehabilitation programs in place, keeping data and assets safe from scams and attacks?

Cybercriminals are currently charged under the CMA 1990, with penalties ranging from a 6 month to a 10 year prison sentence, alongside a £5000 to unlimited fine.¹²⁸ However, these large punishments are not necessarily working and it is therefore argued that the stress should be on rehabilitation. Arguably, the strict punishments for cybercrime are ineffective and, in practice, have the opposite effect to their intention, seemingly increasing the amount of effort criminals put into avoiding detention as opposed to deterring them from committing an offence, or working as an effective punishment.¹²⁹

To ensure its success, the focus has to be on convincing offenders that an ordinary life excluding crime is possible. In July 2017, the NCA ran a camp for young offenders with aims of deterring crime and encouraging the use of their skills for good.¹³⁰ Within these camps, cybersecurity professionals led talks detailing the vast array of jobs available in the cybersecurity sector and how this encompasses the same processes and skills used when committing the crime. Attendees were taught about 'bug bounty schemes',¹³¹ where they would get paid for finding and reporting the loopholes they used to commit cybercrime. This guidance showed those who may be likely to reoffend that there are alternative routes after prison.

We must also focus on highlighting the use of these technological skills in positive work to eliminate crime as an option. A lot of offenders describe the "rush" of committing the crime as the prime reason they offend. It is vital we give offenders the chance to fully comprehend the options available to them. This can create a change in mindset as seen in a young offender who took part in the NCP camp: "You get the same rush, the same excitement, but you are still using it for fun still, but it is legal and you get paid. So, it's every kind of benefit".¹³²

¹²¹ *ibid.*

¹²² *ibid.*

¹²³ CyberUp Campaign, 'CyberUp Campaign – Written Evidence (FDF0005) (01 April 2022) <<https://committees.parliament.uk/writtenevidence/107707/pdf/>> accessed 17 November 2022.

¹²⁴ *ibid.*

¹²⁵ Carly Page, 'Hotel Giant Marriott Confirms Yet Another Data Breach' (TechCrunch, 06 July 2022) <<https://techcrunch.com/2022/07/06/marriott-breach-again/>> accessed 17 November 2022.

¹²⁶ *ibid.*

¹²⁷ Russell Taylor, 'Crime and Rehabilitation' (House of Lords Library, 23 June 2022) <<https://lordslibrary.parliament.uk/crime-and-rehabilitation-an-overview/>> accessed 17 November 2022.

¹²⁸ Computer Misuse Act 1990, s 1-3.

¹²⁹ Adi Gaskell, 'Strict Punishments for cybercrime are useless. Here is why', (Cybernews, 28 September 2022) <https://cybernews.com/editorial/strict-punishments-for-cybercrime-are-useless-here-is-why/> accessed 17 November 2022.

¹³⁰ Russell Webster, 'Rehabilitation For Cyber-Criminals' (Russell Webster, 04 August 2017) <<https://www.russellwebster.com/rehabilitation-for-cyber-criminals/>> accessed 10 November 2022.

¹³¹ *ibid.*

¹³² *ibid.*

This clearly demonstrates that the focus is not always on the crime itself, but on offenders' dependency on the feeling and experience. If it is demonstrated to offenders that the desired experience is possible outside of crime, it could be imperative in lowering crime rates which are increasing by 89% since March 2020.¹³³

The result of these programmes demonstrates how effective rehabilitation can be and why rehabilitation is an essential part of sentencing. Prison alone can be a damaging experience and, as the Woolf enquiry put it,¹³⁴ can leave offenders 'alienated and embittered',¹³⁵ making them less likely to subscribe to the values of justice represented by the criminal justice system. Rehabilitation can act constructively to change offenders' attitudes and behaviours.¹³⁶ These rehabilitations should be aimed at young people. Students can be lured by criminal groups with promises of financial gain.¹³⁷ However, if talks are given, many will be able to see that their skills can be used towards many other successful legal routes. Rehabilitation can also be used to show that people can follow a career path that can guarantee financial stability for them and their families without resorting to crime.

What makes rehabilitation appear so effective is its success rates in other countries. The main goal of Norway's Bastoy prison is rehabilitation as opposed to harsh punishment.¹³⁸ A prominent feature of this prison is its academic course availability: the centre offers academic and vocational courses for offenders to acquire skills useful for employment.¹³⁹ With these skills, some are able to begin work 18 months before their release date, providing them with an easier entrance back into life. Norway's low rates of reoffenders, which sits at 30%,¹⁴⁰ reflects rehabilitation's immense success. Whilst lex talionis is still popular with modern society, it is indubitable that such centres are effective at reducing the rate of cybercrime whilst also introducing offenders into ways they can efficiently execute their skills in employment.

Conclusion

This report focused on three main aspects: education, current legislation, and current punishments within cybercrime law. Throughout these aspects, it has been discussed whether they are currently useful and how these can be reformed within the public interest in order to reduce cybercrime and its effects. Education is a huge aspect that needs to be reformed. The internet is an extremely informative and useful space for all, but effective education must be provided in order for all internet users (particularly younger and older people) to avoid cybercrime and its devastating effects. Our research concludes that legislation regarding cybercrime is extremely outdated and needs to be developed along with the constant development of new and improved software and technology. A huge focus on rehabilitation in response to punishments was also made, as a career in computer science and cybersecurity could be offered to enable past offenders to see their skills that led them to offending in a positive light.

As demonstrated by this report, cybercrime is a growing issue and the legislation and education surrounding it needs to be reformed to create a safe community online.

¹³³ Office for National Statistics, 'Nature of fraud and computer misuse in England and Wales: year ending March 2022' (ONS, 26 September 2022) <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/natureoffraudandcomputermisuseinenglandandwales/yearendingmarch2022>> accessed 10 November 2022.

¹³⁴ Prison Reform Trust, The Woolf Report: Summary of the main findings and recommendations of the inquiry into prison disturbances (1991).

¹³⁵ *ibid.*

¹³⁶ The Week, 'Can cybercrime 'rehab' help young offenders?' (The Week, 25 July 2017). <<https://www.theweek.co.uk/87114/can-cybercrime-rehab-help-young-offenders>> accessed 17 November 2022.

¹³⁷ Beaming, 'Why do young people get into cybercrime?' (Beaming, 2022) <<https://www.beaming.co.uk/insights/young-people-get-cybercrime>> accessed 10 November 2022.

¹³⁸ John Kuroski, 'Bastoy Prison and Life Inside the Nicest Correctional Facility on Earth' (ATI, 18 May 2017) <<https://allthatsinteresting.com/bastoy-prison>> accessed 16 November 2022.

¹³⁹ Emily Richards, 'Rehabilitation not recidivism: Norway's success in keeping re-offending rates low' (Prisoners Abroad, 27 June 2017) <<https://www.prisonersabroad.org.uk/news/rehabilitation-not-recidivism-norways-success-in-keeping-re-offending-rats-low>> accessed 17 November 2022.

¹⁴⁰ John Kuroski, 'Bastoy Prison and Life Inside the Nicest Correctional Facility on Earth' (ATI, 18 May 2017) <<https://allthatsinteresting.com/bastoy-prison>> accessed 16 November 2022.

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