

CONSULTATION: Introducing new measures to tackle stalking

To help us with your evaluation it would be helpful to know if you are responding as a member of the public or from an organisation.

- **Office of the Police and Crime Commissioner for Thames Valley**

1 Are there orders or injunctions already available that could be used to better effect to address stalking?

➤ **Yes**

Please use the text box below to give more details on your answer.

The Protection of Freedoms Act 2012 created two new offences of stalking by inserting new sections 2A and 4A into the PHA 1997. The new offences which came into force on 25 November 2012, are not retrospective, and provide further options for prosecutors to consider when selecting charges.

Whilst there is no strict legal definition of 'stalking', section 2A (3) of the PHA 1997 sets out examples of acts or omissions which, in particular circumstances, are ones associated with stalking. For example, following a person, watching or spying on them or forcing contact with the victim through any means, including social media.

The effect of such behaviour is to curtail a victim's freedom, leaving them feeling that they constantly have to be careful. In many cases, the conduct might appear innocent (if it were to be taken in isolation), but when carried out repeatedly so as to amount to a course of conduct, it may then cause significant alarm, harassment or distress to the victim.

Stalking and harassment of another or others can include a range of offences such as those under: the Protection from Harassment Act 1997; the Offences Against the Person Act 1861; the Sexual Offences Act 2003; and the Malicious Communications Act 1988.

The Protection of Harassment Act includes the following provisions:

- **Harassment (section 2): a summary only offence, carrying a maximum of six months' imprisonment and/or a level 5 fine;**
- **Stalking (section 2A): a summary only offence, carrying a maximum of six months' imprisonment and /or a level 5 fine;**
- **Fear of violence (section 4): an either way offence, carrying a maximum of five years' imprisonment and/or a fine on indictment;**
- **Stalking - involving fear of violence or serious alarm or distress (section 4A): an either way offence, carrying a maximum of five years' imprisonment and/or a fine on indictment;**
- **Breach of a civil injunction (section 3(6)): an either way offence, carrying the same penalty as for the section 4 offence;**
- **Breach of a restraining order (section 5(5)); an either way offence, carrying the same penalty as for the section 4 offence;**
- **a civil tort of harassment, created by section 3.**

CONSULTATION: Introducing new measures to tackle stalking

1a Do such measures provide sufficient protection to victims of stalking and in particular victims of stranger stalking in advance of a prosecution, or if a prosecution is not yet possible?

➤ No

Please use the text box below to give more details on your answer.

Stalking is not legally defined but section 2A (3) of the PHA 1997 lists a number of examples of behaviours associated with stalking. The list is not an exhaustive one but gives an indication of the types of behaviour that may be displayed in a stalking offence. The listed behaviours are:

- a) following a person,
- b) contacting, or attempting to contact, a person by any means
- c) publishing any statement or other material relating or purporting to relate to a person, or purporting to originate from a person,
- d) monitoring the use by a person of the internet, email or any other form of electronic communication,
- e) loitering in any place (whether public or private),
- f) interfering with any property in the possession of a person,
- g) watching or spying on a person.

Harassment that includes one or more of the above features is not automatically stalking. The course of conduct, assessed in the round, must fit the generally received interpretation of the word 'stalking'.

The list in s.2A(3) is not exhaustive and it will be open to courts to consider other acts by a defendant and conclude that those acts constitute stalking even if they are not on the s.2A(3) list. It is likely that the defence may argue particular acts "associated with stalking" should not be classed as stalking but harassment and that their client is guilty of harassment, not stalking. Where such an argument is raised, prosecutors should state that this should be a decision of fact for the magistrates to decide on. It is therefore imperative that the correct charge is laid from the outset. Section 2A is a summary offence and a person guilty of the offence of stalking is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine.

There is no existing framework which can track or monitor stalkers. Rather than the perpetrator being effectively controlled and managed, often it is the victims who are forced to modify and change their behaviour and even flee their homes and disappear themselves in order to stay safe, which is unacceptable.

1b Do you have experience of the use of currently available civil measures in this way?

➤ Yes

Please use the text box below to give more details on your answer.

**Throughout the Force yes.
Prohibitive orders rarely get enforced and focus on the victim rather than the perpetrator.**

CONSULTATION: Introducing new measures to tackle stalking

2 What do you see as the restrictions or deficiencies in the use of currently available measures?

If the suspect is able to show that any of the defences to harassment under section 1(3) of the PHA are made out, he or she cannot be guilty of stalking as without harassment there can be no conviction for stalking.

3 What do you see as the additional features a new Stalking Protection Order might have in order to enhance the range of options available to protect victims?

- **The Stalking Protection Order must ensure it removes the false sense of security for the victim that may be viewed as a “paper shield”.**
- **It must ensure it does not incite the stalker to escalate the harassment or act violently.**
- **They must be effective against ex-intimates who have invested a great deal in the relationship or those whose stalking is driven by delusional beliefs**
- **They must be enforceable as a failure to strictly enforce the order may send a message to the stalker that the order can be disregarded and that the victim is not being protected.**

4 What restrictions should it be possible to place on a perpetrator to help protect victims through a civil order (new or existing)?

- **Physical restrictions**
- **Restrictions on use of technology especially the use of social media**
- **Tagging**

5 What positive requirements, if any, could be placed on a perpetrator to help break the fixated nature of their offending at an early stage that could be included in a Stalking Protection Order?

- **A requirement to attend anger management**
- **A requirement to have a Mental Health Assessment if deemed appropriate**
- **Psychological interventions**

6 If we were to introduce a Stalking Protection Order, what should be the penalty for breaching such an order? Do you think it should be:

If an individual follows a civil route deciding not to involve the police, an injunction can be obtained (i.e. an order from a court that the person stop doing the acts that amount to stalking or harassment) and damages for anxiety and any financial loss suffered.

If the stalker breaches the injunction (in other words, does something which the court has ordered him/her not to do) that is either:

- a) **A criminal offence — for which they can be arrested by the Police, prosecuted by the CPS**

CONSULTATION: Introducing new measures to tackle stalking

- and imprisoned by a criminal court for up to 5 years, or
- b) A contempt of court — for which you can apply to the civil court for them to be imprisoned for up to 2 years.

The main advantage of using civil proceedings is that, unlike criminal proceedings (which are taken by the CPS), the victim is largely in control of the legal proceedings. But the major disadvantage is that, unlike criminal proceedings, the victim has to pay for civil proceedings, including court costs and the costs of any lawyer being instructed. If the victim wins, though, they may be able to get most of their costs from the person who has stalked them (if they have the money). There may be eligibility for Public Funding but that is increasingly difficult to get and they will need to talk to a solicitor or their local Citizens Advice Bureau about that.

Therefore with this in mind the penalties should be the same as above:

- | | | |
|------------------------------------|---|--|
| a) Punishable as contempt of court | - | Yes |
| b) A criminal offence | - | would require clarity in defining "stalking" |

7 Do you think existing civil order in another area would be a useful model for any Stalking Protection Order?

- **There are limitations in existing orders available. These could of course be re-worked and redefined to close the existent gaps within for example; Anti-Social Injunctions, Restraining Orders, Non-molestation Orders, Occupation Orders and Out of Court Disposals.**
- **The addition whereby the police can directly apply for the "order" would provide additional protection to the victim.**

8 Should any new order specifically protect victims of harassment as well as stalking?

- Yes

Please use the text box below to give more details on your answer.

Harassment and Stalking are often used interchangeably yet they are two distinct courses of behaviour.

Harassment is used to cover the 'causing alarm or distress' offences under section 2 of the Protection from Harassment Act 1997 as amended (PHA), and 'putting people in fear of violence' offences under section 4 of the PHA. The term can also include harassment by two or more defendants against an individual or harassment against more than one victim.

Although harassment is not specifically defined in section 7(2) of the PHA, it can include repeated attempts to impose unwanted communications and contact upon a victim in a manner that could be expected to cause distress or fear in any reasonable person.

The definition of harassment was considered in *Plavelil versus Director of Public Prosecutions* [2014] EWHC 736 (Admin), in which it was held that the repeated making of false and malicious assertions against a doctor in connection with an investigation by the GMC could amount to a course of harassment. The Court of Appeal rejected the argument that malicious

CONSULTATION: Introducing new measures to tackle stalking

allegations could not be oppressive if they could easily be rebutted.

A prosecution under section 2 or 4 requires proof of harassment. In addition, there must be evidence to prove the conduct was targeted at an individual, was calculated to alarm or cause him/her distress, and was oppressive and unreasonable.

Closely connected groups may also be subjected to 'collective' harassment. The primary intention of this type of harassment is not generally directed at an individual but rather at members of a group. This could include: members of the same family; residents of a particular neighbourhood; groups of a specific identity including ethnicity or sexuality, for example, the racial harassment of the users of a specific ethnic community centre; harassment of a group of disabled people; harassment of gay clubs; or of those engaged in a specific trade or profession.

Harassment of an individual can also occur when a person is harassing others connected with the individual, knowing that this behaviour will affect their victim as well as the other people that the person appears to be targeting their actions towards. This is known as 'stalking by proxy'. Family members, friends and employees of the victim may be subjected to this.

9 What are the main challenges in identifying cases of stalking at an early stage (as opposed to harassment)?

Professionals do not always understand the difference between stalking and harassment, when victims do disclose or report. Research shows that victims will suffer 100 incidents before reporting to police – this is a challenge in itself and a reason why awareness raising is vital.

Many professionals are still not trained to understand that stalking is about fixation and obsession. It is an intense preoccupation by one with another. Too often victims are not believed, especially if they equivocate, and they rarely self identify as stalking victims. The pattern of behaviour can be missed along with the level of intrusion, or it is categorised as something totally different such as common assault, theft or as a breach (without stalking) and/or plea bargained to something much lesser and therefore the pattern of stalking itself is missed.

10 What more could be done to support the effective gathering of evidence to bring stalking charges?

Further enhancement and development of the “Protocol on the appropriate handling of stalking offences between the Crown Prosecution Service & ACPO”.