

Independent Parliamentary Inquiry into Stalking Law Reform

Main Findings and Recommendations

Justice Unions' Parliamentary Group

Chair: Rt Hon Elfyn Llwyd MP

February 2012

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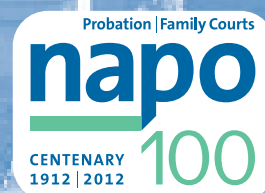
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PROTECTION AGAINST STALKING



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FOREWORD



Stalking is a crime that rips relationships apart and shatters lives. But for too long it has remained a hidden crime, a crime which victims have been reluctant to report out of fear that they wouldn't be taken seriously. One comment we heard in our evidence sessions was that the public perception of stalking is akin to the general perception of domestic violence twenty years ago. Thankfully, due to a longstanding campaign, that crime is now recognised as the destructive behaviour that it is and society greets it with no tolerance. I hope that the work coming out of this inquiry and the upcoming Home Office consultation which has resulted from it will improve public awareness of the appalling realities and effect stalking also has on its victims.

During the course of our inquiry, the panel has heard evidence from practitioners, legal experts and victims on the current system and how it is failing to deliver the necessary support to those who live in constant fear and torment because of their stalkers. It became clear that, although pockets of good practice exist, training for professionals should be made compulsory and treatment programmes for perpetrators introduced for all who display this worrying and damaging behaviour. Too many victims receive little or no support from the criminal justice system while sentencing practices mean perpetrators receive insufficient punishment for the damage they have caused. For no longer should the rights of perpetrators overrule the rights all victims have to safety.

The inquiry heard evidence on whether the current legislation against stalking should be reviewed. The Protection from Harassment Act 1997 was a landmark piece of legislation, but the view of nearly all those giving evidence was that it was not an effective tool against stalking and that too many perpetrators were falling through the net. As the author of a Home Office evaluation of the Act written in 2003 observed, 'the Act is being used to deal with a variety of behaviour other than stalking including domestic and inter-neighbour disputes and rarely for stalking itself.'

Many believed that the chief shortcoming of the 1997 Act was its failure to name 'stalking' in law, meaning the sinister behaviour of stalkers was being conflated with nuisance crimes and disputes over property. In 2010, Scotland made the bold decision to name 'stalking' in its new Criminal Justice & Licensing (Scotland) Act, spurring many to believe the rest of the UK should follow its example. Recent figures certainly show that conviction rates for stalkers in Scotland have increased dramatically since the implementation of the Act.

The inquiry concluded that there was a need for comprehensive reform. Changing laws and strengthening guidelines are both essential so that victims get the support they need and perpetrators receive appropriate sanctions and treatment. But the necessary changes don't stop there. It is unacceptable that the attitudes of many working in the criminal justice system and society towards stalking remain in the dark ages. 'Stalking' is, for many, a joke, and victims are 'lucky to get the attention'. The reality is very different, as the victims' brave and traumatic evidence reminded us. 'Stalking is mental rape', as one observed, a subject you would not joke about. It is an observation we would all do well to remember.

Rt Hon Elfyn Llwyd MP
MP for Dwyfor Meirionnydd
Chair of Inquiry

February 2012

Executive Summary

The panel concluded, based on the experience of victims and frontline practitioners, that the Protection from Harassment Act 1997 needed significant revision.

The panel found that victims had a profound lack of confidence in the criminal justice system; very few prosecutions under the Act resulted in a custodial sentence and that little if any treatment was available for perpetrators.

The panel also concluded that training for criminal justice professionals was inadequate; that risk assessments in respect of victims were not routinely carried out and that psychiatric assessments in respect of perpetrators were largely absent.

Many of the recommendations in this report come directly from the experience of victims, some of whom told their harrowing stories to the inquiry. Recommendations include revisions to the Bail Act, so that those charged with serious sexual or violent offences are not routinely bailed; the strengthening of sentencing guidelines so that there is an assumption of a custodial sentence in respect of a breach of a restraining order; and that previous courses of conduct should always be taken into account before sentencing for additional offences.

The inquiry concluded that a holistic approach was needed for reform and that amendments to the 1997 Act would not be enough to express the concerns of victims. There was therefore all party support for fundamental changes in attitudes towards the offence and behaviour of stalking. These holistic changes are contained in a draft Bill which has the support of all members of the inquiry panel and therefore representatives of all political parties, and none, in both Houses of Parliament.

Significantly the panel is in agreement that an offence of stalking is needed in law. The panel is also in agreement that stalking behaviour needs to be defined with a proviso that new forms of conduct could be added to the Act through regulation laid by the Secretary of State, to thus avoid unnecessary delay before such new behaviour can be criminalised.

RECOMMENDATIONS

The following recommendations are all based on evidence that has been heard, assessed and analysed by the Independent Inquiry into Stalking Law Reform.

Chapter 1 – The Victim’s Voice

1. There should be a presumption that anybody charged with a serious violent or sexual offence should not be bailed unless there are exceptional circumstances. The court should take into account risk to victims and their children.
2. Consideration should be given to the establishment of a statutory Victim’s Advocacy Scheme, to signpost and support victims of stalking through the criminal justice system.
3. The police should have powers to disclose information about a perpetrator’s previous offending behaviour to any potential new partner.
4. Compensation orders should only be made on conviction of stalking where the victim consents and compensation itself should be paid into a victim’s fund.
5. Support should be made available for the victims of stalking and their children as appropriate.
6. The Secretary of State should negotiate and publish a Bill of Rights for Victims.
7. The human rights of victims should be paramount in proceedings.

Chapter 2 – Perpetrators

8. Where a court asks for a pre-sentence report it should also be provided with information about the offender’s previous behaviour so that courses of conduct can be taken into account.
9. Restrictions should be placed on the use of phones, IT and letters to known victims during the course of a perpetrator’s jail sentence.
10. Consideration should be given to the production of a register of serial perpetrators which is now possible with the advent of the Police National Database.

Chapter 3 – Training

11. There should be a duty placed on the respective Secretaries of State to ensure that criminal justice professionals receive training in anti-stalking legislation as well as how to identify it.
12. Duties should be placed on the Secretary of State to develop treatment programmes for those convicted of stalking offences.
13. It should be the duty of the Secretary of State to raise awareness of the reality of stalking behaviour amongst the public and in schools in line with the government’s policy on Bullying and Violence against Women and Girls.

Chapter 4 – Sentencing Guidelines

14. The course of conduct should be taken into account before sentencing for further offences of harassment, stalking or breach of a restraining order.
15. Sentencing guidelines should be reviewed in order to reflect the types of stalking behaviour and its seriousness.
16. Judges and magistrates need to take account of previous offences as serious acts of aggravation.
17. Judges and magistrates should take into account the high rates of post traumatic stress disorder amongst victims.

18. Sentencing guidelines should make it clear that, in respect to stalking, prosecutors should not opt to press lesser charges which leads to courses of conduct and behaviour being missed.

Chapter 5 – Treatment and Risk Assessment

19. Courts and police forces should undertake a risk assessment in respect of a victim.
20. Courts should, in cases where there is evidence of a course of conduct, request specialist psychiatric assessments in respect of perpetrators.

Chapter 6 – Abuse of Process

21. Those who have been convicted of ‘serious’ stalking related offences and who abuse process in the family courts through vexatious applications for contact should be prevented from doing so by giving the crown courts the powers to suspend parental responsibilities.
22. The family courts should have regard to risk assessments in respect of victims, which should be carried out in instances where there is suspected abuse of process cases.
23. Courts should be encouraged to make use of civil orders which prevent further applications for a stated number of years where victims are clearly traumatised.

Chapter 7 – Review of the Protection from Harassment Act 1997

24. There should be a specific offence of stalking introduced into legislation in England and Wales replacing Section 4 of the Protection from Harassment Act 1997.
25. The offence of harassment under Section 2 of the Protection from Harassment Act 1997 should be triable in both the magistrates and crown court to signal the serious nature of the offending behaviour.
26. The starting point for a breach of a restraining order should normally be a custodial sentence, influenced by aggravating and mitigating factors.
27. The Secretary of State should be given the power to negotiate a code of conduct to cover social media and internet service providers.
28. There should be a duty on social media and internet service providers to cooperate with the police in the conduct of any stalking or harassment related inquiry.
29. It should be the responsibility of the Secretary of State to produce an annual report on the workings and effectiveness of stalking legislation.
30. Consideration should be given to creating new offences of ‘going equipped to stalk, harass or cause physical harm’.

INTRODUCTION

In May 2011 the Justice Unions All Party Group under its chair, Rt Hon Elfyn Llwyd MP, decided to hold an independent inquiry into stalking law reform, the Protection from Harassment Act 1997 and related training and practice issues.

This followed two one off seminars in the Commons and then the Lords to brief parliamentarians. The meetings were organised by Napo and Protection Against Stalking (PAS) prior to the first ever UK-wide National Stalking Awareness Week in April. The week was co-ordinated by PAS, Suzy Lamplugh Trust and Network for Surviving Stalking. Harry Fletcher of Napo and Laura Richards of PAS were appointed by the Chair as advisors to the inquiry.

It was decided at the outset that the experiences and voices of victims would be central to the inquiry.

Terms of Reference

The terms of reference for the inquiry were:

- Whether the substantive law in England and Wales needed amending;
- Whether any changes needed to be made to sentencing practice and guidelines;
- Whether treatment programmes should be available for perpetrators and if so what should be their content;
- Whether there was a need for training for police, probation officers and others within the criminal justice system;
- What the consequences are of real life and cyber stalking of victims;
- Whether there is a need for an action plan which deals with victims' needs and services, training, investigation and prosecution, risk assessment and increased public awareness of the consequences of stalking and harassment.

A range of parliamentarians from both houses, all parties and none supported the inquiry.

The Panel

Inquiry members are:

Elfyn Llwyd, Plaid Cymru
Baroness Brinton, Liberal Democrat
Robert Buckland, Conservative
Jenny Chapman, Labour

Baroness Gibson, Labour
Helen Goodman, Labour
Baroness Gould, Labour
Baroness Greengross, Cross Bencher
Gordon Henderson, Conservative
Baroness Howe, Cross Bencher
Baroness Linklater, Liberal Democrat
John McDonnell, Labour
Sandra Osborne, Labour
Claire Perry, Conservative
Barry Sheerman, Labour

It was decided by the panel to hold five 90 minute evidential sessions in order to receive evidence from victims, frontline professionals and others with an interest in stalking law reform. Individuals and organisations were also invited to submit written evidence.

Witnesses

Those giving oral evidence were:

Evidential Session 1

Paul Infield – Lawyer, Chairman of Suzy Lamplugh Trust
Kristiana Wrixon – National Stalking Helpline Manager
Dr Emma Short – Psychologist, University of Bedford
Professor Carsten Maple – Vice Chancellor, University of Bedford

Evidential Session 2

Tricia Bernal, Mother of victim
Tracey Morgan, Victim
Sam Taylor, Victim
Claire Waxman, Victim
John and Penny Clough, Parents of victim

Evidential Session 3

Louise Casey – Commissioner for Victims and Witnesses
John Fassenfelt – Chairman, Magistrates Association
Michael Salter – Barrister
Chris Bryden – Barrister
DS David Thomason – Police Officer

Evidential Session 4

Ann Moulds – Campaigner
DCI Linda Dawson
DI Peter Williams
DC Andrea Bernard
Helen Oakes – Probation Officer
Richard Hollis – Director, Orthus

Evidential Session 5

Laura Richards – Protection Against Stalking
Deborah McIlveen – Women’s Aid

Written evidence was received from:

The Crown Prosecution Service
Ann Moulds, founder of Action Scotland Against Stalking
Tracey Morgan
Rita Grootendorst
Paul Fish, Magistrates Association
Network for Surviving Stalking
Association of Chief Police Officers
Women’s Aid Federation
Protection Against Stalking
Napo

The overwhelming majority of those giving evidence believed there was a need for stalking law reform with the introduction of a specific offence similar to that introduced in Scotland in December 2010. There was also a consensus that Section 2 of the Protection from Harassment Act 1997 needed amending so that the offence of harassment is triable either way in the magistrates’ courts and crown courts, depending on the seriousness of each case, and the maximum prison sentence was increased from six months to five years. There was consensus on other issues including the need for:

- Mandatory training for criminal justice professionals;
- Risk assessments to be carried out in respect of victims of stalking;
- Background and offending history to be available to sentencers;
- The development of specific treatment programmes for perpetrators;
- Changes to the Bail Act 1976 to ensure that those charged with serious sexual or violent offences were not bailed unless there were exceptional circumstances;
- Victims to have rights, rather than codes and charters.

1. THE VICTIM'S VOICE: COMING OUT OF THE SHADOWS

'The victims I hear from are saying the same things I was 15 years ago – what's changed? We need to do more. This is about murder prevention.' – **Tracey Morgan**

At the second evidential session into the need for stalking law reform, six victims of stalking and bereaved parents gave powerful evidence to parliamentarians based on their tragic experiences. Each told of the harrowing reality of stalking and their firm belief that the criminal justice system had let them down. A number of recommendations for change came out of these discussions. All those giving evidence were able to extrapolate from their experiences about what was needed to make it less likely that there would be future victims of stalking, what needed to change in the law and what training was needed.

First Tricia Bernal told the Panel about her daughter Clare and how she was shot dead in Harvey Nichols store in Knightsbridge in September 2005. Michael Pech began stalking her after their brief three week 'relationship' had ended. Then Pech followed her in the street, pestered her with phone calls, stood outside her house and bombarded her with text messages. One day he followed her from work and blocked her getting off the train. She told him to leave her alone or she would call the police. He told her 'if you dare report me I will kill you' and 'if I can't have you, nobody will'. He was charged under section 2 of the 1997 Act and breached bail on a number of occasions. Whilst awaiting sentence he went back to Slovakia and purchased a gun. On Tuesday 13 September, ten minutes before closing time, Pech entered the Harvey Nicholls store, walked up behind Clare and shot her in the head four times. He then turned the gun on himself.

Tracey Morgan told the inquiry panel that she was stalked for ten years by Anthony Burstow. Aged 22 happily married and living in Hampshire, Tracey befriended Anthony Burstow, a colleague at a nearby naval establishment. He was a loner, his wife was serving in Hong Kong and he often appeared depressed. Tracey took sympathy on him and tried to help, even inviting him out several times with her and her husband Andy. Outside of work Tracey was surprised by the number of times she bumped into him; at college, at aerobics, and soon she began worrying about these coincidences. One morning she noticed her car had a flat tyre and she had to walk to work in torrential rain. Burstow insisted he would mend the

puncture for her and she innocently gave him her bunch of keys, something she would much later regret.

Tracey became tired and a little frightened of seeing Burstow around and one day found him parked outside her home. She went out and in strong words told him to go away. She told her bosses, who ordered him to stay away from her. This was the start of a terrifying ordeal that would last for ten years. Importantly Tracey drew on her personal experiences of stalking to campaign for new legislation to protect victims of stalking and harassment, which resulted in the Protection from Harassment Act 1997.

Tracey thought that this piece of legislation was the answer. However she now feels from her own ongoing experience and from all the cases that she has heard about that little has changed in terms of attitudes and she realises how difficult it is for anyone to secure a significant sentence for stalking. She said: 'Victims are never taken seriously, from police forces to courts to the whole criminal justice system. The victims I hear from are saying the same things I was 15 years ago – what's changed? We need to do more. This is about murder prevention'. This view was also supported by DCI Dawson one of the original police officers investigating Tracey's case at the time, who also gave evidence at a later session.

The inquiry received written evidence from Protection Against Stalking, who in November 2011 published the results of a major survey into the views of victims of stalking about how they are treated by the justice system (The Victim's Voice, PAS 2011). The report collates the views of over 140 victims and reveals deep dissatisfaction with criminal justice professionals, secondary victimisation by the system, a lack of confidence in the judiciary and the horrific long term nature of stalking behaviour.

It is clear from the findings that stalking is not fully understood by criminal justice professionals and too often it goes unreported and when it is reported there is a lack of understanding and low priority given to cases by police, the Crown Prosecution

Service (CPS), probation, judges and magistrates. In many cases the stalking campaign is missed and effective risk assessment and management is lacking, which can have lethal consequences.

The vast majority, some 72% of those taking part report being unhappy with the criminal justice system's response as a whole; this includes police, probation, the courts and the CPS. In addition when victims did contact the police 65% said they were not satisfied with the police's response. More than half the victims had been stalked from more than 18 months, which shows the long term nature of stalking and in addition they reported that multiple forms of contact were used by the stalker.

The victims reported that in 78% of cases the CPS were not even involved. Of the remaining 22%, 77% said they were not satisfied with the CPS response.

Victim 1

'The CPS plea bargained with him, by dropping several charges on several occasions as long as he pleaded guilty to other charges ... I thought this wasn't meant to happen in this country? Also, the representation by the CPS is extraordinarily half hearted compared to the representation by defence barristers. Little care is given to the victim in these cases'.

In 47% of the cases, the perpetrator was not charged and in 41% of cases the case did not even progress that far. Therefore, in 88% of cases the perpetrator got away with it and did not receive any form of sanction through the Criminal Justice System.

Victim 2

'He got a one year conditional discharge having caused thousands of pounds worth of damage. Plus he caused me to lose my job, my friends and family, my house and made me feel utterly terrified ... Utterly outrageous'.

Victim 3

'The Harassment Act is interpreted differently by different police officers – some issuing harassment warnings (just in case) others saying they can't issue a warning as damage to my property can't be proved as to who it was'.

Victims were asked, based on their experience of being stalking and dealing with criminal justice professionals to cite examples of things that would have made them feel more protected.

Victim 4

'Recognition of stalking as a crime and conviction'.

Victim 5

'Amend the law'.

Victim 6

'To have an anti-stalking law in place that has "teeth".'

Victim 7

'I now work with victims of domestic violence and I work in court. What happens over and over again is that victims report breaches and the police do not act unless there is a pattern of behaviour. They want there to be more than one instance of a breach. The second breach of any order could be the time that he kills her. Magistrates need more training on stalking. I have seen magistrates release defendants on bail who should not be released as they see stalking as less serious than physical violence'.

This report brings into stark relief the fact that victims are rarely taken seriously and most of the time they are told that the police cannot do anything and 'their hands are tied by the law'. Perpetrators are rarely punished or receive the appropriate treatment they require. They are allowed to continue with their unacceptable behaviour, increase in confidence and escalate their offending, in many cases stalking multiple women and moving from one victim to another. Whilst their confidence increases as they continue to go unpunished, the victim's trust and confidence in the criminal justice system conversely decreases and they fear no one can help or protect them. Only once the perpetrator has seriously harmed and injured the victim, does the system then react and respond. By then it is too late and victims pay with their lives.

This was also found by the National Stalking Helpline that received over 1,500 calls for advice and help in its first year. Overwhelmingly it was reported that there was a poor understanding of stalking behaviour by the police, not all evidence was looked at and examined by criminal justice agencies and that not enough action was taken when orders were breached.

The main recommendations from the victims were:

1. That stalking behaviour should be named in legislation, as in Scotland;
2. Victims should be taken seriously when they report to professionals;
3. The family court system should be reformed so that victims are not further abused by perpetrators through the civil and family courts;
4. That the human rights of perpetrators should not overrule those of victims – victims should have rights and not just codes and charters;
5. That sentences for stalkers should be more robust to reflect the seriousness of their behavior and that they receive treatment;

6. That the education of criminal justice professionals must be stronger and mandatory;

7. Perpetrators must undergo compulsory monitoring and assessment;

8. That victims should receive help with the post traumatic stress disorder and other stress caused to them and their children by stalking behaviour;

9. That it should become a presumption that those charged with serious violence and sexual offences should not be bailed unless there are exceptional circumstances;

10. That a risk assessment should be presented to the court before the bail decision is made;

11. That the court should always take into account information on previous behaviour provided by a Probation report;

12. That there should be a national register of serial stalkers;

13. That professionals should receive education on the psychological effects of the crimes;

14. That there should be a duty on the CPS to obtain all information about past behaviour of perpetrators;

15. That compensation orders should not be made out to victims unless the victim agrees and any compensation ordered should be paid into a victim's fund;

16. That the police should receive education on the nature and effect of cyber stalking;

17. That sentences for breach of restraining orders should take into account all previous behaviour and misdemeanours;

18. That a treatment programme should be developed for perpetrators, to be used in custody and in the community;

19. That restrictions should be placed on perpetrators' ability to use Facebook and other internet social networking sites and other internet services;

20. That offences under Sections 2 of the 1997 Protection from Harassment Act, harassment, should be triable either way;

21. That there should be an assumption that a court would start with a custodial sentence for breach of a restraining order;

22. That there should be a national Victim's Advocacy Scheme for victims of stalking similar to Independent Domestic Violence Advisors (IDVAs) and Independent Sexual Violence Advisors (ISVAs);

23. That all victims of a stalker should have the right to present information to parole hearings rather than just the designated 'primary' victim;

24. That police powers to search the perpetrator's property under Section 2 of the 1997 Act should be reinstated;

25. That awareness programmes should be developed for young people at school;

26. That past abusive and stalking behaviour should be disclosed to any woman entering into a new relationship to allow for an informed decision;

INQUIRY RECOMMENDATIONS

1. There should be a presumption that anybody charged with a serious violent or sexual offence should not be bailed unless there are exceptional circumstances. The court should take into account risk to victims and their children.

2. Consideration should be given to the establishment of a statutory Victim's Advocacy Scheme, to signpost and support victims of stalking through the criminal justice system.

3. The police should have powers to disclose information about a perpetrator's previous offending behaviour to any potential new partner.

4. Compensation orders should only be made on conviction of stalking where the victim consents and compensation itself should be paid into a victim's fund.

5. Support should be made available for the victims of stalking and their children as appropriate.

6. The Secretary of State should negotiate and publish a Bill of Rights for Victims.

7. The human rights of victims should be paramount in proceedings.

2. PERPETRATORS OF STALKING AND THE CRIMINAL JUSTICE SYSTEM

'It is quite clear that short term prison sentences are not making an impact on stalking offending. Programmes which address this type of behaviour need to be developed' – **A Probation Officer**

At the third evidence session, Louise Casey, Commissioner for Victims and Witnesses, said she supported a change in the law. She felt that a specific offence of stalking was needed to send a signal round the justice system about the seriousness of the behaviour and the need for victims to have rights, not charters.

At the same session barristers Michael Salter and Chris Bryden argued that offences under the Protection from Harassment Act 1997 should be triable either way. They felt that stalking was not taken seriously by the criminal justice system and that cyber stalking was on a continuum but that dealing with it needed other remedies than solely the criminal law.

DS David Thomason, a police officer from Cheshire, added that it was unusual for perpetrators to get more than a six month sentences under the provisions of the 1997 Act. In his view the Act was not fit for purpose and needed to be amended to take into account stalking behaviour. He described the act of stalking as an aggravated form of harassment.

At the fourth session, DCI Linda Dawson, who had assisted with the drafting of the Protection from Harassment Act 1997, told the inquiry that she now believed that a specific offence of stalking was absolutely necessary. She and DI Peter Williams felt that current legislation was problematic and was confusing about what constituted a course of conduct, as well as behaviours being hidden and missed as they are recorded under different crime categories such as malicious communications, common assault, harassment and so on. They felt that the victim's perspective was missing and that many incidents were not recorded as crimes and that stalking behaviour was therefore hidden. If there was an offence of stalking it would be clear what was happening, the offender would be charged with stalking and they would be put before the courts for stalking. They can then be sentenced as a stalker and treated. Both highlighted the need for Section 2 of the 1997 Act to be triable either way and for a new offence of stalking to be created.

The evidence from all witnesses was reinforced by the findings of a Napo study on the experience of perpetrators of the criminal justice system. The study examined 80 cases submitted by Napo members during the autumn of 2011. All were disturbing and frightening for victims and all the experiences were harrowing. The overwhelming majority of victims said they were in constant fear, many were physically injured and most experienced varying levels of assault, criminal damage and in extreme cases murder or attempted murder. There was evidence that perpetrators threatened friends and family of victims to get information either in real life or through texts or the internet.

There were a number of common characteristics experienced in all cases. Most victims claimed that there were a significant number of incidents that occurred before they went to the police and even when they did go to the police their complaints were not investigated thoroughly. In most cases there was a history of domestic violence, with numerous incidents reported to the police and then an inconsistent experience as to whether it was taken seriously.

Probation officers in the Napo report expressed deep concern about the justice system, how it treats victims and the absence of treatment programmes for perpetrators.

Probation Officer 1

'I do not think the police take incidents of stalking seriously enough. The frequency with which restraining orders are breached would suggest that they are largely meaningless for many offenders who are clearly obsessed with the victim'.

Probation Officer 2

'Short sentences do nothing to protect victims. Often offenders are allowed IT access whilst in prison which allows them to keep detailed records on victim's movements'.

Probation Officer 3

'The criminal justice system is limited when it comes

to repeat harassment and stalking. More consideration should be given for mental health reviews and referrals’.

Probation Officer 4

‘It is quite clear that short term prison sentences are not making an impact on stalking offending. Sentences which address this type of behaviour need to be developed’.

The report finds that Section 4 of the Protection from Harassment Act 1997, putting a person in fear of violence, was rarely used and when it was short custodial sentences were the norm, which were not long enough for treatment. There was evidence that some perpetrators refused to cooperate with their supervisors, were disruptive and were placed on inappropriate programmes.

Breaches of restraining orders were commonplace and usually resulted in either community orders or in rare cases a short custodial sentence which did not allow for any meaningful intervention. There is evidence that perpetrators breached restraining orders on numerous occasions, indicating that it does not act as a deterrent for most men.

There is also evidence that in many cases threats continue to be made from jail either using illegal

mobile phones, through correspondence or in some cases through official phones on communal landings. Some men use civil and family courts to continue their campaign of harassment and stalking.

Probation staff who made comments on the state of the law felt that training was woefully inadequate, that there was a need for regular risk assessment and that an offence of stalking should be created, with the existing offence of harassment triable either way, in recognition of its seriousness.

INQUIRY RECOMMENDATIONS

8. Where a court asks for a pre-sentence report it should also be provided with information about the offender’s previous behaviour so that courses of conduct can be taken into account.

9. Restrictions should be placed on the use of phones, IT and letters to known victims during the course of a perpetrator’s jail sentence.

10. Consideration should be given to the production of a register of serial perpetrators which is now possible with the advent of the Police National Database.

3. TRAINING

'Training does not filter down to the frontline and although there are pockets of police good practice it was very inconsistent. The National Police Improvement Agency has an overview of training but it is not mandatory.' – **David Thomason, Police Officer**

All the witnesses stated that training for criminal justice professionals was at best inadequate and at worst non-existent. In addition the evidence from both the victims and perpetrators studies undertaken by PAS and Napo shows that stalking behaviour is not being picked up by all criminal justice professionals. Often probation and the courts only deal with the initial index offence and do not take into account long term courses of conduct and unacceptable behaviour, which would clearly have an impact on the sentencing outcome. The courses of conduct should, in both PAS and Napo's view, be taken into consideration as an aggravating factor in individual cases. In all probability, the charity and union concluded, these omissions are most likely a reflection of training failures.

Currently the police in England and Wales do not appear to receive any specific training and although practice advice was made available recently this is not enough on its own. The Crown Prosecution Service (CPS) has also recently been issued with guidance but again appears to receive little training on stalking. Probation staff, according to recent parliamentary answers, are said to receive training on the workings of the Protection from Harassment Act as part of their initial courses. However nobody questioned by Napo or giving evidence to the inquiry had any recollection of receiving such training.

Answers to parliamentary questions tabled by members of the inquiry have also confirmed that the CPS does not give any training on stalking along with the fact that it is left to individual police forces' discretion whether officers receive training in risk assessment. The amount of training the police receive on stalking is limited to a new small module in the police learning and development programme.

The absence of training was an issue that was of paramount importance for victims giving evidence to the inquiry. Tracey Morgan said: 'At every turn every agency has let me down through lack of interest, no understanding of the implications of treating this as a nuisance crime, silly mistakes or putting the perpetrator's rights above my own

needs. Things like the probation officer not turning up for committal proceedings for breach of a prison licence charge so the court crossed it off the list of charges. What message does this send?'

Sam Taylor in her evidence said: 'In spite of three years of endless stalking including attempted murder, threats to my life, threats of suicide, extraordinarily high levels of psychological and emotional abuse through intimidation and harassment, there is clearly very little in place within the law to protect victims or their families'.

Clare Waxman added: 'In this eight year ordeal the biggest stumbling block for me is the Crown Prosecution Service. I have witnessed what can only be described as a farce in every single court case I have ever attended in relation to my stalker. From prosecutors turning up on the day with no information or incorrect files to hand and being unaware whether this was a trial or a bail application'.

One victim said that professionals need to receive training on the psychological effect of the crime. Another said that the police need education on the nature and effect of cyber stalking.

The Chair of the Magistrates Association told the inquiry that training was an important issue and that the Association would lobby for training to be made available for its members on the implications of stalking and stalking behaviour. He added there was a need for a major shift in culture on stalking behaviour and for better training.

DS David Thomason told the inquiry that training did not filter down to the frontline and although there were pockets of police good practice it was very inconsistent. He described how the National Police Improvement Agency had an overview of training but it was not mandatory.

DCI Linda Dawson told the inquiry there was a need for training on what constituted a course of conduct, the victim perspective, risk assessment and also on incidents not being recorded as crimes. DC Andrea Barnard from North Wales police reported that identity crime was a huge

problem and said there were real concerns that there was little training for the police in this area.

Laura Richards explained how professionals were failing to recognise the stalking behaviours and how crucial mandatory training was. She used a number of murder cases she had reviewed as the former Head of the Homicide Prevention Unit at New Scotland Yard as well as cases she has supported on behalf of her charity Protection Against Stalking. She highlighted main considerations involving risk identification, assessment and management, referencing the Domestic Abuse, Stalking and Harassment and Honour Based Violence Risk Model for victims of stalking and the extra 11 questions if stalking is present that can also be used in non-domestic cases.

Probation officers who took part in the Napo perpetrators' study repeatedly stated that training was a major issue. An officer from the Midlands said: *'Staff training is essential to recognise stalking behaviour and the risks associated with it. Fast Delivery Reports are increasingly being used in stalking cases and are not picking up the risk issues. A stalking and harassment risk assessment tool would be helpful as serious violence in cases is quite often predictable and preventable'*. Another officer in the South West said: *'Magistrates clearly need education as there is inconsistent practice between different benches on responses to harassment and breaches of restraining orders'*. A third officer from Yorkshire added: *'Those who attend multi agency public protection arrangement meetings have limited knowledge of stalking behaviour or of indicators or patterns and traits. This needs to be addressed without delay'*.

In addition many of those who took part in the PAS Victims' Voice survey made similar comments:

Victim 1

'There is no continuity with the prosecution as there is always a new prosecutor appointed. Often they have no expertise or knowledge of stalking and harassment and are therefore unable to prosecute effectively'.

Victim 2

'The Harassment Act is interpreted differently by different police officers – some issuing harassment warnings, others saying they cannot issue a warning involving damage to property as it can't be proved as to who it was'.

Victim 3

'The police, Crown Prosecution Service and magistrates do not have enough continuity in this area. Some police forces have excellent training in this field while others are awful. It is the same with

the courts. Some have specially trained magistrates, others can be ignorant of this area with a lack of understanding, leaving women vulnerable and can result in them being killed'.

Victim 4

'The CPS needs to employ specialist prosecutors instead of appointing random ones who have no understanding of stalking nor of the history of ongoing stalking cases'.

Victim 5

'We need qualified police officers with understanding professional attitudes'.

Victim 6

'Magistrates need more training on stalking. I have seen magistrates release defendants on bail who should not be released, as they see stalking as less serious than physical violence.'

Victim 7

'There is a need for training for magistrates to understand the seriousness of the crime.'

Victim 8

'I think the police need consistent training on how to recognise a case of stalking and how safeguard the victim and share information with other agencies.'

In conclusion, PAS and Napo have already had talks with the Magistrates Association, Victim Support and the Police Federation about training needs and these are likely to lead to pilot projects. This is to be welcomed but overall mandatory training must be formalised, approved by the Ministry and delivered through agencies and not left to the voluntary sector.

INQUIRY RECOMMENDATIONS

11. There should be a duty placed on the respective Secretaries of State to ensure that criminal justice professionals receive training in anti-stalking legislation as well as how to identify it.

12. Duties should be placed on the Secretary of State to develop treatment programmes for those convicted of stalking offences.

13. It should be the duty of the Secretary of State to raise awareness of the reality of stalking behaviour amongst the public and in schools in line with the government's policy on Bullying and Violence against Women and Girls.

4. SENTENCING GUIDELINES AND FRAMEWORK

‘Courts ought to take into account all previous behaviour and offences and to do that they should always obtain a social history prior to sentence. It is imperative that the guidelines state that victim impact statements must be available to all courts when dealing with stalking and harassment perpetrators.’ – John Fassenfelt, Magistrates Association

Witnesses to all the five evidential sessions made reference to ways in which the existing sentencing guidelines and framework might be strengthened in relation to stalking.

Paul Infield, Chair of the Suzy Lamplugh Trust, said the guidelines tended to regard harassment as tantamount to a public order offence but they needed to stress that it was much more than that. He also noted that the starting point for breach of a restraining order for non-violent matters was the assumption that a community penalty would normally be sufficient. However, the guidelines needed to bear in mind that victims experience on average a hundred incidents before reporting to the police. He believed therefore that the starting point for a sentence for breach should be incarceration, then taking into account mitigating and aggravating factors. Paul also told the inquiry that the Protection from Harassment Act had become a ‘legislative dustbin’ and that it was not specific enough. In the event of stalking laws being introduced, he believed that the sentencing guidelines would need to reflect the types of stalking behaviour and its seriousness and other matters which might be relevant in the future. Finally he added that sentencing guidelines should reflect the seriousness of the offence and conduct.

Kristiana Wrixon, from the National Stalking Helpline, told the inquiry that because, harassment, Section 2 of the 1997 Act was a summary offence only it was not taken seriously enough by the police for them to allocate appropriate resources to it, especially where there was a cyber element and investigation required specialist computer skills. She believed therefore that sentencing guidelines needed to emphasise the serious nature of Section 2 or that Section 2 should be amended to make it triable either way.

Paul Infield added that the CPS often decided not to prosecute under the 1997 Act as they did not take previous offences of serious acts of harassment into account and this also needed to

be addressed in the guidelines. He further said that the guidelines should tell police and prosecutors that their actions must reflect courses of conduct and these should be taken into account when deciding on charges and not just the latest index offence. The guidelines needed to reflect the fact that courses of conduct could run for years that harassment behaviour can take place over a long period of time and that there might be significant gaps between incidents. Indeed the gaps themselves could be a source of fear or threat.

Dr Emma Short, from the University of Bedford, told the inquiry that sentencing guidelines needed to take into account the high rates of post traumatic stress disorder amongst victims. She informed the parliamentarians that the courts needed to obtain a risk assessment and to take this into account when sentencing. The assessment would relate to the actual impact on the victim and the fact that with cyber stalking the victim might not know or see the perpetrator but the impact can still be immense. She added that the guidelines needed to reflect how much information was now on line and the potential for abuse. For example, Facebook was not around in 1997 when the Act was passed by parliament.

Professor Carsten Maple, from the University of Bedford, added that there needed to be a code of practice for service providers, including blocking calls, and this needed to be reflected in the guidelines.

Louise Casey, Commissioner for Victims and Witnesses, believed the guidelines should make it clear in respect to stalking that prosecutors should not opt for lesser charges and therefore miss courses of conduct and behaviour. She also felt that the guidelines should issue firm advice on when to issue Police Information Notices.

Chris Bryden, a barrister, believed that with stalking the courts had to find a balance between competing

human rights i.e. those of privacy and freedom of expression. He felt the sentencing guidelines need to view stalking and harassment as a manifestation of a breach of privacy but felt that the 1997 Act did not balance those competing rights. The guidelines therefore have a role in correcting that perception. He also felt the guidelines must reflect the effect of stalking and harassment on the victim and that a relatively minor offence might attract a substantial sentence because of the effect on victims of previous actions.

David Thomason, a police officer, felt that the guidelines needed to reflect the fact that stalking was an aggravated form of harassment because of its frequency, the level of intrusion and the impact on the victim and the danger therefore not just to that victim but to the wider public.

John Fassensfelt from the Magistrates Association thought the courts ought to take into account all previous behaviour and offences and to do that they should always obtain a social history prior to sentence. He added that it was imperative that the guidelines stated that victim impact statements must be available to all courts when dealing with stalking and harassment perpetrators. He added too that the guidelines ought to discourage prosecutors from accepting or adding less serious charges in exchange for the defendant pleading guilty.

DI Peter Williams felt that sentencing guidelines ought to reflect the fact that harassment was often not recorded and that risk assessments were therefore not obtained or acted upon in a way that

would lead to an investigation and identification of that risk. He felt that there ought to be a presumption that matters were proceeded with.

Finally, DCI Linda Dawson felt that if a series of events led to a violent offence they were often not recorded as crimes and so stalking behaviour was hidden under the surface. She felt that the notifiable offences of harassment and stalking should be given equal priority with the assault and that way stalking behaviour would not be overlooked.

INQUIRY RECOMMENDATIONS

14. The course of conduct should be taken into account before sentencing for further offences of harassment, stalking or breach of a restraining order.

15. Sentencing guidelines should be reviewed in order to reflect the types of stalking behaviour and its seriousness.

16. Judges and magistrates need to take account of previous offences as serious acts of aggravation.

17. Judges and magistrates should take into account the high rates of post traumatic stress disorder amongst victims.

18. Sentencing guidelines should make it clear that, in respect to stalking, prosecutors should not opt to press lesser charges which leads to courses of conduct and behaviour being missed.

5. TREATMENT AND RISK ASSESSMENT

‘There should be a proper psychiatric assessment done by a psychiatrist who understands stalking behaviour. This would help with risk assessing and devising treatment plans for these types of perpetrators’. – **Victim’s Voice**

Evidence from victims, the National Stalking Helpline and the Commissioner for Victims and Witnesses, called for comprehensive monitoring and assessment of perpetrators. It was recommended by all victims that treatment programmes for perpetrators should be developed in both prisons and the community.

It is currently rare for a perpetrator to be properly assessed by a psychiatrist who has expertise in stalking behaviour. Indeed evidence produced by Napo suggests that in many cases requests for psychiatric assessments are refused by the courts either because of delay or on cost grounds. The proper assessment by experts will lead to effective diagnosis and then treatment and management. Currently there is no specific treatment programme available either in custody or the community to deal with stalking behaviour.

The inquiry notes the establishment in December of a West London based stalking treatment clinic. However, it also notes that it is unclear currently how participation in the programme will be funded. A payment may be made by the referring agency, probation, courts or other bodies. The inquiry understands that the clinic will be non-residential. It is likely therefore to be of assistance to those placed on community orders who agree to comply or as an alternative to short custodial sentences. The inquiry assumes that failure to comply would result in a further court appearance. It is the view of the inquiry that the treatment available at the clinic should be monitored independently for a period of at least 12 months. It should then be evaluated and if it is proven to be effective in preventing or reducing stalking consideration should be given into its incorporation into both the NHS and the prison system.

It is essential that such perpetrator programmes are developed in prison in the future to assist with rehabilitation and desistance. It is also essential that NHS psychiatric services are more commonly available to the courts, with psychiatrists trained specifically in domains of stalking risk, to assist with the sentencing process treatment and management.

In evidence from the PAS Victim’s Voice survey,

one individual said: *‘There should be a proper psychiatric assessment done by a psychiatrist who understands stalking behaviour. This would help with risk assessing and devising treatment plans for these types of perpetrators’.* Another said: *‘A better understanding of this crime throughout from police, CPS, witness services through to judges. Mandatory psychiatric assessment should be done at the time of the first prosecution’.*

Evidence to the inquiry from both the Victim’s Voice study and the perpetrators’ study shows that risk assessments in respect to victims is essential but is not regularly undertaken. Yet the inquiry was told a model has already been developed by Laura Richards, a criminal psychologist, on behalf of the Association of Chief Police Officers and in partnership with Coordinated Action Against Domestic Violence. The checklist, known as DASH, is the accredited toolkit in use across police services and partner agencies in the UK. Every Chief Constable signed up to the model in 2009.

If stalking is found to be present, the DASH is a gateway through to a further 11 questions. These 11 risk factors were developed by Drs Lorraine Sheridan and Karl Roberts, internationally recognized experts in stalking, and operationalized by Laura Richards in the DASH.

There is evidence from a number of sources that the model works. Over the course of four years, the Metropolitan Police Service were using the SPECSS+ (the first generation of the DASH model) and saw a 58% reduction in domestic homicide, serious incidents and in repeat victimisation. This was prior to the introduction of the MARACs (Multi Agency Risk Assessment Conferencing) and IDVAs (Independent Domestic Violence Advisors). In fact there has been a significant decrease in the number of fatalities reported to the Metropolitan Police Service since 2003 – from 49 deaths a year related to domestic violence to 5 in 2010.

The reasons why the SPECSS+, which evolved into the DASH was created was that conclusions from many domestic homicide and serious case reviews have shown, that there is:

- insufficient risk identification, assessment and management;
- a lack of understanding and training regarding risk identification, assessment and management;
- insufficient information sharing;
- a failure to manage the intelligence;
- a failure to make the links across public protection – child abuse, domestic and sexual abuse, missing persons and serial offending.

The evidence based which informed the DASH model included:

- a comprehensive literature review;
- data analysis of murders (n=56), near misses (n=450) and lower level incidents (n=104,000);
- consultation with national and international academic experts and practitioners;
- officer/practitioner and victim focus groups and debriefs;
- extensive piloting in several areas on more than four occasions;
- evaluation;
- continuous review.

Both Napo and PAS recommend that the 11 stalking screening questions that are used to assess stalking risk be made mandatory for police forces in England and Wales. The questions are:

- Q1. *Are you very frightened?*
- Q2. *Has the person engaged in harassment before? (Involving you and/or anyone else?)*
- Q3. *Has the person ever destroyed or vandalised your property?*
- Q4. *Does the person visit you at work, home, etc., more than three times per week?*

- Q5. *Has the person loitered around your home, workplace etc?*
- Q6. *Has the person made any threats of physical or sexual violence in the current harassment incidents?*
- Q7. *Has the person harassed any third party since the harassment began? (e.g. friends, family, children, colleagues, partners or neighbours)*
- Q8. *Has the person acted violently towards other people within the current stalking incidents?*
- Q9. *Has the person persuaded other people to help him/her? (Wittingly or unwittingly)*
- Q10. *Is the person known to be abusing drugs and/or alcohol?*
- Q11. *Is the person known to have been violent in the past? (Physical or psychological)*

According to Laura Richards from PAS some forces appear to be abandoning or scaling down the DASH and introducing officers' discretion, which is a step backwards. This could undo the gains made over the last decade and cost lives. PAS and Napo recommended that the inquiry conclude that such changes be resisted. By properly assessing risk police forces are able to judge their response and take action to deal with the threat from perpetrators. A failure to do this will put victims in danger and play into the culture of stalking being hidden as a crime.

INQUIRY RECOMMENDATIONS

19. Courts and police forces should undertake a risk assessment in respect of a victim.

20. Courts should, in cases where there is evidence of a course of conduct, request specialist psychiatric assessments in respect of perpetrators.

6. ABUSE OF PROCESS, STALKING IN THE FAMILY AND CIVIL COURTS

'Some courts are allowing applications through because they fear that to refuse to do so would be to impinge on the human rights of perpetrators'. – **A Cafcass Worker**

Napo and PAS gave evidence to the inquiry that many perpetrators were continuing to harass their victims by improper use of family and civil courts.

The evidence shows that stalking behaviour does not stop at the prison gates. Abusive behaviour continues as some convicted men pursue their victims through vexatious claims in the family and civil courts. PAS and Napo obtained 33 cases studies from family court staff and family lawyers detailing malicious claims for contact or even attempts to halt adoption proceedings in the courts. Astonishingly in the past the male prisoners have obtained legal aid for the challenges, whilst the majority of female victims have had to rely on savings or loans to pay for their lawyers in order to defend the action.

The process affects victims psychologically and in all cases has a detrimental effect on children's welfare and health. Often the proceedings have been allowed in court despite family court staff advising that such actions would be harmful to victims and families. There is also evidence from probation staff that stalkers continue to attempt to make contact with victims through phone calls on illicit mobiles or sometimes on landing phones, and that some also have access to the internet and can continue to collect data about their victims or harass them through emails.

Prison staff are committed to try and stop the process and sometimes limit the number of phone numbers that can be accessed by prisoners. But the combination of the surge in prison numbers and budgetary restraint is making this extremely difficult to police and monitor. In addition staff often do not know when someone has been stalking another due to there not being an offence of stalking recorded and it therefore not being flagged.

The case studies submitted to the inquiry included one of a male perpetrator who had abused his own children and filmed it online and who then while serving a long prison sentence sought contact with the children. Another male stalker who eventually murdered his partner in the presence of

his children then applied for contact with the children of the mother he had murdered.

In presenting the evidence to the inquiry Napo and PAS concluded that the cases cited in the full report caused extreme concern. It is clear that some perpetrators of harassment and stalking are continuing their unacceptable behaviour post-sentence, often from behind prison walls. All the applications made to the family and civil courts in the 33 cases could or have been described by staff and lawyers as vexatious. Time and time again, Cafcass family court workers have stated that the effect of the applications is to cause harm to the victims and children.

The abolition of legal aid for civil matters will mean that the men, who are often prisoners, will be able to appear in court as litigants in person. This is a frightening prospect. There is also the possibility that legal aid may be removed for some women who currently qualify for it. This will make matters more stressful as they would have to appear as litigants in person too.

It is quite clear from the case histories that some courts are allowing applications through because they fear that to refuse to do so would be to impinge on the human rights of perpetrators. It would not be unreasonable to conclude that currently the human rights of perpetrators appear to outweigh the needs and rights of victims. This is a situation that cannot be allowed to continue.

There should have been adequate risk assessments conducted in each of these cases by trained staff. In some cases supervised contact was ordered but then changed to unsupervised contact in a short time, but this should not occur unless a proper assessment of risk has been obtained.

It is the opinion of Cafcass staff, Napo, PAS and many lawyers working in the field that the motivation for the applications is to continue to cause distress and harm to the previous victim and in some cases the children. It is recommended therefore that consideration be given to establishing a panel of last resort which may comprise a family court judge, an experienced

guardian with knowledge of the individual case and possibly representatives from the Legal Services Commission. This panel would decide whether applications were bone fide or vexatious. Vexatious applications would therefore not be allowed and the decision would be based on the best interests of the child. In order to do this a risk assessment would be essential. These recommendations would, if put into practice, prevent the vast majority of these applications.

If there is evidence of abuse, there should be a presumption of no direct contact until the perpetrator can show evidence that he has changed, which is the system that exists in the Netherlands. Power could also be given to the criminal courts to suspend parental responsibility by the order of that court until further notice. Such an order might last until the child is deemed able to understand proceedings and old enough to make a reasonable decision about contact with the offender. Such powers could be used in cases where the offender was convicted of a serious, violent or sexual offence. This measure would prevent the majority of vexatious applications which were currently being heard in the family courts.

It is also recommended that courts be encouraged to make use of orders which prevent further

applications for a stated number of years where victims are clearly being distressed and traumatised. This would prevent the majority of vexatious applications that are currently made proceeding to court. It would stop prisoners being brought to hearings in person and therefore being able to cross examine witnesses and address the imbalance of power and control between the perpetrator and victim which currently exists.

INQUIRY RECOMMENDATIONS

21. Those who have been convicted of 'serious' stalking related offences and who abuse process in the family courts through vexatious applications for contact should be prevented from doing so by giving the crown courts the powers to suspend parental responsibilities.

22. The family courts should have regard to risk assessments in respect of victims, which should be carried out in instances where there is suspected abuse of process cases.

23. Courts should be encouraged to make use of civil orders which prevent further applications for a stated number of years where victims are clearly traumatised.

7. A REVIEW OF THE PROTECTION FROM HARASSMENT ACT 1997

‘One of the Act’s aims was to tackle the problem of stalking, but it also covered a range of behaviour which might be classed more broadly as harassment of one kind or other ... The Act is being used to deal with a variety of behaviour other than stalking including domestic and inter-neighbour disputes and rarely for stalking itself.’ – Home Office Research Study number 203 (2003)

The Protection from Harassment Act 1997 was passed because it was thought that laws relating to stalking were inadequate. David Moxon, in his foreword to *Home Office Research Study number 203 (2003); An evaluation of the use and effectiveness of the Protection from Harassment Act 1997* said: ‘The Act came into force in June 1997 and was intended to deal with the overt problem of stalking’. However, Jessica Harris, the author of the same Home Office report states in her summary: ‘One of the Act’s aims was to tackle the problem of stalking, but it also covered a range of behaviour which might be classed more broadly as harassment of one kind or other’. She concludes: ‘The Act is being used to deal with a variety of behaviour other than stalking including domestic and inter-neighbour disputes and rarely for stalking itself.’

Victims, along with a number of professionals who gave evidence also made it clear that the breadth of the Act is its weakness rather than its strength. They stated that neighbour arguing about hedgerows was wholly different from when one person fixates on another – and hence a specific offence of stalking was required.

The inquiry was informed by all witnesses who

gave evidence that the Protection from Harassment Act 1997 was no longer fit for purpose. Lawyers, police and victims all took the view that Section 2 of the Act, harassment, should be amended so it was triable either way, that is in both the crown and magistrates court depending on the seriousness of the case, to mark the seriousness of the offence. In addition the vast majority of witnesses believed that Section 4 of the Act, putting somebody in fear of violence, is rarely used and should be replaced by a version of the legislation that was introduced in Scotland in December 2010.

The British Crime Survey in 2006 estimated that up to 120,000 people experience stalking in any one year. During the past six months parliamentarians on the inquiry panel have tabled scores of parliamentary questions about the effectiveness or otherwise of the 1997 Act. Answers have shown that data is not routinely collected by each police force centrally on the number of investigations or the number of offences of stalking which are reported. However the Home Office has collected statistics on the number of offences recorded by the police since 2008. The answers show that the number of harassment cases recorded by the police in 2009-10 was 53,029.

Data is now available through parliamentary answers on the number of persons found guilty of offences under Sections 2, 3, 4 and 5 of the 1997 Act. The number of persons found guilty under Section 2, the offence of harassment, was 4,365 during 2009; however, the number receiving a custodial sentence was 565, which represents 13% of those found guilty. The answers show it is unusual for persons to be found guilty under Section 4 of the Act, putting a person in fear of violence. Nevertheless in 2009, 786 persons were found guilty with 170 being given a custodial sentence. This represents 22% of the total. The number of persons found guilty of breaching a restraining order under Section 5 of the Act was 1,463 in 2009 and the percentage of those jailed was 32%. However if the figures are taken as percentage of all the offences recorded during 2009 then only 2% were jailed and 10% were fined or dealt with in other ways.

Parliamentary answers later in 2011 showed that the number of persons who received a custodial sentence of 12 months or more for breaching a restraining order was on average of 23 per annum. The number receiving a jail sentence of 12 months or more for putting somebody in fear of violence was 27 on average each year. These figures suggest that convictions under the 1997 Act do not attract significant sentences and therefore the individuals are not assisted with treatment or rehabilitation.

Evidence from both PAS and Napo in their studies of both victims and perpetrators published in November and December 2011 shows that most stalkers commit multiple breaches of restraining orders over their criminal careers. Some breach at least four or five times. Examples produced in the briefing papers and submitted to the inquiry show that some perpetrators breached their order at least five times or more but still received either a non-custodial sentences or were fined. The figures, the inquiry believes, show that the offences are not taken sufficiently seriously, that the pattern of behaviour is missed or not taken into account and that this is reflected in the less serious nature of outcome in the courts.

In addition both PAS and Napo have produced scores of other examples of perpetrators being dealt with lightly by the courts when sentenced for offences under other sections of the Act and therefore not receiving treatment, victims complaining that they are not taken seriously and courses of conduct being not taken into account.

Currently for an individual to be found in possession of equipment which may arguably be used to aid kidnapping, abduction, cause physical harm to or to stalk a victim is not a criminal offence. A person can only be arrested if they are equipped for example to commit burglary. Police feel hampered because it is not possible for them to

charge somebody with possessing materials which may aid stalking, kidnapping or worse; for example rope, balaclavas, chloroform and related equipment. The only power that exists is to charge someone with possible conspiracy but that would only apply if there were at least two persons involved. The police feel restricted in that they cannot charge someone with intent to cause harm.

INQUIRY RECOMMENDATIONS

24. There should be a specific offence of stalking introduced into legislation in England and Wales replacing Section 4 of the Protection from Harassment Act 1997.

25. The offence of harassment under Section 2 of the Protection from Harassment Act 1997 should be triable in both the magistrates and crown court to signal the serious nature of the offending behaviour.

26. The starting point for a breach of a restraining order should normally be a custodial sentence, influenced by aggravating and mitigating factors.

27. The Secretary of State should be given the power to negotiate a code of conduct to cover social media and internet service providers.

28. There should be a duty on social media and internet service providers to cooperate with the police in the conduct of any stalking or harassment related inquiry.

29. It should be the responsibility of the Secretary of State to produce an annual report on the workings and effectiveness of stalking legislation.

30. Consideration should be given to creating new offences of 'going equipped to stalk, harass or cause physical harm'.

8. LESSONS FROM SCOTLAND

‘At that time in Scotland there was no such crime as stalking. The police did not recognize the seriousness of the crime, the ongoing predatory nature of this type of crime, or the increasing danger that I was facing’. – **Ann Moulds**

The fourth evidence session of the parliamentary inquiry heard from Ann Moulds from Action Scotland Against Stalking. Ann spearheaded the campaign to create a specific offence of stalking in Scotland and she described her experiences and the lessons to be learned for England and Wales. She told the inquiry how in the early stages of the Scottish campaign a decision was made not to pursue a version of the Protection from Harassment Act 1997. Scottish campaigners wanted to identify stalking as a crime; to identify stalking behaviour in legislation and to include a catchall for other forms of behaviour which would reflect developments in technology. It was felt that the Protection from Harassment Act was too broad and although its breadth can be its strength, much more it was seen as its weakness as it was being used for too many things. The campaigners felt that stalking was quantifiable different from harassment in law. Harassment in their view could cover everything from rows between neighbours to domestic disputes but it omitted to recognise stalking behaviour as a crime. A similar decision was taken in 2011 by the Swedish government.

The Scottish campaign was launched in spring 2009 and gathered momentum involving lobbying MPs, officials, pressure groups, government departments and third sector organisations, over a 12 month period. Changes to the law were drafted in February 2010 and after adjustments and rewrites, were accepted by the government in the late summer of that year. The legislation was passed in December 2010, creating a specific offence of stalking. Ann described how she saw the offence of stalking as a two part crime. The first part was the offender’s behaviour incorporating real and cyber stalking. The second was the impact on the victim which she described as a subjective test.

Two amendments were incorporated into the Criminal Justice and Licensing (Scotland) Bill. The first, Clause 38, created an offence of putting someone in fear, alarm or distress, to catch all public and private behaviour. The clause requires a lower test of evidence and is essentially a catchall. The second, Clause 39, creates the

specific offence of stalking, which is more serious. If the evidence is not considered strong enough then the police must consider the lower test, the safety net of Clause 38.

Under the terms of this clause a person commits an offence, which will be known as stalking, where he or she stalks another person. The stalking occurs where the perpetrator engages in a course of conduct AND that conduct causes the victim to suffer fear or alarm. The clause applies where the perpetrator knows, or ought to know, in all circumstances that engaging in the course of conduct would be likely to cause the victim to suffer fear or alarm. Conduct is defined as follows:

- Where the perpetrator follows the victim or he/she contacts or attempts to contact the victim by any other person and through any other means;
- Where the perpetrator publishes any statement or other material relating to the victim;
- Where the perpetrator monitors the victim through the internet, email or any other form of electronic communications;
- Where the perpetrator enters the premises of the victim, loiters in any place private or public, interferes with any property and possession of the victim or any other person;
- Where the perpetrator gives anything to the victim or any other person or leaves an item that may be found by the victim; or
- Where the perpetrator watches or spies on the victim; and
- Acts in any other way that a reasonable person would expect a victim to suffer fear or alarm.

The Act concludes that the course of conduct must occur on two separate occasions. Ann Moulds in evidence to the inquiry said that on reflection there ought to have been a catchall *inter alia* (amongst other things) and an ability of the Secretary of State to add to the list if it became necessary. She said: ‘At that time in Scotland

there was no such crime as stalking. The police did not recognize the seriousness of the crime, the ongoing predatory nature of this type of crime, or the increasing danger that I was facing’.

In terms of punishment, a person convicted on indictment under Clause 39 faces up to five years in prison. If it is a summary conviction it is a term not exceeding 12 months in prison. In the event of conviction in either case the person can also face a fine not exceeding the statutory maximum. Effectively, noted Ann Moulds, the offence and the victims of stalking ‘came out of the shadows’.

Ann Moulds told the inquiry that the Domestic Abuse Task Force in Strathclyde, which was established in 2004, prosecuted 150 people in the first four months of the Act being implemented. She described how over 90% of perpetrators pleaded guilty before trial. She also informed the inquiry that prior to the introduction of stalking laws the behaviour was dealt with under Breach of the Peace legislation and the police estimated there were 70 such prosecutions in the 10 year

period up to 2010. Now cases are investigated thoroughly including the offender’s background and previous history. The force had produced operational guidelines on domestic violence which now incorporated new procedures to deal with the stalking laws which were introduced in 2010.

The latest figures from Scotland (December 2011) show that over 400 alleged stalkers were prosecuted in the first 11 months of 2011.

Lawyers and police officers who gave evidence to the inquiry supported the development of a model based on Scotland for England, Wales and Northern Ireland but felt there should be two caveats. The first was that the list of stalking behaviour should contain the caveat *inter alia*, that is the list was not exhaustive but the listed behaviours provided a framework of some of those that may occur. They also recommended that a clause be added to the Scottish model giving the Secretary of State the powers by regulation to add behaviours to the list.

9. THE INTERNATIONAL CONTEXT

'All too frequently, legislatures without stalking laws do not prosecute until the stalking behaviour has escalated dramatically. It is suggested that a number of homicides, assaults and rapes are the culmination of a protracted stalking campaign'. – Daphne Project

Legislation covering the crime of stalking can be found in English speaking countries across the world as well as in 13 EU Member States. California introduced a criminal offence of stalking in 1990, with almost all other states in the US introducing similar legislation shortly afterwards. In 1993, Canada amended its criminal code to include stalking.

In Australia, Queensland was the first state to introduce the offence of 'unlawful stalking' into its Criminal Code in 1993. Over the following three years, other Australian states and territories introduced similar legislation. New Zealand introduced a *Harassment Act* in 1997. In December 2011 Hong Kong launched a consultation on whether there should be a specific criminal offence of stalking.

Within the EU, 13 Member States have criminal laws covering stalking (Austria, Belgium, Czech Republic, Denmark, Germany, Hungary, Ireland, Italy, Luxembourg, Malta, Netherlands, Sweden, UK). Both Germany and the UK have specific civil law, as well as criminal provisions. The earliest recent laws were passed in 1997 (Ireland, UK) with the latest being Sweden in 2011. Denmark is an anomaly in this instance, since it has included the crime of stalking in its penal code since 1933.

In Scotland, stalking became a criminal offence in 2010. In Poland and Romania, proposals for reforming the law have in recent years come before parliament.¹ Some countries established a new article into the Penal Code, while others passed a specific Act against harassment which was also meant to cover stalking.

Within the EU, the minimum sentence which perpetrators must serve in custody ranges from 15 days' to 12 months' imprisonment. The statutory maximum ranges from three months' to seven years' imprisonment.²

None of these legislators use the term 'stalking' in the definition of the law, opting rather for more generic terms such as 'harassment', 'belaging'

and 'persistent pursuit'. This tendency was broken when the Scottish legislature chose to define 'stalking' in its new Criminal Justice & Licensing (Scotland) Act, which followed on from a campaign to 'name the hidden crime'.

In a report published by the Modena Group on Stalking for the EU Commission in 2007, academic experts from a number of countries complained that the decision not to define 'stalking' in legislation often resulted in legal indeterminateness since the law is too open to different judges' interpretations. The point was also made that this lack of clarity contributed to the fact that the concept of stalking is not well integrated among the various professions within the criminal justice system in those countries.³

On the other hand, some countries have defended their decision to use broad definitions so as not to restrict the definition of what actions constitute 'stalking'. Some experts have expressed the view that using specific definitions such as 'justified concern for life or health' set the threshold for prosecution unreasonably high, arguing that broader terminology is more inclusive.⁴

Countries such as Austria, the Czech Republic, Denmark and Hungary have included a non-exhaustive list of possible stalking tactics in their legislation to display a similar inclusivity. Needless to say, the problems surrounding the definition of 'stalking' have plagued the drafting of many Acts.

Intriguingly, issues of vocabulary might in part account for the gaps in awareness of stalking in certain European countries. It's unlikely to be a coincidence that many of the same EU countries that do not have a specific anti-stalking law also lack a word in their lexicon for the phenomenon of 'stalking' – (Germany and Malta are exceptions in that they both have anti-harassment laws, as opposed to naming stalking).

Of the 24 states included in the 2007 study, only 8 have a word which corresponds to the English

word 'stalking' (Austria, Belgium, Denmark, Ireland, Netherlands, Slovenia, Sweden, UK).

Conversely, it has also been argued that some English-speaking countries introduced anti-stalking laws too rapidly, frequently in response to media pressure after high-profile cases involving celebrities or, tragically, the death of a victim.⁵ This has led to a multitude of legal definitions of stalking, meaning that behaviour that would constitute stalking in one jurisdiction would not necessarily meet the criteria required in another.⁶ The inconsistency in different legislatures' provisions against stalking proves to be a particular problem when attempting to convict perpetrators of cyber stalking someone who is based in another country from themselves.

The problem of territorial extent is certainly hard to counter, but that would be the subject for another paper. Both the dearth of knowledge surrounding stalking in some European countries, as well as the lessons to be learned from introducing legislation too quickly in others, lead experts to assert that any country developing laws on stalking should first launch a general awareness campaign about the realities of stalking in society.⁷

This would be a welcome step, since countries without anti-stalking provisions display a worrying lack of insight into the true nature of this crime. In the 14 EU Member States which do not have provisions against stalking, perpetrators of stalking can only be prosecuted when individual behaviours are crimes under existing law (e.g. many countries have laws against trespassing, defamation, insults, damage to private property, and so on).

This is of course problematic due to the idiosyncratic nature of stalking; being that it constitutes a series of behaviours rather than isolated criminal offences. Actions which would ordinarily be considered inconspicuous such as sending flowers and letters, waiting for someone outside work or sending texts and emails take on a sinister undertone when unsolicited and done repeatedly.⁸ Most EU states recognise this since most legislators require a 'course of conduct' or 'repetitive behaviour' to have taken place.

In all EU countries except Belgium, stalking must take place more than once in order to be prosecutable. Many legislators also require that perpetrators need to have intentionally undertaken this behaviour, or should have known that certain consequences for the victim would arise from their actions.

It can be argued that those countries which do not

recognise stalking in their laws run the risk of trivialising many of the actions of stalkers by failing to recognise the pertinence of the pattern which emerges from stalkers' conduct – meaning victims will also be less likely to notice or report the behaviour early on.⁹

All too frequently, legislatures without stalking laws do not prosecute until the stalking behaviour has escalated dramatically. It is suggested that a number of homicides, assaults and rapes are the culmination of a protracted stalking campaign, yet in the absence of anti-stalking legislation in many European states, early intervention is not possible.¹⁰ On a more practical level, the lack of awareness surrounding stalking in these countries means that adequate funds are never directed towards prevention.

This same ignorance as to the true nature of stalking behaviour has also impeded effective treatment in most countries. According to Australian stalking expert Dr Paul Mullen, although in most jurisdictions courts will have the power to order mandatory treatment of stalkers, in practice, this option is often ignored due in part to a lack of understanding of the need for medical intervention.¹¹ Studies show that courts will be more likely to order treatment if the offender has a background in domestic violence – meaning the stalking behaviour itself is rarely addressed or treated.¹² Research would suggest that legislatures which continue to ignore stalking behaviours risk prolonging the victims' plight, since clinical management of any underlying mental disorders or erotomania is paramount in treating perpetrators of stalking – and to instill a sense of the impact their behaviour has on others' lives.

For victims of stalking in countries that do not have laws against stalking, the question of whether they receive help and legal assistance thus depends on the specific conduct of the stalker and whether he (or she) breaks laws already in place in that country. For example, many EU countries that do not have anti-stalking laws have recently introduced specific laws against domestic violence. Restraining Orders and Protection Orders are often used to protect victims of domestic violence, which can be applicable in some stalking cases. Evidently, however, such provisions will not deter stalkers who have not physically harmed the victim, or who have not been involved in a relationship with them. This is particularly true of cases involving cyber stalking and malicious communications. Their applicability to stalking cases is therefore limited and academics are keen to recommend that these states introduce specific stalking laws in the near future.

References

¹Daphne Project, ed. (2010), 'Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence' (Luxembourg: Publications Office of the European Union, p.67.

²Ibid, p.68.

³University of Modena and Reggio Emilia Modena Group on Stalking (2007), 'Protecting Women from the New Crime of Stalking: a comparison of legislative approaches within the European Union' (University of Modena and Reggio Emilia Modena Group on Stalking,), p.57.

⁴Daphne Project, ed. (2010), p.675.

⁵Ibid, p.686

⁶McEwan T.E., Mullen P.E., MacKenzie R, 'Anti-Stalking Legislation in Practice: Are we meeting community needs?' *Psychiatry, Psychology and Law*, pp 14(2), 207-217 (207).

⁷University of Modena and Reggio Emilia Modena Group on Stalking (2007), pp.97; 104; 8.

⁸McEwan T.E., Mullen P.E., MacKenzie R, 'Anti-Stalking Legislation in Practice: Are we meeting community needs?' *Psychiatry, Psychology and Law*, pp 14(2), 207-217 (207).

⁹Research suggests that early intervention is beneficial since stalkers get used to the routine of stalking and become more daring over time.

¹⁰University of Modena and Reggio Emilia Modena Group on Stalking (2007), p.9.

¹¹Mullen, P.E. & Pathe, M. & Purcell, R.(2001), 'The management of stalkers', *Advances in Psychiatric Treatment*, 335-342, 336.

¹²Daphne Project, ed. (2010), p.45.

10. CONCLUSION

1. It was the overwhelming view of the victims who gave evidence and those who contributed to the Victim's Voice survey that the time was right for a fundamental review of the working of the Protection from Harassment Act 1997, for mandatory training for criminal justice professionals to be a priority, for sentencing guidelines to be strengthened and for greater support to be available for victims throughout their ordeal in the criminal justice system.
2. The inquiry panel was strongly influenced by a statement from Tracey Morgan who herself was stalked and was instrumental in the campaign for the 1997 Act, when she said: 'Victims are never taken seriously, from police forces to courts to the whole criminal justice system. The victims I hear from are saying the same things I was saying 15 years ago. What has changed? We need to do more. This is about murder prevention'.
3. Throughout the five evidential sessions it became increasingly clear to the inquiry panel that the victims' voice for reform was shared by frontline professionals and academics.
4. It was the view of the Chair of the Magistrates Association, John Fassenfelt, of the Commissioner for Victims and Witnesses, Louise Casey and of police officers such as DCI Linda Dawson from Hampshire, who was also instrumental in drawing up the 1997 Act, that change was needed. DCI Dawson said: 'I myself have done a complete u-turn on legislation. I think to have a specified item on course of conduct would help officers and everybody to understand that this is stalking, and what I think I will be recommending is that this becomes the offence'.
5. There was universal agreement that the training needs of criminal justice professionals were inadequate and inconsistent. Victims reported large scale disappointment in the way in which police dealt with their complaints. Those complainants who did have contact with the Crown Prosecution Service felt they were not taken seriously. Of those cases that were proceeded with, few perpetrators received a custodial sentence and in any event the sentence lengths were too short for any form of treatment or other meaningful intervention. Those professionals who had received any training reported that it was for a few hours at most.
6. It was apparent from the evidence that risk assessments in respect of victims were not routinely undertaken. At the same time psychiatric assessments of perpetrators were often not requested by the courts.
7. Witnesses at all five evidential sessions reported that the sentencing guidelines needed revision and brought forth powerful recommendations of how they might be strengthened, thereby making them effective in practice and bringing greater justice for victims. The consensus emerged that the implementation of the 1997 Act by criminal justice professionals had not resulted in good practice in the field.
8. The panel heard substantial evidence from witnesses, including Ann Moulds, about the effectiveness of the Scottish stalking law, which was introduced north of the border in December 2010. Early data supplied by Strathclyde police is persuasive and shows a sharp increase in the number of prosecutions for the offence of stalking. The panel concluded that a modified version of this Act would be beneficial to victims in England, Wales and Northern Ireland. The panel was persuaded that there were substantial benefits from naming stalking as a crime reflected in the experience of Scotland and other overseas jurisdictions. Naming the crime appears to increase public protection from stalking and the confidence of victims. Where stalking is not defined overseas the problem of interpretation incurs.
9. The panel concluded that the 1997 Act in its current guise was not fit for purpose for a number of reasons.
 - (i) **Section 2 of the Act**, the offence of harassment, is only triable in the magistrates court and therefore the police do not have powers to search a perpetrator's home address, which is where much of the evidence will be. Courses of conduct frequently are not taken into account. The index offence

dominates the outcome. The majority of complaints of harassment do not appear to be recorded as crimes by police forces in England and Wales.

- (ii) **Section 4 of the Act**, putting a person in fear of violence, is rarely used. Indeed there have been fewer than a thousand prosecutions for each of the last two years. Of those just 170 received a custodial sentence and only 25 received 12 months or more. The police reported to the inquiry that it was difficult to gather evidence in order to pursue a prosecution.
- (iii) **Section 5 of the Act**, breach of a restraining order. Courts again tended to deal with successive breaches as a fresh incident and did not taken into account previous behaviour. This means patterns of behaviour were missed. Sentences handed down, if custodial, tended to be expressed in days and there was no evidence of perpetrators receiving treatment or participating in programmes; mainly because the period of incarceration was not long enough to enable them to take part and the fact that such programmes do not even exist. In addition, the fact that the starting point for breach is a non custodial sentence is problematic.
- (iv) Overall, victims reported to the inquiry that they were not receiving the support they needed; they had little confidence in the justice process and experienced re-victimisation by the criminal justice system itself. The inquiry found it

unsurprising that on average victim's experienced a hundred incidents of stalking or harassment before they reported it to the police and even then the majority were not recorded as crimes. (Dr Lorraine Sheridan, Heriott Watt University).

- 10. The panel concluded that the Act and current measures within the criminal justice system do not allow for early intervention or prevention. Consequently, in many cases, the offender's behaviour escalates resulting in more serious harm to the victim, including rape, violence and murder at a later stage. The emphasis should be on early identification, intervention and prevention.
- 11. The inquiry noted that research from countries who did not have anti-stalking laws suggests that behaviour escalates into homicide, assault and rape because the behaviour is not recognized and lessons for the need for early intervention, which would have come from training, are not learned from and the crime is not named.
- 12. The inquiry also noted with concern that Home Office research published in 2003 concluded: 'The Act is being used to deal with a variety of behaviour other than stalking including domestic and inter-neighbour disputes and rarely for stalking itself'. Although guidelines have been produced since 2010 for prosecutors and in 2003 for the police the concerns expressed eight years ago are still, in the inquiry's view, valid today.

Appendix (a) DRAFT BILL

Protection from Stalking Bill

A

BILL

To

Make provision for the investigation of alleged crimes of stalking in connection with criminal proceedings in England and Wales, to amend the Bail Act, to provide for risk assessment, training, treatment in appropriate cases and for related purposes.

Be it enacted by the Queen's most Excellent Majesty, by and with advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Harassment

Amendment to the Protection from Harassment Act 1997 Section 2 (2) – delete and replace with “A persons guilty of an offence under this section is liable on summary or indictable conviction to imprisonment for a term not exceeding five years, or a fine not exceeding the statutory maximum”.

2. Offence of stalking

Amendment to the Protection from Harassment Act 1997 Section 4 – delete and replace with:

- (1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).
- (2) For the purposes of subsection (1), A stalks B where—
 - (a) A engages in a course of conduct,
 - (b) subsection (3) or (4) applies, and
 - (c) A's course of conduct causes B to suffer fear, alarm, distress or anxiety.
- (3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear, alarm, distress or anxiety.
- (4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause B to suffer fear, alarm, distress or anxiety.
- (5) It is a defence for a person charged with an offence under this section to show that the course of conduct—
 - (a) was authorised by virtue of any enactment or rule of law,
 - (b) was engaged in for the purpose of preventing or detecting crime,or
 - (c) was, in the particular circumstances, reasonable.

- (6) In this section—
- “conduct” means (*inter alia*) —
- (a) following B or any other person,
 - (b) contacting, or attempting to contact, B or any other person by any means,
 - (c) publishing any statement or other material—
 - (i) relating or purporting to relate to B or to any other person,
 - (ii) purporting to originate from B or from any other person,
 - (d) monitoring the use by B or by any other person of the internet, email or any other form of electronic or other communication, or making improper use of public electronic communications networks or leaving messages of a menacing character,
 - (e) entering any premises,
 - (f) loitering in any place (whether public or private),
 - (g) interfering with any property in the possession of B or of any other person,
 - (h) giving anything to B or to any other person or leaving anything where it may be found by, given to or brought to the attention of B or any other person,
 - (i) watching or spying on B or any other person,
 - (ii) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and
- “course of conduct” involves conduct on at least two occasions.
- (7) For the purposes of this section a person misuses an electronic communications network or electronic communications service or other social media if:
- (a) the effect or likely effect of use of the network or service by A is to cause B, another person, unnecessarily to suffer annoyance, inconvenience or anxiety;
 - (b) A uses the network or service to engage in conduct the effect or likely effect of which is to cause B, another person, unnecessarily to suffer annoyance, inconvenience or anxiety.
- (8) The Secretary of State may by regulation add further forms of conduct to Sub-section 6 above.
- (9) A person convicted of the offence of stalking is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (10) Sub-section (9) applies where, in the trial of a person (“the accused”) charged with the offence of stalking, the jury or, in summary proceedings, the court—
- (a) is not satisfied that the accused committed the offence, but
 - (b) is satisfied that the accused committed an offence under Section 1 above.
- (11) The jury or, as the case may be, the court may acquit the accused of the charge and, instead, find the accused guilty of an offence under Section 1 above.

3. Breach of a Restraining Order

Amendment to Section 5 of the Protection from Harassment Act 1997 – Insert

(7) – Breach of a Restraining Order

There should be a presumption on a court that breach of a restraining order shall result in a custodial sentence.

4. Bail

Amendments to the Bail Act 1976

Section 4 – bail to accused persons and others

(8) A defendant aged 18 or over shall not be granted bail unless there are exceptional circumstances if he or she is accused of a serious sexual offence and any alleged victim is at risk of physical or mental harm.

(9) In considering whether there are exceptional circumstances in any case where a defendant aged 18 or over is accused of a sexual offence the court must take into account any risk of harm, either physically or mentally, to any alleged victim.

(10) If bail is granted in exceptional circumstances to a defendant aged 18 or over and accused of a serious sexual offence the court should impose a condition of no contact with the alleged victim.

Section 7 – liability to arrest for absconding or breaking conditions of bail

(7) If a defendant aged 18 or over is granted bail in exceptional circumstances having been accused of a serious sexual offence and makes contact with the victim or breaches the conditions of their bail in any other way he or she shall be automatically remanded into custody.

5. Sentencing

(1) The court when requesting a presentence report must ask for a social history on the offender from the Probation or other relevant service.

(2) The social history shall take into account any evidence of a course of conduct in respect of the person convicted of stalking or harassment.

6. Provision of Training

(1) It shall be a duty on the Secretary of State for the Home Department to ensure that the police and the Crown Prosecution Service are trained on stalking law and stalking behaviour.

(2) It shall be a duty on the Secretary of State for Justice to ensure that the probation service staff, judges and magistrates are trained on stalking law and stalking behaviour.

7. Risk Assessments

A court shall, unless there are exceptional circumstances undertake a risk assessment on the impact of stalking upon any victim and their children prior to sentencing any person convicted under Sections 1 or 2 of this Act.

8. Psychiatric Assessments

A court shall have the power to order a psychiatric assessment following a finding of guilt under Section 2 of this Act in respect of any individual who is before them.

9. Victim's Advocacy Scheme

(1) The Secretary of State for the Home Department shall establish a victim's advocacy scheme to assist any victim of a stalker in order to signpost and support them through the criminal justice system.

(2) The scheme shall provide guidance to individuals on the workings of the criminal justice system in respect to the provisions of this Act.

(3) The scheme should also provide counselling for victims of stalking and harassment under the provisions of this Act.

10. Suspending parental responsibilities

(1) A judge in the crown court shall have the power to suspend the parental responsibilities of any individual who is convicted of a serious sexual or violent offence against either his children or step-children or the mother of the children.

(2) A judge in the crown court shall have the power to repeal any order to suspend parental responsibilities of any individual who is convicted of a serious sexual or violent offence against either his children or step-children or the mother of the children, if the individual can show beyond reasonable doubt that his behaviour has modified.

11. Monitoring and Disclosure

(1) The Secretary of State for the Home Department shall have a responsibility to ensure that each police force in England and Wales is able to monitor the behaviour of serial stalkers through the use of the police national database.

(2) The Secretary of State for the Home Department shall ensure that all police forces in England and Wales and the Crown Prosecution Service obtain all information about stalking and harassment related crimes in the event of a person being charged under the provisions of this Act and shall make that information available to courts should that person be the subject of a relevant subsequent charge.

(3) The police in England and Wales shall have a responsibility to disclose information about an individual who has been convicted and where intelligence exists of such behaviour under the provisions of this Act to any man or woman who is known to be contemplating entering into a relationship with that person.

12. Compensation Orders

(1) A court shall not issue a compensation order in respect of a person convicted under the provisions of this Act unless the victim so consents.

(2) Any compensation ordered in respect of this Act shall be paid by the perpetrator into a designated victims' fund.

(3) Any victim of a person convicted of an offence of stalking or harassment under the provisions of this Act shall have the power to apply for compensation from the designated victims' fund.

(4) The Secretary of State shall by regulation issue guidance on appropriate payments to victims of stalking and harassment from the designated victims' fund.

13. Electronic Technology

(1) The Secretary of State shall have responsibility to negotiate a code of conduct in respect of stalking behaviour with social media providers and other relevant corporations.

(2) There shall be a duty on all social media providers and other relevant corporations to cooperate with the police during any investigation by the police into the provisions of this Act. Failure of any social media provider or other relevant corporation to do so shall render them liable to an unlimited fine.

(3) The court shall have the power to place a restriction order for up to five years on any individual convicted under the provisions of this section or Section 2 of this Act in his or her use of social media and other electronic activities if in all the circumstances it is justifiable.

14. Victim's Rights

(1) The Secretary of State shall have a responsibility to publish a Victims' Bill of Rights in respect of stalking and harassment behaviour.

(2) A victim shall have the right to present a victim impact statement to any relevant Parole Board hearing and this information may be presented in writing.

15. Treatment

(1) A court may make a community treatment order in respect of an individual convicted under the provisions of this Act, providing such treatment is available.

(2) A community treatment order made under the provisions of this Act may last for up to two years.

- (3) If without reasonable excuse a person made the subject of a community treatment order fails to comply with the conditions of that order they will be the subject of breach proceedings.
- (4) If a person made the subject of a community treatment order under the provisions of this Act is found to be in breach of that order they shall be liable on conviction or indictment to imprisonment not exceeding five years or a fine or both, or on summary conviction to imprisonment for a period not exceeding 12 months or a fine not exceeding the statutory maximum or both.
- (5) When a court passes a sentence of imprisonment under the provisions of this Act above it may attach a condition of attendance on a relevant treatment programme.
- (6) The Secretary of State shall ensure that treatment is available as appropriate in both a community and custodial setting.

16. Education

- (1) It shall be the duty of the Secretary of State for Education to ensure that domestic violence and stalking awareness programmes are developed for persons under the age of 18 in schools

17. Going Equipped

- (1) It shall be an offence if a person is found in possession of equipment of any kind which would aid the kidnapping, abduction or causing of physical harm to any other individual.
- (2) It shall be an offence if a person is found in possession of equipment that would put a reasonable person in fear of violence.
- (3) It shall be an offence if a person is found in possession of equipment that is likely to cause fear or alarm to any reasonable person if that person believes themselves to be also the victim of harassment or stalking behaviour.
- (4) A person convicted of an offence under this section is liable
 - (a) on indictment to imprisonment for a term not exceeding five years, or a fine not exceeding the statutory maximum or to both;
 - (b) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum or to both.

18. Annual Report

- (1) It shall the duty of the Secretary of State to lay before parliament an annual report on the effect of the sections contained within the Act on victims of stalking and harassment at the end of each financial year.
- (2) The Secretary of State must lay a copy of the annual report before each House of Parliament.

19. Extent

- (1) This Act extends to England, Wales and Northern Ireland.
- (2) The provisions of this Act shall also extend to the Isle of Man and any of the Channel Islands.

20. Commencement

This Act shall come into force on such a day as the Secretary of State may by statutory instrument appoint and different days may be appointed for different provisions or for different purposes

21. Short title

This Act may be cited as the Protection from Stalking Act 2012.

Appendix (b) EXPLANATORY NOTE

These notes refer to the Protection from Stalking Bill

PROTECTION FROM STALKING BILL

EXPLANATORY NOTES

INTRODUCTION

These explanatory notes relate to the Protection from Stalking Bill. Their purpose is to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not require any explanation or comment, none is given.

Background and summary

Background

1. This Bill has been drafted following the publication of the findings and recommendations of the Independent Parliamentary Inquiry into Stalking Law Reform in February 2012. The inquiry was convened in July 2011 by Elfyn Llwyd MP, Chair of the Cross Party Justice Unions' Parliamentary Group. In the inquiry itself was commissioned by the Justice Unions' Parliamentary Group and had the active support and advice of Protection Against Stalking and Napo the Probation and Family Court Trade Union.

Summary

2. The inquiry concluded that existing legislative powers on stalking and harassment were not sufficient to properly prosecute stalking perpetrators, that victim support was inadequate, that there was an overwhelming need for the training of professionals to be improved, for risk assessments to be carried out in respect of victims and similarly for psychiatric assessment and treatment to be available for perpetrators. This Bill reflects the findings of the inquiry.

Section 1 – Harassment

3. This section amends Section 2 of the 1997 Protection from Harassment Act to allow for serious crimes to be referred to the crown court. Currently harassment charges can only be heard in the magistrates' court, where the maximum penalty is six months; in the crown court it would be five years.

Much evidence to the inquiry suggested that prosecutions under this Section rarely resulted in a finding of guilt and a custodial sentence was used sparingly. Trying this matter either way would be a symbol to the judiciary that harassment of a victim can be a very serious matter.

Section 2 – Offence of Stalking

4. This section specifically names an offence of stalking with on conviction on indictment a penalty of up to five years in prison or a fine up to the statutory maximum or both.

5. Sub-section (2) states that if a person engages in a course of conduct which causes another to suffer fear, alarm, distress or anxiety then they have committed an offence.

6. Sub-section (3) states that a person has committed an offence if they intended to cause fear, alarm, distress or anxiety. In other words the stalker has been engaged in a course of conduct (that is repetitive behaviour) against the victim and that person is made fearful, alarmed, distressed or made anxious by that course of conduct. The threat to the individual can therefore be either mental and/or physical.

7. A prosecution can also be taken under Sub-section (4) if the stalker is ought to have known that their behaviour was likely to cause fear, alarm, distress or anxiety; for example threats to harm a person.

8. Sub-section (5) states that the only defence for the alleged stalker would be that the course of conduct was lawful, was necessary to detect a crime or in all circumstances was deemed reasonable.

9. Sub-section (6) defines, as in Scottish legislation, a list of what, amongst other things, can constitute a course of stalking conduct. Activities include: following a person; contacting or attempting to contact that person; making public statements about them; monitoring them electronically, for example through social media; entering premises; loitering near the person; interfering with their property; leaving anything near or on their property; and watching and spying on them. A course of conduct is defined as two or more occasions.

10. Sub-section (7) defines misuse of electronic devices by stating that it is illegal if the use of those devices amounts to a course of conduct which causes annoyance, inconvenience or anxiety or is likely to cause annoyance, inconvenience or anxiety to the victim.

11. Sub-section (8) allows the Secretary of State to add by regulation any new matter which might be part of a course of conduct; for example any developments in the future in electronic communication or the social media.

Section 3 – Breach of a Restraining Order

12. Currently the threshold for sentencing an individual convicted of breach of a restraining under the Protection from Harassment Act 1997 is a non-custodial penalty. However much evidence was given to the inquiry of individuals breaching restraining orders on numerous occasions but that course of conduct was not taken into account when sentencing for the new index offence. Making a presumption that the starting point for a sentence for breach is custody would allow the court to take into account the conduct with the direction of sentencing thereafter being dependent on aggravating and mitigating factors.

Section 4 – Bail

13. This section amends the Bail Act 1976 so that a remand in custody becomes the norm if a person is charged with a violent or sexual offence. In considering whether this applies the court shall have reference to a risk assessment in respect of the victim, particularly in terms of physical or mental harm. However bail could be granted if there were exceptional circumstances, although normally there would still be a condition of no contact with the alleged victim. This consideration follows a recent high profile case where an alleged perpetrator of serious sexual offences was bailed and then was subsequently convicted whilst on bail of murdering his victim. This section would mean that bail would not be possible in these circumstances in the future. In addition, if any individual failed to follow the no contact condition it would result in automatic remand into custody.

Section 5 – Sentencing

14. The inquiry was told that currently probation and other staff do not routinely include social histories or details of courses of conduct from the past in any pre-sentence report. This may be because of cost but more probably because of the increasing use of time saving Fast Delivery Reports, which are normally written on the day of sentence, and where the probation officer or other report writer has little

time to research the defendant's history. Often therefore a course of conduct, which could be argued is an aggravating factor, is not available to the courts. This affects sentencing outcomes and can also have an impact on the relative safety of the victim. The court may, on receiving evidence of a course of conduct, wish to take further advice from a psychiatrist or psychologist on the risk from the perpetrator to current or future victims.

Section 6 – Provision of Training

15. Sub-section (1) and 6 (2) place a duty on the Secretary of States for the Home Department and Justice to ensure that the police, the crown prosecutors, probation staff, judges and magistrates are trained on stalking law and stalking behaviour. Evidence to the inquiry suggested that the amount of training the criminal justice professionals have on stalking and harassment is at best minimal. Often staff have no training at all and are therefore missing stalking behaviour and courses of conduct and that behaviour escalating to more serious offences. A duty is therefore placed on Ministers to ensure that staff are properly trained. Currently training is inconsistent although there are pockets of good practice. This section would ensure that individuals were available in all police forces, prosecution offices, courts and probation locations who had knowledge of stalking behaviour and were able to advise colleagues accordingly.

Section 7 – Risk Assessments

16. Currently it is rare for a court to obtain a risk assessment in respect of the impact of stalking behaviour on a victim. Where such assessments are available they do have an influence on sentencing outcome. Victims are frequently extremely traumatised, distressed and often terrified of individuals engaged in stalking behaviour. It is important that courts have this information available as it will have an impact on sentencing outcomes.

Section 8 – Psychiatric Assessments

17. The inquiry heard that often psychiatric assessments are recommended in respect of perpetrators but either they are too expensive or the courts turn the request down. However, there is ample evidence that many, particularly men, exhibiting stalking behaviour have mental health issues. In the vast majority of cases, according to evidence heard by the Inquiry, these issues are not properly addressed prior to the sentencing process. It may be that treatment within an NHS setting is a far more appropriate outcome than a short custodial sentence, where no such treatment is available.

Section 9 – Victim's Advocacy Scheme

18. The inquiry heard from all the victims giving evidence of their lack of confidence in the criminal justice system. The victims felt isolated, believed that no one was available to explain to them the technicalities of the criminal justice system or to offer them support when they felt fearful or traumatised. Often stalking behaviour can last for years and have an extremely debilitating effect on a victim's self-esteem and confidence. Some victims giving evidence had experienced mental breakdown and other stress related illnesses. The existence of a Victim's Advocacy Scheme, similar to domestic violence advocacy schemes, could offer the victims the support they need through the arduous process of the criminal justice system.

Section 10 – Suspending Parental Responsibilities

19. The inquiry heard harrowing evidence from Protection Against Stalking and Napo the Probation and Family Court Trade Union of individuals convicted of extremely serious offence against children or homicide subsequently applying for contact with the children they had harmed or whose mother they had murdered, through the family courts. In most instances the serving prisoners received legal aid; the victims in contrast had to pay for their own lawyers. In virtually all the cases the inquiry heard the applications were a means by which the perpetrator could carry on stalking or harassing their victim. It seems that the instances were not rare. The suspension of legal aid under the Legal Aid, Sentencing and Punishment of Offenders Bill will if enacted prevent the prisoners receiving funds. However, they will still be able to

apply to the family courts as litigants in person and continue to cause damage to their victim. This section would give power to crown court judges to suspend parental responsibilities for a specified period of time if they felt it was in the interest of the victim and the victim's children to do so. This section also gives power to a judge to subsequently remove the restriction if the perpetrator can show they are now a fit person to have contact with the child(ren).

Section 11 – Monitoring and Disclosure

20. Under this section the police are given powers to ensure the behaviour of serial stalkers is stored on the police national database. It also places a duty on the police and prosecution service to ensure that all historical information about those involved in stalking and harassment crimes is made available to the courts should that person appear on a subsequent relevant charge. In addition the power is also given to the police to disclose information about an individual, where such intelligence exists, about stalking, harassment and domestic violence to any individual who requests that information, if they can show they are possibly entering into a relationship with a named individual. This section would ensure that relevant intelligence about individuals nationally across all police forces and prosecution offices in England and Wales was filed and disclosed where appropriate.

Section 12 – Compensation Orders

21. A number of victims giving evidence to the inquiry complained that compensation orders in respect of their stalkers were made without their consent. This section will ensure that that consent will have to be given, but also gives the power to the Secretary of State to establish a specific victims' fund into which could be paid orders made against convicted stalkers and harassers and enables victims to apply independently and confidentially for monies from that fund. Regulations are also made by the Secretary of State to determine appropriate levels of such payments.

Section 13 – Electronic Technology

22. The inquiry was told repeatedly how social media and electronic developments were changing rapidly and that the law was lagging behind. The inquiry was told that the most effective way of trying to regulate inappropriate use of the social media by stalkers and others was to negotiate a code of conduct with the social media providers. This section places a duty on the Secretary of State to do so. There is also a duty in this section on all social media providers and other relevant electronic corporations to cooperate with the police during any individual investigation into stalking or harassment by electronic means. Failure to do so would render the provider liable to an unlimited fine. Courts are also given the power to place a restriction order on any individual convicted under the provisions of this section or Section 2 to limit their use of social media and other electronic activities for a specified period of time.

Section 14 – Victims' Rights

23. The inquiry heard repeatedly from victims and the Victim's Commissioner that perpetrators have rights and victims have codes and charters. This section places a firm responsibility on the Secretary of State to publish a Victim's Bill of Rights in respect of stalking and harassment behaviour. It also additionally gives the victim the right to present a victim impact statement to any relevant Parole Board hearing and have this information presented in writing. This is included because many victims expressed alarm about giving verbal evidence to a Parole Board or were of the view that their victim impact statements were not be presented to the Parole Board.

Section 15 – Treatment

24. This section places a duty of the Ministry of Justice to ensure that community and custodial treatment programmes are available. A duty is therefore placed on the Secretary of State to ensure that such programmes are developed in the future. Under normal circumstances the order in the community would last for up to two years. A person failing to comply with the conditions would be liable to breach and a period in custody.

Section 16 – Education

25. This section places a duty on the Secretary of State to ensure that provision is made in schools so that pupils are aware on the impact of stalking and domestic violence behaviour. This is in line with the government's policy on Bullying and Violence against Women and Girls.

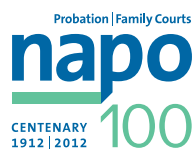
Section 17 – Going Equipped

26. Currently for an individual to be found in possession of equipment which may arguably be used to aid kidnapping, abduction, cause physical harm to or stalk a victim is not a criminal offence. A person can only be arrested if they are equipped for example to commit burglary. Police feel hampered because it is not possible for them to charge somebody with possessing materials which may aid stalking, kidnapping or worse; for example rope, balaclavas, chloroform and related equipment. The only power that exists is to charge someone with possible conspiracy but that would only apply if there were at least two persons involved. The police feel restricted in that they cannot charge someone with intent to cause harm. This section gives the power to the police to question and possibly charge someone found in possession of equipment which may be used to aid kidnapping, abduction, cause physical harm or stalking behaviour.

Section 18 – Annual Report

27. This section places a duty on the Secretary of State to produce an annual report on what progress has been made in for example the Victim's Advocacy Scheme, rolling out training programmes nationally, in developing treatment programmes, the prevalence of risk assessments in respect of victims, prosecutions, outcomes and other related matters.

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