



Response to Committee for Justice - Protection from Stalking Bill Call for Evidence

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Prepared by

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Cara Friend is a registered charity (CR55118) and a  
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We give full and informed consent to the disclosure internally and to the general public of  
this consultation response in full.

## Introduction

HERe NI (previously LASI), established in 2000, is a regional organisation that works across all areas of Northern Ireland (NI) and the boarder counties to support lesbian and bisexual (LB) women and their families. We advocate for and support LB women and their families and improve the lives of LB women across Northern Ireland. We do this in lots of different ways; through providing information; peer support; facilitating training; lobbying government and agencies on LB women's issues; offering a community space for meeting and much more. HERe NI is the only women focused organisation within the NI LGBTQ+ sector.

Cara-Friend has been serving the LGBTQ+ community in Northern Ireland for over 40 years founded in 1974, we work with young LGBTQ+ people aged 12–25. We provide regional LGBTQ+ youth groups across Northern Ireland, one-to-one support for individuals, LGBTQ+ awareness training for professionals and volunteers working in a variety of different areas, community development, the LGBT Switchboard, the LGBTQ+ Inclusive Schools Programme and the Domestic and Sexual Violence project, supporting LBTI women and girls across the region.

The Gendered Violence project is a joint project between Cara Friend and HERe NI and it is aimed at LGBTQ+ women and girls aged 12 years+ who are at risk of domestic and sexual violence or abuse. The Gendered Violence Worker offers training to professionals who work with women and girls who may be at risk of domestic and sexual violence and abuse to highlight the issues that are specific to the LGBTQ+ community. The Gendered Violence Worker also supports LGBTQ+ victims of abuse with one to one support, mindfulness and meditation along with personal development activities.

Within our Gendered Violence Project we have supported women and girls who have experienced stalking and harassment. This includes practical guidance such as encouraging them to turn off location services on any mobile applications, and support through the reporting process. We are aware of the complex link between stalking and other forms of domestic abuse and violence, having supported women whose former partners went to great lengths to monitor their behaviour including tracking their children's mobile phones and online stalking.

Protection from stalking is a human rights issue. Stalking can cause a victim to live in constant fear, as well as interfering with their right to work, education, and private and family life<sup>1</sup>.

Stalking is a serious offence in itself, but often includes other crimes such criminal damage and physical violence<sup>2</sup>. There is also a correlation between stalking and homicide<sup>3</sup>. It is important that the Justice Department produces a robust Stalking legislation, and that this is backed up by adequate resources and training for criminal justice and support services, and a public awareness campaign inclusive of LGBTQ+ people. The definition of stalking should be broad and non-exhaustive to include cyberstalking and online harassment. As technology evolves additional protections may be needed, the legislation should include a mandatory review to allow for any changes needed; for example the use of drones in stalking is a growing problem.

This consultation response is the result of our experience as providers of specialist support services, engagement with service users, review of national and international legislation and

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<sup>1</sup> Parliamentary Office of Science and Technology, 'Stalking and harassment - No. 592' (December 2018); Suzy Lamplugh Trust, 'Restoring the balance' (2015), p.10.

<sup>2</sup> Justice Unions' Parliamentary Group, 'Independent Parliamentary Inquiry into Stalking Law Reform: Main findings and recommendations' (February 2012).

<sup>3</sup> Monckton-Smith, Jane and Szymanska, Karolina and Haile, Sue, 'Exploring the relationship between stalking and homicide,' (2017).

best practise, and engagement with our colleagues in the community and voluntary sector who are experts in various areas, in particular colleagues in the Women's Policy Group and Women's Aid Federation NI.

### Stalking in the LGBTQ+ community

Stalking can form part of a pattern of domestic abuse, harassment, hate crime, sexual violence or a mixture of these categories. Stalking can take place online as well as in physical spaces, including the home, workplace, and social locations.

In the past number of years from 2013/14 to 2017/18, the number of homophobic and transphobic hate crimes in England and Wales has doubled from 4600 to 11,600. These crimes include stalking, harassment and violent assault in the LGBTQ+ community<sup>4</sup>. While there is a lack of published figures for Northern Ireland (NI), our professional experience suggests an increase locally. Stalking may also be recorded as a hate crime. This lack of disaggregated monitoring and recording means we do not know how many LGBTQ+ people have reported stalking, as well as the unknown levels of unreported experiences.

In several countries, including the UK, the US and Canada, studies have shown that bisexual women are the most vulnerable to rape, sexual assault, domestic violence and stalking<sup>5</sup>. A 2010-2012 study in the U.S. found that bisexual women experienced stalking at higher levels than any other group<sup>6</sup>, and a more recent study from 2019 found that disproportionately high levels of bisexual women experienced stalking or other crime carried out by an intimate partner 'Over their lifetimes, 61% of bisexual women reported being raped, assaulted or stalked by an intimate partner, compared to 44% of lesbian women and 35% of heterosexual women.'<sup>7</sup>

### Barriers to support

One significant barrier for LGBTQ+ women, along with other victims, is not recognising that they are experiencing stalking due to a lack of education on healthy relationships. The majority of campaigns are centred around heterosexual, white cis gendered (those who identify with the gender they were assigned at birth) people and rarely if ever show the diversity of our society. Often there is an assumption that if you are a woman, your partner will be a man. With the default of heteronormativity, quite often individuals within the LGBTQ+ community become invisible. This invisibility leads to a lack of awareness that stalking and domestic abuse can happen in same-sex relationships. Therefore it is important that the wording of any legislation recognises the multitude of relationships stalking can occur in, including LGBTQ+ relationships. Visibility is important for those from minority communities as it can lead to a shift in the social consciousness towards inclusion of diverse experiences.<sup>8</sup>

There are concerns around reporting stalking linked to a perceived fear of homophobia from professionals such as the PSNI, Domestic Violence support workers, and Doctors and others. Considering reporting stalking or accessing support, the first barrier an individual has

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<sup>4</sup> Marsh, S., Mohdin, A, and McIntyre, N. (2019) 'Homophobic and transphobic hate crimes surge in England and Wales', *The Guardian*, 14th June.

<sup>5</sup> <https://www.independent.co.uk/voices/bisexual-lgbt-pride-sexual-assault-violence-invisible-minority-survivors-a8435226.html>

<sup>6</sup> Chen J, Walters ML, Gilbert LK, Patel N. Sexual Violence, Stalking, and Intimate Partner Violence by Sexual Orientation, United States. *Psychol Violence*. 2020 Jan;10(1):110-119.

<sup>7</sup> Addington, L (2019) <https://genderpolicyreport.umn.edu/bisexual-women-and-intimate-partner-violence/>

<sup>8</sup> O'Brien, J. (2017) 'Why Visibility Matters: The impact of the rise of LGBTQ+ representation in the media.', *Psychology Today*, (), pp.

[Online]. Available at: <https://www.psychologytoday.com/us/blog/all-things-lgbtq/201711/why-visibility-matters> (Accessed: 15th March 2021).

to face is having to disclose their sexual orientation or gender identity to someone from a mainstream organisation. Disclosure or coming out is seen as a onetime phenomenon, however, for LGBTQ+ people, coming out can happen as often as multiple times in a single day. This can be very difficult as the factors that need to be considered before you disclose sexual orientation or gender identity are quite complex including whether it is safe to disclose, and if there are any potential negative consequences. These consequences may be perceived rather than actual, but this does not make the fear any less real. Past experience of homophobia biphobia and transphobia along with inadequate knowledge on the LGBTQ+ community and how to provide best services to those from the LGBTQ+ community cited as reasons to expect a negative reception from service providers.<sup>9</sup>

In too many instances, the fear of homophobia or transphobia from service providers is borne out. A national survey on accessing healthcare found that 16% of Survey respondents who accessed or tried to access public health services had a negative experience because of sexual orientation and 38% had a negative experience because of their gender identity<sup>10</sup>. Likewise in educational settings, many LGBTQ+ young people reported a negative experience with reasons given for non-reporting including that they considered incidents to be too minor or something that is a regular occurrence.<sup>11</sup>

We would note that LGBTGQ+ women may experience multiple marginalisations, for example if they are disabled or from an ethnic minority, which can present additional barriers to seeking support such as accessibility and a fear of racism.

We recommend the Justice Committee consider the recent research conducted by the Welsh Government which highlights a number of barriers in detail<sup>12</sup>. These include a lack of LGBTQ+ specific services, and a lack of understanding by professionals that stalking can occur between same sex people.

### LGBTQ+ specific support

In service provision, quite often the LGBTQ+ community is overlooked because it is invisible due to the default of heteronormativity (the assumption of heterosexuality). As well as mainstream provision, there should be LGBTQ+ specific services for people who have been stalked.

Mainstream services should be explicitly inclusive in their resources and awareness campaigns that they are inclusive of LGBTQ+ people. Service providers should also be adequately trained to support LGBTQ+ people.

Access to LGBTQ+ specific support is very limited. It is rare to find specific support for issues like stalking in the LGBTQ+ sector and where there are supports in place, the organisations are funded by grant making organisations and are usually funded for between one and three years. This is not sustainable and sustainable long-term funding needs to be put in place to ensure the best possible support for minority groups.

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<sup>9</sup> Harvey, S., Mitchell, M., Keeble, J., McNaughton Nicholls, C. and Rahim, N. (2014) Barriers faced by Lesbian, Gay, Bisexual and Transgender People in Accessing Domestic Abuse, Stalking, Harassment and Sexual Violence Services. Cardiff: Welsh Government.

<sup>10</sup> NIESR (2016), 'Inequality among lesbian, gay bisexual and transgender groups in the UK July 2016'

<sup>11</sup> Bradlow, J., Bartram, F. and Guasp, A. (2017) SCHOOL REPORT: The experiences of lesbian, gay, bi and trans young people in Britain's schools in 2017, Cambridge : University of Cambridge .

<sup>12</sup> <https://gov.wales/sites/default/files/statistics-and-research/2019-07/140604-barriers-faced-lgbt-accessing-domestic-abuse-services-en.pdf> Barriers Faced by Lesbian, Gay, Bisexual and Transgender People in Accessing Domestic Abuse, Stalking and Harassment, and Sexual Violence Services

## Best practice

Even when LGBTQ+ people do report domestic violence, there is a lack of adequate recording, often making the LGBTQ+ community a hidden population in this area. We recommend that all section 75 groups should be monitored inclusive of sexual orientation and gender identity. If monitoring sexual orientation and gender identity is standard procedure, this will remove the onus on the individual to 'come out' in an environment they are not sure will be welcoming. Everyone has a sexual orientation and gender identity and we need to stop othering those who are not heterosexual and/or cis gender (their gender matches that assigned at birth).

Policies and procedures should be co-designed with representatives of section 75 groups as specialists and experts to ensure there are no oversights – for example, even when recorded, bisexual people are often mis-recorded based on the gender of their current partner. To date there has been very little acknowledgement in policy/legislation of LGBTQ+ people who experience stalking.

There must be mandatory training on best practice such as using gender neutral pronouns and sexual orientation awareness. There should be LGBTQ+ Domestic Violence Liaison Police Officers and specialist Independent Domestic Violence Advocates. We recommend the Department considers this guide for service providers from Galop.<sup>13</sup>

## Clause by Clause Comments on the Protection from Stalking Bill

### *Protection from Stalking:*

#### Clause 1. Offence of Stalking (definition)

There is no definition of stalking within the proposed Bill – it instead looks at the associated behaviours and lists these behaviours, this is fluid then as these behaviours change so frequently and abusers move quickly to be able to think of new tactics including the use of technology which is a huge issue. This is welcome as developments in technology may result in an exhaustive list becoming outdated. Cyberstalking needs to be covered adequately in this Bill. There should be flexibility for the Police, CPS, and judiciary to consider whether behaviour constitutes stalking on a case by case basis.

#### Clause 2. Offence of threatening or abusive behaviour Agree

#### Clause 3. Special measures directions

Special Measures directions, should be available for all victims of stalking as a crime. As with all special measure provisions available within the court settings in NI, they need to be adequately resourced.

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legislation's inclusion and a commitment to make legislative changes to provide automatic eligibility for special measures in cases of stalking.

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<sup>13</sup> <http://www.galop.org.uk/wp-content/uploads/For-Service-Providers-Barriers.pdf>

#### Clause 4. Alternative to the conviction of the domestic abuse offence

If used as an alternative to a conviction of domestic abuse it must not create a hierarchy of offences.

#### Clause 5. No right to claim trial by jury

There is no right for those accused of threatening and abusive behaviour before a Magistrate's Court to elect to go to trial at the Crown Court. As any new legislation is rolled out there should be mandatory training for Judges together with PPS, Police and other legal professionals.

#### *Stalking Protection Orders (SPOs)*

#### Clause 6. Meaning of act associated with stalking and risk associated with stalking

We welcome the introduction of SPOs, this work should be adequately resourced.

#### Clause 7. Applications for orders

We believe that giving the police the powers to apply for the SPO on behalf of victims would help to both protect the victim, but also strengthen options available for legal remedies and protection from the police, while tackling the impact of the stalking.

This does however highlight the need for training for the police and judiciary so that stalking can be identified earlier so that SPO's can be effective. It is also essential that the views of victims are sought and taken into account before any application for an SPO, with the option for the victim to be represented within any proceedings. We would think it is best practice for the victim/survivor's consent to be obtained and only in certain exceptions would this be pursued without consent, of course depending on risk to life etc.

#### Clause 8. Power to make orders

Requirements including Stalking Behaviour or Domestic Abuse Behaviour Management Programmes would again involve a lot of resources and implementation of services within all areas across NI which is currently not available. Any programme must be adequately resourced.

It should be possible to impose prohibitions on the subject of the order to prevent them from contacting or approaching the person at risk, or prohibiting them from entering other specified locations in order to prevent approaching the victim/survivor at locations where they frequent as outlined below.

Other prohibitions could include:

- removal of keys to the victim's home
- prohibition on the perpetrator from returning to, approaching or entering the home
- prohibition from contacting/approaching the victim and children via text, phone or electronic means
- prohibition against damaging the property or evicting or excluding the victim from the

home

- prohibition from approaching and entering women's workplace, children's school, college, university, gym, nursery, LGBTQ+ social spaces etc.

#### Clause 9. Duration of orders

We would support a renewal of an SPO, if granted when required and were considered proportionately. This should include the completion of a further risk assessment to identify any other incidents of stalking and the risk posed to that individual by the accused. This assessment should be trauma informed, robust and effective in identifying high risk indicators and also taking into account safeguarding issues and offer continued protection.

#### Clause 10. Variations, discharges and renewals

The proposed Bill should give powers to the police to request to vary, renew or discharge an order. This would allow the police and the court to take into consideration any new evidence that had come to light about the alleged stalking behaviour.

#### Clause 11. Interim Stalking Protection Orders

We welcome the emergency protection of an Interim Stalking Protection Order in order to protect and prevent risk. This is important that the interim SPOs are available quickly to ensure that there are no gaps in a victim's protection.

#### Clause 12. Content of, and procedure for, orders

There is a concern with regard to the criminalisation of under 18 years olds in relation to this clause. Anyone under 18 years old should be dealt with in a Youth Court setting, but we do not believe an SPO is appropriate for a child and that giving someone under 16 years old a SPO risks criminalising children unnecessarily. We would advocate for the urgent implementation of a standardised RSE curriculum across every school in NI.

#### Clause 13. Offence of breaching order

There are many issues in relation to current breaches of Non-Molestation Orders within NI and not being taken seriously by the police when reported. These issues need to be addressed before implementation of a new Order to make sure breaches are dealt with seriously.

The breach of an SPO should be a criminal offence. The maximum sentence should be 12 months on summary conviction in Magistrates Court, rather 6 months to bring our law into line with that in England and Wales. Victims in Northern Ireland consistently have less protections than their counterparts in England and Wales and we do not believe this should be the case.

Breach of an SPO should be considered an aggravation of any offence perpetrated while the SPO is in place, so any stalking, threatening behaviour putting someone in fear etc.

#### - Clause 14. Notification Requirements

The proposed Bill should contain provisions requiring the subject of an SPO to notify the police the following:

- Their name and other names they would be known as
- Current address and last address if less than 3 months
- Are they currently in a relationship and if so name of person?
- Any children/others living in the property
- Any addictions
- Any other issues including poor mental health.

This would ensure that a stalker couldn't continue to stalk a victim by using a different name or by changing their address so that they can't be found by the police. A failure to notify should be a breach of the SPO.

- Clause 15. Method of notification and related matters

The method of notification is paramount, and we would take guidance from the amendments made through the Stalking Protection Act 2019, Section 10.

- Clause 16. Offences relating to notification

We believe that within this clause it provides that it is a criminal offence to fail to comply with the notification requirements without reasonable excuse to provide police with false information should carry a maximum penalty of 12 months imprisonment and not 6 months.

- Clause 17. Guidance

Guidance should be established by the Department of Justice for information with regard to this Bill in conjunction with voluntary and statutory partners, including the organisations involved in the Women's Policy Group joint response, and would like to see clarity in relation to this and assurances that we will be involved in this process.

There is a significant amount of work needed to raise awareness in the public domain together with police, judiciary, PPS and all legal professionals.

- Clause 18. Interpretation No comments.

- Clause 19. Commencement No comments.

- Clause 20. Short Title - This Act may be cited as the Protection from Stalking Act (Northern Ireland) 2021.

No comments.