

Parenting NI response to the Protection from Stalking Act (Northern Ireland) 2021 consultation –

Broadly speaking, Parenting NI strongly welcomes the Protection from Stalking Act (Northern Ireland) 2021. This bill, whose protections are long overdue in many circumstances, is a welcome development in the protection of individuals. Parenting NI has had the unfortunate experience of supporting many parents who were affected by stalking, and we feel that this bill will go some way to alleviating the suffering of those parents.

We also welcome the clarity of the bill. Stalking can be a complex and difficult to define act, precisely because it is often an individual experience. What one individual would consider normal or even welcome behaviour is often threatening or frightening for another person. Therefore, we support the passage of this bill.

However, in our experience there are some individuals that are at risk of having this law used maliciously against them. Parenting NI recognises that this is an extremely difficult situation – almost all genuine perpetrators of stalking or harassment offences will inevitably argue that, as laid out in 1:(5)(C) their course of conduct was ‘reasonable in the particular circumstances’. Parenting NI has faith in the judicial and legal system to separate authentic reasonable action from stalking and harassment in most circumstances.

One area where Parenting NI would like to raise particular concern – and ask that the committee and the department give special consideration is around non-resident parents. The Gillen review of the family court system exposed serious concerns about the current judicial and legal systems capacity to deal with issues surrounding particularly acrimonious parental separations. Often, these most serious of relationship breakdowns end up before a judge and do not result in the best interests of the child (or their parents) being met. Instead, the court often is slow or unwieldy in attempting to plot a course through the animosity between the two parents/ex-partners. This leads to negative outcomes for both the child and the parents.

Given that this is the case under current circumstances, it is with great regret that Parenting NI would raise the unpalatable potential for this bill to be abused by malicious resident parents against non-resident parents. Anecdotal evidence from the non-resident parents we support already suggests that such individuals often misuse existing methods (such as non-molestation orders) to put temporary blockages on visitation between children and their non-resident parent. This is often part of what is often termed ‘parental alienation’ or the intentional damaging by one parent of the relationship between a child and the other parent.

As previously mentioned – Parenting NI recognises that there is no simple or easy solution to this issue. We are fully aware that stalking or harassment perpetrators will attempt misuse contact with children as a method to harass ex-partners. Equally, we are aware that many perpetrators are ex-partners of their victims. Parenting NI would not seek to reduce the security of safety for victims that will be provided by the bill. Instead, we simply ask that the committee and department give consideration to mechanisms that would curtail the misuse of its provisions to prevent access to children by a non-resident parent. In particular, 1:(7)(B) we feel is a particularly open to interpretations that could result in malicious misuse of the bill.

This is a serious issue for parents, as there are few if any useful legal remedies to a parent misusing the legal system to reduce or remove contact from a non-resident parent. Often, judges have two options – fine/imprison the resident parent or do nothing. Neither is likely to be in the best interest of the child, and neither serve as an effective deterrent given the extreme unlikelihood of imprisonment. Again, this assertion is supported in the findings of the Gillen review.

In terms of how best to address this, Parenting NI would like either the bill itself or the guidance issued with it to include specific considerations when an interim stalking order is being imposed. These should consider any children involved in the case and give legal requirement to act in a way that supports their best interests (which will often mean continued contact with both parties). We recognise that this creates an uncomfortable situation for the applicant – who is seeking a total cessation of contact with the person the order is issued against. Parenting NI would suggest that as an interim consideration, a third party (either statutory, such as the police or social services) or registered third sector organisation be engaged to facilitate contact between the child and their parent without necessitating any contact between the victim and potential perpetrator.

Once a full stalking order has been issued the facts of the case will inevitably be clearer. Parenting NI recognises that the committee and department cannot create a situation where a stalking or harassment perpetrator is able to use access to a child as a ‘wedge’ to get around a stalking order. We ask therefore that the bill also consider parental access requirements in all orders as a legal duty. It should not be the case that a person cannot have any access to their child if they do not present a danger to the child – even if they cannot have any access to the other parent. It is important that the legal system recognises that while no individual has the right to harass or stalk another person, being convicted or doing so does not immediately also revoke their rights to access to their children as parents.

For the sake of clarity, Parenting NI would again state the following:

- We support this bill, and recognise it is a necessary step to protecting individuals;
- We accept that many of the individuals who will eventually be convicted of a stalking offence will face consequences and that these may include reduced contact with children;
- We do not feel that, until such time that an individual is convicted of a crime, it is in the best interests of the child of that person to have contact cut-off;
- This bill, as currently written could be misused by vindictive individuals;
- There must be a balance between keeping the victim of stalking safe and the right of all children to have access to their parent (unless it is not their other best interests).