



Response to

Justice Committee NI

Stalking Bill – Call for Written Evidence

16th April 2021

Introduction

Victim Support NI welcomes the introduction of a stalking offence in Northern Ireland. Stalking is a serious crime with an associated high risk of serious harm to victims.

As an independent charity for all victims of crime in Northern Ireland, Victim Support NI provides support to victims of stalking in the immediate aftermath of an incident being reported to police, and again at court through our Witness Service, and Independent Sexual Violence Advocates (ISVAs) in cases where sexual abuse or violence has also been present. Until now, perpetrators in such cases would have been charged under the Harassment Order, which has proven itself to be an ineffective and misunderstood piece of legislation for tackling stalking.

Victim Support NI has contributed to the formulation of this legislation via membership of the Stalking Reference Group and engagement in previous consultations on this issue. We also continue to provide our expertise on broader issues relating to this Bill through the Strategic Justice Group on Sexual Harm, membership of the Gillen Review Implementation Team Training Group, which we Chair, the GRIT Education and Awareness Group, and the GRIT Communications Group.

We are not legal practitioners, and as such do not intend to provide comment on the legal minutiae of the Bill. Our submission will focus on our experience supporting victims of stalking, and reflect their experiences and views on how the law should change.

Assessment of the Protection from Stalking Bill: Overview

We note that the Northern Irish bill is modelled on the Scottish equivalent law. This is a welcome direction for the Bill. Victim support practitioners on the ground in Scotland have reported that the stalking law there is working well. In a feedback session with Scottish charity Action Against Stalking, CEO Ann Moulds reported that the law works with an operational definition of the offence rather than a legal one, making it easier to understand for victims, offenders, police and courts, and easier to implement and interpret.

Action Against Stalking has expressed its willingness to speak to the Justice Committee about how the Scottish offence is working, from the perspective of practitioners on the ground. We would be happy to facilitate contact with CEO Ann Moulds if this is something the Committee would wish to pursue.

It is also positive that this is a separate standalone law and not a sub-section of harassment law, as the two are not the same. This approach, based on the Scottish model, is much clearer and avoids confusion and conflation of harassment and stalking.

Human rights compliance

In our view, the Protection from Stalking Bill will assist in making Northern Ireland's legal system more human rights compliant, by giving people in Northern Ireland protections from and remedies for stalking that are already available in the rest of the UK.

Under the Council of Europe Istanbul Convention, the UK as signatory is obligated to tackle all forms of violence that is “*directed against a woman because she is a woman or that affects women disproportionately*”. Stalking is a crime disproportionately suffered by women, and as such falls under the scope of the Convention. Article 34 of the Convention states:

“Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.”

The UK, and therefore Northern Ireland, also has relevant obligations under the UN Convention for the Elimination of all forms of Discrimination Against Women (CEDAW). The CEDAW Committee, in its most recent examination of the UK, recommended that the UK Government should:

“Revise its legislation in Northern Ireland to ensure that it affords protection to women there on an equal basis with women in other administrations of the State party”.

We strongly welcome this move to comply with our international and European human rights obligations.

Reflecting the gendered nature of the offence of stalking

We recognise that stalking is a gendered crime as per the definition under the Istanbul Convention. That said, stalking victims can also be male or intersex, and stalking affects non-binary and trans folks as well as cis-gendered people. Therefore, we welcome that the proposed primary legislation is gender neutral. In our view, it is preferable for primary legislation to be gender neutral where possible, to cover all victims and avoid any possible confusion as to a law’s applicability.

The primary legislation should, however, be accompanied by a gender-aware policy and strategic framework. As we know, there are gendered nuances in terms of both the root causes of stalking, levels of risk, and how stalking behaviours manifest. Therefore, the gendered nuances of such crimes should be recognised at strategic and operational level, to ensure that everyone applying the law understand the dynamics, root causes and red flags of different forms of stalking. A gendered approach to training, for example, will assist agencies to better pursue offenders and support victims. It will be important for training to impart an understanding of different types of stalking, whether by a stranger, acquaintance, abuser or as part of honour-based violence and abuse, or stalking which has a transphobic basis. Additionally, training should include awareness of scenarios where stalkers enjoy a position of power, either over their victim individually like in cases where domestic abuse has been present, or societally where the stalker holds a position of power or standing (for example a member of the police force or other statutory agency, a more senior member of staff in the workplace, or a community leader or figurehead).

Given our history of conflict and the continued prevalence of paramilitaries /ex-paramilitaries in the community, it is also important that risk factors relating to a stalker’s connection to paramilitary organisations are recognised and safety planning adapted accordingly.

We also recognise that this Stalking Bill is part of a broader suite of enhancements being made to tackle gender-based violence in Northern Ireland. This new law will be a valuable component of the protections framework for victims, along with the Domestic Abuse & Civil Proceedings Act, DAPOs, reform to the rough sex defence and non-fatal strangulation. We also recognise that the NI Assembly has committed to producing a new Violence Against Women and Girls strategy has been committed to and the expansion of hate crime legislation to include gender-based forms of hate. Such a strategy may provide the necessary strategic context for legal reforms including this stalking bill, in particular the root causes of violence against women and girls which are grounded in patriarchy and inequality.

Clause by Clause Assessment

Clause 1

We support the formulation of this clause. The fact that stalking has not been stringently legally defined will allow the law the flexibility to work with new forms of stalking as and when they emerge.

We welcome the inclusion of the reasonable person test in s1(1)(ii), and the “ought to have known” clause in s1(2)(b). By including this objective standard, this circumvents the necessity to prove an individual’s fear, alarm of substantial distress, and an offender’s intent, beyond reasonable doubt, both of which would be extremely difficult to sufficiently evidence.

We further welcome the inclusion of extra-territorial jurisdiction under s 1(3)(b). This is in keeping with the UK’s obligations under the Istanbul Convention.

We welcome that the definition of “conduct” includes actions that relate to in-person stalking and cyber or digitally-assisted stalking. Increasingly, stalkers utilise a combination of in-person and online or digitally-assisted methods to stalk their victims, and it is essential that the law covers these behaviours without being so specific that the law becomes easily outdated as technology evolves.

Clause 2

We support the inclusion of a single act offence of “threatening or abusive behaviour”.

Clause 3

We welcome the extension of special measures eligibility to victims of stalking. Often this offence is committed by people who engender a great deal of fear in victims, on account of the nature of stalking behaviour. It is both in the interests of victim wellbeing and in the interest of justice and achieving best evidence that special measures are available for victims of stalking, who by definition can be regarded as vulnerable witnesses.

As has been noted by Victim Support NI in cases of sexual offences¹, it is vital that if special measures are to be offered, they should be fit for purpose. Therefore failings in technology must be urgently addressed by the courts to ensure that victims who avail of special measures to give evidence are not disadvantaged due to failing or inadequate technology.

It is also the case that people who are stalked by ex-partners have to go to civil and family courts to obtain divorce or establish contact rules. For those who must attend hearings in court buildings, the experience it is equally traumatic to that of criminal trials, and the need for special measures is the same. The Committee may wish to consider whether special measures should be extended to victims of stalking for the purposes of civil and family cases in which their stalker is also party or involved.

Stalking Protection Orders

We welcome the introduction of Stalking Protection Orders via this Bill. These Orders are an additional tool for police and courts to take immediate action to protect victims and prevent harm where stalking behaviours and risk factors have been identified.

Clause 7

We agree that the police should be the primary applicant to avoid victims having to make such applications. We recommend that as a rule, victims are communicated with effectively to keep them updated about any such application.

Given anecdotal evidence from victims of police officers with inconsistent understanding of stalking and its seriousness, the Committee may wish to consider whether victims should also be able to apply in person if they so wish.

We also note from the Explanatory Memorandum that an Order can include ordering an offender to take part in a perpetrator programme, and that the list of potential components of the Order is not exhaustive. In a recent focus group on restorative justice, we asked victims to share their views about alternatives to custodial sentences and restorative measures. One participant, who was a victim of stalking and whose perpetrator was convicted under harassment legislation, told us that a perpetrator programme may be valuable:

“Restorative justice in that case... may mean him attending a course or therapy session where somebody (not you the victim) sits down and tells him. Maybe he felt it was appropriate and he felt he could get away with it, or he felt he had a good understanding of the legal system and he felt he could talk his way out of it. But in this case when trying to define restorative justice it could be some kind of ‘help’ for the offender.”

The same participant cautioned about what she saw as the need to make programmes tailored and have them run by experts who understood the manipulative nature of stalkers:

¹ See *Bearing Witness: Findings of the Northern Irish Court Observer Panel 2018-19*, available at https://www.victimsupportni.com/site/wp-content/uploads/2021/02/VSNI-Report_BearingWitness_Final.pdf

“You’ve got age diversity, gender diversity, cultural diversities, as well as the elements of the crime. So just don’t bundle everyone in. Or ‘lets send them all on that course because they fit that...’. There has to be an element of tailoring.”

“You need to have experts in so you don’t get manipulated easily (by offenders seeking sentence reduction etc). Especially certain types of repetitive offenders, sociopaths, or narcissistic types of offender who are very good at manipulation.”

Victim Support NI would add that if such programmes are to be included within Stalking Prevention Orders, they must be adequately resourced and quality assured, with built in protections for victims.

Clause 8

We welcome the inclusion of extra-territorial jurisdiction, in line with the UK’s obligations under the Istanbul Convention.

Clauses 9&10

We would urge that the Committee reviews how these clauses will work in cases where a victim is stalked over a number of years, and the perpetrator remains a risk to her/his/their safety. Whilst we agree that such prohibitions cannot be indefinite, especially in cases where there has been no conviction for any crime, there is nonetheless an obligation to preserve the life and safety of the victim, and to minimise further harm to them. With that in mind, a system should be put in place whereby victims are communicated with effectively when an Order is set to run out, or in the event that the Order is to be changed substantially or shortened. Seeking and considering victims’ views on the impact on their safety should be a mandatory part of this process. Communications with victims will be essential so that they may take steps to protect themselves and make a safety plan. An obligation should also exist for police to contact victims to explain the contents of the SPO, its conditions, what constitutes breach and how to report breach.

Clause 13

We recommend that tariffs for breach of an SPO are brought in line with England & Wales, which have a maximum 12 months imprisonment on summary conviction.

In cases where a breach has been reported, it would be helpful if an obligation was put in place to contact victims in a timely fashion to inform them of the outcome of proceedings or decisions on bail. Information is key to reassuring victims that they are safe and assisting them in taking steps to ensure their safety.

Additional considerations for the Committee:

We urge the Committee to consider the following for inclusion in the Bill:

- Consider establishing a Stalking Register for serial perpetrators of stalking and abuse which pose a high risk to victims.
- Inclusion of education about stalking as part of standardised, mandatory RSE education. We are cognisant that this is not the domain of the Department of Justice; however, many issues relating to stalking are cross-departmental, and if this law is to be preventative as well as reactive, education will be key. We are aware that this issue is currently being considered by the Gillen Review Implementation Team Education & Awareness Group, and that Minister Long has met with Minister Weir about next steps. We are also aware that work on RSE also sits with work around the development of a VAWG strategy. Whilst we welcome the work done to date, it is important that momentum is sustained to make the urgent and necessary changes to the curriculum to keep our citizens safe and educate them about healthy relationships and behaviours.
- Establishing an obligation for agencies to collect data on stalking incidents and crimes reported, with clear instruction that any stalking behaviours by ex-partners should be recorded as stalking as opposed to being recorded more generically under domestic abuse. It may also be valuable to differentiate between stranger, acquaintance and ex-partner stalking within those figures to monitor the prevalence of different types of stalking and the effectiveness of the law with regard to its applicability to each stalking type.

For further information about this response, please contact:

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