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For the attention of Marie Austin
Senior Assistant Clerk
Northern Ireland Assembly
Committee for Justice

Cheryl Lamont, Chief Executive

Dear Marie

RE: THE COMMITTEE FOR JUSTICE REVIEW OF THE NEED FOR STALKING LEGISLATION IN NORTHERN IRELAND

Further to your correspondence dated 22 November 2016.

Thank you for the invitation to submit evidence to the Committee for Justice. As requested, the Probation Board for Northern Ireland's (PBNI) response is structured under the Terms of Reference headings. I have no objections to this written submission being made public.

1. Identify the extent, types and impact of stalking experienced by victims in Northern Ireland

There is currently no legal definition of stalking in Northern Ireland. However, it is generally accepted that it includes repeated attempts to impose unwanted communications and/or contacts on another in a manner that could be expected to cause distress and/ or fear in any reasonable person. Taken in isolation, behaviours might seem unremarkable, but in particular circumstances and with repetition, they take on a more sinister meaning. Unwanted communications may include telephone calls, letters, e-mails, faxes, sms text messages, sending or leaving unsolicited materials/ gifts and/or messages on social networking sites.

Unwanted intrusions include the following: waiting for, spying on, approaching, accosting and going to a person's home. In addition to unwanted communication and intrusion, the stalker may engage in a number of associated behaviours including ordering or cancelling goods/services, making vexatious complaints (to public bodies), threats, property damage and violence.

Stalkers frequently threaten their victims, either directly or indirectly. Examples of indirect threats include sending wreaths or violent images to the victim (often anonymously). Stalkers will often make specific written or verbal threats and have been known to threaten violence months or even years into the future.

Stalking can occur in a range of situations. Increasingly, people may experience it through social networking sites, chat rooms and other online methods. This is sometimes known as 'cyber stalking'. Cyber stalking is a relatively new

phenomenon and is sometimes used to describe the use of the internet for purposes of stalking. Examples of cyber stalking include sending manipulative or threatening emails; hacking into another's accounts and changing settings; posting messages and personal information on online bulletin boards; creating false profiles and sending 'friend requests'.

The Probation Board for Northern Ireland (PBNI) supervises over 4,000 court orders and licences at any given time. In addition, PBNI complete some 4,500 pre-sentence reports for the Courts every year. In 2015/16 PBNI supervised 1226 people for Violence Against the Person type offences. Currently, there are 38 people subject to community supervision for Harassment, with 31 people supervised for Breach of Non-Molestation Orders. PBNI also runs a Victim Information Scheme for victims of crime.

As a provider of behavioural change programmes for both violent and domestic violence offences, it is the experience of PBNI that such 'stalking' type behaviours as defined above is the modus operandi of many of those offenders convicted of violent/domestic violence offences. However, it is important to note that this behaviour may not be limited to violent offenders and can be also witnessed in the behaviour of sexual offenders.

Due to the current absence of a specific identifiable offence that would fall into the agreed understanding of 'stalking' in all its variations it is very difficult to quantify the extent of the behaviour within Northern Ireland.

2. Examine the key issues relating to stalking offences and the handling of stalking cases by the criminal justice agencies.

A review of the literature relating to stalking indicates that this behaviour differs from many other forms of violence in three important ways. First, it is targeted, that is, directed at specific people who are familiar or known to the perpetrator. It is highly personal, bound up in the relationship (or the perceived relationship by the stalker) between the perpetrator and victim. Second, stalking may comprise acts that are implicitly or indirectly threatening. Victims may perceive conduct to be threatening only because of the context in which it occurs, for example, the perpetrator's previous behaviour toward the victim or others. Third, stalking can persist for many years, even decades. In contrast, most violence occurs in the form of discrete events or episodes.

PBNI, as a key stakeholder within the criminal justice provision, has a core contribution to the management of risk posed by such behaviours. As a provider of assessments to the Court, PBNI assesses the contributory factors and behaviours of such offenders in order to best advise the Courts of the appropriate sentencing options to order to manage the risk posed and address the fundamental factors underpinning such behaviour. This may involve the provision of cognitive behavioural programmes of intervention designed to address the causal issues behind the behaviour.

The experience of other jurisdictions suggests that effective control of stalking behaviour is usually best achieved by an appropriate balance of judicial sanctions and therapeutic interventions. The principal aspects of management of Stalking are based on:

- An understanding of what is sustaining the behaviour
- Confronting the almost universal self-deceptions, which deny, minimise or justify the behaviour
- Building empathy for the victim's plight
- Addressing the stalker's rudimentary, or inappropriate, social and interpersonal skills
- The nature of any contributory mental disorder
- Combating substance misuse as necessary

PBNI works collaboratively within the Public Protection Arrangements of Northern Ireland with colleague agencies such as Police, Prisons and Health to ensure a co-ordinated response to manage the risks posed by offenders both within the prison and the community. However, stalking behaviours not connected to domestic violence or sexual offences are not managed within the Arrangements. Therefore, offences involving stalking non-intimate victims may not receive a formally co-ordinated response.

3. Consider the effectiveness of the current legislation in dealing with stalking

Stalking specifically was made a criminal offence in England and Wales in November 2012. Three new offences within the Protection from Harassment Act (PHA) 1977 Act were introduced, namely "Stalking", "Stalking involving fear of violence", and "Stalking involving serious alarm or distress".

A court dealing with a person convicted of any offence, including those under sections 2, 2A, 4 or 4A of the PHA, may make a restraining order prohibiting the defendant from doing anything described in the order. This order can be made in addition to a custodial sentence or other sentence. The order can be especially useful in preventing continued stalking and harassment by defendants, including those who are given sentences of imprisonment.

The PHA includes the following provisions:

- Harassment (section 2): a summary only offence, carrying a maximum of six months' imprisonment and/or a level 5 fine;
- Stalking (section 2A): a summary only offence, carrying a maximum of six months' imprisonment and /or a level 5 fine;
- Fear of violence (section 4): an either way offence, carrying a maximum of five years' imprisonment and/or a fine on indictment;

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

In GB victims of stalking welcomed the recognition of Stalking as a specific crime separate from Harassment in the hope that this will increase the likelihood of Police and Crown Prosecution Service (CPS) taking action in cases of harassment/Stalking which might in the past have not been fully pursued.

Furthermore, in GB, it was considered that a potential sentence of 5 years imprisonment could prove a significant deterrent if used with discretion by the Police and CPS.

In Northern Ireland behaviour which is repeated and unwanted by the victim and which causes the victim alarm or distress is currently prosecuted within a number of relevant acts, including the Protection from Harassment (Northern Ireland) Order 1997, Family Homes and Domestic Violence (Northern Ireland) Order 1998, the Malicious Communications Act 1988 or the Communications Act 2003.

Stalking is prohibited under The Protection from Harassment (Northern Ireland) Order 1997. In this Order references to harassing a person include alarming the person or causing the person distress. For the purposes of this Order a "course of conduct" must involve conduct on at least two occasions and "conduct" includes speech. The term can also include harassment by two or more defendants against an individual or harassment against more than one victim.

It is arguable that the shortfall of the 1997 PHA Act (pre the change in the legislation 2012) applies equally to the shortfall in the Protection from Harassment (NI) Order 1997. Having a specifically defined offence of Stalking enables the Police to pursue a prosecution based on specific and defined offence behaviour. This will also enable PBNI to respond to a stalking offence with a specific intervention unique to this behaviour.

4. Consider the need for and potential benefits of having specific stalking legislation for Northern Ireland

The Justice Minister has indicated that she wishes to introduce a Specific Domestic Abuse Offence and Disclosures Scheme. The DoJ are in process of developing these for enactment in legislation in late 2017. Similarly specific stalking legislation

will identify more clearly behaviour that has been present under other offence types and provide clearer identification of a specific and highly troubling and traumatising behaviour.

Naming the behaviours, identified in Section 1, above as 'stalking' is useful in a number of ways:

1. The stalking itself, not just the assault in which it often results, is a form of violence. The stalker is taking specific actions, such as calling or appearing at a place of work, that are designed to intimidate and coerce the victim.
2. Secondly, the term 'stalking' identifies a pattern of behaviours that can lead to serious or fatal attacks. Identifying the pattern of behaviour can, therefore, be useful in taking steps to prevent an assault.
3. Naming this pattern of behaviours helps to convey their seriousness. Stalking is a combination of a number of different kinds of actions. Individually, these behaviours may appear to be relatively innocuous. Taken together, they can indicate the presence of a severe threat to the victim.

The potential benefits of anti-stalking legislation could include a clear understanding of the behaviour, an agreed definition of its characteristics and acknowledgement that this behaviour is unacceptable and subject to prosecution even if violence is not used or threatened. Stalking provisions allow prosecutors to add additional charges and can, in some cases, prevent violence by criminalising behaviour that would otherwise not be actionable.

The Committee will also be aware that the Home Secretary recently announced plans to introduce Stalking Protection Orders in England and Wales. The orders will help protect those who are targeted by strangers. Under the proposals, the Police will be able to apply for an order before a suspect has been convicted. The proposed stipulations of the order can ban someone from approaching the victim. In addition, the stalker can be ordered to attend a rehabilitation programme or undergo mental health treatment. The Committee may wish to consider this proposal for Northern Ireland.

Please do not hesitate to contact me, if you require any clarification on the points raised in this submission.

Yours sincerely



Cheryl Lamont
Chief Executive