



PUBLIC PROSECUTION SERVICE
HIGH COURT AND
INTERNATIONAL SECTION
BELFAST CHAMBERS
93 CHICHESTER STREET
BELFAST
BT1 3JR
Tel. (028) 9054 2444

The Committee Clerk
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Date: 23rd December 2016

Dear Madam

**CALL FOR EVIDENCE ON THE COMMITTEE FOR JUSTICE REVIEW
OF THE NEED FOR STALKING LEGISLATION IN NORTHERN
IRELAND**

I refer to your letter to the Director of Public Prosecutions dated 22nd November 2016 inviting him to respond to the Committee for Justice with the views of the Public Prosecution Service (PPS) on those matters within the remit of the Review. The Director has asked me to respond. Although this response is outside the date for submission, for which I apologise, I hope the contents may be of assistance to the committee. As we have said previously, legislation is, of course, a matter for the Department or individual legislators to bring forward and for the Committee and the Assembly to consider. As an independent Prosecution Service it is inappropriate for us to address the rights or wrongs of a particular piece of proposed legislation but hopefully the observations I make in this response are of some assistance to the Committee's deliberations.

As requested, this submission is structured to address the specific Terms of Reference (TORs) for the Review. I will focus on TORs 2, 3 and 4 as other organisations may be better placed to assist the Committee in respect of TORs 1 and 5.

TOR 2

EXAMINE THE KEY ISSUES RELATING TO STALKING OFFENCES AND THE HANDLING OF STALKING CASES BY THE CRIMINAL JUSTICE AGENCIES

There is currently no definition of “stalking” in the criminal law of Northern Ireland. It may be of some assistance to bear in mind a list of examples of behaviours associated with stalking as set out in the relevant English legislation, namely, section 2A(3) of the Protection from Harassment Act 1997:

- (a) following a person;
- (b) contacting, or attempting to contact, a person by any means;
- (c) publishing any statement or other material relating or purporting to relate to a person, or purporting to originate from a person;
- (d) monitoring the use by a person of the internet, email or any other form of electronic communication;
- (e) loitering in any place (whether public or private);
- (f) interfering with any property in the possession of a person;
- (g) watching or spying on a person.

OFFENCES

There are presently a range of offences in force under The Protection from Harassment (Northern Ireland) Order 1997 (“the Order”) which may be considered most relevant when taking prosecutorial decisions on “stalking type” behaviour, in particular:

- (i) Harassment, contrary to Article 4(1) of the Order;
- (ii) Causing another to fear violence, contrary to Article 6 of the Order;
- (iii) Breach of restraining order, contrary to Article 7 of the Order; and
- (iv) Breach of injunction prohibiting harassment, contrary to Articles 5(6) and (9) of the Order.

In respect of these offences in the calendar year 2015 there were 15 Crown Court prosecutions, 437 Magistrates’ Court prosecutions and 54 diversionary disposals.

In 2016 to date there have been 10 Crown Court prosecutions, 375 summary prosecutions and 53 diversionary disposals.

It must be emphasised that these figures include all harassment cases as it is not possible to extract statistical information solely in relation to “stalking” cases. The figures would include, for example, cases where neighbours are in dispute and one has engaged in a course of conduct of harassment against the other.

RESTRAINING ORDERS

A further measure to consider in this context is the “restraining order” provided for in Articles 7 and 7A of the Order:

7. (1) A court sentencing or otherwise dealing with a person convicted of an offence may (as well as sentencing him or dealing with him in any other way) make an order under this Article.

(2) The order may, for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which –

(a) amounts to harassment; or

(b) will cause a fear of violence,

prohibit the defendant from doing anything described in the order.

Article 7A provides:

7A. (1) A court before which a person is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.

Hence the PPS may seek a restraining order in the event of either a conviction or an acquittal for **any** offence. The legislation permits of a wide scope of prohibitions on a defendant’s behaviour at the discretion of a court. The availability to an injured party in a harassment case of a restraining order is of major, and sometimes overriding, significance as his or her principal objective tends to be to achieve a cessation of the defendant’s behaviour.

A further element is that both the prosecution and defence are, in an application for a restraining order, entitled to lead evidence in addition to that led in the criminal case, provided such evidence would be admissible in civil proceedings.

This allows for evidence to be heard which may have been excluded from the criminal case or which has arisen since the criminal case.

In the calendar year 2015 the PPS obtained 405 restraining orders against defendants. So far in 2016 443 restraining orders have been obtained.

(i) Harassment

The offence of harassment as outlined at (i) above is the main offence available to deal with stalking type behaviour. It reads,

4 (1) A person who pursues a course of conduct in breach of Article 3 shall be guilty of an offence.

[Article 3 (1) A person shall not pursue a course of conduct –

(a) Which amounts to harassment of another; and

(b) Which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this Article, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.]

A “course of conduct” is defined as involving conduct on at least two occasions and “conduct” includes speech. References to “harassing” a person include alarming the person or causing the person distress.

The penalties for the offence of harassment are, on summary conviction, imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both; and, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine or both.

This offence can be used in respect of harassing behaviour of any type or gravity, including the most serious cases in which the harassment is persistent over a lengthy period of time, has a significant detrimental effect on the injured party and is considered indicative of a risk of serious harm to the injured party. The PPS has frequently prosecuted for harassment in cases of this nature which may be of the type which would be regarded as “stalking.” The legislative definition of

“harassment” is sufficiently wide to cover a wide range of acts, including those set out in the English legislation at (a) to (g) above.

(ii) Causing another to fear violence

The offence of causing another to fear violence as set out at (ii) above reads:

6. (1) A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.

(2) For the purposes of this Article, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

A “course of conduct” in this context has the same definition as in the context of harassment.

The penalties for this offence are, on summary conviction, imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum or both; and, on conviction on indictment, imprisonment for a term not exceeding seven years, or a fine or both.

The offence of causing another to fear violence can be used where an injured party is being harassed by means of threats of violence in the future, whether by means of verbal threat or otherwise by the actions of an accused. This offence could potentially be relevant in a case of stalking where such a fear has been engendered. It may be noted that it carries a significant penalty in the Crown Court.

(iii) Breach of restraining order

It is an offence under Article 7 (5) of the Order for a defendant to do anything which he is prohibited from doing by a restraining order. The penalty on summary conviction is imprisonment for a term not exceeding six months, or a fine or both; the penalty on indictment is imprisonment for a term not exceeding five years, or a fine or both. It provides another way to protect an individual from

stalking type behaviour as the sentences available for a breach should act as a deterrent to anyone subject to an Order.

In the calendar year 2015 the PPS directed 3 prosecutions on indictment and 50 summary prosecutions for a breach of a restraining order.

In the year 2016 to 18th December 2016 there were 6 prosecutions on indictment and 43 summary prosecutions for this offence.

(iv) Breach of injunction prohibiting harassment

A breach or apprehended breach of the prohibition on harassment may be pursued by an injured party via civil proceedings. One disposal available to the civil courts is the grant of an injunction. Breach of such an injunction constitutes an offence under Article 5(6) of the Order and it carries the same penalties as breach of a restraining order. This is an offence which is prosecuted with less frequency than breach of a restraining order. It is considered likely that this is because fewer injunctions are granted than restraining orders. The PPS does not hold statistics on injunctions issued by civil courts. However, in the calendar year 2015 the PPS prosecuted 1 case and in 2016 there have been 3 prosecutions for a breach of a civil injunction.

OTHER OFFENCES

Offences other than those under the Order may, of course, be disclosed where stalking type behaviour is alleged. These include, but are not limited to, the following:

- (I) offences under section 127 of the Communications Act 2003, namely, improper use of a public electronic communications network. It is an offence to send by means of a public electronic communications network a message which is grossly offensive or of an indecent, obscene or menacing character. It is also an offence to, for the purpose of causing annoyance, inconvenience or needless anxiety to another, send a false message or persistently make use of a public electronic communications network;
- (II) offences under Article 3 of the Malicious Communications (Northern Ireland) Order 1988, namely, of sending a letter or other article which conveys an indecent or grossly offensive message, threat or false

- information or an article of indecent or grossly offensive nature, with the purpose of causing distress or anxiety;
- (III) offences under Part III of the Public Order (Northern Ireland) Order 1987 of stirring up hatred or arousing fear by various means, such as by the use of words or publication of material;
 - (IV) sexual offences, such as meeting a child following sexual grooming under Article 22 of the Sexual Offences (Northern Ireland) Order 2008;
 - (V) disclosing private sexual photographs and films with intent to cause distress under section 51 of the Justice Act (Northern Ireland) 2016; and
 - (VI) the proposed new offence of domestic abuse.

TOR 3

The cornerstone of prosecutions in cases of stalking type behaviour is the offence of harassment under the Order, as set out above. This offence is broadly drafted and highly adaptable. It has the capacity to address a wide range of acts, including those set out in the English legislation at (a) to (g) above. It may be prosecuted either summarily or on indictment.

A key element of a stalking case is the likely involvement of a combination or accumulation of behaviours which, taken together, constitute the persistent, unwanted and intrusive conduct which causes distress in the injured party. It is important for the PPS to be able to bring all these acts together under one prosecution to capture the true nature of the criminal behaviour alleged. Without the ability to prosecute in this way the individual acts may not constitute actual offences or, where they do, they may not represent a full picture of the offending when a court comes to sentence.

The offences of harassment and of causing another to fear violence enable the prosecution of cases of stalking in an appropriate manner, namely, as a series of acts which may be wide-ranging in both scope and time. For instance, a scenario in which an injured party receives abusive phone calls and text messages, is followed by the accused on various occasions and is subjected to derogatory graffiti near her home, can be prosecuted as one charge of harassment over a period of time. This unites the various behaviours to properly reflect the criminal conduct.

TOR 4

Having considered the currently available legislative tools for prosecuting offences of stalking behaviour, the PPS has not identified a particular need for specific stalking legislation. Our experience is that the current legislation, particularly the offence of harassment, has to date been sufficiently robust for the prosecution of cases involving stalking type behaviours.

From a prosecution perspective, challenges in respect of this type of case tend to arise in the context of evidential issues rather than in the formulation of charges.

One minor issue I would mention is that the offence of harassment requires that an accused's act must be within the knowledge of the injured party and must have an effect on that injured party. Therefore any acts of stalking which go unnoticed by the injured party could not be prosecuted under harassment; for example loitering outside the injured party's home which has been observed by a third party but not by the injured party. It may well be that behaviour which does not detrimentally affect an injured party does not require to be criminalised and I offer this only as an observation.

It may be of interest to note that, prior to the enactment of specific stalking offences in England and Wales under the Protection from Harassment Act 1997, the offence of harassment in that jurisdiction was only triable summarily. Only the offence of causing another to fear violence was capable of trial in the Crown Court. A significant benefit was therefore conferred by the creation of a specific offence of stalking which could be tried in the Crown Court. In Northern Ireland the offence of harassment can already be tried in the Crown Court.

We have had the opportunity to speak to a colleague in the Crown Prosecution Service (CPS) in relation to the operation of the specific stalking offences in England. The Committee may wish to contact the CPS for its perspective. However, we are advised that statistics show that about 1000 stalking prosecutions are directed each year across England and Wales, whereas the CPS assess the total number of stalking and harassment cases is over 12,000. The offence of stalking requires proof of harassment plus additional proofs and it carries the same penalties as the offence of harassment. It appears that the requirement for greater proofs without the benefit of any greater sentence may be a disincentive to prosecuting for stalking. The CPS intends to introduce further training for

prosecutors to promote increased utilisation of the specific stalking offences and has identified a training need for police in accurately identifying cases of stalking.

The Westminster government has recently announced plans to introduce in England and Wales “stalking protection orders” to protect victims of stalking at an early stage, whether or not criminal proceedings are ongoing. Consideration could be given to a similar provision in this jurisdiction, which would enhance the protections available to victims.

I would, finally, suggest that education of staff in criminal justice organisations who may encounter a victim of stalking as to the nature of the offence, its impacts and the risks it carries for victims, will be crucial to the success of any new legislation which may be introduced.

The PPS is, of course, happy to provide further evidence in due course should this be helpful.

Yours faithfully



CIARAN McQUILLAN
Assistant Director
Policy Section