

Women's Aid Federation Northern Ireland welcomes the opportunity to provide written comment and evidence on the potential for legislation on stalking. In the course of our work, we commonly support women who have been victims of stalking, often in conjunction with other abusive behaviours, as part of domestic violence.

## **1. Extent, types and impact of stalking experienced by victims in Northern Ireland**

### ***Who are the stalkers? Who are the victims?***

There is a common public misconception that stalking is necessarily unwanted attention and stalking from an obsessive stranger, possibly with specific mental health issues or delusions that have resulted in the stalking behaviour. The most common victim is assumed to be a celebrity or person in the public eye, such as an actor, sports person or politician. While this can and does happen, the common reality of stalking in Northern Ireland and across other jurisdictions is quite different. Stalking is much more likely to occur within the context of domestic violence or a previously established relationship, or be perpetrated by someone who is known in some way to the victim.<sup>1</sup> This is certainly the experience of Women's Aid in Northern Ireland and the women we have supported.

Research across multiple jurisdictions shows that the majority of victims of stalking are women, and the majority of perpetrators are men,<sup>2</sup> although this is not exclusively the case.

### ***Link to domestic violence and coercive control***

Stalking by ex-partners who are domestic abusers is one of the most common forms of stalking. There is a strong link between domestic violence, coercive control and stalking. Control is the cornerstone of stalking, whether it be to force a relationship on a victim without their consent, or to impose a state of fear and terror on a victim as an act of revenge or malice. In some cases it is a combination of both, or fluctuates between the two depending on the reaction of the victim.<sup>3</sup>

Whether relational stalking or revenge stalking, control and entitlement are at the core of the stalking behaviours. And whether stalking behaviour is intended to force a relationship or to cause

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<sup>1</sup> See Hall, 1998; Kohn et al 2000

<sup>2</sup> This pattern has been borne out by the British Crime survey by Walby and Allen (2004). Also Coleman et al state in their research that "Just under a quarter of women (23%) reported having experienced stalking since the age of 16." (Coleman et al, 2007). UK National Stalking Helpline: 80% women, 20% men callers.

<sup>3</sup> Infield & Platford's research in 2000 on stalking confirms that "Stalking forces a relationship upon the victim whether they want it or not" and that "Controlling the victim is what the stalker wants, and needs, to feed their obsession."

pain or seek revenge, the impact of the unwanted contact invariably causes fear and distress on the part of the victim.

### ***Types of stalking***

In the course of our work, Women's Aid staff have heard countless disclosures of stalking behaviour from victims, have witnessed stalking behaviour directly from perpetrators, and have seen the severe effect stalking has on victims.

Common stalking behaviours include:

- Unwanted, often persistent, communication via text messages, phone calls, silent phone calls, emails and social media contact
- Following victims to work to find out where they work or monitor their daily movements
- Following victims home, sometimes to find out where the victim has moved to in a bid to escape their stalker
- Waiting outside Women's Aid resource centres and sometimes refuges or trying to gain access to these spaces.
- Leaving 'gifts' for victims – this is often misconstrued by law enforcement and courts as a 'nice gesture', but usually these 'gifts' are a way of reminding the victim of the perpetrator's presence and omniscience, or a sinister meaning understood exclusively by the victim.
- Contacting friends and family of the victim to get information
- Contacting social security, Women's Aid, or other agency pretending to be a social worker or other professional, to try and obtain information about the victim.

We have supported women who were stalked by men who used different phones and multiple social media accounts to avoid detection. The stalker would make it clear to the victim that it was him, but not enough so that the police could prove it or trace the perpetrator. In our experience, many perpetrators take steps to avoid detection – in one case, an ex-partner of a woman we supported who was a mechanic, used a different car each time he waited outside her house so that she could not prove that it was him.

Other examples include perpetrators who have left gifts in or around the house, to remind the victim that they know where they live and can get access to their property. Damage to property is also common: tyres being slashed, other damage to cars, brake fluid lines cut, smashed windows of home, offensive graffiti sprayed on house or car. All very difficult to prove who has done it, although there are always clear signals to the victim as to who has committed these crimes.

Technology has undoubtedly made it easier for stalkers to stalk their victims, using tracking devices, smartphone GPS, social media accounts, and spying/surveillance apps for phones, tablets and computers.

The common underlying theme to the stalking behaviour that we see is the deliberate intention to terrorise and instil fear, and the immediate implied threat that comes with stalking behaviours.

### ***Frequency***

Our staff have supported victims of stalking who have been frequently contacted or harassed. Frequency of contact could be anything from once every 6 months (in a bid to get around the harassment law), to multiple times a week, to one case where a victim was sent 150 messages and calls in one weekend. Contact tended to be made during unsociable hours at night, which heightened the victims' feeling of vulnerability.

### ***Impact of stalking***

Virtually all victims that we have supported had felt fear due to the stalking. This fear led to increased isolation, as many victims were afraid to leave the house or go to places they commonly went to for fear of being followed or confronted by their stalker. Victims commonly felt extreme levels of anxiety and stress as a consequence of stalking, which is not limited to the times that the stalker contacts them. This fear extends to periods when the stalker is not there, as there is an apprehension about when he will appear again and what he will do. Victims felt like they were being constantly watched and feared that the stalker would enter their home and hurt them. This fear is usually well-founded, as many victims of stalking have also been victims of domestic violence, and have experienced high levels of coercive control, physical violence and/or sexual violence while in a relationship with their stalker.

It is also well-established in research that stalking behaviour can lead to physical and / or sexual assault. Furthermore, even if the stalking behaviour stops for a time it can recur. And crucially, stalking can have a lasting and damaging effect on the mental health of the victim, during and long after the behaviour has ended.<sup>4</sup>

## **2. Key issues relating to stalking offences and the handling of stalking cases by the criminal justice agencies / Effectiveness of the current legislation in dealing with stalking**

### ***No specific mention of stalking in current law***

The lack of any law which explicitly mentions stalking is problematic for a number of reasons. The harassment law is broad and does not contain any mention or definition of stalking. It also does not differentiate between rather more minor instances of harassment, and cases of stalking where a victim is made to feel fear and terror for a prolonged duration.

This has multiple effects. On one hand in cases where stalking is prosecuted under harassment law, the penalty may feel lenient, and not in keeping with the intense fear that the victim has experienced for a prolonged period. On the other hand, many of the women we have supported state that their investigating officer never mentioned harassment as a potential course of action, even though they were clearly being stalked by their ex-partner. This begs the question of whether all police officers

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<sup>4</sup> Mc Ewan et al. (2007)

grasp the relevance of harassment law to stalking situations, or understand that stalking and harassment occur in the context of domestic violence.

### ***Lack of understanding of stalking behaviour***

There are further issues with how stalking is understood by law enforcement, prosecutors and the judiciary. For instance, many stalking behaviours can by themselves be regarded as minor, even benign. However, it is the context of the perpetrator's course of conduct, and the meaning ascribed to their actions, that reveals these behaviours to be more sinister.

An example of this is the giving of gifts by stalkers. For instance, Women's Aid supported a woman who received flowers to her doorstep, which the court ruled to just be a 'nice gesture'. In fact, to the victim it was a clear message that her stalker knew where she had moved to. The discovery of the flowers instilled terror and fear in her.

We have come across other examples, such as women who found gifts sitting on their kitchen table – proof that not only did the stalker know where they lived but had been able to get into the house. In another case, a woman came downstairs to find that the windows in her living room had been carefully removed and placed on the floor – no damage had been done to the windows or the house, but it was a clear message to her from her abusive ex-partner that he knew where she was living and could get access to her any time he wanted. He was a window fitter by trade.

Another case saw a stalker, who was the woman's ex-partner, give a gift of a smartphone to their child. The phone had a tracking device which the perpetrator used to track the movements of the child and the mother. It may have been seen as a nice gift to the child by outsiders, but the intention was to further the perpetrator's ability to control and stalk the woman through the child.

We have also witnessed stalkers and harassers attempt to act undetected in many ways, for example by phoning police or social services with 'legitimate concerns'. When the claims turn out to be unsubstantiated, this is put down as 'misuse of agency/police time', as opposed to being properly recognised as a stalking and harassment tactic.

Women's Aid staff have also encountered issues around DASH forms not being utilised properly to identify stalking. Question 11 refers to stalking and harassment, and if a woman answers that question affirmatively, it opens up another 8 questions in relation to the experience of harassment/stalking. However, our staff have reported that often police do not fill out those additional questions on the form. This not only results in an incomplete assessment of the victim's circumstances, but perhaps sheds light on a lack of understanding of the seriousness of stalking and harassment, and the importance of pursuing perpetrators for these crimes.

Our staff have also raised the issue of cyber stalking. They noted that it is very difficult to prove who has used or has access to what phone or what computer, especially if the computer is a family one in a common space. There is a further issue around the lack of awareness of some older judges who are not up-to-date in their knowledge of ICT. Finally, workers noted that in this age of online friend networks, cyber stalking can isolate victims further, as victims often respond by removing themselves from social media, compounding their isolation.

Whether or not a new law is formulated to better criminalise stalking in Northern Ireland, Women's Aid recommends further training for all law enforcement and justice officials to better understand and identify stalking, the controlling patterns of behaviour that surround it, and any emerging issues relating to new technologies.

### ***Issues around victims responding to stalkers***

One significant issue when investigating stalking is the tendency for police to see any response from victim to stalker as a conversation or a 'tit for tat' argument rather than the stalking that it is. This is a fundamental misunderstanding of the dynamics of stalking. If a victim knows their stalker, there are a number of valid reasons why they may respond to contact even if they have stated that they don't want to be contacted. These include attempts to reason with the stalker, or responding to placate the stalker and avoid violence or physical contact. In our experience, stalkers can often be a mix of relational and revengeful – they might try to make contact to resume the relationship, but on being ignored by the victim, their behaviour becomes revengeful and they switch to behaviour intended to do harm and instil fear.

We have found that the law is inflexible when it comes to victims responding to stalkers, even in cases where women have replied to the stalker as part of their safety plan, as it has been assessed that not responding might put them and their children in danger. If a remedy for harassment is invalidated because a victim has made necessary contact in a bid to keep themselves and their loved ones safe from harm, the law cannot be said to be fit for purpose.

The courts often lack understanding of the nature of stalking in the context of domestic violence. Our staff have seen cases where the stalker/harasser texts saying 'hi', the victim replies that she doesn't want to have any contact, he responds to that, and if she responds a second time to that message, the court views this as a conversation, not harassment. This is extremely harsh to victims and misunderstands the relationship dynamics between victim and stalker.

### ***Need for better support for victims***

According to the National Stalking Helpline, over half of callers had contacted the police before they called the Helpline, and of these ¾ were dissatisfied with how the police had or were handling their complaint.

There is a need to create not only a legal framework for punishing perpetrators, but also a systems which keeps victims safe and makes them *feel* that they are safe. Much of the impact of stalking is psychological, in that it induces extreme worry, stress and anxiety at the possibility of harm. This has severe impacts on the mental and physical health of victims, their ability to go about their daily lives and their ability to live a life free from fear and terror. It is essential to mitigate the severe negative health impacts that stalking can have on victims.

Training of police and other agencies is vital to know what concrete steps to take to help victims keep safe, and help victims deal with the very real terror that accompanies the experience of stalking. Linking in with voluntary expert organisations is also important to ensure that victims have emotional and practical support while stalking is happening, as well support from police in an investigatory capacity.

Many women we support feel that their case of stalking was not taken seriously by police, especially if on the face of it the actions of the stalker seemed minor. This shows a gap in police understanding of the nature of stalking and the very real risk of escalation to violence and harm. There is also a very real public health issue around how an insufficient criminal justice response actually amplifies the terror felt by victims.

### ***Need for more proactive / innovative evidence collection***

Harassment/stalking is very much dependent on victim's ability to document every incident carefully. Victims of stalking are ordinary people, not trained police officers. It is difficult for a woman living in fear to wrap her head around how to log the harassment or stalking in a systematic way. She may neglect to carefully record every incident, with the date, time, etc, or may not even realise the importance of doing this in order to demonstrate the course of conduct and enable police to take action. Police could help this process by providing an incident log to victims when they first report, with details of all information required, which can be filled in by the victim.

### ***Insufficient current legislation***

Most responses to stalkers in our experience have been issuing of non-molestation orders. However, breach of these orders rarely resulted in action, so victims were left without protection from stalkers.

Some women have had success with harassment law being used, others haven't. Many women report that police don't often use the harassment law effectively enough in stalking cases. Furthermore, when Women's Aid conducted focus groups to discuss the potential domestic abuse law, most women in the groups had not been told about the harassment law. This is in spite of them having faced significant stalking and harassment from their former partners.

Women's Aid workers report that there is often insufficient evidence to proceed in terms of proving harassment. This can be exacerbated by police viewing a perpetrator's course of conduct as isolated incidents, and different police attending different incidents due to shift patterns. Thus it is difficult to identify the pattern of stalking.

It is also difficult for victims to report micro-aggressions that are part of the stalking pattern, as they won't be taken seriously. Stalking can be comprised of many small incidents. A simple text message saying 'hi' is very difficult to report to police and will not be taken too seriously, but a woman may know that it is a threat, and that if she doesn't respond he will turn up at the child's school. She may respond to the text because it is part of her safety plan (better to respond than not), but this will mean it is no longer possible to take the text message as an incident of harassment or stalking as it is now a 'conversation'.

There are also issues with civil injunctions as a solution to stalking. Firstly, they don't work in those cases where a victim is being stalked by an obsessed stranger, because the person harassing or stalking has to be an associated person. Secondly, it is the courts that serve civil injunctions, and a breach of one is dealt with a contempt of court. This means that there are no real consequences of a breach, unless the perpetrator decides to show up in court.

There are also cases where a perpetrator may attempt to use the courts as a means of stalking and harassing their victim. Women's Aid has frequently supported women whose perpetrators have taken out non-molestation orders against the victim. These are usually interim orders which are dropped once they are thrashed out in court and found to have no grounds. However, in the waiting period the victim is open to further abuse. In one recent case, a woman received multiple letters from her stalker's solicitor saying that she has breached the non-molestation order even though she had not contacted him, and that the police would be calling out to her. When she then contacted the police she was informed that there was no complaint made about breach of her non-molestation order. The order was later dropped, but the ordeal was extremely stressful to the woman, who had been stalked for some time by her ex-partner.

Our support staff have also noted that other legislation, such as the Telecommunications Act / Communications Act / Malicious Communications Act, may be used where criteria for harassment law aren't met. These laws have greater limitations however. While no course of conduct needs to be proven, the incident in question does need to be "indecent, obscene or menacing" for the law to apply. As has been demonstrated above, many forms of stalking are more insidious and subtle than menacing or obscene. They may not come within the remit of these laws, but nonetheless they cause fear and anxiety and their intention is to instil fear.

It should be noted that there have been some instances where the current legal arrangements have worked well for victims. Prior information notices have been found to sometimes act as a deterrent, and can be used to prove harassment.

Our Criminal Justice Workers also highlighted the value of adult caution. In one case, the harasser/stalker was given an adult caution at the victim's request because she didn't want to go to court. An adult caution can turn into criminal offence if the perpetrator takes any further action to stalk or harass. The caution worked in this case because the perpetrator had a good job, and his employers would have found out if he had a criminal record and he didn't want this. This is one example where both the law and the police response worked very well.

### **3. The need for and potential benefits of having specific stalking legislation for Northern Ireland**

Women's Aid would agree that there is significant potential benefit in strengthening the law around stalking. Women's Aid supports victims of stalking on a regular basis, through risk assessment, safety planning, and emotional and practical support. However, if the police tell victims that "there's nothing we can do", this exacerbates victims' anxiety and counteracts our efforts to keep them safe and make them feel that they are getting justice and being protected.

Any law that is formulated should be victim-focused. It should be able to deal with the realities of stalking, and the seemingly minor behaviours that in conjunction cause fear and alarm to victims. Intent shouldn't have to be proven, but instead objective reasonable test applied. A victim's reaction of fear and alarm, and the reasonableness of this fear given the context of the relationship between stalker and victim, should be central to the offence.

Women's Aid would also point out that there is potential for this issue to be dealt with in conjunction with a coercive control offence, which is currently being examined by the DOJ. There is much overlap between these types of offence, and one could argue that stalking in the context of domestic violence is a form of coercive control.

We would also stress that a new law alone will not improve the lives of stalking victims without successful awareness raising among police, judges, prosecutors, and the general public. This has been shown to be the case in other jurisdictions where stalking and harassment offences have been put on the statute books. For example, in one case in the US, Peggy Klinke was murdered by her abusive ex-partner turned stalker, despite laws being in place to protect her. She was stalked for a long period of time, kept a record of everything her stalker had done over the years, reported everything to the police, and moved states after he burned down her house. Yet law enforcement failed to take the threat seriously enough or put sufficient protections in place, and her stalker tracked her down and killed her before killing himself. This case has been used to educate criminal justice agencies on the importance of responding effectively to stalking in the US.



#### 4. Examples of stalking legislation in other comparable jurisdictions

##### England and Wales

Stalking and Harassment. Legal Guidance: Crown Prosecution Service

[http://www.cps.gov.uk/legal/s to u/stalking and harassment/#a01](http://www.cps.gov.uk/legal/s%20to%20u/stalking%20and%20harassment/#a01)

The PHA was brought into force on 16 June 1997 and was amended by the Protection of Freedoms Act 2012 to include two new specific offences of stalking, through the insertion of sections 2A and 4A.

<http://www.legislation.gov.uk/ukpga/2012/9/part/7/crossheading/stalking/enacted>

Protocol on the appropriate handling of stalking offences between the Crown Prosecution Service & ACPO. [http://www.cps.gov.uk/publications/agencies/stalking\\_protocol.pdf](http://www.cps.gov.uk/publications/agencies/stalking_protocol.pdf)

“New stalking legislation helps to bring thousands more prosecutions as CPS and ACPO launch protocol to improve service to stalking victims”

[http://www.cps.gov.uk/news/latest\\_news/stalking\\_protocol/](http://www.cps.gov.uk/news/latest_news/stalking_protocol/)

##### Scotland

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**STALKING AND HARASSMENT IN SCOTLAND.** Criminal Justice and Licensing (Scotland) Act 2010

<http://www.legislation.gov.uk/asp/2010/13/section/39/enacted>

##### USA

The world's first anti-stalking statute was enacted in the US state of California in 1990. The Act (California Penal Code 646.9) was passed in response to the fatal shooting of actress Rebecca Schaeffer and the murders of four other Californian women at the hands of their stalkers. Since then, anti-stalking legislation has been introduced in all 50 US states, and from 1994 US federal law has also addressed stalking behaviour, particularly in outlawing interstate travel with the intent to injure or harass.

The organisation National Centre for Victims of Crime has monitored stalking law across all 50 states, and has formulated a Model Stalking Code as a means to encourage States to strengthen their criminal justice response to stalking along good practice guidelines

<https://victimsofcrime.org/docs/default-source/src/model-stalking-code.pdf?sfvrsn=12>

##### Canada

The Canadian Criminal Code was amended in 1993 to create a new offence of criminal harassment. This action was taken in response to an increasing amount of stalking conduct in cases involving violence against women, including domestic violence.

Canadian criminal law deals with stalking under the criminal harassment provisions of section 264 of Canada's Criminal Code. The Code states that no person shall, without lawful authority and knowing that another person is harassed (or recklessly as to whether the other person is harassed):

repeatedly follow the other person, or anyone known to them, from place to place; repeatedly communicate with, either directly or indirectly, the other person or anyone known to them; "beset" or watch a place where the other person is visiting, lives or works; or engage in threatening conduct directed at the other person or any member of their family.

The punishment for stalking can be as high as a five year jail term.

<http://www.harassmentlaw.co.uk/law/stalkcan.htm>

### **Australia**

All eight Australian territories have now enacted anti-stalking legislation, following Queensland's lead in the 1993 Criminal Law Amendment Act.

AUSTRALIAN CAPITAL TERRITORY, CRIMES ACT 1900 s34A -

<http://www.harassmentlaw.co.uk/law/stalkaus.htm>

### **Republic of Ireland**

NON-FATAL OFFENCES AGAINST THE PERSON ACT 1997 - SECT 10 – Harassment

<http://www.harassmentlaw.co.uk/law/stalkirl.htm>

### **New Zealand**

Harassment Act 1997 Public Act 1997 No 92 Date of assent 1 December 1997 Commencement see section 1 <http://legislation.govt.nz/act/public/1997/0092/latest/DLM417078.html> An Act to provide criminal and civil remedies in respect of harassment.

### **Other useful Research:**

In October 2000 the Home Office issued a Research Study on The Extent and Nature Of Stalking (PDF) <http://www.harassmentlaw.co.uk/pdf/stalkrep.pdf> which provides the first systematic review of the problem in Britain. A summary (PDF)

<http://www.harassmentlaw.co.uk/pdf/stalksum.pdf> was also published.

In 2000 the Scottish Executive issued a [Consultation Paper on Stalking and Harassment](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157898/consultation.pdf) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/157898/consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/157898/consultation.pdf)

Europe: PROTECTING WOMEN FROM THE NEW CRIME OF STALKING: A COMPARISON OF LEGISLATIVE APPROACHES WITHIN THE EUROPEAN UNION

[http://www.europeanrights.eu/public/commenti/stalking\\_testo.pdf](http://www.europeanrights.eu/public/commenti/stalking_testo.pdf)