

# **Stalking – A Serious Concern**

**A consultation on the creation of a new offence of  
stalking in Northern Ireland**

**Consultation Report and summary of  
responses**

1 November 2019

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## **Introduction and Background**

1. This document provides a summary of responses to the Department of Justice's consultation on the potential creation of a new offence of stalking in Northern Ireland.
2. The purpose of the consultation was to invite a range of views on whether making stalking a specific offence here in Northern Ireland would offer victims better protection.
3. The consultation paper was developed in collaboration with victims groups and partner organisations that formed a 'Stalking Reference Group'. The consultation sought views on a range of issues relating to stalking, particularly from victims of stalking; organisations representing victims; the police; criminal justice practitioners; frontline workers, including mental health workers; and service providers.

## **Background**

4. In 2016, following the reporting of a number of high profile cases of stalking in the media, the then Minister of Justice commissioned a review of the current law relating to stalking in Northern Ireland.
5. The Northern Ireland Assembly subsequently debated a motion on stalking, in September 2016, and shortly thereafter the Committee for Justice initiated its own review of the law to determine whether specific stalking offences should be created. The Department of Justice supported the Committee's work through the provision of advice and research and by engaging with policy officials in other jurisdictions.
6. The Committee was due to conclude its review in April 2017 and publish its findings. However, with the Assembly in suspension, its review was not completed.
7. The Department's review team built on the initial work of the Justice Committee and went on to:
  - review the existing legislative framework;
  - engage with other jurisdictions on their stalking policies and practices; and
  - develop proposals, drawing on the consultation responses submitted to the Committee for Justice.

8. A Stalking Reference Group of key stakeholders was established and contributed to the review by: considering the types of stalking behaviours being displayed and their impact on victims; highlighting the experience of victims under the current law, including how cases were handled by the criminal justice system, and suggesting where improvements could be made; identifying key aspects of the law that may need to be reviewed or changed; and ensuring that a broad spectrum of policy options were identified and considered.

## **The Consultation Process**

9. On 29 November 2018, the DoJ launched a public consultation '*Stalking – A Serious Concern, A Consultation on the Creation of a New Offence of Stalking in Northern Ireland*' via a press release. A link to the consultation on Citizen Space was distributed to key stakeholders and a media strategy promoted public awareness of the consultation and ways to respond.

10. The consultation ran for 12 weeks and ended on 21 February 2019. Over the period 85 responses were received.

11. Two public and stakeholder engagement events were planned, to give people the opportunity to share their views on the consultation. One event was held in Girdwood Community Hub, Belfast but an Omagh event was cancelled due to low uptake.

12. This report summarizes the responses to the consultation questions. The Department of Justice is grateful to those who took the time to respond.

## **Overview of responses**

13. Who responded? A total of 85 responses were received:

- 58 responses were from members of the public
- 27 responses were from organisations
- At total of 76 questionnaires were received, and 9 respondents forwarded submissions rather than completing the consultation questionnaire online.

## **Summary of Responses and comments**

14. The following paragraphs outline the key responses to the questions in the consultation document.

## Northern Ireland Legal Framework

**Question 1: Do you think the offences of ‘harassment’ and ‘putting people in fear of violence’ in the current legislation provide sufficient protection to victims?**

### Options

**Yes, I think the legislation is sufficient – 2 respondents selected this option**

**No, I think there are gaps in the legislation – 71 respondents (93%) selected this option**

**Don't know – 3 respondents selected this option**

15. Many respondents felt that there was a lack of understanding of the complexities of stalking by the police which allowed the behaviour to escalate. Victims felt that they weren't being taken seriously by police and that complaints had not been fully investigated. Other comments included: changing the current system of reporting to enable a history of incidents to be built; and the introduction of specialist police officers.

16. Some respondents reported that, in their experience, the law is currently under used for the purpose for which it was intended and that it fails to sufficiently reflect the seriousness of stalking as a threat to the life and liberty of its victims.

17. Respondents also found it shocking that perpetrators who have clearly harassed or stalked their ex-partner as part of a wider campaign of abuse, had not been charged with harassment.

18. In the context of domestic abuse, and in some circumstances where victims may have to have contact with the perpetrator, respondents thought that contact for such reasons should not preclude charges of stalking or harassment from being brought against the perpetrator if they are found to be engaging in a course of conduct that amounts to harassment or stalking.

19. Respondents recommended that targeted training should be provided for police and criminal justice partners.

## Stalking and the Criminal Justice System

**Question 2: Have you any direct experience of how stalking cases have been handled by the criminal justice system?**

### Options

**Yes – 39 respondents (51%) selected this option**

**No – 37 respondents (49%) selected this option**

**If yes, how can we make the system more effective in supporting victims of stalking and dealing with such offences?**

20. Respondents who had been victims of stalking had varying experiences when reporting the incident to police. Some respondents said their complaints had not been taken seriously and police didn't understand: the difference between stalking and harassment behaviours; the impact of stalking on the victim; the fear that victims' felt; and the potential risks posed to victims by their stalker. Stalking behaviour could also be viewed wrongly as benign or 'a nice gesture' when in fact the purpose was to instil fear and submissiveness in the victim.

21. Other comments included:

- police need training and comprehensive guidance to enable early recognition of stalking behaviours and early intervention to prevent the behaviours escalating;
- a specific officer should be assigned to each victim to ensure consistency of approach and that each incident should be looked at as part of a pattern of behaviour and not treated in isolation;
- each victim should have a comprehensive risk assessment;
- a stalking register should be established;
- police and other agencies should have training in the use of digital technology; and
- communication between PPS and police should be established from the outset and specialist stalking support must be offered to victims.

22. Respondents commented on their experiences with the courts system and stated that there should be better support and protection for victims of stalking prior to court proceedings. Other comments for improving the court system included:

- stalking cases should be dealt with more quickly by the courts;
- harsher sentences;
- the perpetrator's previous offences should be taken into account;
- suspended sentences should not be given as any breaches were not enforced;
- victims should not have to face the perpetrator in court;
- victims should be informed when the perpetrator is released from custody;
- the perpetrator should undergo a psychological assessment and attend a rehabilitation or treatment programme; and
- a victim liaison officer should be appointed.

23. Respondents said that a multi-agency response would be important in dealing effectively with stalking and to protect the public. An awareness campaign could help inform the public and also publicise what services are available to support victims.

**Question 3: What do you consider to be the main challenges in identifying cases of stalking at an early stage (as opposed to harassment)?**

24. All of the respondents provided responses to this question. Many thought that the main challenge was a lack of awareness and understanding of stalking across the criminal justice system and a comprehensive training programme was needed for all criminal justice partners which should include the stalking typologies.

25. Respondents commented on the police response proposing that there should be a dedicated experienced officer in each district trained in stalking behaviours. Some respondents said that the police needed to take stalking more seriously; to be aware of the risks to the victim; and to listen to the victim.

26. Respondents said that victims and their families need advice on how to protect themselves and an awareness campaign to publicise the signs of stalking and the risks posed, and how to seek help both for the victim and the perpetrator, if they wanted to rehabilitate.

27. The perception of criminal justice agencies that behaviours were benign or not serious enough to warrant investigation was also an issue for respondents. This was compounded by the tendency of victims to minimise the perpetrator's behaviours if they were an ex-partner, resulting in the stalking being allowed to escalate and become much more dangerous for victims before any action is taken.

28. Respondents thought that in some cases there was a lack of will to investigate what are seen as 'minor' or 'just a domestic' incident, and to instigate a thorough investigation to establish a course of conduct. This may be exacerbated by staff shortages and cuts in the police service, which could limit the ability of police to carry out this more time intensive work.

29. Other comments included: problems with criminal justice system which is set up to deal with single incidents rather than patterns of incidents; the lack of a legal definition of stalking impedes first responders; and difficulties in obtaining/gathering evidence.

**Question 4: Do you think more could be done to support the effective gathering of evidence to bring stalking charges?**

### **Options**

**Yes – 64 respondents (84%) selected this option**

**No – 1 respondent selected this option**

**Don't know – 11 respondents (14%) selected this option**

30. Many respondents recommended that police should receive training on identifying and understanding stalking behaviours, the risks posed to victims, and on how to obtain evidence from electronic devices. Good quality gathering of information from the victim is key in identifying risks, in identifying potential evidential opportunities to build a case against the offender, and in identifying potential secondary victims. There may also be other victims from previous relationships to consider, not only in terms of evidence but potentially, in terms of safeguarding



31. Other comments included:

- police need to take reports of stalking seriously;
- a dedicated team or officer available in each police district who specialises in stalking;
- police need to be given the time to investigate fully;
- adequate resources for police;
- the criminal justice system processes needed to be changed to accommodate stalking cases, the current system was set up to deal with single incidents;
- the introduction of a specific stalking offence would raise awareness of stalking and encourage law enforcement to be more proactive in gathering evidence; and
- a public awareness campaign would encourage victims to report to police, and also raise awareness of stalking generally with the public and organisations.

## Stalking Offences – what’s available in other jurisdictions

**Question 5: If a new offence of stalking were to be introduced, are the behaviours listed in other jurisdictions relevant and sufficient?**

### Options

**Option 1 similar to Scotland – 29 respondents (38%) selected this option**

**Option 2 similar to England & Wales – 27 respondents (36%) selected this option**

**Option 3 other – 20 respondents (26%) selected this option**

32. Responses to Option 1, which is similar to the Scottish model, were:

- the Scottish legislation’s list of stalking behaviours is comprehensive, indications show it works well operationally, and it potentially could be used as a template for stalking legislation in Northern Ireland;

- the inclusion of behaviours which are psychologically abusive and non-violent demonstrates that Scotland understands the control, power and psychological menace used by stalkers;
- the removal of the requirement of a course of conduct for the second offence of 'Threatening and Abusive Behaviour' would protect victims and highlight how serious an offence of stalking is; and
- the Scottish legislation allows for behaviours not specifically listed which would cover for unique or unforeseen stalking behaviours facilitated by future technology.

33. Responses to Option 2, which is similar to England and Wales approach, were:

- 34. any legislation produced should clearly state that stalking is not confined to the behaviours included in the definition of stalking list and that the list is not exhaustive;
- 35. the National Stalking Helpline recognises 28 separate behaviours;
- 36. list as per behaviours described in forensic psychology literature; and
- 37. assess the outcomes for each region and take the best aspects from each to use in the Northern Ireland legislation.

38. Responses to Option 3 – Other:

- some respondents suggested a combination of the legislation from Scotland, and England and Wales;
- having to prove intention makes the offence difficult to prove, a possible alternative could be 'what a reasonable person would find likely to cause fear or alarm';
- the Scottish offence of threatening and abusive behaviour which does not require a course of conduct could be used as early intervention to prevent escalation. That offence could have a lower sentencing threshold than the more serious offence involving a course of conduct;
- England and Wales have the offence of stalking and of stalking involving fear of violence or serious alarm or distress. Some respondents thought this would be useful and the sentencing is higher thus allowing for the availability of other investigation powers to build a case;

- a 'course of conduct' can be difficult to prove. The lesser offence of 'threatening and abusive behaviour' could be used as evidence for the course of conduct in building the case for the more serious offences;
- guidance is needed around the time period involved for a course of conduct - 3 months, 6 months 12 months etc. This is particularly relevant if the offence is going to be a summary only offence; and
- the legislation should provide police with a power to enter and search.

## **A Course of Conduct – what does it mean?**

**Question 6: Should a new stalking offence require more than one incident to constitute an offence?**

**If more than 2 incidents please tell us why?**

### **Options**

**1 incident – 17 respondents (22%) selected this option**

**2 incidents – 35 respondents (46%) selected this option**

**More than 2 incidents – 13 respondents (17%) selected this option**

**Other – 11 respondents (15%) selected this option**

39. Comments were invited from those respondents who had selected the 'more than 2 incidents' option:

- a stalking offence should be reserved for serious cases;
- stalking is often committed in conjunction with domestic violence which should carry a maximum prison sentence and long term protection and life rebuilding for all the victims; and
- a stalking offence should be for repeated offences but with agencies recording these properly and consistently.

40. Other comments included:

- one incident was one too many and that causing anyone distress or alarm needs to be tackled promptly and robustly. One serious incident could be enough in terms of the impact it can have on a victim;
- as stalking is defined as a repetitive pattern of behaviours there needs to be a course of conduct, and two or more incidents is the classification in other jurisdictions;
- there should not be a set amount of time between incidents and the law should recognise the prolonged nature of some stalking cases; and
- it depends how serious the offence is and the evidence presented by the victim. It should be based on the facts and sound judgment used.

**Question 7: Should a further offence be considered if threatening or abusive behaviour is committed after a single act?**

**Options**

**Yes – 66 respondents (88%) selected this option**

**No – 10 respondents (12%) selected this option**

41. Respondents who selected 'yes' commented as follows:

- a further offence could be particularly useful if there was not enough evidence for a conviction of stalking but in Scotland it is based on the initial charge of stalking being brought before the court first and is therefore dependant on meeting the condition of 'at least two occasions';
- there should be a debate on whether a case of stalking should be heard in court after one incident and the option of a further offence of threatening or abusive behaviour being available to the court if there is insufficient evidence to convict on the charge of stalking;
- a further offence could be a very effective early intervention tool;
- the prison sentence for stalking would not cover or be sufficient for threats to kill or to cause serious harm; and

- a further offence would capture intimidating or threatening one off acts that do not constitute stalking but are of significant concern to individuals.

42. Respondents who selected 'no' commented:

- as stalking is defined by a pattern of behaviour there would be little point in introducing an offence for single incidences of threatening or abusive behaviour;
- current harassment legislation should be able to pick up threatening or abusive behaviour after a single act; and
- stalking is a course of conduct, not a single act. If there are concerns that there has been a pattern of stalking conduct leading up to a single act, then officers should be supported to investigate this thoroughly.

## Penalties

**Question 8: Where should we set our levels of penalties?**

### Options

**Option 1 - similar to Scotland – 29 respondents (38%) selected this option**

**Option 2 - similar to England and Wales – 29 respondents (38%) selected this option**

**Option 3 – other – 16 respondents (21%) selected this option**

43. One respondent did not select an option and another selected both options 2 & 3.

44. For respondents who selected option 3 'other' the following comments were offered:

- The sentence should reflect the seriousness of stalking, and the fact that victims experience stalking continuously, whether or not the perpetrator is active or in their vicinity. The fear and trepidation induced by stalking behaviour leads to a state of constant hypervigilance and fear that is truly debilitating for the victims;

- the higher penalty should be considered to show victims that this offence is being taken seriously and to act as a punishment and a deterrent to offenders and potential offenders;
- a 10 year penalty for an indictable offence and a fine not to exceed the statutory maximum;
- any breach of an undertaking or court restriction order should be viewed as a separate and more serious offence and should carry a custodial sentence;
- if a lesser summary charge for stalking is introduced, the sentencing guidelines should be higher than a six months sentence, to reflect the seriousness and impact of the crime, and to allow probation services time to rehabilitate the perpetrator;
- the Scottish offence of threatening and abusive behaviour which does not require a course of conduct could be used as early intervention. This offence could have a lower sentencing threshold than the more serious offence involving a course of conduct;
- for stalking involving fear of violence or serious alarm or distress, sentencing should be similar to England and Wales on conviction on indictment; and
- to set an example the prison term should be increased to 15 years.

45. Additional comments included:

- perpetrators as well as being imprisoned should have to undergo an intensive treatment programme to address and confront their behaviour, without treatment, imprisonment gives the stalker the opportunity to focus on the victim;
- stalking is often a result of / in conjunction with domestic violence and should carry a maximum prison sentence but also provide long term protection and help for victims to rebuild their lives;
- the penalties will only be as good as the guidelines and the training and buy in of those using them; and
- guidelines must take into account that courses of conduct may span years but there might be significant gaps between incidents.

## Other Issues – what other agencies should be involved?

**Question 9: Do you agree that stalking should not be treated solely as a criminal justice issue? What other agencies should be involved?**

### Options

**Yes – 54 respondents (71%) selected this option**

**No – 22 respondents (29%) selected this option**

- Comments from respondents included:
- there are many different types of stalking and individual circumstances surrounding each case which need to be taken into account to inform an appropriate response. For example, whilst stalking a stranger or an acquaintance as a result of a mental health issue may be regarded as bizarre, the stalking of a victim of domestic abuse by an ex-partner is not regarded as bizarre, but is the escalation of controlling, abusive behaviour, and is part of the reason why leaving an abusive partner is the most dangerous time in a woman's life;
- it would be inappropriate to excuse every domestic violence abuser who stalks their ex-partner as having a mental illness, or to involve mental health interventions in all such cases, as it removes the responsibility of the perpetrator for their actions. Each case should be examined on its individual circumstances and interventions such as mental health or perpetrator programmes should be assigned based on the specifics of each case; and
- a multi-agency approach like that in Hampshire, which incorporates justice, health, and voluntary experts, may provide an effective cross cutting means of tackling stalking, but it is vital to frame legislation that has the needs and protection of the victim as its primary focus.

46. The following list includes some of the organisations suggested by respondents:

- Health Trusts
- Mental health professionals
- Women's Aid
- Addiction Services

- Education Authorities
- NSPCC
- Childrens' Services
- NIHE
- Royal College of Psychiatrists
- Victim Support

## Improving the Safety of Stalking Victims

**Question 10: How can we ensure that any new offence of stalking will protect victims from the outset?**

47. Respondents thought that any new legislation should be supported by effective, comprehensive training for police, to ensure that officers fully understand the complexities of stalking, the different typologies and the risks posed to victims. Training should be provided for criminal justice agencies, including judges before the implementation of any stalking law.

48. Other comments relating to policing included:

- complaints should be treated seriously from the outset;
- a risk assessment should be carried out on every victim and advice given on how to protect themselves and how to make their homes safe; and
- a specialist police unit should be set up to deal with stalking cases.

49. Respondents proposed that the following points should be taken into consideration when drafting a new offence:

- the entire range of offences that stalkers use should be included in any new legislation;
- there should be no time limit between offences;
- victims should not be subjected to cross examination by an unrepresented defendant;



- the use of technology in stalking should be incorporated and future proofed into any new legislation;
- provision for victims' services should be part of any new legislation;
- a public awareness campaign should accompany the introduction of any new legislation; and
- the impact on the lives of victims.

50. Respondents were supportive of Stalking Protection Orders which would give immediate protection for victims during an investigation and recommended the introduction of a national stalking helpline similar to the one in GB.

51. There should be education on stalking in schools, and it would be beneficial to engage with employers and trade unions and have guidance documents and a workplace policy on stalking.

**Question 11: Do you think there could be a role for using the problem solving justice approach to address stalking?**

### **Options**

**Yes – 34 respondents (45%) selected this option**

**No – 18 respondents (24%) selected this option**

**Don't know – 24 respondents (31%) selected this option**

52. Respondents thought that problem solving justice was a good idea and that it could tackle the root cause of behaviour and if intervention occurred at the earliest opportunity, this could stop the behaviours escalating. This should be victim led and in cases where perpetrator programmes are available as alternatives to custodial sentences the victim's opinion should be taken into account.

53. There were some concerns that this approach should not be used as an alternative to developing a law that is capable of securing convictions for stalking offences. Such a model should recognise the differences between the stalking typologies eg a stranger with mental health problems requires a different response to an ex-partner who uses stalking behaviours to continue their abuse.

54. Respondents thought it also depended on the circumstances of the case, if the stalker was willing to address their behaviour, and had expressed remorse for their actions. But there were some concerns that the perpetrator could abuse this process to get a lesser sentence.

55. Some respondents commented that the victim would have to agree to this approach and that strong protection measures should be put in place to protect the victim.

56. Other comments included:

- victims could give an impact statement to the perpetrator in a safe and controlled environment;
- funding should be made available for other agencies to provide programmes where the 'threshold' for an offence has not been met in court but the person would benefit from an intervention; and
- learning from the Multi Stalking Agency Intervention Programme which is currently being piloted in England.

**Question 12: Do we need to consider introducing a stalking protection order or make changes to an existing order?**

### **Options**

**Yes - 58 respondents (76%) selected this option**

**No - 5 respondents (7%) selected this option**

**Don't know -12 respondents (16%) selected this option**

**1 respondent did not selection an option**

57. Comments from respondents included:

- Prevention Orders may be a useful tool in disrupting stalking patterns earlier. They may also be a useful and a vital additional measure to ensure the safety of stalking victims, given that restraining orders are only issued upon conviction of an harassment offence;

- non molestation orders could be reviewed and extended to protect stalking victims;
- early intervention is a deterrent; it does not matter about the system, the perpetrator needs to know that there are serious consequences if they stalk;
- the creation of a stalking register; and
- powers are needed to ensure that breaching Stalking Protection Orders will be dealt with robustly.

### **Alternative Offence**

**Question 13: Should the court be able to convict for an alternative offence?**

#### **Options**

**Yes - 59 respondents (78%) selected this option**

**No - 8 respondents (10%) selected this option**

**Don't know - 8 respondents (10%) selected this option**

**1 respondent did not select an option**

58. 78% of respondents supported the introduction of an alternative offence. However, there were concerns that this could be open to abuse if the perpetrator pleaded guilty to a lesser offence.

59. Other comments included:

- an alternative offence would give prosecutors confidence to try for a higher offence without the risk of 'no conviction' should the threshold not be met;
- the court should not be able to convict of another offence, to ensure all stalking offences are charged and convicted as stalking, which enables the prison and probation services to recognise and manage the obsession and fixation inherent within stalking; and
- In cases where a higher level offence has been committed within a stalking episode, such as murder or grievous bodily harm, stalking should be charged in conjunction with the primary offence to ensure the

fixation and obsession is recorded and identified and to ensure effective management.

## **Powers of Entry and Search**

**Question 14: Do we need the power of entry provision to allow police to apply for a warrant to search premises for evidence?**

### **Options**

**Yes - 69 respondents (91%) selected this option**

**No – 3 respondents (4%) selected this option**

**Don't know – 4 respondents (5%) selected this option**

60. Respondents thought that this was an important power where stalking had a cyber or online element and that it was important for police to have the power to enter premises and seize computers and smart phones.

61. The power of entry would also be useful in investigating whether a stalker had entered a victim's home and removed items belonging to them, this provision would allow police to enter and search a property for such missing items.

62. Some respondents expressed concern that the powers should not be used for purposes other than those set out in the legislation and should be strictly monitored.

63. Other comments included:

- Northern Ireland should adopt this power for stalking offences as victims are often not aware of the entirety of the perpetrator's behaviours, including surveillance, tracking, and bugging;
- if the Scottish legislation was adopted in Northern Ireland the offence of threatening and abusive behaviour is indictable, therefore police would have the powers to enter and search; and
- the introduction of such legislation would give the police greater powers and better protection for victims therefore increasing confidence in the criminal justice system.

## **Analysis and Next Steps**

64. It is evident from the responses received to the Department's consultation that the majority of respondents strongly support the introduction of stalking legislation here in Northern Ireland.

65. The review of the law on harassment and stalking was a ministerial priority of the previous Minister of Justice, Claire Sugden, who had indicated during the debate in the Northern Ireland Assembly in 2016 that she would legislate accordingly to protect and safeguard victims of stalking in Northern Ireland.

66. Being stalked can have terrifying consequences and the Department of Justice is determined to do everything it can to protect victims and to stop perpetrators at the earliest opportunity. We will therefore be recommending to an incoming Justice Minister that a stalking bill with legislative provisions to give effect to the introduction of a new specific offence of stalking, and stalking protection orders, be developed for introduction to a future Northern Ireland Assembly.

67. The Department will also continue to raise the profile of stalking by sharing best practice models and guidance, in use in other jurisdictions, with operational partners.