



Home Office

CONSULTATION ON STALKING

November 2011



Contents

Ministerial foreword	3
1. Introduction.....	5
1.1 Other legislation which may be used to tackle stalking.....	6
2. Police Information Notices.....	7
3. Search powers.....	9
4. Working together at local level	11
4.1 Organisations working to improve the response to stalking.....	11
5. Other remedies to tackle stalking.....	15
5.1 Tackling stalking in other jurisdictions	18
6. Our broader approach	19
6.1 Bringing perpetrators to justice.....	19
6.2 Supporting victims	20
7. Potential next steps.....	25
8. Timescales/next steps.....	30
9. About you	33
Annexes	
Annex A – Prosecutions and convictions.....	35
Annex B – Cyber stalking.....	37
Annex C – The Protection from Harassment Act 1997.....	38
Annex D – The Criminal Justice and Licensing (Scotland) Act 2010.....	40

Ministerial foreword



Stalking is an issue which profoundly affects many lives, often in devastating ways. The statistics make that abundantly clear: around 1 in 25 women aged 16-59 are a victim of stalking every year¹. After the age of 16, stalking affects around one in five women and one in ten men². A third of victims said they had lost their job or relationship or had been forced to move because of the stalking³.

We need all organisations to work together to improve their understanding of and their response to stalking. That includes the police, the Crown Prosecution Service, the courts, the NHS and the prison service. Only then will we develop an effective response to this issue. We also need to ensure that there is a better understanding about stalking and the damage it can cause to lives among the public and professionals.

I believe that government should be a strong advocate for action – bringing organisations together and breaking down barriers, and putting in place a framework of policies that help the professionals to do their job.

That is why we included stalking as a priority in our Call To End Violence Against Women and Girls last autumn. And that is why we followed this up with specific actions to improve our response to this issue this spring. That is also why I am launching this consultation today to ask for your views on how we can protect victims of stalking more effectively.

Theresa May
Rt Hon Theresa May MP

1 Smith, K. (ed), Coleman, K, Eder, S and Hall, P (2011). Homicides, firearm offences and intimate violence 2009/10 (Supplementary volume 2 to Crime in England and Wales 2009/10 2nd Edition). Home Office Statistical Bulletin 01/11.

2 Smith, K. (ed), Coleman, K, Eder, S and Hall, P (2011). Homicides, firearm offences and intimate violence 2009/10 (Supplementary volume 2 to Crime in England and Wales 2009/10 2nd Edition). Home Office Statistical Bulletin 01/11.

3 <http://www.le.ac.uk/press/stalkingsurvey.htm>

SCOPE OF THE CONSULTATION

Topic of this consultation:	This consultation seeks the views on how we can protect victims of stalking more effectively
Scope of this consultation:	This is a consultation to seek the views of key partners, and directly affected parties, including the police, practitioners, other government departments and organisations with a direct interest in preventing stalking. The consultation is also available on the Home Office website and we also invite comments from members of the public.
Geographical scope:	England and Wales
Impact assessment (IA):	An impact assessment will be available on the Home Office website in due course.

BASIC INFORMATION

To:	This consultation is open to the public.
Duration:	12 weeks. This consultation will close on 5 February 2012.
Enquires and responses:	Violent and Youth Crime Prevent Unit 4th Floor, Fry Building 2 Marsham Street London SW1P 4DF
Additional ways to become involved:	This will be an online consultation exercise. Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font or audio.
After the consultation:	A summary of responses will be placed on the Home Office website.
Getting to this stage:	The Home Office has worked closely with departments across Whitehall, the Association of Chief Police Officers, the stalking charities and victims
Previous engagement:	None.

1. Introduction

The definition of stalking used in the British Crime Survey 2010/11 is “two or more incidents (causing distress, fear or alarm) of obscene or threatening unwanted letters or phone calls, waiting or loitering around home or workplace, following or watching, or interfering with or damaging personal property by any person, including a partner or family member.”

- 18.1% of women aged 16-59 and 9.4% of men aged 16-59 say they have experienced stalking since the age of 16.
- Stalking is one of the most common types of intimate violence, with the 2010/11 BCS showing that 4.1% of women aged 16-59 and 3.2% of men aged 16-59 having experienced stalking in the last year.
- The most common perpetrator in incidents of stalking was a partner or ex-partner (39%).⁶

The Protection from Harassment Act 1997 was introduced, following consultation, because there was previously little legal protection for victims who were upset and frightened by a series of disturbing incidents but which fell short of being illegal. The Act is intended to criminalise behaviour that stops short of actual violence and it enables intervention in cases where little could be done before. The word ‘stalking’ is not specifically mentioned in the Act but it was designed to, and does, cover many forms of harassment including stalking and cyber stalking. In 2010, over 10,000⁴ prosecutions were brought under the Act, with almost 8,500 offenders found guilty in the same year (see Annex A, Table 2).

The Protection from Harassment Act followed a series of high profile stalking cases in 1995/1996. The consultation paper which preceded the Bill was focused on “stalking” and the perpetrator was referred throughout as a “stalker”. However, an earlier Private Members Bill, which attempted to define stalking by giving a non-exhaustive list of behaviours, was deemed flawed precisely because its scope would have been too narrow. The then government felt that the solution was instead to focus on the harm caused to the victim rather than the constitutive elements of “stalking”. The Bill was therefore drafted to cover “many incidents of harassment, as well as its primary aim of dealing with stalking”.

The last time that a review of the Protection from Harassment Act 1997 was published was 11 years ago in 2000⁵. It is therefore time to take another look at the Act and, almost 15 years on from the original legislation, we are launching a consultation into the operation of the current law and how we can protect stalking victims more effectively. This includes whether there should be a specific criminal offence in legislation which is clearly labelled ‘stalking’.

The Protection from Harassment Act 1997 is important as the variety of activities employed by stalkers, when taken separately, may not constitute an offence. The Act put in place a regime of both criminal and civil measures. Sections 1 and 2 of that Act make ‘harassment’ (which includes causing alarm or distress) an offence subject to a maximum of 6 months imprisonment (see Annex C for more information on the Protection from Harassment Act 1997). Section 4 of the Act creates a more serious offence committed where a person causes another to fear, on at least two occasions, that violence will be used against them. This offence is subject to a maximum sentence of 5 years imprisonment.

⁴ including breaches, so would include repeat offenders/same case.

⁵ Harris, J. (2000). An evaluation of the use and effectiveness of the Protection from Harassment Act 1997. Home Office Research Study 203,.

⁶ Source: Smith, K. (ed), Coleman, K, Eder, S and Hall, P (2011). Homicides, firearm offences and intimate violence 2009/10 (Supplementary volume 2 to Crime in England and Wales 2009/10 2nd Edition). Home Office Statistical Bulletin 01/11. Note: Stalking is defined in the Interpersonal Violence module of the BCS as: Stalking: two or more incidents causing distress, fear or alarm of obscene/threatening unwanted letters or phone calls, waiting or loitering around home or workplace, following or watching, or interfering with or damaging personal property carried out by any person.

1.1 OTHER LEGISLATION WHICH MAY BE USED TO TACKLE STALKING

Stalkers employ a wide variety of tactics to harass their victims. Therefore sometimes the Protection from Harassment Act 1997 may not be the most appropriate piece of legislation to use for a prosecution. The list below is by no means exhaustive, but illustrates which other pieces of legislation might be appropriate:

- **Computer Misuse Act 1990**

This Act legislates against unauthorised access to or modification of computer material and creates an offence of securing unauthorised access to computer material with intent to commit or facilitate a further offence. It also creates an offence committed through unauthorised acts with intent to impair, or with recklessness as to impairing the operation of a computer

- **Malicious Communications Act 1998**

Offence of sending letters or articles with intent to cause distress or anxiety

- **Public Order Act 1986**

Offence of fear or provocation of violence – threatening, abusive, insulting words, behaviour, signs etc. Intent to cause person to believe immediate unlawful violence will be used or to provoke such violence

Offence of intentional harassment, alarm or distress

- **Criminal Justice Act 1988**

Offence of common assault – actual battery or threat of immediate force

- **Offences Against the Person Act 1861**

Offence of threats to kill

Offence of actual or grievous bodily harm

- **Criminal Justice and Public Order Act 1994**

Offence of witness intimidation

It should also be noted that if the perpetrator commits an offence such as rape or grievous bodily harm, they will be prosecuted for the offence which properly reflect its seriousness.

2. Police Information Notices

Often referred to as a ‘harassment warning’ or ‘warning notice,’ a Police Information Notice or ‘PIN’ is used to inform a person verbally and/or in writing that an allegation has been made against him/her, allowing him/her to consider his/her future behaviour, thereby potentially avoiding prosecution. Potential outcomes as a result of Police issuing these non-statutory notices are:

- to ensure members of the public are aware of the requirements of the criminal law in relation to the Protection from Harassment Act 1997 (PHA);
- to help prevent (as part of an early police intervention) the escalation of disputes between individuals and/or further incidents of behaviour which could amount to harassment;
- to assist any future prosecution by proving that the offender knew their future conduct could amount to harassment under the PHA;
- to provide a response when a complainant does not wish to support a prosecution.

Each PIN must be authorised and issued by a supervising officer. Guidance on this can be found on the National Policing Improvement Agency (NPIA) website⁷.

A PIN should only be issued when the offence is incomplete, i.e. when a course of conduct has not been pursued, such as when the victim reports only one occasion of harassment. The only other reason for issuing a PIN is where there may be situations where the perpetrator may appear to be genuinely unaware that what they are doing constitutes an offence under the PHA and that there are reasonable grounds for that disbelief.

Acknowledging receipt of a Police Information Notice does not mean that the recipient is admitting any wrongdoing – they are simply accepting information about the PHA and the police position on investigating allegations of harassment which includes stalking. For this reason, there is no right of appeal⁸. An individual’s details would not be recorded on the police national computer purely on the basis of a PIN being issued and the existence of a PIN would not in any way be considered a criminal record.

We recognise that there are concerns around the process by which these notices are issued. Some argue that those issued with a Police Information Notice are not given a fair hearing. Equally we are aware that some consider Police Information Notices to lack teeth and that they give victims a false sense of security.

7 See page 70 of the Association of Chief Police Officers (ACPO) Stalking and Harassment practice advice: (<http://www.acpo.police.uk/documents/crime/2009/200908CRISAH01.pdf>)

8 See page 70 of the Association of Chief Police Officers (ACPO) Stalking and Harassment practice advice: (<http://www.acpo.police.uk/documents/crime/2009/200908CRISAH01.pdf>)

**Q1. In your view, how effective are Police Information Notices in tackling stalking in the early stages?
Please provide additional reasons to support your views.**

3. Search powers

The powers of the police to search premises and to seize and retain property found by them on persons or premises are governed by the Police and Criminal Evidence Act 1984. Generally the power for police to enter and search premises is only available in relation to indictable⁹ offences (although there are some exceptions to this). This is on the basis that an intrusion into a person's private dwelling is, in general, only justified when an offence is serious enough to be tried on indictment. Harassment under section 2 of the Protection from Harassment Act (PHA) is a summary only offence¹⁰ and no exception to the general rule is provided for in relation to this offence. Therefore the police do not have the power to enter and search premises in respect of the section 2 PHA offence on its own.

Harassment under section 4 PHA can be tried in either the magistrates' court or the Crown Court and therefore the police have the power to enter and search premises in relation to this more serious offence.

Some forces have pressed us to consider extending police powers to enter and search premises and seize property so that they are available for stalking behaviour covered by the less serious section 2 offence. This is because they feel there are some cases, particularly those harassment cases that involve cyber stalking (see Annex B), where having a power to search for and seize computers or other electronic equipment (e.g. smart phones) that may have been used to commit the offence would help to give a fuller picture of the stalker's behaviour and make prosecution more likely. They point out that in cyber stalking cases in particular it is sometimes very difficult to link the stalking behaviour of the perpetrator to the victim without seizing the equipment used to stalk their victims.

It is arguable, on the other hand, that there is nothing about the nature of section 2 offending that makes it serious enough to justify a power to search premises and seize and retain property. There is also a question whether such a power is necessary in order to satisfy the evidential burden to make out the offence, as the victim should be able to provide the police with any emails, text messages etc. that they have received. It is therefore not clear whether the absence of such a power for section 2 offences is in practice a hindrance to successful prosecutions.

9 An offence triable on indictment is a more serious offence, which can be tried in the Crown Court, either as an alternative to the magistrates' court (a so-called 'either-way' offence) or, for the most serious offences such as murder, can only be tried in the Crown Court (known as 'indictable only' offences).

10 A summary-only offence is a less serious offence which can only be tried by magistrates because the limited sentencing powers available to magistrates are judged to be sufficient.

Q2. Should the police have the power, in addition to the limited powers available for summary only offences, to search premises and seize property in relation to offences under section 2 of the Protection from Harassment Act 1997? Please provide additional reasons to support your views.

4. Working together at local level

Partnership working is at the heart of our approach to tackling stalking and recent work on improving multi-agency management of antisocial behaviour (ASB) cases may yield important lessons for stalking cases too.

When tackling stalking, there are some parallels that can be seen between this and antisocial behaviour. Discussions with practitioners around good practice suggest the need for an effective call handling system at the initial point of contact; the use of appropriate risk assessment tools to identify the most vulnerable victims; and a shared set of case-management principles agreed by agencies in a particular area.

Antisocial behaviour case management and call handling trials (following the case of Fiona Pilkington who killed herself and her severely disabled daughter after years of harassment by youths in 2007) recently concluded with the eight pilot forces reporting their findings to the Home Office in September 2011. We are now considering the findings, with the aim of highlighting the key learning points and effective practice to share with all 43 police forces. We aim to publish our summary report by the end of the year and we will also consider what relevant points can be applied to stalking.

4.1 ORGANISATIONS WORKING TO IMPROVE THE RESPONSE TO STALKING

- **National Stalking Helpline**

The National Stalking Helpline was formally launched in April 2010. The helpline is run by a collaborative partnership of three charities: the Suzy Lamplugh Trust, Network for Surviving Stalking and Protection Against Stalking. The inception of the Helpline was part funded by the Home Office in 2009/10, with matched funding from two charitable trusts.

Data from the helpline indicates that since its launch the helpline has made 2,327 contacts. 80% of these were female and 20% were male. Approximately half of all callers had contacted the police before

calling the helpline and three quarters of these were dissatisfied with the police response¹¹.

The Home Office has committed to allocate £900,000 for a range of national helplines for each year of the spending review period (action number 38 in the Violence Against Women and Girls (VAWG) Action Plan). This supports the work of national helplines which provide advice to male, female and lesbian, gay, bi-sexual and transgender victims of domestic violence. As part of this funding we are working with the National Stalking Helpline to develop its capabilities.

- **Protection Against Stalking (PAS)**

PAS was founded by Tricia Bernal and Carol Faruqui whose daughters were both murdered by stalkers. The Director of PAS, Laura Richards, has been involved in many complex murder cases, assaults and other sexual/violent crimes. She has reviewed, analysed and conducted psychological autopsies on hundreds of cases to gain a better picture of the antecedents to murder and intervention and prevention opportunities.

- **Suzy Lamplugh Trust (SLT)**

SLT is a personal safety charity that deals with stalking as part of its work. SLT manages the National Stalking Helpline.

- **Network for surviving stalking (NSS)**

Alexis Bowater, Chief Executive of NSS, is a former cyber stalking victim. She was a newsreader for ITN and has commissioned the University of Bedfordshire to investigate cyber stalking.

- **Association of Chief Police Officers (ACPO)**

Assistant Chief Constable Garry Shewan is the ACPO lead on stalking and harassment and chairs a working group that meets quarterly. ACPO facilitated the introduction of stalking Single Points of Contact (SPOCs) in February 2010.

¹¹ National Stalking Helpline, 2011. It should be noted that the helpline covers the whole of the UK and as such these statistics are UK statistics, i.e. not just England and Wales

- **Fixated Threat Assessment Centre (FTAC)**

FTAC looks at mental health issues surrounding fixated behaviour. FTAC was created to deal with high-profile victims of stalking or harassment such as the royal family and politicians.

FTAC aims to ensure that mentally disordered fixated people are referred to psychiatric services in their local area, so that their target's safety is improved and their health problem treated. By providing psychiatrists with detailed information about stalkers' previous encounters with the police they can help practitioners treat patients more effectively.

FTAC is jointly funded by the police and health services and won the ACPO Excellence Award in 2009.

FTAC has published a number of research papers on stalking which can be found at <http://www.fixatedthreat.com/>

We have committed to learn from how FTAC operates to see how its methods of investigation of stalking cases could be applied to mainstream policing (action number 26 in the VAWG Action Plan¹²). We are looking to capture their learning and use their techniques more widely. This includes consideration of programmes for perpetrators which focus on their offending and issues relating to their mental health.

In addition to the above organisations, the Home Office has also set up a National Stalking Strategy Group to support the ACPO Stalking and Harassment Working Group (action number 28 in the Violence Against Women and Girls Action Plan). The National Stalking Strategy Group comprises representatives from the Police, Crown Prosecution Service (CPS), Home Office, Ministry of Justice and experts in the field. It supports the victim and charity focused ACPO Stalking and Harassment Working

Group in building Police/CPS awareness of stalking, focusing on the importance of risk assessment, improved police response and robust prosecution. We are also learning from the pioneering work taking place in Melbourne to tackle stalking¹³. We are working with FTAC to consider how this approach might be applied in England and Wales (action number 29 in the VAWG Action Plan).

¹² <http://www.homeoffice.gov.uk/publications/crime/call-end-violence-women-girls/vawg-action-plan>

¹³ The Melbourne team has a specialist clinic for the assessment and treatment of stalkers. They have produced a structured professional judgment tool on the assessment of risk in stalking, known as the Stalking Risk Profile. FTAC has close links to Melbourne through joint research in the stalking area, particularly but not exclusively concerning public figures

Q3. In your view, do you consider that local agencies (including the police, other Criminal Justice partners and other police services) and the public are sufficiently aware of what stalking is and the behaviour it covers? Please provide additional reasons to support your views.

Q4. In your view, are local agencies (including the police, other Criminal Justice partners and other police services) provided with sufficient training on how to address stalking? Please provide additional reasons to support your view.

5. Other remedies to tackle stalking

CIVIL INJUNCTIONS AND RESTRAINING ORDERS

Victims may apply for civil injunctions under section 3 of the Protection from Harassment Act 1997 to prevent stalking. The burden of proof in the civil courts is on the balance of probabilities, rather than the 'beyond reasonable doubt' test in criminal courts.

Injunctions can be made for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment. Damages can also be awarded for any anxiety or financial loss resulting from the harassment.

The civil injunction has to be applied for through the civil courts and the costs of obtaining the injunction need to be met by the person applying for the injunction unless legal aid is granted. Breach of a civil injunction issued after 1 September 1998 is a criminal offence, triable either way¹⁴ and punishable by up to five years' imprisonment and/or an unlimited fine.

RESTRAINING ORDERS

Under section 5 of the Protection from Harassment Act (as amended by section 12 of the Domestic Violence, Crime and Victims Act 2004) a court sentencing someone convicted of any offence may also impose a restraining order prohibiting specified forms of behaviour which cause harassment or a fear of violence. Section 5A of the Act (inserted by the 2004 Act) allows a court to make restraining orders in cases where there has been an acquittal, or a conviction has been overturned on appeal, but the court considers that an order is necessary to protect a person from harassment. Breach of a restraining order is a criminal offence punishable by up to 5 years imprisonment or an unlimited fine. See Annex C for more information.

¹⁴ An either way offence is one which is of moderate seriousness and which most often carries with it the possibility of a custodial sentence.

**Q5. In your view how effective are restraining orders and civil injunctions in tackling stalking?
Please provide additional reasons to support your views.**

**Q6. In your view how effective, if at all, are sanctions for breaching restraining orders?
Please provide additional reasons to support your views.**

5.1 TACKLING STALKING IN OTHER JURISDICTIONS

Specific anti-stalking legislation has been introduced in Scotland under the Criminal Justice and Licensing (Scotland) Act 2010. Section 39 of this Act (see Annex D) lists a number of behaviours and conducts that amount to stalking. The measure came into force in Scottish law on 13 December 2010. The legislation followed a consultation which examined the protection for victims in Scotland against that provided in other jurisdictions, including England and Wales under the Protection from Harassment Act 1997. Although the respective legislation is framed slightly differently, the same stalking behaviours are criminalised. Specific anti-stalking legislation has also been introduced in Belgium, Australia and California.

6. Our broader approach

A number of other actions to address stalking are also in train amongst various agencies:

2010

- In September the Home Office hosted a stalking policy workshop with eight organisations that work with victims of stalking, including the three main stalking charities – Protection from Stalking (PAS), Network for Surviving Stalking (NSS) and the Suzy Lamplugh Trust (SLT).
- The Crown Prosecution Service (CPS) issued new guidance to prosecutors on prosecuting cases of stalking and harassment following consultation with interested groups. This guidance was then later revised to include the latest advice on cyber stalking.
- In December a National Stalking Conference was also convened to promote the sharing of best practice between the police and the CPS.

2011

- The Association of Chief Police Officers (ACPO) is currently consulting with the National Policing Improvement Agency (NPIA) in adding a Stalking and Harassment element to critical incident training for senior police officers.
- Her Majesty's Inspectorate Constabulary (HMIC) is currently looking at how the police can incorporate stalking and harassment into its inspection framework.
- ACPO are currently working with the NPIA to incorporate the investigation of cyber stalking within the NPIA Practice advice
- The majority of police forces now have a Single Point of Contact on stalking and these are working with the National Stalking Helpline and assisting with the referral of urgent cases
- The introduction of risk assessment tools in most forces
- ACPO has launched the Stalking Training Descriptor for all police officers and police staff who are involved in the investigation of incidents.
- A stalking leaflet has been launched for all front line officers to use as an aide-memoir in assisting with stalking investigations.

- We included a detailed range of actions on stalking in the government's Violence Against Women and Girls (VAWG) Action Plan on 8th March 2011 and we have been working since then to deliver those actions. Our focus is twofold – ensuring we bring perpetrators to justice and a focus on victim support.

6.1 BRINGING PERPETRATORS TO JUSTICE

Types of stalker

A number of classifications and typologies for stalkers have been published which have different practical purposes. One example typology based primarily on motivation and context divides stalkers into five basic types.

1. The rejected – who pursue ex-intimates, either in the hope of reconciliation, or for vengeance, or out of a mixture of both.
2. Intimacy seekers – who stalk someone they believe they love and who they think will reciprocate.
3. Incompetent suitors – who inappropriately intrude on someone, usually seeking a date or brief sexual encounter.
4. The resentful – who pursue victims to exact revenge for some actual or perceived injury.
5. The predatory – whose stalking forms part of sexual offending.

Source: Mullen et al (1999)¹⁵

The Home Office has been told by the stalking charities and victims that provision of training and awareness of guidance on the subject of stalking (including cyber stalking and cyber bullying) could perhaps be improved. Stalking behaviour needs to be identified early and acted upon. We also recognise there is a need to focus on prevention work, e.g. teaching about healthy relationships in schools, public awareness raising campaigns and offender behaviour programmes, particularly in vulnerable groups.

15 Mullen, P.E., Pathé, M., and Purcell, R., et al. (1999). A study of stalkers. *American Journal of psychiatry*. 156. pp. 1244-1249.

The Home Office has been working with ACPO, the CPS, the Ministry of Justice (MoJ) and the stalking charities to ensure that best practice guidance is disseminated through a series of regional events. This kind of help and improved training can ensure that stalking behaviour is identified early and acted upon (action number 27 in the Violence Against Women and Girls Action Plan).

The Home Office is working with ACPO who are commissioning NPIA to produce an e-learning training module on stalking for the police. We also recognise that training and awareness of the police and prosecutors can be improved and that incidents of stalking need to be logged and handled in a suitable manner. According to ACPO 65% of forces currently have officers trained in risk assessment and ACPO hope to see all forces using the DASH¹⁶ risk assessment tool by the end of the year.

Other actions within the Violence Against Women and Girls Action Plan to help bring perpetrators to justice include:

- Address the issue of cyber stalking by ensuring that the links are made between the different agencies that are working on stalking, e-crime and communications data (action number 81).
- Learn from how the Fixated Threat Assessment Centre (FTAC) operates to see how its methods of investigation of stalking cases could be applied to mainstream policing (action number 26).
- Coordinate a National Stalking Strategy Group to support the ACPO Stalking Working Group (action number 28).
- Learn from how police forces in other countries respond to VAWG and work with our police partners to consider how effective approaches might be applied in England and Wales (action number 29).
- Review impact of the Protection from Harassment Act 1997 (action number 80).

The UK Council for Child Internet Safety (UKCCIS), jointly chaired by Tim Loughton, Parliamentary Under Secretary of State for Children, and James Brokenshire, Parliamentary Under Secretary of State for Crime and Security, operates a project looking at raising the awareness and understanding of online risks, including aspects of cyber bullying. The advice to children and young people experiencing cyber bullying currently given to children by UKCCIS members is based around being respectful to others online; blocking people who behave badly, not replying, telling a trusted adult and saving the evidence.

6.2 SUPPORTING VICTIMS

Case study example of stalking (Provided by Network for Surviving Stalking)

Shortly after the death of her husband, a middle aged woman, Mrs T, formed an acquaintanceship with Mr H, a local man. Her reliance on this man increased when she began to believe that someone was visiting her home whilst she was out. She would regularly find that e.g. toothbrushes had been used, or that personal letters had been rearranged. She was also upset that dead birds were frequently found on her doorstep. Mrs T was finally admitted to hospital when she awoke to find the unearthed remains of her husband deposited on her doorstep. Throughout this time, she described Mr H as “a tower of strength.” Three months later, police evidence linked Mr H to the desecration of the grave. During questioning, Mr H revealed that this had been his method of asking Mrs T “What it is that her husband has got that I haven’t.”

The outcome of this case was that the stalker was issued with a caution and the stalking behaviour ceased at this point.

¹⁶ Domestic Abuse, Stalking and Honour Based Violence (DASH 2009) Risk Identification, Assessment and Management Model

Stalkers can cause their victims serious and lasting psychological and physical trauma. Findings from a self-selected online of 1,051 victims of stalking looking at the effects of stalking, commissioned by the Network for Surviving Stalking and run by the University of Leicester found the following¹⁷:

- A third of victims said they had lost their job or relationship or had been forced to move because of the stalking.
- 92% reported physical effects and 98% reported emotional effects. These ranged from anxiety, sleep disturbances, anger, and distrust, to depression, self-harm, post-traumatic stress disorder and suicide attempts.
- Half of the victims questioned changed their telephone number, half of the victims questioned gave up social activities, half of the victims questioned saw their performance at work affected and a third of the victims questioned relocated.

A Home Office workshop attended by victims and charities in September 2010 investigated the effects of stalking. Findings included¹⁸:

- Some felt that police officers often lacked the necessary training to identify and adequately deal with stalking cases.
- Some felt that there was a failure of agencies to work together and share information about stalking cases, which was made worse by a lack of awareness of stalking.
- Some victims felt there was a lack of support for them when trying to deal with the psychological trauma of being stalked.

“I’d get 30 bouquets of flowers in a month. Friends would say ‘aren’t you lucky’ – but I’d be terrified.”

Tracey Morgan, stalking victim

“Right to the very end she always felt concerned people out there thought she was making a mountain out of molehill.”

Tricia Bernal, mother of Clare Bernal who was murdered by her stalker

Some victims report that they are not taken seriously by the police or that police do not know how to investigate stalking properly. Some feel that stalking is not seen as a distinct crime with different risk factors to domestic violence, for example, that needs to be approached differently by police officers.

In our Violence Against Women and Girls Action Plan we have committed to support the National Stalking Helpline which provides advice to victims of stalking and harassment. The helpline has links to a police Single Point of Contact (SPOC) in each police force area that they can refer cases of stalking and harassment to. Having a SPOC for stalking victims is a huge step forward.

¹⁷ Sheridan, L. (2005). Key findings from University of Leicester website www.le.ac.uk/press/stalkingsurvey.htm. 23rd September.

¹⁸ Home Office policy workshop in September 2010 with victims and charities

Q7. In your view, what, if any, improvements could local agencies make to their response to victim complaints? Please provide additional reasons to support your views.

**Q8. In your view, what, if any, barriers are there to victims coming forward to the police?
Please provide additional reasons to support your views.**

Q9. In your view, what, if any, barriers are there to the Crown Prosecution Service gaining prosecutions that result in conviction? Please provide additional reasons to support your views.

7. Potential next steps

Stalking charities, campaigners, some police officers and some MPs feel strongly that, although stalking and cyber stalking behaviour is included within the definition of harassment under the Protection from

Harassment Act 1997 (PHA), because these terms are not mentioned specifically the police do not always realise that the Act can be used to tackle stalking and fail to take the appropriate action to deal with it.

Q10. The current legislation addresses cyber stalking and the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) guidance makes this explicit. In your view, is the current legislation and supporting guidance 'sufficient'? Please provide additional reasons to support your views.

Q11. In your view, is there anything that could make a difference to how cases are investigated and prosecuted? Please provide additional reasons to support your views.

A 'Stalking Law Reform Campaign' was launched in July 2011. The aim of the campaign is to gather evidence via 'evidence sessions' on the impact of the current situation on stalking victims. This will be used to pull together an action plan¹⁹. At the second evidence session in July 2011, attended by victims of stalking and their families, a view was expressed that there should be an explicit offence of "stalking" and stalking behaviour should be defined in legislation

to give professionals clear guidance. Some charities echoed the above view at later evidence sessions and at the third session on 12th October 2011, Louise Casey, the former Commissioner for Victims and Witnesses²⁰ said she supported a change in the law and that she felt a specific offence of stalking was needed to send a signal around the justice system about seriousness, as well as to be able to better understand the scale and scope of the problem.

Q12. Is the current legislation sufficient in dealing with stalking perpetrators? If not, what evidence do you have of the gap in the law and does a specific offence of "stalking" need to be defined on the face of legislation? If you consider there should be a specific offence, we would be grateful for your views on what it should contain. Please provide additional reasons to support your views.

¹⁹ <http://www.protectionagainststalking.org/node/50>

²⁰ The role of the Victims' Commissioner is to promote the interests of victims and witnesses, encourage good practice in their treatment, and regularly review the Code of Practice for Victims which sets out the services victims can expect to receive. The Commissioner's role is to listen to the views of victims and witnesses, understand the criminal justice system from their point of view and try to help improve the services and support available.

We have also committed to address the issue of cyber stalking by ensuring that the links are made between the different agencies that are working on stalking, e-crime and communications data (action number 81 in the Violence Against Women and Girls (VAWG) Action Plan). Cyber stalking and cyber bullying²¹ should be treated as seriously as any other form of stalking. The Home Office is working with ACPO to support the police by raising awareness of the agencies that may be involved in tracking down perpetrators of cyber stalking who are able to hide their location and identity on the internet.

A Home Office review of the 1997 Protection from Harassment Act in 2000²² concluded that the use being made of the Act's criminal provisions was valid but that there was a need to clear up the confusion that existed among practitioners about the kinds of cases which the criminal provisions of the Act are intended to cover and the circumstances in which the civil remedy might be more appropriate. A Home Office circular (28/2001) was issued in response to the review which is available on request.

Q13. Do you think there is a need to increase the number of stalking perpetrators we bring to justice, and if so how? Please provide additional reasons to support your views.

21 Cyber bullying is described as when one person or a group of people try to threaten or embarrass someone else using a mobile phone or the internet (http://www.direct.gov.uk/en/YoungPeople/HealthAndRelationships/Bullying/DG_070501)

22 Harris, J. (2000). An evaluation of the use and effectiveness of the Protection from Harassment Act 1997. Home Office Research Study 203

**Q14. Do you think we need to protect stalking victims more effectively, and if so how?
Please provide additional reasons to support your views.**

8. Timescales/next steps

The coalition government takes stalking and harassment very seriously and is committed to taking forward work to address these issues as part of its wider work on violence against women and girls. On 8th March 2011 we published our Action Plan to tackle violence against women and girls which includes seven actions on stalking. To read the Action Plan in full please visit: www.homeoffice.gov.uk/vawg.

A summary of responses will be published on the Home Office website following completion of the consultation period. This consultation will last at least 12 weeks and we will be looking closely at responses received with a view to feeding back our views in the New Year.

Q15. In your view, who do you think will be impacted by this consultation? Please provide additional reasons to support your views.

Q16. In your view, what impacts do you think this consultation will have? Please provide additional reasons to support your views.

The provisions of the Protection from Harassment Act 1997 have also been used in connection with purposes other than stalking, including protest.

Consultees may have views on this or other aspects of the Act's provisions not covered by other questions in this consultation paper.

Q17. Do you have any other observations on the operation of the 1997 Act? Please provide additional reasons to support your view.

9. About you

What is your age? (tick one)

- Under 16
- 16-17
- 18-24
- 25-29
- 30-44
- 45-60
- Over 60

What is your gender (tick one)

- Male
- Female

What region are you in? (tick one)

- North East
- North West
- Yorkshire/Humberside
- East Midlands
- West Midlands
- Wales
- East Anglia
- South West
- South East
- Greater London

Are you:

Responding on behalf of an organisation?

- Central Government Department
(please specify which Department)

- Community Safety Partnership
- Crown Prosecution Service
- Domestic Violence Co-ordinators
- Local Authority
- Magistrate
- NHS
- Police Force
- Voluntary Sector
(please give the name of your organisation)

- Other (please specify)

- Responding as a member of the public?

VICTIM

Have you, or a close friend or family member, ever been a victim of stalking?

- Yes, I have been a victim of stalking
- I know a close friend or family member who has been a victim of stalking
- Neither
- I'd rather not say

How did you hear about this consultation?

- Word of mouth
- Article in national press
- Article in local press
- Article in the Crime and Policing Policy News Update
- TV or radio
- Face to face meeting
- Home Office website
- Directgov website
- Other (please specify below)

Annex A – Prosecutions and convictions

Table 1: Number of defendants proceeded against at magistrates' courts and found guilty at all courts under selected Acts, England and Wales, 2006 to 2010 ⁽¹⁾⁽²⁾⁽³⁾

Statute	2006		2007		2008		2009		2010	
	Proceeded against	Found guilty	Proceeded against	Found guilty	Proceeded against	Found guilty	Proceeded against	Found guilty	Proceeded against	Found guilty
Protection from Harassment Act 1997	8,101	5,531	7,395	5,322	7,674	5,638	8,650	6,646	10,990	8,487

(1) The figures given in the table on court proceedings relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

(2) Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have

been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

(3) Excludes data for Cardiff magistrates' court for April, July and August 2008.

Source: Justice Statistics Analytical Services – Ministry of Justice. [Ref: IOS 310-11]

Table 1 shows that:

- There were 8,650 persons proceeded against in 2009 for offences under the Protection of Harassment Act (of which 6,646 were convicted) and 10,990 in 2010 (of which 8,487 were convicted).

It should be noted that the figures on the Protection from Harassment Act 1997 includes breaches of previously issued orders under this Act so some offenders may be counted more than once in the table

Table 2: Number of defendants proceeded against at magistrates' courts and found guilty at all courts for offences under the Protection from Harassment Act 1997, by sentence breakdown, England and Wales, 2010⁽¹⁾(2)(3)(4)(5)

Offence of harassment – S.2 Protection of Harassment Act 1997	6,025	4,655	4,681	11	724	562	2,085	498	530	271	2.7
Racially aggravated offence of harassment – S.2 Protection of Harassment Act 1997 as amended by Crime and Disorder Act 1998	54	65	67	—	8	6	23	13	13	4	7.4
Religiously aggravated offence of harassment – S.2 Protection of Harassment Act 1997 as amended by Crime and Disorder Act 1998	3	5	5	—	3	—	1	—	1	—	:
Racially or religiously aggravated offence of harassment – S.2 Protection of Harassment Act 1997 as amended by Crime and Disorder Act 1998	26	15	16	—	—	1	9	3	3	—	:
Breach of the conditions of an injunction against harassment – S.3 Protection of Harassment Act 1997	68	29	29	—	2	7	12	1	6	1	1.7
Putting people in fear of violence – S.4 Protection of Harassment Act 1997	1,439	765	761	—	25	11	281	206	141	97	7.0
Racially aggravated putting people in fear of violence – S.4 Protection of Harassment Act 1997 as amended by Crime and Disorder Act 1998	19	26	28	—	3	1	11	5	6	2	13.7
Religiously aggravated putting people in fear of violence – S.4 Protection of Harassment Act 1997 as amended by Crime and Disorder Act 1998	1	2	2	—	—	—	—	—	1	1	:
Racially or religiously aggravated putting people in fear of violence – S.4 Protection of Harassment Act 1997 as amended by Crime and Disorder Act 1998	6	4	5	—	—	—	2	1	1	1	:
Breach of a Restraining Order – S.5 Protection of Harassment Act 1997	3,349	2,920	2,798	15	237	321	778	381	904	162	4.3
Breach of a Restraining Order issued on acquittal – Protection from Harassment Act 1997 as inserted by Domestic Violence, Crime and Victims Act 2004	—	1	1	—	—	—	1	—	—	—	*
Total	10,990	8,487	8,393	26	1,002	909	3,203	1,108	1,606	539	

(1) The figures given in the table on court proceedings relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

(2) Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

(3) The number of defendants found guilty in a particular year may exceed the number proceeded against as the proceedings in the magistrates' court took place in an earlier year and the defendants

were found guilty at the Crown Court in the following year; or the defendants were found guilty of a different offence to that for which they were originally proceeded against.

(4) The sentenced column may exceed those found guilty as it may be the case that a defendant found guilty, and committed for sentence at the Crown court, may be sentenced in the following year.

(5) The category Otherwise Dealt With (ODW) includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; and other miscellaneous disposals.

(6) Average custodial sentence length excludes life/indeterminate sentences
* – Not applicable

: – number too small to give a meaningful average

Source: Justice Statistics Analytical Services – Ministry of Justice.
[Ref: IOS 310-11]

Annex B – Cyber stalking

The definitions of cyber stalking vary widely and experts differ on which activities constitute cyber stalking. There is ongoing debate around whether a victim is only cyber stalked if the harassment originated and was primarily online/through electronic means, or if cyber stalking describes any use of the internet and electronic means to harass a victim. We would therefore define it as “the offence of stalking or harassment using the internet and electronic means”.

Online stalkers might employ the use of the internet and electronic means; common forms of cyber stalking include sending repeated unwanted messages, ordering goods and services on the victim’s behalf, publicising private information of a potentially damaging or embarrassing nature, spreading false information, gathering information about the victim online, identity theft, encouraging others to harass the victim and launching attacks against the victim’s computer and databases. However, as the internet and technology evolve so quickly, an exhaustive list of cyber stalking activities quickly becomes outdated.

The Protection from Harassment Act 1997 covers all forms of harassment, including cyber stalking, where a perpetrator pursues. Where a perpetrator pursues a course of conduct which amounts to harassment and the offender knows or ought to know their conduct amounts to harassment. It does not matter whether the course of conduct was committed online or offline. As long as the elements of the offence are met, the offence under section 2 of the Act can be charged. Where the course of conduct causes another to fear that violence will be used against them, the more serious offence under section 4 of the Act can be charged. Again this covers online behaviour.

This is reflected in the Crown Prosecution Service (CPS) guidance²³ which states: “Harassment can take place on the internet and through the misuse of email. This is sometimes known as ‘cyber stalking’. This can include the use of social networking sites, chat rooms and other forums facilitated by technology.”

STATISTICS

There are no reliable statistics regarding the prevalence of cyber stalking and incidences of cyber stalking are poorly recorded. In a study of 1051 self-defined stalking victims²⁴ nearly half said they had been harassed via the internet, but in only 7.2% of cases had the stalking originated online and remained solely online for a minimum of four weeks. It is likely that the problem of cyber stalking has grown as use of and access to the internet has increased. This is just one of the reasons why it is hard to compare studies of cyber stalking.

EFFECTS OF CYBER STALKING ON THE VICTIM

The degree of cyber involvement in stalking does not seem to impact on the effect of stalking on the victim²⁵. Medical, psychological, social and financial effects are similarly severe regardless as to whether the stalking activity is on or offline.

23 http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/

24 Sheridan and Grant, ‘Is cyber stalking different?’ p633

25 *ibid*

Annex C – The Protection from Harassment Act 1997

SUMMARY

The Protection from Harassment Act came into force on 16 June 1997. The Act criminalises harassment (including stalking behaviour) and provides a civil remedy for harassment. The Act offers greater protection than the previous law in several ways, through criminal penalties, the use of restraining orders and civil injunctions. Breaches of such orders and injunctions are criminal offences which carry significant maximum penalties.

OFFENCES

Section 1 of the Act introduces a prohibition on any course of conduct pursued by a person which amounts to harassment of another and which he knows or ought to know amounts to such harassment.

Section 2 of the Act makes it a criminal offence for a person to pursue a course of conduct in breach of section 1 or 1A (harassment of more than one person). The section 2 offence of harassment is a summary offence (i.e. triable only in the magistrates' court). It carries a maximum sentence of six months imprisonment and/or a fine of up to £5,000. The police are given the power to arrest without warrant anyone reasonably suspected of committing a section 2 offence. The elements of the offence are that the accused must pursue a course of conduct which amounts to harassment of another person and the accused must know, or ought to know, that the course of conduct amounts to harassment.

Section 4 of the 1997 Act makes it a criminal offence for a person to pursue a course of conduct which causes another on at least two occasions to fear that violence will be used against them, and which he knows, or ought to know, will cause such fear on each occasion. The section 4 offence is a higher level offence triable in either magistrates' court or the Crown court. It is punishable in the magistrates' court with up to six months imprisonment and/or a £5,000 fine; in the Crown Court the penalties are up to five years imprisonment and/or an unlimited fine. For an offence of harassment to be made out, there

must be a course of conduct, which is defined in section 7(3) as meaning 'conduct on at least two occasions'. The conduct on each occasion need not be the same but must contribute to the alleged course of harassment. The Act does not specify what period of time must elapse between incidents for them to be treated as a course of conduct and the circumstances of each case must be taken into account.

A 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 another.

STATUTORY DEFENCES

Under section 1(3) it is a defence to a charge of criminal harassment for the accused to show in relation to a course of conduct:

- that it was pursued for the purpose of preventing or detecting crime
- that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under the enactment
- that in the particular circumstances the pursuit of the course of conduct was reasonable.

RESTRAINING ORDERS

A court sentencing, or otherwise dealing with a person convicted of an offence, has the power to impose a restraining order. In addition a court has the power to impose a restraining order on acquittal if it considers it necessary to do so to protect a person from harassment by the defendant. Such orders are made for the purpose of protecting the victim from further harassment or conduct which will cause a fear of violence. Breach of a restraining order is an offence punishable by up to five years imprisonment²⁶.

²⁶ Under s5(6), breach of any of the terms of a restraining order is an either-way offence punishable in a magistrates' court with up to six months imprisonment, or a £5,000 fine or both, and punishable in the Crown Court with up to five years imprisonment, or an unlimited fine or both.

Typical conditions of restraining orders are:

- not to contact the victim
- not to visit the victim's home or place of work
- not to contact the victim's family
- to report to a police station or abide by a curfew.

THE CIVIL REMEDY

A new civil procedure was also introduced under section 3 of the 1997 Act. Applications can be made to the High Court or County Court under a statutory tort of harassment. The criminal and civil remedies were not necessarily intended to cover mutually exclusive types of behaviour and it is perfectly possible for victims to pursue a civil action in circumstances in which they might equally have reported the matter to the police and sought the arrest of the offender. The court can make an order to protect the victim from further harassment and that order has powers of arrest attached. Sections 3(6) to 3(9), which were brought into force on 1 September 1998, create a criminal offence for breach of a civil injunction punishable by up to five years imprisonment or an unlimited fine or both.

Annex D – The Criminal Justice and Licensing (Scotland) Act 2010

SECTION 38 – THREATENING OR ABUSIVE BEHAVIOUR

- (1) A person (“A”) commits an offence if—
 - (a) A behaves in a threatening or abusive manner,
 - (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm,And (c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.
- (2) It is a defence for a person charged with an offence under subsection (1) to show that the behaviour was, in the particular circumstances, reasonable.
- (3) Subsection (1) applies to—
 - (a) behaviour of any kind including, in particular, things said or otherwise communicated as well as things done, and
 - (b) behaviour consisting of—
 - (i) a single act, or
 - (ii) a course of conduct.
- (4) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (3) This subsection applies where A engages in the course of conduct with the intention of causing B to suffer fear or alarm.
- (4) This subsection applies where A knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause B to suffer fear or alarm.
- (5) It is a defence for a person charged with an offence under this section to show that the course of conduct—
 - (a) was authorised by virtue of any enactment or rule of law,
 - (b) was engaged in for the purpose of preventing or detecting crime, or
 - (c) was, in the particular circumstances, reasonable.
- (6) In this section— “conduct” means—
 - (a) following B or any other person,
 - (b) contacting, or attempting to contact, B or any other person by any means,
 - (c) publishing any statement or other material—
 - (i) relating or purporting to relate to B or to any other person,
 - (ii) purporting to originate from B or from any other person,
 - (d) monitoring the use by B or by any other person of the internet, email or any other form of electronic communication,
 - (e) entering any premises,
 - (f) loitering in any place (whether public or private),
 - (g) interfering with any property in the possession of B or of any other person,
 - (h) giving anything to B or to any other person or leaving anything where it may be found by, given to or brought to the attention of B or any other person,
 - (i) watching or spying on B or any other person,
 - (j) acting in any other way that a reasonable person would expect would cause B to suffer fear or alarm, and “course of conduct” involves conduct on at least two occasions.

SECTION 39 – OFFENCE OF STALKING

- (1) A person (“A”) commits an offence, to be known as the offence of stalking, where A stalks another person (“B”).
- (2) For the purposes of subsection (1), A stalks B where—
 - (a) A engages in a course of conduct,
 - (b) subsection (3) or (4) applies, and
 - (c) A’s course of conduct causes B to suffer fear or alarm.

- (7) A person convicted of the offence of stalking is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,
 - (b) on summary²⁷ conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.
- (8) Subsection (9) applies where, in the trial of a person (“the accused”) charged with the offence of stalking, the jury or, in summary proceedings, the court—
- (a) is not satisfied that the accused committed the offence, but
 - (b) is satisfied that the accused committed an offence under section 38(1).
- (9) The jury or, as the case may be, the court may acquit the accused of the charge and, instead, find the accused guilty of an offence under section 38(1).

²⁷ A summary-only offence is a less serious offence which can only be tried by magistrates because the limited sentencing powers available to magistrates are judged to be sufficient.



Home Office