

## **Consultation on stalking**

This online form accompanies the consultation on stalking which runs from 14 November 2011 until 5 February 2012.

The government has launched this consultation to ask for views on how we can protect victims of stalking more effectively.

Read the background on the issue in the full consultation document. You may wish to refer to this document when you are providing your comments on this form.

The responses you give in the 'About You' section are only used to analyse data by broad groups of respondent (for example by age, gender, region). This information will never be used in isolation for one respondent and it will not be possible for you to be identified from your responses.

### **Police Information Notices**

Please refer to Section 2 of the consultation document.

1) 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) website. **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 appeal. **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.**

**Question 1. In your view, how effective are Police Information Notices in tackling stalking in the early stages? Please provide additional reasons to support your views.**

**Answer** – These orders could be effective to a small group of perpetrators or so-called stalkers who are 'genuinely unaware' that what they are doing constitutes an offence or causes harm. However there is no evidence to show that these notices are in any way effective and therefore one ought to be careful not to overly rely on PINs and consider them as a solution to the problem.

Besides when issuing the notice the victim has to be aware to the nature of the notice, i.e. that they are merely information given to the alleged perpetrator so that it doesn't give the victim a false sense of security. Moreover, it is important to consider the risk issuing a notice might entail on the victim who could be susceptible to further harassment for reporting the crime.

A more reasonable solution could be having an intensive public awareness campaign to inform the public about the criminality of such acts – as with any other criminal offence. Other criminal offences are rightly not subject to initial PIN - why would harassment or stalking be any different?

Although it might make sense not to consider PIN as a criminal record – it doesn't make sense not to keep it in police records especially since it may be needed to pursue the case further and identify serial perpetrators.

### **Search powers**

Please refer to Section 3 of the consultation document.

2) 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 **indictable 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 offence 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.

**Question 2. 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.**

Answer – The argument as to the search and seize which states – *“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”* does not seem logical.

Perpetrators are unlikely to use their names or identifiable information when they send emails, texts, etc to the victim and therefore without the power to search and seize equipment, especially in cases of cyber-stalking it could be hard to just rely on what the victim provides as an evidence of the stalking.

There is a need here to recognize stalking as a very serious crime which has enormous impact on the victim. Therefore, section 2 of the Protection from Harassment Act has to be amended to make it as serious as section 4 of PHA which is tried in either the Magistrates' Court or the Crown Court and therefore giving the police the power to enter and search premises and seize equipment.

### **Working together at local level**

Please refer to Section 4 of the consultation document.

3) 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.

Organisations working to improve the response to stalking:

- National Stalking Helpline
- Protection Against Stalking
- Suzy Lamplugh Trust
- Network for surviving stalking
- Association of Chief Police Officers (ACPO)
- Fixated Threat Assessment Centre

In addition to the above organisations, the Home Office has also set up a National Stalking Strategy Group to support the ACPO Stalking 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.

**Question 3. 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.**

Answer - No. A Victim's Voice Survey result published last year which collated views from over 140 victims of stalking revealed that victims are deeply dissatisfied with the criminal justice system professionals; they don't have confidence in the judicial process and feel victimised again by the whole system.

Over two thirds of women interviews did contact the police about being stalked and 65% of the total number in the survey were not satisfied with the police response. 78% said the CPS was not involved with the case and 70% of the total were not satisfied with the CPS response when they were involved.

This shows that the police, CPS and other agencies are not sufficiently aware of what stalking is, the behaviour it covers, the extent of harm it causes, etc. It is important to raise awareness on the issues not just amongst the public but also amongst agencies who are suppose to protect victims or support them in the aftermath.

**Question 4. 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.**

Answer - No there is a need for more training as stated on the points under Question 3. There is also a need for more research into the issue so that there could be a comprehensive and evidence-based training, intervention and support strategies.

Research by Dr Lorraine Sheridan found that victims suffer 100 incidents before they report to the police and over half of the victims weren't taken seriously when they report to the police and 80% of those say that the police should get proper training.

#### **Other remedies to tackle stalking**

Please refer to Section 5 of the consultation document.

#### 5) 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 way 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.

### **Question 5. In your view how effective are restraining orders and civil injunctions in tackling stalking? Please provide additional reasons to support your views.**

Answer - Restraining orders or civil injunctions can not be considered as the solution for the problem although they could be one of the tools to be used as a protection to the victim.

According to the Home Office evaluation of the use and effectiveness of the PHA 1997 states that interviews with victims revealed that restraining orders are often breached but little action is taken by the police in response. Some magistrates think that this could be due to lack of clear mechanisms for monitoring breaches or restraining orders.

Therefore it's crucial to have early identification mechanism, proper risk assessment and management and a multi-agency response rather than overly relying on a piece of paper which can't in reality safeguard a victim from harm.

### **Question 6. In your view how effective, if at all, are sanctions for breaching restraining orders? Please provide additional reasons to support your views.**

Answer- Although the sanction for breach on restraining orders i.e. up to five years imprisonment seems fine the big problem is their implementation.

According to the Victim's Voice Survey - in the 19% of cases where the CPS were involved and perpetrators were charged with breaching an injunction, a few were given cautions, others a warning, some were charged with harassment, assault, child abuse, nuisance phone calls, assaulting a police officer or under the Postal Communications Act.

However, the stalking behaviour was missed as currently there is no offence of stalking and often the police charge for only a part of the stalking behaviour. In the majority of cases, the perpetrators were repeat offenders who only received fines and/or community service. The light sentences and punishments do not reflect the serious nature of stalking and early intervention and prevention opportunities are missed.

### **Supporting victims**

Please refer to Section 6.2 of the consultation document.

7) 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 following:

- a third of victims said they had lost their job or relationship or had been forced to move because of the stalking
- 92 per cent reported physical effects and 98 per cent reported emotional effects, ranging 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 included:

- 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

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.

**Question 7. 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.**

Answer –

- As in many other forms of violence against women and girls it is very crucial to **take the concern of victims seriously**. In all of these cases the victim is the single person who will know the extent and level of risk involved.
- Another crucial thing in terms of safeguarding victim's safety and increasing confidence in the criminal justice system is keeping the victim up-to-date. Most victims according to the Home Office evaluation report felt that they were rarely informed on what was happening with their case.
- Also better protection of victims in court – at present victims can be named and professionals responding to the Home Office evaluation felt there should be an embargo on this to lessen the stress of the victim.
- Stalking should be a crime in its own right and defined like in Scotland. The Anti-stalking legislation was introduced in the New Criminal Justice and Licensing Bill in Scotland in 2010 and the law came into effect in December that year. By June 2011 130 individuals had been charged under the provision – an offence of stalking (clause 39) and 15,000 individuals charged under the provision - offence of threatening and abusive behaviour (clause 38).
- There should be a national victim advocacy service which includes the provision of counselling and support for victims.
- Past stalking behaviour should be disclosed to any woman entering into a new relationship to enable the woman to make an informed decision;
- Restraining orders and civil injunctions should be taken seriously and offenders re-arrested and sentenced appropriately for breaches.
- Those in the criminal justice system and others who support victims of stalking should receive adequate training.
- Support and intervention strategies have to be victim-centred accompanied with proper risk assessment
- There should be a national register of stalkers
- The British Crime Survey suggests that at least 120,000 individuals are affected by stalking and harassment each year, however only 53,029 cases are recorded as crimes. There should be a robust data collecting mechanism by the police.
- Recognise the gendered nature of stalking – latest statistics show that the majority of victims (80.4%) are female while the majority of perpetrators (70.5%) are male.



**Question 8. In your view, what, if any, barriers are there to victims coming forward to the police? Please provide additional reasons to support your views.**

Answer – According to the Victim’s Voice survey 72% of participants were unhappy with the Criminal Justice System’s response including the police, probation, the courts and the Crown Prosecution Service.

- Some because they don’t feel they are believed or taken seriously
- Not feeling that the outcome at the end of the long process is satisfactory – one victim said: “*There have been over fifty breaches of non-molestation orders. The outcome was a £80 fine for the perpetrator*”
- Lack of adequate protection – one victim said: “*The court ruling failed to protect me*”
- Lack of understanding about the nature of stalking by those in the CJS
- Fear/intimidation by perpetrator
- Lack of knowledge about the criminality of the act and the support available

**Question 9. 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.**

Answer - In 2009, 53,029 offences were recorded by the police of whom 6,581 were subsequently found guilty in court. This represents only 12.9% of the total number of recorded offences. Only 2% of perpetrators receive a custodial sentence and 10% received other sanctions, such as fines. Therefore there is not only lack of adequate evidence of conviction but also lack of appropriate sentencing.

- This could be due to lack of adequate evidence which emanates from the very nature of the law – that stalking is not named as a criminal offence in its own right, the limited power of the police to search and seize.
- Victim’s unwillingness to cooperate with the CPS – due to fear of reprisal, bad experience when dealing with the criminal justice system, lack of confidence in the system, etc
- Lack of proper and comprehensive guidelines and procedures
- Lack of multi-agency working
- Lack of training and understanding of stalking by the police, CPS and judges
- Lack of specialist dedicated support to advocate for victims

**Potential next steps**

Please refer to Section 7 of the consultation document.

10) 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.

**Question 10. 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.**

Answer- No - Stalking and cyber stalking has not been defined and well described as offences in the law. The limitations of PHA in regards to the police power of searching and seizing mentioned above are also barriers especially with cyber-stalking.

The police and the CPS, despite the current publication of guidelines, are still not trained on the issue.

**Question 11. 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.**

Answer –

- Training of those in the CJS and other agencies who support victims
- Proper risk identification, assessment and management including adequate support to the victim and family as the witness to the crime
- Creating an offence of stalking – giving a list of acts that could constitute stalking, of course without making it exhaustive to accommodate new stalking behaviours which will send a clear signal as to the recognition of stalking as a very serious crime
- Making Section 2 triable either way in the Magistrates or Crown Court, therefore ensuring police have search and seize powers.
- Increased dedicated support and advocacy for victims

12) 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 plan.

At the second evidence session in July 2011, attended by victims of stalking and their families, the 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 Witnesses 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.

**Question 12. 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.**

Answer – No

As mentioned throughout this consultation response the evidence shows that the current legislation is not sufficient. The starting point should be the change of law – making stalking an offence in its own right – stating what behaviours consist as stalking, and give the law 'teeth' to be effectively implemented.

In Scotland after the introduction of the Anti-Stalking law – from December 2010 to June 2011, 130 individuals had been charged under clause 39 and 15,000 individuals charged under clause 38.

Please also see previous answers as to the importance of having a separate stalking law and its content.

13) 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 bullying 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 2000 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.

**Question 13. 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.**

Answer – Yes, currently only 2% of perpetrators receive custodial sentence and there is a need to make it clear that is a serious crime with serious consequence. This could help in boosting victims' confidence in the CJS resulting in more victims reporting and more perpetrators brought to justice.

Besides, one of the purposes of sentencing perpetrators under the criminal law is to deter others from offending and raise awareness of the issue.

**Question 14. Do you think we need to protect stalking victims more effectively, and if so how? Please provide additional reasons to support your views.**

Answer – A big Yes!

- Starting by believing the victim and early intervention
- Proper risk assessment and support such as counselling, safe housing, etc (please note that this support should also be extended to family members whenever appropriate as stalkers target family members as well)
- Adequate legal support for victims – a victim interviewed for the Victims Voice Survey said she did not apply for injunction because she didn't afford it.
- Providing dedicated victim advocacy service
- Make the CJS victims-friendly

**Question 15. In your view, who do you think will be impacted by this consultation? Please provide additional reasons to support your views.**

If the question is in regards to equality impact as mentioned before women are most likely to be impacted as they are in majority of the circumstances the victims.

If this is a general impact question then – victims, family of victims, the CJS, other agencies supporting stalking victims could be impacted and perpetrators would realise the consequence of their actions.

**Question 16. In your view, what impacts do you think this consultation will have? Please provide additional reasons to support your views.**

The consultation is a great tool to have a wide discussion on the issue and to let victims and practitioners feed in their views and concerns. It could also be a great

start to trigger the necessary changes in regards to the law and practice around stalking.

17) 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.

**Question 17. Do you have any other observations on the operation of the 1997 Act?**

According to the Home Office evaluation report in 2000 although the Protection from Harassment Act was introduced to deal with the problem of stalking it has in fact rarely being used for what it might have been intended and is far more often used to deal with a range of lower-level harassment by neighbours, etc.

Evidence after evidence both from practitioners and victims has shown the need to have a well defined law around stalking and well strategized response in supporting victims and their families.