



Response to the Home Office's consultation:

About Rights of Women

Rights of Women specialises in supporting women who are experiencing or are at risk of experiencing, gender-based violence, including domestic and sexual violence. We support other disadvantaged and vulnerable women including Black, Minority Ethnic, Refugee and asylum-seeking women (BMER women), women involved in the criminal justice system (as victims and/or offenders) and socially excluded women. By offering a range of services including specialist telephone legal advice lines, legal information and training for professionals we aim to increase women's understanding of their legal rights and improve their access to justice enabling them to live free from violence and make informed, safe, choices about their own and their families' lives.

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Rights of Women's consultation response

Before answering the specific questions asked in the consultation we would point out that as a women's legal organisation we will confine our responses to law and legal policy issues within our skills and experience.

1. Are there orders or injunctions already available that could be used to better effect to address stalking?

In a large proportion of stalking cases and particularly in the early stages of stalking abuse, there is no sufficient or appropriate legal protection available for the victim. Stalking is a considered and deliberate form of abuse. Stalkers are likely to be careful not to generate the evidence required to prosecute a criminal offence and stalkers are often careful to protect their anonymity.

Restraining Orders under Sections 5 and 5A of the Protection from Harassment Act 1997 can be made upon the disposal of criminal proceedings. The remedy of a Restraining Order therefore does not afford protection to victims of stalking where there is not enough evidence to prosecute. It is unhelpful that sections 5 and 5A of the

Protection from Harassment Act 1997 do not specifically mention stalking. The legislation should be amended to include stalking.

Domestic Violence Protection Orders and Non Molestation Orders are more accessible legal remedies for those who are being stalked by someone they are associated with. However, these remedies are not available in cases where the stalker is to the victim a stranger, acquaintance, friend, colleague, neighbour or as is increasingly the case, someone they met online.

The only option available for a victim of stranger stalking is to apply for a civil injunction pursuant to **section 3 of the Protection from Harassment Act 1997**. The section 3 injunction is by no means a user-friendly option for a victim of stalking, as discussed below at 1a.

It is questionable whether, in a stalking case, a stalking victim would be able to access legal aid for the purpose of obtaining a section 3 civil injunction. Whilst technically legal aid is available, due to the way that legal aid contracts are structured, it would be difficult and in many cases impossible to find a solicitor willing to grant legal aid outside of a housing law or a family law legal aid contract.

1a. Do such measures provide sufficient protection to victims of stalking and in particular victims of 'stranger stalking' in advance of a prosecution, or if a prosecution is not yet possible?

In such circumstances a section 3 civil injunction would be the most appropriate remedy to pursue. These are however complicated applications to make.

There is no court fee for issuing an application for a non-molestation order in the Family Court. There is a court fee for issuing an application for an injunction under the Protection from Harassment Act 1997. This may dissuade applicants from applying.

By making an application to the county court for a civil injunction, the victim may also have costs ordered against her if her application is unsuccessful. There are likely to be costs and fees associated with serving the orders on the perpetrator. In short, obtaining such an order is likely to be difficult and costly and it is unsatisfactory that in such circumstances this is the only remedy available for a victim of stranger stalking to pursue. Further, section 3 of the Protection from Harassment Act 1997 does not currently specifically include stalking and the legislation should be amended in this respect for clarity.

If an applicant is successful in acquiring an injunction then it is vital that any breaches are taken seriously and fully investigated by the police and the courts in order for the injunction to provide sufficient protection.

1b. Do you have experience of the use of currently available civil measures in this way?

Yes, however, from our experience of practice the use of civil injunctions under the Protection from Harassment Act 1997 are relatively rare. This could be an indication that the civil measures are inaccessible.

2. What do you see as the restrictions or deficiencies in the use of the currently available measures?

As detailed above, applications for s.3 injunctions are complicated to make if the victim is a litigant in person. County court applications also carry the risk of incurring significant costs for the victim. The criminal process does not currently afford any protection until there is enough evidence for a prosecution, which could take a considerable period of time. During this period a victim is at risk of potentially escalating violence unless there are appropriate bail conditions in place. The Family Court orders are not available in stranger stalking cases. As this consultation rightly identifies, there is a group of stalking victims for whom there is no legal protection available. This is particularly worrying in stalking cases where without early intervention, the stalker's fixation on and violence towards the victim is likely to grow.

3. What do you see as the additional features of a new Stalking Protection Order might have in order to enhance the range of options available to protect victims?

If, as the name suggests, the proposal is that Stalking Protection Orders (SPOs) would mirror the legal framework of Domestic Violence Protection Orders (DVPOs) then we would raise the following points:

- Domestic Violence Protection Orders last for between 14 and 28 days. This may be sufficient in some domestic violence cases where the victim/survivor can apply to the Family Court for a non-molestation order before their DVPO expires. It is not however likely to be long enough for a victim of stalking to locate a solicitor and for their solicitor to apply for and be granted legal aid before then preparing and making an application for an injunction. In all cases where the applicant hopes to be represented through legal aid, a 14-28 day expiry date is of insufficient length and is likely to expose the victim of stalking to a period of time where they are entirely unprotected. In a case where a stalking victim is unable to access legal aid and is representing themselves against their stalker, they are likely to find the process of applying for a s.3 order too difficult and traumatic and so when their 14-28 day SPO expires they will be unprotected and without options for ongoing protection.
- Unlike non-molestation orders, breach of a DVPO is not a criminal offence but a civil contempt of court. This makes them less effective. They do not have the same deterrent effect and they are more complicated and laborious to enforce. If SPOs are to be an effective deterrent and prevent dangerous and obsessive patterns of

behaviour developing, it is vital that the new legislation provides that it is a criminal offence to breach any part of an SPO.

- Between March 2014 and March 2015 approximately 2,500 DVPOs were made by 39 police constabularies. When this figure is viewed in the context of the 1 million calls made to the police each year reporting incidents of domestic abuse, it is clear that DVPOs are not a preferred option by police. Whether it is that the application process is too complex or the evidential burden too great, the reasons will need to be identified and addressed so that the SPO can be a more accessible and effective legal remedy than the DVPO has been thus far. Data from the Women's Aid Annual Survey last year found that, of a sample of 510 women who used domestic violence services and reported the domestic violence to the police, DVPOs were issued in just 2.5% of cases - a mere 13 in total.

If, alternatively the Stalking Protection Order is to take the form of a civil injunction which the victim applies for themselves, we would argue that there is already such an order available under the Protection from Harassment Act 1997. We would recommend instead that the existing legal remedies under the PHA 1997 be amended to make them far more accessible and user friendly to litigants in person.

4. What restrictions should it be possible to place on a perpetrator to help protect victims through a civil order (new or existing)?

This depends on the circumstances of the particular case. There should not be an exhaustive list of the restrictions an order can place on the perpetrator. Civil protection orders could, for example, include injunctions forbidding the perpetrator from:

- directly or indirectly communicating with the victim in any way or causing anyone else to communicate with the victim
- sending anything to the victim's home address or place of employment
- entering or attempting to enter the victim's home address or the street they live on or causing anyone else to enter or attempt to enter the victim's home address, place of employment or children's school or any geographical area required
- following the victim or loitering within a certain distance of the victim or a particular building
- monitoring the victim using the internet, email or any other form of electronic communication
- publishing any information about the victim or publishing anything which is purported to be by the victim.

5. **What positive requirements, if any, could be placed on a perpetrator to help break the fixated nature of their offending at an early stage that could be included in a Stalking Protection Order?**

No comment

6. **If we were to introduce a Stalking Protection Order, what should the penalty be for breaching such an order? Do you think it should be: Contempt of court/criminal offence**

A breach of a court order is always going to be a contempt of court. However, such applications are extremely difficult to make in terms of law, legal drafting and procedure and it is unlikely that a litigant in person would be able to successfully enforce a breached protection order. The police may also find the process laborious and complicated. In order for the SPOs to be effective, their breach must be a criminal offence with penalties akin to breach of a non-molestation order.

7. **Do you think any existing civil order in another area would be a useful model for any Stalking Protection Order?**

Civil injunctions under the Protection from Harassment Act and DVPOs are both possible models, but neither are perfect. Ideally, police should have the power to issue a Stalking Protection Order similar to DVPOs, and women should also have the option of applying for a civil injunction if the police take no action or if she does not want to report to the police.

DVPOs

Currently, the police can issue a Domestic Violence Protection Notice which lasts 48 hours. Within the 48 hours there should be an application for a DVPO, which can last up to 28 days. We suggest that this procedure be amended as follows for Stalking Protection Orders: The police have the power to issue a Stalking Protection Notice which lasts 48 hours. Within the 48 hours there should be an application for a Stalking Protection Order. It will be for the judge hearing the case to decide how long the Stalking Protection Order will last (which could be until a particular date or until further order).

Civil injunctions

We consider that the procedure to apply for injunctions for harassing or stalking behaviour should be simplified and made clearer for victims, so that those who cannot afford lawyers and are not eligible for legal aid can apply themselves. There should be no court issue fee. Consideration should also be given as to how the orders will be served on the perpetrator. There should be a mechanism to personally serve the order free of charge for the victim.

8. Should any new order specifically protect victims of harassment as well as of stalking?

There needs to be protection in civil and criminal law to address all forms of violence and abuse which are experienced by women. From a legal point of view it is not necessary to separate out various forms of abuse when one type injunction may be appropriately applied to different situations. We appreciate however that the creation of a distinct legal remedy for stalking may be helpful for various agencies and the police to help with the identification of stalking abuse.

It would be helpful therefore if the Protection from Harassment Act 1997 refers to stalking separately and specifically throughout. Sections 2, 3 and 5 should be amended to include stalking. Section 3 should refer to sections 2 and 2A (it currently only refers to section 2).

9. What are the main challenges in identifying cases of stalking at an early stage (as opposed to harassment)?

In isolation the incidents of stalking may appear not to be crimes or abuse – watching someone, sending non-aggressive messages, being in the same place at the same time as someone. A stalker may act anonymously, for example, contacting the victim via the internet, sending anonymous gifts, posing as the victim and subscribing or registering them for a postal service etc. Some women tell us that when they report stalking or some types of harassing behaviour their concerns are almost immediately disregarded and they are told no crime is being committed. In contrast, other forms of harassment involving say, aggressive messages or criminal damage, may be easier to prove. The key to identifying cases of stalking therefore is to ensure that all allegations are taken seriously, recorded and fully investigated. It is also vital that police assist women to gather evidence safely and in a way that does not put them at further risk.

10. What more could be done to support the effective gathering of evidence to bring stalking charges?

Any evidence gathering needs to be done safely and securely. Any new evidence gathering approaches or techniques should be adopted only on the advice of experts. There should be detailed and mandatory training for police as to how to gather evidence safely and how to support stalking victims to help the police gather evidence safely. Currently it appears many police are misinformed about the cost and ease with which they can request disclosure from social media providers such as Twitter. We understand women are also being told to gather their own evidence in circumstances where that may not in fact be safe or appropriate; it is the job of the police and CPS to

gather evidence and build a case against the stalker, not the woman reporting an offence.

Rights of Women

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