

Crime and Policing Bill - Written Evidence

Submitted by Claire Waxman OBE, Independent Victims' Commissioner for London

Summary

- **While allowing Stalking Protection Orders (SPOs) to be given at the point of conviction is welcome, there should be clear instruction for police to pursue these at an earlier stage, not wait for court.**
 - **Further guidance on SPOs is needed for the judiciary, to ensure their effective use.**
 - **The process of obtaining SPOs needs to be streamlined, using the model introduced with Domestic Abuse Protection Orders / Notices (DAPO/Ns). This will enable swift protection of stalking victims.**
 - **New stalking legislation is required, featuring a standalone stalking offence, to replace those created by the Protection from Harassment Act 1997.**
 - **Guidance should be produced and distributed on offenders' use of the Civil Courts to continue their course of contact.**
 - **Legal mechanisms, such as barring orders, should be introduced to prevent vexatious use of Civil Courts by stalking offenders.**
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Full Submission

1. I am supportive of the measures that have been laid out within the Crime and Policing Bill in relation to Stalking. I have myself been a victim of stalking for over 20 years and have campaigned successfully for various legislative and policy changes to help improve the way in which our criminal justice system responds to stalking victims. This response is also informed by policing colleagues with extensive operational expertise.
2. My latest published work as London's Victims' Commissioner is the [London Stalking Review](#), conducted by the Mayor's Office for Policing and Crime, involving an analysis of stalking cases in London. This work has gone on to inform some of the Government's proposals within the Bill, and so I encourage committee members to read through this comprehensive piece of research.

Stalking Protection Orders

3. One of the suggested recommendations from my Stalking Review is covered by Clauses 69 and 70 in this Bill, which will enable Stalking Protection Orders (SPOs) to be introduced by a court at the point of conviction or acquittal. The importance of SPOs, in contrast to other judicial orders, such as Non-Molestation (NMOs) or Restraining Orders (ROs), is in their ability to place positive requirements upon the offender, offering a chance to intervene and

address their stalking behaviour. That these orders can now be made at the end of a court case is welcome.

4. However, this creates a risk that conviction or acquittal becomes the only point at which an SPO is pursued, with police viewing the process as burdensome. I therefore believe explicit instruction is needed for police forces, clarified in guidance, that they should *not* wait until this point for an SPO to be administered. There should always be the pursuance of an SPO by the police prior to court proceedings where possible.
5. In addition, we have frequently heard of the reluctance of judges to approve SPOs, particularly when bail conditions are already in place. There is limited data available to know if this is a systemic issue, but nevertheless a lack of judicial understanding about SPOs and stalking generally has been highlighted as an area of concern. Further guidance for the judiciary on the importance of SPOs to stalking victims would be welcome.
6. As referenced above, obtaining an order can be lengthy and burdensome. My Stalking Review found that victims will often be advised that if they want an order quickly, they would be better pursuing an NMO. Our research found that of the 332 cases reviewed in London, SPOs were obtained in just 1.4% of cases, whilst NMOs were obtained in 7%.
7. Where a stalking victim is in a relationship with the offender, a Domestic Abuse Protection Notice (DAPN) could be authorised on the day of the offence by a Superintendent. These notices last for 48 hours, after which time there must be a full application at court. This window of time puts the suspect 'on notice' that the case will be heard in court, where the police will seek to have an actual order imposed.
8. In contrast, for a stalker who doesn't know the victim, or hasn't been in a relationship with their victim (as was the case for 3 in 10 victims in the London Stalking Review), a Domestic Abuse Protection Order or Notice (DAPO/N) is not applicable, and so the SPO process would need to be pursued instead. The stalker in this case would most probably be released on the same day, with no order nor protections in place for the victim, due to the length of time it takes to get SPOs or interim SPOs approved.
9. The main challenge in the SPO process is that whilst the burden of proof should in theory only equate to that required in a civil law case, in practice, the amount of information the police are required to obtain in order to build the case for an SPO equates to having to meet the criminal burden of proof.
10. This means that an officer needs to build a strong case before an offender can be served with papers notifying them an application for an SPO against them is being made. Once they have done this and served the perpetrator with their court bundle, the respondent is then given 21 days to respond, after which a court date must finally be found for the SPO hearing. This all takes place without any robust protective measures in place for the victim.
11. The process of obtaining SPOs needs to be streamlined, in line with that of DAPO/Ns, potentially though the Government bringing forward a "Stalking Protection Notice" that could mirror the time scales and evidential requirements as the DAPO/N. While there is presently an "interim SPO", policing colleagues have advised that this is still a far lengthier process than the new DAPO/N, and requires the offender to be given the full 21-day period to respond once informed of the application.

Reform of Protection from Harassment Act 1997

12. The need for reform of the current stalking legislation has been understood for a long time. In 2017, an HMCPSI report identified the problems the police and CPS face when grappling with the five course of conduct offences which currently come under the Protection from Harassment Act 1997. It is clear that a lack of understanding and training among justice agencies has impacted the success of the current legislation, but it also must be acknowledged that there are fundamental issues with the legislation that prevent it from protecting all stalking victims.
13. My Stalking Review outlined the issues within the current legislation. It finds that the two-tier stalking offence is leading to failings in the identification of high-risk and serial stalkers, leaving victims at risk. Frontline police continue to find it difficult to determine whether behaviour constitutes stalking or harassment, and which one of the five course of conduct offences is applicable. With most stalking cases in my research initially identified as something else, the confusion and lack of clarity and precision with the legislation is obvious. The police, CPS, and courts need a much clearer legal description of stalking as a standalone offence.
14. The Government is currently conducting a review of the stalking legislation in response to recommendations within my report and from the National Stalking Super Complaint, and have been engaging positively with experts within policing and victims services as part of this work. I would welcome Government's conclusion of this work in time to bring forward amendments within this Crime and Policing Bill, rather than using its limited resources to introduce new guidance relating to the current legislation which we hope to reform.
15. It is my view that 'stalking' must become a standalone offence, and the inclusion of harassment within the same legislation is unhelpful. Stalking behaviours should be clearly presented as those which are oppressive to the victim and cause them substantial fear, alarm, and distress, and those that are prolonged and intrusive to the victim. The new legislation must not seek to codify fixation or obsession in law, for the reason that these are temporary mental states which, whilst not irrelevant, are not always definitive when it comes to stalking.
16. Part of the issue with the current legislation is that the most serious stalking offence (S.4A) requires the victim to have suffered serious alarm or distress. This phrasing is deeply unhelpful on a number of levels and excludes certain victims subject to dangerous stalking behaviour who wouldn't want to gratify the perpetrator by admitting fear, or those who are unaware of their stalkers behaviour and have been covertly stalked. It is also arguably illogical, given that in cases where a victim has reported, they are already displaying a significant amount of alarm and distress due to the fact that they have chosen to contact the police about the behaviour.
17. Northern Ireland recently reformed their legislation around stalking to place the onus upon the perpetrator's behaviour, which goes some way towards addressing this problem.

Vexatious claims within courts

18. One of the common issues we hear of from victims of stalking are their offenders using vexatious claims within the court system – including criminal, civil, and family – to continue their course of conduct. This is a common tactic and our support services in London hear regularly from victims who have experienced this.
19. When malicious and unmeritorious applications for civil proceedings are made as part of a course of conduct of stalking, and victims report this to the police, they will often be told that it is a ‘civil matter’ and not a police matter, even though such applications are part of a course of conduct.
20. This was recognised [in case law](#) following my own experience in 2011, where my stalker repeatedly breached the terms of his restraining order by using the Civil Court process to make vexatious claims against me. I reported this matter to the police, but the CPS dropped the charges against him arguing that it was his human right to access the Civil Courts. In 2011, I took the CPS to judicial review and the court maintained that the right of access to the courts under Article 6 of the European Convention is not an absolute right and can be restricted to achieve a legitimate social objective, including the prevention of persistent harassment. I would like to see this case law far more frequently referenced and incorporated in training so criminal justice professionals are aware that this is a common tactic of stalking perpetrators that can still be pursued with criminal sanctions.
21. New guidance should be developed and provided to relevant authorities within the Civil Division, referencing my case law and reiterating that claims made within civil courts may be being used as a course of conduct for stalking.
22. We have heard recently from the Minister for Courts Sarah Sackman MP that some small claims within the Civil Courts system can take well over a year to get through the congested system, at a great cost to public finances. If unmeritorious and vexatious claims such as those which are made by stalking perpetrators are screened out before they reached these courts, this would undoubtedly free up court time.
23. I would welcome consideration of how this type of conduct could be prevented through legislative measures brought forwards within this Bill. For instance, where a stalker has a conviction, protective orders should make clear that the offender cannot bring, or attempt to bring, any civil claim without the leave of a Judge. This would prevent the offender using the Civil Courts vexatiously.
24. I would also suggest the use of Barring orders to prevent these vexatious claims being brought. I successfully lobbied for this in the Domestic Abuse Act, and Section 91(14) of the Children Act 1989 allows Family Courts to make orders to bar individuals from making further applications to a court without the court’s permission, for example to prevent instances where abusive ex-partners have attempted to repeatedly bring victims back to court for no reasonable purpose.
25. A similar legal mechanism should be brought forwards within this Bill that would be available to all stalking victims to prevent them from their stalker continuing their course of conduct by making vexatious claims through the Civil Courts. This must be applicable to stalking victims regardless of whether or not it is an offence involving an ex-partner, or “DA Stalking”.

26. In addition, when there is a charge or investigations are ongoing, police should have the power to advise the civil courts and ask to stay the proceedings until there is an outcome.

I hope that the Committee finds this evidence of use to its scrutiny of the Crime and Policing Bill, and I am willing to meet with members should any further follow up be required in relation to the above.

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