



Bar Council response to the Home Office consultation on 'Introducing a Stalking Protection Order'

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Home Office consultation¹ on "Introducing a Stalking Protection Order".
2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

Overview

4. As acknowledged in the body of the consultation document, stalking and the protection of victims or potential victims from stalking is an area that generates "a wide range of strongly held views". It is also a difficult area in which to legislate, as what is in the best interests of the victims or potential victims of such conduct is not always easy to identify and can vary from case to case. As noted in the report when considering s.3 injunctions under the Protection from Harassment Act 1997, there are cases in which victims do not wish to utilize the provisions that already exist for their own protection.
5. There are many others who will be better placed to comment on the practical need for any further measures in this area. We therefore confine ourselves to observations that concern identified gaps in the legal framework.

¹ [Home Office \(2015\) Introducing a Stalking Order](#)

6. Taken as a whole, it seems to us that the current legislative framework for dealing with stalking (including what is termed “stranger stalking” in the consultation paper) is comprehensive and flexible enough to meet most situations envisaged in the consultation. The single exception relates to the (perhaps not uncommon) situation where a victim does not wish to apply for a preventive order for fear that it may exacerbate rather than mitigate the situation. In such circumstances, it would seem appropriate to extend the power to apply for preventive orders (e.g. s.3 or 3A injunctions) to the police, in line with what appears to have been a successful pilot in the area of domestic violence.

7. Against that general background, we answer below the specific questions on which we feel we can properly assist.

Questions

Q1. Are there orders or injunctions already available that could be used to better effect to address stalking?

a. 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?

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

8. We do not have direct experience of the practical effect of the full range of orders currently available. However, our analysis of the legal framework is that sufficient legal powers currently exist to protect victims of stalking, including “stranger stalking”, with the sole observation made above re: the power to apply for preventive orders.

Q2. What do you see as the restrictions or deficiencies in the use of the currently available measures?

9. With the exception noted above, our view is that concerns about identifying, assessing and managing risk are likely to diminish with greater resourcing and training of professionals (including police) operating in this area. The consultation paper contains no empirical assessment of the effectiveness of recently introduced measures and initiatives in this area - for example the nomination of a Single Point of Contact dealing with harassment and stalking in police forces. It seems to us that a proper assessment of the impact of these measures would be of benefit to any consideration of the necessity of new legislation.

Q3. What do you see as the additional features a new Stalking Protection Order might have in order to enhance the range of options available to protect victims?

Q4. What restrictions should it be possible to place on a perpetrator to help protect victims through a civil order (new or existing)?

Q5. 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?

10. These are in our view practical questions on which others – for example behavioural professionals – are better placed to offer an opinion.

Q6. If we were to introduce a Stalking Protection Order, what should the penalty be for breaching such an order: should it be punishable as contempt of court and/or as a criminal offence?

Q7. Do you think any existing civil order in another area would be a useful model for any Stalking Protection Order?

11. Our view is that any new order introduced would need to be applied for and (if appropriate) granted on the basis of an assessment of necessity to the civil standard. If such an order were to be introduced, it might be appropriate for it to share features of e.g. an Anti-Social Behavioural Order (ASBO) or Sexual Offences Prevention Order (SOPO), including criminal penalties for breach. Conditions of such an order could mirror conditions of bail typically imposed in cases involving ongoing disputes (of a relevant nature) by individuals.

Q8. Should any new order specifically protect victims of harassment as well as of stalking?

12. As noted above, our general view is that there is no need for a new type of order, as (subject to the extension of the power to apply) s.3 injunctions are flexible enough to meet the challenges posed by stalking.

Q9. What are the main challenges in identifying cases of stalking at an early stage (as opposed to harassment)?

13. The common features of stalking and harassment that present challenges include (not exhaustively):

- i) the unwillingness of victims to come forward with complaints and pursue them through the court process;
- ii) the potential for counter-complaints from e.g. malicious litigants;
- iii) issues of identity (in “stranger stalking” cases).

Q10. What more could be done to support the effective gathering of evidence to bring stalking charges?

14. This is in our view a practical question on which others (particularly the police and other investigators) are better placed to offer an opinion.

Bar Council²

Thursday 14 January 2016

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² Prepared by the Law Reform Committee on behalf of the Bar Council