

Stalking



What is stalking?

Stalking is a crime of obsession and is often associated with different types of psychopathology, including psychosis and severe personality disorders. Behaviour may range from overtly aggressive threats and actions, to repeated calls, letters or approaches. Stalking harassment may go on for years, causing the victim to exist in a constant state of stress and fear. The violent aspects of stalking behaviour often escalate over time, and in extreme cases, can end in murder (Douglas 1998)

Stalking behaviour

- Following or appearing within the sight of another
- Approaching or confronting another individual in a public or private place
- Appearing at the workplace or residence of another
- Entering or remaining in an individual's property
- Contacting a person by telephone
- Sending postal or email to another
- Contacting or making comments about someone via social networking sites

Introduction¹

- The laws are part of the Protection from Harassment Act 1997 for England, Scotland and Wales.
 - o A person guilty of stalking faces six months in jail or a fine.
 - o A person guilty of stalking and causing a victim to feel fear of violence or serious alarm of distress, faces five years in jail.

The Crown Prosecution Service (CPS) have issued legal guidance relating to the

¹ Taken from CPS website November 2013: http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/

stalking legislation which addresses behaviour that is repeated and unwanted by the victim and which causes the victim to have a negative reaction in terms of alarm or distress. Cases involving stalking and harassment can be difficult to prosecute, and because of their nature are likely to require sensitive handling, especially with regard to victim care. The provision of accurate and up-to-date information to the victim throughout the life of the case, together with quality support and careful consideration of any special measures requirements are essential factors for the CPS to consider.

The CPS feel it is important to work closely with the police and other agencies to ensure that the best evidence is gathered and presented to the court. A strong, coordinated prosecution team is required to proactively build and manage a case. It is also important that, where appropriate, victims are able to access relevant support organisations. This is to ensure that their safety and support needs are addressed throughout the criminal case (and sometimes beyond) and to reduce the risk they face as a result of the offending.

In many circumstances, cases of stalking and harassment will come within the definition of 'domestic violence' and as such the CPS Domestic Violence Policy and legal guidance will also be relevant. Further information can be found at: CPS Policy for Prosecuting Cases of Domestic Violence and Domestic Violence Legal Guidance.

The CPS Employee's Guide on Violence Against Women was published in March 2010. It includes practical guidance to assist those members of staff who are victims of stalking and harassment either in a domestic or non-domestic environment. It includes information to reduce any affected employee's risk by considering:

- their working arrangements;
- their communication needs;
- security arrangements; and
- information about concealing their identity.

Harassment

Section 2

The term harassment is used to cover the 'causing alarm or distress' offences under section 2 of the Protection from Harassment Act 1997 as amended (PHA),

Section 4

'Putting people in fear of violence' offences under section 4 of the PHA. The term can also include harassment by two or more defendants against an individual or harassment against more than one victim.

What defines harassment?

Although harassment is not specifically defined it can include repeated attempts to impose unwanted communications and contacts upon a victim in a manner that could be expected to cause distress or fear in any reasonable person.

The harassment of another or others can include a range of offences such as those under: the Protection from Harassment Act 1997; the Offences Against the Person Act 1861; the Sexual Offences Act 2003; and the Malicious Communications Act 1988. It is important when considering this type of offending to look at all relevant legislation when formulating charges.

Closely connected groups may also be subjected to 'collective' harassment. The primary intention of this type of harassment is not generally directed at an individual but rather at members of a group. This could include: members of the same family; residents of a particular neighbourhood; groups of a specific identity including ethnicity or sexuality, for example, the racial harassment of the users of a specific ethnic community centre; harassment of a group of disabled people; harassment of gay clubs; or of those engaged in a specific trade or profession.

Harassment of an individual can also occur when a person is harassing others connected with the individual, knowing that this behaviour will affect their victim as well as the other people that the person appears to be targeting their actions towards. This is known as 'stalking by proxy'. Family members, friends and employees of the victim may be subjected to this.

Certain groups of professionals are particularly susceptible to harassment connected with their work. These include doctors, judges, police officers, teachers and other authority and public figures. It may also involve harassment of individuals as a result of their employment by a particular employer.

Stalking

Sections 2A and 4A

The Protection of Freedoms Act 2012 created two new offences of stalking by inserting new sections 2A and 4A into the PHA 1997. The two offences are in force from 25 November 2012 and provide further options for prosecutors to consider when selecting charges. The Home Office have issued guidelines and this can be accessed

via the following link: <http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/018-2012/>.

Whilst there is no strict legal definition of 'stalking', section 2A (3) of the PHA 1997 sets out examples of acts or omissions which, in particular circumstances, are ones associated with stalking. These include: physical following; contacting, or attempting to contact a person by any means (this may be through friends, work colleagues, family or technology); or, other intrusions into the victim's privacy such as loitering in a particular place or watching or spying on a person.

The effect of such behaviour is to curtail a victim's freedom, leaving them feeling that they constantly have to be careful. In many cases, the conduct might appear innocent (if it were to be taken in isolation), but when carried out repeatedly so as to amount to a course of conduct, it may then cause significant alarm, harassment or distress to the victim.

Criminal Legislation

Protection from Harassment Act 1997

The PHA was brought into force on 16 June 1997 and was amended by the Protection of Freedoms Act 2012 to include two new specific offences of stalking, through the insertion of sections 2A and 4A. A court dealing with a person convicted of any offence, including those under sections 2, 2A, 4 or 4A of the PHA, may make a restraining order prohibiting the defendant from doing anything described in the order. This order can be made in addition to a custodial sentence or other sentence. The order can be especially useful in preventing continued stalking and harassment by defendants, including those who are given sentences of imprisonment.

Section 12 of the Domestic Violence, Crime and Victims Act 2004, as well as extending the availability of restraining orders to all offences, provides the court with the power to make a restraining order even when a person has been acquitted, where the court considers it necessary to do so to protect a person from ongoing harassment from the defendant.

The PHA includes the following provisions:

Harassment (section 2): a summary only offence, carrying a maximum of six months' imprisonment and/or a level 5 fine;

Stalking (section 2A): a summary only offence, carrying a maximum of six months' imprisonment and /or a level 5 fine;

Fear of violence (section 4): an either way offence, carrying a maximum of five

- years' imprisonment and/or a fine on indictment;
- Stalking - involving fear of violence or serious alarm or distress (section 4A): an either way offence, carrying a maximum of five years' imprisonment and/or a fine on indictment;
- Breach of a civil injunction (section 3(6)): an either way offence, carrying the same penalty as for the section 4 offence;
- Breach of a restraining order (section 5(5)); an either way offence, carrying the same penalty as for the section 4 offence;
- A civil tort of harassment, created by section 3.

Section 2A and 4A stalking offences which are also racially and religiously aggravated are now also covered under section 32 of the Crime and Disorder Act 1998 (CDA).

More information is available in the Legal Guidance on Racist and Religious Crime.

S.2 offence Harassment

The elements of the section 2 offences are:

- a course of conduct;
- which amounts to harassment of another; and
- which the defendant knows, or ought to know amounts to harassment of another.

Or section 1(1A), as inserted by section 125(2) of the Serious Organised Crime and Police Act 2005 (SOCPA)

- a course of conduct;
- which involves harassment of two or more persons; and
- which the defendant knows or ought to know involves harassment of those persons;
- by which he intends to persuade any person (whether or not one of those mentioned above);
- not to do something that he is entitled or required to do; or
- to do something that he is not under any obligation to do.

As a summary only offence, the section 2 offence requires an information or complaint to be laid within 6 months from the time when the offence was committed,

or the matter of complaint arose. The 6 months' limitation should run from the last date of the course of conduct alleged.

In determining whether the defendant ought to know that the course of conduct amounts to harassment, the question to be considered is whether a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

Section 2A offence - Stalking

The elements of the section 2A offence are:

a course of conduct

which is in breach of section 1(1) of the Protection from Harassment Act 1997 (i.e. a course of conduct which amounts to harassment) and

the course of conduct amounts to stalking.

This means that there has to be a course of conduct which amounts to harassment and that particular harassment can be described as stalking behaviour.

A course of conduct is the same as defined under section 7 of the PHA 1997 and referred to elsewhere in this guidance.

Definition of stalking

Stalking is not legally defined but section 2A (3) of the PHA 1997 lists a number of examples of behaviours associated with stalking. The list is not an exhaustive one but gives an indication of the types of behaviour that may be displayed in a stalking offence. The listed behaviours are:

- (a) following a person,
- (b) contacting, or attempting to contact, a person by any means,
- (c) publishing any statement or other material relating or purporting to relate to a person, or purporting to originate from a person,
- (d) monitoring the use by a person of the internet, email or any other form of electronic communication,
- (e) loitering in any place (whether public or private),
- (f) interfering with any property in the possession of a person,
- (g) watching or spying on a person.

Section 2A is a summary offence and a person guilty of the offence of stalking is liable on summary conviction to imprisonment for a term not exceeding 6 months or a fine.

As a summary only offence, the section 2A offence requires an information or complaint to be laid within 6 months from the time when the offence was committed, or the matter of complaint arose. The 6 months' limitation should run from the last date of the course of conduct alleged.

An integral part of the stalking offence is establishing that harassment has taken place. In determining whether the defendant ought to know that the course of conduct amounts to harassment, the question to be considered is whether a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

S.4 offence - Putting People in Fear of Violence

The elements of the section 4 offence are:

a course of conduct;

which causes another to fear that violence will be used against him; and

which the defendant knows or ought to know will cause another to fear that violence will be used against him; and

the defendant ought to know that his course of conduct will cause another to fear that violence will be used against them if a reasonable person in possession of the same information would think that the course of conduct would cause the other so to fear on that occasion.

Section 4A Offence - Stalking involving fear of violence or serious alarm or distress

The elements of the section 4A offence are:

a course of conduct;

which amounts to stalking; and

which causes another to fear, on at least two occasions, that violence will be used against him or her; or

causes another serious alarm or distress which has a substantial adverse effect on his or her usual day-to-day activities.

In determining whether the defendant ought to know that the course of his or her conduct will cause the other person to fear that violence will be used against them or will cause the other person serious alarm or distress, the question to be determined is whether a reasonable person in possession of the same information would think it so.

A course of conduct is the same as defined under section 7 of the PHA 1997 and

referred earlier in the guidance.

There are two ways of committing this offence:

First, a course of conduct that amounts to stalking and causes the victim to fear, on at least two occasions, that violence will be used against them (which is similar to the existing section 4 offence).

Second, a course of conduct which causes "serious alarm or distress" which has a substantial adverse effect on the day-to-day activities of the victim. This limb recognises the overall emotional and psychological harm that stalking may cause to victims, even where an explicit fear of violence is not created by each incident of stalking behaviour.

The phrase "substantial adverse effect on ... usual day-to-day activities" is not defined in section 4A and thus its construction will be a matter for the courts. However, the guidelines (<http://www.homeoffice.gov.uk/about-us/corporate-publications-strategy/home-office-circulars/circulars-2012/018-2012/>) issued by the Home Office suggest that evidence of a substantial adverse effect may include the following:

- (a) the victim changing their routes to work, work patterns, or employment;
- (b) the victim arranging for friends or family to pick up children from school (to avoid contact with the stalker);
- (c) the victim putting in place additional security measures in their home;
- (d) the victim moving home;
- (e) physical or mental ill-health;
- (f) the deterioration in the victim's performance at work due to stress;
- (g) the victim stopping /or changing the way they socialise.

Prosecutors should note that the above list is not exhaustive and that there may be some victims who will try to continue their lives as usual in defiance of a stalker. So the absence of factors such as those listed above does not necessarily mean that stalking is not taking place.

Section 4A is an either way offence and on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both.

Alternative verdict

If on the trial on indictment of a person charged with an offence under this section the jury find the person not guilty of the offence charged, they may find the person guilty of an offence under section 2 or 2A.

A Course of Conduct

Section 7 defines a course of conduct as being on at least two occasions. Harassment is not defined but includes conduct causing alarm or distress. It is confirmed as including speech.

The PHA does not specify what period of time should elapse between occasions. Arguably, therefore, so long as the behaviour complained of ceased, even for a short period of time, and then resumed either in the same or a different form, this can form a course of conduct. Acts might be some distance apart, and yet still constitute a course of conduct. Each case will fall to be determined on its own facts.

Section 7(3A) provides that conduct by one person shall also be taken to be conduct by another if the other has aided, abetted, counselled or procured the conduct. It makes it clear that a campaign of collective harassment by two or more people can amount to a "course of conduct". It also confirms that one person can pursue a course of conduct by committing one act personally and arranging for another person to commit another act.

If there are only two incidents and a long period between them, the less likely it is that they will be accepted by a court as amounting to a course of conduct. In the case of *Pratt v DPP* [2001] EWHC 483, the Administrative Court held that two incidents almost 3 months apart were "close to the line" but nevertheless sufficient to establish a course of conduct.

However, the courts have ruled that it is not just the number of incidents which make up a course of conduct, but whether those incidents could be said to be so connected in type and context as to justify the conclusion that they could amount to a course of conduct (see *Lau v DPP* [2000] Crim. L.R. 580 and *R v Patel* [2005] 1 Cr. App. 27).

It is necessary to prove that the conduct is unacceptable to a degree which would sustain criminal liability, and also must be oppressive (*R v Curtis* [2010] EWCA 123). The prosecution in this case relied on a series of spontaneous outbursts of bad temper and bad behaviour, with aggression on both sides, between partners during the time they cohabited. These were interspersed with considerable periods of affectionate life. The Court of Appeal allowed the appeal against conviction on the basis that the trial judge had not directed the jury that the course of conduct had to amount to harassment and that the facts of the case, largely undisputed by the defendant, did not establish a nexus between the incidents.

There is no specific requirement that the activity making up a course of conduct should be of the same nature. Therefore different types of behaviour by a person such as making a telephone call on one occasion and damaging the victim's property on another may suffice, provided that the prosecution can also show that there was a

common intent to persuade the victims or any other person to do something or not to do something they were entitled to do.

It may often not be immediately apparent that separate incidents are connected as a course of conduct. It is therefore important that officers are alert to the possibility that such incidents could form part of a course of conduct and to take this into account during the investigation of each incident - making whatever inquiries seem appropriate to determine whether the incident is in fact part of a course of conduct. Police will need to ensure that accurate records are kept of each incident.

Earlier Incidents

If an earlier incident is charged under other legislation (for example, a breach of the peace or an offence contrary to section 5 of the Public Order Act 1986), and a subsequent incident establishes a course of conduct, it may be advisable to withdraw the earlier charge and to substitute a charge under the PHA, covering both incidents. Difficulties will arise if an earlier incident has resulted in a conviction. It is unlikely that the courts will allow incidents that have already been dealt with to form part of a subsequent offence, given the doctrines of *autrefois acquit* and *convict*.

Similarly, where a defendant has been cautioned, care should be taken before going behind the caution and charging that incident as part of a course of conduct. This may constitute an abuse of process.

General advice for victims

When victims of stalking seek assistance, they usually ask the following questions:

- Am I in danger?
- Will it continue?
- If it has stopped, will it start again?
- Will I ever get over this?
- What do I need to do to stop it?

This is some basic information and advice to answer these questions. More information is available in the book ‘Surviving Stalking’ by Michele Pathé (Cambridge University Press, 2002).

Although there is no “one size fits all” list of recommendations that will be applicable to all stalking situations, there are four **Golden Rules** that should be followed if you find yourself the victim of stalking:

- Have NO contact with the stalker
- Tell others
- Increase personal protection
- Collect evidence

1. Have No Contact with the Stalker

After the stalker has been told by the victim in a calm, clear and firm manner that their attention is unwanted and that they are to stop all contact, the victim, their family and friends should have no further contact with the stalker. Stalkers want a reaction whether it’s positive or negative. It is crucial to ensure that:

- Everyone involved understands the importance of not appealing to the stalker to stop, threatening them or retaliating to provocation
- The police should be the only ones to confront the stalker

- If contact is necessary due to the shared custody of children, arrange for a professional organisation or police station to be the handover point. The victim should never meet the stalker alone or at their home
- If there is accidental contact with the stalker, the victim should try not to show any emotion and leave the situation as soon as possible. Seek refuge in the closest shop or business and call the police emergency number if the stalker tries to approach.

2. Tell Others

Although many stalking victims are reluctant to inform others of what they are going through, it is important that if the victim feels comfortable sharing this information, those around the victim know what is happening. This includes family, friends, co-habitants, work colleagues and even neighbours. By explaining the situation the victim can:

- Reduce the possibility of others inadvertently providing information to the stalker or access to the victim
- Alerts them to the significance of any events they witness
- Helps to provide stronger evidence should the case go to court
- Obtain the necessary support to get through the ordeal

What you can tell others

- Give clear instructions not to initiate any contact with the stalker and tell them what to do should the stalker make contact with them; e.g. avoid any aggressive or hostile interactions and not provide any information.
- Describe the stalker or give them a picture.
- Provide the make, model and license number of the stalker's vehicle(s), if known.

3. How you Can Increase Personal Protection

- Change daily routines if possible e.g. the route or times going to work, the gym or other frequently attended locations
- Know the location of the closest police station and those along the routes frequently traveled
- Keep a list of critical telephone numbers including emergency services and other support next to your home telephone and have them on speed dial on your mobile phone.
- Have an unlisted telephone number and give it to those you trust. Have caller ID on your phone and screen all calls from unknown numbers by using an answering machine or service.
- Ensure that telephone calls and visitors are screened at work

- Avoid walking alone at night or in quiet remote areas
- Ask a colleague to escort to your car when leaving work
- Get a personal alarm
- Let people know where you are going and how long you will be
- Join a car breakdown organisation so that you can call for assistance if you find you have a flat tyre/s or your car has been tampered with
- Check your car before getting in. Regularly check for tracking devices and turn off the GPS on mobile phones
- You can inform schools or day care centres that your children attend of the situation
- Carry a mobile telephone so you can call for assistance
- Develop a safety plan that includes how to exit your home quickly and arranging a safe place to go
- As a last option, you may consider moving to a new location. If you choose to do this, ensure that you take measures to ensure that you are not traceable.

How You Can Improve Home Security

- Change locks - install deadlocks, window and manhole locks
- Install sensor lights that are beyond easy reach
- Keep torches in easy to access places around the home
- Install fire alarms and ensure that they are always in working order and have battery back-up and have all purpose fire extinguishers available
- Have peepholes in the doors
- Remove hiding places (trim bushes)
- Don't leave ladders or other means of climbing around the house
- Lock your power box (electricity, gas)
- Protect pets
- Get a home security check. Many police stations offer this service

How You Can Protect Personal Information

- Only give personal details to those you trust
- Shred all paperwork before throwing it out
- Don't give out personal information online
- If you use social media accounts such Facebook, Bebo, Myspace, ensure that security settings are at a level you are happy with
- Don't show your name at the entrance to your residence
- Don't have personalised number plates on your car
- Remove details from the electoral role if applicable
- Don't use your home address for anything related to business
- Be careful what you say on cordless telephones as conversations can be monitored by scanner. Baby monitors can also transmit conversations in the home.
- Ensure your computer has a strict firewall and is well protected against viruses

4. How You Can Collect Evidence

Proof is crucial in preparing a case against the stalker and it cannot be overestimated how important it is to keep all evidence and document your encounters and experience. The following are some ways in which to collect evidence:

- Compile a journal that is a chronological summary of events from that first day through to the present. Keep it brief and include everything you can remember, even if it seems trivial, and record dates, times, and witnesses to the encounters. Include telephone calls, items left or sent and any encounters with the stalker. You may start to see a set pattern develop. Don't ever lie about or minimise your involvement with the stalker. If the stalker is prosecuted and it is discovered that you did not tell the truth, it may damage your case as they may suspect that everything else you say is untrue.
- Organise paperwork in a filing system e.g. Police reports, hard copies of e-mails telephone records or by date.
- Keep originals in a safe place and a copy of everything in another location. Scan any paperwork, pictures etc and send an e-mail copy to an e-mail account specifically set up for this purpose and send a copy to a friend. Keep the copy up-to-date.
- Don't scribble on original documents, add notes.
- Save everything. Keep e-mails on the computer and in hard copy.
- Keep a log of expenses and receipts, as they may later be important in regards to any claims for compensation.
- Keep a small camera or use a mobile phone to take pictures of any items in the location in which they are found. This is also important for perishable items such as flowers or damage to property. If there is a time/date facility on the camera use that.
- If you wish to photograph the stalker, it can be beneficial to speak to the police beforehand about your plans, as there have been cases where the stalker has then accused the victim of harassing them. If you do wish to photograph the stalker, use extreme caution, try not to be obvious and do not compromise safety.
- If items are delivered, contact the delivery service as it may be possible to determine who placed the order, when, and how it was paid for (cash or credit card). Try to obtain a description of the person who placed the order.
- Handle all evidence carefully so as not to smudge fingerprints. Either hold items by the corner or use tweezers. Keep the item in separate plastic bag.

Telephone messages

- Keep the tapes from answering machines or, if your machine is digital, keep a second recording of the message elsewhere such as with a Dictaphone.
- Have someone else listen to any messages

- Try to record the message so it can be stored in another format.
- Keep text messages on the phone, download to computer and show others
- Have a generic message on all phones or have a same gender friend record your voicemail message to discourage the stalker from calling you to hear your voice



Reporting the stalking to police

- Go with someone else if possible for support
- Present evidence in a collated organised fashion
- Include copies of previous court orders related to the stalking situation
- Keep a copy of all material presented to police
- Record where, when, and to whom the report was made
- Ask for a copy of the report or obtain the report number (quote with future contact)
- Ask if you can have one or two officers allocated to the case so you don't have to keep repeating your story
- Ask to be kept informed of any contact the police have with the stalker so that you can be prepared for the possibility of retaliatory acts. This includes the issuing of warnings, the serving of protection orders or laying of charges
- Consider whether you want to apply for a court order
- Ensure that all breaches of court orders are recorded and reported to police immediately
- If you have relocated, ensure that your new details are not inadvertently provided to the stalker in legal paperwork
- If the complaint is not taken seriously or breaches of court orders are not acted on, request to speak to a senior officer.