



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

The Attorney General's Human Rights
Guidance (Domestic Abuse and Stalking)
Order (Northern Ireland) 2018

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principally respond to it. Therefore we want the police to tell us why they are not taking action in a particular case. For example, look at the section "Recording and Analysis" beginning at paragraph 37:

"For every reported incident of domestic abuse and stalking a record must be kept ... At a minimum".

At paragraph 40:

"An analysis of serious crime cases and of decisions not to arrest should be carried out on a regular basis by a senior PSNI officer."

That is a very short paragraph, but in many ways it is one of the most important, if acted upon, in bringing about effective change here, because this is one of the issues. I do not say this as a criticism; there may be all kinds of very good reasons for police inaction in particular cases, but let us know what they are.

This is the product of consultation with Women's Aid and anti-stalking groups. I remember attending a meeting one Friday afternoon, and it had been my plan to simply look in briefly to a meeting that was being run by a senior member of staff. But it was an intensely chilling experience, because three women recounted their experience of stalking and domestic abuse, more characterised as the abusive stalking rather than in the standard extant domestic setting. What struck me was that there is out there an existence of abusive, largely male, partners or ex-partners whose malevolence is matched only by their energetic commitment to acting on their malevolence. The sheer ingenuity and persistence displayed in trying to make the lives of these women miserable was astonishing. In a sense, one can read such things, and obviously, intellectually, one absorbs such things, but there was something truly chilling in being exposed to these testimonies of simply how creative, inventive and committed these men were to doing harm to former partners. So it is about changing a culture. It does not change the law, save to the very limited extent that I have mentioned it, but, if acted upon, I think that it will help to change that culture.

Ms Dillon: I think that this goes to something that I said earlier, and I notice that Paul Frew, the previous Chair, also had some experience of this. We are talking about bringing in new legislation and about the length of time that it will take to train PSNI officers and understanding how to use that, and I am concerned that the PSNI does not even use the powers that it already has. Is it that officers do not fully understand or do not get the adequate training? If that is the case, that is an issue for the new members of the Policing Board who have taken over from me. Or is it the case that they are just not using those powers? If that is the case, we need to ensure that they do. I suppose it is not for me to put you on the spot and ask you which you think it is, but I have concerns that there is a bit of both.

Mr Larkin QC: Put me on the spot right away, Ms Dillon.

Ms Dillon: I would like your view of it. Is it the case that the PSNI is not using the powers because it is too much like hard work and there is a lot of follow-up on it? It is hard work to tie these people down, because you are right. The only other thing that matches their malevolence and their ability to act on it is their deviousness and how far they can go to really pull the wool over people's eyes and convince people that they are almost the victim in all of this. Is it the case that the PSNI is choosing not to act or that it does not fully understand what its powers are?

Mr Larkin QC: I apologise, because this is not a direct answer to your question, but this guidance is designed to ensure that there will be no excuse for not fully using the powers that the PSNI presently has. I have to say that I entirely agree with the general proposition. In one sense, there is no point introducing a new piece of legislation if what is required, for some things at least, is a full utilisation of existing legislation. It is different, obviously, if you are making that which was not an offence previously an offence. That is a clear change. But if you are not enforcing the law in relation to conduct that everyone acknowledges is criminal already, that is something that you need to look at.

I round this out by saying that I should have mentioned the deviousness, because it is part and parcel of this. It manifests itself in, "Oh, I was just walking down the street. It's a free country; why can't I walk down here?". The difficulty, of course — one has to acknowledge this — is that, from an enforcement perspective, unless an order is in place, for someone who is at the end of their tether by reason of a history of stalking, the impact of simply seeing someone walk past — seeing their head and shoulders above the hedge — can be genuinely terrifying, and yet, absent an order that has been breached, no offence has been committed. If I ask, "Why no arrest?", the answer could be, "Because no offence

was committed", but it starts building a piece of the jigsaw and then becomes part of the campaign of harassment. I very much hope that that will change and improve operational culture. Let us see how it works.

Mr McGlone: I am looking at that point 40:

"an analysis of serious crime cases".

Domestic abuse and stalking is an awful thing. Is similar good practice done in the PSNI? It should be. I am thinking of other cases too, where there may be blackmail, intimidation, extortion or a similar type of behaviour by individuals. In general, is there a process whereby the police do that regularly for all serious crime? I would expect that they should do.

Mr Larkin QC: I will not say that there was a little pushback on this, but, in a way, one is looking for the decisions not to arrest. Take, for example, the person who claims that they are simply innocently strolling down the street; we know that it is not for an innocent purpose, but, on the face of things, no crime has been committed. There would not be any analysis of that as a problem. It might be an entry in a notebook — "Complaint that so-and-so is standing outside the house. Turned up. Not there. No action." — but there would not be the fuller analysis that paragraph 40 calls for.

You are right: in relation to a range of serious offences, there is no reason why one would not want to do that in other cases as well. It is a bit like the debate about something like Black Lives Matter. There is a campaign about black lives mattering because there is an issue about law enforcement in the United States. That is not to say that white lives do not matter. That I am doing this in the context of domestic abuse and stalking does not mean that it should not happen elsewhere, but there is a problem here, and that is what paragraph 40 is designed to address.

Mr McGlone: I get that, but implicit in that is that it is not done elsewhere. That is what I read from it.

Mr Larkin QC: I very much hope that the implementation of and acting on paragraph 40 leads to improvement in that area, but just because I am not saying it does not mean that the police cannot do it. I very much hope that they will use that, at their discretion and judgement, to build on their own best practice.

Mr Frew: I have an issue with this, as Linda rightly said. I will give you an example: when I brought in the child protection disclosure scheme and tried to convince the police and others that it was the right idea, and that it was right that I tried to amend one of the justice Bills, they were totally opposed to it and tried to talk me out of it. It was all about what process that would take and how they could cope. It was not about cause and effect; it was about their process. The PSNI has totally failed to promote the child protection disclosure scheme. For whatever reason, I do not know; I think that it is process. Having spoken to the people at the top who matter, I know that, gladly, that will be relaunched. I give that example simply because I do not trust the police to fulfil what is law at present.

So, while I think that this is a novel pursuit and one that it is very worthy and, of course, human rights-based, John, can I ask you first about the need and necessity to do this? Obviously, you have seen this as a massive problem and sought to change it. How effective can this guidance be, albeit it is going through a legal procedure, without a Bill on domestic violence going through this place?

Mr Larkin QC: It is an enormous question. As Ms Dillon said, there is no point having legislation where the problem, at least in part or in large measure, is the failure to properly use the legislation that we have. I am speaking in the abstract here, but sometimes an organisation can use new legislation as a bit of an alibi for not properly using legislation that is probably sufficiently adequate for the job in hand. There is a provision for review and monitoring in this, and obviously we will continue to explore that.

Mr Frew: Who actually monitors it: your office or the police?

Mr Larkin QC: The police are invited to bring to us problems with the implementation of this, and — I am sure I will be corrected if I am wrong — they have not done that. We will be inviting them to tell us how it is working in practice. However, although the formal interface — I emphasise "formal" — is with the relevant criminal justice body, there is nothing to stop Women's Aid, individual women or other

citizens getting in touch to say, "I have seen your guidance and, in fact, this is not happening in my area. They are not doing this". I very much welcome that kind of input.

Mr Frew: It is quite detailed. Paragraph 37, "Recording and Analysis":

"For every reported incident of domestic abuse and stalking a record must be kept by PSNI. At a minimum, the following must be recorded".

You then list eight items. That is quite a detailed process for the police, which will horrify them. Surely you are changing the mindset, psyche and operational sense of the PSNI even before the change of legislation or creation of new legislation. Do you think that it should take a year after Royal Assent for a domestic violence Bill to be rolled out into operation?

Mr Larkin QC: I am going to give the classic lawyer's answer: that depends. It depends what is in it. I have not seen it. The big advantage of this from a police perspective is that, if they do not comply with its terms, they are not breaking the law. If they take a decision at the outset, "Oh, we are not having regard to this", they would break the law. The Bill that has been discussed will be quite different. It will impose obligations which will result in a breach of the law if they are not faithfully implemented. Therefore, one would need to see the text of that. The advantage that I have in a small office is that usually we can make things happen quickly; sometimes not as quickly as we would like but usually, in relative terms, quite quickly. My old-fashioned view is: where there is a will, there is a way.

Mr Frew: OK, thank you.

Mr Dunne: It is good to meet you, John. Thank you for your input. The police always make the point that domestic violence is a huge issue for them. They say that it is one of the biggest problems they have locally. There are different levels of it. In paragraph 40, you talk about "a regular basis". I am sure you thought long and hard about that term. Could that be monthly, or could it be three-monthly?

Mr Larkin QC: Tying in with what I said to Mr Frew, I want to encourage a culture of sensitivity to the issue and a culture of efficiency. I do not want to be prescriptive; I am not part of the police command structure. I want them to look at that and make a judgement about what they think it means and to work with the grain of the guidance to produce a result. If they came and said, "Look, we're doing this on a six-monthly basis", I would say, "Well, how's that working for you? Is that yielding the results that you hoped it would?".

Mr Dunne: I suppose it depends on the scale of the case.

Mr Larkin QC: It does, very much so.

Mr Dunne: Thanks very much.

The Chairperson (Mr Givan): If members are content, I will put the question formally. Are members content that the Committee for Justice has considered SR 2018/108: The Attorney General's Human Rights Guidance (Domestic Abuse and Stalking) Order (Northern Ireland) 2018 and, subject to the Examiner of Statutory Rules' report, has no objection to the rule?

Question put and agreed to.