



Northern Ireland
Assembly

Committee for Justice

OFFICIAL REPORT (Hansard)

Protection from Stalking Bill: Department of
Justice

21 January 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Paul Givan (Chairperson)
Ms Linda Dillon (Deputy Chairperson)
Mr Doug Beattie
Ms Sinéad Bradley
Ms Jemma Dolan
Mr Gordon Dunne
Mr Paul Frew
Ms Emma Rogan
Miss Rachel Woods

Witnesses:

Ms Barbara Compston	Department of Justice
Mr Brian Grzymek	Department of Justice
Mr Andrew Laverty	Department of Justice

The Chairperson (Mr Givan): From the Department of Justice, we hopefully have Brian Grzymek, the deputy director of the criminal justice policy legislative division; Andrew Laverty, the head of the criminal law branch; and Barbara Compston. The session will be reported by Hansard, and a transcript will be published on the Committee web page. Brian, I will hand over to you at this stage.

Mr Brian Grzymek (Department of Justice): Chair, I should check that you can see and hear us OK.

The Chairperson (Mr Givan): We can hear you no problem, so please feel free to continue. We do not have a visual, but that is OK.

Mr Grzymek: I am not sure what happened to the visual, but never mind. I thank the Committee for giving us the opportunity to brief you today on the principles of the Protection from Stalking Bill. As you know, the Bill passed First Stage in the Assembly on Monday. I will give you a brief overview of the content and principles, and we will be happy to answer questions.

The Bill contains 20 clauses and is divided into three parts. The first part creates a new specific offence of stalking. That will address behavioural acts associated with stalking, something that the current harassment law does not do effectively. While harassment often presents as a disagreement over a specific issue, stalking is fixated, obsessive, unwanted and repeated behaviour. The Bill also creates the offence of threatening and abusive behaviour, which can be triggered by a single incident. Those new offences will also have stronger and more appropriate penalties and protections than are available under the current harassment legislation.

You will note that the maximum penalty on summary conviction in a case going to the Magistrates' Court for the stalking offence will now be 12 months' imprisonment or a fine up to the statutory maximum of £5,000, or both. The maximum penalty on conviction on indictment for the more serious offences that go to the Crown Court is up to 10 years' imprisonment or a fine, or both. For the offence of threatening or abusive behaviour, which is inappropriate behaviour that falls short of stalking, the maximum penalty on summary conviction is 12 months' imprisonment or a fine up to £5,000, or both. For indictment, it is five years' imprisonment or a fine, or both.

Importantly, the new offence of stalking will ensure compliance with the Council of Europe convention on preventing and combating violence against women and domestic violence, also known as the Istanbul convention. That requires extraterritorial jurisdiction to be extended to the stalking offence. Under the legislation, when inappropriate behaviour occurs outside of the United Kingdom, it can constitute a stalking offence as if it occurred in Northern Ireland.

Provision for special measures covering all victims of stalking is also included in the legislation. That will ensure that all victims of this insidious crime have automatic eligibility for special measure assistance, such as the use of live links or screens at court when giving evidence.

The second part of the Bill, which relates to stalking protection orders (SPOs), provides for the introduction of such orders. They will be a key tool for the police, enabling them to intervene prior to any conviction, when appropriate. By using them, the police can disrupt stalking behaviours before they become entrenched or escalate in severity, and, through those orders, they can protect victims when there is an immediate risk to them. The police will apply the orders, taking the onus away from the victim, which is an important consideration. To make an application to the Magistrates' Court, a police officer must be satisfied that the defendant has carried out acts associated with stalking, that they pose a risk of stalking to another person, and that the order is necessary to protect that person or another person from that risk. The orders will be available to defendants under the age of 18, and such applications will, of course, be heard in the youth court.

The orders will be able to prohibit the defendant from taking identified actions, as far as is necessary, to protect the other person from the risk of being subject to stalking behaviour. They could, for example, include prohibiting the defendant from entering certain locations or defined areas where the victim resides or frequently visits. They could also prohibit contacting the victim by any means, including via telephone, post, email, text messages, social media or, indeed, physically approaching the victim at all or within a specified distance.

In addition to prohibitions, a law can require the defendant to do something, as far as it is necessary, to protect the other person from stalking. Positive requirements could include the defendant attending a perpetrator intervention programme or undergoing a mental health assessment. If the defendant breaches the terms of an order, the maximum penalty on summary conviction is six months' imprisonment or a fine up to £5,000, or both. On indictment, the penalty will be up to five years' imprisonment or a fine, or both.

A defendant subject to a stalking prevention order will be subject to notification requirements and will need to provide personal details of their full name and home address to the police before the end of three days, beginning with the date on which the order comes into force. They must also provide details of any change of address, also within three days. Failure to comply with the notification requirements without reasonable excuse or knowingly to provide the police with false information will be an offence. It will be for the court to decide what constitutes a reasonable excuse in such cases. The maximum penalty on summary conviction for notification offences is six months' imprisonment or a fine up to £5,000, or both, and, on indictment, it is five years' imprisonment or a fine, or both.

The third part of the Bill provides that the Department will issue and publish guidance to the Chief Constable about the exercise of police functions in relation to stalking protection orders. We envisage that the statutory guidance will provide information about the procedure for applying for a stalking prevention order and will provide the police with a practical toolkit to use when making such applications.

That concludes my opening remarks. My team and I will be very happy to answer any questions that members may have about the principles of the Bill. We look forward to working with the Committee in the coming weeks and months as the Bill progresses through the Assembly.

The Chairperson (Mr Givan): Thank you, Brian. That is helpful. I have a couple of quick questions. This Bill, unlike the Domestic Abuse and Family Proceedings Bill, lists behaviours. I would like a little

more information around the thinking behind specifying the type of behaviours. Why was that approach taken rather than the creation of a general offence?

Mr Grzymek: I will start off and then perhaps pass to one of my colleagues. In developing the Bill, we had quite a lot of engagement with an expert group, which brought together the Suzy Lamplugh Trust, Women's Aid and a number of NGOs that have direct experience of the issue. We also spoke to our colleagues in England and Wales, and in Scotland; both of those jurisdictions already have stalking legislation, and we took advice from them about how their legislation was working. It was from that, and certainly from victims, that the importance of having stalking as a defined offence was highlighted. Elements of stalking have not historically been readily identified and recognised by police services either here or in the UK. The aim of having a list of typical behaviours, which is fairly comprehensive but does not cover all possible behaviours, was to make sure that stalking was identified and recognised more readily. That is partially because some of the actions in themselves look quite innocent, but when you see them in the context of being obsessive, repeated and unwanted behaviour, those sorts of patterns are important. We felt that it was important to specify and set out those behaviours in the legislation to ensure that they were appropriately recognised.

I do not know whether either of my colleagues want to add to that.

Mr Andrew Laverty (Department of Justice): I will, hopefully, add some clarity. The reason for setting out a not exhaustive but fairly comprehensive list of behaviours is to draw a distinction between what might be constituted as harassment behaviour and what we want to have clearly identified as stalking behaviours. That was a big part of the responses to the Department's consultation as part of our review of the existing harassment laws, which date back to the previous mandate. Perhaps that adds a little extra clarity to what Brian said.

The Chairperson (Mr Givan): The number of incidents that constitute an offence is, I think, set at two. What was the rationale for setting that at two?

Mr Grzymek: We looked to see what was happening in other jurisdictions. A lot of what we are doing here is based on the Scottish model, which the NGOs certainly preferred to the approach in England. The number of two was about starting to establish a pattern. In practical terms, it may well be that the capacity of the police to pick up the second offence as being the point at which they come in will depend on how their systems work, but we felt that it was important to see the establishment of the beginning of a pattern. A single incident could still be caught. It would not in itself be stalking, but, if there were two or more offences, you are starting to create a pattern and to see stalking occur. Certainly, it was very much based on taking advice from what was happening elsewhere and how it was defined, and two seemed to be the right number.

Mr Laverty: To add to that, the number of two is not new in the stalking sphere. Two instances or more already exists in the protection from harassment order, so it already has a legislative footing in Northern Ireland. We have extracted that from the harassment legislation and included it in the stalking legislation.

The Chairperson (Mr Givan): I have a few more questions, but I will bring in Linda first. I may pick up again once other members have had an opportunity.

Ms Dillon: I thank the officials for coming to the Committee. Obviously, we are well aware of the impact of stalking and the long-lasting and negative effects that it has on a victim — on somebody who is being pursued in this manner. It is regrettable that we have not had legislation in place to date, but I am really happy to see it coming to the fore now, particularly given that we have just completed the Domestic Abuse and Family Proceedings Bill. While stalking was not included in that Bill for the very good reason that it is generally not domestic, there certainly are instances and cases in which stalking forms part of domestic abuse, so I think that it is really important that we have got to this point and are moving forward.

I have a few questions. Many of the respondents to the consultation said that their complaints had not been taken seriously and that the police did not understand the difference between stalking and harassment behaviours. You will be well aware that, in the Domestic Abuse and Family Proceedings Bill, there was a big emphasis on training, and that needs to be the case with this Bill. I foresee the Committee having conversations on how we ensure that that happens and whether it needs to be in the Bill. As a Committee, we will have those conversations, but the issue of training is important.

Have you any plans for a campaign on the public element to ensure that the wider public understand what stalking is and what stalking behaviours are so that people who are potential victims understand what it is and that they can access the law in a way that will satisfactorily deal with what is happening to them? They need to understand that what is happening to them is stalking, so there needs to be a publicity and awareness-raising element. Can you outline the training issue, the public element and the advertising campaign?

Mr Grzymek: I am happy to answer those questions. We have been having continuing conversations with the police over the past two years about training. Indeed, I went to Hampshire Constabulary's stalking clinic, which is one of the exemplars in England for how to deal with stalking. I went there with two colleagues from the Police Service, and we saw how it was working in practice and talked to police and other interests there about how the system was working. The police have been quite engaged with us as we have been developing the legislation, and, indeed, they also sat on the expert group that was looking at how we take all of this forward.

As part as that, we all recognise the importance of training. I think that it was recognised that, too often, stalking offences in particular fall between stools. Identifying the pattern quite early on is important, and I know that the police felt frustrated with the existing legislation. They found problems with using harassment legislation in some of the cases that came before them. This legislation will give them greater capacity to intervene effectively, and they will have a significant training need because, clearly, the stalking protection orders will be new. Training will have to be rolled out to get awareness and understanding of how they will work. The police will have to train their officers to make sure that they understand the new law and how it is to be applied. We will work with them over the next period to do that. I discussed that last week with the police, and a trainer who has been involved in training on stalking in two police services in England and I will meet the police again in a fortnight to take forward those conversations. At this stage, it is still under development, but the importance of training on stalking, as well as on domestic abuse, is well recognised. Indeed, there were discussions about whether we could tag on some of the training to the domestic abuse training. You are quite right: it is much broader than domestic abuse. Some components of stalking have links to domestic abuse offences against someone from a former relationship. We may link some of that training with domestic abuse training. That is under discussion, and it will certainly be taken forward.

As the legislation progresses, we will develop plans to see how we can roll out a campaign for the public. Awareness will be pretty important. We do not yet have hard plans; those are still under development. By the time we move ahead, we will be developing a communications strategy that will have a public component and a focus on the police, the Public Prosecution Service (PPS), the NGOs and others, who will work with us to make sure that that awareness of the law is promulgated effectively.

Mr Laverty: Linda, I will jump in very quickly to add to what Brian said. One thing that we and, in particular, I have found very helpful is in understanding the difference between harassment and stalking. The College of Policing devised an acronym that has been used in guidance to the police, and we will certainly take the opportunity to rehearse it as many times as we can using the Department's social media platform. It is very similar to the FAST acronym for stroke awareness. On stalking, the acronym is FOUR. As I said, the difference between harassment and stalking is that harassment is primarily seen as a dispute or a grievance issue whereby, if that grievance issue is addressed, the harassment behaviour is expected to diminish. With stalking, however, what you are looking for is behaviour that is — using the FOUR acronym — fixated, obsessive, unwanted and repeated. That message lends itself very well to social media platforms and awareness raising on that basis.

Mr Grzymek: I might add that, on training, we are not starting from a bad place. Although we are behind the rest of the UK in bringing this into legislation, the College of Policing nationally has, in the meantime, developed very good guidance on stalking. Indeed, we ran a workshop about a year or 18 months ago. We brought over some members of the college, together with representatives from the Suzy Lamplugh Trust and others, and we had quite a useful seminar. It brought together a lot of the interests — police interests and community interests. We got details about what has developed nationally by way of training. We are therefore starting off with quite a good national resource on which we can draw, and I know that the police are linked into that.

Ms Dillon: Thank you very much. I appreciate the opportunity to ask those questions. I am glad to hear that you are linking in with NGOs on training and the advertising campaign. They have experience, know best how to reach people and have the greatest understanding of what the issues

are and how they impact people. You are absolutely right: that acronym lends itself to social media. I encourage Committee members and other elected reps to be part of getting that message out to ensure that people understand exactly what stalking looks like. Thank you for the answers.

Mr Frew: Linda has addressed one of the issues that I had wanted to raise. For many years, when politicians were pushing for stalking legislation, the Department would always say that that was covered by harassment laws. I was going to ask you to tell me the difference between harassment and stalking, but you have, quite rightly, answered by using that acronym, of which I am aware. I thank you for that, because you have hit that nail on the head.

I welcome the Bill and the creation of an offence of stalking. I am there with you 100%, and I was there five years ago, so I am very supportive of it. We touched on the reasonableness concept in our deliberations on the Domestic Abuse and Family Proceedings Bill. What is interesting about the Protection from Stalking Bill is that it is much more descriptive in that it outlines conduct. One subsection outlines the reasonableness test:

"acting in any other way that a reasonable person, or a reasonable person who has any particular knowledge of B that A has, would expect would cause B to suffer fear, alarm or substantial distress".

The question is: why is that reasonableness test in a subsection of a clause and not an umbrella reasonableness test for all conduct?

Mr Grzymek: At one level, it could be. One option would have been, of course, just to have that as the total test: would the man on the Clapham omnibus see that as reasonable or not? However, we noted from victims that their concern was quite often that there are innocuous behaviours that in themselves do not look like stalking. If you are a potentially vulnerable woman and somebody is sending you flowers every day, that might look to the man in the street as slightly quirky or strange behaviour, but it would not necessarily be seen as threatening or abusive. In fact, however, that sort of obsessive, repeated, fixated and unwanted behaviour could over time become quite sinister, disruptive and damaging to the individual on the receiving end.

We felt that it was important, because of the nature of stalking, to spell out some of the typical behaviours that could constitute it. At the same time, just as on the domestic abuse side, it is very hard to specify things. Any time you ever write a list, you are always going to leave something off it. We wanted to spell out what are often the typical behaviours, but, by putting in that reasonableness test at the end, it ensures that, if someone found a new and novel way of stalking or obsessing over an individual, it would not be discounted because it was not on the list.

Mr Frew: OK. Clause 1(1)(b)(ii) is also a reasonable person test. I suspect that that covers the offence of stalking and all the other items of conduct. Is that correct?

Mr Grzymek: By definition, the test of reasonableness would cover them all, but we felt that it was important — indeed, we were advised by victims — that, in fact, those were spelled out. Quite often, some behaviours in themselves look innocuous and, therefore, may be discounted by a policeman or another person in the justice system who is less familiar with stalking.

Mr Frew: I also note that you have a reasonable defence. How do you see those two reasonableness tests living alongside each other — the test for the offence and the test for a defence?

Mr Grzymek: Essentially, the test of reasonableness is to try to identify whether an offence has been committed. On occasion, it could well be that a pattern of behaviour could be there for some good reason that would not be apparent from a test of reasonableness. However, when you query the person who appeared to be committing a potential offence, they could explain that there were other factors that made what looked like a pattern of inappropriate behaviour legitimate. In essence, we recognise that, by definition, stalking is quite a difficult area. It is important that we recognise not only that people will develop new and interesting ways of undertaking stalking behaviour but that, because it can be so wide-ranging, some innocent activities could be swept up as well. We are providing a safeguard to ensure that, if someone who is going about a legitimate purpose — they have no intention of stalking but are creating a pattern of behaviour that looks like it could be conducted by a stalker — has a reasonable excuse for that behaviour to show that it is not an offence, it will, of course, not be prosecuted or pursued.

Mr Frew: One example of what you have outlined is in clause 1(4)(f), which deals with:

"loitering in any place (whether public or private)".

There, again, there could be an innocent reason for somebody's presence somewhere, whether because of their routine, job or hobbies. Although they are there for a particular reason, because they are a stalker, they are striking fear into their victim through being there. That is what we are grappling with here.

Why do you need to put in "(whether public or private)"? Why is "loitering in any place" not good enough?

Mr Grzymek: Andy, do you want to pick that up? I must admit that I understand what you are saying: "any place" will include public and private places. I think that it was probably a case of our trying to be as specific as we could be to make sure that we did not leave anything out.

Mr Laverty: I will go back slightly. One reasonable defence may be that someone is involved in a neighbourhood watch programme. Another may be that someone is walking a dog past a person's premises, but the dog is not visible as it is small, and the person, who is walking behind a wall, can be seen only from the waist up, or something like that. Those behaviours could be described as a reasonable defence.

On "public or private", with your blessing, Mr Frew, to provide you with complete clarity on why we specified both, I would like to go back and look at the exchanges that we had with the Office of the Legislative Counsel (OLC). Having been involved in the preparation of quite a lot of substantial legislation over the last number of years, I know that, if it is there, it is there for a very good reason. The drafting of this legislation has taken place over the last seven to eight months, and the reason for that particular inclusion escapes my memory at the moment, so I would like to go back and make sure that any thoughts that I have are confirmed by our exchanges with the Office of the Legislative Counsel.

Mr Frew: Sure.

I go back to your previous point, which is the point that I am making. You hit the nail on the head. I do not wish to cast aspersions or make any generalisms but a neighbourhood watch volunteer or dog walker might also be a stalker. That is why I am asking about that.

Mr Grzymek: They would not be stalkers. They would be carrying out behaviours that could be stalking. In fairness, quite often, when you talk to victims of stalking, you find that it is not just the loitering but the fact that a perpetrator leaves things behind or goes on to social media. It is unusual for there to be just loitering and nothing else. At the same time, you could have a circumstance in which a person could be appearing quite frequently, and, at a certain point, the individual who feels that they are being stalked could reach the wrong conclusion. In practice, it might turn out that there was a legitimate reason. To be honest, if the person knew that, they would be reassured, and it would not be a problem.

Mr Frew: Yes. Clause 1(4)(d) deals with:

"monitoring the use by B or by any other person of the internet, email or any other form of electronic communication".

How will we ever prove that someone is dipping in and out of someone else's social media posts?

Mr Grzymek: Again, from talking to victims, we know that that use tends to be the thin end of the wedge. Perpetrators start by looking at what people have on their social media and then reproduce, distort and reissue it. Quite often, that is the entry point; they start by doing that. The evidence then comes from finding that information innocently put on social media, to share it with a group of friends of whatever, suddenly reappears in a distorted fashion or in a way that fraudulently implies certain behaviours. This is about people accessing information for the particular purpose of stalking.

Mr Frew: I have a final question, Chair. The two offences created in clause 1 are the offence of stalking and the offence of threatening or abusive behaviour. I think that we can all very quickly recognise what threatening or abusive behaviour is, probably more so than stalking. To the untrained eye, that is very much the case. Why does the offence of threatening or abusive behaviour — to me, in many ways, that is a manifestation of stalking — attract a lesser sentence on conviction? It is only five years, whereas stalking is 10 years.

Mr Grzymek: Stalking is a pattern of behaviour, which is, in fact, therefore seen as being more damaging and serious. Although some threatening and abusive behaviour may go on to become stalking, it could well be a situation where you cannot demonstrate that there has, in fact, been a continuing pattern of behaviour. At the same time, you can certainly demonstrate that there was threatening and abusive behaviour, which in itself can attract a sentence. Clearly, if it carries on or a pattern can be established, that has the potential to be more serious. A one-off threat is clearly an offence, but, if a one-off threat becomes a pattern of offending, that is potentially more damaging; hence, the longer sentence.

Mr Frew: Do we not have an offence of threatening or abusive behaviour?

Mr Laverty: We do. However, by putting a particular offence of threatening or abusive behaviour into the Protection from Stalking Bill, we are saying that the threshold for a conviction can relate to a single instance. There is an offence of threatening or abusive behaviour under the other legislation, which is the Offences against the Person Act. We are trying to corral as many stalking-type behaviours as possible into a single piece of legislation, rather than relying on disparate pieces of legislation, which might result in a person trying to use other defences that are not specified, such as the likes of the "reasonable person" test. That exists in this legislation but, to the best of my knowledge, it does not exist as a defence in the Offences against the Person Act.

Mr Frew: In the Offences against the Person Act, what are the tariffs for abusive behaviour?

Mr Laverty: I do not know off the top of my head, Mr Frew, but we can confirm that for you.

Mr Frew: Thank you, and thank you for your answers.

Ms Rogan: I thank the officials for their presentation this afternoon. I have a couple of questions. First, may we have a breakdown of stalking victims by gender?

Secondly, many of the consultees and stakeholders who fed into the consultation have called for the establishment of a stalking register. Has consideration been given to this? What would that register look like, and how would it be used?

Mr Grzymek: First, on the gender breakdown, I do not know whether we have good statistics to provide that intelligence. From speaking to the police and victims' groups, our expectation is that the vast majority of people who are stalked are female, although a minority of males also experience this. It is equally serious regardless of the gender of the person perceiving the behaviour. Part of our problem is that, at the moment, that sort of behaviour comes under harassment and other legislation. Victim fatality is not picked up effectively either. I do not know that we have a good picture at this moment. Once the legislation comes in, we will get a progressively better picture, I believe, particularly if people use the law.

On the issue of a stalking register, we had lots of conversations with NGOs, including the Suzy Lamplugh Trust and others. We also spoke to the police in other jurisdictions, and, by and large, a register was not an issue that was brought to us. We went to victims' groups and others to ask, "What do we need to put in this?", and we did not get significant demands for a stalking register. From talking to the police, we are not sure how effective registers are. The Criminal Records Bureau is the main mechanism used when the police pick up a potential stalker.

Actually, we have a system in Northern Ireland. We are fortunate that we have one Police Service, and, indeed, one of most organisations. In England, where there are 43 police services, you will find that stalkers quite easily become lost by moving from one area to another. Suddenly, they move off the books of one force and on to those of a force that does not have access to their records.

In Northern Ireland, all records of that nature are shared between the police, the Public Prosecution Service, the courts and other justice agencies. That means that, when someone is on the books for stalking, or when they have been arrested, cautioned or whatever, they are in the system. Once we have stalking legislation, they will be in the system, as will the fact that the cause for which they were registered was a stalking offence. So, if someone's name comes up in another area, the police will find it easy to look at their record and see immediately that there was a stalking conviction or a case against them.

We are certainly not turning our face against a stalking register. It is just that it has not been raised with us as a significant issue. In Northern Ireland, because of its structure and make-up, our current systems should work well enough once we have a new offence. That, I think, is the police's view at the moment. Our aim is to keep this under review. If any advance could be obtained from a register, we would take it forward.

Having talked to colleagues in other jurisdictions, I am not aware of any real pressure in those areas for a stalking register. Certainly, there are no plans elsewhere to introduce one. We will keep a watching brief on that. If it looked as though something like that could give value, we would not be backward in seeking to introduce it. As it stands, I am not clear that it would add any value, and it would add a bit of additional bureaucracy.

Ms Dolan: Thanks, Brian and Andrew, for your presentation. I want to ask a couple of questions about stalking protection orders. First, will you give a practical example or examples of what a stalking protection order will entail?

Mr Laverty: Jemma, with your agreement, we will bring in Barbara Compston, who is our policy lead on stalking and works closely with the Office of the Legislative Counsel on the drafting of these provisions.

Ms Barbara Compston (Department of Justice): A stalking protection order can have prohibitions. It could prohibit the defendant from visiting the area where their victim lives. Prohibitions and requirements mean that defendants could be asked to go for a mental health assessment or attend a perpetrator programme. Those are the two aspects of a stalking protection order.

Many respondents to our consultation were keen to see stalking protection orders introduced because they will take the onus off the victim, whereas, under protection from harassment, as a victim, you have to apply for your own non-molestation order or wait for a conviction of harassment before getting a restraining order. The stalking protection order will put the onus on the police. Once they are content that stalking has been committed — that acts have occurred — they can apply to the court for a stalking protection order with immediate effect.

Ms Dolan: OK, thank you, Barbara, that is really good. Are there stalking protection orders in other jurisdictions?

Ms Compston: England and Wales introduced stalking protection orders at the start of January last year, and they are completing a full-year review of their first year. We have been working very closely with our colleagues — the stalking policy leads — in the Home Office. On the whole, they have found that the stalking protection orders have been welcomed and that they are working. However, as Brian and Andrew mentioned, England and Wales have 43 different constabularies, and the take-up of stalking protection orders differs from one constabulary to the next. Given that we have one force, and with the appropriate training on how to use the protection orders, the orders will certainly be welcomed.

Mr Laverty: Jemma, I will add a couple of points to what Barbara was saying. Part of the big attraction of stalking protection orders, and it links back to what Emma was saying about the calls for a stalking register, is that we see them as being there at an early stage. An order is a proactive disposal; it is not dependent upon a conviction for stalking. Orders are applied for by the police, so there is instant protection. Respondents to our consultation exercise rehearsed their frustration at people breaching non-molestation or restraining orders, almost with impunity. We have gone to great lengths to make sure that there is a stand-alone offence of breaching a stalking protection order, which gives these orders more teeth. Quite significant penalties are available for breaching them. Certainly, at the Crown Court, for conviction on indictment, there is a sentence of imprisonment of up to five years; and, for summary conviction, a sentence of up to six months. We believe that they will offer instant protection.

As Brian and Barbara mentioned, we have a single police force here, so we expect that the implementation and application of these powers will be consistent across all district command areas.

Mr Grzymek: From a justice perspective, the value of these orders is that they can be brought in early on, as Andy said. The aim is to disrupt the behaviour. Often, stalkers can be quite obsessive, and their behaviour can escalate. The ability to disrupt their behaviour fairly early on — either by limiting their behaviour or having the individual sent off for assessment or therapeutic support, if that is part of the solution — gives us much better opportunities to address stalking. Our aim is to try to intervene early where we can to limit the damage done, rather than allowing it to become established behaviour, which is much more difficult to disrupt later.

Ms Dolan: I agree. The earlier you can stop it, the better.

My final question is on a rural needs impact assessment. The Bill's explanatory notes state:

"We do ... consider that specific action may be required to raise awareness ... in rural areas".

I am from a very rural area and have my own ideas on how that would be a challenge for victims of stalking in rural areas. Will you outline what raising awareness might look like?

Ms Compston: We will definitely work on a public campaign as the Bill makes its way through the Assembly. We have already engaged with the Suzy Lamplugh Trust, which has established a Northern Ireland stalking consortium. That will include a lot of NGOs, such as Women's Aid and Victim Support, and the Probation Board. There will also be representatives from the PSNI and the Public Prosecution Service on that consortium. It will be a one-stop shop for raising the profile of that campaign across Northern Ireland so that everybody can understand the behaviours that constitute stalking.

Ms Dolan: Thank you. That is grand, Chair.

Ms S Bradley: Thank you for your presentation. I will quickly run through three things that I want to clarify. Am I right to say that you have gone with the approach of having no set time between instances when determining behaviour, which means that it does not have to recur within six days, six weeks or six months?

Mr Grzymek: That is correct.

Ms S Bradley: OK. I could not see anything about that.

We have tried to make a distinction between harassment and stalking. There is the option of going down the harassment route, but, as I read through the Bill and work my way through the tests for a conviction, I struggle with the distinction between online trolling and stalking. Would it be possible, under the legislation, for there to be a successful conviction based on exclusively online behaviour?

Mr Grzymek: I think that the answer should be yes. Essentially, you are looking for a pattern of behaviour, and what you describe would fit the criteria. I have been in contact with a number of victims who have been stalked largely online. In one case, the person lifted stuff from their online site and used it in their place of employment to suggest that the victim was a sex offender. They were working only online, but they were interfering with the person's online identity and putting out false and malicious statements about them online. That, clearly, is stalking behaviour and would certainly fit in to our definition without any problem.

Ms Compston: During our policy development, we spoke to many of the different advocacy services. They recorded that police will have to look at all online stalking and that it should be part of the investigation of an offence. It will need to include online and offline stalking. That will build the case. That will come as part of the training programme.

Ms S Bradley: So, there may be a case that has an element of online and offline, but there could be a conviction based on what we know to date as being trolling as a form of stalking, and there could be a conviction based on that.

Mr Grzymek: I add a caveat: one of the dilemmas about the online side is where people use false identities and whatever. I am not pretending that this will always be straightforward and easy, but, at the same time, it will certainly be covered by the legislation.

Ms S Bradley: That brings me nicely on to the third point that I want to raise with you. Given the anonymous accounts and false identities that are used online, one of the parts of the consultation that you talked about was the power of entry to search premises for evidence in such an instance. Where has that landed? Are there plans to incorporate those powers to give a route to conviction via any online stalking?

Mr Laverty: Those are standard investigatory powers under the Police and Criminal Evidence Act 1984 (PACE) legislation. We do not need to add them to the stalking legislation. The police clearly have the ability to identify people already. Under the Malicious Communications Act 1988, they can identify people who are using pseudonyms or false identities. When those people are identified, existing PACE legislation allows for the examination of mobile devices, laptops, computers and the types of resource that a person will use to carry out online stalking or online-only stalking.

Ms S Bradley: OK. It is just that I noted the question in the consultation about the powers of entry. That raised the important point that the person who is being stalked might not be fully aware of the entirety of the perpetrator's behaviours. Gathering such evidence can bring to light further things, like surveillance, tracking and bugging, that had been happening without the victim necessarily being aware of them. I know that you spoke to that, but I was not sure whether there was something else running in tandem with the draft legislation, against the legislative programme, to specifically look at that, but there appears not to be. Is that fair?

Mr Grzymek: No. In essence, this is a criminal act. The fact that it can go to the Crown Court on indictment shows that it is clearly a serious criminal offence. Under PACE, the police have quite extensive powers to pursue investigations, which they do. You are quite right that it could well be that the stalking victim does not always know the full extent of the stalking. I was sitting with the Minister when she was talking to a victim of stalking and her mother a few months ago. The woman told the Minister that, because she was living in accommodation that had some surveillance cameras as part of its building's security, she discovered that her stalker, with whom she was previously in a relationship, had a key to the building and was identified as having visited and stood outside her door on 100 occasions over a three- or four-month period. She knew nothing about that, but she was seeing clearly the other things that he was doing. So, you are quite right. Once the police exercise their powers under PACE, they could well find evidence that is not available or known to the stalking victim.

Ms S Bradley: Thank you.

Miss Woods: Thank you to the officials for coming today. A lot of my questions have been asked, but I will pick up on Sinéad Bradley's point about powers of entry and search. You are saying that the PSNI already has those powers under PACE. Why, then, was that question asked in the consultation?

Mr Grzymek: It was probably asked because there was a concern that stalking was not seen as serious an offence. It was perhaps not recognised for what it is. One of the concerns has been that not all stalking behaviour seemed to fit neatly into harassment legislation. It then became a bit of an anomaly where the police were either not recognising patterns or not recognising that they had the power to intervene because there was not a clear and obvious serious criminal offence. What we are doing through the draft legislation is establishing stalking as an offence that can be pursued under indictment where it is in a particularly serious form. That will mean that there is no lack of certainty, so the police will be able to confidently use powers. Previously, when someone indicated, "This person keeps leaving flowers outside my house, and I keep seeing them on the street corner", the police were struggling to say whether that was a serious offence that gave them the power to carry out those sorts of actions.

Miss Woods: OK. Thank you. I want to go back to the offence in the Bill. I know that Paul Frew raised loitering in any place, whether it is in public or private. I believe that that is directly covered in the 2010 Scottish legislation. It would certainly be good to get some clarity on whether it was put in place in Scotland for any particular reason and what its functions are.

Clause 1(5), which deals with the offence of stalking, states:

"It is a defence for a person charged with the offence of stalking to show that the course of conduct—

(a) was authorised by virtue of any statutory provision or rule of law".

Can you give some examples of what that means?

Mr Grzymek: You may find that the police are observing someone because of suspected drug offences. That is an example. You may find that the licensing authorities are doing surveillance on those without a TV licence in an area, or you may find that the Driver and Vehicle Licensing Agency (DVLA) has issues about vehicle registration and licensing. There are a number of quite legitimate reasons why people may call, perhaps on a number of occasions. In essence, we recognise that there will be lawful reasons for people to carry out surveillance in some cases. For example, if social security fraud is suspected, you may well find that there is a surveillance operation to pick up people who are abusing a benefit or who are not entitled to it. There will be a number of factors, and, clearly, in the law, we want to exclude those if there is a legitimate reason for them. This is not about having a legitimate personal reason; it is about there being a legitimate organisational, business or legal reason for the behaviour, and, clearly, that should not be included as stalking.

Miss Woods: OK. Thank you. We will probably go into that in more detail; I certainly will. If a course of conduct, regardless of whether it is authorised under a statutory provision or rule of law, is causing someone to:

"suffer fear, alarm or substantial distress",

should that be looked at?

Mr Grzymek: I suspect that if you were claiming for a long period benefits that you were not entitled to and somebody started to look at that, it may well cause you some distress to discover that you were under surveillance. I am not sure whether being in distress in that situation is stalking. Clearly, we are talking about, as I say, people carrying out a fixated, obsessive, unwanted and repeated behaviour. That acronym is quite useful when you are looking at this, and it should help us to quite clearly exclude those sorts of legitimate purposes while keeping in the frame obsessive people who are conducting obsessive behaviour and, in the process, seriously damaging the victims.

Miss Woods: Thank you. An agreed legal definition of stalking is absent, and, obviously, there is not one here either. Do you think that that is a gap, or do you think that it is OK not to have one, given the non-exhaustive list of behaviours?

Mr Grzymek: It has been very hard to establish a legal definition, so, in essence, what we have given is as close as we were able to come to one with confidence. If you can come up with a brilliant legal definition, we would be very happy to adopt it tomorrow. From talking to our colleagues in other parts of the UK and elsewhere, I know that getting a comprehensive definition that covers all aspects has been problematic given that this sort of behaviour can morph in different ways, depending on the circumstances and opportunities. We picked up some of the regular and typical sorts of behaviours and put in at the end a test of reasonableness about what a reasonable person would see as an offence.

Miss Woods: I certainly do not have a ready-made definition for you. I know that the lack of a legal definition has come up before in debate and certainly in academic research. I also know that it was brought up during discussions on the Domestic Abuse and Family Proceedings Bill as well.

As for who it applies to, there is no age range in the Bill, so is the offence applicable to anyone who is over the age of criminal responsibility?

Mr Grzymek: I think that the answer is yes. I do not see why it would not. Clearly, that is behaviour that would naturally cause problems. I would be surprised if you found many children fitting into that category, but I presume that it could happen at any age. Normally, it does not tend to be very young or very old people who are involved, but I do not think that we can say with certainty that any one group should be excluded. It allows for anyone who is the age of criminal responsibility.

Mr Laverty: If I might just add very quickly, in drafting legislation, unless there is a specific clause that excludes an age group, the legislation automatically extends to all age groups. For it not to include

children, there would have to be a clause that stated, "a person of 18 years or over". Certainly, our thinking was that we do not want to criminalise innocuous behaviour by young people, but, similarly, we do not want to miss an opportunity for something that is more than just a teenage crush, where someone is in fear or has been caused to be in distress or fear for their safety as an adolescent, either as a victim or a perpetrator.

Miss Woods: OK. I have loads of questions, and I am sure that I will tie them up with you again. I want to ask about the comparison of conviction rates. On indictment in Scotland, there is a maximum of five years' imprisonment plus a fine, in England, it is five years, but they are consulting on 10 years and, in the Republic of Ireland, it is seven years plus an unlimited fine. We are proposing 10 years plus a fine. Is that a roundabout way of comparing with the other jurisdictions, or is there a reason for the 10 years?

Mr Laverty: We wanted to create a significant uplift from the penalties under the Protection from Harassment Order 1997. A prison term of 10 years is seen as a serious conviction for a serious offence, and it reflects the seriousness that we attach to the offence. We have obviously done our due diligence in analysing not only disposals in other jurisdictions but existing offences in our legislature.

Miss Woods: OK. Finally, I want to ask about clause 5. Why is there no right to claim a trial by jury?

Mr Laverty: That happens when someone is tried in the Magistrates' Court. The maximum sentence of imprisonment that can typically be imposed without a jury trial is six months. We propose uplifting the maximum penalty on summary conviction to 12 months' imprisonment. That is a consequential amendment that we have to make so that a person cannot claim a jury trial in that instance.

Miss Woods: OK. Thank you.

The Chairperson (Mr Givan): Thank you. Linda, you had a brief follow-up question.

Ms Dillon: On the back of an earlier question, I want to ask about protection orders. As I said when I was talking about training, that will be another area where reporting will be essential. Although you said that there are quite serious consequences for not abiding by a protection order, the difficulty is whether judges will impose those orders for five years. Given that and the serious implications for those who are guilty of breaking the orders, we need some kind of reporting mechanism. If people are continually breaking the orders but, when they get to court, the judge does not make them accountable by imposing prison sentences, we need to be aware of that. There is no value in having it unless it is used.

Mr Grzymek: Five years is the maximum sentence for that offence.

Ms Dillon: Yes.

Mr Grzymek: Clearly, you could have a range of breaches. If somebody deliberately and repeatedly breaches the order, that is one thing. If it happens once, in a minor way, that is another thing. Clearly, you need to give the judge discretion. Having said that, that is something that we can keep under review to see how it works in practice. Setting a five-year sentence is a message to the judiciary that stalking is a serious offence. If there is a five-year sentence, it is called an indictment, so the Public Prosecution Service (PPS) has concluded that it is sufficiently serious that it should put it not to a Magistrates' Court but to the Crown Court. The expectation is that judges will act accordingly. The top of the sentence range is five years, so it would be very different if the sentence were for six months.

That is an area that we can keep a watch on, but, at the same time, I am conscious that, once the Department sets the range of penalties, we have to recognise the independence of the judiciary and its capacity to look at all the facts in a case and make a judgment. That judgment should be independent of the political domain.

Ms Dillon: I absolutely accept what you say, and I am 100% for the independence of the judiciary. We should let the judges do their job. However, reporting is important because we need to know whether something is working. In the reporting, you can allow for the fact that, of course, there are different circumstances and reasons why somebody gets two months or a fine but somebody else gets five years.

However, there has to be some type of reporting mechanism because, as we have seen through the Gillen and other reviews, just because something is available to the courts does not mean that it is used in the best way for the victims and those who suffer the crime. We are well aware that the law did not work for victims, particularly in cases of sexual violence. That can be clearly seen now in the uphill battle that we have in trying to get people to report this sort of crime. It is important that we do not wait until years have passed and have another Gillen review or a review from whoever the judge happens to be in 20 or 30 years. I want to know that this is working in two or four years' time. Part of the reporting will be to ascertain how many people are breaking a condition.

Mr Grzymek: I guarantee that we will make sure that the monitoring arrangements are such that our normal statistics will pick that up. As we do in that sort of case anyway, we would review it periodically.

Knowing that something is working always makes it more complex. It is quite straightforward to know the numbers, but if you find that x percentage of offenders have had a certain sentence and y percentage a longer one, going below that is quite complex. We can certainly report on the number of instances of orders being laid and of breaches and their consequences. That could certainly be done.

Ms Dillon: I appreciate that. Thank you very much. Thank you Chair. That is everything.

Mr Frew: I have a very quick question, Brian. Have you considered adding into the list of conducts the creation of a picture wall or a shrine-like decoration that you might see in somebody's room, where the room is decorated by pictures of the victim? That might be a manifestation, as much as a conduct, but it would tie in with the "watching or spying" and monitoring the internet. Could that be classed as a conduct?

Mr Grzymek: Yes. If the police saw a pattern emerging and felt that they needed to go into a person's house to look for evidence, finding a wall of pictures that were taken without the individual's permission would certainly be a strong indicator of obsessive behaviour and an invasion of privacy. That would be material evidence that they would, absolutely, take on board.

It also comes back to what a reasonable person would consider to be stalking. A reasonable person seeing a whole wall of pictures taken of someone without any permission or authority would recognise that. It would be seen by most reasonable people as seriously worrying behaviour. Taken with other things, I am sure that it would strengthen the case against the person.

Mr Frew: Should that not then be listed and itemised in the Bill?

Mr Grzymek: Nowadays, a picture wall is much more likely to be on a computer. When the police have access to the person's computer, they will probably find all the pictures on that rather than on the wall.

Ultimately, what you are looking for is evidence of the behaviour. That would be evidence. We do not necessarily want to cite in the Bill what every item of evidence might constitute. We are talking about behaviours. Obsessively taking photographs of an individual without authority certainly could be included, but the truth is, as I think Andy said, it is quite a comprehensive but not exhaustive list. No doubt, we could add to it. The list has been put together by looking at what has happened in Scotland, it has been passed by our expert group, which brought in victims' groups, and we thought it reasonable. At the same time, there are probably other things that you could put in. However, the list, as it stands and taken with the test of reasonableness at the end, is probably sufficient.

The Chairperson (Mr Givan): No other members are seeking clarity. I thank the officials for attending today's Committee meeting. It is much appreciated, as always.