



Paladin Briefing for the Home Office Consultation on Orders for Stalkers

1. Introduction

Two women a week are murdered at the hands of their current or ex-partner. Many were stalked prior to their murder. This number of women being killed has remained static for the last decade. Analysis of the Domestic Homicide Reviews (DHRs) reveal that when domestic violence, stalking and coercive control co-occur, these are the **most** dangerous of cases, where women and children are more likely to be killed. Analysis of DHRs also show that many of the perpetrators have a history of abuse, including stalking, and have damaged multiple victims across their life course and have breached conditions and orders put in place. Many have been allowed to escalate their behaviour and, in some cases, the history only becomes apparent at court or at a DHR, which is far too late. Examples include:

Case Study: Jayden Parkinson murdered by Ben Blakeley

Ben Blakeley murdered his pregnant ex-girlfriend 17 year old Jayden Parkinson. Blakeley strangled and buried Jayden in his uncle's grave in December 2013. He has a history of serial abuse. The Prosecution Lawyer stated how Blakeley was violent and controlling during all his relationships. Kirsty Penford was 16 years old in 2007 when she dated Blakeley. When she was seven months pregnant he threw her down the stairs in the flat. He threatened to stab her in the stomach to kill the baby. He then moved onto Katie Gale and she described in court that he "punched me, kicked me in the head, bit my face. To teach me... he would cling onto my cheeks to leave marks." He told Katie he had killed her cat; she reported the abuse but was too afraid to file a formal complaint as she did not wish to 'get him into trouble'.

Case Study: Tracey Morgan was stalked by Anthony Burstow

Tracey Morgan was stalked by a work colleague Anthony Burstow for nine years. He planted listening devices, broke into her home and persistently followed her wherever she went. Tracey lost her confidence, her marriage and her social life. Burstow has been in prison since 2001 for the attempted murder of another woman, who he had been stalking simultaneously. He also changed his name by Deed Poll.

Case Study: Caroline Finegan murdered by Ryan Ingham

On July 7 2014 Ingham was sentenced to a 16 year minimum sentence for murdering his fiancée Caroline. A few months before Caroline died Ingham attacked her so badly she needed hospital treatment. He killed her by pushing her to the ground and punching her in public at a bus station in January. However, it was only at court, the victim's family learned he had 23 convictions, many for violence towards other partners dating back to his teenage years. Ingham had first been charged with common assault in 2005 when he punched an ex-girlfriend in the face and body. Later that year he attacked the same woman who was just 17 at the time. Three years later he was charged with common assault on his own parents along with another partner. He was convicted twice more of attacking and 'harassing' her, including threats to kill her unborn child and holding a knife to her neck. But Caroline would not have been able to learn about his history using the Domestic Violence Disclosure Scheme - Clare's Law – because he was using a false name.

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2. Current Civil Remedies Available

Domestic Violence cases/ cases where Stalker is an 'associated person'²

2.1 Non-Molestation Order, under the Family Law Act 1996

Non-molestation orders prohibit a person from molesting another person. This can be applied for by the victim or a court can make apply for them in Family Court proceedings. An order can be made for specified notice or until further notice. It is a criminal offence to breach a non-molestation order, with a possible sentence of up to five years imprisonment.

Challenges in Practice:

- Obtaining a non-molestation order requires a victim to go through the civil justice system. In our experience this in itself often places victims under considerable stress and pressure. Many victims have often already gone through the Criminal Justice System and therefore this often leads to secondary victimisation.
- Legal aid cuts have also had a substantial impact on victims' experience through the civil court process. As a result of the cuts, it is far more likely that perpetrators will be cross-examining the victims themselves in civil court which wouldn't be permitted in criminal court.
- The length of time it now takes to have legal aid approved for an injunction can often take weeks, which places the victim at substantial risk in the interim.
- There is a substantial variance in the wording of non-molestation orders from court to court; some will prohibit perpetrators from "intimidating, harassing or pestering" whereas many judges refuse to do this as it's "too vague" and simply prohibit approaching the house and communicating with the victim. This means they can then follow and stalk the victim without breaching the order. Too often Judges are reluctant to prohibit the perpetrator from approaching the victim as they say it could be occur due to happenstance e.g. in supermarkets, in contradiction to bail conditions which generally prohibit this.

2.2 Occupation Order, under the Family Law Act 1996

Occupation Orders exclude an individual from their home (or a part of it); an application can be made by an 'associated person'. The courts will apply the 'balance of harm' test to see which individual will be most at risk if the order is made or not. An order can be made for specified notice or until further notice.

² Associated Person as defined in FLA 1996, Current or former partner, cohabitants or former cohabitants, relatives, or persons who live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder.

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Challenges in Practice:

- The power to make Occupation Orders only applies to the family home or a home intended to be the family home. The Order, for example, would not apply to a victim's new home; the victim would therefore need to get a provision within a non-molestation order for that.
- Whilst the victim does not need to have home rights to apply for the Order, the lack of them will restrict the length of the Order.
- Often we see Orders which will prohibit a victim and perpetrator from certain spaces within the home at certain times. This only serves to impose restrictions on the victim and does not take into account the dynamics of coercive control in domestic violence.
- Breach of an Occupation Order is not a criminal offence. However, the Court has the ability to attach a 'power of arrest' to an Occupation Order if the Court considers that the circumstances warrant it.

2.3 Domestic Violence Protection Notice and Order (DVPN/O), S.24 to 33 of the Crime and Security Act 2010

Domestic Violence Protection Notices and Orders are a new power that closes a gap by enabling the Police and Magistrates to put in place protection in the immediate aftermath of a domestic violence incident. A DVPN is the initial Notice issued by the police to provide emergency protection to an individual believed to be the victim of domestic violence.

This Notice, which must be authorised by a police superintendent, contains prohibitions that effectively ban the suspected perpetrator from returning to the victim's home or otherwise contacting the victim.

A DVPN may be issued to a person aged 18 years and over if the Police Superintendent has reasonable grounds for believing that:

1. the individual has been violent towards, or;
2. has threatened violence towards an associated person, and;
3. the DVPN is necessary to protect that person from violence or a threat of violence by the intended recipient of the DVPN;

The associated person mentioned above does not have to consent to the issuing of a DVPN or DVPO.

Following an alleged breach of the DVPN, the police may arrest the individual without warrant and hold them in custody pending the Magistrates' Court hearing of the DVPO application; this hearing must take place within 24 hours of the arrest for the alleged DVPN breach.

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Challenges in Practice:

- The breach of a DVPN is a civil breach and therefore has limited impact in reality. Evidence from regions where DVPNs have been trialled has shown that breaches are not being effectively dealt with. In some cases as little as a £50 fine has been sanctioned, which is unlikely to act as a deterrent.

Recommendation: The Government consider making this a criminal breach to ensure effective sanctions.

2.4.Domestic Violence Protection Order (DVPO), S.24 to 33 of the Crime and Security Act 2010

Before the DVPO there was a gap in protection. This was particularly the case where Police were unable to charge the perpetrator due to lack of evidence, therefore unable to provide victim protection through bail conditions. The obtaining and granting of injunctions was also not immediate. Within 48 hours of the DVPN being issued (excluding weekends and bank holidays), the Police must submit an application to the Magistrates Court for the DVPO. The Magistrate can make a DVPO if two conditions are met:

1. The court is satisfied on the balance of probabilities that the recipient has been violent towards, or has threatened violence towards, an associated person;
2. The court thinks that making the DVPO is necessary to protect that person from violence or a threat of violence by the recipient.

With DVPOs, a perpetrator can be banned with immediate effect from returning to a residence and from having contact with the victim for up to 28 days, allowing the victim time to consider their options and get the support they need.

Challenges in Practice:

- Whilst a DVPO could be issued in domestic violence cases where stalking co-occurs, it is not applicable in all other cases of stalking. Therefore a gap still exists for victims of stalking.
- Obtaining a DVPO within the 48 hour window may prove difficult in practice, especially given the practicalities of shift work, which renders it too difficult to obtain all the paperwork and get into court with that 48 hour period.
- Where there are grounds for a DVPO there would likely be grounds to have arrested and placed the perpetrator on police bail, as it requires reasonable grounds for suspecting that the perpetrator has been violent or threatened violence.

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- A breach of a DVPO is also a civil breach and not a criminal breach. This again means limited effective sanctions where offenders do not adhere to the conditions of the order. Sanctions have to be effective otherwise there is no incentive for the perpetrator to adhere to the Order and if they are not enforced victims lose confidence in the system.

Stranger and Non Intimates (Non Domestic Violence Cases)

2.5. Protection from Harassment Act Injunctions, under the Protection from Harassment Act 1997

Any person can make an application to the high court or county court to make an order for the purpose of protecting a person from conduct that amounts to harassment or will cause a fear of violence. Injunctions can regulate behaviour and movement, i.e. exclude an individual from an area. An order can be made for specified notice or until further notice.

Challenges in practice:

- There is often poor advice given to victims about being able to obtain injunctions under the PHA in 'stranger stalking case'. Often victims are not informed that this is an option available to them when the perpetrator is not an 'associated person' and a criminal remedy is not possible.

3. Current Criminal Remedies Available

3.1. Restraining Orders, Protection from Harassment Act 1997 as amended by Section 12 Domestic Violence, Crime and Victims Act 2004

An application can be made to the High Court or County Court to make an Order for the purpose of protecting a person from conduct that amounts to harassment or will cause them to fear violence. Orders can also be made on acquittal if the court considers it necessary to protect the person from harassment or fear of violence. Injunctions can regulate behaviour and movement, e.g. exclude an individual from an area. An Order can be made for specified notice or until further notice.

Challenges in practice:

- Criminal courts often do not grant restraining orders especially if the perpetrator has stated that they are in touch with the victim/or seeing the children or getting back together with the victim, even though this information may not have been verified by the CPS with the victim, who may or may not be present at court.
- We have seen many examples of restraining orders which contain provisions within them for contact with the children on certain days even where there has previously not been any. Again oftentimes this information has not been corroborated by CPS with the victim.

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Other challenges in practice:

- Above injunctions can be used for repeat offenders, but does not apply if the perpetrator enters a relationship with another woman. Given that many offenders are repeat offenders given the serial nature of abuse and future victims are left unaware and unprotected.
- It is a real challenge to apply the Orders to other forms of violence against women and girls, including stalking, so-called honour based violence, child abuse, and trafficking for example.
- These Orders do not impose obligations for treatment and therefore there is, no duty on the perpetrator to modify/change their behaviour. They just continue moving from relationship to relationship and creating multiple victims in most cases, as well as secondary victims (children) and tertiary victims (future).
- There is also an onus on the victim to report all breaches, rather than any proactive monitoring and supervision of perpetrator. It should be the duty of the state in serious cases to proactively monitor and supervise dangerous offenders, just like sex offenders.
- Currently there is no registration component. There is no duty on the offender to notify police when they move to a different area, change their name (many stalkers do), go abroad, form new relationships etc. Therefore currently their offending history does not follow them, which is a very real gap in intelligence and public protection. Histories now follow victims via the MARAC process – but we should be tracking and monitoring the perpetrator when they move area.
- There continues to be an emphasis on the victim to change and modify *their* behaviour to protect themselves and their children, which is unacceptable given that they are not the problem, the perpetrator is. Victims have reported that they feel restrained rather than protected by the orders, i.e., where they are able to move to because the Order does not cover the area. Given the dynamic of violence against women is often one of coercive control, as a result, victims find themselves unable to break away due to the limitations placed on them through existing Orders.
- Many Orders are poorly written and perpetrators often look to manipulate and exploit gaps in the Order. For example, we have seen where orders may have 100 meters restriction or exclusion zone and the perpetrators will appear 101 meters away from the victim and therefore just outside the restraining order zone.
- Light touch sanctions and short and inappropriate sentencing tends to be the norm when breaches happen. In some of our cases the perpetrator has received as little as £50 fine for a breach. This often results in the perpetrators feeling they are able to act with impunity.
- Perpetrator programmes are rarely used by courts following domestic violence and or stalking

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offences or breach of protective Orders.

- Despite a maximum custodial sentence of five years in several of the above Orders, we have yet to see anything close to that in reality. In fact more often we see multiple breaches that are not enforced. Or the CPS may pick and choose which breach to prosecute giving a false picture of what is happening as well as it looking innocuous and unremarkable out of context of all the breaches. When this happens and perpetrators are without sanction, victims lose trust and confidence in the Criminal Justice System and perpetrators act with impunity often escalating their behaviour as they grow in confidence.
- There has been evidence in cases where perpetrators have been arrested for breaches of orders and have subsequently had the order removed by courts as they have argued that the victim had initiated the contact. The emphasis must be on the perpetrator and not on the victim.
- Victims are often regarded as the ones who have "breached" the order if they communicate with the perpetrator and are seen as responsible for their own protection and expected to ensure the perpetrator is arrested for breach. This places the responsibility of the perpetrators behaviour on the victim and where children are involved, often results in Family Court applications and/or Social Services removing children if they are deemed not to have used and enforced their Order. Again the focus must be on perpetrators as it is their behaviour that should be monitored, restrained and controlled.
- There is no duty placed on the perpetrator to notify the Police of a new relationship or restrictions preventing relationships with women (with or without children) until approved by police or social services. This results in the perpetrator going from victim to victim. Where children are involved it often results in them being removed and going through care system, costing hundreds of thousands in legal fees alone per perpetrator, as well as multiple victims.
- There is also a clear lack of protection within the aforementioned Injunctions for victims when a perpetrator is being released from prison for an offence unrelated to the victim, but it is felt that the victim is at risk upon release. The perpetrator may for example have made threats from prison; the victim often gets little or no information and no detail of any license conditions to protect them or their children. The victim is unable to safeguard herself yet often receives substantial pressure from services such as Social Services to safeguard her children due to the risk the perpetrator poses. This was clearly evidenced in the case of Raoul Moat.
- The emphasis on victims having to report breaches puts them in an unacceptable position of greater risk as they are then blamed for the arrest or sanction by the perpetrator. Equally, a piece of paper does not protect victims as we have seen in many cases of murder:

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Case Study: Jeanette Goodwin murdered by Martin Bunch

Martin Bunch stabbed Jeanette Goodwin to death at her home in Essex on 24 July 2011 after she ended their long term relationship. Bunch refused to accept the relationship was over and subsequently began to stalk Jeanette. Less than a month before her death, Jeanette told police she had received unwanted voicemails, texts and visits from Bunch, who had also told his mother he planned to kill her. She reported to police that she was fearful he would kill her. At the time there was a restraining order in place but Bunch had shown complete disregard for the court process. Bunch was arrested and charged with harassment but a Magistrate then released him on bail even after he had removed his electronic tag. Bunch killed Jeanette a few days later.

4. Offender Focused Orders

The below orders highlight remedies available under civil and criminal law for convicted offenders and challenges presented in practice.

4.1 Violent Offender Orders (VOOs), Criminal Justice and Immigration Act 2008

VOOs³ are civil orders and apply to those convicted of specified violent offences;

- (a) manslaughter;
- (b) an offence under section 4 of the Offences against the Person Act 1861 (c. 100) (soliciting murder);
- (c) an offence under section 18 of that Act (wounding with intent to cause grievous bodily harm);
- (d) an offence under section 20 of that Act (malicious wounding);
- (e) attempting to commit murder or conspiracy to commit murder; or
- (f) a relevant service offence.

The perpetrator must have received at least a 12 month custodial sentence (or a hospital/supervision order) and continue to present a risk of serious harm to the public after the sentence has expired. Conditions can be imposed to prohibit offender's movements and from contacting specified people for between two and five years.

It is the same notification as those on Sexual Offenders Register, including they must also tell Police if they move home, change their name, or go abroad. Breaking the terms of a VOO could be punishable by

³ In November 2014 the use of VOOs will be extended to include the use of preventative Violent Offender Orders to offenders convicted of murder abroad, as amended by the Anti-Social Behaviour, Crime and Policing Act 2014

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Sexual Harm Prevention Orders⁶ are civil orders which are targeted at sexual offending and are designed to prevent the commission of acts or offences which would cause serious sexual harm to another person. The purpose of a SHPO is to protect the public or specific individuals from serious sexual harm by placing restrictions on the perpetrators behaviour.

The offender must be a qualifying offender (i.e. convicted of a Schedule 3 or 5 offence⁷), and; the offender must have behaved in such a way as to give reasonable cause to believe a SHPO is necessary. A SHPO can be issued either when a perpetrator is sentenced for a sexual offence or shows their behaviour may be 'risky'. A SHPO lasts for a fixed period. The period must not be less than five years but could be for life. A breach of any of the SHPO conditions is a criminal offence with a maximum penalty of 5 years imprisonment. The conditions on a SHPO should not be the same as:

- sex offender notification rules
- license conditions
- rules on not working with children.

Challenges in practice:

- As with VOOs, they do not impose positive obligations, such as mandatory attendance of sex offender programmes.
- If on a SHPO for schedule 5 offences, it is not a conditional requirement to register on Violent and Sexual Offender Register (ViSOR).

Sexual Risk Order⁸ can be made against persons who have not been convicted but who have engaged in certain specified types of behaviour **on at least two occasions**. A Sexual Risk Order does not place the subject under the notification requirements – but breach of the order is a criminal offence and if convicted or cautioned for this offence then the person will then become subject to the notification requirements for the rest of the duration of the order.

4.3 Violent and Sexual Offenders Register (ViSOR)

⁶ SOPOs were replaced by a Sexual Harm Prevention Order in November 2014, as amended by the Anti-Social Behaviour, Crime and Policing Act 2014

⁷ Schedule 3 lists specified sexual offences. On the other hand, Schedule 5 is not limited to sexual offences and includes various offences of homicide, kidnap and certain offences against the person. Whether the offence is sexual or not in nature, the test for the imposition of a SOPO remains the same: it must be necessary to protect the public or particular members of the public from serious sexual harm on the part of the defendant.

⁸ Sexual Risk Order replaced the Risk of Sexual Harm Order in November 2014, as amended by the Anti-Social Behaviour, Crime and Policing Act 2014

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Domestic Violence Disclosure Scheme¹⁰, although this will assist the process of identifying such individuals *after* they have come to attention in respect of a further crime or incident, but will not permit the proactive approach necessary to keep *potential* victims informed and safer. This would then satisfy all three objectives outlined above.

The Risk of Harm Order (RHO) would be akin to Risk of Sexual Harm Order for sex offenders. This order could be made against persons who have not been convicted but who have engaged in certain specified types of behaviour **on at least two occasions**. A RHO does not place the subject under the notification requirements – but breach of the order is a criminal offence and if convicted or cautioned for this offence then the person will then become subject to the notification requirements for the rest of the duration of the order.

Currently measures are in place to monitor sexual offenders in the form of the Violent and Sexual Offenders Register (ViSOR) and this would be the appropriate database for serial stalkers and domestic violence perpetrators in the UK.

5.2 Europe

Perpetrators travel and orders and their offending history and control orders should travel with them. Marc Chivers murdered his partner, Sabine Rappold, in Germany and was released after serving 15 years. He travelled to the UK and formed a relationship with Maria Stubbings, whom he sexually assaulted, abused, stalked and murdered her in 2008. His history was known but little was done to supervise and manage him¹¹. Current orders, offending histories, behaviours and restrictions should follow with perpetrators when they move to a different country.

Therefore, intelligence, information and orders should be included on pan-European databases such as SISII. SISII is a pan-European database that passes real-time information from one participating country to another, in the form of alerts relating to people and property. Most EU countries (and some non-EU) have access to SIS data. The UK will participate from October 2014, at which time SISII data will be available in the UK to all police officers, police staff and law enforcement agents.

6. Key Facts and Cost Benefits Analysis

- There are around 25,000 serial domestic violence offenders who have used or threatened violence towards two or more unconnected victims (ACPO, 2009). The most dangerous of these would be obliged to register.

¹⁰ Domestic Violence Disclosure Scheme (DVDs) Pilot Assessments

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260894/DVDS_assessment_report.pdf

¹¹ In November 2014 the use of VOOs will be extended to include the use of preventative Violent Offender Orders to offenders convicted of murder abroad, as amended by the Anti-Social Crime and Policing Act 2014

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- The estimated cost of creating and registering 20% of offenders would be around £1.4m over the first 3 years, but this would be easily offset by reducing the number of future victims and saving lives.
- Preventing one murder would save £1.54 million. These proposals would achieve 'break-even' between the cost of establishing a system to track serial stalkers and savings if they prevent victimisation of more than 119 victims in the first year, 238 in the second year and 357 in the third year.
- The Home Office Select Committee estimated cost of services for victims of domestic violence, including criminal justice, health and social services, was around £3.4 billion per year in 2008.
- The Crime Survey of England and Wales 2011/2012 suggests that at least 120,000 individuals are affected by stalking and harassment each year; however, only 53,029 cases are recorded as crimes.
- 1 in 5 women and 1 in 10 men will experience stalking in their adult life (Homicides, Firearm offences and intimate violence 2009/10; Supplementary Volume 2 to Crime in England and Wales 2009/10 2nd Edition. Home Office Statistical Bulletin 01/11)
- Victims do not tend to report to the police until the 100th Incident (Sheridan, 2005)
- Statistics show that the majority of victims (80.4%) are female while the majority of perpetrators (70.5%) are male. (National Stalking Helpline, 2011).
- The Metropolitan Police Service found that 40% of the victims of domestic homicides had also been stalked (ACPO Homicide Working Group, 2003).

7. Conclusion

A Serial Perpetrator Order, Risk of Harm Order and register for serial stalkers and domestic violence offenders will ensure protection to primary, secondary and potential future victims. This would impose a positive obligation on a perpetrator which will create much needed cultural change placing a positive obligation and responsibility back on the perpetrator. This will ultimately save lives and money.

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9. Summary of Recommendations

Recommendation 1: The Government consider making DVPO/Ns a criminal breach to ensure effective sanctions.

Recommendation 2: Consideration to amend PACE to ensure police can keep the perpetrator in custody long enough to serve the DVPO on them there, rather than releasing them at a time of increased risk.

Recommendation 3: The Government consider creating a register for serial stalkers and domestic violence perpetrators and incorporating it into the existing framework for sex offenders – ViSOR and MAPPA.

Recommendation 4: The Government consider creating a new Serial Perpetrator Order (SPO) for serial stalkers and domestic violence offenders.

Recommendation 5: The Government consider creating a new Risk of Harm Order for serial stalkers and domestic violence offenders.

Recommendation 6: Ensure orders stand across European boundaries so that offending histories, behaviour and restrictions are also shared across borders.

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