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Better protection for stalking victims

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Abstract

Crime analysis: Will the new anti-stalking laws help to bring more stalkers to justice? Laura Richards, specialist adviser to the Parliamentary Stalking Law Reform Inquiry, says naming stalking for the first time and making it a specific criminal offence signals how serious it is.

Analysis

Original news

New laws against stalking come into force, LNB News 26/11/2012 127

Under new legislation which has now come into force in England and Wales, stalking has become a specific offence which is punishable by up to six months in prison and/or a fine of £5,000. Stalking where there is fear of violence or which causes distress now carries a minimum prison sentence of five years and an unlimited fine.

What are the main provisions of the new anti-stalking laws? And what key changes will arise as a result of them coming into force?

Stalking became a criminal offence on 25 November 2012. The Independent Parliamentary Stalking Law Reform Inquiry heard overwhelming and compelling evidence suggesting the Protection from Harassment Act 1997 (PHA 1997) was not an effective tool against stalking and many stalkers were falling through the net. Although a landmark piece of legislation at the time, the PHA 1997 failed to name stalking in law. This meant the sinister behaviour of stalkers was being conflated with nuisance crimes and disputes. Stalking is different from harassment as it involves fixation and/or obsession--'the hunter and the hunted'. It includes repeated attempts to impose unwanted communications and/or contacts on another in a manner that could be expected to cause distress and/or fear in any reasonable person.

Under the PHA 1997 (amended by Protection of Freedoms Act 2012) it is necessary to prove one of the

following:

- o a course of conduct amounting to harassment (PHA 1997, s 2)

- o stalking (PHA 1997, s 2A)

- o fear of violence (PHA 1997, s 4)

- o stalking which causes serious alarm or distress which has a substantial adverse effect on the victim's usual day-to-day activities (PHA 1997, s 4A), which the perpetrator knows or ought to know amounts to harassment or stalking or fear of violence

A course of conduct is conduct that occurs on at least two occasions.

The two new offenses are PHA 1997, ss 2A and 4A. The more serious offence is PHA 1997, s 4A. It includes a psychological test of harm for the first time whereby someone will alter their behaviour due to the fear caused by another. This part is essential as we know in many cases the stalking lasted months and years and some perpetrators do not make direct threats of violence, despite the fact that many victims endure serious psychological harm over a prolonged period.

How effective are the new laws likely to be?

Naming stalking for the first time and the fact it is now a criminal offence in its own right signals how serious it is. This in itself will hopefully encourage more victims to come forward earlier rather than wait 100 times before they disclose, as research shows. Hopefully, they will then be taken seriously. Stalkers steal lives and in the most serious of cases, such as Jane Clough, Christine and Shania Chambers and Jeanette Goodwin, they take lives. The new law should provide and afford greater clarity to all including police officers, lawyers, judges, magistrates, as well as better protection for victims. However, training and guidance on implementation of the new law is crucial to its success, as well as understanding the dynamics of stalking and that it is a pattern of behaviour. Taken in isolation, behaviours might seem unremarkable. But in particular circumstance and with repetition, they take on a more sinister meaning. It is important PHA 1997, s 4A is used in stalking cases, as there is a power of entry to search the premises of the perpetrator in order to seize important potential evidence to prove the behaviour.

The latest figures from Scotland are highly encouraging. They introduced a specific stalking law in December 2010--in the first 18 months of the operation of the act there have been 650 detections of crimes, with 446 prosecutions so far.

We hope to see this reflected in England and Wales, where for the first time perpetrators will be put before the courts as a stalker and go to prison as a stalker. Hopefully it will ensure they are flagged across the criminal justice system and when they go to prison, they do not have access to prison IT to carry on their behaviour or stalk and fixate on prison staff. They need to receive the appropriate treatment.

Could there be any unintended consequences or disadvantages to the new laws?

Any law is only as good as those who understand, interpret and use it. Therefore it is important for professionals to receive training.

It was decided not to define stalking in law as it can be too restrictive and not allow for all the various behaviours, as well as advancements in future technology. Given that there are two provisions there may well be challenges when differentiating so-called 'low level' stalking from harassment. However, I have yet to meet a victim of stalking who isn't frightened and seriously alarmed about the behaviour. Therefore PHA 1997, s 4A should be used, rather than PHA 1997, s 2A, as it also provides power of entry to premises to seize potential important evidence at the earliest opportunity such as computers, laptops, phones etc. This is vital as we know from research stalkers use multiple means of contact and approach. However, it must be borne in mind, not all victims are homogenous and behave in the same way. Some victims I have worked with refused to be 'victimised' or allow the stalker to close down their world or change/impact on their

day-to-day activities. That's not to say it does not have an impact on them psychologically.

Additionally, we do not want to see history repeat itself with PHA 1997 in that many offences are dropped and charged as a s 2(2a) as it is easier to prove. Section 4A stalking offers a psychological test of harm which should be easier to prove than fear of violence and it also carries a maximum sentence of 5 years. It will be interesting to see how this translates in practice, particularly in terms of how it is understood as well as how the terms 'serious' and 'substantial adverse effect' will be defined in case law.

The other key issue is, course of conduct will now be counted from the date the new legislation commenced (from 25 November onwards). Therefore any previous history of stalking will not be considered as part of the course of conduct.

What are the common problems when establishing a case against a stalker and does the new law address these?

All too often victims are not believed or taken seriously. The pattern of behaviour can be overlooked, particularly if there is no physical abuse. Many think it is not serious or there is no risk if the stalker has not been violent. However, the psychological impact and damage to the victim and their family is immense and should not be underestimated.

Equally, some stalkers can be seen as hapless suitors, 'Romeos' or being 'misunderstood'. This only serves to minimise how serious the behaviour is as well as the impact it has on a victim. Furthermore, stalkers can be very plausible and convincing in an interview. They can manipulate even the most experienced professional with their account which is why it is so important to seize all potential evidence at the earliest opportunity under PHA 1997, s 4A, which has power of entry.

It is clear when people fixate and stalk, they are psychologically unstable. A significant minority are psychotic and some may suffer from undiagnosed personality disorders. Currently stalkers do not routinely get assessed once they come into contact with the criminal justice system. If they do not have access to mental health services they will just continue their behaviour, which is detrimental, costly and dangerous to those they stalk, as well as to themselves. Without an effective intervention the stalking will not just stop and it is important to understand the long-term pathological nature of stalking.

What should lawyers advising in this area be aware of?

For lawyers specifically it's important to look at the whole pattern of behaviour and meet the victim/witness at the earliest opportunity to understand the impact it has had on them and their family. It's also vital to ensure that the police have undertaken a risk assessment of the victim's risk of harm or homicide and that it has been included in the case papers, along with a Victim Personal Statement (VPS). This is critical when discussing bail, breaches of restraining orders and/or if the case goes to appeal post sentencing for example. Equally important is, stalkers can be assessed using state of the art risk assessment tools developed for stalking such as the Stalking Risk Profile (SRP) or the Stalking, Assessment and Management (SAM) Model.

What happens next?

Being part of the Parliamentary Stalking Law Reform Inquiry was a fantastic experience and I am delighted with the commencement of the new offence of stalking. However, this is not the end of the campaign--but rather the start of change. The inquiry made a raft of recommendations that I am continuing to work on, including better support and advocacy for stalking victims, the availability of treatment for offenders, effective training and risk assessment, as well as monitoring the implementation of the new law.

View the full Parliamentary Stalking Law Reform Inquiry Report and other articles on law reform here.

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