



Case Study: Jane Clough murdered by Jonathan Vass

Jane Clough, an A&E nurse warned police that her violent ex-partner Vass was going to kill her when she separated from. He had raped her repeatedly and assaulted her. She was terrified when he was bailed and moved into her parents house with her baby. He started stalking her on Facebook. He waited for her to return to work at the hospital and stabbed her 71 times in the car park. He had a history of abusing women.

We know through research, including current DHRs, that many domestic violence and stalking perpetrators are serial¹, moving from one abusive relationship to another (Richards 2004) and such offenders have often used or threatened violence towards two or more unconnected victims (ACPO 2009). Police research shows that out of 356 perpetrators who re-offend, 18% did so against a different partner (Hester and Westmarland 2007).

Many studies document the links between different forms of abuse and violence including the links between domestic violence and stalking (Sheridan and Davies 2001), domestic abuse and child abuse (Hester, Pearson, Harwin and Abrahams 2007; Richards, 2004; Plotnikoff and Woolfson, 1998), domestic rape and stranger rape (Richards, 2004; Scully 1990), forced marriage and intimate partner violence (Home Office, FCO and ACPO, 2005). Domestic violence is about power and control and if it gets the perpetrator what they want they will continue their abusive behaviour. This means that more and more primary, secondary (children) and tertiary (future) victims accumulate and the cost is counted in both lives destroyed and damages and financial costs. This also places a huge financial burden on services and the Criminal Justice System.

The ACPO (2009) paper entitled 'Tackling Perpetrators of Violence against Women' concluded that currently no perpetrator order exists which deals with the full range of offences against women and girls; affords protection to future victims; and imposes a positive obligation on a perpetrator (e.g. to change their behaviour, notify police of change of address or move and/ or attend treatment programs).

The All Party Parliamentary Stalking Law Reform Inquiry report (2012) also recommended a register for serial stalkers. The Inquiry heard evidence from police, probation, victims, victim's families, the National Stalking Helpline, Women's Aid, the Victim's Commissioner and other key professionals across 15 months and resulted in Prime Minister David Cameron announcing on March 8 2012 that stalking would become a criminal offence.

¹ 'Serial' is defined as a perpetrator of violence against women where the perpetrator is alleged to have used/threatened violence against two or more victims who are unconnected to each other (as opposed to repeat offending against the same victim or persons in the same household). Serial is defined not only in relation to domestic violence cases, but may also be applied more widely to include perpetrators of more than one form of violence against women and girls, where this involves two or more unconnected victims (Tackling Perpetrators of Violence Against Women and Girls, ACPO Review for the Home Secretary 2009).

Patron: Lady Edwina Grosvenor

Directors: Laura Richards, Rachel Horman, Allan Aubeelack, Zoe Dronfield, Shonagh Dillon, Baroness Jan Royall

Paladin – National Stalking Advocacy Service

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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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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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five years in prison.

Challenges in practice:

- Given the high attrition and low convictions rates of domestic violence perpetrators, many being repeat offenders, most do not meet the threshold for a VOO (Grievous Bodily Harm threshold currently requires/minimum 12 month sentencing). However, they continue to pose a risk to current or future partners. The use of VOO's is therefore very limited. The Crime and Public Protection Command in Essex have reported that of 380 violent offenders currently subject to MAPPA, only two currently have reached the threshold to be issued with a VOO⁴.
- There is no power of entry if the perpetrator refuses to allow the police onto their premises.
- Perpetrators subject to a VOO do not have to produce identification or details of bank accounts, credit or debit cards.
- VOOs do not include preventative measures or impose positive obligations, for example, treatment programmes on perpetrators.
- There are very real concerns from subject matter experts, that as with Anti-Social Behaviour Orders, VOOs are too broad and therefore less likely to result in breach if specific person at risk cannot be identified.
- Concerns that order breaches civil liberties, sidestepping the criminal due process protections that apply under Article 6 of the Human Rights Act (HRA)⁵.
- Lack of clarity about the burden proof necessary to prosecute a breach, as despite VOOs being civil orders it is a criminal offence to breach.
- Practitioners have reported that whilst VOOs allow for certain prohibitions to be implemented there is little ability under the Order to proactively manage the offender. For example, whilst subject to a VOO, the offender does have to inform police manager of a developing relationship (if a Judge has agreed to this stipulation) and they may be obligated to notify if they move address. However, they are under no obligation to allow a police manager to enter an address where they are living to carry out a home visit thus reducing any information or intelligence they may glean from a visit.

4.2 Sexual Harm Prevention Order (SHPO) and Sexual Risk Order, Sexual Offences Act 2003 s 104-113 amended by the Anti-Social Behaviour, Crime and Policing Act (2014)

⁴ Essex Police

⁵ <http://www.liberty-human-rights.org.uk/pdfs/policy07/violent-offender-orders-cons.pdf>

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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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- The Notice is not a court order, warning or caution and does not prohibit the alleged offender from any specific behaviours, although it is often mistakenly treated as such.

5. Proposal and Criteria for a Serial Perpetrator Order (SPO), Risk of Harm Order (RHO) and Registration

5.1 UK

Our findings suggest that no order currently exists that manages all aspects of serial perpetration of domestic violence or stalking, particularly regarding:

- i. all stalking perpetrators (those who have had an intimate relationship and those who have not) as well as domestic violence offenders who meet the criteria
- ii. protection for potential future victims, through tracking, monitoring/supervision.
- iii. Imposing positive obligations on the serial perpetrator

Paladin recommend that in order to meet the objectives outlined above there would need to be primary legislation to permit the regulation and ‘tracking’ of serial perpetrators of violence. Notification requirements and prohibitions placed would be akin to that of a Registered Sex Offender. This would allow for a proactive approach which is necessary to keep potential victims informed and safer. Offenders should be placed on VISOR and be subjected to robust and proactive supervision, monitoring and management through the Multi-agency Public Protection Arrangements (MAPPA). Registration and tracking will also inform and facilitate the Domestic Violence Disclosure Scheme (DVDS), helping to identify patterns of serial abuse and offending behaviour and coercive control⁹.

Paladin recommends the consideration of a specific Serial Perpetrator Order and Risk of Harm Order for stalking and domestic violence which encompasses a similar framework to that of a VOO and SOPO; following a conviction, and on application by the Crown in certain circumstances a suspected serial perpetrator will be required to register relevant addresses, changes of identify and this will also allow the Disclosure Scheme to be implemented and managed effectively.

Circumstances in which the Crown would make an application to the convicting or sentencing court – as a result of convictions, cautions or allegations made by other, unconnected female victims, whether leading to a prosecution or not – the convicting or sentencing court adjudges that the offender is a serial perpetrator and should be subject to a regime akin to that of a sexual offender. Even now with the

⁹ Paladin, Women’s Aid and Sara Charlton Charitable Foundation are spearheading a campaign in partnership regarding closing the criminalisation gap in relation to a pattern of behaviour and coercive control. For more info please see <http://paladinservice.co.uk/harassment-legislation/domestic-violence-campaign/>

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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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