

The briefing

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Stalking and harassment

This Police Foundation Briefing looks at the development of legislation addressing stalking and harassment and identifies some of the key issues.

What is stalking?

Stalking behaviours have existed for centuries, although the recognition of stalking as a criminal justice concern is relatively recent. The first anti-stalking legislation, enacted in California in 1990, was introduced in response to several high profile celebrity cases, incidences of ex-partner violence and the recognition that there was a gap in the law that prevented the criminal justice system from dealing effectively with many of these cases.

The profile of stalking began to rise and within England and Wales awareness of it as a social issue, affecting many individuals, not just celebrities, led to a surge in interest in stalking and widespread academic, political and legislative attention.

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It is estimated that today around 1.2 million women and 900,000 men in England and Wales are victims of stalking and harassment each year⁽¹⁾.

The term 'stalking' was generated by the media, similar to other offences, such as 'mugging'. It is used to describe a form of harassment in which 'one person repeatedly intrudes on another to such an extent that the recipient fears for his or her safety'⁽²⁾. It is characterised by repeated, and in many cases, prolonged victimisation. Victims of stalking and harassment can be subjected to a wide range of behaviours, such as being followed, receiving telephone calls, physical intimidation and receiving unwanted gifts⁽³⁾. Secondary victims can also be affected by stalking, such as a victim's partner and family and in some cases stalkers may directly target the family and associates of the victim as a method of harassment. The terms 'stalking' and harassment are often used interchangeably, and although stalking is not a legally defined term, the behaviour is widely recognised as an offence within England and Wales⁽⁴⁾.

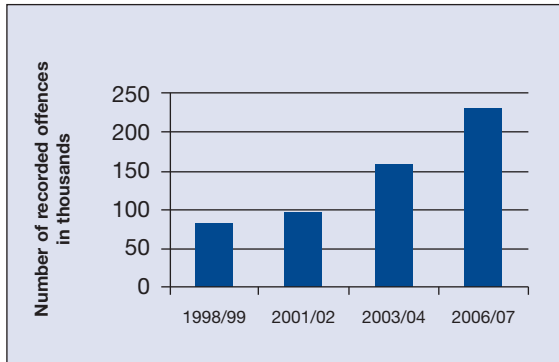
On April 26th 1999, Jill Dando, one of Britain's most well-known broadcasters and best-loved public figures was shot dead outside her London home. Evidence led to the arrest of Barry George, who was claimed to be an 'obsessive fan' with a history of stalking women and mental health problems. He was convicted for her murder in 2001, but subsequently acquitted in 2008. While this case may never be solved it had considerable reverberations. It led to the setting up of the Jill Dando Institute of Crime Science in 2000 and has significantly raised the profile of stalking as a serious issue with potentially devastating consequences.

Why is stalking an important issue?

Data from the British Crime Survey (BCS) in 1998 indicate that 2.9% of adults aged between 16-59 had been stalked⁽⁵⁾, which equates to almost nine hundred thousand victims. More recently, data taken from the 2006/07 BCS⁽⁶⁾ suggest that there has been a significant increase in incidents of stalking with 7.3% of adults aged between 16-59 admitting to being stalked, which equates to almost two million victims. This contrasts with, for example, credit card fraud, of which only 4% of BCS respondents are victims and demonstrates the high prevalence of stalking, particularly in comparison to offences that seem to attract more attention. The BCS also indicates that stalking is the most commonly experienced type of intimate violence, with 8% of women and 7% of men reporting having experienced it⁽⁷⁾.

The considerable increase in stalking demonstrated by the BCS is also reflected in recorded crime figures. Although there is no recordable offence of stalking, figure 1⁽⁸⁾ shows the number of recorded offences of harassment in 2006/07⁽⁹⁾, which is the most common offence category for stalking. It shows that between 1998 and 2006/07, recorded offences of harassment increased from 79,000 to just under 229,000, which represents an increase of nearly 200 per cent in less than a decade. While this shows a considerable increase in recorded incidents of harassment, it should be emphasised that this may be wholly or in part a reflection of changes in public awareness, reporting behaviour and policing practices rather than an increase in the prevalence of stalking and harassment *per se*⁽¹⁰⁾.

Fig. 1. Number of recorded offences of harassment (England and Wales, 1998-2007)



Crime in England and Wales 2006/07, Home Office 2007

Over the past 15 years there has been a substantial increase in the amount of research dedicated to stalking and harassment (although there is little research specifically on the policing of stalking). It indicates that while stalking is not age or gender specific, it is more common for women to be victims, particularly younger women⁽¹¹⁾. Research also shows that the majority of cases tend to be associated with ex-intimate partnerships⁽¹²⁾ and that approximately sixty per cent of victims have had some personal contact with their stalker⁽¹³⁾. More recently, research has begun to address the issue of cyber-stalking. Although fundamentally cyber-stalking does not differ greatly from conventional stalking⁽¹⁴⁾, its *modus operandi* tends to mark it out as different, relying on the repeated use of technology, such as mobile phones, the internet and email, to harass individuals⁽¹⁵⁾, but as yet there are no official national statistics on its prevalence.

Stalking can have a severe psychological impact on the victim and can cause major lifestyle disruptions⁽¹⁶⁾. Clinical research has reported high rates of post-traumatic stress

disorder (PTSD), depression and anxiety among victims of stalking⁽¹⁷⁾. There is also a high risk that the behaviour of perpetrators can escalate to violence or even homicide. In addition to the now infamous stalking of Jill Dando highlighted above, there have been other high profile stalking cases in the last decade that have resulted in murder, such as that of Tania Moore (2004), Clare Bernal (2005) and Hayley Richards (2006).

Stalking and the law today

Prior to 1997, it was only possible to prosecute stalkers who breached existing laws. The legislation used to deal with certain stalking behaviours included the Telecommunications Act 1984, the Public Order Act 1986 and the Trade Union and Labour Relation (Consolidation) Act 1992. However, there was very little that could be done to deal with harassment cases that appeared innocuous, and yet caused great distress to the victim. This led to a demand for legislation that dealt specifically with the problem of stalking and in 1997 the Protection from Harassment Act was introduced.

The Protection from Harassment Act 1997 (PHA)⁽¹⁸⁾

The PHA was introduced to enable the criminal justice system to deal more effectively with incidences of stalking and harassment. Although the Act does not mention stalking specifically, it contains a broad definition of harassment that includes behaviours that can be construed as stalking. The police have the power of arrest to deal with criminal offences committed

under the Act, as well as breaches of civil orders which under the Act constitute criminal offences. The Act can also be applied to other situations including bullying at school, sexual and racial harassment and neighbourhood nuisance⁽¹⁹⁾.

The legislation specifies that harassment requires evidence of a course of conduct involving two or more acts. While individual acts may not be classed as criminal, they may as a whole amount to harassment. The Act creates four specific recordable offences in relation to harassment. Under Section 2 of the Act a person is guilty of an offence if they pursue a course of conduct that they know, or ought to know, amounts to harassment of another individual. If found guilty, the offence is punishable by a maximum of six months' imprisonment and/or a fine of up to £5,000.

The second criminal offence under the Act can be found in Section 4, which states that it is an offence for an individual to pursue a course of conduct that, on at least two occasions, puts a person in fear that violence will be used against them. Once again, the offender must know, or ought to know, that in pursuing this course of conduct they are putting the individual in fear of violence. This is determined using the 'Reasonable Person' test whereby if a 'reasonable person' was in possession of the same information they would know the course of conduct amounted to harassment or would cause fear of violence. If convicted of this more serious offence, a perpetrator may receive a sentence of imprisonment of up to a maximum of five years and/or an unlimited fine.

Under Section 3 of the Act a victim can take civil action against the perpetrator. The victim may claim for damages or apply for an injunction. Breaching an injunction is a criminal offence punishable by up to five years imprisonment and/or an unlimited fine.

A fourth recordable offence, under Section 5 of the Act, covers breach of a restraining order, which also carries up to five years imprisonment. A restraining order can be imposed under Section 2 or 4 of the Act. The purpose of a restraining order is to protect an individual from harassment, however if an individual is harassed and then assaulted the perpetrator is likely to be prosecuted for the assault and under current legislation no restraining order will be imposed. In 2007, under Section 12 of the Domestic Violence, Crime and Victims Act (2004), restraining orders were due to be extended so that they could be imposed for any offence⁽²⁰⁾, but to date Section 12 has not reached the statute books, partly because of concern about its potential impact on an already over-crowded prison system⁽²¹⁾.

An evaluation of the legislation in 2000 showed that the police often lacked confidence in their understanding and implementation of the Act⁽²²⁾. Police were unclear about what constituted a course of harassment and also faced issues in understanding the application of Sections 2 and 4 of the legislation, which is reflected in the divergence of practice by police officers when enforcing the law⁽²³⁾.

Key issues

Prior to the introduction of the PHA there were no practical guidelines for investigating stalking and harassment. Hamish Brown⁽²⁴⁾, previously a Detective Inspector with the London Metropolitan Police and a leading authority on stalking and harassment, produced a manual in 2000 to assist police officers investigating such cases⁽²⁵⁾. The manual covers how the police should initially respond, the handling of the suspect and guidance on investigating the offence. It also provides guidance on advising victims and an overview of the legislation surrounding stalking and harassment.

In 2005, the National Centre for Policing Excellence (NCPE), on behalf of the Association for Chief Police Officers (ACPO), produced more extensive guidelines on the policing of various forms of harassment⁽²⁶⁾. It sets out the priorities for police services in dealing with harassment as:

- Protecting lives and preserving the safety of all victims and others who may be at risk as a result of harassment
- Investigating all reports of harassment
- Facilitating effective action against offenders so that they can be held accountable through the criminal justice system
- Adopting a proactive and, where appropriate, a multi-agency approach to preventing harassment

Most recently (March 2009), the Government released a consultation paper in relation to violence against women and girls⁽²⁷⁾. This states that police services are already

implementing a national-risk identification tool, DASH (Domestic Abuse, Stalking and Honour-based violence)⁽²⁸⁾, and proposes that the police, CPS and ACPO will be working together to produce guidance and practical advice on investigating stalking and harassment⁽²⁹⁾. These should be a useful developments as they will specifically relate to the issue of stalking.

One of the main difficulties the police face is establishing the intention behind the actions of a suspected stalker. Stalkers are not a homogenous group and have different motivations. In cases where the accused disputes the facts put forward by the victim and denies responsibility, prosecutions may be difficult to secure. In some cases the accused may not realise that his/her behaviour is causing concern. The police may decide to send a warning letter to the individual, however this is not an official warning or a caution and just informs the individual that their behaviour is inappropriate and needs to stop. In some cases this may be enough to deter the perpetrator. Warning letters are also useful protection against subsequent claims by perpetrators that they were unaware that their behaviour was potentially unlawful.

As stated earlier, stalking and harassment can have a profound effect on victims. The police can refer victims to other agencies for advice and support, such as Victim Support, the Network for Surviving Stalking and the Suzy Lamplugh Trust. It has been argued that there is a need for a multi-disciplinary approach to stalking to deal with cases more effectively, which should include mental health professionals, the probation service, the police and victim advocates. Specifically,

these agencies would work together to keep the victim safe and would intervene and attempt to stop the stalking behaviour⁽³⁰⁾.

In 2006, a Fixated Threat Assessment Centre (FTAC) was set up as a joint initiative between the Metropolitan Police, Department of Health and Home Office to target individuals who were fixated on people in the public eye, such as politicians. Using section 136 of the Mental Health Act (1983), the police can place a person suspected of being fixated on an individual in the public eye in a place of safety⁽³¹⁾. As yet, there is no similar resource to protect members of the public who face similar situations and there is concern that using powers in this way blurs the line between medical decisions and police actions⁽³²⁾. Liberty argues that the credibility of doctors who are supposed to be independent is undermined when they are required to work closely with the police in this way and that the initiative will be used to detain terrorists pre-trial without charge⁽³³⁾. Since October 2006, the FTAC has dealt with 168 cases of fixated stalking⁽³⁴⁾.

The police response to stalking and harassment has attracted criticism over recent years, particularly in the cases of Tania Moore (2004) and Hayley Richards (2006). In both cases, the police failed to identify the seriousness of the situations, despite being approached by the victims on numerous occasions. Both cases received a lot of media coverage and the actions of the police services involved came under a lot of critical public scrutiny. ACPO has acknowledged the 'poor responses' made by the police in certain cases and has recommended the need for improvements to

frontline response, offender profile checks, the attitude of police officers and early intervention⁽³⁵⁾.

On March 29th 2004, Tania Moore was driven off the road and shot by her former partner Mark Dyche. On ending their relationship in 2003 she was stalked and subjected to a campaign of harassment by Dyche. She contacted the police on at least six occasions, stating that she was concerned for her safety, but the police failed to thoroughly investigate any of her complaints. Dyche had a history of violence against women and yet no risk assessment in relation to her safety was conducted. The case resulted in an investigation by the Independent Police Complaints Commission (IPCC) in which the Commissioner concluded that the police investigation was 'abysmal'.

While there has been some progress, in recent years, in the development of guidelines to assist police in the investigation of stalking and harassment, the system falls short on providing any formal training for police officers and staff. Training is identified by victims and professionals as a key area in need of development. A stalking survey conducted by the University of Leicester in 2005⁽³⁶⁾ found that victims felt that the police were sympathetic to their needs, but suggested that officers could benefit from training and guidance on the nature of stalking, the legislation underpinning the guidance, the range of possible manifestations of stalking and its potentially lethal consequences, particularly where there are links to domestic abuse⁽³⁷⁾. A better understanding the nature of the offence is considered crucial in responding appropriately to victims.

Hamish Brown has commented that police staff, as well as police officers, should be provided with training in stalking and harassment. Victims of stalking are just as likely to have contact with civilian staff (e.g. at the front desk or in making a 999 call) therefore, it is argued that they should receive training to improve their understanding of the offence and how to appropriately advise victims.

The National Policing Improvement Agency (NPIA) has developed modules for training all new recruits and civilian staff in domestic abuse, which are currently being refreshed to incorporate stalking and harassment⁽³⁸⁾. While this may appear to be a step in the right direction it fails to recognise that not all stalking incidents are related to domestic violence⁽³⁹⁾. Training therefore needs to ensure that police officers are aware of this.

In San Diego, a more proactive approach to tackling stalking has been developed that appears to have had some success. Established in 1996, the San Diego Stalking Strike Force is run by the District Attorney's Office in conjunction with their police force and adopts a proactive, multi-agency approach to stalking that involves specialist police training, victim support and risk assessments of individual stalking cases⁽⁴⁰⁾. The scheme emphasises the need to look at the situation as a whole and not just the incident in hand.

Conclusion

Stalking and harassment are now widely recognised as serious social problems that affect many individuals throughout England and Wales. Over the past 15 years there has been a significant increase in research on the nature of the problem⁽⁴¹⁾ and its potential impact⁽⁴²⁾, but there appears to be relatively little research on the policing of stalking, especially the police's responses to stalking situations and their awareness of and attitude towards the issue.

The introduction of new legislation to enable the criminal justice system to deal more effectively with 'stalking' and harassment has been an important step. However, further provisions that would allow restraining orders to be granted in cases of stalking and domestic violence (which have all-party support) still need to be enacted⁽⁴³⁾.

The issue of increasing awareness and understanding of stalking and harassment is particularly important. Despite considerable media coverage and the completion of some research in recent years, there is still some confusion about what actually constitutes stalking and harassment and how serious this behaviour can be. This appears to be in part due to the nature of the offence, in which individuals may have differing perceptions of the behaviour they are being subjected to. Improving the training of police officers and staff should help to address this problem.

Home Office research conducted over a decade ago recommended the standardisation of police practice for dealing with incidents of stalking and harassment, including introducing better training provision⁽⁴⁴⁾.

The latter is only now being drafted and the issue still remains as to whether stalking and harassment should be treated separately from domestic abuse. It would be useful to know more about how other countries deal with stalking and how effective these approaches are.

It is clear that the police are now dealing with a wide variety of incidents of stalking behaviour that they would not previously have encountered. This is reflected in the increased levels of recorded crime for stalking and harassment. But more resources need to be dedicated to what is a considerably more serious offence than is often perceived. If the police are to become more responsive to the needs and priorities of the public, as recommended by Ronnie Flanagan⁽⁴⁵⁾, then it is important that stalking does not fall below the radar of either the police or their political masters.

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