

The logo graphic for Nexus, consisting of several overlapping, semi-transparent shapes in shades of blue, purple, and teal, arranged in a cluster in the top right corner.

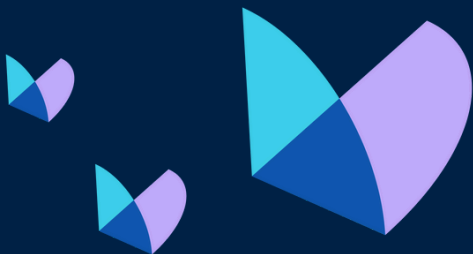
Nexus

Breaking the Cycle of Sexual Abuse
and Abusive Relationships

Consultation Response:

Public Prosecution Service Consultation on Policy for Prosecuting Cases of Stalking

September 2024



Introduction

Nexus has almost 40 years' experience offering a specialised professional counselling service to people impacted by sexual abuse and abusive relationships. We can provide support to anyone impacted by sexual abuse from age 4 and upwards, availability of children's counselling depends on available funding. Our Early Intervention and Prevention Training team provide a range of bespoke training and workshops that are available to schools, workplaces, volunteer groups, higher education institutions, individual practitioners, community groups, sports teams, voluntary and charity groups, and businesses.

As a charity that supports people impacted by abusive relationships, we welcome the opportunity to provide our expertise on the proposed PPS Policy for Prosecuting Cases of Stalking. The decision to pursue legal action is oftentimes a re-traumatising experience for victims as they navigate a criminal justice system that is not trauma informed nor victim centred. We believe that there is much work to be done to reform the criminal justice system, part of which is complete transparency within the judicial and prosecutorial process.

The following comments, recommendations, and questions are based on our expertise and experience supporting people impacted by sexual abuse and abusive relationships, as well as feedback from our clients on their experiences with the criminal justice system.

Background

The Protection from Stalking Act (2022) created the stalking offence and the offence of threatening and abusive behaviour. As the principal prosecuting authority in Northern Ireland, the PPS has developed this policy to outline the PPS approach to taking prosecutorial decisions in cases of stalking and abusive behaviour.

Chapter 2 - The Protection from Stalking Act 2022

Question 1: At Chapter 2, is there sufficient information in respect of the legal framework, and particularly the provisions under the Protection from Stalking Act (NI) 2022, including the new offences of stalking (see 2.2) and threatening or abusive behaviour (see 2.3)?

Nexus Response:

Guidance outlines the provisions under the Stalking Act, the qualifications for an offence of stalking, and how the PPS and prosecutors use the Stalking Act. The policy is clear that the examples listed are not exhaustive and that prosecutors will consider all offending behaviour in deciding whether it fits the concept of stalking, “whether it is a pattern of fixated, obsessive, unwanted and repeated (F.O.U.R) behaviour that is intrusive”. Each section in Chapter 2 includes a guide for how prosecutors will engage with the Act and what they will be looking for to prove a stalking offence. Chapter 2 also includes how the Act provides for alternative offences, penalties for an offence of stalking, and safeguarding.

Regarding the offence of threatening or abusive behaviour (TAB), this policy is clear on the legal framework for establishing a case of threatening or abusive behaviour as well as the statutory defence of TAB.

Section 2.4 is detailed in its explanation of Stalking Protection Orders, from the application stage to examples of prohibition, to how children and young people can be protected by Orders and what can happen if an Order has been breached.

We welcome Section 2.5's explanation of overlap between stalking and TAB with other existing criminal offences such as domestic abuse, harassment, and communication offences and how prosecutors will make a decision on how and what to charge.

Chapter 3- How We Take Decisions in Stalking Cases

Question 2: Chapter 3 sets out how we take decisions in stalking cases. In your view, does this explain the key issues considered by the prosecutor?

Nexus Response:

In Chapter 3, we require clarification on the following:

- How does the PPS measure how juries are directed in accordance with the law?
- In applying the Evidential Test, are prosecutors aware of the biological effects of trauma on reporting and giving statements, and the possibility of a victims' account of the offence varying due to re-traumatisation, repressed memories, and fear?
- Regarding the Evidential Test, how is the evidence assessed? What are the standards for evidential quality?
- The guidance needs to elaborate on what is meant by "interest of justice" outside of trauma-informed practise in relation to the Test for Prosecution
- In relation to the Public Interest Test, the guidance would benefit from the inclusion of examples of when the public interest goes against prosecution to illustrate this point.
- When decisions to not prosecute are taken, how and when does the PPS communicate the decision to victims?

- Is the decision to not pursue prosecution made by a single prosecutor? How is this reviewed?
- For alternatives to prosecution, is there consideration given to the potential re-traumatisation of victims who must go through the disclosure process to explore alternatives?
- In cases of diversionary disposals, are there further examples of when a diversionary disposal is recommended? Further, what weight is given to the opinions of the victim and their families?
- Regarding MARACs, is relevant information supplied in order to support decision making? We note that MARACs should not be heavily relied upon as these are only enacted in the most serious cases of domestic abuse. Northern Ireland does not have MATAC, which has broader remit with 'lower levels' of domestic abuse cases (e.g. when behaviours are becoming problematic) and stalking is often one such behaviour as it often poses no or lower levels of threat to physical safety. We also note that sometimes there isn't a correlation between stalking and domestic abuse. Victims may not have any form of intimate/personal relationship with the perpetrator.
- Does the PPS collect data on reasons for retractions and attrition rates. This would aid the development of victim-centred, trauma-informed reforms to the criminal justice system and better support victims who choose to go through the court process.
- In the case of withdrawals or retractions, it is important to consider the unique situation in Northern Ireland with paramilitary intimidation of victims and witnesses.
- What support is offered to victims and families in the case where intimidation is found to be present?
- What specifically defines a vulnerable victim or witness?
- What is being done by the PPS and wider Justice system to address concerns that result in withdrawal from the judicial process?
- Does the PPS employ other methods besides sending letters to victims in the case of no prosecution? Is the victim's preference for communication discussed in the very beginning of a case?

Chapter 4 - Dealing with Cases at Court

Question 3: Chapter 4 provides an overview of how we deal with cases at court, including the sentencing stage. Is all of this information of value? Is any additional information required regarding the PPS's approach?

Nexus Response:

In Chapter 3, we require clarification on the following:

We agree with Section 4.1.2 that "The prosecutor's primary concern should be the safety of the victim and any children or other dependants" and Point 4.1.4 that "Where an application is made to vary bail, prosecutors should insist that the defence give proper notice so that enquiries can be made of the victim to seek their views and check whether any other court orders exist or are pending". Further clarification on the weight of the victims' views in this case and what specifically is meant by the "acceptability of pleas" is required. Chapter 4 sets out what happens when a case is listed for trial, including the effects on victims and witnesses' mental health and the importance of ensuring prosecutors "have the right skills to prosecute stalking cases effectively, including the ability to deal sensitively with victims and witnesses". We would recommend a commitment to a trauma-informed approach for prosecutors who work with victims and witnesses of stalking and abusive and threatening behaviour, as we know that many victims and witnesses experience re-traumatisation in the criminal justice process.

Section 4.2.3, the Guidance states that "Where there is a delay, or if the case cannot proceed, the prosecutor will provide this information as soon as possible, together with an explanation", we would advocate for accountability measures to be implemented when a prosecutor has not informed the victim and/or witness in a timely

manner, or in an appropriate setting (i.e. phone call, time of day, etc). In the same point, the guidance says that “They [the prosecutor] will also try to speak to victims and witnesses before they give evidence and try to put those who may be nervous at ease”.

We would recommend this guidance reflect the duty of the prosecution to keep victims and witnesses at the forefront of their work, so that the above statement can be amended to “They [the prosecutor] will ~~also try to~~ speak **or make every effort to speak** to victims and witnesses before they give evidence **and undertake specific training so that they are able to put those who may be nervous at ease**”. We would also advocate for the language to be updated in Section 4.3.2 under Acceptability of Pleas with “When considering whether to accept a plea to alternative charges, ~~where possible~~ the prosecutor ~~should~~ **must** discuss the situation with the victim”.

It is important that the guidance states that the prosecution will make every effort to make the process of giving evidence as easy as possible, but that ultimately it is a matter for the Judge to ensure that the trial is conducted fairly. It could be useful, however, to include here some more detail on how the prosecution can make the case that the victim and/or witness is being treated unfairly.

The guidance includes a useful explanation of ancillary orders and some common examples in cases of stalking. The guidance is also clear on Victim Personal Statements what they are, when they are used, and what can be included.

Section 4.6 details the appeals process, however we would recommend that more detail is included on how the VWCU case officer will communicate with the victim, for example, via telephone (with confirmation that the victim is available to speak), by post, or by an in-person or online meeting.

It is important that these details are available to ensure transparency in the process and provide sufficient detail so that all victims and witnesses are aware of their choices. We would also advocate for the inclusion of guidance on how the PPS will protect victims from potentially vexatious appeals intended to scare or intimidate the victim.

Section 4.7 discusses avoidable delay, and it is welcomed that the PPS have included why some cases might be delayed and have assured that the prosecution will make every effort to keep the victim updated. However, we would recommend further detail be included on the impact of delay on victims, which is briefly mentioned in point 4.7.1 but is not outlined for prosecutors. To put this in context:

- The Victims of Crime Commissioner Designate has said that “Delays in the criminal justice system are leaving victims of crime in Northern Ireland waiting years for justice” and that “ [t]he impact of that [delays], increases the trauma that individual experiences and their ability to readjust and move on following the crime because it is always hanging over them”.
- The Criminal Justice Inspectorate examined 200 case files prepared by the police and PPS and found that over half of those did not meet the quality standards, which can have “significant consequences, including delaying the progression of cases”³. In an article by the BBC, Dean Kane spoke about his experience of the criminal justice system when he was trying to secure a child cruelty conviction against his parents, saying

“Would I do it again? Probably not. Would I advise someone to even do it? Probably not, given how appalling I believe my case was handled” ... “My head's a mess, I don't know where my life's going. I don't know where the court case is going. I was getting no clarity, my life's on hold... The whole system from start to finish, the lack of being updated, the lack of knowledge that you have around it - you're just kept in the dark”

- The Northern Ireland Audit Office conducted a report entitled 'Speeding Up Justice' found that "Crown Court cases in Northern Ireland typically take more than 500 days from the date an offence is reported until a verdict is delivered in court, twice as long as in England and Wales. Around 12 per cent of Crown Court cases in Northern Ireland take in excess of 1,000 days to complete".
- The Chief Inspector of the Criminal Justice Inspectorate said, about the CJINI 2023 Follow Up Review, that "New laws and IT systems will only take the criminal justice system so far if victims don't have the confidence to report crimes or withdraw their evidence because their dignity has been crushed and they are re-traumatised by the delay, lack of information and poor support they receive. This undermines the rule of law and confidence in our justice system".

Just as in Annexes A and B, it would be beneficial for prosecutors to be fully informed and regularly reminded of the impact of delay on victims and witnesses.

We would also make the following points:

- We would recommend that the PPS include more specific detail regarding the length of time that can be expected for decisions on bail considerations, and how and when they will inform victims on these decisions.
- In section 4.3.2, what are considered exceptional circumstances?
- How quickly is the victim informed that the suspect has been charged?
- We recommend setting a target for avoiding delay with consideration given to both parties awaiting court date i.e. from date of charge x amount of weeks for court date.
- Section 4.3.1 is not clear on what is meant by "proper reason" to not prosecute

- Section 4.4.4 discusses the use of good character information, and we would like to strongly emphasise our fundamental opposition to the use of good character references in cases of domestic and sexual abuse, stalking, harassment, and abusive and threatening behaviour. Indeed, in our experience many people who display abusive behaviour often use their 'societal status' to further intimidate their victim into believing they won't be believed. Previous 'good character' is not evidence that the crime in question did not happen and does not have a place within the court process.

Chapter 5- Helping Victims and Witnesses to Give Evidence

Question 4: Chapter 5 provides an overview of victim and witness issues and the services and other support available. Is all of this information of value? Is any additional information required regarding victim and witness issues?

Nexus Response:

Chapter 5 outlines examples of special measures that the PPS can apply for to make evidence-giving a more comfortable experience, the importance of early applications, and is very clear that the defendant has no right to cross-examine a victim of an offence of stalking in person. However, we would recommend that clarification be included on how and when victims are informed of special measure decisions.

The policy is also takes account of the additional barriers for victims and witnesses for whom English is not their first language however, we note that in 5.3.1, the policy has advised that the PPS will "seek advice from police as to the victim's or witness's ability to give and understand oral evidence in English or whether the witness requires the use of an interpreter". A survey conducted by Crest Advisory, a group of crime and justice specialists, with over 5,000 adults in England and Wales found:

- 46% of Black people trust the police, compared to 62% of the general population
- 75% of Black adults surveyed agreed that the police “do not treat people from ethnic minority backgrounds the same as White, British people”
- 69% of Black adults believe they do not get the service or protection they need from the police.

And in a similar survey with over 1,500 children in England and Wales, Crest Advisory reported that:

- Only 36% of Black children and teenagers trust the police, with Black girls reporting the lowest among all those surveyed at 33%.
- “Less than a quarter of Black children and teenagers questioned for the poll said they trusted police to stop and search them fairly and fewer than one in five trusted officers to treat people from different backgrounds fairly”.

What this research illustrates is a mistrust of police, by people who potentially don't have English as their first language, and as such as we would advocate that Section 5.3.1 be revised to “PPS will seek advice from police **and the Victim and Witness Care Unit** as to the victim’s or witness’s ability to give and understand oral evidence in English or whether the witness requires the use of an interpreter”. Including the VWCU will provide a victim/witness-centred assurance for victims and witnesses who may have a distrust of the police and their agencies.

In Section 5.1.3, the guidance states that “The court will only allow a special measure where it considers that the measure would be likely to improve the quality of evidence given by the victim or witness”. We assert that the protection and safety of victims of such a crime will always improve the quality of evidence.

Annexes A, B, and C

Question 5: Annexes A, B and C of the policy provide general background information in respect of stalking behaviours, the impact of stalking and the types of stalkers. Is this useful?

Nexus Response:

As a charity that provides training, educational workshops, and public awareness campaigns, we value inclusion of the Annex sections to highlight the behaviours and impacts of stalking. This can be a valuable aid for anyone who may be impacted by stalking. By providing information on the signs of stalking, potential victims may be better equipped to report a crime and seek support.

Final Questions

Question 6: Thinking about the document as a whole, is the information clear and easy to understand? For example, is there any complex legal language or jargon which needs to be amended or explained?

Nexus Response:

There are portions of the policy that are clear, concise, and detailed in a format that is accessible and explanatory. The document contains descriptions for relevant legislation as well as links to further information. For the Protection from Stalking Act 2022, the policy document clearly outlines the provisions of the Act, highlighting key sections, providing definitions and example case law. The policy provides the legal text from the 2022 Act as well as an explainer, for example, in 2.2.5, the policy states "The Act defines a 'course of conduct' as conduct that has occurred on two or more occasions. This is to capture the repetitive nature of the stalking behaviours that usually occur over a period of time. There is no set time between the incidents of behaviour and the occurrences do not necessarily have to occur in quick succession.

However, the fewer the incidents and the greater the separation in time, the less likely the court will make a finding of fact that the behaviour is a 'course of conduct'". This is a clear example of how to provide a legal and conversational explanation of course of conduct that would be understood by people who are not involved in the legal profession or studied law.

However, as we have noted in Questions 2-4, there is work to be done to provide explanations of how the prosecution will use the Act to pursue prosecution, how exactly they apply the Evidentiary Test, and how the PPS communicates with victims and witnesses. The policy makes several assumptions that the reader will understand the prosecutor's reasoning for taking decisions, such as how much weight is given to the victim's wishes in situations such as alternatives to prosecution and bail, how they interpret "interest of justice", and what are considered exceptional circumstances for the acceptability of pleas.

Question 7: The overall purpose of this policy is to provide guidance on the general principles, commitments and associated working practices, and to explain the standards of service expected from the PPS in cases of stalking. In your view, does the guidance deliver this? (If not, please explain the reasons why).

Nexus Response:

Overall, there are sections where the policy provides an easy-to-read, step-by-step guidance on how the PPS and prosecutors will handle cases of stalking. However, we would recommend that, in Chapter 1, the guidance provide more information on the training given to prosecutors, as this would inform victims' choice to pursue a judicial outcome as well as make victims and witnesses aware of how much familiarity the prosecutor has with the subject. For example, who provides the training, in what format, and how is the lived experience of victims embedded into the training?

We would also recommend the inclusion of an annex which outlines the evidence of trauma-informed practise outcomes inside and outside of the PPS.

Chapter 2 outlines the Protection from Stalking Act 2022, including how the offences of stalking and threatening or abusive behaviour are met, the definitions of course of conduct, reasonable person test, fear or alarm, the statutory defence of TAB, penalties for the offences, and safeguarding victims. Understanding the legal definitions, duties, and protections for victims of stalking and TAB are essential for both the criminal justice system and the public, in particular victims and witnesses and their advocates. Just as we did in our answer to Question 3 regarding good character references, we recognise that the term "reasonable person test" is codified in the Protection from Stalking Act, and therefore must be reflected in practise and in this guidance- however, from a trauma-informed perspective, we would strongly recommend that the PPS advocate for reviewing this language in line with promoting a victim-centred approach and work with the DoJ and Northern Ireland Assembly to analyse the possible implications of the phrase 'reasonable person' on victims of stalking and propose to re-word "reasonable person" to "reasonable behaviour.

We have some points for clarification and recommendations for Chapter 3, particularly to request further details on the test for prosecution, how the PPS weighs the wishes of victims and their families, and how the PPS communicates with victims.

In relation to Chapter 4, we advocate that, a commitment is made for the PPS to embed trauma-informed practise for their prosecutors, including commitments from prosecutors to exhausting every option to communicate any changes or updates with victims and witnesses. In conjunction with this, we also recommend that Chapter 4 should include further details on the impact of delay on victims to emphasise

the importance of timeliness, accountability, and enforcing the high standards of case quality with the PSNI.

For Chapter 5, we have highlighted research into mistrust of the police for victims of crime who come from marginalised communities, particularly the Black community, especially people who don't have English as their first language, to inform PPS policy on determining the need for an interpreter. We recommended including the opinion of a Victim and Witness Care Unit case worker and any other victims advocate to reflect the victim-centred approach to supporting victims.

Finally, we welcome the addition of Annexes A, B, and C as useful guides for raising awareness of stalking behaviours.

Question 8: Are there any other comments you would like to make about this policy?

Nexus Response:

As the host of the Domestic and Sexual Abuse Helpline, we would like to see the Helpline section amended to:

"The Domestic and Sexual Abuse Helpline provides free, confidential information and support to people directly and indirectly impacted by Domestic and Sexual Abuse across Northern Ireland. The Helpline is available to people with lived experience, those concerned about someone, those with concerns as to whether abuse is occurring, and to professionals working with people who may be impacted by abuse. The Helpline also works collaboratively with statutory agencies and other charities to provide further support.

The Helpline will direct callers to the appropriate support in both emergency and non-emergency situations. The Helpline is available 24/7, 365 days a year. Trained, experienced staff are available to help via phone, email, and webchat. To contact the Helpline, call 0808 802 1414, email at help@dsahelpline.org, or use the live chat feature at www.dsahelpline.org. It is free and the number does not appear on a landline telephone bill. A telephone translation service is also available".

Conclusion

As part of a commitment to transparency and accessibility, we welcome the development of this policy. We have noted in our response that further work is needed to ensure that the policy not only outlines how the PPS prosecutes cases of stalking, but also the rationale, trauma-informed training, and awareness of prosecutors who take these decisions and the role of the victim and witness in the process.

At Nexus, we engage with clients who have been disenfranchised by the criminal justice system, and we strongly advocate for systemic change to better support victims and witnesses, especially in cases of abuse and stalking. The PPS have an important role to play in reforming the criminal justice system, and Nexus will continue to work alongside them and other key stakeholders to support victims on their journey, including how we inform the public and raise awareness of the prosecutorial process.

Further Information



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