

Attorney General for Northern Ireland

Guidance by the Attorney General for Northern Ireland

pursuant to

Section 8 of the Justice (Northern Ireland) Act 2004



No. 13

**HUMAN RIGHTS GUIDANCE FOR
THE POLICE SERVICE OF NORTHERN IRELAND, THE PUBLIC
PROSECUTION SERVICE, THE PROBATION BOARD FOR
NORTHERN IRELAND AND THE NORTHERN IRELAND
COURTS AND TRIBUNALS SERVICE
DOMESTIC ABUSE AND STALKING**

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HUMAN RIGHTS GUIDANCE FOR THE
POLICE SERVICE OF NORTHERN IRELAND, THE PUBLIC
PROSECUTION SERVICE, THE PROBATION BOARD FOR NORTHERN
IRELAND AND THE NORTHERN IRELAND COURTS AND TRIBUNALS
SERVICE

DOMESTIC ABUSE AND STALKING

INTRODUCTION

1. Human rights standards are designed to make life better for individuals and communities. Human rights standards should not be, and should not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.
2. This guidance is without prejudice to the requirement on all public authorities to comply with obligations arising under section 6 of the Human Rights Act 1998 and those arising under EU Law. This guidance does not purport to extend domestic law.

THIS GUIDANCE IS ADDRESSED TO THE POLICE SERVICE OF NORTHERN IRELAND, THE PUBLIC PROSECUTION SERVICE, THE PROBATION BOARD FOR NORTHERN IRELAND AND THE NORTHERN IRELAND COURTS AND TRIBUNALS SERVICE

3. This guidance deals with domestic abuse and stalking. Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. It will be revised in light of adjustments in human rights standards, changes in domestic criminal law and the experience both of those to whom it is addressed and the public.

DEFINITION OF DOMESTIC ABUSE AND STALKING

4. In this guidance ‘domestic abuse’ means any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those who are or have been intimate partners or family members, regardless of gender or sexuality.
5. Controlling behaviour is a range of acts designed to make a person subordinate and dependant by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape, and by regulating their everyday behaviour.
6. Coercive behavior is an act (or a pattern of acts) of assault, pressure or coercion, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten the victim.
7. In this guidance ‘stalking’ refers to a pattern of behaviours or specific actions which are designed to coerce, control or harm the victim. Stalking often involves a pattern of unwanted, persistent contact and

intrusive behaviour that engenders fear and distress in the victim and is characterised by a fixation or obsession with the victim. Some of these actions, when taken individually, may appear relatively innocuous, but when taken together create a threat to the victim's well-being. Such actions include, but are not limited to:

- a) engaging in unwanted communication with another person;
- b) letting the other person know that she or he is being observed;
- c) persistently or regularly subjecting the other person to observation or surveillance;
- d) following the other person;
- e) attempting to isolate or humiliate the other person, for example, by spreading untruthful or private information about the other person by any means, including online communication or through social media;
- f) making vexatious complaints about the other person.

8. In this guidance behaviour which is harmful or abusive includes, but is not limited to:

- a) behaviour which is physically, sexually or psychologically violent, threatening or intimidating; or
- b) behaviour toward the victim (or another person associated with the victim, or the property of the victim) which has the purpose or effect that it:
 - i. involves physical, psychological or sexual violence;
 - ii. deprives a person of her or his basic needs, freedom or independence (or the means required to secure this);

- iii. restricts a person's autonomy or choices or exerts undue control over another person or undermines that person's self-worth;
- iv. isolates the person from friends, relatives, family, sources of support or wider society;
- v. withholds or controls access to resources (including money), healthcare or employment opportunities or dissipates or sabotages access to these;
- vi. monitors or controls or regulates the person's day to day activities. This could include where he or she can go, who he or she can see, dictating childcare arrangements, and how or when he or she can undertake routine activities;
- vii. punishes or threatens the person or creates a climate of fear (including threats toward children or threats to damage the person's reputation);
- viii. uses a child as a means of abusing or controlling or harassing the other person;
- ix. makes that person feel frightened, humiliated or degraded;
- x. punishes, harms or frightens the person;
- xi. gives rise to psychological control or manipulation;
- xii. involves threats for non-compliance;
- xiii. involves repeated unwanted and unnecessary engagement;

- xiv. involves threats, which may be implicit threats, to isolate the person socially if she or he does not comply with demands; or
 - xv. involves an obsession or fixation with the victim. This may involve false accusations against the victim whilst repeatedly attempting, instigating or continuing unwanted or unnecessary interaction with the victim.
9. Professionals within the criminal justice system dealing with domestic abuse incidents should be alert to patterns of behaviour that could be controlling or coercive. In an abusive relationship, decisions by a dominant partner can become 'rules' that, when broken, lead to adverse consequences for the victim. When investigating or dealing with counter-allegations consideration should be given to the impact upon the victim of following or not following such 'rules' or other demands imposed upon them within the wider context of the relationship.
10. Individual characteristics such as age, disability, membership of a close knit or marginalised community, immigration status, being a non-English speaker, being a member of a sexual minority or the perceived status of the abuser within the community can increase the risk of isolation for a victim and make it easier for a perpetrator to establish controlling or coercive behaviour. Anyone, with any characteristics, and from any background, can be the victim of abuse.
11. The principal characteristic of both stalking and coercive and controlling behaviour is that it involves a pattern of continuing and repeated abuse. This abuse often appears routine and so-called low-level but, taken as a whole over time, it can cause the build-up of constant anxiety and fear. Consideration by criminal justice professionals of the cumulative impact of this behaviour and the pattern of behaviour in the context of relationships is crucial.

12. Professionals working within the criminal justice system must be able to recognise the risk of violent escalation that can arise when victims challenge abusers and the pattern of control is threatened or when a stalker is likely to be exposed.

INTERNATIONAL STANDARDS

13. This guidance is based on international human rights standards. It is based, in particular, on:
 - The European Convention for the Protection of Human Rights and Fundamental Freedoms¹ (ECHR);
 - The Charter of Fundamental Rights of the European Union;
 - The United Nations Convention on Civil and Political Rights;
 - The United Nations Convention on Economic, Social and Cultural Rights;
 - The United Nations Convention on the Rights of the Child;
 - Council of Europe Convention on preventing and combating violence against women and domestic violence;
 - The United Nations Declaration on the Elimination of Violence Against Women;
 - Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime;
 - Council of Europe Recommendation (2010) 3 on effective remedies for excessive length of proceedings;

¹ And relevant jurisprudence of the European Court of Human Rights

- Council of Europe Recommendation (2000) 19 on the role of public prosecution in the criminal justice system;
- Council of Europe Recommendation (2001) 10 on the European Code of Police Ethics;
- Council of Europe Resolution (2002) 12 establishing the European Commission for the efficiency of justice (CEPEJ);
- European Commission for the Efficiency of Justice (CEPEJ) CEPEJ (2006) 13 Compendium of “best practices” on time management of judicial proceedings;
- Council of Europe Recommendation (2006) 8 on assistance to crime victims;
- The Guidelines on the Role of Prosecutors - Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Havana, between 27th August and 7th September 1990;
- The Human Rights Standards and Practice for the Police, Office of the United Nations High Commissioner for Human Rights, 2004.

GENERAL

14. The criminal justice organisations to which this guidance is addressed shall exercise their respective functions diligently in order to prevent, investigate and prosecute acts of stalking and domestic abuse.
15. Senior management within the Public Prosecution Service (PPS), the Police Service of Northern Ireland (PSNI), the Northern Ireland Courts and Tribunals Service (NICTS) and the Probation Board for Northern Ireland (PBNI) shall ensure that appropriate mechanisms exist for the

effective co-operation between all of the relevant agencies including law enforcement, judicial and prosecution authorities and other relevant organisations such as non-governmental organisations in protecting and supporting victims and witnesses of domestic abuse and stalking.

RISK ASSESSMENT AND THE NEED FOR A PROACTIVE APPROACH

16. An assessment of the lethality risk, including that arising from access to firearms and from repeated violence, must be carried out by PSNI in order to manage that risk, and if necessary, to provide co-ordinated safety and support. This may be accommodated in the domestic abuse risk assessment (DASH) carried out as part of the Multi-Agency Risk Assessment Conference (MARAC).
17. PSNI and PPS must ensure that investigations into, and prosecutions of, offences relating to domestic abuse are not wholly dependent upon a report or complaint filed by the victim where other strands of credible and admissible evidence exist, and that proceedings may, as far as possible, continue where the victim withdraws his or her statement or complaint.
18. PSNI must be proactive in seeking evidence where it appears that a pattern of domestic abuse or stalking is occurring or has occurred. Material such as:
 - a) copies of electronic communications;
 - b) relevant photographs;
 - c) recordings;
 - d) information on previous incidents;
 - e) medical records;

f) witness statements; and

g) other relevant material

must be sought when such material is relevant to a reasonable line of inquiry.

19. Where appropriate, PSNI and NICTS must ensure that statutory or non-governmental organisations and domestic violence counsellors may assist and support victims, at their request, during investigations and judicial proceedings.
20. Active supervision within PPS and PSNI, with due regard to the specific responsibilities of each organisation, is important in ensuring an effective and consistent investigation takes place.

IMMEDIATE RESPONSE, PREVENTION AND PROTECTION

21. PSNI must respond to all forms of domestic violence and abuse, including stalking, promptly and appropriately by offering adequate and immediate protection to victims. Preventive operational measures should be employed in accordance with PSNI's legal obligations.
22. Officers are required to take, within the scope of PSNI's powers, preventive and protective measures even where no criminal offence is immediately apparent, particularly where there are signs of controlling or coercive behaviour and stalking.
23. PSNI and PPS must apply for the appropriate orders (and conditions within orders) to ensure the safety of victims or the persons at risk, for example to prevent the perpetrator from accessing the residence of the

victim, or from contact with the victim². The implementation of such orders must be properly enforced by PSNI.

24. Use of evidential collection techniques such as electronic recording methods (for example, body-worn cameras) should be used where possible; images should be produced expediently to enhance the material available for suspect interviews and preparation of any case file for PPS.
25. Steps must be taken by PSNI to enforce the removal of electronic images and material which forms part of a pattern of abuse or stalking. Such images and material may constitute aiding and abetting the commission of relevant substantive offences.
26. With due regard to the specific responsibilities of each organisation, and working collaboratively, PSNI, PPS, PBNI and NICTS must each ensure that victims receive adequate and timely information on available support services and legal measures in a language they can understand.
27. Where criminal proceedings have commenced in a case involving domestic abuse or stalking, NICTS must ensure that details which may inform the alleged abuser of the whereabouts of the victim are removed from material forwarded to the alleged abuser (unless otherwise required by Court order).

Withdrawal of Statement

28. A prosecution must not depend on the willingness of the victim to proceed where other strands of credible and admissible evidence exist.

² These may include anti-social behaviour orders, violent offender prevention orders, domestic violence protection orders (when available), bail conditions and restraining orders.

29. PSNI should actively liaise with PPS when victims or witnesses withdraw statements to inform the recording of the reasons for withdrawal and on how the case can proceed without the co-operation of the victim or witness.
30. PSNI and PPS must give active consideration to continuing with the case in the absence of victim evidence. When it appears that a victim may not attend court consideration should be given to whether an application could be made to the court to tender the victim or witness evidence, or whether the victim or witness should be summoned to attend court. Such consideration must take account of the rights and safety of the victim. Where communication with a victim takes place about her or his willingness to proceed, this should be conducted sensitively.

Support Services

31. In relation to paragraphs 32-35 support services should:
 - a) be based upon a fully informed understanding of the context of violence against women and domestic abuse and upon an understanding of the dynamics of power within all abusive intimate relationships, including those where the victims are men;
 - b) focus on the human rights and safety of the victim;
 - c) be based upon an integrated approach which takes into account the relationship between victims, perpetrators, children and their wider social environment and aims to avoid secondary victimisation;

- d) aim at the empowerment and independence of victims of domestic abuse and address the specific needs of especially vulnerable persons, such as child victims.
32. The necessary measures should be taken to provide (or arrange for access to) specialist support services, at as early a stage as possible, to victims of domestic violence and stalking as well as to their children.
 33. Victims must have access to services facilitating their recovery from violence. This should include, when necessary, services such as legal advice and psychological counselling. Staff should be trained to enable them to direct victims, where appropriate, to the relevant health and social care services or other assistance and services.
 34. In the provision of protection and support services to victims, due account must be taken of the needs of child witnesses (including recognition that children may also be victims) and due regard given to their best interests.
 35. The provision of services must not depend on the victim's willingness to press charges or testify against any perpetrator.

MEASURES OF PROTECTION

36. The protection of victims, including their special needs as witnesses, should be catered for by each organisation within its specific sphere of responsibility by:
 - a) providing for the protection of victims and their families and witnesses from intimidation, retaliation and repeat victimisation;
 - b) informing victims of their rights and the services at their disposal and the follow-up action taken in relation to their complaint, the charges, the general progress of the investigation or proceedings and their role therein, as well as the final outcome of their case;

- c) ensuring that victims are kept informed, in a way which is timely and effective, of when the suspect or perpetrator is released temporarily or definitively, or if the suspect or perpetrator escapes;
- d) enabling victims to supply evidence, and have their views, needs and concerns presented (directly or through an intermediary) and considered;
- e) providing victims with adequate support services so that their rights and interests are duly presented and taken into account at all stages of investigation and judicial proceedings;
- f) ensuring that measures may be adopted to protect, as far as possible, the image and privacy of the victim;
- g) ensuring that contact between victims and perpetrators within court and PSNI premises is avoided, where possible;
- h) providing victims with independent and competent interpreters when supplying evidence;
- i) enabling victims to give evidence without being present in the courtroom or at least without the presence of the alleged perpetrator, through the use of appropriate communication technologies, where available. This will require an application to be made to the court for a special measures direction.

Special protection measures for child witnesses of domestic abuse shall be put in place, where appropriate, taking into account the best interests of the child.

RECORDING AND ANALYSIS

37. For every reported incident of domestic abuse and stalking a record must be kept by PSNI. At a minimum, the following must be recorded:
- a) the gender of the victim/subject and the suspect/person mentioned and the inter-relationship, for example female victim and male suspect; female subject and female person mentioned;
 - b) the age of the victim/subject and the suspect/person mentioned;
 - c) the relationship of the suspect/person mentioned to the victim/subject;
 - d) the type of abuse;
 - e) the geographical location;
 - f) any disability; and
 - g) any protection orders.

Other factors deemed relevant should also be recorded.

38. PSNI must, if necessary with the assistance of the PPS, collect and publish disaggregated data at regular intervals on domestic abuse and stalking. At a minimum the factors listed in paragraph 37, and any other factors deemed relevant (such as conviction rates), must be recorded and published.
39. The data should be publicly accessible and provided to international human rights bodies (such as those dealing with domestic abuse within the Council of Europe) for the purposes of stimulating international co-operation and enabling international comparison and evaluation.
40. An analysis of serious crime cases, and of decisions not to arrest, should be carried out on a regular basis by a senior PSNI officer.

PREVENTIVE INTERVENTION AND TREATMENT PROGRAMMES

41. PBNI treatment programmes aimed at educating perpetrators of domestic abuse to avoid violent and abusive behaviours in relationships are important to prevent or reduce reoffending. Such programmes should ensure that the support and safety of victims and their human rights are of primary concern and that, where appropriate, these programmes are set up and implemented in close co-ordination with specialist support services for victims. Such programmes should place the human rights of victims at their centre.

POLICIES

42. Criminal justice organisations should implement comprehensive and co-ordinated policies encompassing all relevant measures to prevent and combat domestic abuse and stalking, and to offer a comprehensive and co-ordinated response.
43. Policies should place the rights of the victim at the centre of all measures while ensuring procedural fairness for the accused. Policies should be implemented by way of effective co-operation between all relevant agencies, institutions and organisations at all levels.
44. Appropriate financial and human resources must be allocated for the adequate implementation of policies, measures and programmes to prevent and combat all forms of domestic abuse and stalking.

COMPLAINTS

45. Criminal justice organisations should ensure that victims have ready access to information on relevant policies for addressing domestic abuse and stalking, as well as ready access to any relevant complaints mechanisms. In this context 'ready access' will often include the ability

to obtain information or make a complaint online. Organisations should promote the provision of sensitive and knowledgeable assistance to victims in presenting any such complaints.

TRAINING

46. Effective training must be provided for the relevant professionals dealing with victims or perpetrators of domestic abuse and stalking. This should include training on the prevention and detection of such violence, equality between women and men, the needs and rights of victims and the prevention of secondary victimisation.
47. Training shall place the human rights of victims at its centre without prejudicing the rights of the accused.
48. Such training should include training on co-ordinated multi-agency co-operation to allow comprehensive and appropriate handling in cases of domestic abuse and stalking.
49. Training for those who will be taking the initial report of domestic abuse or stalking, including call handlers and first response officers, is particularly important as the initial contact with a victim can significantly impact and inform the future progression of the case.
50. Updating or renewal training must also be regularly provided.
51. The training referred to in this section must enable professionals working within the criminal justice organisations to properly assist and protect victims and to effectively investigate and prosecute perpetrators. The training must provide sufficiently comprehensive, detailed and relevant information to enable an effective individual and organisational response to domestic abuse incidents and stalking.
52. The training must ensure the prevention of secondary victimisation through clear direction on how to respond to domestic abuse and

stalking incidents. Understanding the dynamics of power and control in abusive relationships, and how to recognise an abusive pattern of behaviour, should form an important element of the training. To reduce the risk of secondary victimisation in cases involving counter allegations, training in skills and techniques to facilitate effective identification of the victim and/or perpetrator are necessary.

SECONDARY VICTIMISATION

53. PSNI, PPS, PBNI and NICTS must refrain from engaging in any form of abuse against individuals and shall ensure that their officials, agents and employees act in conformity with this obligation.
54. Services which, while well-intentioned, do not adequately take into consideration the devastating effects of domestic abuse and stalking and the length of the recovery process, or that treat victims insensitively, run the risk of re-victimising service users.
55. Sensitivity requires enabling victims and witnesses to report and describe what has occurred in an appropriate environment, in private and in a manner which is attuned and responsive to their needs. This includes understanding the dynamics of control and manipulation in abusive relationships.
56. The fact that victims may have been manipulated into what appears to be some form of voluntary contact with their abuser should not adversely impact on the way their case is handled. The pattern of coercive behaviour and harassment is the key measure of the abusive nature of the relationship.
57. Organisations, and staff working within them, must exercise particular vigilance and prudence when dealing with allegations of stalking and all forms of domestic abuse.

58. Perpetrators may accuse the victim of abuse or try to 'set up' the victim to make it look as if the victim is an abuser in order to escape justice and to reduce the capacity of the criminal justice system to protect the victim. This must be effectively recognised and countered within the criminal justice system in order to avoid secondary victimisation. In order to do so the list of examples at paragraph 8 may be instructive. Where there is a pattern of one party instigating communication and/or threatening punishment for non-compliance with their demands, this may be a strong indication of the direction of coercion and control within the relationship. Appropriate training in recognising the differences in the behaviours and attitudes of abusers and victims is essential in order to reduce secondary victimisation.
59. Stalking, and all forms of domestic abuse, must be dealt with quickly and effectively. In order to do so it is necessary for organisations to move away from an incident-based approach and to 'join up' a pattern, or patterns, of behaviour to protect the victim from further abuse and from secondary victimisation.

DELAY

60. Investigations and other aspects of the criminal justice process must be carried out without undue delay taking into particular consideration the rights of the victim during all stages of the criminal proceedings and the adverse impact of protracted proceedings on victims.
61. The organisations must take the necessary measures to ensure the effective investigation and prosecution of domestic abuse offences and those related to stalking.

GENERAL

62. PSNI, PPS, PBNI and NICTS should ensure that the above guidance is circulated to all staff and ensure awareness of, and adherence to, the above standards.
63. It is similarly important that the general public is aware of the standards. This guidance should be made available to others who may have an interest in, or who may be affected by, the work of PSNI, PPS, PBNI and NICTS.
64. Regard must be had to this guidance when making or reviewing contractual or other agreements with other statutory agencies.

REVIEW AND MONITORING

65. Difficulties encountered in the application of this guidance by PSNI, PPS, PBNI and NICTS should be notified to the Attorney General as soon as possible.
66. The Attorney General will formally seek the views of PSNI, PPS, PBNI and NICTS on the review or amendment of this guidance annually. It is open to PSNI, PPS, PBNI and NICTS to suggest revision or amendment of this guidance at any time.

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