Stalking: A Violent Crime or a Crime of Violence?

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Abstract: This article examines the sufficiency of the legal response to stalking in terms of the penalty that can be imposed under the Protection from Harassment Act 1997. It is argued that the statute places limitations upon the availability of a sentence that adequately reflects the severity of the harm involved. This is exacerbated by the sentencing policy outlined in the Powers of Criminal Courts (Sentencing) Act 2000, which delineates the circumstances in which a sentence of imprisonment may be imposed. Central to this article is the distinction between a violent act and an act of violence and the role of the relevant conduct and consequences in the categorisation process. The article concludes with a consideration of whether the recommendations of the Halliday report would strengthen the law in this respect.

Stalking and the Protection from Harassment Act 1997

There is no definition of stalking in the English legal system. Legislation introduced to combat stalking and cases involving conduct that has been labelled as stalking have not generated any generally applicable definition of the conduct involved. The British Crime Survey 1998 (BCS) identified the most prevalent forms of stalking behaviour as unwanted contact, silent or otherwise unpleasant telephone calls, watching and following the victim and leaving unwanted gifts and letters. The Home Office evaluation of the BCS findings concluded that, despite the prevalence of certain types of conduct, there is little commonality between stalking cases in terms of the conduct involved, the motivation of the stalker or the relationship between stalker and victim (Budd and Mattinson 2000). In common with research conducted in the United States and Australia, the Home Office research study concludes that there is no prototypical stalking case but that stalking can be characterised by three essential components: the conduct is repeated, it is unwanted and it causes an adverse reaction in the victim (Finch 2001).

The difficulties inherent in formulating a precise definition of such variable conduct contributed to the decision to leave stalking undefined when legislation to combat it was enacted (House of Commons Debates, vol. 287, 17 December 1996) hence stalking, like shoplifting and mugging, is a description of a particular manifestation of an offence rather than a legal
category in its own right (Wells 1997). The Protection from Harassment Act 1997 prohibits the more general concept of harassment, which includes, but is not limited to, stalking. Thus stalking is not a crime in its own right but a species of harassment that comes within the provisions of the Protection from Harassment Act 1997.

The Protection from Harassment Act 1997 was enacted following a series of high-profile stalking cases and was a direct response to the perceived inability of the existing law to offer effective protection to stalking victims. The Act created two new criminal offences and a statutory tort of harassment. The lower level criminal offence is contained in Section 2 of the Act and is a summary offence carrying a maximum penalty of six months’ imprisonment. Like the statutory tort created by Section 3, the offence of harassment is based upon the definition of harassment contained in Section 1(1):

A person must not pursue a course of conduct –
(a) which amounts to harassment of another, and
(b) which he knows or ought to know amounts to harassment of the other.

A ‘course of conduct’ is further defined in Section 7(3) as conduct on at least two occasions and is said in Section 7(4) to include speech. Other than this, there are no statutory limitations of what may constitute a course of conduct thus suggesting that any two incidents may suffice as a course of conduct. There is a further requirement that this course of conduct must amount to harassment of another. This is a purely subjective element, hence it is a matter for the victim to determine what conduct amounts to harassment. This is combined with a purely objective mens rea requirement that provides that what the defendant ‘ought to know’ is determined by reference to what the reasonable person in possession of the same information would know amounted to harassment. It has been argued that this combination of three easily satisfied requirements creates an extremely low threshold of criminal liability (Finch 2000).

The second, more serious, offence created by the Protection from Harassment Act 1997 is that of causing fear of violence (Section 4). This offence is triable either way and carries a maximum penalty of five years’ imprisonment. The offence is similar to the offence of harassment in that it requires at least two incidents, gives primacy to the victim’s interpretation of events and adopts the objective reasonable person test of what the defendant ought to know. It differs in that the course of conduct must cause the victim to fear that violence will be used against him or her. It is this element of the offence that significantly limits its application in stalking cases. As Lord Steyn notes in *R v. Ireland* [1997] 4 All ER 225, it is more likely that a victim will fear that violence may, rather than will, be forthcoming. Research indicates that it is far more common for stalking victims to experience a heightened sense of generalised fearfulness rather than a specific fear of imminent violence (Budd and Mattinson 2000). Notwithstanding this, the narrow scope of Section 4 was reaffirmed by the Court of Appeal in *R v. Henley* [2000] Crim LR 582 where it was held that to cause the victim to be seriously frightened of what might happen was not equivalent to causing her
to fear that violence would be used against her. The narrow parameters of this offence frequently exclude its availability even in more serious stalking cases. Moreover, Home Office research into the use and effectiveness of the Protection from Harassment Act 1997 found that the police favour the use of Section 2 over Section 4, even in cases where Section 4 would technically be available, as the Section 2 offence is 'easier to run with' (Harris 2000, p. 4). As such, the majority of stalking cases, regardless of their seriousness, will be charged under Section 2 thus limiting the maximum penalty available to six months' imprisonment.

The maximum penalty available for the offence of harassment may be insufficient to address the magnitude of the defendant’s conduct or the severity of the harm caused to the victim. Needless to say, not all stalking cases are of sufficient magnitude to justify the imposition of such a serious penalty. This is particularly so as the Protection from Harassment Act 1997 facilitates intervention at an early stage, that is, after two incidents, which may prevent escalation and put an end to the harassment before the victim suffers significant harm. However, some stalking cases span a long period of time, often many years, and cause such serious harm to the victim’s physical and mental health that a sentence of imprisonment is entirely appropriate. Before exploring the potential for the imposition of such a penalty, the next section will elaborate upon the nature and extent of the harm that may be caused by stalking victimisation.

**The Nature of the Harm in Stalking Cases**

Response to stalking is inextricably linked to the psychology of the victim and it is clear that conduct that renders one victim insensible with fear may leave another victim wholly unmoved. Victims respond in a variety of ways ranging from amusement or indifference on the one hand to more extreme reactions causing significant psychological damage at the other end of the continuum. It would appear that the range of reactions to stalking are as varied and unpredictable as the stalking itself.

Research into stalking victimisation indicates that in some cases the harm suffered by the victim is severe and long-lasting; indeed the adverse consequences caused by victimisation frequently outlive the duration of the harassment (Mullen et al. 2000). It is clear that the majority of stalking victims suffer some adverse impact although this may be minor or transient in nature. Different research studies offer varying estimates of the percentage of victims that experience negative consequences as a result of being stalked. For example, Budd and Mattinson’s (2000) analysis of the findings of the British Crime Survey 1998 found that 71% of victims underwent a major lifestyle change whereas Pathe and Mullen’s (1997) research indicated that such significant alterations were to be found in 94% of stalking cases. Hall’s (1998) research into the impact of stalking discovered that 80% of victims had suffered significant changes in personality, habitually becoming less friendly, trustful and outgoing, whilst experiencing an increase in negative characteristics such as paranoia, anxiety, aggressiveness and introversion. One factor that contributes significantly to the
impact of victimisation is the deterioration of trust for others that is characteristic amongst stalking victims thus inevitably increasing their sense of social isolation. This is exacerbated by the powerlessness that accompanies an inability to bring about a cessation of the conduct, particularly if it persists following police intervention (Finch 2001).

Some victims develop psychological disorders as a result of victimisation. According to Mullen et al. (2000): ‘stalking victims possess many of the features that may produce chronic stress reactions and related psychological sequelae’ (p. 59). The development of significant psychological, depressive and anxiety-related disorders is not uncommon, with approximately 37% of victims studied by Mullen et al. satisfying the diagnostic criteria for post-traumatic stress disorder. One-quarter of the victims in Pathe and Mullen’s sample had considered or attempted suicide whilst other research found a high incidence of self-harm amongst stalking victims (Finch 2001; Pathe and Mullen 1997).

Although not all stalking cases involve such dramatic and serious consequences, the research indicates that a significant number of stalking victims suffer some adverse effects on their psychological, social and/or occupational functioning (Mullen et al. 2000). It is clear that the devastation caused by stalking may be immense. There are cases in which no vestige of the victim’s life remains unaffected: relationships, career, physical and mental health, and feelings of self-worth may all be damaged irreparably by the experience. The far-reaching impact of stalking can be encapsulated by the words of one stalking victim:

He is everywhere. There is no part of my life that he hasn’t destroyed. (Finch 2001, p. 80)

It is worthy of reiteration that not every stalking case will lead to such devastating consequences on the life of the victim. However, it is equally clear that there are cases in which victims suffer serious and long-lasting harm as a direct result of victimisation. Given the variability of conduct and the harm that may arise in stalking cases, it is important that the full range of penalties are available to the courts, including the ability to impose a custodial sentence in serious cases.

The Statutory Framework of Sentencing

Despite the potentially serious consequences of victimisation, sentences of imprisonment are rarely imposed in stalking cases. An examination of the Home Office Criminal Statistics reveals that less than 5% of harassment cases result in immediate custody (Harris 2000, p. 36, Table 4.3). A partial explanation for this low rate of imprisonment can be found by considering the range of conduct to which Section 2 applies. The low threshold of criminal liability allows the offences to catch conduct at an early stage before it has escalated into serious harassment that causes significant harm, hence it is entirely appropriate that such cases do not result in imprisonment. However, given the narrow and exclusionary scope of the more serious offence under Section 4, the offence of harassment also has
to accommodate stalking cases at the other end of the spectrum of seriousness. As such, and given the nature of harm that can result from prolonged victimisation, the low rate of imprisonment cannot be explained solely by reference to the low level of conduct that is encompassed by the offence of harassment. This article proposes two inter-related explanations for the low incidence of custodial sentences in serious stalking cases. Firstly, it is likely that the severity of harm that can result from prolonged victimisation is not yet widely recognised. Support for this can be seen by reference to the Magistrates’ Association Sentencing Guidelines, which state that the appropriate penalty for harassment is a community sentence (Ashworth 2000, p.123).Whilst such a sentence will be adequate in many stalking cases, there appears to be no acknowledgement that cases at the more serious end of the spectrum may justify the imposition of a custodial sentence. It may be that it is difficult for an objective observer to appreciate the trauma of stalking victimisation, especially as each composite incident may appear trivial when viewed in isolation. Moreover, the link between the experience of stalking and the psychological symptoms suffered by the victim may appear somewhat tenuous. However, greater recognition of the impact of continued and prolonged harassment is essential if severe stalking cases are to be treated with the seriousness that they merit. The second reason that a significant proportion of stalkers who have caused serious detrimental consequences to their victims are not being dealt with by way of imprisonment could be attributed to the restrictive nature of the Powers of Criminal Courts (Sentencing) Act 2000.

This consolidating legislation largely replicates the relevant provisions of the Criminal Justice Act 1991, which established a statutory framework of sentencing guidelines (Ashworth 2000). According to these guidelines, the imposition of a custodial sentence can be justified only if the offence is so serious that no other means of disposal is deemed appropriate or, in the case of violent or sexual offences, where such a sentence is necessary to protect the public from further harm.

A ‘violent offence’ is defined by Section 161(3) of the Powers of Criminal Courts (Sentencing) Act 2000 as one that leads, or is intended to lead, to a person’s death or to physical injury to a person. This definition was explored in R v. Robinson [1993] 2 All ER 1 where it was held that an offence that causes purely psychological injury could not amount to a ‘violent offence’ for the purposes of the Criminal Justice Act 1991, which preceded the Powers of Criminal Courts (Sentencing) Act 2000. This emphasis on physical injury operates to exclude the majority of stalking cases from the parameters of Section 161(3) as stalkers rarely resort to physical violence in their pursuit of their victims. Due to the definition adopted by the statutory framework, few stalking cases will fall within the definition of a violent offence. This could go some way to explaining the low rate of imprisonment in stalking cases, even those in which the victim suffers serious psychological harm, as this will not suffice to justify the imposition of a custodial sentence in the absence of physical harm.

It seems somewhat incongruous that a ‘violent offence’ for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 encompasses relatively
minor physical injuries but excludes all psychological harm, however severe. One way in which this apparent anomaly can be explained is by considering the genealogy of psychological harm elsewhere in the criminal law. At the time at which the concept of a violent offence was introduced for sentencing purposes, a likely explanation for the exclusion of psychological harm was that the criminal justice system had not recognised this as a significant personal harm. It was not until the Court of Appeal decision in *R v. Chan Fook* (1994) 99 Cr App R 147 that it was acknowledged that ‘bodily’ harm, for the purposes of the Offences Against the Person Act 1861, was not limited to the flesh, skin and bones but included all parts of the body including the organs, nervous system and the brain. This was confirmed by the House of Lords in *R v. Ireland; R v. Burstow* [1997] 4 All ER 225, both of which were stalking cases, where it was held that the Offences Against the Person Act was a statute of the ‘always speaking’ kind that must be interpreted in light of contemporary knowledge regarding the link between the body and psychiatric injury. As such, the House of Lords held that it was entirely appropriate that psychological harm caused by prolonged stalking victimisation should amount to actual or grievous bodily harm, depending upon its severity.

There have been opportunities to update the criteria under which conduct is classified as a violent offence for sentencing purposes, which would bring sentencing policy into line with other developments that recognise psychological injury as a significant personal harm. The Powers of Criminal Courts (Sentencing) Act 2000 could be seen as a missed opportunity in this respect. Although this was a primarily a piece of consolidating legislation, certain changes were made to the relevant provisions that were gathered from other statutes. As Thomas (2001) comments, as it was deemed appropriate to alter ‘probation officer’ to ‘officer of a local probation board’, it is unfortunate that the statute did nothing to update and expand the meaning of ‘violent crime’, which is in such urgent need of amendment.

It is particularly paradoxical that conduct that comes within the parameters of Section 47 of the Offences Against the Person Act will be categorised as a violent offence for the purposes of Section 161(3) of the Powers of Criminal Courts (Sentencing) Act 2000 if it causes physical harm to the victim but not if the result is psychological injury. This inconsistency is exacerbated by the disparity of the harm threshold between physical and psychological harm for the purposes of evaluating whether it constitutes ‘actual’ bodily harm contrary to Section 47 of the Offences Against the Person Act 1861. In terms of physical injuries, *R v. Donovan* [1934] 2 KB 498 defined ‘actual bodily harm’ as ‘any hurt or injury calculated to interfere with the health or comfort’ of the victim provided it was more than merely ‘transient and trifling’, thus indicating a relatively low threshold of injury is required to satisfy the requirements of Section 47. Moreover, the Crown Prosecution Service (1996) *Charging Standards* suggests that a prosecution under Section 47 is appropriate in cases involving minor cuts, minor fractures and extensive bruising. This further supports the assertion that Section 47 is an offence that is concerned with minor physical injuries. However, although such injuries are unpleasant, they can hardly be said to be of comparable
seriousness with the level of psychological injuries that are required to sustain a conviction under Section 47. It was clear from the House of Lords decision in *R v. Ireland* that actual bodily harm of a psychiatric nature would only be established if the victim suffered from a recognised psychiatric or psychological disorder.

Although the Offences Against the Person Act 1861 now encompasses psychological injury within the remit of ‘bodily’ harm, it is clear that it is regarded as less serious than physical harm despite the longevity and severity of psychological injury. Equally, little account is taken of lesser levels of mental discomfort and distraught emotional states despite evidence of the severe ramifications that such states can have on a victim’s life and wellbeing (Hall 1998; Mullen *et al.* 2000). Although psychological injury is recognised within non-fatal offences against the person, it is clear that it is a somewhat poor relation to its physical harm cousin. The position of psychological harm is even more impoverished for the purposes of sentencing due to the failure to classify the causing of even the most serious psychological harm as a ‘violent offence’ deserving of a sentence of imprisonment.

There has been some judicial recognition of the limitations of adopting a definition of ‘violence offence’ that focuses solely on conduct intended or likely to result in physical harm. For example, in *R v. Richart* (1995) 16 Cr App R (S) 977, the Court of Appeal reached a reluctant conclusion that the threatening words and conduct in which the defendant had engaged could not amount to a violent offence for sentencing purposes as they did not cause physical injury, nor were they intended or likely to do so. The Court of Appeal condemned this narrow and exclusionary approach and advocated an extension of the meaning of ‘violent offence’ to encompass circumstances in which there was a reasonable apprehension of violence on the part of the victim. Although such a proposal would not wholly resolve the impediments to the imposition of a custodial sentence in all serious stalking cases, it would increase the potential for stalking cases to come within the definition of ‘violent offence’. Whilst it has been argued that the majority of stalking victims do not fear that violence *will* inevitably be used against them, it is probable that a greater number of those who experience extreme and prolonged victimisation would be able to satisfy a criterion of reasonable apprehension of violence. Therefore, an amendment such as that proposed by the Court of Appeal would increase the availability of custodial sentences in serious stalking cases.

Given the severity of the harm that can result from stalking victimisation, it is contended that some amendment to the current approach to sentencing is needed to ensure that custodial sentences can be imposed in appropriate cases. The definition of ‘violent offence’ could be widened to include apprehended violence or an amendment could be made that embraces conduct that causes, or is intended or likely to cause, psychological harm. Without some such alteration to the current law, it is clear that rates of imprisonment for stalking, in all but the most extreme cases, will remain extremely low. It is contended that the current position does not give sufficient accord to the magnitude and seriousness of psychological harm but it is also acknowledged that wholesale expansion of the approach
to the imposition of custodial sentences may not be desirable. There is a clear tension between the need to ensure that the law responds appropriately to serious stalking cases and the equally important requirement that the ethos of the current sentencing framework is maintained.

In the absence of a definition of ‘violent offence’ that encompasses stalking, the only basis for the imposition of a custodial sentence is dependent upon the circumstances of the case satisfying the seriousness criteria. In *R v. Cox* (1993) 14 Cr App R (S) 479, the Court of Appeal held that the element of seriousness would be satisfied if the circumstances of the offence were such that no right-thinking member of the public would consider that justice had been done unless a custodial sentence were imposed. The prevalence of the offence in question and the degree of public concern regarding the offence were relevant factors to be taken into account when determining the seriousness of the offence. It is likely that few stalking cases will be of sufficient severity to the objective observer to justify the imposition of a sentence of imprisonment on this basis. During the passage of the Protection from Harassment Act 1997, emphasis was given to the need to ensure that the offence of harassment would be satisfied according to the subjective evaluation of the particular victim. This was an explicit acknowledgement of the unique nature of stalking in which conduct that may appear perfectly innocuous to a third party may be distressing in the extreme given the context between the parties (Finch 2000). Therefore, stalking is not an offence that is amenable to an objective evaluation of its seriousness or impact. Studies into the public perception of stalking indicate that it is commonly viewed as a minor irritation, not a serious criminal offence, thus it is not surprising that so few stalking cases satisfy the seriousness criteria. Taken in conjunction with the failure of many stalking cases to fall within the definition of a ‘violent offence’, this would appear to provide an explanation for the low rate of imprisonment in stalking cases.

**Violent Crime or Crime of Violence?**

The restrictive definition of a ‘violent offence’ contained in the Powers of Criminal Courts (Sentencing) Act 2000 excludes a significant number of crimes from its remit. The most prevalent academic and judicial criticism has been focused upon the exclusion of making threats to kill under Section 16 of the Offences against the Person Act 1861 (Ashworth 2000; Thomas 2001). As this offence does not require an intention on the part of the defendant that the threat be carried out, an essential element of the definition of ‘violent crime’ – the intention or likelihood that the conduct will result in death or physical injury – is absent. Thus a situation arises whereby a defendant who makes a threat to kill, intending to carry it out, has committed a violent offence whilst a defendant who utters a similar threat with no intention of carrying it out, has not committed a violent offence.

It is the emphasis on the conduct that leads to the harm rather than the nature of the harm itself that is the limiting factor. Harris advocates an approach which distinguishes between a violent act, which is concerned with describing the nature of the conduct involved, and an act of violence, which
describes not the consequences of a violent act but harmful consequences of any act (Harris 1980). This approach involves more than a shift of adjective from cause to consequences; it accentuates the fact that a violent act and an act of violence are not necessarily concomitant. Not every violent act, for example, results in violence; throwing a brick at another person is clearly a violent act as it is appropriate to characterise the conduct involved as violent of itself. However, should the brick miss its target, no act of violence has occurred as no harmful consequences can be attributed to the violent act. Conversely, not every act that causes harmful consequences can properly be described as a violent act. The administration of poison, for example, involves no conduct that could be described as violent but the consequence would certainly merit characterisation as a form of violence due to the harmful impact on the victim.

If this delineation between a violent act and an act of violence is accepted, it would appear that the focus of the law upon the causative element of the harm, rather than the harm itself, artificially restricts the scope of the law. The wording of Section 161(3) of the Powers of Criminal Courts (Sentencing) Act 2000 encourages this focus upon the conduct rather than the consequences as it includes conduct intended or likely to cause physical harm regardless of whether or not this harmful consequence actually occurs. This gives rise to the question of whether it is right for the law to treat the defendant who seeks to cause harm by using physical violence but is unsuccessful more severely than the defendant who deliberately causes harm using non-violent means. The current approach to sentencing ensures that the majority of stalkers will not be deemed to have committed a violent offence for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000 despite any serious psychological impact that the conduct has upon the victim. This proposition remains unchanged even if the stalker has deliberately undertaken a campaign of harassment with the intention of causing the victim to suffer psychological damage. An approach to sentencing that focused upon the consequences would be broader in scope and would be applicable to all those who deliberately or recklessly cause serious and harmful consequences regardless of the means employed to do so.

However, this approach to an act of violence cannot be unquestioningly accepted. An alternative approach would be to regard an act of violence as a description of the harm caused by a violent act hence refocusing attention upon the cause rather than the consequences. This approach currently prevails in relation to the definition of an act of violence for the purposes of the Criminal Injuries Compensation Scheme, under which compensation is payable to those who have sustained ‘criminal injury’, which is defined as personal injury directly attributable to a crime of violence.

In the early stages of its operation, there was some indication that the courts were concerned with the consequences of an act when determining whether a crime of violence had occurred. However, in the leading case of R v. Criminal Injuries Compensation Board ex parte Warner [1987] QB 74, the Court of Appeal rejected the consequentialist stance whereby any crime likely to cause injury, whether physical or psychological, would amount to a crime of violence. Lawton LJ held that to focus on the consequences of the
The Halliday Report: A Solution to the Problem?

Stalking is characterised by the intransigence of the stalker and the interminable nature of the conduct. For many victims, it is the ongoing nature of the conduct and the uncertainty that results from this that causes them the most distress:

This is one of the defining characteristics of stalking: irrespective of the nature of the component acts, stalking can be distressing and threatening to a victim because of its sheer oppressive persistence. (Brown 2000, p. iii)

In the light of the difficulties that have been outlined in justifying the imposition of a custodial sentence in serious stalking cases under the current sentencing framework, it could be anticipated that the proposals contained...
The Halliday report recommends the introduction of a new statutory presumption that sentence severity should increase in accordance with the defendant’s history of offending. As such, previous convictions would amount to an aggravating factor that would lead to the imposition of a more severe sentence than that which would otherwise be imposed for the instant offence. Such an approach would increase the likelihood that a stalker who persisted with the harassment of the victim following conviction would be sentenced to imprisonment on subsequent occasions. As such, it could be seen to represent an improvement on the current position in terms of sentencing persistent stalkers. However, such a proposal does not address the difficulties that have been outlined in imposing a custodial sentence on the first occasion that a stalker appears before the courts.

It could be argued that the low threshold of criminal liability created by Section 2 of the Protection from Harassment Act 1997 facilitates early intervention in stalking cases, thus it is unlikely that a sentence of imprisonment will ever be justified on the first occasion. Whilst it is true that Section 2 renders early intervention possible, it does not render early intervention inevitable. As such, the victim may have experienced prolonged victimisation and suffered serious psychological harm by the time a prosecution is forthcoming. This is particularly so in cases where the stalker’s identity is unknown to the victim. Moreover, the Crown Prosecution Service urges the police to exercise caution in basing a prosecution for harassment on only two incidents. The rationale for this is that although such a prosecution is a technical possibility, it is a risk in practical terms, as the prosecution would collapse if one of the incidents were to be disproved. As such, it is ultimately in the interests of the victim to endure the harassment for a longer period of time to ensure a greater prospect of success once the case reaches court. In addition to this, police policy regarding harassment cases may preclude the possibility of an active investigation at the early stages of stalking. For example, the Operational Guidance of one police force notes that the resource implications of the investigation of harassment complaints is such that only serious cases — those in which there is a serious deterioration in the victim’s quality of life — should be investigated. Therefore, a case which did not initially merit investigation may continue until the victim has experienced a sufficient deterioration of quality of life by which time the conduct and its impact upon the victim may be so severe that a custodial sentence is entirely appropriate. Unless such a case were to satisfy the seriousness requirement, the stalker would not receive a sentence of imprisonment under the current sentencing framework. The proposals outlined in the Halliday report would not significantly improve this position in terms of a first offence hence does little to strengthen the current law in this respect.

Conclusion

The recommendations of the Halliday report, whilst strengthening the ability of the law to deal with persistent stalkers, do not appear to remove the
impediments to the imposition of a custodial sentence for a first stalking offence, regardless of the level of harm caused to the victim. The limitations to the availability of custodial sentences under the current sentencing framework appear equally applicable to the approach advocated in the Halliday report. The imprisonment of an offender is indicative of the seriousness with which conduct is regarded hence this disinclination to imprison stalkers may contribute to the public perception that stalking is not a serious crime. As public perception is one of the factors that is taken into account when determining whether the seriousness justification for imprisonment is satisfied, this creates a somewhat circular and self-defeating situation. Stalking will not be viewed as a serious crime until rates of imprisonment increase but rates of imprisonment cannot increase until stalking is viewed as a serious crime!

Equally problematic is the exclusive emphasis on physical harm in the determination of whether a crime is to be regarded as a violent offence for the purposes of the Powers of Criminal Courts (Sentencing) Act 2000. This prioritisation of physical harm denies the seriousness of the potentially life-long consequences of stalking victimisation. Surely the correct approach to determining whether a crime is violent is to ignore the causative act itself and to focus upon the nature of the harm that arises as a consequence of the conduct. Until such an approach is adopted, psychological harm will continue to be subordinated to physical harm and the few stalkers will be imprisoned hence perpetuating the perception of stalking as a minor and inconsequential crime.

References


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