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Response to	Introducing a stalking protection order
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The MA welcomes the opportunity to contribute to this consultation. As a charity whose members are judicial office holders, it does not generally comment on the principle of whether new offences or legal impositions should be introduced. However, the MA can comment on the sound administration of the law and makes its observations in that spirit.

Would it be appropriate for magistrates' courts to issue stalking protection orders?

The MA assumes that stalking protection orders (SPOs) would ultimately be imposed by a court. It sees no reason why, with appropriate training and guidance, this should not be the responsibility of the magistrates' courts. Magistrates' courts already deal with civil injunctions and benches have the experience and competency to apply different burdens of proof where this is required.

Domestic violence protection orders (DVPOs) are currently issued by the magistrates' courts on application from the police, after a domestic violence protection notice (DVPN) has been issued. It has also been widely agreed that ensuring that the victim does not have to apply for injunctions of this kind is welcome in the interests of being able to protect him or her more effectively; an order applied for by the police in the magistrates' courts, rather than (for instance) a Section 3 injunction for which the victim must apply in the civil courts, meets this requirement better.

The MA assumes that SPOs are, by analogy with DVPOs, only intended to apply to over-18s. It would argue that any proposal for SPOs or an equivalent provision for under-18s should be consulted on separately, to ensure that the distinctive features of youth justice, including the focus on the welfare of the young person, are fully accounted for. While the MA would maintain that any SPO would be best handled by magistrates for over-18s as well (especially given the connection between the SPO and a potential criminal offence), it is particularly appropriate that any kind of SPO for under-18s should be a matter for the youth courts. Anti-social behaviour injunctions for young people are imposed in the youth courts, even though they are handled in the county courts for over-18s, with youth offending team (YOT) involvement before it reaches the court.

Positive requirements in a SPO

Generally speaking, magistrates also welcome the ability to take decisions which address the causes of behaviour brought before their courts. Positive requirements of a SPO such as a mental health assessment or participation in anger management courses could theoretically fit within this category. However, consideration would need to be given to the question of the basis on which such requirements might be recommended. The Government would also need to take a view on what kind of requirements it would be acceptable to impose via a civil injunction with a civil standard of proof.

The MA would also note that clarity on who is able to impose requirements to address root causes, rather than to prevent stalking of a particular victim in the immediate term, would be important. It would presume that these would need to be imposed by a court. Such requirements also raise the question of how long a SPO could last for: DVPOs can last between 14 and 28 days, but requirements of this kind would presumably tend to operate over longer periods. Crucially, DVPOs are imposed with a view to giving a victim immediate protection and time to decide what to do next. They are not a substitute for the normal criminal justice process. The MA would not want to see SPOs used as such a substitute.

Breaches of, appeals against and awareness of SPOs

It is not for the MA to determine which penalty should be applied for breach. It would note that both contempt of court and criminal breach attract the criminal standard of proof, which is right for any proceeding in which custody might result.

Given that SPOs seem to be envisaged to continue for longer periods of time than DVPOs, the MA would point out the importance of considering what rights of appeal would be afforded to the subject of a SPO. The MA would also point out that it will be important to ensure that the Family Court is aware of SPOs in any relevant cases which come before it, which might include child protection issues.

Training and guidance on stalking

The current offence of stalking appears relatively infrequently in the courts, with 495 people convicted in 2014. There is currently no sentencing guideline relating to stalking, and while the MA understands that the CPS and police have had training in this area, magistrates have not.

No definition of stalking is expressly given in the current offence, and if there is not to be any clearer definition as part of a SPO, training and guidance will be all the more important – for magistrates and, indeed, for all parties involved in applying for or granting an order. Victims' confidence in SPOs will rely on applications being dealt with fairly and appropriately by all parties involved.