

STALKING PROTECTION ORDERS

As of January 2020 the Police now have the ability to apply to the Magistrates' Court for a Stalking Protection Order (SPO) under the Stalking Protection Act 2019. This is an order solely sought by the Police, a complainant of stalking cannot apply to the courts directly as they would with Non-Molestation Orders (NMOs) or Restraining Orders.

The Police may apply for a SPO where:

- A victim has reported stalking behaviour, or it has come to the attention of police during a separate investigation, or by other means (such as a third-party referral through the MARAC/MAPPA processes or from another member of the public);
- At any point during the course of an investigation, up to and including the point of conviction (or acquittal), or where an investigation has not yet commenced; **and**
- There is a belief the victim is at risk of harm from the respondent and an order is necessary to protect them from such risk.

A SPO is a civil order which carries a criminal conviction for any breach, much like a Domestic Violence Protection Order (DVPO).

The Police can apply to the court for a Full or Interim SPO.

Applications for either must be made to the Court and there is no Domestic Violence Protection Notice (DVPN) equivalent. Please see

our article on DVPNs and DVPOs for further information, available [here](#).

SPOs are designed as an intervention for stalking behaviour prior to criminal court proceedings and/or conviction. However an SPO can be applied for at any point during criminal investigations and proceedings.

They can be imposed on adults aged 18 and over as well as children aged 10 to 18 years old. Any SPO on a youth must be dealt with by the Youth Court.

Duration

An SPO can last for a minimum of 2 years up to an indefinite period (until further order) and can contain both prohibitions and/or requirements.

Application Process & Test Applied by the Courts

Whilst the application process for both an interim and full SPO is the same, the test applied by the Court is different.

Interim SPO

When considering whether to make an interim order, the court can make one *'if it considers it appropriate to do so'* as per section 5(3) of the Stalking Protection Act 2019.

An interim SPO could potentially be made more quickly on an immediate assessment of risk, before a full examination of the evidence to determine the application for a full SPO. This is a lower threshold than that required to make a full SPO.

It is likely that the courts will not apply the criminal standard of proof (beyond reasonable doubt) to the fact-finding elements of an interim SPO application, but rather apply a lower test, namely treating it as an exercise of judgement or evaluation.

Full SPO

When considering whether to make a full SPO the court can make one if it is '*satisfied that an order is 'necessary to protect another person'*' from stalking as per section 2(1) of the Stalking Protection Act 2019.

It is likely that the courts will apply the criminal standard of proof (beyond reasonable doubt) to the fact-finding elements of a full SPO application.

The questions for the courts to consider in respect of fact-finding will be:

1. Whether the defendant has carried out acts associated with stalking; **and**
2. Whether the defendant poses a risk associated with stalking to another person.

It is likely that the courts will not apply the criminal standard to the non-fact-finding elements of both the interim and full SPO applications, namely whether they consider an SPO is either 'appropriate' (Interim) or 'necessary' (Full).

Hearing

An application will be made to the court by the Police and a Summons will then be sent to the respondent. If the application is

contested, then the evidence will need to be heard. As with DVPOs, the rules in respect of civil evidence apply and so hearsay evidence is admissible.

The matter could be adjourned but it seems likely that SPO application will be dealt with in the same way as DVPOs especially considering that a criminal investigation does not even have to be ongoing at the time of the application.

Notification

Anyone subject to a SPO must notify the Police of their name(s) and their home address within a period of 3 days from the date the SPO is served.

Failure to do so is a criminal offence, the same as with notification requirements for sexual offences, and carries a maximum of 5 years' imprisonment. The Sentencing Guidelines for the Sexual Offences Act 2003 notification offence will likely be the most helpful.

Breach of a SPO

Any breach of a SPO is punishable by either the Magistrates' Court or the Crown Court and carries a maximum sentence of 5 years' imprisonment. A breach of an interim or full SPO carries the same sentence.