

HARASSMENT (Simpliciter)

Protection from Harassment (NI) Order 1997

3. - (1) A person shall 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.
- (2) For the purposes of this Article, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
- (3) Paragraph (1) does not apply to a course of conduct if the person who pursued it shows-
- (a) that it was pursued for the purpose of preventing or detecting crime;
 - (b) that it was pursued under any statutory provision or rule of law or to comply with any condition or requirement imposed by any person under any statutory provision; or
 - (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.
4. - (1) A person who pursues a course of conduct in breach of Article 3 shall be guilty of an offence.
- ...

Maximum Sentence:

Protection from Harassment (NI) Order 1997, Article 4(2)

Indictment: 2 years imprisonment or an unlimited fine or both (for offences committed on or after 28 September 2004)

Summary: 6 months imprisonment or a fine not exceeding the prescribed sum (£5,000) or both

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Small number of incidents over a relatively short period of time	Community Order + Compensation Order	Fine to Community Order + Compensation Order + Restraining Order
Persistent contact to victim's home, workplace or during the night	1 month Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order + Restraining Order
Taking/making/distributing photographs or images of the victim; OR Sending/publishing offensive material or messages (including the use of social media);	2 months Custody + Compensation Order	1-6 months Custody + Compensation Order + Restraining Order

Examples of Possible Aggravating Factors of Offence

1. Planning or pre-meditation
2. Offender ignores obvious distress to victim
3. Offender involves other persons to assist in the offence
4. Using contact arrangements with a child to instigate/perpetuate the offence
5. Victim requires medical treatment/counselling as a result of the offence
6. Offence motivated by, or demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.*
7. Offence caused children to be distressed/frightened
8. Offence committed in the context of bullying at college/university/workplace/etc.
9. Victim forced to leave home
10. Victim particularly vulnerable
11. Creating email/website accounts purporting to be the victim
12. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying)

Examples of Possible Mitigating Factor of Offence

1. Provocation

Relevant Cases:

NI Cases:

N/A

English Cases:

1. R v Liddle; R v Hayes [2000] 1 Cr App R(S) 131

2. R v Debnath [2006] 2 Cr.App.R.(S.) 25
3. R v Buxton and others [2011] 2 Cr.App.R.(S.) 23

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a 'Restraining Order' prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order
3. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' where it relates to displaying any or other thing which is threatening,, abusive or insulting – Section 44 of the Justice Act (NI) 2011