

HARASSMENT CAUSING FEAR OF VIOLENCE

Protection from Harassment (NI) Order 1997

6. - (1) A person whose course of conduct causes another to fear, on, at least two occasions, that violence will be used against him shall be guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.
- (2) For the purposes of this Article, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.
- (3) It is a defence for a person charged with an offence under this Article to show that-
- (a) his course of conduct was pursued for the purpose of preventing or detecting crime;
 - (b) his course of conduct 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) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

Maximum Sentence:

Protection from Harassment (NI) Order 1997, Article 6(4)

Indictment: 5 years imprisonment or an unlimited fine or both (for offences committed before 28 September 2004)

7 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	1 month Custody + Compensation Order	Community Order to 3 months Custody + Compensation Order + Restraining Order
Persistent contact to victim's home, workplace or during the night	2 months Custody + Compensation Order	Community Order to 6 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); OR Threats of sexual violence	4 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. Evidence of previous instances of actual violence by the offender against the victim
12. Creating email/website accounts purporting to be the victim
13. 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

<u>Relevant Cases:</u>	
<i>NI Cases:</i> N/A	<i>English Cases:</i> 1. R v Debnath [2006] 2 Cr.App.R.(S.) 25 2. R v Buxton and others [2011] 2 Cr.App.R.(S.) 23
<u>Notes:</u>	
<p>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)</p> <p>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</p> <p>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</p>	