



Joint Guidance for

Candidates in Elections

When it goes too far



Police Service
of Northern Ireland



**Public
Prosecution
Service**



**The Electoral Office for
Northern Ireland**

**The
Electoral
Commission**

Contents

Why this guide?	3
What might happen?	3
Protecting Yourself, Family, Friends and Colleagues	4
When Should I Contact the Police?	5
Key Links	5
Legislative Guidance	6
Conclusion	9

Why this guide?

Political debate and discussion underpins our democratic process and is a key component of public life. But on occasions this can go too far spilling over into intimidatory behaviour.

This can cause candidates to question whether they have made the right decision to participate and engage in public life. Female candidates in particular may suffer a disproportionate level of unacceptable behaviour including online abuse and harassment.

The Police Service of Northern Ireland, Electoral Commission, Electoral Office and the Public Prosecution Service have produced this guidance to give candidates the knowledge and tools to recognise and respond to intimidatory and criminal behaviour.

What might happen?

The election period places a number of pressures on candidates. This will include greater scrutiny on you and your political standpoint. You will be subject to heightened public exposure.

For the majority of candidates, and for most of the time, these pressures will not impact on your personal safety. However, there have been occasions where candidates have been exposed to unacceptable levels of harassment and intimidation. This can have a significant psychological impact on candidates and those close to them, and can affect their wellbeing. In some cases, these behaviours and actions have reached the criminal threshold. The worst examples

have led to violence and injury.

It is important to recognise what might happen and the action you can take. The advice contained in this guide applies to both your political and private life – harassment and intimidation may also be directed at your family, friends, and co-workers. In addition to occurring in public life, these behaviours and actions can primarily occur in virtual ('online') spaces.

Candidates should be aware of the National and Northern Ireland security threat level.¹ This forms the security backdrop and is important to be aware of as a candidate in a publicised election campaign.

¹ <https://www.gov.uk/terrorism-national-emergency> Terrorism and national emergencies: Terrorism threat levels (www.gov.uk)

Protecting Yourself, Family, Friends and Colleagues

There are steps you can take to help protect yourself and others, for example:

- When at hustings or public meetings, be aware of your surroundings and if something or someone causes you to be concerned for your safety, report it to the police using 999 if the threat or danger is immediate and 101 to report suspicious activity that has already occurred.
- Consider your safety when canvassing and visiting voters at the door.
 1. While political debate is a key part of our democracy, if you feel unsafe then disengage.
 2. Avoid lone working and conduct visits accompanied.
 3. Ensure colleagues or family are aware of where you are canvassing, timings and your expected return time. Have a plan and stick to it.
 4. If you are unsure of a location or property whilst canvassing, consider moving on and ensure you are making safe decisions on the doorstep.
- Keep records of any intimidating behaviour (what, where, when) – the more details the better.
- Do not engage with individuals who are stalking/harassing you (offline and online).
- Report intimidation to your internet service provider/mobile phone company.
- Use 'Report Abuse' tools on social media platforms.
- Block/report trolls. You can disable comments on Instagram or Facebook on a post by post basis if necessary.
- Conduct an online health check - review online information and minimise availability of personal information.
- Seek advice from your local police on personal safety and building security (e.g., home/workplace security survey).

Further advice and information is available on the Police Service of Northern Ireland web pages but if you feel, you or others are in immediate danger, call police on **999**. Report all other suspected criminal matters via **101**.

When Should I Contact the Police?

The actions and behaviours listed below may constitute a criminal offence and should be brought to the attention of your local police. The legislative guidance in this guide provides more detail and information on types of criminal offences:

- Communications, on or offline, which contain abusive or threatening language.
- Repeated unwanted contact may constitute harassment or stalking.
- Racial, homophobic or other discriminatory abuse or threats.
- Fixation on you or an issue associated with your campaign.

The following indicators ('red flags') may signal an escalation and should be brought to the immediate attention of your local police (dial **999**):

- Threat of imminent violence.
- Fixated ideas – if someone seems set on a certain course of action or is making a very specific type of threat or reference to a plan.
- If you become aware that the individual has access to weapons or has weapons skills.
- If the person releases personal information about you not already in the public domain.

Key Links

Electoral Commission www.electoralcommission.org.uk

Police Service Northern Ireland www.psni.police.uk

Public Prosecution Service NI www.ppsni.gov.uk

Electoral Office Northern Ireland (EONI) www.eoni.org.uk

Practical advice and information available from:

National Cyber Security Centre (NCSC) – Election Guidance for Local Authorities
www.ncsc.gov.uk/guidance/election-guidance-for-local-authorities

UK Legislation www.legislation.gov.uk

Stalking & Harassment [What is stalking and harassment? \(psni.police.uk\)](http://www.psni.police.uk)

Protecting Yourself When Driving [Protect yourself when driving \(psni.police.uk\)](http://www.psni.police.uk)

Protecting Your Home [Protecting Your Home \(psni.police.uk\)](http://www.psni.police.uk)

Protecting Yourself (Out & About)

[Protecting yourself | How to stay safe when out and about \(psni.police.uk\)](http://www.psni.police.uk)

Cyber Aware www.ncsc.gov.uk/cyberaware

Get Safe Online www.getsafeonline.org

Suzy Lamplugh Trust www.suzylamplugh.org

Victim Support NI Telephone: 028 90 243133 www.victimsupportni.com

Twitter, Facebook and YouTube have provided guidance to help candidates better understand:

- What types of content and activity breach each service's terms and conditions;
- How candidates can report directly to companies instances where they believe content may breach terms and conditions; and
- The response candidates can expect from each company once an issue has been reported.

Legislative Guidance

1. This section provides guidance to candidates in elections about behaviours they may experience during a campaign which may be likely to constitute a criminal offence.
2. There is no requirement or expectation for a person reporting an allegation of crime to have knowledge of the criminal law. This guidance is intended simply to assist candidates to recognise conduct which may or may not be caught by the criminal law, in order to inform and assist them in any contact they have with the police and potentially the wider criminal justice system. In any circumstance where a candidate in an election believes that a criminal offence may have been committed, they are encouraged to report it to the police.
3. The police are responsible for investigating an allegation that a criminal offence may have been committed. They will take statements and gather evidence. Where there is sufficient evidence to suspect the commission of a criminal offence by an identifiable individual, police will send a file to the Public Prosecution Service (PPS). The decision to prosecute a person for a criminal offence lies with the PPS. Any decision to prosecute must be taken in accordance with the PPS Code for Prosecutors. A prosecution may only be commenced by the PPS where it is satisfied the Test for Prosecution is met. The Test for Prosecution is met if:
 - (i) The evidence which can be presented in court is sufficient to provide a reasonable prospect of conviction - the Evidential Test; and
 - (ii) Prosecution is required in the public interest - the Public Interest Test.
4. This guidance cannot cover every eventuality and is intended to outline some of the criminal offences a candidate in an election may encounter. The information should not be treated as legal advice nor is it meant to be an exhaustive account of these areas of law.

Public Order Offences

These offences contrary to the Public Order (NI) Order 1987 relate to acts intended or likely to stir up hatred or arouse fear:

(i) Use of Words or Behaviour or Display of Written Material - Article 9

(ii) Publishing or Distributing Written Material - Article 10

Under this Article it is a defence for an accused who is not shown to have intended to stir up hatred or arouse fear to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(iii) Distributing, Showing or Playing a Recording - Article 11

Under this Article it is a defence for an accused who is not shown to have intended to stir up hatred or arouse fear to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(iv) Possession of Matter Intending or Likely to Stir-up Hatred or Arouse Fear - Article 13

Other public order offences contrary to the 1987 Order may include:

- (i) Disorderly behaviour in a public place – Article 18(1)
- (ii) Breach of the peace in a public place – Article 18(2)
- (iii) Provocative Conduct in a Public Place or at a Public Meeting or Procession - Article 19

Criminal Damage

Offences contrary to the Criminal Damage (Northern Ireland) Order 1977 are:

- (i) Destroying or damaging property - Article 3
- (ii) Threats to destroy or damage property - Article 4
- (iii) Possessing anything with intent to destroy or damage property - Article 5

Assaults

The most common offences of assault, in ascending order of seriousness are:

- (i) Common assault - Offences Against the Person Act 1861 section 42
- (ii) Assault Occasioning Actual Bodily Harm - Offences Against the Person Act 1861 section 47
- (iii) Grievous Bodily Harm or Wounding - Offences Against the Person Act 1861 section 20
- (iv) Grievous Bodily Harm or Wounding with intent to commit Grievous Bodily Harm - Offences Against the Person Act 1861 section 18

Threats to Kill

Under section 16 of the Offences Against the Person Act 1861 a person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person may be guilty of an offence.

Harassment

Under Article 3 of the Protection from Harassment Order (NI) 1997 it is an offence for a person to pursue a course of conduct that amounts to harassment of another or which they know or ought to have known amounts to harassment. A course of conduct must involve conduct on at least two occasions and includes speech. Harassing a person includes alarming the person or causing the person distress.

Under Article 6 of the 1997 Order it is an offence for a person to pursue a course of conduct causing another to fear, on at least two occasions, that violence will be used against them. An individual 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.

Stalking

Under Section 1 of the Protection from Stalking Act (NI) 2022 Act it is an offence for a person to engage in a course of conduct that causes another person to suffer fear, alarm or substantial distress; or is such that a reasonable person would consider to be likely to cause fear, alarm or substantial distress; and that the person engages in the course of conduct with the intention of causing another to suffer fear, alarm or substantial distress; or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause fear, alarm or substantial distress.

Examples of conduct that could amount to stalking include:

- Following a person or any other connected person;
- Loitering in any place (whether public or private);
- Watching or spying on a person or any other connected person.

‘Substantial distress’ may be evidenced in many ways, such as a person putting additional security measures in place at home, deleting or stopping use of social media accounts, not leaving home unaccompanied, or moving house on a permanent or temporary basis.

Threatening or Abusive Behaviour

Under Section 2 of the Protection from Stalking Act (NI) 2022 it is an offence for an individual to behave in a threatening or abusive manner; and the behaviour would be likely to cause a reasonable person to suffer fear or alarm; and the individual intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour causes fear or alarm. The range of behaviours considered capable of causing a reasonable person to suffer fear or alarm are similar to the behaviours that amount to stalking as set out above.

Hate Crime

Hate Crime is defined as any criminal offence which is perceived by the victim, or any other person, to be motivated by hostility or prejudice towards someone based on a personal characteristic. The Police Service of Northern Ireland also use the principles of this definition to record non-crime hate incidents.

There are six strands of hate motivation. They are race, homophobia (sexual orientation), sectarianism, faith/religion (non-sectarian), disability and transphobia.

Communications Offences

Section 1 of the Malicious Communications Act 1988 and Section 127 of the Communications Act 2003 criminalise the sending of certain communications including those alleged to be indecent, grossly offensive or menacing. Menacing means creating a sense of apprehension or fear in the likely recipient. There is a high threshold to meet the objective test of whether or not the communication is grossly offensive.

A prosecution is only viable where the communication in question crosses the high threshold necessary to protect freedom of expression, even unwelcome freedom of expression, particularly in the course of robust political debate.

Communication which is merely any one of the following is likely to be protected as freedom of expression:

- Offensive, shocking or disturbing; or
- Satirical, iconoclastic or rude comment; or
- The expression of unpopular or unfashionable opinion about serious or trivial matters, or banter or humour, even if distasteful to some or painful to those subjected to it; or
- An uninhibited and ill thought-out contribution to a casual conversation where participants expect a certain amount of repartee or 'give and take'.

A prosecution is only likely to be viable where a communication goes beyond the above.

Election Offences

The provisions of the Representation of the People Act 1983 (RPA 1983) provide for the offence of making or publishing a false statement of fact about a candidate's personal character or conduct, contrary to section 106. The false statement must be in relation to the candidate's personal character or conduct, rather than their political views, reputation or criticism of their public acts. It is a defence to show they had reasonable grounds for believing and did believe that the statement was true. The offence is only committed where it is "for the purpose of affecting the return of any candidate at the election" and therefore only relates to conduct during an election period. It should be noted that the RPA 1983 provides for other misconduct offences during an election period.

Conclusion

If a candidate in an election believes that a criminal offence has been committed, they are encouraged to report it to the police.

This guidance may assist when a candidate has contact with the police or the wider criminal justice system. The application of the law is in each case fact - and context - sensitive which must be borne in mind when applying general guidance of this kind to real life situations.



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