

Protection from domestic abuse

The Civil Court's Protective Orders

The following orders under Part IV of the Family Law Act 1996 are commonly referred to as injunctions. They are civil remedies aimed at protecting the applicant and any children involved against harmful behaviour.

Non-Molestation Orders - Family Proceedings Court and County Court

These Courts can grant an Order that prohibits the perpetrator from 'molesting' the applicant or a child.

The term 'molestation' covers a wide range of behaviour. For example, it will cover physical assaults and threats and can even prevent the perpetrator from entering a specific area. Protection also extends to pestering behaviour, such as nuisance telephone calls and abusive letters.

Q Who can make an Application?

1 "Associated Persons":

An application can be made by any associated person within existing family court proceedings, or by a free-standing application. Associated persons include:

- parties that have been married or were civil partners;
- cohabitants or former cohabitants;
- parties that live or have lived in the same household, other than because one of them is or was the other's employee, tenant, lodger or boarder;

- immediate relations and other close relations such as grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, step-parents and step-children;
- those who have agreed to marry, or have had an intimate personal relationship;
- the parents of a child or who have had parental responsibility for a child; and
- those that are party to the same family court proceedings.

2 The Court:

In family proceedings the Court is also free to make an order of its own volition. Since 1 July 2007, the Court must also consider making a non-molestation order when considering whether to make an occupation order (see below),.

3 A Child:

Children under 18 may apply for a non-molestation order, but if they are under 16 they will need the permission of the Court, given only if the Court is satisfied that the child has sufficient understanding.

Q How long can an order last?

A non-molestation order can be made for a specified period or until another order is made, that is, for an indefinite period of time.

Q What factors will the Court consider?

The Court will... "have regard to all of the circumstances of the case including the need to secure the health, safety and well-being of the applicant and any relevant

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child." Therefore, the applicant must show a real need for protection.

Occupation Orders

These orders regulate occupation of the home. They can include both occupation and exclusion provisions, and even give the right to remain in the home for a period, if the applicant doesn't have the automatic legal right to live there. Exclusion provisions restrict or suspend a the right to occupy the home e.g. an order to leave and not return, or not to come within a specified distance of the home.

Q Who can make an Application?

- 1 Associated persons (see above)- if they are legally entitled to occupy the home.
- 2 Former spouses or civil partners who have no existing legal right to occupy the home, but the other party does.
- 3 Cohabitants or former cohabitants who have no existing legal right to occupy the home, but the other party does.
- 4 Spouses of former spouses where neither party is legally entitled to occupy the home.
- 5 Cohabitants or former cohabitants where neither party is legally entitled to occupy the home.

Q How long can an order last?

This will depend upon which of the above 5 circumstances apply.

Q What factors will the Court consider?

The Court will consider a number of factors, such as the housing needs and housing resources of parties; the respective financial resources of the parties; the likely effect of any order, or any decision by the Court not to make an order, on the health, safety or well-being of the parties and any relevant child; and the conduct of the parties.

In certain cases, other factors apply such as the length of time since the parties lived together; the length of time since the marriage or civil partnership was dissolved or annulled; the existence of any other pending court proceedings; the nature of the parties' relationship and the level of commitment involved; the length the cohabitation; whether there are or have been any children who are children of both parties or for whom both parties have parental responsibility.

Sometimes also the Court has to apply a 'Balance of Harm Test' or 'Balance of Harm Questions'. This is a comparison of the harm that would be done if an order were to be made with the harm that would be done if no order is made.

The courts are generally reluctant to grant orders (occupation orders in particular) where the respondent has been given no notice of the court hearing. Therefore consideration is given to whether it would be better to apply to reduce the notice period instead. An order obtained without notice to the other party will only provide temporary (interim) protection. There will still be a hearing for both to attend to set out their case.

Q What Happens if there is a Breach of an Occupation or Non-Molestation Order?

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Breach of a non-molestation order is a criminal offence punishable by up to five years imprisonment in the Crown Court or 12 months imprisonment in the Magistrates' Court.

A power of arrest can be attached to occupation orders only. This means that a police officer will be able to arrest without a warrant someone breaking the order, if s/he has reasonable cause to suspect that there is a breach. If no power of arrest has been attached, it is still possible to apply to the Court for a warrant of arrest. The penalty imposed will depend upon whether the matter is brought before the County Court or Family Proceedings Court and how serious is the breach, but can include committal to prison, or a fine.

Additional Provisions

When making a some types of Occupation Order, the Court is also able to order either party to repair and maintain the home; pay rent, mortgage payments or other expenses; grant possession or use of the furniture or other contents of the home and to keep the contents of the home secure.

Protection from Harassment Act 1997 - Criminal Proceedings

This Act is a mixture of civil and criminal statute. It creates criminal offences of "criminal harassment" and "putting someone in fear of violence". The Criminal Courts have the power to make restraining orders stopping the perpetrator from engaging in further harassment.

Protection from Harassment Act 1997 - Civil Proceedings

A civil claim is possible where a person pursues a course of conduct that amounts to harassment, where he knows or ought to know the behaviour amounts to harassment. There is no definition of 'harassment' in the Act, but it will include 'alarming the person or causing them distress'. A 'course of conduct' must include at least two events. The victim may claim damages or an injunction - a restraining order. If the injunction is breached the victim can apply for a warrant of arrest. Breach of the injunction may be a criminal offence.

Other Options

1 Warning letter:

A solicitor's letter advising the perpetrator to desist with their unacceptable behaviour or face court action for failure to comply, may be sufficient deterrent. It is important to think carefully before taking this step, without seeking any further protection.

2 Police Contact:

Many police forces now have their own domestic violence unit or special cases unit. Consideration should be given to reporting any violent, threatening or pestering behaviour to the police so that they can consider taking further action, such as arresting the perpetrator.

3 Undertakings to the Court:

The Court is able to accept an undertaking in any case where it has the power to make a non-molestation or occupation order. An

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undertaking is an enforceable promise made by the respondent to the court and will be based on similar terms to the court order. But this will not always be an option. The Court will not accept an undertaking in a case where it would otherwise attach a power of arrest to an occupation order, or where the respondent has used or threatened violence or the order is necessary so that any breach can be punishable as a criminal offence.

4 Local Authority Duties and Responsibilities:

Local Authorities may seek to prevent domestic violence as part of their housing management functions. They can apply for injunctions in certain circumstances. They have responsibilities to publish various policies setting out their approach to anti-social behaviour generally, as well as considering the reduction of crime and disorder and well-being of the local area. This information and information about refuges and temporary should be available from them.

This information sheet has been prepared to highlight some key issues relating to domestic abuse. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at November 2008 and may be affected by subsequent changes in the law.

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