

Domestic Abuse and the Family Law Act 1996

Domestic abuse is any incident or pattern of controlling, coercive or threatening behaviour, violence or abuse (including psychological, physical, sexual, financial or emotional abuse) between people who are, or have been, intimate partners or family members, regardless of gender or sexuality.

If you are or have been a victim of domestic abuse there are several legal protective measures which may be open to you. These include recourse to the criminal law for those who have suffered physical assault or harassment (and reporting an incident to the police is recommended for safety reasons even if criminal charges are not later pursued). Alternatively, or in addition to the criminal law, civil law remedies under the Family Law Act 1996 are available to protect you provided you fall in to a category of person who is “associated” with your abuser.

These civil law remedies are known as injunctions and can take the form of a ‘non-molestation order’ or an ‘occupation order’ and it is possible to obtain one or both of these depending on the circumstances of your case.

Non-molestation orders

A non-molestation order forbids the abuser (known as the ‘respondent’) from using or threatening violence against you or your child, or intimidating, harassing or pestering you. The order can include a mixture of appropriately tailored provisions to fit the behaviour complained of, for example, such as forbidding the respondent from:

- using or threatening violence against you or instructing any other person to do so
- going within a certain distance of your home or workplace
- communicating with or attempting to communicate with you by any means whether directly or indirectly

An example of a non-molestation order can be seen [here](#).

If a non-molestation order is breached then it is contempt of court, but importantly it is also a criminal offence whereby the respondent can be automatically and immediately arrested without having to apply for a separate arrest warrant and can be fined or imprisoned for up to five years.

Who can apply for a non-molestation order?

For an application to be made the applicant and the respondent must be what are called ‘associated persons’. You are ‘associated’ persons if you:

- are or have been married or civil partners;
- are or have cohabited;
- live in the same household in a relationship such as employer/employee or landlord/tenant;
- are relatives i.e. parent/child, brother/sister;
- have agreed to marry one another or have an agreement to enter into a civil partnership (either currently or previously);
- have had an intimate personal relationship of significant duration;
- are both the parents of a child or have/have had parental responsibility for a child;
- are parties to the same family court proceedings.

If your abuser is not an 'associated person', you will not be entitled to apply for a non-molestation order but there may be other civil remedies available to you, which are outside the scope of this factsheet.

How will the court decide whether or not to make an order?

When deciding whether or not to grant a non-molestation order, the court will consider all of your circumstances, including the need to secure the health, safety and well-being of you and of any children. You therefore need to show the court how your health, safety or well-being or that of your children would be at risk if you are not granted the order.

Should I apply on notice or without notice?

The court can make a non-molestation order without notice (sometimes referred to as '*ex parte*'). This means that the respondent (the abuser) **will not be informed** of your application **and will not be in attendance** at court at the first hearing to put forward their arguments against the order being made. A 'without notice' application is usually appropriate in emergency situations where you are fearful of abuse or repercussions if your abuser were to be given notice of the application. In deciding to make a without notice order the court will consider all of the relevant circumstances including:

- a) if there is any risk of significant harm to the applicant or a relevant child from the conduct of the respondent if the order is not made immediately;
- b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately;
- c) whether there is a reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved.

The court will always arrange a subsequent hearing so that both parties can put their case once the immediate urgency is alleviated and the vulnerable person(s) protected.

How do I apply?

You can make an application for a non-molestation order and/or an occupation order (see this note further below) at the Family Court. Guidance notes can be found on [Form FL700](#). The application form is a [FL401](#). You can also download all forms from the [Ministry of Justice's website](#) and find a list of the court centres in your area which deal with these applications.

There is no court fee for applying for a domestic violence injunction.

As well as Form FL401, you or your solicitor will need to prepare a '**statement in support**' giving details of your relationship, any relevant children, past history of violence and the events which led you to make the application. You should also set out what you want the order to do. If you are applying without notice, you will also need to state why this is necessary. A template witness statement **which you can use to complete your statement in support** can be found [here](#). Guidance for preparing your statement can be found [here](#).

If you are concerned about your abuser learning your address then you can complete [Form C8](#). The court will then keep your address details confidential.

What is the court process?

The court process is set out in the factsheet entitled “[Applying for a Non-molestation Order and/or an Occupation Order under the Family Law Act 1996: The Court Process](#)” which can be read together with this factsheet.

Undertakings

At a hearing, the respondent may offer ‘undertakings’ as an alternative to a non-molestation order being made. This is a promise to the court usually in the same terms as a non-molestation order (e.g. not to use or threaten violence etc.). Although the police cannot arrest the respondent for breach of an undertaking, any breach would still place the respondent in contempt of court for which he/she may be fined or sent to prison.

Occupation orders

An occupation order is an order that regulates the occupation of the family home. This can:

- exclude someone from the family home;
- enforce the applicant’s right to remain in the family home;
- require the other respondent to permit the applicant into the home
- regulate the occupation by either or both parties
- exclude the respondent from a defined area around the home

The court can also make an additional order imposing obligations on either party in relation to the property including to pay the rent/mortgage payments or other outgoings, or to repair or maintain the house.

Unlike a non-molestation order, an occupation order does not carry an automatic power of arrest, however, the court can and should be asked to attach a power of arrest to the order if violence has been used or threatened to the applicant or a child.

The court has power to accept undertakings when an occupation order has or may be made but unlike a non-molestation order it cannot do so where a power of arrest would be attached to the occupation order.

An example of an occupation order can be seen [here](#).

Who can apply for an occupation order?

You can apply if:

1. You own or rent the home and it is, was, or was intended to be shared with a husband or wife, civil partner, cohabitant, family member, person you are engaged to or parent of your child.
2. You do not own or rent the home but you are married or in a civil partnership with the owner and you are living in the home (known as ‘home rights’)
3. Your former husband, wife or civil partner is the owner or tenant, and the home is, was, or was intended to be your shared matrimonial home

4. The person you cohabit or cohabited with is the owner or tenant, and the home is, was, or was intended to be your shared home

What will the court consider before making an order?

The 'Balance of Harm' test

The court balances up the harm that would be suffered by the applicant and any child if the order was not made against the harm that would be suffered by the respondent and any child if it was made. The court **must** make the order if it determines that the applicant or the child is likely to suffer significant harm due to the conduct of the respondent if an order is not made.

The 'All Circumstances' test

The court is also required to have regard to all of the circumstances of the matter including the housing needs and housing resources of each of the parties, the financial resources of each of the parties, the likely effect of the order on the health, safety or wellbeing of the parties and any child. If you are a former spouse, civil partner or cohabitant the court will also take into account the length of the relationship/cohabitation and the period since the relationship/cohabitation ended.

What is the process?

The process for obtaining an occupation order is the same as with the non-molestation order above. The court does have the discretion to make a without notice occupation order; however generally the court will be more reluctant to make this type of order without notice and will often choose to deal with this application at a return hearing.

Funding

Applying to the court for a non-molestation order or occupation order is free. However, if you wish to instruct a solicitor or a barrister to represent you, that will cost money. You may be eligible for legal aid if you meet the Government's relevant criteria [here](#).

How can we help?

Russell-Cooke has a specialist family team who can advise you and assist you in making an application for a non-molestation order and/or occupation order. Please contact us if you would like more information or want to arrange an initial meeting - +44 (0)20 3826 7550