

Applying for a non-molestation order and/or an occupation order under the Family Law Act 1996: the court process

This factsheet should be read together with the factsheet entitled “[Domestic Abuse and the Family Law Act 1996](#)” which provides further information about the protection available from the family court for victims of domestic abuse, and the factors which the court will consider when dealing with an application for a non-Molestation order and/or an occupation order.

The court process

Step	Action	Explanation
1	Apply to court for a non-molestation order and/or occupation order	<p>The following should be delivered to the court:</p> <ol style="list-style-type: none"> 1. A completed Form FL401 2. A Statement in Support 3. Form C8 (if relevant to you) <p>You can apply online or by email or by post. To apply by email or post you should send these documents (plus two copies, if by post) to the nearest court which deals with domestic abuse cases. You can enter your postcode here to find the nearest court. Check here that the court is currently open and staffed.</p> <p>Due to measures in place because of coronavirus (COVID-19), hearings may take place over a video or phone call. If you need a face-to-face hearing, you will need to explain why in your application.</p>
2	First hearing	<p><i>Without notice</i></p> <p>If the application is made without notice then the court will issue the application and list a hearing to take place imminently (normally the same or next day). The respondent will not be made aware of this hearing or be in attendance. At that hearing the judge will consider the application and make such order he/she sees fit. The judge will also fix a date for the ‘return hearing’ (see below).</p> <p><i>On notice</i></p> <p>If the application was made on notice then the respondent will be served with the application and the hearing date so that he/she can prepare a statement in defence and attend the hearing. The court may make an order at the hearing or it may consider that further evidence is required. In that case, it will fix a date for a second hearing required and give ‘directions’ for any additional evidence. See ‘final hearing’ below.</p>

3	Service on the respondent	A non-molestation order or occupation order is not effective until it is served on the respondent (i.e. he/she is given a copy of the order and supporting documents). Service should be done using a process server or through the court, by the court bailiff. You should not serve the documents yourself on the person you are seeking the order against.
4	Notifying the police	Once the non-molestation order has been served on the respondent it becomes effective and breach of it is now a criminal offence. When an order is made it must be delivered together with a statement of service to the police so that they are aware of it and can take appropriate action if the order is breached. For occupation orders to be enforceable by arrest the court needs to be asked to order a specific power of arrest setting out clearly on the face of the order itself for the respondent and the police the specific provisions of the occupation order to which the power of arrest is attached (see further below). A copy of the occupation order must also be served on the police at the appropriate station.
5	<i>Without Notice</i> Return Hearing	If an order was made without notice, a date will be fixed for a second 'return' hearing, at which the respondent will have the opportunity to put his/her case to the court by way of a statement and by attending the hearing. The court will reconsider whether to keep the order in place or vary the terms of the order. In many cases the matter can be concluded at this return hearing. On occasion the court may think it necessary to list the case for a further 'final' hearing (see below).
6	Final Hearing	In some cases it may be necessary for the court to list this longer 'final' hearing (usually half or one day) when both parties will be expected to attend and give evidence. The court will have made directions in advance of this hearing requiring the parties to produce certain additional evidence, for example, police disclosure or additional witness statements. This is likely to be the second hearing if the application was on notice or the third hearing if the application was made without notice. At this hearing the court will aim to conclude matters on the basis of all the evidence by either granting a non-molestation order/occupation order, accepting undertakings (see below) or any other such order the court sees fit.

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.

