

Boys & Maughan Family Fact Sheet - PROTECTION FROM HARM

Domestic Abuse can destroy the lives of not only its victims, but also the families who are living in, or who have lived through, abusive relationships. Domestic abuse can take various forms such as emotional, mental or physical and is hugely damaging to the victim and those close to them.



Family

Those suffering abuse deserve early intervention and access to the most appropriate legal intervention and follow-up support services.

Injunction Orders [Non-Molestation Orders & Occupation Orders]

A Non-Molestation Order forbids the threat or use of violence and the use of intimidation, harassment or pestering and from encouraging or suggesting that any other person should do so. It can also prohibit specific behaviour. The court has to take into account all of the circumstances including the need to secure your health, safety and wellbeing and that of any children you may have.

An Occupation Order can be obtained where significant harm to you or your children is likely. The order may include:

- A requirement that your partner leave the home.
- Suspension of your partner's right to occupy the home.
- Exclusion of your partner from a defined area around the home.
- A requirement that your partner permits you to return to the home.
- Regulating the occupation of the home by you and your partner.

The court must take into account the housing needs of each of you and any children, your respective financial resources and the conduct of each of you in relation to each other.

You can apply to the court for an order without notice to your partner. Non-Molestation Orders (and, in exceptional cases, Occupation Orders) can be granted by the court urgently even on the day the application is issued. A Power of Arrest can be attached to all or part of the Occupation Order. The police are then able to arrest your partner for breach of the Order and produce your partner to court within 24 hours (excluding Sundays and bank holidays).

Breach of any Order is contempt of court and if your partner does breach an order they could be sent to prison by the civil court that made the order. This could result in a maximum sentence of 2 years imprisonment.

Breach of a non-molestation order is also a criminal offence and can result in a maximum sentence of 5 years imprisonment. Orders are usually made for six months and can be extended.

Undertakings

You can accept an undertaking from your partner. This is a promise your partner makes to the court not to threaten or use violence, intimidate, harass or pester you. The Court will, however, not accept an undertaking instead of an occupation order in any case where it is considered that a Power of Arrest should be attached. The Court will not accept an undertaking instead of making a non-molestation order if your partner has used or threatened violence against you or your child and it is necessary for the protection of both you and your child to make a non-molestation order so that any breach may be punishable.

Legal aid is available to cover the costs of making an application to the court. The usual rules which cap eligibility do not apply when seeking legal aid for these orders, as there is discretion to

waive the upper income and disposable capital limits, however, contributions from income and capital will not be waived. This discretion to waive the upper income and capital limits only applies when seeking these orders – if there are other aspects to your case then the usual eligibility rules apply. If you need legal aid to cover an injunction but also, for example, financial issues, then the waiver will not apply for the work that needs to be undertaken in relation to the financial issues. Legal aid is not always free. We will explain the “statutory charge”. If you are affected by this you will have to pay back all of your costs incurred under your legal aid, not just the costs incurred for dealing with the financial issues, so you would have to pay back the costs of seeking injunction orders as well.

Procedure

To be able to apply, you and the other party have to be Associated Persons. These include persons who:

- Are or have been married to each other
- Are or have been civil partners
- Cohabitants or former cohabitants
- Live in the same household and are NOT employees, tenants, lodgers or boarders
- Relatives
- Have agreed to marry (even if the agreement has been terminated)
- Have entered into a civil partnership agreement (even if the agreement has been terminated)
- Have or have had an intimate personal relationship with each other of significant duration
- Are parents of a child or have or have had parental responsibility for a child
- Are the natural parent or grandparent of a child adopted placed or freed for adoption and the other party is;
 - i. the adoptive parent,
 - or ii. a person who has applied for an adoption order for the child,
 - or iii. a person with whom the child has been placed for adoption,
 - or iv. the child who has been adopted, placed or freed for adoption.
- Are parties to other family proceedings.

In addition to the above, if you are seeking an occupation order, you must fit into one of the categories below:

- You are entitled to occupy the home by virtue of a legal/beneficial estate/interest or contractual/statutory right (in other words you are an owner, co-owner or a tenant).
- You have home rights by virtue of being married, in a civil partnership or divorced but with home rights under a court order (in other words your spouse or partner is an owner, co-owner or tenant but you are not).
- You are former spouses or civil partners.
- You are spouses or civil partners and neither of you have a right to occupy.
- You are cohabitants /former cohabitants and one of you has a right to occupy.
- You are cohabitants /former cohabitants and neither of you has a right to occupy.

An application form is completed. This must be supported by a sworn statement setting out in detail the behaviour of your partner that you are complaining about. This should give as much detail as possible. It is an important document.

The application form and statement are lodged with the court.

Depending on the facts of your case there will be either;

A first hearing without notice to your partner; or the court will set a date for the hearing and your partner will be given notice.

If your partner is not given notice of the first hearing, the court will make an order to last for a short period of time and set a date for another hearing so your partner can come to court and have a chance to speak to the Judge, when the judge will decide whether the order should continue.

The papers will need to be handed to your partner (served), who will receive a copy of your sworn statement.

Once the judge has made the orders and these have been handed to your partner or have come to the attention of your partner, copies of the orders will be lodged at your local police station.

If your partner does not obey a non-molestation order or an occupation order to which a power of arrest has been attached, then you can contact the police for assistance.

The contents of this fact sheet are general principles and do not constitute legal advice. Every case is different.



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