

Protection from harm

Are you experiencing domestic violence or do you have a friend who needs help?

Domestic abuse can be physical, emotional, psychological, financial or sexual. Victims often hide the problems they are experiencing for many different reasons or may even deny they exist. Sometimes this is because they fear reprisal involving themselves or their children.

We can give you confidential legal advice if you are feeling concerned about how your partner is behaving. Then if you want us to we will apply to the courts for an injunction; a non-molestation order to protect you or an occupation order so you no longer need to share your home with your partner.

It's usually best to involve the police but by working with a solicitor you can often get a court order that stops problems more quickly and with less stress.

We work very closely with local domestic abuse support agencies to provide advice and court representation to victims, and we can provide Legal Aid if you are eligible.

Call us now on 01843 234010 and we will explain how we can help or read on for details of the different types of court orders and procedures.

Injunction orders

Non-molestation orders are civil court orders which aim to protect people experiencing domestic violence. They can forbid the abuser from molesting the person asking for the order and sometimes the applicant's children as well but only if they are under 18 years old.

Non-molestation orders also forbid abusers from instructing anyone else to harass or intimidate or use violence against the applicant. They can additionally forbid the perpetrator (abuser) from damaging or disposing of the applicant's possessions.

Breach of a non-molestation order is a criminal offence and can result in a prison sentence. Orders are usually made for a year and can be extended.

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 and 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 can arrest for breach of an order and produce your partner to court within 24 hours, excluding Sundays and bank holidays.

Breach of an order is a contempt of court and can be punished by a prison sentence.

Undertakings

This is a promise the other person makes to the court not to threaten or use violence, intimidate, harass or pester you. However, the court will not always accept an undertaking instead of making an order if the other person 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 an order, so if the order is not complied with, the police can intervene.

Legal aid

Legal Aid is available to cover the costs of making an application to the court. The usual rules which limit 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 occupation and non molestation 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. This would include the costs for dealing with the financial issues and the costs of seeking an injunction.

Procedure for making an application to court

To be able to apply you and the other person 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
- Are 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:
 - the adoptive parent
 - or a person who has applied for an adoption order for the child
 - or a person with whom the child has been placed for adoption
 - or 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 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, or
- You are cohabitants / former cohabitants and neither of you has a right to occupy.

An application form must be completed. This must be supported by a detailed statement setting out in the behaviour of the other person that you are complaining about. It is an important document. Keeping a diary or record of events can be really useful.

The application form and statement are then lodged with the court. Depending on the facts of your case, there will be either a first hearing, without notice to the other person, or the court will set a date for the hearing and the other person will be given notice.

If the other person 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 the other person can come to court and have a chance to speak to the judge. The judge will then decide whether the order should continue.

The papers will need to be handed to, served on, the other person who will receive a copy of your statement. Once the judge has made the orders and these have been served or have come to the attention of the other person, copies of the orders will be lodged at your local police station.

You can contact the police for help if your partner does not obey a non-molestation order or an occupation order to which a power of arrest has been attached.

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

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