



PROTECTION FROM DOMESTIC ABUSE

There may be difficulties within a relationship which results in one person subjecting the other to forms of harassment or even violence. This information sheet has been prepared to enable you to understand the options available to protect you. You may wish to refer to this in the future or, alternatively, you may speak to one of the specialist family law team at any time.

WHAT IS DOMESTIC ABUSE?

The term "domestic violence" is often used and relates to physical, sexual or psychological behaviour or harassment and this may include patterns of coercive and controlling behaviour. The term "violence" will often relate to the use or threat of physical force by one person against another. However, in the context of the family, there is also a much wider meaning which extends to abuse beyond the more typical instances of physical assault to include any form of physical, sexual or psychological behaviour which has a serious detrimental effect on the health and wellbeing of the victim even where there is no actual violence involved in the sense of physical force being used.

If you have been the victim of domestic abuse then there are various options available to you to prevent further abuse being inflicted upon you in the future. This will often take the form of a Court Injunction which is an Order preventing one person from acting in a certain manner towards another. A person who has been the victim of abuse will usually be able to apply for an injunction in the County Court under the provisions of the Family Law Act 1996 and the different types of Order have been set out below.

NON MOLESTATION ORDER

This is an Order which can prohibit one person from using or threatening violence, harassing, intimidating or pestering another or any relevant children. It can also contain specific provisions to suit a particular case such as, for example, prohibiting one person from contacting another whether by telephone or text message. This type of Order will usually also prohibit the abuser from instructing or encouraging another person to act on his/her behalf. A typical Non Molestation Order will usually contain the following clauses:-

- The respondent is forbidden to use or threaten violence against the applicant/any relevant child and must not instruct, encourage or in any way suggest that any other person should do so
- The respondent is forbidden to harass, intimidate or pester the applicant and/or any relevant child and must not instruct encourage or in any way suggest that any other person should do so

A Non Molestation Order will usually last for a period of 6 months although it can be extended if further difficulties arise.

The term "molestation" embraces a wide variety of behaviour from violence or threats of violence at one end of the spectrum to nuisance telephone calls at the other end. In modern terms we are talking about someone who pesters another. There must however be a degree of harassment sufficient to justify the intervention of the Court. Indeed, a Non Molestation Order should only be made where the alleged behaviour of the other person is serious enough to justify the Court being involved.

OCCUPATION ORDER

An Occupation Order can determine who shall occupy the family home. The Court can make an Order which will require one person to vacate the property and then prohibit him/her from returning to, entering or even attempting to enter the property. Furthermore, if one person has left the property owing to violence, the Court can make an Order which will enable that person and any children to return to live at the property and can exclude the other person from it. The Court can even restrict one person from approaching within a certain distance of the property and in extreme circumstances it has even been known for the Court to prohibit a person from entering a particular town.

When considering whether to make an Occupation Order the Court will first consider what is known as the "balance of harm" test. If it appears to the Court that the person applying for the Order and/or any relevant child is likely to suffer significant harm attributable to the conduct of the other party in the absence of an Order then the Court will usually make the Order. There are exceptions to this general rule and, where the test cannot be satisfied, the Court will then consider other factors which include:-

- The conduct of the parties towards each other and any relevant children;
- The housing needs of each party and any children;
- Their incomes as this will have a direct impact on whether alternative rented accommodation would be affordable;
- Any other relevant circumstances of the case which could for example include health issues.

It is usual for an Occupation Order to last indefinitely.

An Occupation Order has been described as a draconian order and there will need to be a certain level of violence and/or harassment before an Order will be made. It is therefore important that you gather as much relevant information as possible.

HOW CAN YOU HELP?

We have prepared a checklist below of some things which will assist your Solicitor and which include:-

- Photographs of any injuries;
- A report from the hospital or your general practitioner
- A short account of the abusive behaviour with any dates, medical treatment received, police involvement and other relevant information
- Details of any witnesses to include their names and addresses.
- Property details to include tenancy documentation

WHO CAN APPLY FOR AN ORDER?

To be able to apply for either Order the individuals must be associated with each other. This can include married couples, those living together, relatives and even any relevant child. We will advise you on whether you can apply for an Order under the Family Law Act 1996 although in most cases this does not pose any difficulty.

EMERGENCY APPLICATIONS

It is possible to make an application for non molestation and/or Occupation Orders without first giving notice to the other party in circumstances where the Court considers it just and convenient to do so. The court will only make an Order where the other party has not been notified of the application in the following circumstances:-

- Where there is a risk of significant harm to the applicant or any relevant child as a result of the other person's conduct if the Order is not made immediately;
- Where the applicant will be deterred or prevented from making the application if an Order is not made immediately;
- Where there is reason to believe that the other party will deliberately evade service of the Court papers.

Where it is inappropriate to apply without first notifying the other party then the papers will be sent to the court and personally served on him/her by the bailiff together with notification of the initial hearing. It is unusual for cases to be commenced in this way as the person applying for the Orders will not then have the protection of the court when the papers are served.

The Court will usually only make a Non Molestation Order where the other party has not been notified of the proceedings. However, if the other person has already left the family home then the Court will sometimes be persuaded to also make an Occupation Order to prevent him/her from returning to enter or occupy the property. This is however restricted to the minority of cases.

THE PROCEDURE

At the first meeting the Solicitor will take very detailed information and will then be able to prepare an application for the Orders being sought and also a statement which will need to be signed. The statement will set out all of the relevant information to include the other persons behaviour and the others which are being sought. In the majority of cases the application is made to the court on an emergency basis on the same day. This will involve the solicitor and you attending at the local County Court without first notifying the other party. The District Judge at the Court will usually then make a Non Molestation Order and, in exceptional cases, an Occupation Order particularly where the other person has already left the family home.

The Orders will contain details of the date of the next hearing which will usually be about a week later and all of the Court paperwork will then be passed to a bailiff who will then personally serve the same on the other person. Please note that the Orders are only effective once they have been personally served and you should therefore provide the solicitor with a written description or preferably a photograph of the other person which will assist the bailiff when trying to effect service of the paperwork.

THE SECOND HEARING

At the second hearing, the District Judge will need to know whether the other person is opposing the making of the Orders. It is sometimes possible to resolve this matter by agreement at this second stage although in some cases where the other person is opposing the making of the Orders it will be necessary for there then to be a fully contested hearing at a later date. It is usually necessary for both parties to give oral evidence to the Court and be subjected to cross examination at a full hearing. It is also possible for any witnesses to give evidence and the District Judge will then decide what Orders to make. Please note that, at a fully contested hearing, it is likely that you will be subjected to cross examination and it is therefore vital that the statement which you make at the outset of the case is both accurate and detailed. Please also note that it is open to you to withdraw your application at any stage and this sometimes happens where a final hearing is necessary as the person applying for the Orders does not feel able to undergo the ordeal of an acrimonious and lengthy day at Court.

UNDERTAKINGS

An undertaking is a formal promise to the Court by one person not to behave in a certain way. If the District Judge is satisfied that the person applying for the orders would be adequately protected by an undertaking then it is sometimes appropriate for cases to be concluded on the basis of the undertaking rather than a formal court Order particularly at the second hearing mentioned above. Furthermore, if the undertaking is then breached, it may be possible for an application to be made for the person who gave the undertaking to be committed to prison. This should not therefore be seen as a soft option.

BREACH OF INJUNCTIONS

Under the Domestic Violence Crime and Victims Act 2004, a breach of a non molestation order is a criminal offence and the offender may be fined or even sent to prison for up to 5 years. The Courts no longer attach a power of arrest to a Non Molestation Order because they automatically contain a warning to the other party about the action which can be taken if the Order is breached in any way. Therefore, if there is any breach of a Non Molestation Order, the police and your solicitor must be notified immediately.

The Court does have the power to attach a power of arrest to an Occupation Order if it is satisfied that there has been the use or threat of violence and the applicant would not be properly protected without a power of arrest being attached. The police will be notified of this order and, if the other party then breaches the terms of the Order in any way, the police will have the power to arrest immediately. Once again, the person in breach of the Order could then be fined and/or sent to prison.

PROTECTION FROM HARASSMENT ACT 1997

It is possible to apply to the Court for an injunction under this piece of legislation in circumstances where it is not possible to use the Family Law Act of 1996. There needs to be a course of conduct (i.e. more than one incident) by one person against another regardless of whether they are associated with each other. The police also have powers under this legislation to issue written warnings and in some instances to arrest a person. However, in the vast majority of cases an injunction will be sought under the Family Law Act 1996 as outlined above.

FUNDING

It is difficult to estimate the cost of a case at the outset with any degree of certainty as there is no way of knowing the extent of the work involved. However, in our experience, the legal costs can range between about £1,000 plus VAT where the other person does not oppose the making of the Orders and the costs may be at least £2,500 plus VAT where the Orders are opposed. There is also a fee payable to the court of £90 and there may also be bailiff's fees of at least £300. We will discuss with you your eligibility for public funding although in some instances, this still has to be repaid at a later date.

FINALLY

This is a standard information sheet to provide you with some basic information relating to individuals having protection from domestic abuse. The Family Law team are very experienced in this area of work and often undertake work on behalf of the local Women's Aid project and the Women's Refuge. Accordingly, if you have any questions on your position, please let us know and we will be happy to assist you with any difficulties which you may be experiencing.