

JOHN BOYLE SOLICITORS LIMITED

GUIDE TO
DOMESTIC ABUSE &
PROTECTION ORDERS

Definition

Domestic Abuse can include but is not limited to: -

- Physical abuse (pushing, slapping, punching or intimidation);
- Sexual abuse;
- Emotional abuse;
- Psychological abuse (harassment, pestering, shouting);
- Controlling behaviour (financial control and social isolation);
- Coercive or threatening behaviour; and
- Culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence and transnational marriage abandonment.

Domestic Abuse may be a series of acts forming a pattern of behaviour or one single act.

Domestic abuse can happen to anyone and is far more prevalent than most people realise.

In a case of emergency, you should always contact the police.

The Family Law Act 1996

This act provides remedies for domestic abuse where persons are “associated”.

You are an “associated person” if: -

- You are or have been married to each other;
- You are or have been Civil Partners;
- You are or have been Cohabitants;
- You live in the same household save for being the other’s employee, tenant, lodger or boarder;
- You are related;
- You have agreed to marry one another;
- You have or are having an intimate relationship with each other which is of significant duration;
- In relation to a child, you are a parent of that child or have or had parental responsibility for the child;
- You are parties to the same family proceedings.

Funding

Legal Aid is available to people who have suffered domestic abuse and provides for immediate action if you qualify financially.

Warning Letter

The first step to take is usually to send a warning letter to the other party putting them “on notice” that you want no further contact from them either direct or indirect.

If this does not prevent them from contacting you, then you may have no alternative but to seek a Protective Order as described below.

Orders made without notice

In certain circumstances it will not be considered suitable to send a warning letter and instead it will be necessary for an emergency application to be made at Court without giving notice to the Respondent first. This is because if you are at risk of serious harm, giving the Respondent notice can exacerbate an already dangerous situation. This is a particularly useful tool if you are unable to move away to refuge or another safe place whilst the Respondent has notice of the hearing.

If the Court makes an Order without notice of such application having been provided to the Respondent, the Court must give the Respondent an opportunity to make representations as soon as just and convenient at a full hearing, known as a “return date”.

Non-Molestation Order

One of the protection Orders you can seek is a Non-Molestation Order which: -

- (a) Prohibits the Respondent from molesting another person who is “associated” with the Respondent; and/or
- (b) Prohibits the Respondent from molesting a relevant child.

There is no statutory definition of “Molestation” but it is wider than violence and can include threats of violence, harassing telephone calls, stalking etc.

When considering the application, the Court will consider all the circumstances of the case, including the need to secure the health, safety and well-being of the Applicant and of any relevant child.

When making an application to the Court for a Non-Molestation Order, you will be expected to file a Witness Statement which should include a chronology of incidents or injuries, upon which you are relying.

If the Hearing is held without notice, the court must list the matter for a “return date”, generally within 5 days of the initial hearing, to give the Respondent an opportunity to put their case forward as quickly as possible. This is because until such time as they are able to give their submissions, they have an Order against them, which has potentially criminal sanctions attached to it which is not considered just for any more than a few days.

At the “return date” hearing: -

1. The Respondent may agree to an Order remaining in place, even if he does not admit any of the allegations made, in a hope of bringing matters to a conclusion without the need for a Final Hearing;
2. The Respondent may agree to give an Undertaking, which is a formal promise to the Court not to harass, pester, intimidate etc; or
3. If the Respondent contests all of the allegations made and the need for an Order/Undertaking, the matter is to be listed for a Final Hearing, where both parties will be expected to give oral submissions on the allegations made.

If a Final Hearing is necessary the Court can make directions at the “return date” for statements or expert evidence.

If and when an Order is made, it will be for a specified period of time or until further order.

A Non-Molestation Order can be enforced either through the criminal or the family courts.

Occupation Order

Another protective Order open to “associated persons” is an Occupation Order. The general aim of such Order is to determine who is to live in the family home. Orders can also be made about the payment of rent or mortgage and deal with belongings and contents of the home.

If you are an “associated” person you can apply for an Occupation Order if you: -

- (a) Have a legal or contractual right to occupy the home;
- (b) Have a beneficial interest as a former spouse or civil partner to occupy the home;
- (c) Are a cohabitant or a former cohabitant with no existing right to occupy the home where your cohabitant or former cohabitant had a right to occupy the home;
- (d) You or your former spouse/civil partner have no right to occupy the home;
- (e) You or your former cohabitant have no right to occupy the home.

The legal test in Occupation Order applications is much more difficult to prove than the test in Non-Molestation Order applications because you are asking the Court to restrict a person’s right to occupy their own home and as a consequence such Orders should only be made in exceptional circumstances.

When considering an application for an Occupation Order, the Court will consider the “balance of harm” test. This is when the Court weighs up the harm suffered by the Applicant or relevant child and whether or not they are likely to suffer significant harm if the Order is not made against the harm suffered by the respondent or relevant child and whether that harm is significant if the Order was to be made.

When filing an application with the Court for an Occupation Order, you will also be expected to file a Witness Statement in which you will have to put your case, to include: -

- The housing needs and housing resources of each of the parties and of any relevant child;
- The financial resources of each of the parties;
- The likely effect of any Order, or of any decision by the Court not to exercise its powers, on the health, safety or well-being of the parties and of any relevant child; and
- The conduct of the parties in relation to each other and otherwise.

On the “return date” hearing, the Court may either make the order or, if such application is contested, set a date for a Final Hearing. It is possible for a Respondent to agree to an Order remaining in place, even if he does not admit any of the allegations made, in order to bring matters to a conclusion without the need to give oral examination, if by such date the Respondent has been able to find alternative housing arrangements.

If an Order is made, it will be for a specified period (usually 6 months) or until further order. In practice, Occupation Orders tend to be for short periods as a way of allowing the parties time to find new housing arrangements. An Order can be extended by the Court in certain circumstances but for no more than a 6 month period at any one time.

Occupation Orders can still have a power of arrest attached to them allowing the police to arrest for a breach of the order. However, many prefer to keep matters out of the criminal Courts and will therefore apply to the Family Court for a breach of an Occupation Order instead as any breach of an Order is a contempt of Court that is punishable by a fine or imprisonment.

Further Help and Information

If you require any additional support, you may find the following website a useful tool

<https://safecornwall.co.uk/what-we-do/dasv-hub/>