

Frequently Asked Questions on Domestic Violence, answered by Bridget Barford

How do I get an injunction?

There are two main types of injunctions available under the Family Law Act 1996:

(1) A Non-Molestation Order

This is aimed at preventing your partner or ex-partner from using or threatening violence against you or your child, or from intimidating, harassing or pestering you in order to ensure the health, safety and well-being of you and your children.

A breach of a Non-Molestation order is a criminal offence. If your abuser breaches the Order you can ask the Police to arrest them. If the police do not take steps then your solicitor can be instructed to take the matter back to the Court that made the Order.

(2) An Occupation Order

This regulates who can live in the family home, and can also restrict your abuser from entering the surrounding area. If you do not feel safe continuing to live with your partner, or if you have left home because of violence but want to return and exclude your abuser, you may want to apply for an occupation order. You can have a power of arrest attached to an occupation order.

If you are applying for an occupation order you either have to have a legal right to occupy the home (as joint or sole tenant or owner of that home), or you have to be or have been married to, or cohabitating with a partner who is the owner or tenant. The court will apply a 'balance of harm' test when deciding whether to make the order.

Who can apply for an injunction?

To apply for an injunction you must be an associated person. This means you and your partner or ex-partner must be related or associated with each other in one of the following ways:

- You are or have been married to each other
- You are or have been in a civil partnership with each other
- You are cohabitants or former cohabitants (including same sex couples)
- You live or have lived in the same household
- You are related
- You have formally agreed to marry each other (even if that agreement has now ended)

- You have a child together (this can include those who are parents of the same child, and those who have parental responsibility for the same child)
- Although not living together, you are in an “intimate relationship of significant duration”
- You are both involved in the same family proceedings (e.g. divorce or child contact)

What if I am not an “associated person”?

If you are not eligible to apply for an Order under the Family Law Act but you are being continually harassed, threatened, pestered or stalked after a relationship has ended, you can also apply for a civil injunction under the Protection from Harassment Act 1997.

What Court do I attend?

Applications for injunctions under the Family Law Act are heard in the County Court or Magistrates Court. The application will be in a private court (‘in chambers’) so people who are not directly concerned with your case will not be allowed in. You will not normally be allowed to take in a friend or other supporter (though they can stay in the waiting room). The good thing about this is that no members of the public will be there (unlike at a criminal court) and this provides a degree of privacy.

When an application is first made it is often made “ex-parte” which will mean the abuser is not made aware of your application until after you have attended Court, obtained an Order and the abuser has been personally served with the Order. The Order is only effective once it has been personally served on the abuser. If the court grants an “ex-parte” Order, you will have to return to court for a full hearing after your abuser has been served with notice.

What evidence does the Court need to make an Order?

You will need to make a sworn statement (sometimes called an affidavit) to the court about the physical and emotional abuse you have experienced. We will prepare this with you. This will detail the ways you have been physically and emotionally harmed, the dates and times (if you have them) and the effects on you and your children (if applicable). It will help if you have kept a record of past events and a record of ongoing events. If you have any independent evidence such as police reports or medical records, you should be ready to provide these.

Will the Court always make an Order?

As with any application before the Court, they have a discretion when deciding whether to make an Order. The Court has to look at all the circumstances, including the likely effect of any order on the health, safety and well-being of you and your partner or ex-partner, your conduct

in relation to each other, your needs and your financial and housing resources.

Undertakings

The court sometimes suggests that, instead of an Order, the abuser should make an undertaking (a solemn promise) to the court not to harass or threaten you. While this is supposed to have the same strength as a court order, and breach of an undertaking constitutes contempt of court, in practice undertakings cannot be enforced effectively as powers of arrest cannot be attached. The court should never accept an undertaking where violence has been used or threatened and you do not have to agree to accept an undertaking if you do not want to.

What happens if the abuser breaks the order?

Under the Domestic Violence Crime and Victims Act 2004 a breach of a non-molestation injunction is a criminal offence. This means that the police must treat any breach of such an order just like any other criminal offence. If they arrest your abuser, he will be taken before a Magistrates' Court.