

A GUIDE TO DOMESTIC VIOLENCE INJUNCTIONS



RIGHTS OF WOMEN

It is estimated that domestic violence affects one in four women. If you are experiencing or have experienced domestic violence there are a number of ways the law can protect you. This legal guide is designed to give information about remedies available under the Family Law Act 1996 and the Protection from Harassment Act 1997. Rights of Women also publishes a number of other legal guides and handbooks that may be useful including our **Domestic Violence DIY Injunction Handbook (2nd edition)**. For further information about these contact us or visit our website at www.rightsofwomen.org.uk

What is domestic violence?

There is no legal definition of domestic violence. However the Government defines domestic violence as “...**any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been in a relationship together, or between family members, regardless of gender or sexuality.**” This definition includes violence from family members other than a woman’s partner.

Almost all domestic violence is directed by men against women, but it can and does occur in same-sex relationships, and in a small minority of cases, by women against men. Although we refer here to the abuser as ‘he’ we recognise that this is not always the case.

Different complainants

Domestic violence affects women from all ages and backgrounds, regardless of economic or social status, race, religion or immigration status. The law of England and Wales that deals with domestic violence should protect **all women** from violence (Scotland and Northern Ireland have different arrangements). This means that you can go to the family courts or the police for assistance and you have the same right to assistance or protection regardless of whether you are a British citizen, an overstayer, an asylum seeker or someone with leave to remain in the UK as a spouse, student or worker.

In an emergency

In an emergency you can contact the police for assistance by dialling 999 or **textphoning**

0800 112 999. The police may be able to attend the scene of the incident to protect you from further abuse or violence and/or arrest the person responsible (see our legal guide **Reporting an Offence to the Police: A Guide to Criminal Proceedings**).

The Family Law Act 1996

The **Family Law Act 1996** (FLA 1996) as amended by the **Domestic Violence Crime and Victims Act 2004** (DVCVA 2004) enables a woman to obtain an **injunction** from the court to protect her from abuse. An injunction is a type of court order which forbids an abuser from doing certain things, such as being violent, or orders him to do certain things, such as leave the home. There are two types of domestic violence injunctions available under the FLA 1996: **non-molestation orders** and **occupation orders**.

Who can I get an injunction against?

You can only apply for a non-molestation or occupation order if you are **associated** to your abuser. You are associated to your abuser if you:

- are or were married or in a civil partnership (it does not matter how long ago the marriage or civil partnership ended);
- are or were engaged to be married or had agreed to form a civil partnership;
- are or were living together (this includes same-sex and opposite-sex couples);
- live or have lived in the same household, for example as a flat share (but not as a tenant, border, lodger or employee);
- are relatives, including: parents, children, grandparents, grandchildren, siblings, uncles, aunts, nieces, nephews or first

- cousins (whether by full-blood, half-blood, marriage, civil partnership or cohabitation);
- are parents of the same child;
- have or have had parental responsibility for the same child;
- are parties to the same family proceedings for the same child; or,
- are or were in an **intimate personal relationship of significant duration** (new category introduced by section 4 of the DVCVA 2004 on 1 July 2007).

Before making your application we would advise that you check whether you are legally associated to your abuser. If you are not, you may be able to obtain protection under the **Protection From Harassment Act 1997** (see below).

Who can be protected by my non-molestation order or occupation order?

You can get an order to protect yourself and any relevant child. A **relevant child** is any child under 18:

- who is living or might be expected to live with you or your abuser;
- who is the subject of family court proceedings linked to an application for a domestic violence injunction; or
- whose interests the court thinks relevant.

If you have a child who is over 18 or another adult family member who needs protection they have to make their own application for an injunction.

Non-molestation orders

A **non-molestation** order can protect a woman and any relevant child from violence or harassment. A woman can obtain a non-molestation order against someone who has not been physically violent but has been harassing, intimidating or pestering her. A woman can apply for a non-molestation order even if she still wants to (or has to) live with her abuser.

A non-molestation order can:

- forbid your abuser from being violent towards you or any children in your family, from threatening violence or from harassing, pestering or intimidating you in many different ways (including, for example, by text message);
- forbid your abuser from coming within a certain distance of your home;
- forbid your abuser from damaging or disposing of your belongings.

When deciding whether to grant a non-molestation order the court will consider all of your circumstances, including the need to secure the **health, safety and well-being** of you and any children. You therefore need to show the court how your health, safety or well-being or that of your children would be at risk if you are not granted the order.

Occupation orders

An occupation order deals with who lives in the family home. An occupation order can:

- order your abuser to move out of the home or to stay away from the home;
- order your abuser to keep a certain distance away from the home;

- order your abuser to stay in certain parts of the home at certain times (for example, it can order him to sleep in a different bedroom);
- order your abuser to allow you back into the home if he has locked you out;
- order him to continue to pay the mortgage, rent or bills.

When deciding whether to grant an occupation order the court will consider a number of factors including the housing needs and resources of you, your abuser and any children; the financial resources of you both; the likely effect any order, or not making an order, will have on you, your abuser and any children; and your and your abuser's behaviour to one another. The court may also look at the harm that you and any child might suffer if the order is not granted and the harm that the respondent and any child might suffer if it is.

The type of occupation order you can apply for depends on whether you or your abuser are legally entitled to occupy the property and on the type of relationship you have. Before making your application we would strongly advise you to seek legal advice or see our Domestic Violence DIY Injunction Handbook (2nd edition).

The court can make both a non-molestation order and an occupation order if it is appropriate.

The application process

You can make an application for either a non-molestation order and/or occupation order in the **Family Proceedings Court**

(part of the magistrates court), the **county court** or the **High Court**. You will need to complete an application form, form FL401, which is available from the court you plan to apply to or to download from the HM Courts Service website (see Other useful contacts). In addition to form FL401 you will need to prepare a sworn statement giving details of your relationship, any relevant children, past history of violence and the events which led you to make the application. You will also have to attend at least one or possibly more court hearings.

If you need an injunction urgently or are scared that your abuser will cause you further harm if he is aware you are going to court, you can make your application “**without notice**” to him. This means that the court can consider your application without your abuser being present. The court will have to be persuaded that there are good reasons to make the order urgently so you will need to explain this in your witness statement. A supporting report from the police or your doctor may help and can be attached as an exhibit to your statement.

If you applied for and were granted your order without notice to your abuser the court is likely to organise another hearing to give him an opportunity to put forward his side of the story. You will have to attend this hearing and you may have to give evidence. The court will consider all the evidence and decide whether to grant a further order or not.

For detailed information about completing the forms and making the application please see our **Domestic Violence DIY Injunction**

Handbook (2nd Edition) which gives a step-by-step guide to making an application for a non-molestation and/or occupation order. To purchase a copy please visit our website or contact us to request an order form.

Enforcement

The person who is making the application to the court is responsible for serving it (giving it) to the respondent. Your abuser must be handed the order personally together with a copy of your application and statement for it to be effective. Orders can be served by a process server or a court bailiff. **You are only protected once he is aware of the order.**

Since 1 July 2007 it has been a criminal offence to breach a non-molestation order.

This means that it is no longer possible to get a **power of arrest** attached to a non-molestation order. Powers of arrest are still available for occupation orders and can be attached if the court is satisfied that your abuser has used or threatened violence against you. How your order is enforced therefore depends on whether you have a non-molestation order or an occupation order and where you have an occupation order, whether a power of arrest is attached or not.

Enforcing a non-molestation order: two options

If your abuser has breached your non-molestation order you can enforce it by either:

- Starting **criminal proceedings** by **reporting** his behaviour to the police; or,

- Starting **civil proceedings** by applying to the court that made the order for the respondent to be arrested and/or punished.

Breaching a non-molestation order is a criminal offence that can be tried in the Magistrates' court or Crown Court. The criminal courts have a range of sentencing options available to them; however, the maximum sentence is 5 years imprisonment. For information about criminal proceedings see our legal guide **Reporting an Offence to the Police: A Guide to Criminal Proceedings**.

Alternatively, if you do not want to start criminal proceedings you can return to the court that made the order to have your abuser arrested and/or punished. In order to do this you will need the help of a solicitor. A respondent who is found by the court to have breached the order may be committed to prison, fined or be given a suspended sentence of imprisonment. The civil courts (the courts that make non-molestation orders and occupation orders) do not have the range of sentencing powers that criminal courts have.

Enforcing an occupation order: is there a power of arrest attached?

If your abuser breaches any of the provisions of an occupation order that have a power of arrest attached to it you can contact the police. The police can arrest him and take him to the court that made the order to be punished. The court may hear evidence about the breach and deal with the respondent immediately or the court may adjourn the hearing to another day. Where a power of arrest is not attached to

an occupation order you can still apply to the court that made the order to have your abuser arrested and/or punished. In order to do this you will need the help of a solicitor. A respondent who is found by the court to have breached the order may be committed to prison, fined or be given a suspended sentence of imprisonment.

The Protection From Harassment Act 1997

If you are not associated to your abuser (see above) then you may be able to obtain protection under the **Protection from Harassment Act 1997** (PFHA 1997) which makes it a criminal offence to harass someone or make them fear that violence will be used against them. The PFHA 1997 enables a woman who is being harassed or put in fear of violence to get a **restraining order** against the person responsible and claim **damages** (financial compensation) from him.

What is "harassment"?

Harassment is a course of conduct that is deliberately intended to cause a person distress or alarm. The test for whether any particular course of conduct amounts to harassment is whether a reasonable person, looking at the behaviour from outside the situation, would think that it amounts to harassment. **A course of conduct is two or more incidents of harassment.** An incident of harassment could be a text, answer-phone message, letter or email; a comment or threat; standing outside someone's house or driving past it; or, an act of violence.

What is “putting someone in fear of violence?”

Putting someone in fear of violence is a course of conduct (see above) that causes another person to fear that violence will be used against them. As with harassment, the person whose behaviour is in question ought to know that it will cause another to fear violence if a reasonable person, in possession of the same information, would think that it would cause her to have that fear.

How can I get protection from harassment?

You can report an incident of harassment to the police who may be able to take action against the person responsible for example, by warning him of the consequences of his behaviour (sometimes referred to as a **harassment warning**) or arresting him for the criminal offences of harassment or putting someone in fear of violence.

The criminal courts can make a **restraining order** following conviction of the person responsible for harassment or putting someone in fear of violence. A restraining order can prohibit the harasser from doing anything specified in the order including using or threatening violence, communicating with a person (by phone or email) or going to certain places (a woman’s home or place of work). A woman who wants a restraining order should discuss this with the **Police Liaison Officer** (PLO) dealing with her case before trial. For information about criminal proceedings see our legal guide **Reporting an Offence to the Police: A Guide to Criminal Proceedings**.

In addition to or instead of contacting the police a woman experiencing harassment can apply for a **restraining order** at her local **County court** or the **High Court**. The procedure for applying for a restraining order is complex so anyone considering applying should seek legal advice.

Enforcement

Breach of a restraining order is a **criminal offence** that can be tried in the Magistrates’ court or Crown Court. The criminal courts have a range of sentencing options available to them; however, the maximum sentence is 5 years imprisonment.

Funding for domestic violence injunctions

To be eligible for **public funding** (formerly Legal Aid) you have to have a legitimate legal problem (the merits test) and meet certain financial criteria (the means test). You can find out whether you are eligible for public funding using the calculator on the Community Legal Advice website (see **Other useful contacts**). However, if you need public funding to get protection from domestic violence you may qualify for assistance even if your income is above the limits set out (**Reg 5E, CLS (Financial) Regulations 2000**).

If you are applying for public funding it is advisable that you report the incident/s of violence to the police. If you have not reported the incident/s your solicitor will have to give detailed reasons why this was not possible or appropriate in your case. Your solicitor must also **consider** whether or not it would be

appropriate to send a warning letter to your abuser.

Many women are either not eligible for public funding or cannot find a solicitor in their area who does publicly funded work or is able to take on the case. Women in this situation can either pay for legal advice privately or represent themselves. If you are considering representing yourself you can use our **Domestic Violence**

DIY Injunction Handbook (2nd edition) or contact our legal advice line for assistance.

The law relating to domestic violence is complex and we have provided a very basic overview of terminology, the law and procedure. We would strongly advise you to seek legal advice by either telephoning our legal advice line or contacting a solicitor.

Please note that the law referred to in this legal guide is as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this guide. This legal guide is designed to give general information only.

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For free, confidential, legal advice on family law issues including divorce and relationship breakdown, children, domestic violence and lesbian parenting call our Family Law Advice Line on **020 7251 6577 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 11am–1pm, Tuesdays and Wednesdays 2–4pm and 7–9pm, Thursdays 7–9pm and Fridays 12noon–2pm.**

For free, confidential, legal advice on criminal law issues including domestic and sexual violence call our Criminal Law Advice Line on **020 7251 8887 (telephone)** or **020 7490 2562 (textphone)** on **Tuesdays 11am–1pm and Thursdays 2–4pm.**

For free, confidential, legal advice on immigration and asylum law, including in relation to financial support issues call our Immigration and Asylum Law Advice Line on **020 7490 7689 (telephone)** or **020 7490 2562 (textphone)** on **Mondays 2–4pm and Wednesdays 11am–1pm.**

Other useful contacts

Community Legal Advice (for finding a family solicitor)	0845 345 4345	www.legaladvisorfinder.justice.gov.uk/AdviserSearch.do
Department of work and pensions		www.dwp.gov.uk
Gingerbread	0808 802 0925.	www.gingerbread.org.uk
National Domestic Violence Helpline	0808 2000 247	www.nationaldomesticviolencehelpline.org.uk
Samaritans	08457 909090	www.samaritans.org.uk
Shelter	0808 800 4444	www.shelter.org.uk

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