

A Family Law Department  
Client Guide on  
Domestic Violence and  
Occupation of the Family Home

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# Domestic Violence and Occupation of the Family Home

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## 1. General Comments

This guide provides an overall view of the legal position for anyone who is suffering from domestic violence or harassment.

If you or your children are suffering from domestic violence or from harassment, it may be possible to apply for a Non-Molestation Order which is an order preventing your partner from “molesting” you or your children. The order can extend not just to your partner, but also to anyone whom your partner tells to molest you.

## 2. Who can apply for a Non-Molestation Order?

Anyone can apply for a Non-Molestation Order if they are an “associated” person. An “associated” person includes people who :-

- Are married / have been married
- Are co-habitants / have been co-habitants
- Are relatives
- Have agreed to marry each other
- Are parents of the same child or who have parental responsibility for the same child
- Same-sex couples
- Live in the same household / have lived in the same household (but not as the other party’s employee, tenants, lodger or boarder)

If you or your children are suffering domestic violence or molestation in some form from a partner, then:-

- You should consider going to the police in the first instance and make a complaint. The police are under a duty to investigate and if they believe there is sufficient evidence, they can formally caution or charge a person accordingly. If the police do press charges, then often the bail conditions set by the Magistrates Court will provide you and your children with protection from further assault or harassment.
- You should also take the additional step of visiting your solicitor and asking that a warning letter be sent to your partner. This might well be all that is necessary to cause your partner to “stop and think”. A next step might be an anger management course or some help from Relate, an organisation which helps couples cope with relationship breakdown or difficult parenting problems.

## 3. How do you apply for a Non-Molestation Order?

If the police are not able to press charges, often through lack of evidence or a warning letter is not considered appropriate or has not produced the desired effect, then you can apply to the Court for a Non-Molestation Order. This can be done with or, in the case of an emergency, without notice to your partner.

## 4. How to apply

Please contact us so that we can make the applications on your behalf.

Additional support and information can be obtained from voluntary support organisations such as the local Women’s Aid refuge or Victim Support.

## 5. What does the process cost?

At present the court fee for issuing a Family Law Act (FLA) application is £60 - there is no fee for an application made in the magistrates’ court. Exemption from court fees may be possible for a person in receipt of benefits. We will provide a free assessment will be made as to your eligibility for public funding during your consultation.

## 6. Without Notice Application (Ex-Parte)

Where a situation is an emergency, an applicant can issue her application in court and go before a judge/magistrate on the same day without notice to your partner (i.e. in his absence). In the applicant's sworn statement, she must include the reasons why the court should deal with the application without notifying the partner first. If an order is made the court has to give a date for a full hearing so that the partner has an opportunity to put his side of the story.

## 7. With Notice Applications?

Once the applicant has issued her application in court, all parties will be sent notices to appear at a court hearing. The hearing should take place from a week to four weeks later. This type of application must be served on the partner at least 2 days before the actual hearing.

## 8. At the Hearing?

Both parties are expected to give evidence and answer any questions put to them by the Judge or the opposing party's legal representative. If the court believes the application is justified, it will issue an order.

- A Non-Molestation Order can be temporary and reviewed at a later date or last for a defined period. It will usually have a power of arrest attached to it, particularly where one party has used or threatened violence against the other party. This means that if the terms of the order are broken, the police will be able to arrest your partner immediately. A serious breach of a non-molestation order can lead to a prison sentence of up to 2 years.

## 9. Undertakings

Sometimes an "undertaking" can be given to the Court rather than the Court imposing an order. This is essentially a promise to the Court by the partner as to his/her future behaviour. It is not an admission of guilt, but is an option that can allow parties to settle their dispute without a full hearing.

No power of arrest is attached to the undertaking. If the promise is broken, the Court would still consider a breach of an undertaking as a serious issue as it is as enforceable as if it were an actual Court order. Therefore committal proceedings can be instituted resulting in a fine or a prison term. The Court will also not accept an undertaking where a power of arrest would normally be attached to an order.

## 10. What are Occupation Orders?

These are orders which decide who should carry on living in the family home in the short-term after there has been domestic violence or harassment etc. These orders can :-

- Allow you to remain in the home if your partner is trying to get you out
- Allow you back in the home if your partner has already thrown you out or is preventing you going back to the home
- Exclude your partner from all or part of the home
- Impose a set of rules about living in the home
- State that you or your partner must live in separate parts of the home
- Order your partner to leave the home or part of it within a time frame deemed appropriate by the Court

An occupation order can also impose financial obligations such as an obligation to pay the rent or mortgage.

The extent of the order that can be applied for depends upon whether you are married, co-habiting and on whether you own the property or have an interest in the property. The Court will not automatically grant an order where one party would become homeless as a result, but will always take into account the welfare of any children in the situation.

As with Non-Molestation Orders, a power of arrest attached to an Occupation Order is usual where one party has used or threatened violence against the other.

If you find yourself in a situation where you need help and are suffering domestic violence or harassment, please do not hesitate to contact the following, who will be pleased to offer support and advice :-

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