

## **DOMESTIC VIOLENCE/ABUSE HANDOUT**

If you are a victim of domestic violence/abuse or harassment you should always report any such incidents to the police who have a designated Domestic Violence Unit. In addition you should consult with a solicitor to enquire if an injunction is appropriate.

There are three types of Injunction which can be obtained if a person is harassed or intimidated by another person or being subjected to violence.

Two are in relation to family situations, the other is in relation to general harassment.

### **'Clare's Law' – Domestic violence checks on partners**

The rules surrounding Domestic Violence and Abuse have recently changed to allow people to request the police to check their partner's previous history of Domestic Violence or violent acts.

This is known as the Domestic Violence Disclosure Scheme or "Clare's Law", which is named after Claire Wood, who was strangled by her boyfriend, George Appleton and set on fire at her home in Salford, in February 2009. The couple had met on the internet and Mr Appleton had a record of violence against women.

The checks also stretch to anyone who is worried about someone they know who is in a potentially abusive relationship and believe they are at risk of domestic violence and/or abuse.

The checks allow the police to look through the person's criminal history/records and if they have reason to believe this person is a risk due to offences they may have committed or other information arising from their system, they can consider disclosing such background information to the potential victim.

The victim can then make their own choice as to whether to continue in the relationship or not.

## **Domestic Violence Protection Orders**

There has been a further change and introduction of Domestic Violence Protection Orders (DVPOs), which help and provide support for victims who have been subjected to incidents of Domestic Violence and Abuse. They have been implemented from the 8<sup>th</sup> March 2014. DVPOs can last for up to 28 days, during which time an offender can be prevented from having contact with the victim and/or returning to the home where they have both lived.

This is designed to be a “filler”, which provides immediate protection to the victim so it gives them enough time to think about their options and what to do next. We would advise the victim should always seek legal assistance from a solicitor to see what more permanent measures can be taken against an offender.

## **Steps to be considered before an Application for a legal Injunction is made**

There are various steps which have to be considered before an Injunction can be applied for both under the Family Law Act and the Protection from Harassment Act:

1. A warning letter must have been sent to the opponent in a situation where an emergency Order is not required.
2. Where the Police have been involved but have refused to take action.
3. Removal to a Refuge should be considered where it will offer sufficient protection.

Once this procedure has been followed, if the harassment is continuing, then an Injunction of the appropriate type can be applied for and Public Funding if appropriate can be considered.

## **Family Law Act 1996 Non Molestation Order and Occupation Order**

The Applicant is the person making the Application. The Respondent is the person defending it.

These can be obtained against someone who is related to the Applicant in the following way:-

- (a) Husband, wife or civil partner
- (b) The cohabitee or former cohabitee
- (c) Someone with whom you have shared a house other than a tenant, lodger, employee or boarder.
- (d) A relative.
- (e) A fiancée or ex-fiancée. However this must be within 3 years of the end of the engagement.
- (f) Someone with whom you have had a child.
- (g) Someone who is party to existing Court proceedings of a family nature.

(Note: children under 18 can apply for an Order in their own right. However, if under 16 they will require the leave of the Court which will only be given if the Court is satisfied the child has sufficient understanding to make the Application.)

There are 2 types of Order that come under this heading:

### **1. Non Molestation Order.**

The Courts can grant an Order prohibiting the Respondent from molesting the Applicant or a child. The word "molestation" covers not only violence and threats of violence, but also harassing and pestering. This means that an Order can be granted against a former partner who sends abusive letters, or makes persistent nuisance telephone calls.

There are factors which the Court must consider in relation to the making of a Non Molestation Order. They must consider all of the circumstances including the need to secure the health, safety and wellbeing of the Applicant and so if the Applicant can show that there is a genuine need for protection for themselves or any relevant child then a Non Molestation Order will be granted by the Court.

An Order is normally made for a specified period. This is usually between 3 to 12 months. The Court will not usually make an Order for an indefinite period.

If a person acts in breach of a non-molestation order they are committing a criminal offence and can be arrested by the police and prosecuted.

In the alternative a breach of a non-molestation order can be dealt with by way of committal proceedings for contempt of Court.

## 2. Occupation Order

An Occupation Order is usually obtained against a spouse or cohabitee who is living in the same property as the Applicant where it is necessary to exclude them from that property in order to ensure the Applicant's safety. As this is a serious remedy effectively making the Respondent homeless, the Court has to consider a complex range of factors. The Court will consider the following:

- (a) Whether the proposed Applicant, i.e. the person bringing the Application, can apply for an Order. This means that the Court will consider both parties' rights to occupy the house whether they are joint owners, joint tenants, or have some other right to occupy the house in question.
- (b) The Court will then decide what provisions should be put into the Order. That means whether they will exclude the Respondent completely from the home or whether they will exclude them at certain times.
- (c) The Court will then take into account various factors to decide whether or not to grant the Order. These will be discussed later in the Handout.
- (d) Finally the Court will consider the duration of the Occupation Order.

### **What the Court can Order as part of an Occupation Order**

The Court can order any of the following:-

- (1) Declare a person's rights to occupy the property.
- (2) Requiring the Respondent to permit the Applicant enter and remain in part of the home or in the home.
- (3) Regulating the occupation of the home by either or both parties.
- (4) Can prohibit, suspend or restrict the Respondent's exercise of their right to occupy the home.
- (5) They can require the Respondent to leave the home or,

- (6) They can exclude the Respondent from a defined area in which the home is situated.

### Factors which the Court must always consider when making an Occupation Order.

The following factors will always be considered by the Court and have to be referred to within a written statement which will be provided to the Court with their Application for an Order:

- (a) **The respective housing needs and housing resources of the Applicant, both parties and any child.** This means that the Court will consider factors such as family who live in the area with whom either party could reside or whether either of them have the income to afford rental property and in respect of a child they will consider the importance of the child's requirements.
- (b) **The respective financial resources of the parties.** As above the Court has to consider the parties' financial needs and income before making a decision.
- (c) **The likely effects of making the Order** or the decision not to make an Order on the health, safety and wellbeing of both parties and any relevant child.
- (d) **The conduct of both parties in relation to each other.** This means they will consider the conduct of the Applicant and the Respondent over a period of time and if there is a child involved they will consider what is known as the balance of harm test. This means that if it appears to the Court that the Applicant or any child are likely to suffer significant harm because of the conduct of the Respondent if they do not make an Order then they must make the Order unless it appears to them that:
  - (i) The Respondent or any child is likely to suffer significant harm if the Order is made and
  - (ii) The harm that is likely to be suffered by the Respondent or any other child is as great or greater than the harm caused by the conduct of the Respondent which is likely to be suffered by yourself or a child if the Order is NOT made.
- (e) **The duration of an Occupation Order.** It can be made for a specified period or until the occurrence of a specified event or further Order.

As such the Order could be made for an indefinite period. However, in practice the Courts usually make the Order for a specified period of 3 to 6 months.

- (f) **A Power of Arrest** can be attached to an Occupation Order.
- (g) **Breach of an occupation order** where a Power of Arrest is attached will lead to the person breaching the order being arrested by the police and prosecuted. If someone acts in breach of an Occupation Order where no Power of Arrest is attached they are in contempt of court. In these circumstances an application will normally be made for the person breaching the Order to show good reason why they should not be sent to prison for the contempt.

## Procedure

- (1) An Application will be made to the Court where the situation is considered to be an emergency because there is significant risk of harm to the Applicant's safety or any relevant child. An application for both orders can be made to the Court without the Respondent being informed of this beforehand. This is known as making an Application without notice (ex parte). Whilst the Court may grant a non-molestation order ex-parte it is possible that the Application for an Occupation Order to be adjourned to the first on notice Hearing when the Respondent will be present at Court. Where an Order is obtained without notice it is not effective until served on the Respondent. All non-molestation orders are served on the police.
- (2) The Court Application form is completed and a statement must be made by the Applicant to support that Application. This statement has to be sworn at the Court in front of a Court official.
- (3) If you are eligible for Public Funding we can grant this in an emergency. However, Public Funding forms have to be completed and submitted to the Legal Services Commission within 5 working days otherwise you will be liable for all of our costs incurred.

- (4) We then attend Court before the Judge and the Judge considers the Application before deciding whether to make the Non Molestation or Occupation Order as applied for.
- (5) If the Judge makes this Order then he will set another Hearing date which is usually within 1 or 2 weeks of the initial Application to give the Respondent the opportunity to attend Court to be heard.
- (6) At this hearing the Judge will consider the Applicant's position and the response of the Respondent before deciding whether the Order should be made for a longer period.
- (7) If the Respondent disputes and challenges the allegations the Judge can list the application for a fully contested Hearing where both parties will need to give evidence and be cross examined.

### Intervention under the Protection from Harassment Act

- (1) Where there has been a course of behaviour that can be interpreted as harassment the police can intervene, interview, warn and issue Harassment notices against the offending party.  
Two or more incidents of harassment amount to a course of behaviour.
- (2) If the police action fails to protect, this type of Injunction can be obtained against someone who is harassing, intimidating, or pestering the Applicant in some way but who is not related to the Applicant in any of the ways as required by the Family Law Act 1996 as set out above. The Applicant must prove to the Court that the harassment has been ongoing for some time and that it is of a serious nature. It should be noted that for this type of injunction the funding of Public Funding is difficult to obtain. It should only be considered in extreme cases where there has been a regular pattern of harassment.

## Likely costings:-

1. Public Funding – the eligibility for Public Funding on a capital basis is not capped but you may be asked to pay a lump sum contribution to your funding certificate. Eligibility is still meanstested in relation to income. If you have a disposable income over £301 per month or above you will be asked to pay a monthly amount towards any legal fees over £296.
2. If you are Publicly Funded the obtaining of the emergency Order is likely to cost up to £1200 and the likely costs for an extension to this is likely to cost £2000 to £2500.
3. Private paying clients – if you are a private client you will be charged in accordance with our terms of business already provided. The likely costs of an initial emergency injunction will be up to £2000. To obtain an extension to that Order for a period of 3-6 months or even longer in exceptional circumstances is likely to cost up to £4000.

## Statutory Charge

This allows the Legal Services Commission to claw back the legal costs they have paid on your behalf where there has been a financial settlement. For more information you are referred to the Certificate of Public Funding Handout – Matrimonial. You should be aware that although the Statutory Charge does not normally apply to the obtaining of a Non Molestation/Occupation Order it does if there is a Public Funding Certificate dealing with finances already in place or subsequently comes into existence.