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Your questions answered

NON-MOLESTATION ORDERS AND OCCUPATION ORDERS

The purpose of this Stowe guide is to enable you to understand what non-molestation orders and occupation orders are:

Non-molestation orders

A non-molestation order prohibits a person (the "Respondent") associated with the person applying for the order (the "Applicant") from "molesting" them or relevant children. They are used to protect individuals from violence, harassment and threats, but can cover a wide range of behaviour.

Any breach of a non-molestation order is punishable as a criminal offence and a contempt of Court. The order takes effect once it is served on the Respondent.

When faced with an application for a non-molestation order, the Court will have regard to all of the circumstances of the case including the need to secure the physical or mental health, safety and wellbeing of the Applicant and any relevant children. The focus is not the nature of the Respondent's behaviour, but its effect.

A wide range of behaviours could be considered "molestation" by a Court. It is possible to obtain a non-molestation order based on a single incident if the Court is satisfied that intervention is required to control the Respondent's behaviour.

There are different types of non-molestation orders including those which prohibit certain actions or behaviours, such as communicating or attempting to communicate with the Applicant, and those which prohibit going to, entering or attempting to enter defined areas. These are often referred to as "stay away", "zonal" or "exclusion" orders.

Non-molestation orders are sometimes applied for without warning to the Respondent. A high duty of candour applies and the Court is expected to carefully scrutinise the application. If successful, an interim order is made and the matter will be listed for another Hearing, this time on notice to the Respondent.

Non-molestation orders are usually made for periods of up to 12 months. The trend is moving away from orders being made for longer or for an indefinite period as was often the case in the past.

It is sometimes advisable to compromise applications for non—molestation orders on the basis of the Respondent providing undertakings not to do the acts complained of. Breach of an undertaking is a contempt of Court, but not a criminal offence. In such cases, no admissions are made and the Court makes no findings of fact. Undertakings may not be suitable where the allegations are extremely serious or easily disproved.

Occupation orders

Occupation orders are made to regulate occupation of a property. The Court has the power to decide who should or should not reside in all or part of a home. They can grant the Applicant the right to occupy a property to the exclusion of the Respondent and require the Respondent to leave. Occupation orders can also exclude the other person from areas around the property and deal with practical matters such as payment of the mortgage or rent.

In deciding whether to make an occupation Order the Court will have regard to all of the circumstances of the case, including the parties conduct; their financial resources; the housing needs of the parties and any relevant children, and the likely effect of any order on the physical and mental health, wellbeing and safety of the parties and any relevant children.

The Court also has a duty to consider the 'balance of harm' test, ie. the harm that would be caused to the parties and any relevant children if the order was or was not made. The Court must make an order if it appears that the Applicant and any relevant children are likely to suffer significant harm attributable to the conduct of the Respondent unless the harm likely to be suffered by the Respondent and any relevant child is as great or greater.

As with non-molestation orders, the Court may accept an undertaking rather than making an occupation order without the Respondent making any admissions or the Court making any findings of fact. However, it must not do this where a power of arrest would otherwise be attached to the order. A power of arrest would be attached if a Respondent has used or threatened violence against the Applicant or a relevant child and there is a risk of significant harm to the Applicant or child attributable to the conduct of the Respondent. A breach of an occupation order is an arrestable offence if a power of arrest has been attached.

Occupation orders are usually made for a maximum of 6 months, but can be renewed. In some circumstances, they may be made for longer periods.

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