

SERVICE
GUIDE

Domestic abuse
and the law



The charity Refuge defines domestic abuse as:

“the systematic pattern of behaviour on the part of the abuser designed to control his partner. The abuse can be physical, emotional, psychological, financial or sexual. Anyone forced to alter their behaviour because they are frightened of their partner’s reaction is being abused. It can begin at any stage of the relationship. Domestic violence is rarely a one-off. Incidents generally become more frequent and severe over time.”

Domestic abuse knows no social or economic boundaries and can happen to anyone, in any type of relationship. It can be experienced by men and women.

Leaving an abusive relationship

It takes a great deal of courage to leave a partner that controls and scares you. If you wish to leave, it is important you plan your departure safely.

We have supplied some links to useful web resources on the inside back cover of this booklet.



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www.stowefamilylaw.co.uk



How can the law help victims of domestic abuse?

Many kinds of domestic abuse are criminal offences and should be reported to the police.

Most police stations have Domestic Violence Units or Community Safety Units with specially trained officers to deal with domestic violence and abuse.

Once you have found a safe place and are thinking longer term, you may choose to permanently separate from your partner by divorce if you are married.

There are also legal steps you can take to keep your abusive partner away from you. As a victim of domestic abuse you may qualify for Legal Aid and would not have to pay legal costs or court fees.

For more information on legal aid, see the inside back cover.

Understanding injunctions

Where there is domestic abuse, you can apply for an injunction against:

- Someone you are or have been married to
- A cohabitant or former cohabitant
- Those living in, or who have lived in the same household (other than employees, tenants, lodgers or boarders)

- The parent of their child
- Someone you are or have been engaged to
- Someone you have been involved in an intimate relationship with for some time
- A relative.

There are two types of injunctions:

A non-molestation order which prohibits someone from using violence against the other person, threatening them with violence, pestering or molesting them, or coming within a specified radius of their home, or other specified premises, or encouraging another person to do.

There are two types of occupation orders that are available these are referred to as declaratory and regulatory.

- Declaratory orders can set out the rights of occupation of the property, they can extend the rights of occupation beyond the termination of them (for example following divorce/death) or they can grant a right of occupation to an individual who would otherwise have no rights.
- Regulatory orders could require one party to leave the property, temporarily suspend their right to occupy, prohibit one party entering or re-entering/coming within a certain distance of the property once left. They could also

allow a person to enter or remain in the property or even regulate the occupation of the home such as the use of certain rooms/areas. They can also terminate completely the occupation rights of an individual in respect of a property.

How to apply

In order to make an application, a Form FL401 entitled “Application for: a non molestation order/an application for an occupation order” must be completed and lodged at the Court. This should be supported by a statement setting out the background of the case.

In urgent cases, the application may be heard without the other party receiving notice. If this is the case the Court will usually make a short term order and arrange for a future hearing which the other party will be given notice of.

The case can be resolved by a Court order, or in certain cases by the other party giving an undertaking, which is a solemn promise to the Court not to behave in a prescribed way.

You will need to attend Court for all hearings. Any injunction order is only valid once it has been personally served upon the other party. There is no automatic entitlement to either of the above orders, and it is open to the other party to defend the application.

When the Court considers making an occupation order, it will look at the circumstances of the case, including housing needs, resources of the parties and any relevant children and the likely impact of an order. It will also look at the conduct of the parties.

The Court will also consider the relationship between the parties and the legal rights regarding ownership of the house. On or after making an occupation order, the Court may impose obligations on either party regarding the repair and maintenance of the property and payment of rent, mortgage or other outgoings.

How long do they last?

The duration of non-molestation orders/occupation orders does vary, but is typically either six or twelve months. This can be extended if the other party continues to cause problems.

Enforcement of non-molestation/occupation orders

Breach of a non-molestation order

Any breach of a non-molestation order is a criminal offence and you should inform the police immediately. You should also contact your solicitor.

Once contacted, the police should arrest the respondent and question them in relation to the alleged breach.

If the respondent admits the breach then the Magistrates Court can sentence them on the first occasion that they appear before the Court or, if the Magistrates are considering a custodial sentence, they can ask the Probation Service to prepare a pre-sentence report before imposing a sentence for the breach.

The Magistrates Court may sentence the respondent by means of custody, a fine or unpaid work in the community. Sometimes, the Court may not impose any sentence at this stage, provided they comply with the non-molestation order going forward. However, if there are any further breaches the respondent will then be sentenced for the old breach and the new breach.

If the respondent denies having breached the non-molestation order then the Magistrate will fix a trial date when you will need to go and give evidence on behalf of the Crown Prosecution Service and the respondent will also give evidence.

If you report the breach to the police, but they do not take any action, you should let your solicitor know. In these circumstances, it may be possible to make an application to the County Court to enforce the non-molestation order using the committal procedure as set out below.

Breach of an occupation order

If an occupation order is breached, for example, if they have been ordered to leave the cohabited home and refused to go, or if they left the property but returned without consent, then you should contact your solicitor urgently. If a 'power of arrest' is attached to the order, you should also contact the police immediately.

The police should then arrest the respondent. When the respondent is arrested, they will be taken to the County Court by the police within 24 hours and the District Judge

will either sentence them, or give directions for the filing of statements and list the case for a contested hearing.

If the occupation order does not have a power of arrest attached to it, your solicitor will make an application for committal. This application allows the County Court to punish the respondent for breaching an order.

Committal application

An application for committal is a written application that is submitted to the Court. Your solicitor will prepare this and a sworn statement on your behalf which sets out full details of the breach. This will then be issued by the Court and an initial hearing date set.

At the first hearing, the respondent will be asked if they admit the alleged breach. If the respondent admits the breach, the Court will be able to sentence them at the first hearing.

If found guilty, they face imprisonment or a fine. The Court can defer a sentence, but if they fail to comply with the order again, they will be sentenced for both breaches.

If the respondent denies the breach, then the Judge will order that the case be listed for a contested hearing.

You have the opportunity of filing further witness evidence and the respondent will be ordered to file statements in response. The case will then go to Court.

On the day, you (and your witnesses if you have any) and the respondent (and any of their witnesses) will attend Court to give evidence and be cross-examined.

If the Judge is satisfied that the order has been breached, then the respondent will be sentenced in one of the ways described on the previous page.

Breach of an undertaking

If the respondent fails to comply with an undertaking, then you should contact your solicitor urgently. An application can then be made to the Court for the respondent to be punished for the breach. The procedure will follow the one set out under the heading 'committal application'.

How long will it take?

A non-molestation or occupation order can be heard by the court the same day the application is made. There will then be a return date normally within a couple of weeks. If there needs to be a trial, for example, the respondent denies the allegations, this could take 3–6 months depending upon court availability.



Useful links

Access via the QR reader app on your phone.



Find out more about legal aid on the Stowe website.



Apply for a non-molestation or occupation order.



A list of support networks and agencies on the BBC website.



Specific advice on planning to leave on the Refuge website.



For more information on domestic abuse and the law
please call our Client Care Team on **0330 838 7456**
to speak with one of our specialist family lawyers
or visit **www.stowefamilylaw.co.uk**