

## **Domestic Violence – Applicant**

*This brief note is designed only to give a general outline of the relevant law and procedure relating to non-molestation and occupation orders as it applies to partners. It is based on the Family Law Act 1996, the relevant part of which came into force on 1st October 1997. The note will be revised as necessary in the light of experience as the new law is implemented by the courts.*

*The type of court order obtainable, its duration and its contents will vary according to the nature of your relationship with your partner and the legal interest, if any, you have in the home, such as ownership or tenancy rights. The detail of the law is too complex to be contained in this summary, but we will advise you according to your particular circumstances.*

*The new law can also assist those who are not partners but who are related in other ways. We will be glad to advise you if you are being subjected to violence from any relation or member of your household. and look with you at whether an order could be obtained to protect you. Information about legal aid and court procedures and orders contained in this note will be applicable to you in most respects.*

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Violence you experience within a relationship, apart from any physical injury it may cause, leads to very real emotional stress, both for you and for any children who are involved. We recognise that, and will try to deal with your case as sympathetically as possible. However, there are sometimes limits on the help the law can give. Help under the legal aid system is also often limited. Both these limitations may mean that, at times, we are not able to do as much for you as you or we would like. Should that be your situation, we will explain to you what the difficulties are.

*What happens initially?*

We will discuss with you in confidence the acts of violence that have taken place. We will need to take from you as much detail as you can give us, both as to the nature of the violence and the dates on which it took place. The more specific information you can give, the more this will help your case. We will need to know whether there were any witnesses to the violence (if there were, we are likely to need to take a statement from them) and whether the police were called (if so, we will want, with your agreement to contact the police station concerned). You should note that you will have difficulty in obtaining legal aid to make an

application to the court if you have not involved the police, or if you have done so and the police are taking action against your partner.

If the violence has been on one occasion only, is not recent (that is, within the previous 2 or 3 weeks) or has been infrequent, or it has not been at a level the court would regard as serious, then we will consider with you whether a letter to your partner warning against similar future conduct might suffice to bring the violence to an end. Such a letter would usually contain a warning that any future violence might lead to an application being made to the court. The absence of this letter is also likely to cause difficulty in obtaining legal aid.

If the violence has been serious and/or frequent, if the police have been involved but have taken no action, and if a warning letter has produced no improvement, we will consider with you whether you are likely to be financially eligible for legal aid and, if you are, complete application forms for you. You will be provided with other information about the legal aid process and any costs implications for you if you proceed with the help of legal aid.

Legal aid can sometimes be obtained on the same day you first see us for you to apply to the court for an order, but this will only be possible if you or a child is in imminent danger of significant harm from your partner.

#### *What orders can the court make?*

If an application to the court is appropriate, we will prepare for you an application for a court order which will tell your partner that they must do or must not do a certain action. For example, the order can tell someone not to be violent to you or a child (“non-molestation order”) or can (in certain circumstances) require someone to move out of a house (“occupation order”). You must appreciate that the order, of itself, does not provide you with physical protection - it is, of course, only a piece of paper. However, the court has power to punish someone for failing to obey the terms of such an order once they have been handed a copy of it and this, in the majority of cases, has the effect of encouraging people to comply with its terms. A breach of an Order is automatically a criminal offence and the police can become involved.

The court can include supplemental provisions in the order in some cases, relating to such things as responsibility for household outgoings and for maintenance of the property. It can also give you legal rights to be in occupation of the property or a specified part of it even if you are not a joint owner or tenant.

An order can be applied for as part of divorce proceedings if you are married, or within separate proceedings if you are not or if you do not wish at this stage to seek a divorce. We will consider with you whether your circumstances are such that an urgent application has to be made to the court for your protection without your partner first being notified (remembering that there are quite strict limitations on the availability of emergency legal aid for this purpose).

*How is the order applied for?*

If after discussion with you and, if you are eligible for legal aid, the Legal Services Commission has issued you with a certificate, it is agreed that an order will be applied for, we shall prepare the formal court application. This has to be supported by a statement from you (called an “affidavit”) which is either sworn or declared to be true and, in some cases, statements from any witnesses.

If your case is really urgent, you will then be asked to come with us to court to see the judge or magistrate and ask him or her to make the order and the case will then be put over to another hearing a few days later. If your case is not quite so urgent, we shall send your application to the court so that a hearing date (normally within the following week) can be arranged.

A copy of the papers will be given by us to an enquiry agent to serve personally on your partner. To help this to be done efficiently, please supply us with a photograph of your partner (if you have one) or a physical description. We shall also need details of their place and hours of work and any addresses at which it is likely that they can be reached by the enquiry agent.

If, following personal service of the papers on your partner, they make contact with you, you should let us know. If you are threatened with further violence, you should immediately also make contact with the police and seek their assistance, telling them that an application is being made to the court.

On the hearing date, you will be required to attend court and may be asked to give evidence. Provided the papers have been served on your partner, the case is then likely to be dealt with in one of four ways:

1. An order is granted. If so, we expect it normally to be expressed to last for 3 - 6 months, on the basis that the difficulties that led to the violence can generally be resolved in that time. The hearing is likely to proceed in this way if your partner fails to appear, if the judge is satisfied that legal grounds for the order exist, or
2. Your partner attends and offers a promise to the court (called an “undertaking”) in terms which you and the court find acceptable. This undertaking can be enforced and breaches punished as if an order were granted by the Court through committal proceedings, or
3. The application for an order is refused because the court does not accept your version of events or does not accept that you are at risk of further violence: or
4. The proceedings are adjourned or withdrawn at your request on the basis of an informal agreement. This might be the case if, following the application for an order, you and your partner had patched up your differences.

A copy of any order or undertaking has to be given to your partner personally for its terms to be enforceable. We will send a copy of the order to your local police station so that they will be aware of its existence and be better able to help you quickly should your partner disobey the order.

### *Housing problems?*

You may find it necessary to look for temporary accommodation, for example, in a refuge. You may also want to consider longer term alternative housing by applying, for example, to the local authority for council housing. We will consider those options with you and try, where possible, to assist you with any applications you make for alternative accommodation.

### *Can I get help with inadequate income and housing costs?*

If you are on a low income, you may well be eligible for benefits to assist in meeting housing costs. If you are working less than 16 hours per week and separated, you may also be entitled to income support in your own right, including help with housing costs. If you are working more than 16 hours per week and have at least one child under the age of 16 (or under 19 and in full time education), you may be eligible to claim Family Credit.

If the violence has forced you to move out of your home, an occupation order may be obtainable that would allow you to return to the exclusion of your partner or limiting their use of part of the home. If the house you were living in was owned by your partner, there may also be steps that can be taken to protect any interest you might have in that property and we will discuss these with you if that is your situation.

### *What happens if my partner breaks the order or undertaking?*

A breach, because it is disobedience of a court order, is a “contempt of court”. If that happens, you must let us know immediately. We shall then have to decide with you whether the breach is only minor, in which case a written warning from us may suffice to ensure no future breaches. If the breach is not minor, you should contact the police as the breach is a criminal offence. If the police do not take action and we consider that it was serious we can apply to the Court for your partner’s committal.

The judge may, if the breach is proved, punish your partner by imposing a fine or a prison sentence (which may take immediate effect or be suspended), though often more than a single breach will be needed before the court will take such a step.