



**Atherton
Godfrey**

S O L I C I T O R S

DOMESTIC ABUSE, NON-MOLESTATION ORDERS AND OCCUPATIONAL ORDERS

This fact sheet is intended to act as a general guide to steps you can take if you have experienced domestic abuse, and particularly non-molestation orders and occupational orders. We are happy to discuss the circumstances of your own situation in more detail.

What is domestic abuse?

Domestic abuse includes any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or are family members. This includes, but is not limited to, psychological, physical, sexual, financial or emotional abuse.

Practical steps you should consider

In addition to legal action, you should consider whether there are any practical steps you can take to protect yourself from domestic abuse. For example, you could:

- Change your mobile phone number and check your social media privacy settings
- If you think an incident is about to happen, try and get away and call the police. If you cannot, try and avoid rooms like the kitchen where there are potential weapons
- Have a plan of ways to get out of your property
- Keep your keys within easy reach
- Keep your mobile phone close by and charged so that you can call for help
- If you have children teach them how to use the telephone, your address and how to call 999 in an emergency
- If it is safe and you trust them, talk to your neighbours so that they can call the police if you are unable to

Doncaster Domestic Abuse Service offers confidential advice, information and support and can point you to other services. Their helpline number is **01302 737080**

Reporting domestic abuse to the police

If you have experienced domestic abuse, you may be the victim of a criminal offence. If you think you have been the victim of a criminal offence, or you are concerned for your safety, you should report this to the police immediately.

Action the police can take

The police can issue a Domestic Violence Protection Notice, apply for a Domestic Violence Protection Order or charge the perpetrator with a criminal offence.

Other ways that the law can protect you

In addition to the steps the police can take, the law enables those subject to domestic abuse to apply to court for injunctions to protect them.

The most common injunctions made by the court are called non-molestation orders and occupational orders. This guide explains what these are and how you can apply for them.

NON MOLESTATION ORDER

What is a non-molestation order?

A non-molestation order is a court order forbidding someone (called the respondent) from “molesting” another person (called the applicant). It can only be applied for where the applicant and respondent are associated to each other according to certain criteria, e.g. through living together.

Molesting can include behaviour that harms, troubles, vexes, annoys or inconveniences an associated person or any relevant children. It can be direct and include a range of behaviour, such as:

- Physical harm
- Verbal abuse or threats
- Pestering another person

Molestation can also be committed indirectly, including in writing or through a third party, and can include intimidation, pestering and persistent abusive messages or phone calls, threats and harassment. Molesting can also include pushing, punching, slapping, hair pulling, throwing objects and spitting.

What will a non-molestation order say?

A non-molestation order will be tailored to the individual circumstances of the case, but will often include orders forbidding the respondent from:

- Using or threatening violence against the applicant
- Using or threatening violence against a related child
- Coming within a specified distance of the applicant
- Coming within a specified distance of the applicant’s home, place of work or another location and/or
- Communicating with the applicant by any means, including messages or phone calls, except through solicitors

How will the court decide whether to make a non-molestation order?

In deciding whether to make a non-molestation order the court will consider all the circumstances, including the need to secure the health (physical or mental), safety and well-being of the applicant, and/or any relevant children.

The court must be convinced there is evidence:

- Of the behaviour complained of
- That the applicant or a child is in need of protection
- That, on balance, an order is needed to control the behaviour of the respondent.

How long will a non-molestation order last?

Typically, a non-molestation order is made for six to twelve months but it is possible to then apply for further orders.

What are the consequences of breaching a non-molestation order?

A person who, without reasonable excuse, does anything that he/she is prohibited from doing by a non-molestation order is guilty of a criminal offence.

As a breach of a non-molestation order is a criminal offence, the police can intervene to stop a breach while it is happening or where they have reason to believe a breach has occurred. If the respondent has breached a non-molestation order, or there is reason to believe he/she is going to breach the order, this should be reported to the police.

Breach of a non-molestation order is punishable by up to five years imprisonment as a contempt of court.

OCCUPATION ORDERS

What is an occupation order?

An occupation order is a court order granting the applicant the right to occupy a dwelling-house. The court can decide who should or should not reside in all or part of the home.

Occupation orders can also exclude the other person from an area around the home.

When in force, an order can also deal with practical matters of occupation, including who bears responsibility for payment of the rent or mortgage on the property and whether the occupying party should pay rent to the other person.

How will the court decide whether to make an occupation order?

People who are associated with the respondent according to certain criteria are entitled to apply to the court for an occupation order.

The court usually must consider both the balance of harm test and the core criteria test. If the applicant is not entitled to occupy the property and is a cohabitant or a former cohabitant, then the court must simply have regard to the balance of harm test.

Balance of harm test

The court must balance the harm that would be caused to the applicant, the respondent and any relevant children, if the occupation order was or was not made. The court must make an order if it appears that the applicant or any relevant child is likely to suffer significant harm attributable to the conduct of the respondent if an order is not made.

Core criteria test

The court has a discretionary power to grant an occupation order and should consider all the circumstances including, but not limited to:

- The housing needs and housing resources of each of the parties and of any relevant child
- The financial resources of each of the parties
- The likely effect of making, or not making, an order on the health, safety or well-being of the parties and of any relevant child
- The conduct of the parties in relation to each other and otherwise

How long will an occupation order last?

The duration of an occupation order depends on the nature of the parties' relationship and their respective legal rights in relation to the home.

In practice, most occupation orders, even if the court is able to make them to last indefinitely, are reviewed at regular intervals, usually every six or twelve months.

What are the consequences of breaching an occupation order?

The consequences of breaching an order will depend on whether the court attached a power of arrest to the order when it was made.

If a power of arrest has been attached, and the respondent breaches the order, he/she can be arrested by the police without the need to obtain a warrant. If there is no power of arrest attached the applicant may apply to the court for the respondent to be committed to prison for contempt of court.