

Advice for sufferers of harassment or domestic abuse



Nobody should be the victim of harassment or domestic abuse. But if you're affected, there are several ways in which we can help you to deal with the problem.

Except in the case of an emergency, our first step will be to write a letter warning the other party to leave you alone.

If that warning is ignored, we can apply to the court for an injunction. This is an order of the court that forbids the other party from acting in a way that is deemed violent, threatening or harassing.

There are two types of injunction:

- + A Non-Molestation Order.
- + An Occupation Order.

Non-Molestation Order

This order forbids the respondent (the person receiving the order) from using or threatening to use violence towards you and your children, or harassing or pestering you or your children.

The respondent must be associated with you. For example, by being married or engaged to you, having lived with you, being related to you or had a child with you.

In deciding whether to make an order the court will consider your circumstances, including the need to secure your and any child's health, safety and well-being.

Occupation Order

An Occupation Order states who can or cannot live in, visit or enter a particular home or an area around it.

When making an Occupation Order, the court can also state who should pay the rent or mortgage.

The court can also transfer tenancies between couples who are or have been married or living together.

In deciding whether to make an order, the court will consider the housing needs of you and your children, the financial resources of each partner, the likely effect of the order on you and your children, and the nature of your relationship.

If you or your child is likely to suffer harm because of the respondent's behaviour, then the court must make an order.

Without Notice Orders

If your case is urgent, there is a risk of harm to you, or if any delay in getting an order would be prejudicial, the court can make an order 'without notice'.

This means that the respondent will not be given notice of the court hearing.

If the court makes an order without notice, they will also arrange a further hearing, normally held a week or two later. This gives the respondent the opportunity to attend and have their say.

What is the procedure?

To apply for a Non-Molestation Order or an Occupation Order, we'll prepare an application form and a statement for you. This will set out the reasons why you are making an application for an Injunction Order.

Once you have confirmed that the contents of your statement are true, we'll ask the court to issue your application for you. The court will then make a decision based purely from the papers, or list the matter for an urgent ex-partner hearing (the other party will not be present).

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Unless we have applied for a Without Notice Order we need to give the other party at least two days' notice of the hearing (although this can be shortened in emergency circumstances) so that they have the opportunity to attend court and give their perspective.

We do this by delivering ('serving') a copy of the forms to the respondent. They'll be served with notice of the hearing and copies of your application and statement, setting out the reasons why you feel you need an injunction.

If we have applied for a Without Notice Order we will need to serve these documents once granted and before the second hearing.

If matters can't be agreed at the return hearing, you'll each need to give evidence and the judge will decide if there are grounds for the order.

In the case of an Occupation Order and depending upon the circumstances, the judge will normally give the respondent time to leave the property – up to seven days, for example.

Instead of making an order, the court may sometimes accept an Undertaking, or a written promise not to do something. For example, the other party may promise not to go within a certain distance of your home.

Cases can sometimes be settled in this way to avoid having to go through a contested court hearing.

If an Undertaking is broken, it can be enforced as if it were an order of the court. An undertaking does not have a power of arrest attached.

What if the Order is breached?

If the respondent does something that is forbidden by the injunction and you feel that you or your child is at risk, you should call the police.

Breach of a Non-Molestation Order is an arrestable criminal offence and can lead to imprisonment of up to five years. If a Non-Molestation Order is breached, you should immediately call the police and then contact us.

Breach of an Occupation Order is a contempt of court and can be punishable by a fine, or in some cases, imprisonment. Although a breach of an Occupation Order is not a criminal offence, it is still important to contact the police if you are at risk.

Legal Aid

Depending on your circumstances and your financial situation, you may be eligible for legal aid to enable us to help you. This will be assessed by your lawyer.

Further information

We believe that everyone has the right to live without fear.

For further help and guidance, call our specialist team on **0117 325 2929** or visit **barcankirby.co.uk**.

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