

Brief Guide To Domestic Abuse Protection Orders

Domestic Abuse Protection Orders

The legal system provides a variety of measures to protect victims and survivors of domestic abuse from further harm, including the threat of violence, so they can live a safer life.

One route open to victims is to seek what is informally called an emergency injunction. Granted by a civil court, they are usually issued without the perpetrator knowing about it until they are served with the order. The most common types are outlined below.

Non-Molestation Order

These are designed to stop someone from pestering, attacking, threatening physical violence, intimidating or harassing their victim and/or children. Photos of any injuries or damage to property will strengthen the applicant's case.

Each order is unique with the judge taking the applicant's individual circumstances into account, such as their physical well-being and if there are children involved.

These orders can include the court prohibiting the perpetrator from communicating with their victim or instructing or encouraging others to attack, threaten or intimidate them.

In some circumstances, it can also include a clause preventing the abuser from coming within a certain distance of your home, place of work or children's schools.

The orders are typically granted for six to 12 months and breaching them is an arrestable offence.

If an order is granted without notice on an emergency basis, then there is a further hearing approximately 14 days later, to give your abuser the opportunity to tell the Court whether they oppose the order.

Occupation Order

Occupation orders specify who can live in the family home, and can mean eviction of the abuser, banning them from visiting the family home or coming within a certain distance of it.

Courts usually grant them for six to 12 months, and a power of arrest can be attached to an occupation order in certain circumstances.

Prohibited Steps Order

This order (under the Children Act 1989) can prohibit someone with parental responsibility for your child(ren) from taking them away from your care and control.

This order is particularly appropriate when the person threatening to take away your child(ren) is ordinarily allowed to look after them and you believe there is a risk of them not being returned, or taken elsewhere.

You must have parental responsibility for your child/children in order to apply for a prohibited steps order.

You can apply on an emergency basis (without notice) if, within the last 7 days, the Respondent has taken your child (even if they eventually returned the child to you), attempted to take your child or threatened to take your child.

The Court will grant a prohibited steps order if it considers that order to be in the best interests of your child. It may consider a child arrangement order to be more appropriate.

Enforcement

All these orders have to be served on the abuser – in court, or in person at some later time – for them to be enforceable. A copy of the order has to be given to the local police station so officers are aware it exists. A copy of the non-molestation orders may need to be given to the children's school(s) to ensure that the youngsters cannot be removed without the victim's permission. A non-molestation order will need to be given to the landlord or mortgage company.

The orders can generally be applied to most forms of relationship: intimate partners, ex-partners, couples who have had children and family relations, including in-laws.

Domestic Violence Protection Notice (DVPN)

Another safeguard for victims is a Domestic Violence Protection Notice (DVPN) which police can serve on an alleged abuser who they view as posing a continuing risk of violence to someone in the family home, often their partner or ex-partner. A police officer has to give the written notice to a perpetrator by hand.

A DVPN lasts for 48 hours and requires the abusive partner to leave the premises and not contact the victim.

They can be extended by up to 28 days by magistrates, who issue a Domestic Violence Protection Order (DVPO). Survivors can use that time to consider their options and seek further support.

Restraining Order

This is the criminal court equivalent of a non-molestation order to protect an abused person from violence, the threat or fear of violence or harassment.

It is only imposed at the end of the criminal proceedings but can be imposed even if a defendant has been found not guilty of an offence if the Court believes the order is necessary to protect another from harassment.

The order can be for a specified period or until further notice.

Breach of a Restraining order is a criminal offence and carries the same penalties as breach of a non-molestation order.

For further information please look at The National Centre for Domestic Violence:
www.ncdv.org.uk

Stalking Protection Orders (SPO)

A Stalking Protection Order can ONLY be applied for by the police via an application to the Magistrates Court, to protect a person being stalked. The order can prohibit the perpetrator, entering certain locations or defined areas where the person being stalked resides or frequently visits; contacting the person being stalked by any means, including via telephone, post, email, text message or social media; or contacting through a third party.

The order can also require the defendant to sign-on with the Police (name and address) within 3 days of any change from when the order is granted and throughout its lifetime. Further to this, positive requirements can be included, e.g., the defendant has to attend courses/classes such as substance rehabilitation and Stalking Awareness.

If it is breached, they could face up to 5 years & 6 months imprisonment, a fine or both.

For more information please go to: www.suzylamplugh.org or www.paladinservice.co.uk

Meshor order

A Meshor Order is a court order that says how the family home will be dealt with after divorce. A Meshor Order allows the sale of the family home to be pushed back for a certain length of time or until a specific event takes place; such as the kids leaving school.

When a marriage breaks down, there are often finances and property to deal with. The Courts in England and Wales have wide ranging powers on deciding how finances are divided between a couple. There are numerous options available when dealing with assets, including what happens to the family home.

Most people will be familiar with some of the more popular options; the family home could be sold and the sale proceeds divided between the couple or one person could buy the other out. But what if neither of these options are practical or you have young children that you want to keep in their home? In this case, the Court can make a Mesher Order for the family home.

You might want to apply for a Mesher Order if you want to stay in the family home with your children, but don't have the financial means to take over the mortgage on your own. This would usually mean the property cannot be transferred into your sole name and so you would need your former spouse to remain on the mortgage. This doesn't necessarily mean they will still have to contribute towards the monthly repayments.

For more information go to www.gov.uk or seek legal advice

Obtaining Civil Orders

Orders are applied for by the person being abused, either via the Police or a Court. To obtain a civil order follow the below steps;

- Seek a local solicitor firm who has a family law department Find a Solicitor
- Arrange with them an appointment to discuss what orders you would like, most of which allow a free 30-minute initial meeting.

They will also help assess if Legal Aid is achievable, this is done by:

- The Means Test – assesses if you are financially eligible for legal aid. Here you provide evidence of all of your income (such as wages and benefits) and any capital (such as savings, properties and shares).

The Merit Test – assesses the strengths and weaknesses of your case for example; the chances of the request of a civil order succeeding; whether the likely legal costs for requesting a civil order are proportionate compared to the cost benefit you may gain.

If not entitled to legal aid and can't afford a solicitor, there are still options available to get a civil order.

NCDV and FLOWS offer advice and guidance on civil orders, without the need for a solicitor, either free or at a minimal cost, for those who are unable to gain legal aid.

There is also the option of a DIY NonMolestation and / or Occupational order, all the information on how your client with your help can apply is on this Government website.

List of Resources & Support:

- LDASS [Formally EDAN Lincs] (ldass.org.uk) or SOLDAS (Formerly Boston Women's Aid) bostonwomensaid.org.uk
- Find a Solicitor (www.solicitors.lawsociety.org.uk)
- Sentencing - Ancillary Orders | The Crown Prosecution Service (www.cps.gov.uk)
- Protective orders – Family courts and domestic abuse (www.idas.org.uk)
- Citizens Advice Bureau (www.citizensadvice.org.uk)
 - The Rights of Women offer information guides on family law, criminal law, divorce, Immigration and Asylum. They also have a free Law Adviceline with access to interpreters. www.rightsofwomen.org.uk

National family law advice line

This line is for women in England and Wales who need family law advice.

Call: 020 7251 6577

Opening hours:

- Tuesday 7pm – 9pm
- Wednesday 7pm – 9pm
- Thursday 7pm – 9pm
- Friday 12pm – 2pm