

Information Sheet

Protection from Domestic Abuse

- A non-molestation order
- An occupation order

A **non-molestation order** prohibits your former partner or spouse from using or threatening violence against you or your children, or intimidating, harassing or pestering you. It can contain very specific provisions depending on the particular type of harassment being perpetrated in your case. A breach of a non-molestation order is a criminal offence and the police can arrest someone who is in breach.

To apply for a non-molestation order you must be an 'associated person', which is defined in legislation. Spouses, civil partners, cohabitants and those who have been in intimate personal relationships of significant duration are eligible. In deciding whether to make an order, the court must have regard to the health (mental and physical), safety and well-being of the applicant or any relevant child.

It is also possible to obtain a restraining order under the Protection from Harassment Act 1997, or the courts can attach a restraining order to a judgment in criminal proceedings if the court believes you are likely to be at risk. Restraining orders can provide the same protection as injunctions under the civil law but carry stronger penalties if they are breached.

An **occupation order** regulates who can live in the family home, and can also restrict your partner or spouse from entering the area surrounding the home. If the court makes an order that one of you may no longer reside in the family home, this may informally be termed an 'exclusion order' or an 'ouster'. This type of order does not have any effect on each person's financial interest in the home, simply on who can live in it.

The court applies different criteria and different tests depending on the relationship status of the people involved and whether either or both of them have any right to occupy the home. For certain categories of applicant, the court will apply a 'balance of harm' test when deciding whether to make the order, in which it balances whether any person or child is likely to suffer significant harm if an order is or is not made. When making an occupation order, the court may make other associated orders imposing obligations on you or the other person - for example, relating to the repair and maintenance of the home, or to payment of the rent or mortgage.

Family law injunctions are normally for a specified period of time (e.g. six months) but can be renewed and extended. There is no limit on the length of time that non-molestation orders can be extended.

There are complex provisions regarding how long occupation orders can last, depending on the interest that the occupier has in the property and their relationship to the other person. Generally, an occupation order can only be extended beyond 12 months if the occupier has a legal right to stay in the home, derived either from ownership/tenancy or from marriage or civil partnership.