

Dunn & Baker Family Team

16. NON-MOLESTATION AND OCCUPATION ORDERS (INJUNCTIONS)

Injunctions

The Family Law Act 1996 Part IV provides injunctive relief in the case of domestic violence and abuse, or other significant domestic dispute. Two remedies which can be obtained are:

- an Occupation Order and/or
- a Non Molestation Order.

Occupation Orders

This refers to a property (usually the house you are sharing together). Depending on the relationship between the parties, an Applicant may apply to the Court for one or more of the following:

- to enforce the Applicant's right to stay in the home
- to require the Respondent to permit the Applicant to enter and remain in the home
- to regulate the occupation of the home (for example who may use what parts of the house and at what times)
- to prohibit, suspend or restrict the Respondent's rights to occupy the home (and in certain cases to terminate those rights)
- to require the Respondent to leave the home or part of it
- to exclude the Respondent from a certain geographical distance away from the home.

In deciding whether or not to make an order the Court has to consider:

- the housing needs and housing resources of each of the parties and of any relevant child
- the likely effect of the Order/not making an Order on the health, safety or well being of the parties and of any relevant child
- the conduct of the parties.

If it appears that the Applicant or any relevant child is likely to suffer significant harm due to the conduct of the Respondent, and this behaviour will continue unless an Order is not made, then the Court will make an Order unless:

- the Respondent or any relevant child will suffer significant harm if an Order **is** made **and**
- this harm is as great as, or greater than, the harm suffered by the Applicant or child if an Order is **not** made.

This is known as the 'balance of harm' test, and is very important in cases which deal with issues surrounding property

Exactly what remedy will be granted and how long will depend on:

- the nature of the relationship between the Applicant and the Respondent
- whether the Applicant, Respondent or neither has a legal interest in the matrimonial home.

Non Molestation Order

The Applicant may apply for an Order:

- preventing the Respondent from molesting (pestering) the Applicant.
- prohibiting the Respondent from molesting a relevant child.

In deciding whether or not to exercise its discretion, the Court must have regard to all the circumstances including:

- the need to secure the health, safety and well being of the Applicant

- the health, safety and well being of any relevant child or any other person for whose benefit the Order would be made.

Ex-parte orders (often called hearings 'without notice')

In a case of an emergency, an initial Order may be granted ex parte – that is in the absence of the Respondent – if it is 'just and convenient to do so'. This will depend upon:

- any risk of significant harm to the Applicant or child attributable to the conduct of the Respondent if the Order is not made
- whether it is likely the Applicant will be prevented from pursuing the application if the Order is not made
- whether the Respondent is aware of the proceedings but is deliberately evading service and delay will prejudice the Applicant or child
- if there is a very good reason, supported by a sworn statement, why the **initial** Order has to be made in the absence of the Respondent.

When the Court makes an ex parte Order, it must give a return date for Court, to enable the Respondent to attend Court and make representations.

Breach of Order

There may be some older injunctions still in force.

For non molestation orders granted before 1st July 2007, where there is or has been actual violence, the Court may have imposed a Power of Arrest. This will permit Police to arrest the Respondent who is in breach of an Order.

If there is no Power of Arrest attached by the Court and if the Respondent does not comply with the Order, the Applicant would need to refer the case back to the Court (usually with sworn statement). The Court may, issue a Warrant for the arrest of the Respondent; if it has reasonable grounds to believe the Respondent has failed to comply with the Order.

When a Respondent is arrested, either by virtue of a Power of Arrest or by Warrant, the Respondent may be dealt with immediately, or remanded in custody or on bail (or indeed for a medical report if he is believed to be suffering from a mental illness or impairment), until the Court has the opportunity fully to consider the breach in a maximum three or four weeks. Often details of the breaches have to be provided (if time) to the Court with a sworn statement.

For non molestation orders granted after 1st July 2007, there is no power of arrest required – a breach of a non molestation order is a criminal offence in any event. A complaint is made to the police, and the police will deal with the matter.

For Occupation orders: This can have a power of arrest attached. If it does – then the process is the same as it would be with the non-molestation with power of arrest. (A breach is not however a criminal offence)

If it does not have a power of arrest attached then:

- apply back to court for one to be attached.
- or apply to court for Committal (with supporting application and statement) – showing to the Court that the Order of the Court has been breached. The Court can then Commit to Prison or fine (or both)
- or apply to vary the order for example to extend the exclusion zone to see if that assists.

Undertakings

In proceedings for an Occupation Order or a Non Molestation Order, the Court has the power to accept an Undertaking by the Respondent to do, or to refrain from doing, certain acts. An Undertaking is a solemn promise to the Court by the Respondent. If the Respondent breaks an Undertaking, this is a contempt of Court, which can be dealt with by a fine, imprisonment or both. This would require the

Applicant to apply to the Court (with sworn statement) confirming what it is alleged the Respondent has done.

An Undertaking would be accepted **instead of** having to continue with the proceedings and relying upon the Court to make a formal Court Order. However, a power of arrest cannot be attached to an undertaking.

However a Court should not accept an Undertaking in any case where the Court has heard evidence that would lead it to believe that a Respondent has used or threatened to use violence against an Applicant or relevant child if they cannot adequately be protected without a Power of Arrest. Where an Undertaking is given, the parties seldom have to give any verbal evidence in Court, and matters can be finalized briefly at the first or second hearing.

Other Orders

Where the Applicant has been living with the Respondent in owner occupied accommodation, it is possible for the Applicant to protect his or her interest in that property, to prevent resale or further mortgaging of the property.

The Respondent may similarly be ordered to pay the housing costs of the Applicant, to enable the Applicant to remain in the property.

Other assistance

Should you require it, we can assist you to explore the possibility of alternative accommodation, including Local Authority Housing.

We can also direct you to sources of help, should you require advice concerning Benefits.

Until you make a financial claim, you may need to consider the possibility and availability of a welfare benefit claim.

- a) If you are working fewer than 16 hours per week it may be possible to claim Income Support and/or help with your housing costs (including Council Tax reductions).
- b) If you are in paid work of 16 hours or more per week and have at least one child under the age of 16 (or under 19 and in full time education) there is a possibility of claiming Working Tax Credit or Child Tax Credit (from the HM Revenue and Customs).
- c) If you are already of means tested benefits and without sufficient resources to meet the immediate short-term needs of yourself and your family, it may be possible to apply for a crisis and/or budgeting loan.

We can also assist you, where appropriate, to apply for CLS Funding (Legal Aid)

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Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.