

18. HARASSMENT

The two principal remedies for Domestic Violence or Abuse, are Non-Molestation Orders and Occupation Orders. We refer you to our own fact sheet (number 7) regarding these. However those remedies are limited to spouses and ex-spouses, civil partners or ex-civil partners, co-habitees and former co-habitees and very close relatives. Therefore this excludes a number of people, for example where a man and woman have had a sexual relationship, but have never actually lived together. When there is a child of the relationship, the parties are more likely to pursue an application under the Family Law Act.

In such cases of Domestic Violence or Abuse, a remedy may exist under the Protection from Harassment Act 1997. This remedy is available where there has been **more than one** act of harassment, violence or threat of violence or damage to property. More than one act can then constitute what is referred to under the Act as - 'a course of conduct'. A course of conduct must involve conduct on at least two separate occasions and conduct includes speech.

- 1) Harassing a person can include upsetting the person or causing the person distress. It can be in writing, direct or even indirect.
- 2) In principle, two incidents would usually constitute a course of conduct if they can be shown to be related and part of a pattern, even if they are a year apart. However they have to be linked, rather than constituting separate and isolated incidents. It is necessary to find a link between them in order for the course of conduct to be shown.
- 3) Harassment is also a criminal offence. This gives victims of harassment a choice between seeking a remedy in the civil court, or making a complaint to the police.
- 4) Civil proceedings can be taken by victims of harassment in the county court or family proceedings court. The court may award damages for any anxiety caused by the harassment as well as any financial loss. Where the perpetrator may have income or capital, proceedings are worth considering. It is possible then to seek an injunction within the civil proceedings, to try and prevent further harassment.
- 5) Criminal proceedings are taken by the police and save the victim of harassment the additional strain of having to take the proceedings themselves (and possibly to pay for the proceedings themselves). There are two distinct offences
 - Harassment S2 Protection from Harassment Act 1997
 - Harassment causing a fear of violence S4 Protection from Harassment Act 1997
- 6) There are a number of defences namely: -
 - a) His/her course of conduct was pursued for the purpose of preventing or detecting crime
 - b) His/her course of conduct was pursued under another enactment or rule of law
 - c) The course of the conduct was reasonable (and in the case of harassment causing fear of violence for the protection of him/her or another or the protection of his/her or another's property).In the case of harassment causing fear of violence, the court must additionally believe that the person responsible knew or should have known that the victim would fear violence.
- 7) The Protection from Harassment Act makes provision for
 - a) The Civil Court to make a Restraining Order restraining the offender from further conduct, which amounts to harassment or will cause the fear of violence.
 - b) The Criminal Court similarly to make a Restraining Order if it has cause to believe that it is necessary to protect a victim from harassment. This applies no matter what offence the offender is being sentenced for or even if s/he is acquitted.
- 8) Breach of the Restraining Order is a criminal offence, punishable by up to 6 months' imprisonment in the Magistrates' Court, and 5 years' imprisonment in the Crown Court.
- 9) The subject of a Restraining Order can return to the Civil or Criminal Court at any time to seek to have the Order varied or discharged. The person protected by the Restraining Order can apply for Legal Aid funding to be represented in those proceedings, and often the means testing requirement will be waived.
- 10) Where one of the Parties has resorted to one off act of violence upon the other, or one off act of trespass on the other's premises, or one off act of vandalism on the Other Party's property, then this remedy is not available. However there are other civil and criminal remedies available in these cases.

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