

## **Emergency Protection – Family Law Injunctions**

### What is an injunction?

Under the Family Law Act 1996 the Court has powers to make a Non-Molestation Order. The wording of a Non-Molestation Order is typically:

- a) an order prohibiting someone from being violent or threatening violence (or getting someone else to do so on their behalf)
- b) an order prohibiting someone from communicating with you by letter, text message or telephone call (or getting someone else to do so on their behalf.)
- c) an order prohibiting someone to enter, attempt to enter or come within a defined period from your home, or other defined place.

The Court also has powers to make an Occupation Order which is an Order that regulates a person's occupation of the family home. For example an Order may require a person to leave the property and not to return.

### What is the procedure for obtaining an Injunction?

1. Assessing your case - we will need to take a lot of information from you about the most recent incident and also incidents that have happened in the past. We will assess whether you have legal grounds for an injunction and if so, whether you have grounds to ask the Court to grant the Orders 'ex parte'. This means making the Orders without the other person knowing. The legal test for an ex parte order is whether there is any risk of significant harm to you or a relevant child, attributable to conduct of the respondent, if the order is not made immediately.
2. Preparing the application – we have to complete an Application form and a detailed statement on your behalf setting out what orders we want the Court to make and why the orders are necessary.
3. Attending Court – for an ex parte application we will attend Court with you and ask the Court to make an Order without the Respondent knowing. If granted, the Orders will not become binding on the Respondent until he has been personally served with the application and Order. We will arrange for a process server to personally serve the papers on the Respondent.  
If your case does not meet the legal test for an ex parte application we will issue your application at Court who will give us a date and time for the first court appointment. We will have to personally serve the Respondent with a copy of the application so that he has the opportunity to attend the first hearing.
4. The Second Hearing – for ex parte applications, the Court will list the case for a further hearing, often a week after the first hearing. The purpose of this hearing is to give the Respondent the opportunity to have his say in relation to the application.
5. What if the Respondent opposes the application - the Court may order him to prepare a statement setting out his views and then list the case for a further contested hearing where the Judge would hear from both you and the Respondent before deciding whether the injunction orders should continue.

## Undertaking or Order?

Sometimes, when the Respondent attends Court in respect of an Injunction he/she will offer an undertaking to the Court. An undertaking is a binding promise to the Court and is usually worded to cover the same behaviour as an order. If you agree to an Undertaking the court would not be making findings against the Respondent but you would not have to give evidence in a contested hearing. If an order is granted the Court can make an Order for the Respondent to pay your costs. This does not apply if an undertaking is accepted. The main difference between an undertaking and an order is in relation to the consequences of breaching it:

### What happens if the Respondent breaches the injunction or undertaking?

- Non-Molestation Order

It is a criminal offence to breach a Non-Molestation Order. The punishment is a fine and/or imprisonment for a maximum of 5 years.

If the Respondent breaches the Non-Molestation Order then you should ring the police and tell them. The police should arrest the Respondent and take him to the Magistrate's Court to be dealt with.

If the police do not arrest the Respondent, or you do not want the police and criminal courts to get involved then you can contact us and we can issue Contempt of Court proceedings in the Family Court. The Respondent will have to be personally served with the Committal application before the application can be dealt with by the Court. The Family Court can punish the Respondent with up to 2 years in prison and/or a fine. The Respondent cannot be punished by both the Magistrate's Court and the Family Court for the same breach.

- Occupation Order

In some cases the Court will attach a Power of Arrest to the Occupation Order. If there is a Power of Arrest attached then the Police will know about the Order and if you contact them they should exercise the Power of Arrest and deliver the Respondent to the Family Court within 24 hours.

It is Contempt of Court to breach an Occupation Order and it is punishable by up to 2 years in prison and/or a fine.

If there is no Power of Arrest, or if the police do not act promptly then please contact us and we can issue Contempt of Court proceedings. The Respondent will have to be personally served with the Committal application before the application can be dealt with by the Court.

- Undertakings

Breach of an undertaking is Contempt of Court. Following a breach, we would have to make an application for Contempt of Court proceedings within the Family Court. The Respondent will have to be personally served with the Committal application before the application can be dealt with by the Court. If proved, the Respondent could be punished by up to 2 years in prison and/or a fine.

## **Practical Advice for Victims of Domestic Abuse**

In addition to applying to the Family Court under the Family Law Act 1996 for a Non-molestation Order there are also practical steps that you could take in order to protect yourself.

We also understand that in some circumstances the victim of domestic abuse does not wish to apply to the Court for an Order and is merely seeking advice.

If you are still in living in the property with your abuser but are considering leaving you may wish to consider:

- Try to save some money for a taxi or bus fares;
- Keep together things you may need e.g. keys, benefit book, medical and national insurance cards, passports, birth and marriage certificates, address book;
- Take your children with you;
- Take a few clothes, children's favourite things and any essential medicine;
- Try to work out the safest time to leave – if you need help with safety planning, we would advise that talk to one of the victim support services listed further on in this information sheet;
- Remember, the safety of you and your children is most important. If there is any risk to yourself or your children we would advise you to leave immediately and sort out details and belongings once you are safe.

Once you have left the property to live at an address unknown to your abuser:

- Be very careful about who you disclose your address and personal details to in order to reduce the risk of you being traced
- Remove your name from the electoral register by requesting a form from the Council and ticking the box that states that the details are for confidential information only;
- You can also contact your telephone provider and request that your telephone number is ex-directory;
- By accessing [www.192.com](http://www.192.com) and requesting that they remove all of your personal details including your address and telephone number from their website.
- By setting up a password at the Benefits Agency and Council to ensure that your personal details cannot be obtained.

If your abuser knows where you live or you are afraid that he will locate you:

We are able to organise for an agency such as 2010 or Safer Homes to make your property as safe as possible by taking such measures as:

- Putting extra locks on your doors;
- Installing panic buttons linked directly to the police;
- Fitting vibrating window alarms;
- Installing free fire alarms;
- Fitting locked letter boxes.

We are also able to notify the police and put what is known as an Expression of Interest on your property with the police domestic violence unit. Effectively should there be a 999 call relating to your address the police should respond within 12 minutes.

**What happens if you want to leave but have nowhere to go?**

We can make a referral to a Women's refuge who may be able to offer you temporary accommodation. Whilst staying in the refuge the staff will offer you practical advice and support including advice on re housing yourself and your children.

Please inform us if you would wish for any of the above measures to be put in place.

If at any time you consider yourself to be at risk we would advise you to telephone 999 **immediately**.

**What do I do now?**

Oxley & Coward can offer confidential assistance and advice if you, or someone you know have any concerns and if necessary to take steps to obtain the relevant Orders to protect you. Call us now on 01709 510999 or email [family@oxcow.co.uk](mailto:family@oxcow.co.uk)

**Useful Telephone Numbers**

South Yorkshire Police:

Emergency	999
Non urgent	101
Domestic Violence Officer (9am- 5pm)	01709 832670

National Domestic Violence Help Line	0808 200247
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Choices and Options	01709 838400
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Apna Haq (Asian support service)	01709 519211
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Women's Aid National 24 Hour Help Line	0808 200247 <a href="http://www.womensaid.org.uk">www.womensaid.org.uk</a>
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Men's Advice Line	0808 8010327
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