



## Information Sheet: Violence, Harassment and Injunctions

You have approached this firm to provide you with advice because you are suffering violence and/or harassment. The following information may be of use to you.

### What do I need to do first?

In the first instance you should take all steps possible to try and restrain the behaviour of the other party yourself, and also be able to provide evidence of the problems you are experiencing. In particular, considering the following:-

- 1) Keep a comprehensive diary of all events. Keep details of dates, times, and of any witnesses.
- 2) Always call the Police, even if they are not prepared to take any action. They should log all reports, and this will help provide evidence that problems are occurring.

If the Police do take action and arrest the other party, we will need to know the names and numbers of the Officers dealing with the case, and which Station they are based at. We will also need to know if any bail conditions have been imposed, or whether the other party has been remanded in custody.

If bail conditions have been imposed which should prevent the other party from attending at your address or from intimidating you, then you are unlikely to be granted Public Funding to take injunction proceedings, as these would offer you similar protection.

- 3) Consider whether it is likely to help if we write to the other party warning them that their behaviour is unacceptable, and that if they do not stop immediately, they will face injunction proceedings. This may not be an appropriate course of action in all cases, however the Legal Services Commission will generally expect us to have written in these terms before proceedings are issued.

- 4) Take other preventative action if possible - e.g. if you are receiving nuisance telephone calls, then consider having your telephone number changed. If you have reported the calls to the Police, the BT may allow you to do this for free. If the nature of the calls is serious enough, the Police may try to trace them.

If the above measures are not successful, then we will advise you whether you can go on to seek an injunction(s).

There are essentially two types of Order:



## Information Sheet: Violence, Harassment and Injunctions

### Non-Molestation Order

Which prevents another person from harming, or harassing you, or a child.

### Occupation Order

Which will indicate who can live in the family home, and can direct another person to leave the home. The Court can also decide who should pay the bills, or Order someone to repair/maintain the property.

### Who can apply for these Orders?

You can apply for an Order against another person if you are related in one of the ways listed below:-

- Married - a man or woman to whom you are or have been married
- Cohabitants - a man and a woman who are not married, but who are, or have lived together as husband and wife
- Two people who live or have lived in the same household - but not if one is the employee, tenant, lodger or border of the other
- Certain relations - such as brother, sister, parent, aunt, uncle. We will be able to tell you if the other party is a relevant person.
- Two people who have agreed to marry each other - but you must apply within three years of the agreement to marry ending
- You and the other party are the parents of the child or have Parental Responsibility for a child - this also applies if you or the other party have been responsible for a child in the past
- The natural parent or grandparent of a child who has been adopted or is freed for adoption - you may apply if the other party is the child, the adoptive parent or any adult who has applied to adopt the child, or with whom the child has been placed for adoption



## Information Sheet: Violence, Harassment and Injunctions

- Also, if you are under 18 you must make an application to the High Court and someone over 18 must help you to make the application. That person, usually a relative or friend, is called a "Next Friend". If you are under 16, you will need permission from a High Court Judge to make an application.

### What happens if I need an emergency Order?

We will advise you as to whether it would be appropriate to make an application without notice to the other party (*ex parte*). If this is the case, then we will need to attend Court with you (and any witnesses) as soon as your application for emergency Public Funding has been approved - if the Legal Services Commission consider your case to be an emergency.

You should be aware that all injunction proceedings are considered to be emergency remedies, but an application of this kind is usually only made in cases of extreme violence or homelessness.

You will need to make a sworn statement, which will form the basis of your evidence. In most cases, this statement is accepted by the Court as your evidence, however you should be prepared to give oral evidence on oath if necessary.

If the Judge who hears the application is satisfied on your evidence that you need the protection of a Court Order to protect you from violence a Non-Molestation Order will be made.

Once the Order has been made there is a further hearing, a week or so later which is called a "Return Date" at which the other party will have the right to attend and make representations about your application. Your *ex-parte* Order will usually last until at least that next hearing, and sometimes longer.

Any *ex-parte* Order will **NOT** have effect until it is personally served upon the other party. We will need you to provide us with information, such as photographs, description, and details of their car, place and hours of work, and any addresses you may have for them.

Applications made on an *ex-parte* basis means that the Order was made without District Judge hearing any evidence from the Respondent or the Respondent knowing about the application. This means that there must be a "Return Hearing" which will take place at Court. The return date Hearing will be a very short Hearing to confirm the contents of the Order and also the fact that the Respondent has been served. At that Hearing the



## **Information Sheet: Violence, Harassment and Injunctions**

Respondent has an opportunity to either agree to the terms of the Order or if the Respondent doesn't agree to it then for them to contest the application which will result in a Hearing having to take place some time later for the Court to consider whether or not the Order should continue.

### **What happens at the main Court hearing?**

The matter will usually be resolved in one of the following ways:-

#### **The other party does not attend Court**

Provided the other party has been personally served with the injunction papers and any ex-parte Orders which have been made, then the Court will proceed, and make Orders against them in their absence. The Court may also order the other party to repay your legal costs.

#### **The other party attends Court without legal representation**

If you are seeking a Non-Molestation Order then the other party may not be granted Public Funding to oppose this. The Legal Services Commission will expect them to give "undertakings" to the Court. However the Court will not usually accept Undertakings when there has been incidents of violence. These are solemn promises made to the Judge, that the other party will not harass, threaten or use violence against you in the future. The other party must give undertakings in person to the Judge, and they will usually be asked to sign a document confirming that they will be bound by their promises. The Judge may also adjourn the Hearing to allow the other party to obtain legal representation. If the other party refuses to obtain legal representation the Court will proceed with the Hearing. It is possible for the other party to oppose your application even if they do not have a Solicitors, however this is fairly rare, and you will have the benefit of a Barrister and a representative of this Firm to represent you.

#### **The other party attends Court with legal representation**

This is most likely if you are applying for an Occupation Order (see (Violence/Harassment")), or if the other party has the means to pay privately. If the application is opposed, the Court will list the matter for a contested Hearing at a later date. At the contested Hearing the Court will expect to hear your evidence, and that of any witnesses in person (on oath), as well as the evidence of the other party. The other



## Information Sheet: Violence, Harassment and Injunctions

party's lawyer will probably question you about your evidence, and your Barrister will have the opportunity to cross-examine the other party.

The Judge will then decide whose evidence they prefer, based on a balance of probabilities. The Judge will then make any Orders considered to be appropriate. In these circumstances, as the other party has been present throughout they will be bound by any Orders made immediately.

You should be aware that whenever the other party attends Court, efforts will be made by your representative to resolve the matter outside the Courtroom, to avoid having a contested hearing if possible.

### **What happens if there are further problems with a Non-Molestation Order?**

Any breach of a Non-Molestation Order after 1 July 2007 is a criminal offence and will be dealt with by the criminal Courts and will be subject to criminal sentencing which could include a custodial sentence. It is therefore extremely serious if the Order is breached as it will invoke sanctions from the criminal courts.

### **What happens if there are further problems with an Undertaking?**

1) If the problems are more annoying than anything else, it is unlikely that they will be serious enough to justify taking any further action. You should still keep a comprehensive diary of these incidents, as in combination, they may be enough to justify taking further steps.

2) If the breaches are serious, then we may advise you to make an application for the committal of the other party to prison. If they have acted in defiance of their own promises to the Court, then this is generally considered to be contempt of Court. This type of application is usually done "on notice" which means that there will be a hearing in about a week's time. The committal papers will be personally served upon the other party, who will then have the right to attend and make representations about the application. In any case where the other party's liberty could be at risk, they will generally be given Public Funding to be represented, provided they are financially eligible.

The Court will hear evidence from you, the other party and any witnesses, and again will determine whose evidence they prefer. In these cases however, the Court must apply a stricter test, which is that they are satisfied beyond all reasonable doubt. This is because



## Information Sheet: Violence, Harassment and Injunctions

if they find the breaches to be proven, there is a risk that the other party may be sent to prison.

### **I have been served with injunction papers - I am the Respondent. What do I do?**

You will be aware of the injunction procedure from the information contained above. Generally speaking, if the application is for a Non-Molestation Order, you may be granted Public Funding to pay for us to defend you, as any breach of the Order is a criminal offence.

If the application is also for an Occupation Order, then you are also likely to obtain Public Funding to defend this, particularly if the Applicant is seeking an Order that you be forced to leave your home.

In most cases, it is best for you to offer undertakings (your solemn promise to the Court that you will not use violence, nor threaten, harass, pester or intimidate the Applicant). If you deny the allegations made about you, then you have nothing to lose by promising that you will not do these things in the future either. If you accept any of the allegations, it is better for you to give an undertaking than for you to have a Court Order against you. You are also less likely to be ordered to pay the Applicant's costs if the matter can be dealt with in this way. We will advise you as to whether undertakings are likely to be suitable in your case. There is however, strong resistance from the Court to accept Undertakings when there has been incidents of domestic violence.

If there is time before the next hearing, we can contact the Applicant's Solicitors and try to agree undertakings with them. You will be required to attend the hearing yourself, and you would not be represented unless you are able to pay for this privately, or we have been able to obtain Public Funding for you. It will usually be a very short hearing (a few minutes) and if the Court agrees to accept your undertakings, you may be asked to sign a document confirming this. If the matter is dealt with by way of undertakings, then there are no findings of fact made against you. You should understand that giving undertakings is a very serious matter, and if you do anything to breach these (they will normally last for approximately six months) then you may face committal proceedings for contempt of Court.

Another alternative is for us to prepare for you a sworn statement in which you can address the allegations made about you. The Court can then have more balanced evidence on the file even if they do not hear evidence from you in person. It is only possible to do this if you do not accept any of the allegations made about you.



## Information Sheet: Violence, Harassment and Injunctions

If the application is for an Occupation Order, and you are not able to agree this, then you will be represented by a representative of these Offices, or a Barrister. There may be a full hearing, when both parties will have to give evidence on oath. You may be cross-examined by the Applicant's representative, and your representative will cross-examine the Applicant. The Judge will decide, on a balance of probabilities, whose evidence they prefer, and will make Orders accordingly. Generally speaking, the Court does not like forcing people to leave their home, unless they believe that their behaviour justifies this.

There are other alternatives, such as "zoning" the accommodation so that both of you can continue to live there. The Court can also decide who should pay the bills, and who should carry out any necessary repairs or maintenance to the property.

Please consider carefully the details provided above as to the possible consequences of breaching the Court Orders or undertakings - this will risk your imprisonment.

### What if a reconciliation is achieved?

Sometimes parties do reconcile and we can help you in that regard.

If the Court proceedings have not been concluded, you may seek permission from the Court to withdraw your application for a Non Molestation Order or Occupation Order. Where Court proceedings have been concluded and an Order has been made to afford protection, either party may apply to the Court to discharge the Order(s). The applying party must swear a statement to accompany their application and both parties should attend the Court.

### CONTACT:

Erica Kemp or any member of the Team  
Partner & Head of Family Law

Telephone Number: 0844 561 0100

Direct Dial: 0844 561 0290

Email: [erica.kemp@alsterskelley.com](mailto:erica.kemp@alsterskelley.com)

If you need any further information about matters in this information sheet, please do not hesitate to contact us.