

WHAT IS A PROTECTIVE ORDER?



part of the Affordable Family Law Group CIC

What is a Protective Order?

When you're in an abusive relationship, you may find yourself constantly worrying about the safety of you and your children. No one should have to endure these feelings, so if you feel that you or your children are in danger, from a partner or former partner, you can apply to the courts for a non-molestation order immediately.

If you feel like you're in immediate danger, your first point of contact should always be the police, but by applying for a non-molestation order you can ensure the safety of yourself and your children in the future.

Getting a non-molestation order put in place can often be quite simple if you understand the process and what is required of you beforehand.

It is important you understand the orders and process so you feel confident when the time comes to apply through the courts so you, and your children, can live a happy and safe life.

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What is a Non Molestation Order?

A non-molestation order is a type of injunction that you can apply for through the family court. These orders are granted in order to prevent a partner, or former partner (or other “associated person”), from causing you or children harm.

Harm doesn’t just mean physical harm, it can also include harassment, intimidation, psychological abuse, or even threats to inflict physical harm, as well as coercive and controlling behaviour and financial abuse. Non-molestation orders can be served on many different types of people that you have a relationship with, not just spouses, this is what is known as “associated persons”.

These orders can be applied against:

- A spouse, or ex-spouse
- A civil partner, or previous civil partner
- A fiancé(e) or ex-fiancé(e)
- A family member
- Someone who you live with, or used to live with
- The father or mother of your children

These orders are very serious and can have serious criminal consequences if they are broken. Once you have a non-molestation order put in place, you should feel much safer as any breaches amount to an arrestable offence and depending on the seriousness of any reported breach, the person that has breached the order could result in up to 5 years in prison.

How long does a Non Molestation Order last?

Non-molestation orders are injunctions which will typically last anywhere between 6 and 12 months, depending on the circumstances. It’s also possible for an order to last longer than this period, but it will depend on your situation and the decision of the courts. If you get to the end of your fixed court order, it’s also possible to extend the order if your situation hasn’t changed and you still feel in danger.

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What is an Occupation Order?

An occupation order grants the person making the application the right to occupy a dwelling house; the content of such an order specifically defines who should or should not reside in all or part of the home. The order can also extend to exclude people from entering an area around the home, if there is a concern that person will turn up at the door to cause trouble. Such an order can also cover practical day-to-day matters, such as who bears the responsibility for payment of rent or mortgages on the property, and whether the occupying party should pay a rent to the other person.

If you are concerned about the conduct of an associated person sharing a property with you and you wish to discuss what protective measures can be put in place for you, please do not hesitate to contact us on **01202 985 111**.

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Given the draconian nature of these orders, they can only be applied for by applicants who are ‘associated’ with the respondent (the person the order is made against) The key factors that the court must consider before making an Occupation Order are known as the balance of harm test and the core criteria test.

Balance of Harm Test

The balance of harm test sets out a duty to the court to determine what harm would be caused to the applicant, the respondent, and any relevant children if the occupation order was made or not. When considering the balance of harm the court must make an order if it appears that the applicant or any child is likely to suffer significant harm attributable to the conduct of the 'associated person' if the order is not made.

Core Criteria Test

After the court has established their deliberation on the balance of harm, the court must consider the core criteria test, having regard to all the circumstances, this can include, but is not limited to the following considerations:

- the housing needs of each of the parties and any relevant child
- the financial resources of each of the parties
- the likely effect of any order, or of any decision by the court not to exercise its powers to make an order and the health, safety/ wellbeing of the parties or of any relevant child, and
- the conduct of the parties in relation to each other and otherwise.

As the courts are determining whether to deprive the 'associated person' of their right to remain within their own home, the court will only make such an order in exceptional circumstances. When the application is issued and the court is satisfied that the respondent has used or threatened violence against the applicant or a relevant child, a power of arrest can be attached if the court is satisfied that the applicant or child would not be adequately protected without it. Should an order be made with a power of arrest attached to it, a copy of the order can be filed with the local police station to ensure that the order can be enforced should the respondent breach it. In terms of the duration of the order, it is dependent on which section of the Family Law Act 1996 the application is brought under, but an occupation order is typically made for a maximum of six months pending further review from the court.

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