

## DOMESTIC VIOLENCE

### NON-MOLESTATION ORDERS AND OCCUPATION ORDERS

If you have been the victim of violence or threats of violence then you may be entitled to apply to the court for an Order to restrain any further incidents of violence (Non-Molestation Order) or, in extreme cases, to have the violent party removed from your home (Occupation Order).

#### WHO CAN APPLY?

You may be able to apply if the person who is being violent or threatening violence towards you or intimidating, harassing or pestering you is either: -

- Your husband or wife or former husband or former wife
- Someone with whom you are living or have been living with as husband and wife
- Someone you live with or have lived with in the same household (although not if one of you is the employee, tenant, lodger or Boarder of the other).
- A relative e.g. parents, brother, sister or aunt.
- The other parent of your child or someone with Parental Responsibility for your child or who has been responsible for that child in the past

The person making the application is the **APPLICANT** and the person against whom an application is made is called the **RESPONDENT**.

In considering whether to make a Non-Molestation Order the Court will consider whether an Order is needed to secure the Applicant's health, safety and wellbeing and that of any relevant child. Health can mean both physical and mental health.

In considering whether to make an Occupation Order the Court will consider:-

- The housing needs of the parties and any relevant children
- The financial resources of the parties
- The effect of making an order on the health, safety of wellbeing of the parties or any relevant children
- The effect of not making an Order on the health, safety and wellbeing of the parties or any relevant children
- The conduct of the parties.

#### HOW DO I APPLY FOR AN ORDER

It will normally be necessary to see a solicitor. If the situation is very urgent for example if there is an immediate risk of significant harm to you or your child then it is possible to apply for what is known as an **EX PARTE** Order. This means that the Applicant can obtain an immediate order from the Court without the other person having to be present or even knowing that an application to the court has been made.

If such an order is obtained the Respondent will immediately be served with a copy of the Order which will state that they must not use or threaten violence or intimidate, harass or pester the Applicant. This is a Non-Molestation Order. If an Occupation Order is also granted then the Respondent may be told to leave the house within a certain period of time and not to go back to it or within a certain distance of it.

Where there has been violence or a threat of violence then the Court will usually also attach a **POWER OF ARREST** to the Order. If the Respondent does not obey the Order you should contact the Police who will arrest the Respondent immediately. Even if a Power of Arrest is not included in the Order if the Respondent does not obey it then he / she is in **CONTEMPT** of court the penalty for which is a fine or imprisonment.

The ex parte Order will normally only last for a period of seven days and the matter will then be brought back before the court with the opportunity for both parties to attend and give evidence to the court. The Judge will then decide whether the Order should continue. In many cases the Respondent will give an **UNDERTAKING** which is a promise to the court not to use or threaten violence or to intimidate harass or pester the applicant which has the same effect as a Court Order except that a Power of Arrest cannot be attached to an Undertaking.

### **HOW LONG WILL THE ORDER LAST?**

A full Order will usually last for a period of 6 months.

### **WHAT IF THE OTHER PARTY BREACHES A NON-MOLESTATION OR OCCUPATION ORDER?**

As stated above, if the Court have included a Power of Arrest and the Police have reason to believe that the Order has been breached then the Respondent must be arrested without a Warrant and brought before a Court within 24 hours.

Otherwise there would need to be a further court hearing and the Judge has the power to either fine the Respondent or send him/her to prison for Contempt of Court.

[If the breach occurs at a time where it is not possible to call a solicitor then the police should be called out and a copy of the Order shown to them.]

### **WHAT IF THE RESPONDENT DOES NOT FALL INTO ANY OF THE CATEGORIES OF PEOPLE LISTED?**

In these circumstances it may be possible to make an application for an injunction under the **PROTECTION FROM HARASSMENT ACT 1997** if a person is harassing you. This area of the law is quite complicated and we will discuss it further with you if appropriate. The Police can also take action under this Act and they should discuss this with you if it is appropriate in your case.

### **HOW SOON SHOULD I APPLY FOR A NON-MOLESTATION ORDER OR AN OCCUPATION ORDER?**

**IMMEDIATELY.** If there is any delay between the threats or actual violence or intimidation, harassment or pestering occurring and the application for an Order the court may be unwilling to grant the Order depending on the period of delay and the reason for the delay.

## **FURTHER INFORMATION**

For more information about children and financial issues please refer to the fact sheets on those subject

Lees Solicitors LLP provide this fact sheet free of charge

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