

It is estimated that domestic violence (also called 'domestic abuse') affects one in four women in the UK. If you are experiencing or have experienced domestic violence, there are a number of ways the law can protect you. This legal guide is designed to give information about the protection available to you through the Family Court. Rights of Women publishes a number of other legal guides that may be useful. For further information about these contact us or visit our website at www.rightsofwomen.org.uk

In an emergency situation you can call the police on 999. For other support and protection that might be available see **Useful contacts** at the end of this guide.

What is domestic violence?

There is no legal definition of domestic violence. However, the Government defines domestic violence as:

"Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass but is not limited to the following types of abuse:

- *Psychological abuse*
- *Physical abuse*
- *Sexual abuse*
- *Financial abuse*
- *Emotional abuse*

Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving

them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

This definition, which is not a legal definition, includes so called 'honour' based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group."

Who is affected by domestic violence?

Almost all domestic violence is directed by men against women, but it can and does occur in same-sex relationships, and in a small minority of cases, by women against men. Although we refer here to the abuser as 'he' we recognise that this is not always the case.

Domestic violence affects women from all ages and backgrounds, regardless of economic or social status, sexuality, race, religion or immigration status. The law of England and Wales should protect all women from violence. This means that you can go to the family courts or the police for assistance regardless of your immigration status.

In an emergency

In an emergency you can contact the police for assistance by dialling **999** or textphoning **0800 112 999**. The police may be able to attend the scene of the incident to protect you from further abuse or violence and/or arrest the person responsible (see our legal guide **Reporting an offence to the police: a guide to criminal investigations**).

Domestic violence and criminal offences

Domestic violence can involve a range of criminal offences. For more information on the criminal justice process see our legal guides **Reporting an offence to the police: A guide to criminal investigations** and **From charge to trial: A guide to criminal proceedings**. If you have experienced a violent crime you may be able to get criminal injuries compensation, for more details see **A guide to criminal injuries compensation**. You can also contact our legal advice line.

Domestic violence and protection in the Family Court

There are two types of injunction you can apply for in the Family Court to protect yourself from domestic violence:

1. an occupation order to exclude someone from your home, and
2. a non-molestation order to prevent someone from being violent, threatening violence, harassing or intimidating you

A non-molestation order

A non-molestation order is a kind of injunction which can protect you and any relevant child from violence or harassment. You can obtain a non-molestation order against someone who has been physically violent or against someone who is harassing, intimidating or pestering you. You can apply for a non-molestation order even if you still want to (or have to) live with your abuser.

Examples of what a non-molestation order might include:

- Your abuser must not be violent, threaten violence, intimidate, pester or harass you
- Your abuser must not contact you by telephone, email, social media or in person
- Your abuser must not attend or contact for any reason your place of work

When deciding whether to grant a non-molestation order the court will consider all of your circumstances, including the need to secure the health, safety and well-being of you and any children. You therefore need to show the court how your health, safety or well-being or that of your children would be at risk if you are not granted the order.

If you own the home or the tenancy to the home in your sole name, you are not married to your abuser and your abuser has no legal entitlement to your home then the non-molestation order can also stop your abuser from coming to the home. Otherwise, if you want to stop the abuser from coming to your home then you need to apply for an occupation order.

An occupation order

An occupation order is a type of injunction which deals with who lives at the family home. An occupation order can:

- Order your abuser to move out of the home or to stay away from the home

- Order your abuser to keep a certain distance away from the home
- Order your abuser to stay in certain parts of the home at certain times (for example it can order him to sleep in a different bedroom)
- Order your abuser to allow you back into the home if he has locked you out
- Order him to continue to pay the mortgage, rent or bills

When deciding whether to grant an occupation order the court will consider a number of factors including:

- The housing needs and resources of you, your abuser and any children
- The financial resources of you both
- The likely effect any order, or not making an order, will have on you, your abuser and any children
- Your and your abuser's behaviour to one another

The court may also look at the harm that you and any children might suffer if the order is not granted and the harm that your abuser and any children might suffer if it is.

The type of occupation order you can apply for, how long the order will last and the factors the court will consider depend on your and your abuser's legal entitlement to the home. Before making your application we would strongly advise you to seek legal advice.

The court can make both a non-molestation order and an occupation order if it is appropriate.

Who can I get an injunction against?

You can apply for a non-molestation or occupation order if you are **associated** to your abuser. You are associated to your abuser if you and your abuser:

- are or were ever married or engaged to be married
- are or were ever in a civil partnership or had agreed to form a civil partnership
- are or were living together (this includes same-sex and opposite-sex couples)
- live or have lived in the same household, for example as a flat share (but not as a tenant, border, lodger or employee)
- are relatives, including: parents, children, grandparents, grandchildren, siblings, uncles, aunts, nieces, nephews or first cousins (whether by blood, marriage, civil partnership or cohabitation)
- have a child together
- have or had parental responsibility for the same child
- are parties to the same family proceedings for the same child
- are or were in an intimate personal relationship of significant duration

If you are not legally associated to your abuser, you may still be able to obtain protection from harassment. Please contact Rights of Women's legal advice lines for more information on harassment.

Who can be protected by my injunction?

You can get an order to protect yourself and any relevant child. A **relevant child** is any child under 18:

- who is living or might be expected to live with you or your abuser
- who is the subject of family court proceedings linked to an application for a domestic violence injunction; or
- whose interests the court thinks relevant

If you have a child who is over 18, or another adult family member who needs protection,

they will have to make their own application for an injunction.

The application process

You can make an application for a non-molestation order and/or an occupation order at the Family Court. The application form is a FL401 which is available from any court or to download from the Ministry of Justice's website. There is no court fee for applying for a domestic violence injunction.

You or your solicitor will need to prepare a witness statement giving details of your relationship, any relevant children, past history of violence and the events which led you to make the application. You should also set out what you want the order to do. You will have to attend at least one and possibly more court hearings. If you are considering making an application for a domestic violence injunction, you can call Rights of Women for free legal advice – see **Useful contacts**.

If you need an injunction urgently or are scared that your abuser will cause you further harm if he is aware you are going to court, you can make your application **without notice** to him. This means that the court can consider your application without your abuser being present. The court will have to be persuaded that there are good reasons to make the order urgently so you will need to explain this in your witness statement. A supporting report from the police or your doctor may help and can be attached as an exhibit to your statement.

If you apply for and are granted your order without notice to your abuser the court is likely to organise another hearing to give him an opportunity to put forward his side of the story. You will have to attend this hearing and you may have to give evidence. The court will consider all the evidence and decide whether the order should be continued or extended.

Serving the orders

Either you or your solicitor are responsible for serving the order on your abuser. This means giving him a copy and it should be done using a process server or through the court, by the court bailiff. A process server is a person whose job it is to serve documents on people and they will charge a fee.

The respondent must know there is an injunction in place to be responsible for breaching any part of it. You are only protected once he is aware of the order. A copy of the order should also be sent to your local police station.

What if the injunction is ignored or not followed by my abuser?

If your abuser breaches the injunction you will need to enforce the injunction. This means asking the courts to take further action. The process for enforcing the order varies, depending on whether you have a non-molestation order or an occupation order.

Enforcing a non-molestation order: two options

It is a criminal offence to breach a non-molestation order.

If your abuser has breached your non-molestation order you can enforce it by either:

- Starting criminal proceedings by reporting his behaviour to the police, or
- Starting civil proceedings by applying to the court that made the order for the respondent to be arrested and / or punished

Breaching a non-molestation order is a criminal offence that can be taken to the criminal court. The criminal courts have a

range of sentencing options available to them. The maximum sentence is 5 years imprisonment and a fine. For information about criminal proceedings see our legal guide **Reporting an Offence to the Police: A Guide to Criminal Proceedings**.

Alternatively, if you do not want to start criminal proceedings you can return to the Family Court that made the order, to have your abuser arrested and / or punished. To do this it is advisable to seek the help of a solicitor. A person who is found by the court to have breached the order may be sent to prison, fined or be given a suspended sentence of imprisonment. The Family Court does not have the range of sentencing powers that criminal courts have.

Enforcing an occupation order

If you have an occupation order, the process for enforcing the order varies depending on whether a **power of arrest** is attached to the order. A power of arrest allows police officers to arrest the respondent if the occupation order is breached. Powers of arrest can be attached to occupation orders if the court is satisfied that your abuser has used or threatened violence against you.

If your abuser breaches any part of your occupation order and there is a power of arrest attached to it, you can report the breach directly to the police. The police can arrest him and take him to the court that made the order to be punished. The court may hear evidence about the breach and deal with the respondent immediately, or the court may adjourn the hearing to another day.

If your occupation order does not have a power of arrest attached, you can still apply to the court that made the order to have your abuser arrested and / or punished, if he has breached any part of the order. In order to do this you may need the help of a solicitor or to seek further advice from our advice lines. A respondent who is found by

the court to have breached the order may be committed to prison, fined or be given a suspended sentence of imprisonment.

Harassment

If you are not associated to your abuser (see Who can I get an injunction against) then you may still be able to obtain protection if you are suffering harassment or being put in fear of violence.

The Protection from Harassment Act 1997 makes it a criminal offence to harass someone or make them fear violence will be used against them. You can also apply for an injunction against the person harassing you or making you fear violence. You can also claim damages (financial compensation) from him. For further information about Harassment, please contact Rights of Women's legal advice lines.

Funding for domestic violence injunctions

The application for a domestic violence injunction at the family court is free. However, if you wish to instruct a solicitor or a barrister to represent you, that will cost money. You may be eligible for legal aid to cover the cost of your lawyer, if you meet the financial criteria (the means test) and the test for whether it is reasonable to provide legal aid for your case (the merits test). See **A guide to family law legal aid** for further information.

If you cannot access a solicitor or barrister then you can make the applications yourself, without a lawyer. You can take a McKenzie Friend with you to court. See our guide **Family Court proceedings: where can I get advice and support?** for further information.

The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice. Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children:

Women living and working in London: call **020 7490 2562** or textphone **020 7490 2562** the advice line is open Mon 11am–1pm and Tues – Thurs 2–4pm.

For all women: call **020 7251 6577** the advice line is open Tues – Thurs 7–9pm and Fri 12–2pm

For free, confidential, legal advice on immigration and asylum law or criminal and sexual violence visit **www.rightsofwomen.org.uk** for our advice line details.

Useful contacts

Police (emergency)
999

24 hour domestic violence helpline
0808 200 0247
www.nationaldomesticviolencehelpline.org.uk

Rape Crisis Freephone helpline
0808 802 9999
http://rapecrisis.org.uk/

National LGBT Domestic Violence Helpline
0300 999 5428
www.brokenrainbow.org.uk/help/helpline

Forced Marriage Unit Helpline
0207 008 0151
www.gov.uk/guidance/forced-marriage

Revenge Porn Helpline
0845 6000 459
www.revengepornhelpline.org.uk/

Stop Online Abuse
www.stoponlineabuse.org.uk

Samaritans
08457 909090
www.samaritans.org.uk

Legal Aid Agency
0345 345 4345
www.gov.uk/government/organisations/legal-aid-agency

The Law Society (to find a solicitor)
www.lawsociety.org.uk/find-a-solicitor/

Resolution (to find a family law specialist lawyer)
01689 820272
www.resolution.org.uk/

Court forms and locations
http://www.justice.gov.uk/about/hmcts

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