

---

# *Fairbrother & Darlow*

---

Solicitors

## **Injunction Procedure Guide**

### **1. Introduction**

The purpose of this guide is to set out details of the injunction orders that a court can make to protect victims of domestic violence where parties are married, or living together effectively as man and wife, or have lived together in the same household. Protection orders may also be available to a wider range of applicants depending upon the circumstances of a particular case.

### **2. The Available Orders**

The following orders are usually available to parties:-

#### **(a) Non-Molestation Orders**

These are orders that prohibit another person or persons from:-

- (i) Using or threatening violence against the applicant and/or any children;
- (ii) Intimidating, harassing, pestering or otherwise interfering with the applicant and/or any children;

In certain situations it may be appropriate to make an emergency “ex parte” application. In considering whether to make such an order the court will consider any risk of significant harm to the applicant and/or any children as a result of the conduct of the respondent, if the order is not made immediately, and whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately.

This depends upon the circumstances of the case. This means that you can apply for an order without having to give the respondent any prior notice of your application. On this application the court may attach a power of arrest. The respondent must be served with the order for it to be enforceable and the application will usually be listed for a further hearing at a later date after the respondent has had notice of the application.

If the respondent is given at least two days notice of the hearing this is an “on notice” application then the court must attach a power of arrest if the court is satisfied that the respondent has physically injured the applicant or any child.

Any breach of a Non-Molestation injunction will constitute an offence. The police should arrest the respondent for breach of any parts of an order to which the power of arrest relates. Enforcement proceedings will then take place through the criminal courts. If an arrest takes place, the respondent should be brought before the court within 24 hours of the arrest.

Whether or not there is a power of arrest, any breach of the order renders the respondent liable to a fine or a period of imprisonment of up to 2 years for contempt of court.

#### **(b) Occupation Orders**

---

# *Fairbrother & Darlow*

---

## Solicitors

This is an order that is made in relation to the accommodation in which the parties are living or have lived. For example, it can exclude the respondent from the accommodation or an area around it. If the court feels that both parties have the right to occupy the accommodation it can regulate how it is to be used by each of the parties in order to seek to ease possible tensions where both parties will continue to reside in the property.

Non-Molestation and Occupation Orders will often last between 3 and 12 months, although they can last for longer periods than that, or until further order. In addition to the injunction order itself, the court may order the respondent to pay the applicant's legal costs incurred in making the application. Any such order would then need to be enforced against the respondent.

### **(c) Undertakings**

In certain cases, the respondent may, without admitting to any of the applicant's allegations, undertake (i.e. promise) to the court not to act in a particular way. For instance, the respondent could undertake not to use or threaten violence to the applicant or to leave the family home.

Although the penalties for breaching an undertaking are the same as for the breach of a Non-Molestation Order, a power of arrest cannot be attached to them. The applicant can still apply directly to the court for the respondent's committal to prison for contempt of court.

If a court is of the opinion that the respondent has used or threatened violence against the applicant, or a child, and that the applicant would not be adequately protected by an undertaking, it must make an order with a power of arrest attached.

### **3. How to apply for an Injunction Order**

The applicant files an application at the court which has to be supported by a sworn statement explaining why an injunction order is required. The court then fixes a date for the application to be heard. A copy of the applicant, sworn statement and a notice of the hearing date must be personally served upon the respondent, usually by a process server.

In very urgent cases, the court can immediately make orders preventing the respondent from using or threatening violence against the applicant or intimidating, harassing, pestering or otherwise interfering with the applicant. The application will then usually be listed for a further hearing when the respondent can attend the court and make representations. Such "ex parte" or "interim" orders must be personally served upon the respondent with the other court documents.

### **4. Procedure at the Hearing**

Both parties should attend any hearing of which they have been given notice.

---

# *Fairbrother & Darlow*

---

## Solicitors

If the respondent opposes the application, the parties and any witnesses they may wish to call, will need to attend the hearing in order to give evidence and to be available to be cross-examined. Once all of the evidence has been presented, the court will decide whether to make any of the orders applied for by taking into account the various factors that are set out below.

If the applicant agrees to resolve matters by the respondent giving an undertaking, none of the parties will need to give evidence at the hearing.

If the respondent does not attend the hearing, the court will usually make an order in the terms of the application in his or her absence.

### **5. Factors to be taken into account by the Court**

A number of factors are taken into account by the court when deciding whether or not to make an injunction order under the Family Law Act 1996. These factors include the following:-

- (a) the conduct of the parties and, in particular, the extent and duration of any violence or threats of violence;
- (b) whether there are any witnesses to the incidents alleged;
- (c) whether, and if so when, the police were called to any of the incidents;
- (d) the outcome of any police investigation;
- (e) any criminal convictions of the parties;
- (f) whether the applicant can substantiate any alleged injuries with a medical report;
- (g) whether the applicant, or nay children, have had any contact with the social services or other welfare organisations;
- (h) the needs of any children and whether they have suffered, or are likely to suffer, any harm as a result of the respondent's behaviour;
- (i) whether there have been any previous injunction or other proceedings between the parties;
- (j) the respective needs and financial resources of the parties and their ability to find alternative accommodation if they are excluded from the family home;
- (k) whether the family home is rented or owned, and by whom;
- (l) whether the applicant has any interest in the home, and whether any payments on it are still being paid;
- (m) whether it is possible to exclude the respondent from part of the family home, as opposed to all of it.

Each case will be judged on its own merits, and the matters listed above are only examples of some of the factors that can be considered by a court when deciding whether to make any orders. However, an order excluding a respondent from the family home will only be made in serious situations.

If you would like any further information about injunction orders, please contact Fairbrother & Darlow (Tel: (01344) 420808 Email: [info@fairbrotherdarlow.co.uk](mailto:info@fairbrotherdarlow.co.uk)).

e: [info@fairbrotherdarlow.co.uk](mailto:info@fairbrotherdarlow.co.uk)

i: [www.fairbrotherdarlow.co.uk](http://www.fairbrotherdarlow.co.uk)

t: 01344 420

---

# *Fairbrother & Darlow*

---

Solicitors