

Injunctions relating to abuse and violence in the home



At Wards Solicitors, our family lawyers are experienced in providing practical and supportive advice and can help you identify and prioritise the issues. This factsheet is designed to give you information on injunctions. We have further factsheets on divorce procedure, dissolution of civil partnerships, finances and children. If you have any questions, please contact us.

Injunction proceedings

The family courts have wide powers to protect anyone facing abuse or violence in the home. Such orders are known as 'non-molestation orders' and 'occupation orders'. It is vital that you talk to us if you are affected by abuse. Our experts can advise you how to keep you and your family safe.

Step one - preparing the paperwork

We need to show the court that you are in need of its protection and that the court has the power to deal with your case. As part of this we will prepare a statement for you to sign which will form the basis of your evidence. It is vital that the information in it is correct. Any inaccuracies would affect your credibility and deliberate inaccuracies could lead you to being punished by the court.

Step two – without notice applications (optional)

This is where we go to court without informing the other person. The court could grant you an injunction straight away and fix a 'return date' hearing for the next week. This gives us time to give the other person notice of the case and time to obtain independent advice on the case. The advantage is this gives you protection very quickly. However, please bear in mind the following:

An injunction is not effective until it is handed to the other person. Therefore,

if there are difficulties with finding your partner, you will not be protected by the injunction until they are found.

You are highly unlikely to obtain an order excluding your former partner from your home without giving them the chance to be present at court to put forward their case. The court will only do this in cases of extreme violence.

Step three - service of the papers

It is only when the papers are handed in person to your former partner that they take effect.

Step four - the hearing 'on notice'

This is where your former partner has the opportunity to put his or her side of the case to the court. You may also have to give evidence and be questioned about your statement. If it seems that there will be a lengthy dispute, then the court will have to adjourn the hearing to a later date, when more time is available.

If we cannot agree a solution with your partner, the court will impose a settlement. Many injunction cases end without a formal injunction being made. Quite often 'undertakings' will be offered. These are promises made to the court to do certain things, such as keep away from a property or not to contact someone. Undertakings are a popular way of dealing with injunction applications as there is no finding of blame or fault against your partner.

If the person who gave the undertaking later breaks that promise, he or she will be in contempt of court and at risk of imprisonment. However, there would have to be serious breaches of an injunction or undertaking for the person to be jailed.

If the other side offers an undertaking then we may advise you to accept it and you may be encouraged to do so by the court.

Step five - enforcement

This is rare but if the other person breaks the injunction or undertaking, we will have to go back to court for it to consider what punishment to impose. Please keep a diary of any difficulties your partner causes. Even if minor and not too annoying, taken with other behaviour, there could be a breach of the court order.

If you do suffer any further problems, let us know, so we can consider any further action necessary to protect you.

Extra support

If you need extra help, beyond that of legal advice, there are organisations that could assist you. For example, Victim Support (0845 456 6099), Women's Aid (0808 2000 247) or your normal GP may be able to help.

Please remember it is possible to stop injunction proceedings at any time, subject to the court's permission. Experience has shown that many applications for an injunction end when the parties try for a reconciliation. Also bear in mind any children, who can be affected by violence in the home, even if it is not directed at them.

We would still advise you to seek outside help. There are agencies that can help with relationship counselling and anger management. We can give you details.

General matters

An injunction cannot physically stop someone misbehaving, although breach of one is a serious matter. If you face problems at any time, call the police on 999. The police are now geared up to help with domestic violence cases.

You need to consider whether your partner is likely to ignore any injunction granted. If you believe he or she will take no notice of the court, you may wish to consider staying elsewhere, e.g. with relatives, until things have calmed down.

Equally, you need to consider whether an injunction may cause the situation to get more out of hand. Please remember that as a lesser step, a letter can be sent or a referral made to Relate or another mediation group. This is something that only you can decide.

Powers of Arrest

Breach of a non-molestation order is a criminal offence.

Occupation orders will be treated differently, however, and a separate 'power of arrest' will still be needed in case of breaking the court order.

What happens if the Respondent breaks the order?

If Respondent breaks the terms of the injunction, and you are fearful for your safety or that of others, you should call the police. The police should arrest the Respondent and are required to bring him or her back before a court within 24 hours. If they arrest Respondent, he or she will be taken to the Magistrates' Court and not back to the County Court. The court may fine the Respondent, impose a community sentence, impose a suspended sentence, or commit to prison for serious or repeated breaches.

If you are unhappy about the enforcement process being taken out of your hands, it should still be possible for us to take the Respondent back to the County Court for contempt of court - in the same way as you still have to do for the breach of an occupation order.

Compensation

If agreement has been reached, the District Judge is unlikely to interfere.

In some circumstances it may be possible to seek compensation directly from the other party or by making a claim to the Criminal Injuries Compensation Authority. If there are criminal proceedings, the court dealing with them might make compensation orders too.

For more information on divorce and relationship breakdown please follow the link [**wards.uk.com/divorce-and-family**](https://wards.uk.com/divorce-and-family).

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