



# Domestic violence injunctions under the Family Law Act

How can it help me?

This leaflet tells you how the Family Law Act can help you. It explains who can apply for a domestic violence injunction, describes what you need to do and tells you what will happen once the court receives your application.

This leaflet deals with applications that are made at a family court.

## How can the Family Law Act help me?

This Act, protects victims of domestic violence with two different types of orders:

- A non-molestation order – which prevents another person from harming you or a child.
- An occupation order – which will indicate who can live in the family home and can direct another person to leave the home.

## How do I know if I can apply?

You can apply for an order against another person if you are associated in one of the ways listed below. The position is a little more complicated for occupation orders and depends on 'rights' to the family home. You can ask at the court or check with a solicitor.

**Married:** a man or a woman to whom you are or have been married.

**Civil partners:** someone with whom you have or have had a civil partnership.

**Cohabitants:** two people who are not married and not civil partners but who have lived together as though they were married or in a civil partnership.

**Two people who live or have lived in the same household:** but not if one is the employee, tenant, lodger or boarder of the other. This type of incident may be dealt with through the criminal or civil courts so seek advice.

**Certain relations:** (for example, parent, brother, sister, aunt). You should ask at the court for a full list of all relatives who may apply.

**Two people who have agreed to marry each other:** but you must apply within three years of the agreement to marry ending.

**Two people who have agreed to enter into a civil partnership:** but you must apply within three years of the agreement to enter into a civil partnership ending.

**Two people who have never cohabited or married:** but who have or have had an intimate relationship with each other which is or was of significant duration.

**You and the other person are the parents of a child or have parental responsibility for a child:** this also applies if you or the other person have been responsible for the child in the past.

**The natural parent or grandparent of a child who has been adopted or is freed for adoption:** you may only apply if the other person is the child, the adoptive parent or any adult who has applied to adopt the child or with whom the child has been placed for adoption.

If you are over 16 but under 18 you are required to have a 'Next Friend' (a person appointed by the court to represent someone under the age of 18). That person might be a parent, relative or a friend who is over 18 years of age.

If you are under 16 as well as being required to have a 'Next Friend' you will need permission from a High Court judge to make the application.

If you want to apply for a non-molestation order or an occupation order, you should carefully read this leaflet and the notes for completing the application form. Make sure you have all the information and forms it says you will need.

If you need help deciding whether you can apply for an order, you should ask for help from a solicitor or Citizens Advice Bureau. You may be able to get free legal advice. Go online at [www.gov.uk/legal-aid](http://www.gov.uk/legal-aid) or phone 0845 345 4345 for further information. In cases of domestic violence where you may need an order to protect you from harm the usual legal aid limit on how much you can earn and how much money you have will be applied.

You can also access advice and support from national and local voluntary services, for example:

- National 24 hour Domestic Violence Helpline (run by Women's Aid and Refuge) – Freephone: 0808 2000 247
- Women's Aid – Survivors' Handbook, Getting an Injunction: [www.womensaid.org.uk](http://www.womensaid.org.uk)

- Men's Advice Line – Helpline: 0808 801 0327
- National Centre for Domestic Violence – Helpline: 0844 8044 999  
www.ncdv.org.uk

## **Where may I apply for an order?**

You can make your application at any family court. You can find the closest court to you and their opening hours, online at [courttribunalfinder.service.gov.uk](http://courttribunalfinder.service.gov.uk)

## **How much will it cost?**

There is no fee payable to make this application.

## **What information do I need?**

- Your own name, address and date of birth (if you are under 18 you will need the same information for your 'next friend').
- The name and address (and date of birth – if you know it) of the person you are seeking the order against.
- If you are applying for a non-molestation order involving a child, the full name and date of birth of the child (or children).
- If there are already family proceedings involving you and the other person, the name of the court and the case numbers, if known, and the type of case (for example, an application for residence of a child).
- If there are criminal proceedings and the other person was arrested and charged, the name of the criminal court and case number if known and the date of the hearing or trial.
- If you are applying for an occupation order, in which you are asking the court to consider changing a rental or mortgage agreement, a copy of the agreement may help the court.

If you are applying on the basis that you and the other person agreed to marry, or entered into a civil partnership agreement, you must apply within three years of the end of the relationship or the termination of the agreement. This information should be confirmed in writing otherwise you will need to produce an engagement ring, or some similar object of your intended marriage, or the evidence of someone who attended a gathering to celebrate your intended marriage (for example, someone who was a guest at your engagement party). In the case of a civil partnership agreement you will need to confirm in writing that a gift was given by the other person as token of the agreement, or that a ceremony that took place before one or more people.

## What forms do I need to fill in?

- You will need to submit three copies of the application form (FL401) and your witness statement. Guidance notes are included as part of the application form.
- If you are applying for an 'occupation order' which may involve a change in the occupier of a rented or mortgaged house, you will need another copy of the application form (FL401) for the landlord or mortgage company.
- If you do not wish to reveal any contact details, except by order of the court, complete form C8, available from any family court, or from our website at [hmctsformfinder.justice.gov.uk](http://hmctsformfinder.justice.gov.uk)

## Will I be able to fill in the forms myself?

- You must read the application form carefully before you begin to fill it in.
- The form asks different types of questions: some need a written answer (for example, the full name and address of the person you need an order against – this person is known as the 'Respondent'), while others will just ask you to tick a box. The guidance notes which come with the application explain each part of the form.
- Once you have completed the application you should write a witness statement which needs to be submitted with the application. On this you should explain what has happened between you and the respondent and list the orders you would like the court to make (for example, 'I would like the court to make an order for John Smith to leave the family home'). The witness statement should be verified by a statement of truth.
- If you do need help filling in these forms, but do not know a friend or relative who can help, you should go to see a solicitor or Citizens Advice.
- If a solicitor is helping you under legal aid, they will help you fill in the forms.

## What should I do when I have filled in the forms?

You should take or post all of the forms to the family court. You must also send or take your witness statement verified by a statement of truth.

A statement of truth is created by writing 'I believe that the facts stated in this witness statement are true.' You will need to sign and date this statement of truth.

## What should I do if I need an urgent order?

- If you think there are exceptional reasons, you may ask the court to consider your application immediately and without the respondent being served with any documents ('ex-parte', also known as 'without notice'). Any order which is made will still need to be served after the hearing.

- If an ex-parte order is made, you will be given a further appointment to attend the court. The respondent will be entitled to be present at this appointment so that the judge/magistrates can then listen to both of you before deciding whether to make another order.

## **What will happen when I send the forms to the court?**

- The court will check the forms and give you a 'Notice of Proceedings' (FL402). This will tell you the date of your appointment which may be the same day if the application is urgent before the judge or magistrates and will act as a receipt for your fee.
- If you are being helped by a solicitor, the forms will be sent to him or her to serve on the respondent.
- If a solicitor is not helping you, you can ask the court to serve the documents for you. The court may ask you to complete a form for this. The court will then arrange for a copy of your application and witness statement to be served on the respondent by the bailiff.

## **If you are worried about coming to court**

Write your concerns on your application form or make your request in writing to the Court Delivery Manager as soon as possible or there may be a delay in hearing the application.

Courts may be able to offer:

- Separate court waiting rooms;
- Separate court entrances and exits;
- Parking on court premises to facilitate easy access to the court building for intimidated witness.

Witness protection facilities may also be available in some courts.

## **What will happen if the bailiff cannot serve the application on the respondent?**

- If the address you gave for the respondent is wrong, the respondent has moved or the bailiff has not been able to locate the respondent, the court will tell you what has happened.
- If the address is wrong or the respondent has moved, you must find out the new address. You should write and let the court know. The court will then arrange a new appointment date before the judge and pass the papers back to the bailiff. You will also be told the new date.
- If the bailiff has not been able to serve the papers on the respondent in time for the appointment, the court will let you know the new appointment date and the bailiff will continue to attempt service.

- If you are unable to find the respondent's address or it appears that they are avoiding service, you may ask the court to serve the papers in some other way.

## Can I serve the documents myself?

- You should not hand the documents to the respondent yourself, given the potential dangers involved in doing this. If you have a solicitor, they can arrange for the documents to be served, perhaps by using a professional process server. If you do not have a solicitor, you can arrange for a process server to hand the documents to the respondent (this is likely to involve a fee). Or you can ask the court to order that a court bailiff should serve the documents (there is no fee for this).
- The documents must be served on the respondent personally. This means that the papers must be handed directly to the respondent. It does not mean that you personally must hand the papers to the respondent. This is the case unless the court has allowed the papers to be served in some other way.
- The person who serves the documents should fill in a 'Statement of Service' (FL415) and return it to the court before the date of your appointment. The example below shows what a completed form should look like.

Statement of Service		Case number 97DU5001
<i>Family Law Act 1996</i>		<b>Applicant</b> <i>C Walker</i> Ref.
The court at which your case is being heard <i>Anytown</i>		<b>Respondent</b> <i>R Walker</i> Ref.
<p><b>You must</b></p> <ul style="list-style-type: none"> <li>■ give details of service of the application on each of the other parties</li> <li>■ give details of service of the mortgage or landlord of the dwelling-house (if appropriate)</li> <li>■ file this form with the court on or before the first Directions Appointment or Hearing of the Proceedings</li> </ul> <p><b>You should</b> if the person's solicitor was served, give his or her name and address</p> <p><b>You must indicate</b> the manner, date, time and place of service or where service was effected by post, the date, time and place of posting</p>		
Name and address of person served	Means of identification of person, and how, when and where served	Prescribed forms served
<i>Mr R Walker 34 High Street Anytown</i>	<i>Personally served at 6.00pm on 1st October at 34 High Street Anytown by the Applicant</i>	<i>FL401 Application FL402 Notice of Proceedings</i>
<p>I have served the [application][Notice of Proceedings] as stated above. I am the [applicant][solicitor for the applicant][other] (state)</p> <p>Signed: <i>C Walker</i> Date: <i>1st October 1997</i></p>		
FL415 Statement of Service		

## **What will happen at the hearing?**

The respondent and you, and any legal advisers present will discuss your application with the judge/magistrates. The appointment will usually be in private (this is normally called 'in chambers'). No other members of the public or press will be in the room. Once the judge/magistrates understand both parties' points of view, they can decide any of the following:

- They need further information about you, the respondent or any children that are involved. You will be told what extra information to provide.
- They need further information, but are prepared to make a short term (interim) order until all of the extra information has been provided. You will be given a new appointment, an interim order, and be told what extra information to provide.
- They are prepared to make an order for a certain period of time, after which the court will reconsider the case. You will be given a new appointment date and a copy of the court order.
- They are prepared to make an order. The order will continue until you or the respondent ask the court to reconsider the case. You will be given a copy of the order.

Form FL404 (occupation order form) and form FL404A (non-molestation order form) tells the parties in the case, what decision the court has reached.

## **Does the court order have to be served personally on the respondent as well?**

It is very important that the respondent is personally served with a copy of the court order otherwise the court might not be able to enforce or punish any breach of the order. You should ensure that the question of service is agreed with the court at your hearing. The steps outlined at the bottom of this leaflet should be followed to ensure it is served correctly.

## **Does anyone else have to be served with a copy of the order?**

If the court makes a non-molestation order or any other order with a power of arrest attached you must without delay ensure the order, is delivered to the officer in charge of the police station for your address or the station specified by the court. Without doing this the police will have no knowledge of the order and it may mean they cannot take any action should the respondent do something the order says they aren't allowed to do. If you have asked a court bailiff to serve the order on the respondent the court will make sure that the police are served.

## **What can I do if the respondent does not obey a non-molestation order?**

- If the non-molestation order was made after 1 July 2007, the police will be able to arrest the respondent if they do not obey the order. The order will contain a notice in it warning the respondent of the consequences of breaching the order.
- If the non-molestation order was made before 1 July 2007 please contact your nearest Family Court for advice.

## What can I do if the respondent does not obey the occupation order?

- If the court is concerned that the respondent may not obey an occupation order, the judge/magistrates can include a 'Power of Arrest'. This allows the police to arrest the respondent if they believe that they have disobeyed the court order.
- If the respondent has failed to obey the court order ('breached the order'), but the order does not include a 'Power of Arrest', you may apply to the court for a warrant of arrest or to commit that person to prison.

**Note:** If the court order is breached and does not contain a 'Power of Arrest', you should consider applying for this to be added to the order, at the same time as applying for the warrant of arrest.

- Further information on the enforcement of court orders can be obtained from a solicitor or Citizens Advice.

## What happens if the respondent is arrested?

- If the respondent is arrested and charged they will be taken to a court and possibly for trial depending on if they plead 'guilty' or 'not guilty'. If the case goes to trial, you might be asked to attend court as a witness. The Witness Care Unit will contact you about the trial date and the Witness Service at court will be there to support you and arrange a visit before the court date if you think that would help you. You can watch some videos on going to court as a witness. Please visit YouTube ([www.youtube.com](http://www.youtube.com)) and search for 'going to court as a witness'. You can also telephone the Victim Supportline on 08 08 16 89 111.
- In some cases, even if you do not wish for the case to go to court, if the police and the CPS have enough information and they think what happened is very serious and it is in the public interest to take action, they may go ahead without you. Someone will speak to you about this and find out how you feel about the case.
- If the CPS thinks that it does not have a strong case and the respondent is not charged, you can return to the Family Court for a committal hearing.

## Guidance for applicants on serving a non-molestation or occupation order

This guidance is for applicants who need to serve (give to the other party) one or both of the above orders. It is very important that the other party (known as the respondent – the person the order has been made against) is personally served with a copy of the court order. Otherwise the court might not be able to take any action if they disobey the order.

Personal service means that the respondent is handed the documents directly (that is, personally). It does not mean that the applicant has to be the one to hand the documents to the respondent. If you do not have a solicitor, you can arrange for a professional process server to hand the documents to the respondent: there will probably be a charge for this.

Or you can ask the court to say that the court bailiff should hand the documents to the respondent, and there is no fee for this. If you have a solicitor representing you they can arrange to serve the order, perhaps by using a professional process server. The order should be served appropriately and as soon as possible.

How to serve the order

1. The respondent should be handed:

- a copy of the order
- a copy of the application
- a copy of any supporting statement
- a written record of the reasons for the court's decision (only if heard by magistrates in the family court)

**Do not** put the document in an envelope (this is to comply with the legal requirements of personal service)

**Do not** serve the respondent by post or email unless you have permission from a judge (see point 5 below)

**Do not** hand the documents to the respondent yourself: ask your solicitor to arrange this or, if you do not have a solicitor, you could appoint a professional process server or you could ask the court to arrange for the court bailiff to serve the documents.

2. Once the order and documents have been served, the person who affected service should complete a 'Statement of Service' (FL415) and make a copy for the police (you may also like to keep a copy for your own records). You can get a copy from the court or online at <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

**Note:** You must serve the respondent before you inform the police.

3. Deliver a copy of the order and a copy of the statement of service to the officer in charge of the police station for your address or the station specified by the court. **(If you don't do this the police may not be able to take any action if the respondent does something the order says they aren't allowed to do. This step is not required for Occupation Orders where no power of arrest is attached – ask a member of court staff if you are unsure.)**

4. If an Occupation Order was made, you (the applicant) are also required by the Family Procedure Rules to serve a copy of the order on the Landlord or Mortgagee. This may be done by first class post although it is advisable to retain proof of postage.

5. Send or hand the original completed statement of service to the court which issued the order.

6. If it appears that the respondent is avoiding service (for example by refusing to accept the order) you may ask the court to serve it in some other way.

**Warning:** Please make sure that every page of the order has been served on the respondent and police – including the page which specifies any order expiry date.