

Non-molestation orders and occupation orders: how we can help



Non-molestation orders and occupations orders are injunctive orders made in the family Courts under the Family Law Act 1996.

A victim of domestic abuse or violence may apply for a non-molestation order through the family courts, unlike a restraining order which is made in the criminal courts and requires the assistance of the police and/or CPS to obtain.

A non-molestation order is a broader injunction prohibiting specific behaviour or actions, such as threatening violence, contacting a victim, or instructing someone else to do so. If a non-molestation order is breached, the police have the power to arrest a perpetrator for breach of the order.

An occupation order specifies who is allowed to live in or enter a property. It is commonly used to restrict someone from accessing the family home while the other party still resides there, even if that person has a legal right to enter, such as being the owner or co-owner.

Non-molestation orders can be made with or without notice to the other party. Whether the application should be made with or without notice will depend on the circumstances in which an order is sought. Most applications for non-molestation orders are made without notice, where appropriate, if there appears to be an imminent risk to the applicant's safety.

Occupation orders can be applied for at the same time, but such orders are rarely granted without notice due to their draconian nature, and the respondent will have an opportunity to make representations at a subsequent court hearing.

In some circumstances where there does not appear to be an imminent risk to the applicant's safety, a non-molestation order can still be sought (such as harassing a victim with telephone calls) and such an application should be made with notice.

What is the application process?

The applicant must fill out a detailed application form and submit a witness statement outlining the alleged abuse and explaining why they need the protection of an order. If immediate protection is necessary, the court may grant an emergency order and will typically schedule a hearing to further assess the merits of the case.

The application, along with the supporting witness statement(s) and the order, must be personally served on the respondent by a process server. Once the respondent is served, they are legally bound by the terms of the order. The respondent must be served no later than two days before the scheduled hearing; however, it is in the applicant's best interest to serve the order as soon as possible to ensure the respondent is immediately bound by its terms.

At the hearing, both the applicant and the respondent will have the opportunity to present their case to the court. The court will then decide whether the order should remain as it is, be modified, or be dismissed altogether.

Injunctive orders can be complex to obtain, as the court must take various circumstances into account when reviewing an application, and carefully drafted witness statements are required. Non-molestation orders, in particular, are customised to address specific behaviours and actions, making it essential to seek legal advice for such proceedings.

At Astle Paterson, we understand that the circumstances leading to a need for injunctive relief after a relationship breakdown are often highly stressful. Our compassionate family law experts are here to offer guidance and support, helping to ease the burden of court proceedings as much as possible for victims.

For more information on family law, please contact our expert, trusted Family Law & Divorce team on 01283 743969 or email enquiries@astlepaterson.co.uk

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