

Domestic violence protection order

What is a domestic violence protection notice and order?

A domestic violence protection order (DVPO) and domestic violence protection notice (DVPN) is a civil remedy for domestic violence matters. It is used to give individuals protection after an incident of domestic violence, where there is a lack of sufficient evidence to charge the perpetrator. A DVPO can last up to 28 days and therefore allows the victim time to get further support. A DVPN can be issued by the police meaning it is effective from the time of issue.

What is the process?

After an incident of a report of domestic violence to the police they will assess the incident and decide whether it is proportionate and necessary to issue a DVPN.

If a DVPN is issued it will have strict conditions which the preparator must follow and this may include non-molestation provisions.

Thereafter, an application for a DVPO will be heard within 48 hours of the time of service of the DVPN. At the DVPO hearing, the Judge will consider whether making the order will protect the victim from violence or a threat of violence.

The civil test of balance of probability is used when making a DVPO. The courts will assess the likelihood of a domestic violence incident reoccurring. Should the court be satisfied that it is likely for another incident to happen, a DVPO will be ordered. A DVPO will last between 14-28 days and it cannot be revoked or varied by the court.

However, the police do not always take action and a DVPO may not be made. In which case you should seek alternative injunctive relief.

What protective orders are available?

If you are suffering from violence, threats or intimidation, it is possible to apply in the family courts for an injunction to help protect you. There are two types of injunction:

- a non-molestation order, and
- an occupation order

What is a non-molestation order?

A non-molestation order prohibits your partner or spouse from using or threatening violence against you or your children, or intimidating, harassing or pestering you. It can contain very specific provisions depending on the particular type of harassment happening to you.

Who can apply?

To apply for a non-molestation order you must be an associated person, which is defined in the relevant legislation. Former and current spouses, civil partners and cohabitants are included, as well as fiancé(e)s, relatives, people living in the same household, the parents of

children in the house and those who have been in intimate personal relationships of significant duration. Your family lawyer will be able to advise you whether you qualify to apply.

What is the procedure?

The person applying to court for the injunction must complete a form and a witness statement setting out in detail what has taken place. Although usually the other person is told if a court application is made against them, this won't be necessary if your safety or the safety of any children is at risk. The person asking the court to help is the applicant and the other person is the respondent. Usually, the respondent will prepare a witness statement in response to yours.

When the court receives your application, it will fix a hearing to decide what should happen.

How does the court decide?

In deciding whether to make an order, the court considers the health (mental and physical), safety and well-being of the applicant or any relevant child. It must be satisfied that there is evidence of molestation and that the applicant or children need protection from the court. Molestation involves any form of physical, sexual or psychological molestation or harassment that has a serious impact on the health and well-being of the applicant or any relevant child. Molestation is not only defined as violent behaviour, it may be other forms of behaviour.

Any non-molestation order the court makes will contain a list of things that the respondent is prohibited from doing. The order can last either for a specified period of time or indefinitely. Breach of a non-molestation order is a criminal offence and the police can arrest someone who is disobeying an order.

What is an occupation order?

An occupation order sets out who can live in the family home (or certain parts of it) and can also restrict someone from entering the area surrounding a home. An occupation order does not affect each person's financial interest in the home, simply who can live in it.

Who can apply?

Former or current spouses, civil partners or cohabitants, or people with a legal entitlement to occupy the property, such as an owner or tenant, can make an application to court for an occupation order. The person asking the court to help is called the applicant and the other person is the respondent.

What is the procedure?

The applicant must complete a court form and provide a witness statement setting out in detail the reasons why they are seeking the order. Usually, the papers will be sent to the respondent, who has a chance to reply by preparing his or her own witness statement. The court will list a date and time for a hearing to decide what should happen.

How does the court decide?

The court applies different tests depending on the relationship status of the people involved and whether the applicant has any legal right to occupy the home. For certain categories of applicant, the court will apply a 'balance of harm' test, in which it balances whether any person or child is likely to suffer significant harm if an order is or is not made. In other cases the court must exercise its discretion taking into account all the circumstances. The process is quite complex and your family lawyer will be able to help you understand what applies in your situation.

The order

The order that the court makes will say who can live in the home and who is excluded from it. It can also impose obligations relating to the repair and maintenance of the home, or to payment of the rent or mortgage. The length of time for which the order will last depends on your particular circumstances and is usually 6 or 12 months, but may be renewable. Breach of an occupation order is not a criminal offence, but a power of arrest can be attached to the order, allowing the police to arrest the person in breach.

Undertakings

When considering either a non-molestation order or an occupation order, it is possible to give undertakings, which are binding promises to the court, instead of having the court make an order. The difference is that breach of an undertaking is contempt of court, which can be punished by committal to prison, but it is not a criminal offence and no power of arrest can be attached.

Please contact our family law team on 02085696289 or via email at info@mackenzieco.co.uk who will assist you obtaining a protective order.