



HOMELESSNESS CAUSED BY DOMESTIC VIOLENCE¹
RETURNING HOME: LOCAL AUTHORITY
ASSISTANCE, LEGAL RIGHTS AND
DOMESTIC VIOLENCE INJUNCTIONS

¹Please note that the contents of this leaflet relate to the laws of England and Wales only.



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I. INTRODUCTION

If your client wishes to return home but their abuser is preventing them from doing so, or they fear that they may suffer domestic violence if they do so, there are a number of ways that the law may be able to help.

The options available to your client differ depending on the nature of their interest in the property, the relationship between him/her and the abuser and the assistance needed (for example, whether your client wishes to return home to the exclusion or inclusion of the abuser). The law on domestic violence is very complex and this leaflet provides only a very basic overview of the options that may be available to your client. Should your client be interested in taking legal action s/he should be strongly advised to seek comprehensive legal advice before taking any further steps. Some contact details that your client may find useful are provided at "Where to go Next" below.

Clients' needs should be dealt with on a case-by-case basis and you should be aware that the most appropriate course of action for one client may not be the same for another. You should always refer to your organisation's domestic violence policy (St. Mungo's policy revised in January 2012) when considering the options available to your client.





2. WHERE YOUR CLIENT IS A LOCAL AUTHORITY TENANT

If your client is a local authority tenant they could ask their local authority to take steps to assist him/her. Local authorities have a general duty to promote social wellbeing and prevent crime and disorder in their local areas, and the Housing Act 1996 gives local authorities various powers to assist in performance of these duties in the context of their housing management functions. Your client's local authority may use some of these powers to protect them from domestic violence. There should be no cost to your client in seeking the local authority's help. The willingness to use such powers may differ between different authorities, however. Powers include:

- **the power to evict a tenant** – the local authority can apply to the court to evict a tenant for behaviour 'causing, or likely to cause, a nuisance or annoyance'. The court will order the eviction if it is satisfied that it is 'reasonable to do so'.
- **the power to obtain an injunction against a tenant** – the local authority can apply to the court for an injunction against your client's abuser which could help to protect your client against further abuse, for example by:
 - forbidding the abuser from being violent towards your client;

- forbidding the abuser from damaging your client's property;
- requiring the abuser to leave the home; or
- prohibiting the abuser from entering the home or the immediate vicinity.

A power of arrest can be attached to the injunction, which would mean that the police could arrest your client's abuser should he/she breach the injunction.

Breach of injunction can be punished with up to 2 years imprisonment. The power to obtain an injunction is considered further below.

Applying for an injunction

A local authority may apply to the court for an injunction if it can show that the defendant has engaged or threatened to engage in "housing-related conduct" which is capable of causing a nuisance or annoyance to a "relevant person".

Behaviour is "housing related conduct" if it directly or indirectly relates to or affects the housing management functions of the local authority.

A "relevant person" is:

- a person with a right to occupy accommodation owned or managed by the local authority;
- a person with a right to occupy other accommodation in the neighbourhood of the accommodation owned/ managed by the local authority;

- a person engaged in lawful activity in, or in the neighbourhood of, the accommodation owned/managed by the local authority; or
- a person employed (whether or not by the local authority) in connection with the exercise of the local authority's housing management functions.

The court will grant the injunction if it is satisfied that:

- the conduct consists of or includes the use or threatened use of violence; or
- there is a significant risk of harm to a relevant person.

Applications can be made by the local authority to the county court or High Court under Part 8 Civil Procedure Rules (Alternative procedure for claims) as modified by Part 65 Civil Procedure Rules (Proceedings relating to Anti-social Behaviour and Harassment) (available at: <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/parts/part08.htm> and <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/parts/part65.htm#IDAHWIHC>).

The application can be made with or without notice to the defendant.

Further information on the Housing Act injunctions, and the application process, can be found in this Home Office fact-sheet: <http://www.communities.gov.uk/documents/housing/pdf/138685.pdf>





3. WHERE YOUR CLIENT HAS PROPERTY RIGHTS

Your client may have property rights that they can rely on in order to return home.

If your client:

- either solely owns the home, or is renting it and the tenancy is in his/her sole name; and
- is not married to or in a civil partnership with the abuser;

the abuser has no right to remain in the property and your client can require the abuser to leave.

If your client:

- is renting the home (whether privately or as a local authority tenant) and the tenancy is in your client's and the abuser's joint names, or in the abuser's name only;
- is married to, in a civil partnership with or lives with the abuser; and
- the tenancy is not an assured shorthold tenancy,

your client can apply to the county court for the tenancy to be transferred to his/her sole name under Part VI Schedule 7 Family Law Act 1996.



4. INJUNCTIONS UNDER PART IV FAMILY LAW ACT 1996

There are 2 types of injunctions available under the Family Law Act that your client may be able to apply for, whether they own the home, are a private or local authority tenant, or reside in a hostel. These may be useful whether your client wishes to return home to the exclusion or inclusion of the abuser:

- **Non-molestation order:** this can be used to protect your client (and, if applicable, his/her children) against violence or harassment from the abuser, for example by:
 - forbidding your client's abuser from intimidating, violent or harassing behaviour;
 - ordering your client's abuser to leave the home; and
 - forbidding your client's abuser from damaging your client's possessions.
- **Occupation order:** this deals with who lives in the home. It may, for example:
 - order your client's abuser to let your client back into the home;
 - order your client's abuser to stay in certain parts of the home at certain times (e.g.: a separate bedroom); or
 - order your client's abuser to leave the home and keep a specific distance away from it.

The court also has the power to order your client's abuser to pay the rent, mortgage or other outgoings when making an occupation order.

Additionally, a power of arrest can be attached to any provision of a non-molestation or occupation order, which would mean that the police could arrest your client's abuser should he/she breach it.

Non-molestation orders and occupation orders are normally for a specified period of time (e.g. six months) but can be renewed, or they may be made "until further order". There is no limit on the length of time that non-molestation orders can be extended. Occupation orders can only be extended beyond 12 months if your client has a legal right to stay in the home (i.e. as owner or co-owner, or tenant/joint tenant, or because he/she is or has been married to the owner/tenant).

Eligibility

Your client can only apply for a non-molestation order or occupation order if he/she is "associated" with the abuser. Your client and the abuser are "associated" if they:

- are or were married or in a civil partnership (it does not matter how long ago the marriage or civil partnership ended);
- are or were engaged to be married or had agreed to form a civil partnership;
- are or were living together;

- live or have lived in the same home, for example as a flat share or in a hostel (but not as a tenant, border, lodger or employee of the abuser);
- are relatives, including: parents, children, grandparents, grandchildren, siblings, uncles, aunts, nieces, nephews or first cousins (whether by full-blood, half-blood, marriage, civil partnership or cohabitation);
- are parents of the same child;
- have or have had parental responsibility for the same child;
- are parties to the same family proceedings for the same child; or,
- are or were in an “intimate personal relationship of significant duration”.

An order can also protect any “relevant child”. A “relevant child” is any child under the age of 18:

- who is living or might be expected to live with your client or the abuser;
- who is the subject of family proceedings linked to an application for a domestic violence injunction; or
- whose interests the court thinks relevant.

Children over the age of 18 and other family members in need of protection will need to make their own injunction applications.

When the court is considering an application for a non-molestation order it will take all the circumstances into account, particularly the health, safety and wellbeing of your client (and, if applicable, his/her children).

When the court is considering an application for an occupation order it will take all the circumstances into account, including the housing needs of your client, his/her children and the abuser; your client’s and the abuser’s

respective financial resources; and the likely effects any order, or not making any order, would have on all parties concerned.

Application process

A non-molestation order and/or occupation order is obtained by submitting an application to the Magistrates' Family Proceedings Court or County Court under Part 10 Family Procedure Rules (available at: http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/family/parts/part_10.htm; Practice Direction available at: http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/family/practice_directions/pd_part_10a.htm). Application is initially made by submitting an application form and supporting evidence to the court.

If your client applies to the County Court there is an application fee of £70, but your client may be able to apply for it to be waived in full or part due to his/her financial circumstances. Alternatively if your client can apply to the Magistrates' Family Proceedings Court, no fee will be payable.

It is possible for your client to make their own application for a non-molestation or occupation order. Your client's local County Court will provide the application form and a guidance leaflet, or these can be downloaded from the Court Service website (<http://www.justice.gov.uk/about/hmcts/>). Rights of Women sell a handbook at a price of £8 which may be useful for clients intending to make their own application (available for purchase online at <http://www.rightsofwomen.org.uk/publications.php>). Rights of Women also has a legal advice line for assistance (see "Where to go Next" below). Alternatively your client may wish to seek legal representation (on which, see "Legal advice and funding" below).

Your client will also need to attend at least one court hearing. Hearings are in closed court, which means that only people with a direct interest in the matter can attend. This has the advantage that your client's application will be heard in privacy, although it also means that he/she cannot usually be accompanied in court by a friend or supporter. His/her legal advisor can go into court with him/her, though, and a friend or supporter can wait in the waiting area outside the courtroom.

Your client's abuser will usually be informed that your client has applied for an order and be invited to submit evidence in defence of the application. However, where your client needs an order urgently or fears that he/she will suffer further abuse if the abuser discovers that an order is being sought, your client can make the application without notice. An injunction can be obtained on the same day if the application is made without notice.

The court will require good reasons to issue the order without notice. If the court is minded to grant an order without notice, it is likely to do so on a temporary basis and call another hearing to hear evidence from your client's abuser before deciding whether to issue a further order.

Where the court is to hear evidence from your client's abuser and your client fears that he may harass or intimidate him/her while they wait for the hearing, the court officers can put measures in place to prevent this from happening – for example, by providing separate waiting rooms.

If other family proceedings are already in progress (e.g. proceedings for custody of your client's children) the court may wish to hear all the applications together. An emergency order can still be obtained for the interim period until the full hearing.

Enforcement

Breach of a non-molestation order is a criminal offence, which is punishable with a maximum of 5 years imprisonment. Alternatively a civil action can be brought for breach of injunction, which may be punished by fine, 5 years imprisonment or suspended sentence.

Breach of an occupation order is treated as a civil offence and may be punished by fine or up to 2 years imprisonment or a suspended sentence.



5. RESTRAINING ORDERS UNDER THE PROTECTION FROM HARASSMENT ACT 1997

The Protection from Harassment Act enables your client to apply for a restraining order at the county court where he/she is being continually harassed, threatened, pestered or stalked after the relationship with the abuser has ended.

The Harassment Act also makes it a criminal offence for one person to harass another or putting them in fear of violence. If criminal proceedings are taken against your client's abuser the court can issue a restraining order against him at the point of sentence. The order can stand even if the criminal conviction is eventually overturned.

A restraining order forbids your client's abuser from doing certain things, for example:

- threatening him/her;
- contacting him/her; or
- visiting certain places (e.g. your client's place of work).

Damages may be awarded to your client in addition.

Eligibility

Unlike the Family Law Act, the Protection from Harassment Act does not require your client to be "associated" with the abuser in order to obtain an injunction. Your client must, however, satisfy the court that he/she has been "harassed" or "put in fear of violence":

“Harassment” is a course of conduct (two or more incidents) that is deliberately intended to cause a person distress or alarm. Examples of harassment include a text, letter or email; a comment or threat; persistently standing outside someone’s house; or an act of violence.

“Putting in fear of violence” is a course of conduct that causes another person to fear that violence will be used against them.

In both cases that court will consider whether a reasonable person, looking at the behaviour from outside the situation, would think that it amounts to harassment or conduct which would put another in fear of violence.

Application process

Applications to the county court must be made under Part 8 Civil Procedure Rules (Alternative procedure for claims) as modified by Part 65 Civil Procedure Rules (Proceedings relating to Anti-social Behaviour and Harassment) (available at: <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/civil/contents/parts/part08.htm> and <http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part65#IDA2ULCC>).

If your client applies to the county court there is an application fee of £70, but your client may be able to apply for it to be waived in full or part due to his/her financial circumstances.

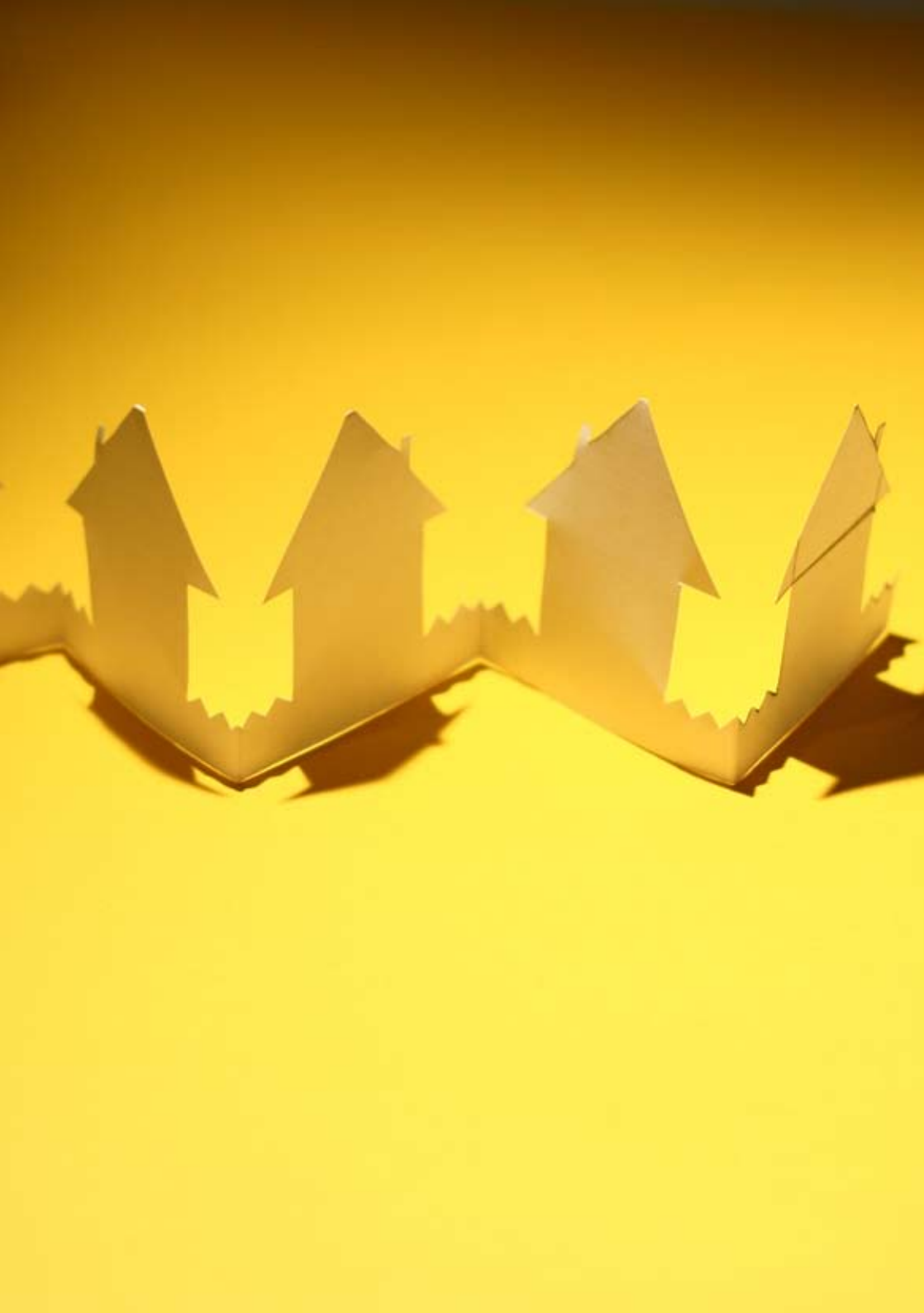
It is possible for your client to make their own application for a restraining order. Your client’s local county court will provide the relevant application form and guidance leaflets.

Rights of Women has a legal advice line for assistance that may be able to assist your client with his/her application (see “Where to go Next” below). Alternatively your client may wish to seek legal representation (on which, see “Legal advice and funding” below).

Where criminal proceedings are being taken against your client's abuser a restraining order can be imposed at the point of sentence. Obtaining a restraining order in this context would incur no cost to your client. If your client would like to apply for a restraining order in these circumstances he/she should discuss this with his/her Police Liaison Officer as soon as possible before the trial.

Enforcement

Breach of a restraining order is a criminal offence with a maximum sentence of 5 years imprisonment.





6. LEGAL ADVICE AND FUNDING FOR DOMESTIC VIOLENCE INJUNCTIONS

Although your client can apply for an injunction herself, he/she may find it useful to have legal advice. Your client's local Citizens' Advice Bureau, the Law Society or Community Legal Service Direct can provide a list of family law solicitors in his/her area (see the "Where to go Next" below for further information).

Depending on your client's financial means he/she may be eligible for public funding to pay his/her legal costs. Your client can find out whether he/she is eligible for public funding using the calculator on the Community Legal Advice website at: <http://legalaidcalculator.justice.gov.uk/calculators/eligCalc;jsessionid=2828DA6FFBF1FC6AC3447B75F2F1E326?execution=e1s1>. Further information on the availability of legal aid can be found on the Directgov website: <http://www.direct.gov.uk/en/Governmentcitizensandrights/GettingLegalAdvice/Gettinglegaladviceandlegalaid/index.htm>





7. WHERE TO GO NEXT

Rights of Women legal advice line

Telephone 0207 251 6577

Textphone on 0207 490 2562

(Open Tuesday – Thursday 2 – 4pm and 7 – 9pm, and Friday 12 – 2pm.)

Website: www.rightsofwomen.org.uk

Freephone 24 Hour National Domestic Violence Helpline

Telephone: 0808 2000 247

Website: www.nationaldomesticviolencehelpline.org.uk

Citizens' Advice Bureau

Wales: 08444 77 20 20

England: 08444 111 444

Text Relay: 08444 111 445

Website: <http://www.citizensadvice.org.uk>

Southall Black Sisters (for immigration matters)

Provides advice and information on domestic violence, racial harassment, welfare and immigration, primarily for Asian, African and African-Caribbean women. Casework primarily undertaken in London Borough of Ealing, but deals with enquiries on a national basis.

Tel: 020 8571 9595 (Open Monday-Friday 10am–5pm,
closed Wednesday)

Fax: 020 8574 6781

Email: southhallblacksisters@btconnect.com

Community Legal Service Direct (for finding a family/immigration solicitor)

Telephone: 0845 345 4345

Website: www.clsdirect.org.uk

The Law Society (for finding a family/immigration solicitor)

Online search tool: <http://www.lawsociety.org.uk/choosingandusing/findasolicitor.law>

Resolution (for finding a family solicitor)

Telephone: 01689 820272

Website: www.resolution.org.uk

Community Legal Advice (for legal aid calculations)

Telephone: 0845 345 4345

(Open Monday-Friday 9.00 am to 8.00 pm,
Saturday 9.00 am to 12.30 pm)

Online call back service: https://forms.direct.gov.uk/forms/form/277/en/community_legal_advice-call_back_service





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www.mungos.org

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