

THE INTERNATIONAL FAMILY LAW GROUP

iGuides to family law and practice

DOMESTIC VIOLENCE

WHAT IS DOMESTIC VIOLENCE?

- Domestic Violence includes all kinds of physical, sexual and emotional abuse between people who are or who have been partners, spouses, civil partners, cohabitants or similar;
- Typical violence involves a pattern of abusive and controlling behaviour which tends to get worse;
- Domestic Violence is unfortunately common in all levels of society and takes many forms.
- Some types of violence are directly physical and may include assault, rape and damaging property. It does not have to involve actual violence; threats criticism, isolation and oppressive behaviour and harassment or other abusive behaviour is also included
- Men are also the victims of domestic violence
- Some forms of domestic violence are criminal offences and can be reported to the Police; however often for victims this is extremely hard to do.

NON-MOLESTATION ORDERS

This is a court order to stop one person being “molested” by another. Molesting includes harassing, pestering or interfering with a person in any way. It includes the sort which in turn incorporates pushing, punching, slapping, throwing objects, spitting.

OCCUPATION ORDER

An occupation order is a court order for one party to leave the home to give the victim somewhere to live. In some circumstances the court can also make one party to pay the mortgage and other household bills for the duration of the order.

Entitlement to an occupation order depends on the relationship between the parties. ‘Associated’ persons can be granted an occupation order regardless of whether they have any entitlement to the property itself. Associated persons include the following:

- Parties who are married or have been married,
- Cohabitants or ex-cohabitants,
- Those who have lived together other than under a landlord/tenant or employer/employee basis,
- Close relatives,
- Those who have been engaged (even if the engagement was some time ago)
- Those who are both parents of a child or both have parental responsibility for a parent (for a description of parental responsibility see the glossary).

If an applicant is not an associated person, then they only have the right to an occupation order if they have some right to be in the property through ownership.

COMMON LAW INJUNCTIONS

A victim of domestic violence can also apply for a common law injunction. Under these rules the court is able to grant a number of orders preventing the perpetrator from continuing in their behaviour. These injunctions can include stopping a person from assaulting or harassing a victim or can include stopping a person from causing a nuisance or interfering with property. More recently, the courts have been able to prevent the accused person from going within a certain distance of a person’s place of work.

It is not possible to attach a power of arrest to these injunctions but if the person persists in their course of action then the applicant can return to court to have the offender committed to prison or fined as they are in contempt of court. The court can also give a suspended sentence to the offender.

ANTI-HARASSMENT ORDERS

These can be made where the behaviour is a type of harassment. Harassment can involve anything which reasonably causes distress to the victim. The action must take place more than once. Harassing a person includes alarming the person or causing the person distress. The behaviour that causes the alarm or distress must take place more than once. The conduct can be a wide variety of actions that cause alarm or distress but include physical or sexual assault, or psychological torment. Words and phone calls can be classified as harassment. An anti-harassment order can have a power of arrest attached to it but only once the original injunction has been broken. The victim would have to attend court again to have a power of arrest attached.

GETTING THE ORDERS

These remedies can be made at short notice without the person accused having to be present at the first hearing. Each case will depend on its facts however. These orders will normally be made for a specific length of time, again specific to each individual case. Sometimes an order may not be always needed and a warning letter may be sufficient. iFLG can advise on this although caution and safety is paramount

This iGuide is for information only and a specialist legal advice should always be taken. For further details contact The International Family Law Group at 020 3178 5668 and www.iflg.uk.com. (c) February 2009