



Family Department

Injunction Proceedings

This Guide is not intended to be comprehensive. It highlights and explains some common legal and related issues which may arise in Injunction Proceedings. It should also help you understand some of the steps we take on your behalf and the terms that we and other professionals involved in your matter may use. Please read this Guide carefully and contact the lawyer dealing with your matter if you do not understand anything in it. We will not repeat advice or information provided in this Guide when writing unless we need your specific instructions on some aspect of it.

What is an Injunction?

An injunction is a Court Order which orders a person(s) from engaging in a particular action such as harassment. The most commonly sought injunctions in Family work are Non Molestation Orders and Occupation Orders.

What is a Non Molestation Order?

This Order is aimed to prevent a person such as a partner or ex-partner from using or threatening violence against you or your child, intimidation, harassing or pestering you in order to ensure that the health, safety and wellbeing of yourself and your child/ren are protected

Who can apply for a Non Molestation Order?

You can usually apply for a Non Molestation Order if you have been a victim of domestic abuse (physical or emotional) and the person you want to be protected from is:

- A partner or an ex-partner
- a family member
- someone your living with or have lived with
- someone you have a child/children with

What is an Occupation Order?

An Occupation Order is an order issued by the court which sets out who has the right to stay, return or be excluded from a family home. An Occupational Order doesn't change the legal ownership of the home. It is usually a short term measure and the length of time that it will last will depend upon your circumstances.

Who can apply for an Occupation Order?

If you have been a victim of domestic abuse (physical or emotional) and you meet the following requirements then you can seek an Order from the court which will force a person to leave the family home and prevent them from entering it until a specified period.

- You own or rent a home and it was or is intended to be shared with a partner, husband/wife, civil partner, family member, person you are engaged to, cohabitant or a parent of your child.
- If your living in the home of your husband/wife or in a civil partnership but do not own or rent the property (home rights)
- Your former husband/wife or civil partner is the owner or tenant and the home was or is intended to be shared as a shared marital home.
- The person you cohabit or cohabited with is the owner or tenant and the home is or was intended to be your shared home.

What the court consider when deciding whether to make an Occupational Order

Before making an Occupational Order the court will give consideration to the following:

- The income of you and your partner/ex-partner.
- The housing needs of you and your partner and children and what might happen if someone is made homeless.
- Whether an Occupational Order would affect the health (physical or mental), safety and wellbeing of you, your partner/ex-partner and any children.
- How you and your partner/ex-partner have behaved.

What do I need to do to obtain an Order?

Non Molestation Orders and Occupational Orders can be obtained by making a formal application to the court with a statement in support. This must set out the reasons for the application and why an Injunction is needed. To obtain an injunction you must be able to show the court that you have a substantive cause of action. Applications are often made 'on notice' which means that your ex partner/spouse will be aware of the application against them.

Injunctions are a discretionary remedy available to the Court and it is ultimately a decision for the Judge. Any Order has to be necessary and proportionate. The Court is not obliged to make such an Order and must always consider whether it is just and fair.

The Court can grant an Injunction at the first hearing if it deems that such an order is necessary and urgent. The Court can deal with the application in two ways:

- On Notice Injunction are hearings where your ex partner/spouse is required to attend court. They will be given the opportunity to set out their response to the Injunction application.
- Ex Parte/Without Notice Injunctions are made without the other party having notice of the application or being present at the application hearing. The court will only grant this type of application if there is good reasons for not giving notice to your ex partner/spouse (for example if the matter is so urgent that without the order the applicant would be at risk of significant harm). If the Court grants an ex parte injunction then it will usually fix a date for a further hearing with all parties being present and the interim injunction will only last until the next hearing. The court will then consider extending the injunction at the next hearing.

In both cases a copy of your application will be served on your ex partner/spouse. However the timing will depend upon whether your application is made with or without notice.

Who will be present at the Court Hearings?

Generally, only you and your ex partner/spouse, along with legal representatives will be in attendance at any court hearing.

How long will the Order apply?

A Non Molestation Order is generally made for a period of 3 months initially, although it can be made for a shorter or longer period. The length of time covered by an Occupation Order is dependent upon the circumstances of the individual case. A Non Molestation Order/Occupational Order can be extended at the expiry of the Order by a making a further application to the Court.

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