

## Your guide to non-molestation and occupation orders

This guide will provide you with an overview of the legal requirements and process to apply for a non-molestation order or occupation order.

### **What is a non-molestation order?**

A non-molestation order is an order prohibiting a person (the respondent) associated with the applicant from molesting, using or threatening violence against the applicant or their child.

### **What does molesting include?**

Molesting is not defined in the Family Law Act 1996 (FLA 1996) but can include behaviour that harms, troubles, vexes, annoys or inconveniences an applicant or any relevant children.

Molestation can be direct and includes a range of behaviour, such as; physical harm, verbal abuse, threats or pestering. Molesting can also include pushing, punching, slapping, hair pulling, throwing objects and spitting.

Molestation can also be committed indirectly, including; in writing or through social media, through a third party, intimidation, pestering, persistent abusive text messages, phone calls or messages on social media, threats or harassment. Such types of conduct are examples of “controlling and/or coercive behaviour” which has been classed as a crime since the Serious Crime Act 2015. The Domestic Abuse Act 2021, which became law on 29 April 2021, has expanded the area further as the offence now acknowledges that perpetrators can continue to abuse their victims when they no longer live together. Another action which is now capable of being classed as molestation is the threat to share intimate images with the intention to cause distress.

### **Do I need evidence?**

For an application to be successful the applicant must provide evidence:

- Of behaviour of a molesting nature;
- That they or a child are in need of protection; and
- That an order is needed to control the behaviour of the respondent.

### **Factors the court must consider**

In deciding whether to grant a non-molestation order, the court shall have regard to all the circumstances. The court will focus its attention on the need to secure the health (physical or mental), safety and well-being of the applicant and of any relevant child and not explicitly the nature of the respondent’s behaviour that is complained about. In practice, therefore, the applicant’s witness statement in support of their application for an order should include details of the effect of the respondent’s behaviour on the applicant and any relevant child.

In addition, the following principles should also be considered in deciding whether to grant a non-molestation order:

- There must be evidence of molestation; and
- The applicant or relevant child must need protection; and
- The court must be satisfied on the balance of probabilities that judicial intervention is required to control the respondent’s behaviour that is the subject of the complaint.

## Who can apply?

A person can apply for a non-molestation order if they are associated with the respondent. A person is associated with another if they fall under one of the following categories:

- They are, were or intend to be married to each other;
- They are, were or intend to be civil partners to each other;
- They are or were cohabitants (this applies to both heterosexual and same sex couples);
- They live or have lived in the same household in a familial relationship;
- They are relatives including:
  - Parent, step-parent, child, step-child, grandparent, grandchild, spouse, former spouse, civil partner or former civil partner;
  - Sibling, uncle, aunt, niece, nephew or first cousin (whether full or half, or by marriage or civil partnership) of that person or of that person's spouse, former spouse, civil partner or former civil partner.
- They have or have had an intimate personal relationship of significant duration with each other;
- In relation to a child they either:
  - Are a parent of the child; or
  - Have or have had parental responsibility for the child.

If the applicant was engaged to or had agreed to form a civil partnership with the respondent, the applicant will need to provide evidence, such as a ring or statement from a witness who attended a ceremony or celebration.

If your child (or grandchild) has been adopted, you can also apply to get an injunction against their:

- Adoptive parent;
- Anyone who has applied to adopt them;
- Anyone the child has been placed with for adoption.

## How long will a non-molestation order last?

Typically, a non-molestation order is made for six to twelve months but it is possible to apply for further orders.

## What is an occupation order?

An occupation order determines who will live in the family home and can exclude someone completely from the property and the surrounding areas or can set out rules to enable a property to be shared. They are intended to determine temporary living arrangements to give parties time to organise where they will live and how they will divide their property.

## Who can apply?

A person can apply for an occupation order if:

- The applicant has a right to occupy the home and it is, was, or was intended to be shared with a husband or wife, civil partner, cohabitant, family member, a person the applicant is engaged to, or parent of their child;
- The applicant does not have a right to occupy the home but they are married or in a civil partnership with the owner and they are living in the home (known as 'matrimonial home rights');
- The applicant's former husband, wife or civil partner is the owner or tenant, and the home is, was, or was intended to be their shared matrimonial home;
- The person with whom the applicant cohabits or cohabited is the owner or tenant, and the home is, was,

or was intended to be their shared home.

## **What do the courts take into account?**

For an application to be successful, the so-called “balance of harm” test must be applied. Essentially the court will consider whether the applicant or any child is likely to suffer significant harm due to the conduct of the respondent if the occupation order is not made. The test includes the need to consider whether making an occupation order will cause greater harm to be suffered by the respondent and any child.

In deciding whether or not to make an occupation order, the court will consider all the circumstances of the case, including the:

- Housing needs of the parties;
- Financial resources of the parties;
- Likely effect of any decision by the court not to exercise its powers on the health, safety or wellbeing of the applicant and any child;
- Conduct of the parties to each other.

## **How long will an occupation order last?**

In practice, it is unlikely that an occupation order will be made for longer than six months due to the impact on the respondent.

## **How to apply for a non-molestation or an occupation order**

A person can apply for a non-molestation and/or an occupation order by filing an FL401 form with the court. The applicant must file a supporting witness statement with their application telling the court what has happened and what order they are seeking.

The applicant must make sure that the respondent receives a copy of their application and witness statement. The applicant or their solicitor must do this. If the applicant does not have a solicitor, they can ask the court to serve the documents upon the respondent.

## **Court fee**

There is no fee for making either application.

## **Court hearing**

The court will list a hearing following receipt of the application and the hearing will be held in private. In most cases only the applicant, the respondent and any legal representatives can attend.

## **Getting a decision**

At the end of the hearing, the court will make one of the following decisions:

- The respondent must give an ‘undertaking’ (a legally binding promise) to do or not do something;
- More information must be provided. The court may issue a short-term order (an ‘interim order’) to protect the applicant while the information is obtained;
- To issue a non-molestation and/or occupation order.

If the court issues a non-molestation and/or occupation order, the applicant will receive a copy. The order will say what the respondent can and cannot do.

If the order expires and the applicant still requires protection, they will have to make a further application to the court.

## After the hearing

The applicant must arrange for the respondent to receive a copy of the order. They can:

- Ask the court to serve the documents; or
- Serve the documents personally, as long as this does not put them in danger.

If the applicant serves the documents upon the respondent, they will need to download and fill in a statement of service setting out how and when the respondent was served and send the form to the court.

The applicant must also take the order and the statement of service to the officer in charge of their neighbourhood police station or the police station named in the court order.

## What if I need protection immediately?

If the applicant needs protection immediately, they must ask for an emergency order when making their application to the court in form FL401. This is an application without notice to the respondent (known as an 'ex-parte' application).

The court will hold a hearing at which only the applicant is required to attend. If the application is successful, the court will issue an order at this hearing. Following the hearing, the applicant must serve the respondent with their application and the issued order.

An emergency order will usually only last for a short period of time until the next hearing at which both parties will be required to attend. The court will then decide whether the order should continue or whether to make further orders as appropriate.

## Breach of a non-molestation order

If a person breaches a non-molestation order it is both contempt of court (leading to a possible fine or imprisonment) and a criminal offence. They can be immediately arrested and face up to five years in prison. If an undertaking is provided instead of an order and this is breached it is civil contempt but is not a criminal offence.

## Breach of an occupation order

If a person breaches an occupation order it is not a criminal offence unless a power of arrest has been attached to the order. A power of arrest is normally attached if there is a concern that a respondent has or may have used violence or threatened to use violence towards an applicant.

If the respondent breaches the sections of the order to which a power of arrest has been attached, they can be arrested without the need to obtain a warrant. It will therefore be necessary for the applicant to report to the police any breach to which a power of arrest is attached.

Should the respondent breach any aspect of the order to which a power of arrest is not attached, the applicant may apply to the court for the issue of a warrant for the arrest of the respondent.

A penal notice can also be attached to the order stipulating that the respondent must obey the instructions contained within the order. Furthermore, a penal notice can state that, if the respondent does not obey the relevant instructions, s/he will be guilty of contempt of court and may be sent to prison.

## What if I don't fit the definition of an "associated person"

If you are not an associated person with the proposed respondent, you will not be able to obtain a non-molestation order. However, you may be able to seek a civil remedy in the form of an order under the

Protection from Harassment Act 1997. The rules are different, and you would have to show a course of conduct pursued by the respondent that amounts to harassment. In all other respects the procedure and protection provided are very similar to a non-molestation order.

This guide is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more information about the issues referred to in this guide, please seek formal advice.