

MENNEER SHUTTLEWORTH

Family Law

Factsheet 5

DOMESTIC VIOLENCE

Domestic violence includes not only violence and threats of violence but also intimidation and harassment. Whether it is a short or long term problem private family law may offer some protection.

The Family Law Act 1996 allows applications by a wide range of “associated persons”. The Act specifies that a person is “associated” with another if:

- a) they are or have been married to each other
- b) they are cohabitants or former cohabitants
- c) they live or have lived in the same household otherwise than by reason of one of them being the other’s employee, tenants, lodger or boarder
- d) they are related
- e) they are or have been within the last 3 years engaged to be married
- f) in relation to a child, they are both parents or have or have had parental responsibility
- g) they are parties to the same family proceedings (other than under Part IV of the Family Law Act 1996 itself)

The types of Order that can be applied for are as follows:-

1. Occupation Orders

An Occupation Order will exclude one party from occupation of the home or part of it. If necessary it can extend to excluding that party from a specified area around the home. An Occupation Order may affect a party’s right to live at a property but it will not affect that person’s ownership of the property.

A court can attach a power of arrest to an occupation order enabling the police to arrest a person, without a warrant, if they have reasonable cause to suspect that the person is in breach of any of the terms of the order. The court will do this if it appears that the other person has used or threatened violence against the applicant or a child.

Where the court has not attached a power of arrest and the order has been breached then the applicant can apply to the court for a warrant of arrest.

The provisions relating to occupation orders are detailed and complex and depend upon a number of circumstances.

2. Non Molestation Orders

These orders can be granted by the court to prohibit a person from molesting another person or child. Molestation includes violence, threats of violence, harassment and pestering.

Breaching a non molestation order is a criminal offence with a maximum penalty of 5 years' imprisonment.

When deciding whether or not to make an order, the court will have regard to all the circumstances including the need to secure the health, safety and well-being of the applicant and any child.

PROTECTION FROM HARASSMENT ACT 1997

If you are not eligible to make an application under the Family Law Act 1996 then you may be able to make an application under the Protection from Harassment Act 1997.

CRIMINAL PROCEEDINGS

Some forms of domestic violence involve criminal behaviour and it may be necessary to involve the police.

Useful telephone numbers

The following telephone numbers may also be useful if you require some practical help:

- 0808 2000 247 English National Domestic Abuse helpline
- 0808 80 10 800 Men's Advice and Enquiry line

Expert advice is required to deal with this difficult area. Please contact our Family Law Partner Amanda Wilson on 01424 720044 or e-mail: awilson@menneershuttleworth.co.uk for further guidance.