

Domestic Violence

A Guide to Civil Remedies and
Criminal Sanctions



February 2003 (updated March 2007)

Contents

Foreword	1
Introduction	2
PART 1 - CIVIL REMEDIES	4
Part IV of the Family Law Act 1996	4
Protection from Harassment Act 1997 (civil)	16
Civil Partnership Act 2004	18
Domestic Violence, Crime and Victims Act 2004	18
PART 2 - CHILDREN	20
Children Act 1989	20
The Adoption and Children Act 2002	20
Children Act 2004	20
Children and Adoption Act 2006	21
PART 3 - CRIMINAL SANCTIONS	22
Protection from Harassment Act 1997 (criminal)	32
Domestic Violence, Crime and Victims Act 2004	32
PART IV - OTHER RELATED PROVISIONS	34
Housing Act 1996	34
Sanctuary Schemes	34

Immigration Status and Public Funds	34
Police Reform Act 2002 - domestic violence and health	35
Education Act 2002	35
Annex A	
Who is an associated person?	36
Annex B	
Special measures for vulnerable or intimidated witnesses	39
Annex C	
Glossary of terms	40
Annex D	
Reference sources and further reading	45

Foreword

HMCS is pleased to publish this revised version of the Guide that was first launched in 2003. The new Guide reflects the changes brought about by, among other things, the Domestic Violence, Crime and Victims Act 2004.

We have also produced a DVD '*You Don't Have to Live in Fear*'. The film aims to provide an insight for those applying for civil injunctions in the family courts through interviews and re-enactments. It also aims to demonstrate to service providers how extensive the impact of domestic violence can be on an individual and their family and community life.

We hope that these reference sources will continue to be of use to anyone involved in service provision and training in this field.

Domestic violence affects and damages whole families across all social classes. The affects are far reaching not only for the families concerned but society in general. We all bear the costs and consequences – not only through the public purse, but more importantly, in terms of the social outcomes for victims, particularly children who may suffer poor educational achievement and social exclusion as a result of living with domestic violence. In the twenty first century it is shocking to realise that every week, two women die as a result of domestic violence, and that domestic violence accounts for 17% of all violent crime.

As a society we should no longer be prepared to tolerate such behaviour and must continue to send clear messages to victims and perpetrators alike that acts of domestic violence are taken seriously. But we must do more – and we will. We need to raise public awareness; help victims to get the advice and support they need; expect professionals to be well trained and empathetic; and ensure that the court system helps and supports victims. Across Government a programme of work is being taken forward to meet these objectives. We have a particular responsibility for how the system treats people affected by domestic violence. We want to make sure that victims of domestic violence have a swift and effective route to protection and perpetrators of violence are brought to justice.

March 2007

Introduction

This guide sets out the civil remedies and criminal sanctions available through the courts to victims of domestic violence and includes the provisions of the Domestic Violence, Crime and Victims Act 2004 in operation now and those that will be implemented from 1 July 2007. It is intended for statutory and voluntary service providers who deal with the impact of domestic violence. It will also assist the general public but is not intended to be a self-help guide. The accompanying DVD '*You Don't Have to Live in Fear*' will be helpful for those supporting applicants through the family court process. Further information about guidance and leaflets is at Annex D.

How do we define domestic violence?

The definition agreed by the Inter-Ministerial Group on Domestic Violence follows that used by the Association of Chief Police Officers, and is:

'Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members¹, regardless of gender or sexuality.'

Domestic abuse can go beyond actual physical violence. It can also involve emotional abuse, the destruction of property, isolation from friends, family or other potential sources of support, control over access to money, personal items, food, transportation and the telephone, and stalking. Violence will often be witnessed by children and there is an overlap between abuse of women and abuse (physical and sexual) of children. The wide adverse effects of living with domestic violence for children must be recognised as a child protection issue. They link to poor educational achievement, social exclusion and to juvenile crime, substance misuse, mental health problems and homelessness from running away. It is acknowledged that domestic violence and abuse can also manifest itself through the actions of immediate and extended family members through the perpetration of illegal activities such as forced marriage, so called 'honour crimes' and 'harmful traditional practices' such as female genital mutilation. Extended family members may condone or even share in the pattern of abuse.

Findings from the British Crime Survey² show that the majority of domestic violence is perpetrated by men on women. This Guide refers to applicants, victims, respondents, suspects, perpetrators and/or abusers in gender neutral terms. However, we acknowledge that men and same-sex partners can equally be victims of domestic violence. The information here is valid for both sexes, of any sexual orientation and all cultures. We have where possible, highlighted the need to refer to specialist services and some of these are listed in the reference source at Annex D.

¹ *Family members* are defined as mother, father, son, daughter, brother, sister and grandparents, whether directly related, in-laws or step-family

² Finney, A. Domestic violence, sexual assault and stalking: findings from the 2004/2005 British Crime Survey. Home Office Online Report 12/06.

What remedies and sanctions are available?

A number of options are available through the courts. The different routes taken by survivors will depend on various factors, including:

- the severity and/or nature of the violence or harassment
- the relationship between the abused and the abuser
- financial implications, eg, eligibility for legal aid
- the stricter burden of proof required by the criminal courts compared to the civil courts. (In criminal proceedings a case has to be proved “beyond reasonable doubt” whereas in civil proceedings the court will arrive at its decision on the “balance of probabilities”.)
- the wishes of the applicant / victim about the protection they require from the law; and
- the actual and perceived protection the law can deliver in practice, as well as the availability of appropriate support services.

Part 1 of this Guide explains the steps that victims of domestic violence can take to pursue civil action in county courts, Family Proceedings (Magistrates’) Courts, or the High Court.

Part 2 sets out the provisions governing cases where domestic violence is an issue in child contact / residence cases.

Part 3 explains the sanctions available through the criminal courts, including Magistrates’ and Crown Courts.

Part 4 sets out some of the other related legislation that might also impact on domestic violence victims and perpetrators, such as housing provisions.

PART I: CIVIL REMEDIES

The legislation

There are a number of Acts that apply in varying degrees to domestic violence in the civil jurisdiction:

- Part IV of the Family Law Act 1996 (FLA 1996)
- The Protection from Harassment Act 1997 (PHA 1997)
 - which also contains criminal sanctions
- The Children Act 1989 (CA 1989)
- The Adoption and Children Act 2002 (AChA 2002)
- The Children Act 2004 (CA 2004)
- The Domestic Violence, Crime and Victims Act 2004³ (DV Act 2004)
- The Civil Partnership Act [CPA 2004]
- The Children and Adoption Act 2006 (ChAA 2006)

In the following pages, we set out the main civil remedy provisions under each Act and offer guidance on how to pursue a specific course of action.

Part IV of the Family Law Act 1996

Part IV of the Family Law Act 1996 (FLA 1996) provides a civil remedy for molestation, violence and occupation of a home. Its purpose is to protect people who experience domestic violence in a familial type relationship. There are strict criteria about who can apply for an injunction or occupation order to protect themselves under this Act; these are outlined below.

Under the FLA 1996, the court can grant occupation orders and non-molestation orders to protect the applicant from the respondent (the person against whom the injunction is made). There is also power for a court in any Family Proceedings - to which the respondent is a party - to make a non molestation order, even if no formal application for an order has been made and if the court considers one should be made for the benefit of a party or a child.

An occupation order regulates the occupation of the home shared by the couple and their children to protect any party or children from domestic violence. The order can exclude an abuser from the property altogether, or divide the property to exclude him/her from part of the accommodation. If a respondent has already left the property, an occupation order may, therefore, be used to prevent him/her from re-entering and/or coming within a certain area of the property.

³ ss 1 – 4 amend the Family Law Act 2006

There are numerous types of occupation order (see below) but the most common will say something along the lines that the respondent must leave the property which the parties occupy and, having left the property, must not enter or attempt to re-enter it, or come within a specified distance. The order will also include notice of any further hearing dates and the length of time the order is to last. Generally, the duration of these orders is between six months and one year but it can be until “further order”. In some cases the order may only be extended for one six month period, for example, where the applicant is a cohabitant or former cohabitant, with no interest in the home.

Before issuing such an order the court will apply the “balance of harm” test, which includes the concept of significant harm. This is a test to find out which person and/or child or children living with them will be at most risk if an order is made, or is not made. If the court applies the balance of harm test in favour of spouses/partners or former spouses/partners, it has a mandatory duty to make an order. The court also assesses the party’s circumstances according to the ‘relevant factors’ set out in section 33 (6) of the Act. These can be quite complicated as the Act distinguishes between spouses, those entitled to occupy and cohabitants with no entitlement.

A non-molestation order is used to deter someone from causing or threatening violence to the applicant or to any children, or from molesting them. The Act does not define molestation but it can include intimidation, pestering, threats and harassment. The actual wording of non-molestation orders forbids the respondent from using or threatening violence against the applicant and instructing, encouraging or in any way suggesting that any other person should do so. It can also forbid the respondent from intimidating, harassing or pestering the applicant and instructing, encouraging or in any way suggesting that any other person should do so. This wording is also used to protect any children named in the application from the respondent.

The protection of children from violence, or the threat of violence, applies to any “relevant child”. A relevant child is defined as:

- Any child who might be expected to live with either of the parties involved
- Any child who is the subject of adoption or Children Act proceedings; and
- Any other child whose interests the court considers relevant.

The criteria for who can apply for an occupation order, and the types of orders which the courts can make, are more complicated than those relating to non-molestation orders and are dealt with in more detail below. If you apply for a non-molestation order you may also apply for an occupation order, using the same application form provided your case meets the relevant criteria.

Orders are applied for either ‘on-notice’ or ‘without notice’. These terms are also explained below.

Applying for non-molestation and occupation orders

Who can apply?

A list of those who are eligible to apply for a non-molestation and/or occupation order under the FLA 1996 (as amended by the DV Act 2004) is at Annex A. The principle is that eligibility is based on association through familial type relationships and/or cohabitation and entitlement to occupy the family home.

If the applicant is under 18 years old and over 16 they are required to have a “next friend” or legal representative to assist them with the application.

Where to obtain orders

An application can be made for either or both of these orders in any county court with family jurisdiction and in a magistrates’ court that is also a Family Proceedings Court (FPC). Applicants should note, with the development of the Unified Family Service, it is more likely that this kind of application will be dealt more and more at FPC level.

Particularly complex cases that start in FPCs are sometimes transferred to the county courts. There are also certain types of applications for occupation orders that cannot be dealt with by the FPC.

How to apply

Applicants can instruct a solicitor (preferably one with experience of domestic violence work⁴) to make an application direct to the court itself. If solicitors are instructed it will be more expensive to bring the case to court, unless the applicant qualifies for public funding.

There are no restrictions about applying in person (on one’s own behalf) but, if applicants do this, they must be prepared to complete the relevant forms and statements themselves and to explain their case before the court. Court staff can help by explaining court procedures, but they cannot provide legal advice on the merits of individual cases, or give advice about probable outcome. However, additional support and information can be obtained from voluntary support⁵ organisations, such as the local Women’s Aid refuge or outreach service or Victim Support. These organisations might also suggest where to obtain legal advice but they do not generally offer this themselves.

What does the process cost?

At present the cost of issuing a Family Law Act (FLA) application in the county court is £60 – there is no fee for an application made in the FPC - magistrates’ courts. Any subsequent applications made under the Act are also £60. Applicants who decide to act on their own behalf have to pay this fee when they file the application. However, they might be exempt or

⁴ Resolution – has a panel of Specialist Solicitors accredited in the law of Domestic Abuse You can search their website www.resolution.org.uk. The results will show solicitors or trainee solicitors, legal executives and paralegals and whether they are accredited Resolution specialists or Resolution mediators.

⁵ Any service provider referring a person to another service should consider their particular needs and target specialist services wherever possible to meet individual requirements, e.g., BME services.

have some remission from paying the fee – as explained in the Court Service Leaflet EX160A⁶, *Court Fees: Do you have to pay them?*

An officer of the court will waive the fee if the case meets one or more of the following the criteria:

- The applicant and her partner receive Income Support
- The applicant receives Income-based Job Seeker's Allowance
- The applicant receives Working Tax Credit
- The applicant or their partner receives Income Support, or Income-based Job Seeker's Allowance, Working Tax Credit, or Disabled Person's Tax Credit and the applicant receives 'Legal Help' and are involved in a civil case; or
- They are involved in a family case and receive 'Legal Help'.

Applicants who instruct a solicitor should bear in mind they must pay both the court fees and the solicitor's legal costs. An applicant may qualify for assistance from the Community Legal Service Fund (previously known as Legal Aid and which is administered by the Legal Services Commission). To qualify for this they must pass the statutory means test and must show reasonable grounds to pursue the case.

Is funding available to pursue a case?

All cases are judged on their individual circumstances and merits and measured against the criteria set out in the Legal Services Commission Funding Code. Guidance is also provided under the Funding Code – Decision-Making Guidance. In cases where an urgent domestic violence injunction needs to be made, a solicitor who is contracted with the Commission can use devolved powers to grant an emergency certificate of Legal Representation to ensure that representation on such an application is not delayed.

In accordance with the Criteria, the prospects of success of obtaining the order must be better than poor, and the likely benefits to be gained from the proceedings for the client must justify the likely costs, having regard to the prospects of obtaining the order sought and all other circumstances (Criteria 11.10). While both parties may be entitled to public funding defendants (perpetrators/respondents) are less likely to satisfy the criteria, particularly where an application for a non-molestation order only is being made. In domestic violence cases, the Funding Code guidance requires the applicant for funding to explain what action has already been taken by the Police and what other protection, if any, is already in place. It will not generally be appropriate to grant public funding where bail conditions are in effect which provide protection to the applicant unless these are likely to be lifted shortly following the determination of a criminal prosecution. However this is not an absolute rule and the extent of protection afforded to the applicant from any criminal proceedings must be considered in each case. The advising solicitor should also demonstrate that they have considered

⁶ (note) http://www.hmcourts-service.gov.uk/HMCSCourtFinder/GetLeaflet.do?court_leaflets_id=172/ (application) http://www.hmcourts-service.gov.uk/HMCSCourtFinder/GetForm.do?court_forms_id=168

whether a warning letter should be sent to the respondent before court proceedings are initiated or whether such a letter might endanger the client.

It is important to realise that the Commission considers cases on their individual merits. Solicitors should always consider applying for funding and should provide as much information as possible to the Commission about the circumstances of the case. At the time of publication of this Guide, people receiving Income Support or Income-based JobSeeker's Allowance automatically qualify financially for public funding. Otherwise, people may receive assistance if they have a gross monthly income of less than £2,350 (a higher gross income limit applies if the applicant has more than four dependent children), a monthly disposable income below £649 per month and disposable capital of £8,000 or less. If the monthly disposable income is between £280 and £649 per month, or disposable capital is between £3,000 and £8,000, they will be offered funding on the basis that they agree to pay contributions towards their legal costs. **N.B.** These figures will be further revised in line with the annual up-rating of State Benefits (around April each year).

In addition, the Commission has discretion to waive the upper disposable income limit of £649 for the benefit of victims of domestic violence seeking protection from the court. The waiver applies where the client is seeking an injunction or other order for protection from harm or for committal for breach of any such order. Contributions, however, cannot be waived and therefore in these cases the monthly contribution will exceed the usual maximum contribution applicable. Even where there is no contribution required from capital and/or income the "statutory charge" may apply the client recovers or preserves property or money in related proceedings such as ancillary relief proceedings. In such cases the solicitor's costs of the funded client are required to be paid out of any property or money recovered or preserved.

More information on public funding is available on the Legal Services Commission website and from CLS Direct (www.clsdirect.org.uk) which includes a downloadable leaflet summarising the law and is suitable for clients.

What are on-notice applications?

On-notice applications are where all parties are sent notices to appear at a court hearing.

Once the application has been filed with the county court or FPC:

- It is given a case number and listed for hearing before either a District or Circuit Judge, or a bench of magistrates. A date could be set any time from 24 hours to four weeks later, depending on court business and urgency.
- An on-notice application must be 'served'⁷, that is to say, given to the respondent in person, not less than two days before the date of the hearing (solicitors usually employ process servers to do this);
- The respondent will be served with the FL401 application, statement in support and form FL402 – notice of hearing date; and

⁷ The mortgagee or landlord also need to be served certain applications for occupation orders – see rules 3.8(11) and 3A(10).

- When the respondent has received the relevant papers, the applicant must file a statement of service with the court (form FL415 is available from the court or FPC).

What are without notice applications?

These are also referred to as ‘Ex-parte’ applications. They are heard without notifying the respondent (therefore in his/her absence). The procedure for applying for a without notice application is virtually the same as for on-notice applications. The only difference is that when the applicant comes to court to issue the application they go before the judge/magistrate the same day. The sworn statement must also include the reasons why the court should deal with the application without notifying the respondent first.

Section 45 of the FLA 1996 contains the statutory provisions on without notice applications and the guidelines that courts should follow when deciding whether to hear an application without notice. It sets out factors to guide the court’s discretion in deciding whether or not making an order without notice is just and convenient and whether, on the balance of probabilities, there is a risk of harm⁸ to the applicant (or any children) if an order is not made immediately. If a non-molestation and/or occupation order is made without notice, the court has to give a date for a full hearing so that the respondent has an opportunity to attend court personally.

Without notice applications are usually granted, but if one is refused by the court (and this does happen occasionally), the court ensures that a hearing takes place quickly, usually within a week. Non-molestation orders are much more likely to be granted without notice than occupation orders. In cases of extreme urgency courts can sit outside normal working hours or at a weekend.

How to apply for non-molestation orders⁹

An applicant should:

- Complete form FL401 (copies are available at the court and accessible on the internet at www.hmcourts-service.gov.uk/HMCSCourtFinder)
- State the relationship with the respondent (by ticking the relevant box)
- Indicate briefly, in the space provided, what remedy is being sought
- Complete form C8 if the applicant wishes to omit their home address from the FL401 form – no permission from the court is needed for this; and
- File a sworn statement in support of the application (this should outline the main facts of the case, including details of any criminal activity and intervention by the police).

⁸ See further on ‘harm’ in Part II - Children

⁹ Court forms are available on HM Courts Service website at <http://www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do> and some applications can actually be made online at www.hmcourts-service.gov.uk/onlineservices .

With court permission, the FL401 can be supported by oral evidence instead. In cases of extreme urgency the court may be prepared to accept the application without a statement in support, but it is usual practice for the court to ask the applicant to ensure it is filed at a later date.

How are occupation orders different?

Occupation orders are more complicated than non-molestation orders for various reasons, but mainly because there are five different sections of Part IV of the Family Law Act 1996 that relate to this issue (sections 33, 35, 36, 37 and 38).

Granting an order depends on the relationship of the parties involved and whether the applicant has existing occupation rights.

It is important to bear in mind that applicants can only seek an occupation order in relation to a property which either is, has been, or is intended to be the home of the parties involved. For example, an order cannot be made which concerns a property that has been bought for investment purposes.

What are the types of occupation orders?

The court can make many different orders under the FLA 1996. Some are listed here to give an idea of what the applicant could expect to obtain.

An order can:

- Allow the applicant to occupy the home or part of the home
- Forbid the respondent to occupy the home or a specific part of it
- Require the respondent to leave the home (by a certain time and date)
- Require the respondent not to return to the address stated
- Require the respondent not to evict the applicant from the home
- Require the party in occupation of the home to take reasonable care of it
- Regulate the use of the furniture and chattels in the home; and
- Require either the applicant or respondent to continue making mortgage or rent payments.

Occupation orders may also include penal notices and the court can also order a Power of Arrest (see below) to be attached. However, the court cannot attach a Power of Arrest to an order to take reasonable care of the home, to pay the mortgage or rent, or one concerning the use of furniture or chattels. As a result of an existing gap in the law, the court cannot enforce payment of mortgage or rent.

In extreme circumstances applicants can obtain occupation orders without notice following

the same procedures as outlined for non-molestation orders. If a respondent breaches an occupation order, the applicant has the same enforcement procedures available as with non-molestation orders.

Who can apply for an occupation order?

There are three categories of people who can make an application for an occupation order:

- entitled persons
- non-entitled persons; and
- persons with matrimonial home rights or rights as Civil Partners.

An 'entitled' person has some legal right to occupy a property as the freehold owner, tenant or contractual licensee. A 'non-entitled' person has no such rights.

The type of occupation order for which a victim of domestic violence may apply depends on whether she is entitled or non-entitled. If not entitled, her type of application depends on whether she was married to the respondent. An entitled applicant can apply for an order under Section 33 of the FLA, while a non-entitled person can apply under Sections 35, 36, 37 or 38.

An entitled person who applies for an occupation order must show that they are associated to the respondent, for example, by marriage, civil partnership or cohabitation.

A list of the definitions of association is at Annex A.

What do hearings and orders involve?

Non-molestation and occupation hearings for FL401 applications take place in private - "in chambers" (in the judges' room) at the county court. They may also take place in FPCs, in which case the public is excluded from the courtroom. Either court may allow other people in, for example, a friend or independent adviser, for support. Applicants may be required to give oral evidence to the court. The length of a hearing varies, depending on the complexities of the case and whether the respondent disputes the allegations. At the hearing the court can

- a) dismiss the application; or
- b) make a non-molestation and/or occupation order; or
- c) accept an 'undertaking' (see below) from the respondent in terms that have been agreed between both the applicant and the respondent but the court must also be satisfied that this will give the applicant sufficient protection.

What are 'undertakings'?

An undertaking is an option that allows the parties to settle their dispute without a full hearing. It is a promise made to the court to do, or not to do, certain things. **It is not an**

admission of guilt. Undertakings can be made in cases listed in either the County or Family Proceedings Court although the penalties for breach are not the same in the FPC. Either court should only accept an undertaking in cases where they are satisfied it is safe to do so. The respondent can give an undertaking without having to admit to the allegations made against them. An undertaking cannot, therefore, be used in subsequent criminal proceedings as evidence of a criminal charge or as proof that any violence has occurred. Nor does it provide any factual evidence that the abuse took place.

The court cannot attach a Power of Arrest to an undertaking, but breaking an undertaking is still contempt of court and is as enforceable as any other order of the court. The undertaking (which is usually worded similarly to a non-molestation order) must be signed by the person who gives it. The court usually serves form N117 on both parties before they leave the hearing.

Can the order be changed?

If the respondent or applicant wish to vary (change the terms) or discharge (cancel) or extend an occupation order, non-molestation order, or both, they must apply to the court on-notice. The court will arrange a further hearing.

Are there applications in other courts?

Practitioners should note that especially in private law cases in the civil and/or family courts (cases between individuals), the court is unlikely to know about any other actions pending in the criminal court. For example, a court hearing a contact application would not automatically be aware of a pending criminal case in which a bail condition, preventing the respondent (alleged perpetrator) from contacting the children had been imposed. Legal representatives should always ask their clients about other actions. Courts are likely to ask parties to draw their attention to any other proceedings but legal representatives should ensure that the court is aware of all previous or current proceedings where it is permissible under the rules of evidence to mention them.

In Part 3 of this Guide, we discuss the issue of rules of evidence further, in the context of sharing information between the jurisdictions. (See under the section on the role of the Crown Prosecution Service.)

Can you appeal?

An appeal of a Part IV order may be lodged when both parties have attended a hearing and one or both parties are unhappy with the order given. The appeal must be lodged within 14 days of the date that the original order was made. If an appellant is unable to lodge an appeal in this time, he or she may apply to the same court that made the order for permission to take more time to prepare an appeal.

The appeals are heard in different courts from the ones which made the original order:

- Orders made in the Family Proceedings Court are appealed in the Divisional Court of the High Court
- Orders made by a District Judge of the county court are appealed before a Circuit Judge

in the county court

- Orders made by a District Judge of the High Court are appealed before a High Court Judge in the same area; and
- Orders made by a Circuit Judge are appealed at the Court of Appeal.

What does a Power of Arrest involve?

A Power of Arrest (PoA) may be attached to any provision of a non-molestation (until 1 July 2007) or occupation order where violence or a threat of violence has been found. PoA enables a police officer to arrest a respondent, without a warrant, if s/he is reasonably suspected to be in breach of provisions in an order. The main benefit to the applicant is that there is no need to make a separate application to the court for a warrant for arrest to be issued. Courts can attach a PoA to an order (or to certain provisions in the order) whether they are on-notice and without notice. Once arrested, the police are required to bring the respondent before the court (that is, to the same level of court that made the original order) within 24 hours (beginning at the time of his arrest). If the court cannot deal with the matter immediately at that hearing, it has the power to remand the perpetrator in custody or on bail.

However, section 1 of the DV Act 2004 amends the FLA to make breach of a non-molestation order a criminal offence and when implemented on 1 July 2007, it will no longer be legal for the courts to attach a POA to non-molestation orders. Furthermore, the Serious Organised Crime and Police Act 2005 (SOCPA) substituted the list of arrestable offences under Section 24 of PACE from January 2006 to make all offences arrestable thereby superseding section 10 of the DV Act 2004. A PoA will still be attached to occupation orders, where appropriate.

PoAs must state a date when they will expire. Occasionally, they may expire before the orders to which they are attached expire. For example, this may be the case where the PoA applies only to part of an order.

The PoA form, FL406, must state clearly all the parts of the order to which a PoA is “attached”. The form must be delivered to the officer in charge of any police station that covers the applicant’s address. This must be accompanied by a statement from the applicant (or their solicitor) that the respondent has been served or informed of the terms of the order.

When may a Warrant for Arrest be required?

Where a PoA has not been attached to an occupation order, or it has only been attached to some provisions in the order and the respondent is in breach, the applicant may apply to the same civil court for a warrant for arrest. This procedure also applies if the police decide not to arrest or charge an alleged perpetrator. The application is made without notice (as explained above) on form FL407 and must be supported by sworn evidence. If the court is satisfied that the respondent has not complied with the terms of the order, a warrant for arrest is issued (form FL408). This is sent by the court to the officer in charge at the police station covering the applicant’s area.

What is a Penal Notice?

The following wording is used in both the undertaking form and the form for an occupation order¹⁰: **“You must obey the instructions contained in this order. If you do not, you will be guilty of contempt of court, and you may be sent to prison.”**

This is known as a penal notice. If the respondent fails to obey the order or undertaking, the applicant can apply to the same court for a committal hearing.

At these hearings the respondent, if found to be in breach of the order, has to “show cause”, that is, to explain why s/he should not be sent to prison. If s/he fails to provide an adequate explanation for his/her actions, the judge can sentence for contempt of court. (Further detail on how breaches of non-molestation orders will be dealt with after 1 July 2007 is on page 19.)

What does the court do when an order is breached?

When a respondent is arrested for breaching an occupation order which has a PoA attached they are brought before the court. The court can:

- Deal with the matter immediately and make the necessary order; or
- Adjourn the matter (the case must be brought back to court within 14 days of the arrest unless time is extended by consent) and release the respondent; and
- Give the parties not less than 2 days’ notice of the adjourned hearing date.

At the committal hearing the court decides whether or not the order has been breached and, if the finding is that it has, decide what punishment to give. The FPC can currently hand down a custodial sentence of up to two months and the county court up to two years. Most committals are for weeks or months rather than years. In many cases courts make a suspended committal order which means the respondent is not sent to prison provided he complies with the terms of the order.

What are the types of remand?

- **Remand in custody:** The respondent is held in custody, to be brought back before the court at the end of the committal (usually no longer than 8 clear days from this decision). If the remand period is no longer than 3 clear days, the respondent may be held in the police station.
- **Remand on bail:** The respondent may be granted bail which means he is not kept in custody but must follow any conditions set by the court. These may include the payment of money as a bond to ensure the respondent returns to the hearing; or it may require someone vouching a bond of money on the respondent’s behalf. This remand period

¹⁰ With effect from 1 July 2007, there will be separate forms for non-molestation and occupation orders.

cannot exceed 8 clear days unless both parties agree to a longer period. However, an adjourned hearing cannot be more than 14 days after the respondent's arrest.

- Remand on bail: The defendant may be bailed either unconditionally or with conditions. If a defendant fails to appear on the date and at the time and place he has been bailed to, or breaches his conditions of bail, he may be arrested and brought before the court. His remand status will then be looked at afresh in light of the circumstances of the breach.
- **Further remand:** If the respondent is unable to appear before the court because of illness or another difficulty, the remand period can be extended to allow for this.
- As above, but with reference to a defendant not a respondent.

Section 1 of the DV Act 2004 will make breaching a non-molestation order a criminal offence. A person can be arrested for breaching a non-molestation order if they do so without reasonable excuse and at a time when they were aware of the existence of the order.

A person cannot be convicted of an offence under section 1 in respect of any conduct that has already been punished as a contempt of court. Nor can a person be punished for contempt if the conduct has resulted in a conviction under section 1.

If the police are called to a breach of a non-molestation order and arrest the respondent/alleged perpetrator, and if (in consultation with the victim-applicant and the CPS) the decision is made not to prosecute, the victim-applicant could still apply to the civil court for the breach to be dealt with as a contempt of court.

The victim-applicant may also decide not to involve the police at all and apply separately for a warrant of arrest or issue and arrange service of a notice to show why the respondent should not be committed to prison and have the matter dealt with in the civil court as contempt, as set out above.

If the perpetrator is arrested and charged the procedure is the same as for occupation orders above except for the fact that the alleged perpetrator will be taken before the magistrates' court in the first instance. The victim-applicant of the originating civil process, then becomes the key victim-witness in a criminal case and the Crown Prosecution Service will prosecute provided there is sufficient evidence and it is in the public interest to do so.

Protection from Harassment Act 1997 (civil)

The Protection from Harassment Act 1997 (PHA 1997) contains both criminal and civil remedies for domestic violence. We explain the criminal sanctions in Part 3 of this Guide.

The remedies in this Act are similar to those in the Family Law Act 1996. The PHA 1997 was originally designed to address the problem of “stalking” but it has also been used by people who cannot apply for an order under the FLA 1996 because they do not meet the necessary requirement for “association” through family relationships and/or cohabitation. To some extent this position will be improved by the DV Act 2004: section 3 – giving cohabiting same-sex couples the same access to Part IV orders as heterosexual couples (implemented in December 2005), and section 4 - making couples who have never cohabited or been married eligible for Part IV orders (to be implemented 1 July 2007).

The PHA 1997 provides civil remedies for restraining respondents – regulating behaviour and/or excluding them from an area around the applicant’s home or place of work - and for seeking damages for harassment. They include injunctions and claims for damages. One relatively recent example highlights the possible scope of this Act. A successful application was made against a mother in law in a case where the applicant was awarded £35,000 damages where the harassment constituted the deliberate and negligent abuse of a young woman by her mother-in-law.¹¹

Who can apply?

Anyone can apply for an injunction or damages against anyone else under this Act.

Under section 3 of the Act, proceedings can be based on “an actual or apprehended breach of section 1”. This contrasts with criminal proceedings under the Act which require proof of a “course of conduct”, meaning that the defendant has harassed the claimant on at least two previous occasions.

Which courts are involved?

Applications under section 3 of the Act can be made to the High Court or the county court. FPCs cannot deal with these cases.

How do applicants apply?

If the police decide to take criminal proceedings under sections 2 or 4 of the Act, it would not be necessary to pursue civil proceedings at all. If an applicant decides to pursue civil proceedings under section 3, they can either act on their own behalf or appoint a solicitor. Involving a solicitor is more expensive in money terms, unless applicants can get public funding (see page 5). An applicant acting in person must be prepared to complete all the relevant forms and plead her case before the court if the case comes to trial, including the possibility of questioning and being questioned by the alleged perpetrator.

¹¹Singh –v- Bhakar (4NG17900) Nottingham County Court 24 July 2006

In pursuing a claim for damages or an injunction, applicants have various options. They may:

- 1) issue a claim for a specified amount (damages for a fixed sum); or
- 2) issue a claim for an unspecified amount (damages for an unspecified sum of money);
and/or
- 3) issue an injunction application either with or without a money claim.

Whatever their choice, applicants need to fill form N1 (which can be obtained by the court). The fee payable depends on the remedy sought, as does the procedure through the court. However, if applicants pursue option 3 above, a hearing will be set before a District or Circuit Judge.

Claimants choosing option 1 above may not be required to appear before the judge. If a defendant does not respond to the claim and fails to file a defence, a claimant can ask the court to enter judgement in default. In these cases, attendance at court is not necessary. In an emergency, claimants can apply to the court for an interim, or temporary, injunction (using form N244) before an application for full proceedings is issued.

What enforcement is there under PHA 1997?

Breach of an order under this Act is a criminal offence. There is no provision under the Act for attaching a Power of Arrest as in FLA 1996. But when the court grants an injunction in order to restrain a defendant, and a claimant states that the defendant has breached this order, s/he may apply for a warrant of arrest (through the court where the order was made). A warrant can only be issued if the application is substantiated on oath and the judge has reasonable grounds for believing that the defendant has not complied with the order, or part of the order. A warrant would then be served by the court on the officer in charge of the local police station covering the applicant's area. If however, the activity amounting to the breach is criminal activity, then the police can arrest for the criminal offence.

Alternatively, a claimant can make a 'committal application' – an application to commit a defendant to custody or prison. The application, once issued by court staff, will be listed for a hearing. The defendant must then, if the breach is proved, "show cause" why s/he should not be committed to prison for disobeying the order.

Civil Partnership Act 2004

Implemented on 5th December 2005, this legislation created a new form of legal relationship, which may be formed by two persons who are:

- the same sex;
- not already in an existing civil partnership or lawfully married;
- not within the prohibited degrees of relationships;
- both aged sixteen years or over.

Civil partnership is not marriage but a parallel relationship of similar seriousness and commitment which has been created in order to provide same-sex couples with a means of having their relationship legally recognised if they wish. It will confer on the couple the status of being each other's civil partner. Going through a registration procedure will form a civil partnership with similarities to civil marriage. The Act also provides for certain registered legal relationships under foreign law (including same-sex marriage in countries which allow civil partnerships) to be recognised in the UK as civil partnerships.

The CPA 2004 Act (section 82, Schedule 9) amends Part IV of the Family Law Act 1996 so that the same provisions apply to civil partners as they do to married couples. This means that where there are provisions for a 'spouse' to apply for an occupation order, civil partners have the same rights. Section 3 of the DV Act 2004 amended the FLA 1996 list of 'associated persons' at the same time to clarify that 'cohabitants' includes same-sex cohabitants.

The Domestic Violence, Crime and Victims Act 2004¹²

The provisions of the Act impacting on the Family Law Act 2006 to be implemented from 1 July 2007 are sections 1 and 4. Sections 2 and 3 were implemented in December 2005: section 2 sets out additional considerations if parties are cohabitants or former cohabitants and the nature of their relationship; section 3 gives cohabiting same-sex couples the same access to non-molestation and occupation orders.

Section 1 makes breach of a non-molestation order a criminal offence. Breach will be punishable by up to five years' imprisonment on indictment. The detail is covered above under "What does the court do when an order is breached?"

Section 4 makes provision for some couples who have never cohabited or been married, eligible for non-molestation and occupation orders.

Section 12: enabling courts to impose restraining orders when sentencing for any offence (and on acquittal) and giving any person mentioned in a restraining order a right to make representations in court if an application is made to vary or terminate the order. This section

¹²<http://www.legislation.hmso.gov.uk/acts/acts2004/20040028.htm>

will also be implemented on 1 July 2007 and the detail is set out in Part 3 under the section dealing with the criminal aspects of the Protection from Harassment Act 1997.

PART 2: CHILDREN

Children Act 1989

Schedule 6 of the Family Law Act 1996 amended the Children Act 1989 to permit the court to attach a requirement, with power of arrest if necessary, to remove or exclude a person from a child's home, or exclude that person from entering a defined area around that child's home. Where the court has power to order an exclusion requirement it may instead accept an undertaking from the relevant person.

The court will only make these orders (under sections 44A, 44B, 38A and 38B of the Children Act 1989) (as inserted by Schedule 6 of the Family Law Act 1996) where an Emergency Protection Order or Interim Care Order has been made.

Adoption and Children Act 2002

The Adoption and Children Act was passed in November 2002. This Act now makes clear that when a court is considering applications under section 8 of the Children Act 1989 and it is also considering whether a child has suffered, or is likely to suffer harm, it must consider harm that a child may suffer not just from domestic violence, but from witnessing it.

The revised definition of harm was formally implemented in January 2005. This amendment provides guidance for the courts that add to existing guidelines – for courts and professionals involved – on contact and domestic violence.

Revised forms C1 and C1A (commonly known as 'Gateway' forms), for applications for child contact and residence were also introduced on 31 January 2005. Applicants and respondents have the opportunity to raise concerns about harm at an early stage, providing information for the Courts to consider whether any incidents of domestic violence has had an adverse impact on the child, or might affect the child in the future.

Children Act 2004

The Children Act 2004 changed the rules for disclosure of information in children cases. New rules came into force on 31 October 2005. For full details see guidance published on the Court Service website: http://www.hmcourts-service.gov.uk/docs/ex710_1105.pdf

Nothing in the new rules undermines the principle that the welfare of children is the courts' paramount concern or inhibits the courts' inherent powers to allow or restrict wider disclosure in specific cases. These rules balance children and adults' needs for privacy against their needs to be able to seek appropriate advice and support. The rules are in addition to other changes made to the law earlier in the year.

Section 62 of the Children Act 2004 came into force on 12 April 2005. This means that:

- It is no longer a criminal offence for a party to family proceedings involving children to disclose orders to other individuals or bodies, so long as disclosure is not made to the general public, or any section of the general public, or to the media; and
- It is no longer a contempt of court to disclose information where the rules authorise circumstances in which specified information relating to family proceedings held in private involving children could be communicated.

Children an Adoption Act 2006

The Children and Adoption Act 2006¹³ completed its parliamentary passage and received Royal Assent on 21 June 2006. When implemented the Act will give the courts more flexible powers to facilitate child contact and enforce contact orders made under the Children Act 1989. The Act will give the courts wider options when dealing with contact cases where there is conflict between the parents. New facilitative measures in the Act include giving courts the power to require parents to undertake a “contact activity” such as attending relevant parenting programmes or classes, or information sessions, before a contact order is made. The Act will also provide the courts with the power to attach conditions to contact orders, which may require a parent to undertake a “contact activity” and to require a CAFCASS officer to monitor contact.

Where a contact order has been breached, there are provisions in the Act to enforce contact orders, enabling the courts to impose unpaid work on the person who breaches a contact order. This will give the courts greater flexibility in dealing with breaches of contact orders, and will be in addition to the existing powers to treat the breach of the order as a contempt of court.

Section 7 of the Act requires Children and Family Court Advisory Support Services (CAFCASS) officers, or Welsh family proceedings officers, to carry out risk assessments in private law proceedings under the Children Act 1989 [residence/contact/prohibited steps and specific issues orders] where they consider that there is cause to suspect that a child is at risk of harm. They are then required to inform the court of their findings in respect of the risk of the child-suffering harm.

[It is expected that the provisions in part 1 of the Children and Adoption Act 2006 in relation to Family Assistance Orders and risk assessments will be implemented from October 2007.]

¹³ The text of the Act can be found at: <http://www.opsi.gov.uk/acts/acts2006/20060020.htm>
This link is to the Government’s Green Paper on Parental separation: Children’s Needs and Parents’ Responsibilities: <http://www.dfes.gov.uk/childrensneeds/>

PART III: CRIMINAL SANCTIONS

The Legislation

There is no specific offence of 'domestic violence' under criminal law. The charge, therefore, reflects, as best it can, the particular circumstances of the abuse or violence. This means that there are many offences that may apply to violence in a domestic context as well as those that arise in the context of forced marriage. Sections of the following Acts apply to domestic violence cases – this list is not exhaustive:

Murder	Common law
Manslaughter	Common law
Breaches of Bail	Bail Act 1976 s6(1) (2) and (7)
Criminal damage	Criminal Damage Act 1971 s1 (1)
Common assault	Criminal Justice Act 1988 s39
Threats to kill	Offences against the Persons Act 1861 s16
GBH with intent	Offences against the Persons Act 1861 s18
GBH/wounding	Offences against the Persons Act 1861 s20
ABH	Offences against the Persons Act 1861 s47
Other	Offences against the Persons Act 1861
Harassment	Protection from Harassment Act s2(1) and (2), 4(1)
Affray	Public Order Act 1986 s3
Threatening behaviour	Public Order Act 1986 s4
Threatening behaviour with intent	Public Order Act 1986 s4(A)
Rape	Sexual Offences Act 1956 s1
Assault by penetration	Sexual Offences Act 2003 s2
Sexual assault	Sexual Offences Act 2003 s3
Other	Sexual Offences Act 2003
Theft	Theft Act 1968 s1
Blackmail	Theft Act 1968 s21
Witness intimidation	Criminal Justice and Public Order Act 1994 s51
Criminal trespass	Criminal Law Act 1977 s6(1)
Child cruelty	Children and Young Persons Act 1933 s1
Child abduction	Child Abduction Act 1984 ss1 and 2
Trafficking for exploitation	Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s4
Trafficking for sexual exploitation	Sexual Offences Act 2003 ss57-60

Magistrates' courts deal with all domestic violence cases initially when there is a charge for a criminal offence, as all criminal cases must commence in a magistrates' court. Depending on the severity of the offence, cases may then be sent to the Crown Court. Serious offences such as rape are always sent from magistrates' courts to the Crown Court, and these are known as 'indictable only' offences. In such cases the relevant magistrates' court will decide

whether the case is too serious of it to deal with. If so, they will commit the case to the Crown Court. If it decides that I can hear the case the defendant can still choose to have the case heard in the Crown Court. 'Summary only' cases can only be heard in a magistrates' court.

Victims of domestic violence cannot insist that the Crown Prosecution Service (CPS) pursue a criminal prosecution. If the CPS decides not to proceed with a case, for reasons outlined below, then the victim may consider pursuing a civil rather than criminal remedy. However, the CPS has a policy to prosecute in all cases wherever possible.

What is the police response to domestic violence?

The majority of Police Forces have Domestic Violence Units (DVU). Within these Units designated officers, who have specialist training in domestic violence (and in some areas other specialisms such as forced marriage), are there to offer support to victims of domestic violence. All forces have Community Safety Units (CSU) attached to local police stations and this is where DVUs are often based. These Units also provide information and advice to victims and deal with various community problems, including racial abuse, neighbour nuisance and other issues defined as hate crimes and including homophobic violence.

When the police are called to a scene of domestic violence they will typically:

- Carry out an initial investigation and seek to secure all of the available evidence, identify other evidence that may be available, identify potential witnesses at the scene and obtain details of other witnesses where appropriate.
- Arrest the offender if they have the grounds to do so and he is still present, or can be located (they do not need a warrant to arrest someone they suspect has committed or is about to commit a violent offence or breach of the peace; nor do they need to have witnessed an assault themselves).
- Try to obtain a statement from the victim at the time, away from the suspect, even if the statement is brief and basic. However, where other evidence is available and has been gathered by the police, cases may proceed without the support of the victim. One of the purposes of obtaining a statement from the victim is to enable officers to interview the suspect at the police station. The defendant must be charged within 24 hours of arrest, unless an extension has been granted. On some occasions the suspect may be released on bail, to return to the Police Station, in order for further evidence to be obtained.
- Sometimes, ask the victim to see the Forensic Medical Examiner (FME). If she agrees, the police may escort her to the police station for an examination. In some cases, the FME will be called by the police to attend the victim at the scene. If she is reluctant to see an FME she will be urged to visit either her GP or local hospital as quickly as possible. This not only ensures a proper medical assessment for treatment but also obtains medical evidence that can be used as evidence for the court case.
- Advise the victim, as required by the force's own domestic violence strategies, of other options available to her, for example obtaining an injunction under civil

proceedings. The police would also provide her with contact addresses for support organisations, advocacy groups or local refuge services such as Women's Aid, Victim Support or local Domestic Abuse Specialist Solicitor or any other specialist service depending on individual needs. The victim's consent is required before the police can pass any information to Victim Support but this organisation can be contacted direct. The police, in consultation with the CPS, are responsible for investigating the matter and deciding whether to charge the suspect based on the strength of the evidence and prospect of conviction.

What does police bail involve?

A defendant can be bailed by the police pending a Charging decision or their first appearance at court. Bail can be conditional or unconditional and depends on the circumstances of the case, including whether or not they have relevant previous convictions. As well as bail, a defendant may also be kept in custody pending their court appearance. Defendants on bail after charge are usually listed to appear in court on the next available date.

At the hearing the court will decide whether the defendant should be bailed or remain in custody until the trial. If the court is asked to remand the defendant in custody, the prosecution must show that bail conditions would not be enough to prevent the defendant from failing to turn up for the next hearing or committing further offences or interfering with witnesses.

These are some of the various conditions that courts can impose on a defendant:

- must not contact, either directly or indirectly, a named person; and/or
- must not enter a specific area (preferably described within a 'street map' context rather than distances from a particular address) go to a named place; and/or
- must live and sleep at a named place; and/or
- must report to a named police station on a given day or days at a given time; and/or
- must surrender their passport to a named police station.

Although similar, these conditions should not be confused with civil non-molestation and occupation orders, which do not necessarily include such protective conditions.

When the court imposes bail, it uses a standard form to record the decision and any conditions. If a defendant breaches any of his bail conditions he can be arrested and the court has the power to remand him/her in custody. Once the criminal case has been concluded, there is no bail, so any previous bail conditions cease to have effect. The defendant is therefore no longer under any restrictions, except for those which may result from any sentence imposed. Further protection may be given by the imposition of a restraining order granted under section 5 of the PHA 1997, or if a civil injunction order made either under the PHA 1997 or the FLA 1996. Section 12 of the DV Act 2004 amends section 5 and inserts a new section 5A to enable a restraining order to be made on acquittal (see

further for detail).

What is the role of the Crown Prosecution Service (CPS)?

The Criminal Justice Act 2003 gave the CPS a much greater level of responsibility for deciding whether suspects should be charged and with what offences. There are 42 Areas, which correspond geographically with police areas and a 'virtual' Area, CPS Direct, which provides a national, out of hours pre-charge advice service to the police. Each of these Areas has a national domestic violence co-ordinator, who operates both strategically and operationally and who is the lead prosecutor for domestic violence cases.

After the police have arrested a suspect they must (except for certain very minor offences) refer the file to a CPS lawyer who decides whether or not to proceed with the case. The case is reviewed in accordance with the Code for Crown Prosecutors and the decision to prosecute is based on two tests:

- 1) The evidential test – there must be sufficient evidence to provide a 'realistic prospect of conviction'

If the victim withdraws her support for the prosecution, the case is not automatically discontinued. Where there is other evidence available, that is sufficient to satisfy the evidential test, the case may still proceed. Alternatively, a witness may be compelled to attend court. This is done after an experienced prosecutor has considered the case in consultation with the officer in the case. This is usually the case where the wider public interest necessitates a prosecution, for example, escalating levels of violence, children involved or an extremely vulnerable victim.

If the survivor informs the police that she wishes to withdraw her original statement, the CPS will ask the police to take a further written statement explaining her reasons, confirming whether her original statement was true, and asking if she has been pressured into taking this decision. The police are also asked for their opinion about her withdrawal. If it is suspected that the victim may have been put under undue pressure to withdraw the case, the CPS may ask the police to investigate the matter further.

- 2) The public interest test – the prosecutor only goes on to this test if the evidential test is satisfied.

There are a number of public interest factors which could be considered here. Factors such as whether the offence was pre-meditated, the offence was committed in the presence of, or in close proximity to a child or there are grounds for believing that the offence is likely to be repeated are all relevant.

The CPS can lawfully receive copies of any orders or judgements made in family proceedings from parties involved with the case, e.g. police or victim. For any further material such as statements or reports, the leave of the family court must be obtained before it can be obtained or used in other proceedings.¹⁴

¹⁴ See Family Proceedings (Amendment) Rules 2005 (various)

Where the CPS is aware of breaches of a civil order, it will consider how this information can be used and whether it is relevant in providing extra weight in the prosecution of criminal cases.

There are details of how the CPS prosecutes domestic violence cases in its revised policy, published in February 2005¹⁵ (www.cps.gov.uk).

What about court attendance and waiting times?

As mentioned above, the majority of domestic violence criminal cases are dealt with by the magistrates' courts; a small proportion are referred to the Crown Court, as explained below. The waiting time for trials in both types of court can vary from a couple of weeks to a several months. Listing will depend on the location and the workload of the individual court but the case may also be adjourned by either side, for example, for case preparation, reports etc.

A case goes to the Crown Court for a number of reasons including:

- It is indictable only (see glossary); or
- It is an "either-way" (see glossary) offence that is not considered suitable for summary trial; or
- It is an either way offence and the defendant elects to have a trial in the Crown Court; or
- It is an either way offence and the magistrates do not consider their powers of sentencing to be sufficient.

Whatever the stage of the criminal proceedings, the police are duty bound to inform the victim of any developments, especially of decisions regarding bail. Victims should be kept informed about the case, trial date etc, via the police Witness Care Unit (WCU). The WCU will inform the victim about Victim Support and the Witness Service that is available in the local court where the case will be heard. The Witness Service provides support and information for witnesses, victims, their friends and family before, during and after a hearing. It can arrange pre-trial visits to the court, if requested. The full service to witnesses is set out in Victim Support's leaflet, Going to Court, which the police and/or WCU should give to witnesses. Anyone attending court will also be advised about what travel expenses may be claimed and how to claim them. The police can also put victims in touch with other relevant local support organisations. For further information you can visit the HMCS Victim & Witness Website at <http://www.hmcourts-service.gov.uk/infoabout/attend/witness/index.htm>.

How is a case listed?

The police's Witness Care Unit within the Criminal Justice Unit asks all parties for dates to avoid before a case is listed for trial – also for telephone numbers and addresses where parties can be reached at short notice.

¹⁵Policy for Prosecuting cases of Domestic Violence AND How Prosecution Decisions are reached: <http://www.cps.gov.uk/publications/docs/DomesticViolencePolicy.pdf> AND <http://www.cps.gov.uk/publications/docs/DomesticViolenceLeaflet.pdf>

Cases are listed for specific dates in the magistrates' courts, allowing a reasonable amount of time between the initial notification a hearing and the date for which it has been arranged.

In the Crown Courts, cases are either listed for specific dates or put in an early-warned list that covers a period of about two weeks. In the latter instances, the parties may be warned of the hearing the evening before the trial date.

If either of the parties cannot be contacted, the case is adjourned to a later date. Witnesses are not required to attend if the defendant pleads guilty before the hearing. If a plea of guilty is entered at the start of or during the trial, any witnesses warned to attend will no longer need to do so.

What is the role of witnesses?

Due to the nature of domestic violence, the victim is often the only witness to the offence and is, therefore, the key witness for the trial. The need for a witness to attend can be avoided only if the defendant pleads guilty or if there is very strong supporting evidence from other sources, such as neighbours, police, or medical staff, which can be put before the court. However, the best evidence comes from the witness in person.

Under the provisions of Section 116 of the Criminal Justice Act 2003, a victim can give evidence by a written sworn statement rather than in person. There are specific situations in which this section can be used, for example, where the victim is kept away through fear or is unable to give oral evidence by reason of their 'bodily or mental condition'. The court also has to consider whether it is in the interests of justice to allow the statement to take the place of oral evidence.

In limited circumstances the statement of a person who does not give oral evidence through fear may be admissible. Leave may be granted by the court - under sections 114-116 Criminal Justice Act 2003 - for a written statement to be admitted if it is in the interests of justice to do so having regard to:-

- its content; or
- any unfairness to any other including the inability to cross-examine the person who made it; or
- whether a direction for Special Measures could have been made; or
- any other relevant circumstances.

Courts tend to be reluctant to allow these applications because the defendant's legal representative is denied the opportunity to cross examine the victim. The application is unlikely to succeed. However, the European Court has made it clear that the overarching principle is whether the trial as a whole was fair.

From July 2002, new measures were introduced, following legislation in the Youth Justice and Criminal Evidence Act 1999, which can be applied to all 'victims'. These require the police to identify vulnerable or intimidated witnesses at an early stage. This allows the CPS to consider the situation with the victim, and decide what application to make to the court for

any special measures to assist the victim when giving evidence. Special measures may include: separate waiting rooms and facilities for victims and witnesses; giving evidence from behind a screen, or via a TV/video link; or clearing the public gallery. However, it should be remembered that the measures applied for and/or granted will depend on the type of witness involved and the nature of the case. A table summarising those provisions is at Annex B.

What does a conviction involve?

On 7 December 2006, the Sentencing Guidelines Council published definitive guidelines on *Overarching Principles: Domestic Violence*¹⁶ and *Breach of a Protective Order*¹⁷.

For the defendant to be convicted of a criminal offence, the jury or magistrates'/judge must be sure of the defendant's guilt "beyond reasonable doubt" rather than on the "balance of probabilities" as in civil matters. If they are not satisfied so that they are sure of the defendant's guilt, they have no choice but to acquit.

If the defendant pleads guilty or is found guilty after a trial, there is a range of sentences that could be imposed. The focus of criminal sanctions is to rehabilitate the defendant as well as to act as a deterrent against further criminal offending. In contrast, the remedies available in civil cases are designed primarily to protect the victim.

Magistrates have a range of sentencing options from absolute or conditional discharges, through fines and community orders to custody. Custodial sentences can be immediate or suspended and a sentence may also be deferred to a later date to see whether a defendant complies with one or a number of conditions specified by the court. As an ancillary order to any of the above sentences, Magistrates can also order the defendant (subject to his means) to pay compensation to an injured party.

A community order is a court order that contains at least one or more of the following requirements:

- An unpaid work requirement;
- An activity requirement;
- A programme requirement (including a programme to address offending behaviour leading to domestic violence);
- A prohibited activity requirement;
- A curfew requirement;
- An exclusion requirement;
- A residence requirement;
- A mental health treatment requirement;
- A drug rehabilitation requirement;

¹⁶ http://www.sentencing-guidelines.gov.uk/docs/domestic_violence.pdf

¹⁷ http://www.sentencing-guidelines.gov.uk/docs/breach_of_protective_order.pdf

- An alcohol treatment requirement;
- A supervision requirement;
- An attendance centre requirement (if the defendant is under the age of 25)

Perpetrator Programmes

Each probation service area in England and Wales runs an accredited perpetrator programme. These programmes are designed for convicted adult male perpetrators, who are abusive against female intimate partners, though not all perpetrators within this category will be suitable for the programmes for a range of reasons. The programmes consist of the following infra-structure:

- Inter-agency risk assessment and risk management, involving information exchange protocols with the police and other relevant agencies.
- Contact with the known victims and new partners of men accepted on to the programme to ensure they have realistic expectations, encourage realistic safety planning, to give information about the programme and invite them to contribute to the evaluation of the programme.
- Pro-active management of the offender by the supervising offender manager for a quick return to court in cases of non-attendance; active liaison with the police and Women's Safety Worker; delivery of some individual structured sessions.
- Group work sessions with the offender.

During the beginning of 2006/07, all accredited Domestic Abuse Perpetrator Programmes within the Criminal Justice System satisfied the Correctional Services Accreditation Panel (CSAP) quality standards and for the first time, targets were set by the National Offender Management Service (NOMS) for programme completions.

Specialist Domestic Violence Courts

When referring to a Specialist DV Court (SDVC), we are not so much referring to a court building or jurisdiction, but to a specialised way of dealing with domestic violence cases in the magistrates' courts. Generally, specialist criminal domestic violence courts operate either by:

- Clustering: all DV cases are grouped into one court session to deal with a range of matters - bail variation, pleas, pre-trial reviews, pre-sentence reports, and sentencing. Some cluster courts also hear trials in specific DV sessions; or
- Fast-tracking: priority is given to DV cases by allocating specific sessions of the court list e.g., 1 in 4 court slots allocated to DV for all further hearings/trials.

However, it is important to note that SDVCs are the culmination of support work from local statutory and voluntary agencies. Key among these is the availability of independent

domestic violence advisors (IDVAs) providing this support. As well as the availability of advocacy services, other partners involved in developing and supporting specialist courts include: Police, social services, housing, CPS, Probation Service, Primary Care Trust, Accident & Emergency, GPs. Provision of dedicated, trained staff is also recommended.

The first 7 specialist courts, West London, Cardiff, Derby, Wolverhampton, Caerphilly, Croydon, Leeds, have been independently evaluated¹⁸. Benefits included:

- Enhanced effectiveness of court and support services for victims;
- Better information sharing;
- Increased public confidence and victim participation;
- Place victim at the heart of the process.

The CPS data snapshot carried out in December 2005 also demonstrated that cases in SDVCs were achieving a 71% successful rate of prosecution against the national average of 59%. On the basis of these positive outcomes of the evaluations, HM Courts Service, Home Office and CPS developed a programme through which the evaluations were disseminated to all magistrates' courts and Government Offices. Courts and local partnerships were invited to express their interest in setting up an SDVC. A self-assessment provided a basis by which areas could be assessed for 'readiness' and compliance against a number of components. The components were formulated by a Task Force of key stakeholders in the field and were included in the Resource Manual. The background to the SDVC Programme, the Resource Manual and Data Collection templates can be accessed via the Crime Reduction website at:

<http://www.crimereduction.gov.uk/domesticviolence/domesticviolence59.pdf>

From April 2007 there will be 64 sites operating SDVCs in England & Wales.

Integrated Domestic Violence Courts

At the time of going to print, Croydon was about half way through its year long pilot of the first Integrated Domestic Violence Court (IDVC). The Pilot will be evaluated autumn/winter of 2007 in conjunction with an evaluation project to measure the impact of the provisions of the Domestic Violence, Crime and Victims Act 2004.

The main characteristic of an IDVC is that both criminal and family matters relating to one family, and where DV is a factor, will be heard before the same Judge wherever possible - similar to those in existence in the USA.

The term IDVC is used for convenience - cases are being heard within the Magistrates' and Family Proceedings Courts jurisdictions - not a new court.

The principles and aims of the Croydon Pilot assume that any action will only be taken within existing legislation, and that judicial decisions will be made upon the facts in each case:

- One family, one Judge wherever possible, and within the law and fair process.
- The criminal case is to be completed, at least to point of conviction or acquittal, before the family case is heard by the same Judge

¹⁸ Reports available on line at <http://www.cps.gov.uk/publications/docs/specialistdvcourts.pdf>; <http://www.cps.gov.uk/publications/docs/dvpilotsites0405.pdf>; and http://www.cps.gov.uk/publications/docs/eval_dv_pilots_04-05.pdf

- The process whereby the case is heard within the IDVC should not create delays for those involved.
- Effective information sharing will aid safe and effective decisions

Protection from Harassment Act 1997 (criminal)

The main advantage of this Act is its availability to those who have not lived with their abusive partner, nor had children with them. The PHA 1997 is a significant remedy for victims who cannot seek protection under the Family Law Act 1996 because they do not fall within the strict criteria for applicants set out by that Act (see Annex A and Part I of this Guide).

Criminal proceedings under PHA 1997 can result in a conviction **and** a restraining order. The restraining order can prohibit the offender from a wide range of conduct, but it cannot make any orders concerning property rights.

The Act **created** two criminal offences: harassment (under section 2); and fear of violence (under section 4). Harassment is classed as a summary offence and is triable by a magistrates' court, or on indictment in the Crown Court.

- Section 2: under this section a person must not pursue a course of conduct which amounts to harassment of another (or others) and which he knows, or ought to know, amounts to the harassment of another (or others). For the purposes of this Act, the person whose course of conduct is in question ought to know that it amounts to harassment if a reasonable person in possession of the same information would think the course of conduct amounted to harassment. A "course of conduct" must involve conduct on at least two occasions. This section can only be tried in the magistrates' court.
- Section 4: under this section a person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against them is guilty of an offence, if he knows, or ought to know, that this will cause the other so to fear on each of those occasions. There is a similar test of 'reasonableness' as in section 2. This offence can be tried in either the Magistrates' or Crown Court.

The police have the power to arrest anyone whom they suspect of committing either of the above offences and refer the case to the CPS for a decision to be made about prosecution.

Domestic Violence, Crime and Victims Act 2004

From July 2007, section 12 of the DV Act 2004, amends section 5 of the PHA 1997 and inserts a new section 5A to give courts wider powers to impose restraining orders when sentencing for any offence. It will also give any person mentioned in a restraining order a right to make representations in court if an application is made to vary or terminate the order.

This provision also introduces the ability for the courts to impose restraining orders - for any offence - where the defendant has been tried or acquitted. At present, restraining orders are only available when an offender has been convicted under sections 2 or 4 of the Protection

from Harassment Act of either harassment or putting someone in fear of violence. The aim is to deal with the situation where a criminal case ends in acquittal but it is apparent from the circumstances of the case that the victim needs continuing protection. It is of course open to the victim to seek a non-molestation order or injunction from a civil court. However, a more proactive approach would not only avoid delay and increase costs to the legal aid budget, but also provide a more seamless protection for the victim.

Following an acquittal, the court could invite both the prosecution and defence to present any additional evidence that would be inadmissible in criminal proceedings but admissible in civil proceedings. On the basis of that evidence, the court would decide whether an order might be necessary to protect the victim from harassment. Alternatively, the court could make that decision on the basis of the evidence already presented in the criminal trial. (For example, someone may be acquitted of grievous bodily harm but it may be undisputed that they hammered on the door shouting threats and pushed their way into the house.)

The purpose of the restraining order would be preventative, not punitive – a measure to protect someone from harassment. We believe that there are circumstances where, even though there is insufficient evidence to convict, victims need immediate protection. In considering whether to make an order the court will consider the same question as would a civil court on an application for a restraining order under section 3 of the Protection from Harassment Act; i.e. is an order necessary to protect from harassment? That is a question of judgement for the court.

In considering whether particular allegations of past misconduct are proved, the courts will apply the civil standard of proof. However, as the case law on similar orders makes clear (ASBOs and football banning orders) the civil standard will apply will depend on the nature of the case, including the seriousness of the conduct alleged and the nature of any sanction that could be imposed.

The DV Act 2004 also gives any person mentioned in a restraining order a right to “to be heard”, i.e. to make representations, if an application is made to vary or terminate the order. Rules of Court will place a duty on the court to inform anyone mentioned in the restraining order of such an application so that person will have advance notice of what is happening, and so they have the opportunity to argue against the application in court.

PART IV – Other Related Provisions

Housing Act 1996

This Act is an indirect means of protecting victims of domestic violence because it relies on a third party – their landlord – applying for a possession order. Only a landlord – or more specifically, a local authority or social landlord – can take action under this Act if it is brought to their attention, or it is alleged, that a tenant is being violent towards another tenant.

This civil remedy also depends on the tenant who is experiencing domestic violence leaving the property with no intention of returning. It is, therefore, simply a way that the landlord can regain a property by taking action against an abuser who remains in occupation. It does not enable the victim of violence to stay in the property. Nor does it provide any protection – in the form of an injunction – in another location.

Sanctuary Schemes

The Sanctuary Scheme is an innovative approach to homelessness prevention. It provides professionally installed security measures to allow those experiencing domestic violence to remain in their own accommodation where it is safe for them to do so, where it is their choice and where the perpetrator no longer lives within the accommodation.

This joint LGA and Communities and Local Government guidance aims to help local authorities and other key stakeholders set up and run effective schemes designed to help victims of domestic violence.

Guidance is only available on line at:

<http://www.communities.gov.uk/index.asp?id=1502478gov.uk>

Immigration status and public funds

There are approximately 500 women a year, who will have been granted leave to enter the United Kingdom in order to marry a UK national on condition that they shall have no recourse to public funds. Public funds in this case refers to any social funding, for example housing benefit.

In the case of domestic violence victims, Immigration Rules allow them to apply on their own behalf for indefinite leave to remain, with specific evidential requirement for this to be granted. However, while the application is pending, their existing immigration status prevents their access to housing provision. Without a place of safety or any means of support, these women may often be forced to return home to face further abuse and, in some extreme cases, homicide.

Local authorities need to be mindful that some victims of domestic violence could have specific needs for care and attention and /or have dependent children, which may make them eligible for assistance under section 47 of the NHS & Community Care Act, the Local

Government Act s.2, Children Act 1989 or other relevant legislation on a case-by-case basis.

In 1999, a concession was introduced so that those who left their abusive partner or spouse during their probationary period, and could prove by way of a court conviction or similar that the relationship ended because of domestic violence were granted settlement.

In November 2002, the types of evidence that could be used as proof of violence were expanded. While an order, conviction or police caution provide the best evidence, a GP report, a court undertaking, and a police report of attendance, a letter from social services, or a letter of support from a refuge were also made acceptable.

The Immigration and Nationality Directorate are flagging and fast-tracking these cases and more recently, applicants are exempted from the new charging regime, if they are destitute.

New steps are in progress to improve the application and evidence gathering process, including a pro-forma for agencies, widening the meaning and interpretation of the term 'refuge'. In April 2007 there will be a new application form¹⁹ with guidance notes.

Police Reform Act 2002 - domestic violence and health

The NHS has a particular contribution to make in domestic violence, not only because of the impact on victims' health, but also because the NHS may be the first contact point with professionals who can recognise and intervene in the situation.

As a result, Primary Care Trusts (PCTs) in England became responsible authorities within crime and disorder partnerships with effect from 30 April 2004. (The relevant legislation is section 5 (1) of the Crime and Disorder Act 1998, as amended by the Police Reform Act 2002).

This means that PCTs now have a statutory responsibility to work in partnership with other responsible authorities to tackle crime and disorder and misuse of drugs issues locally.

Education Act 2002

Schools can be the first step in identifying family violence and the abuse of pupils, and can refer cases to social services. Where a school suspects that a pupil is a victim of abuse or at risk of abuse, or if it believes there are family problems, it should follow the local procedures for reporting its concerns. Section 175 of the Education Act 2002 will ensure that governing bodies and Local Education Authorities have appropriate child protection procedures in place.

¹⁹ current domestic violence questionnaire: <http://www.ind.homeoffice.gov.uk/6353/11406/dvquestionnaire.pdf>

Annex A: Who is an associated person?

Concerning Occupation Orders (section 62(3) of the FLA 1996)

- They are or have been married to each other, or are or have been Civil Partners.
- They are cohabitants or former cohabitants (from 5 December 2005 Section 3 of the DVCA Act amends section 62(1)(a) of the Family Law Act 1996 to include cohabiting same-sex couples)
- They live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder.
- They are relatives (the definition of a "relative" has been extended in the Family Law Act 1996 to include first cousins)
- They have agreed to marry each other (whether or not that agreement has been terminated)
- They have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004)(whether or not that agreement has been terminated);
- In relation to any child, both persons are either a parent or have or have had parental responsibility - a person falls within its scope if:
 - 1) S/He is a parent of the child; or
 - 2) S/He has or has had parental responsibility for the child.
- They are parties to the same family proceedings (other than proceedings under Part IV of the FLA 1996).

Concerning Non-Molestation Orders (FLA 1996)

If the respondent falls within any of the categories below an application can be made:

- a) In relation to the applicant:
 - Spouse
 - Former spouse
 - Cohabitant
 - Former cohabitant

- Civil Partner
- Former Civil Partner

b) In relation to the applicant or to any class of person in a):

- Father
- Mother
- Stepfather
- Stepmother
- Son
- Daughter
- Stepson
- Stepdaughter
- Grandmother
- Grandfather
- Grandson
- Granddaughter
- Brother
- Sister
- Half- or step-brother or sister
- Uncle
- Aunt
- Niece
- Nephew
- First cousins

c) In relation to any of the persons in b):

- Spouse
- Former spouse
- Cohabitant
- Former cohabitant
- Civil Partner

- Former Civil Partner
- d) • Someone who lives, or has lived, in the same household.
- e) • Someone whom the applicant has agreed to marry, or has entered into a civil partnership agreement; where agreement terminated, only within 3 years of termination.
- f) • Where the applicant is the parent of a child or has parental responsibility for a child, any other parent or person having parental responsibility.
- g) • Where a child has been adopted or freed for adoption:
- i) a natural parent, or the parent of such a natural parent, is associated with;
 - ii) the child or a parent of the child by virtue of an adoption order, or a person who has applied for an adoption order, or any person with whom the child has at any time been placed for adoption.
- Anyone in class i) may apply for an order against anyone in class ii).
- h) • the other party to any family proceedings.

NB: The criteria used for determining who can apply for an order under Part IV of the Family Law Act 1996 is relatively wide as can be seen above. In general, if a victim of domestic violence is related to the perpetrator of the violence, this Act can be used as a remedy.

From 1 July 2007 section 4 of the Domestic Violence, Crime and Victims Act 2004 will extend "associated" persons to include persons who 'have or have had an intimate relationship with each other which is or was of significant duration' but have never married or cohabited.

Annex B: Special measures for vulnerable or intimidated witnesses

The table below sets out the special measures provided in the 1999 Youth Justice and Criminal Evidence Act (1999) (YJCE Act).

Special measure	Reference in 1999 YJCE Act	Section 16 witnesses (children and vulnerable adults)	Section 17 witnesses (intimidate/fear or distress)
Screening witness from the accused	s.23	Full availability	Full availability
Evidence by live link	S.24	Full availability	Full availability
Evidence given in private	s.25	Full availability	Full availability
Removal of wigs and gowns	s.26	Not applicable	Not applicable
Video recorded evidence in chief	s.27	Partial availability – for child witnesses in need of special protection only	NOT available
Examination through an intermediary	s.29	Partial availability – pilot areas only	NOT applicable
Aids to communication	s.30	Full availability	NOT applicable

While not strictly special measures, s34-40 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) also contains powers to protect victims and witnesses from cross-examination by the accused acting in person.

In particular, s38 of this Act provides that the court must allow the accused sufficient time to appoint a representative for the purpose of cross-examining the victim. If at the end of this period no appointment has been made, the court must consider whether it should appoint a representative to cross-examine the victim on behalf of the accused. Payment for the representative in such circumstances should come from Central Funds.

Annex C: Glossary of terms

Abridged Time

The usual time limits for service of notice of a hearing may be 'abridged', that is shortened, particularly in applications for occupation orders and the case listed sooner than usual. The applicant still has to show that the respondent has been made aware of the application that may result in an order that removes them from their family home. There is a suggestion that the court is more likely to make such an order if it has had the opportunity to hear from both parties.

Bail

The release by the police or court of a defendant until a specified date, time and place. Conditions may be attached to the bail, for example not to commit offences or keep away from/out of a certain area.

Binding over (to keep the peace)

'Bind-overs' can be made on application (or 'complaint') or by the court itself. A person who is bound effectively makes a promise to be of good behaviour and agrees (by signing a document) to keep the peace for a specified period of time. If they fail to do so he can be ordered to pay part or all of a sum of money specified by the court in the original order.-

Care order

An order under the Children Act 1989 which places a child under the care of a Local Authority. An application can only be made by a Local Authority, or a person authorised by Secretary of State. The court has the power to make a care order only when it is satisfied that a child is suffering, or is likely to suffer, significant harm. Sometimes it may be because the parents have done something to harm their children or allowed someone else to do this. This includes causing physical harm or sexual abuse. Both physical harm and sexual abuse also cause emotional harm. (Section 31 Children Act 1989)

Claim form (civil)

A formal, written statement setting out details of the remedy sought by the claimant. The form may also contain particulars of the claim, including background information such as dates and location of events relevant to the case. If these are not included on the claim form they can be forwarded to the court up to 14 days after the claim is filed in court.

Committal hearing (civil)

A method of enforcing judgment by obtaining an order that a person is committed to prison. It is most commonly sought when that person has committed a contempt of court, for example by disobeying an order of the court.

Conditional discharge

An offender may be conditionally discharged for up to three years. The condition is that he or she does not commit another criminal offence in that period. The discharge will then lapse. If

a fresh offence is committed during the period fixed by the court, the offender can be sentenced afresh for the offence in respect of which the conditional discharge was made. The offender can then face sentence for two matters, the old and the new. Conditional discharges are convictions.

Contact Activity (Children and Adoption Act 2006)

Contact activity is an information session, a programme, class, counselling or guidance session or any other activity which can assist a person to establish, maintain or improve contact with a child. This is a new addition in helping parents when they have separated or divorced and cannot agree on arrangements for their children. The parents may refer their dispute to a family court to make a decision. Most court cases concerning children involve private disputes between parents about the issues of residence and contact. Also commonly referred to as 'custody' or 'access'. (Section 8 Children Act 1989 as amended by Children and Adoption Act 2006.)

Contempt of court

Disobeying a court judgment or process, for example breaching a non-molestation order is a contempt of court. The subject of the order (the respondent) is warned that he risks imprisonment for contempt if he disobeys the order, by the fact that a penal notice is attached.

Crown Prosecution Service

The CPS is a public prosecuting authority who is independent of the police but works with them as part of the prosecution team. . The CPS charges and prosecutes people in England and Wales with a criminal offence. It also advises the police on possible prosecutions; prepares cases for court; prosecutes cases in the magistrates' courts and the Crown Courts; and instructs counsel to prosecute cases in the Crown Court and higher courts.

“Either way”

Can refer to a case that is “triable either way” or an “either way offence”. This means a case can be tried either in the magistrates' court or the Crown Court. The Magistrates Court can send the case to be heard at the Crown Court, the CPS can request that the case be heard in the Crown Court or the defendant can choose to be tried at the Crown Court.

Emergency protection order

An order made under the Children Act 1989 that gives a Local Authority or a person authorised by statute the right to remove a child to suitable accommodation or prevent his removal from a hospital, etc. for a maximum of 8 days if there is reasonable cause to believe a child is suffering, or likely to suffer significant harm unless the order is made. These order can be the first step to the more permanent Care Order (see above). The court may also make an order to exclude a relevant person from the house in which the child lives or from entering a defined exclusion area around the child's home. (Sections 44 and 44A Children Act 1989)

Ex-parte – see Without notice

Independent Domestic Violence Advisor [IDVA]

IDVA services are attached to each local specialist DV court (see also SDVC) and help victims through the court process and to access a range of statutory and voluntary agencies.

Indictable only offence

An offence that can only be tried on indictment, which means by jury in the Crown Court. Most serious offences (murder, rape) are indictable only. However, these cases will all start in the magistrates' court and will be sent to the Crown Court for a Preliminary Hearing immediately.

Injunction

A remedy in the form of a court order addressed to a particular person that either prohibits him/her from doing, or continuing to do, a certain act, or orders him/her to carry out a certain act.

Integrated Domestic Violence Court [IDVC]

This is based on "one judge one family" hearing both criminal and family cases, trying to avoid people having to repeat their story more than once. The first pilot integrated court system is based at Croydon Magistrates' Court [began October 2006].

Liquidated/unliquidated claim

A liquidated claim is a claim for damages for a specified amount of money, for example £1,000. An unliquidated claim for damages is for an unspecified amount of money, for example not more than £10,000. The judge hearing the case will fix the amount awarded.

Non-molestation order

An order under the Family Law Act 1996 restraining a person, either directly or indirectly molestation an 'associated person' or a relevant child, or from otherwise doing what the court orders him not to do.

On-notice application

Application listed for hearing by the court for which all parties to the action are notified of the date and time of the hearing.

Penal notice

A notice that can be attached to civil orders warning a party or parties that if they do not obey the order, or certain provisions in the order, they will be in contempt of court and may be sent to prison. Penal notices are mandatory on non-molestation orders, but discretionary in respect of other orders. If an applicant (victim) feels that the respondent (perpetrator) is likely to ignore or break the penal notice, the applicant has to apply to the court herself to

have a power of arrest attached in order for the respondent to be arrested and committed to court.

Perpetrator Programmes

Perpetrator programmes are predominantly designed to help men to change their behaviour and develop respectful, non-abusive relationships. Since, statistically, most perpetrators are male, most perpetrator programmes work with men. Programmes usually consist of small groups of 8-15 men who have been violent or abusive in a current or previous relationship.

Power of arrest

A power attached to a non-molestation [until 1 July 2007] or occupation order which enables the police to arrest, without warrant, a person whom they have reasonable cause to suspect of being in breach of the order to which the power is attached, even though that person may not be committing a criminal act. It is not mandatory to attach a power of arrest to a non-molestation or occupation order and from 1 July 2007 a power of arrest will no longer be attached to a non-molestation order. However, at present, the court must attach a power of arrest if it appears that the respondent has used or threatened violence against the applicant or a relevant child, unless the court is satisfied in all the circumstances of the case that the applicant or child will be adequately protected. The benefit here being, where a power of arrest is attached, the applicant does not have to go to court to ask for the respondent to be arrested since the police can arrest him without a warrant.

Process server

An authorised person, typically an 'officer of the court' responsible for delivering legal documents to people – usually defendants or respondents.

Remand

Committing an accused person to custody or releasing him/her on bail. If the suspect is remanded in custody he will be sent to prison until his next appearance before the court.

Specialist Domestic Violence Court [SDVC]

A specialist venue based at an existing magistrates' court that provides specific training for the judiciary and staff together with effective support for victims. There will be 64 such sites in England and Wales at April 2007.

Special Measures / Facilities

Additional powers or facilities designed to protect victims. These can include separate waiting rooms, giving evidence behind a screen or by video link, etc depending upon the type of court. Always ask what is available.

Summary offence

An offence that can only be tried summarily, which means before magistrates rather than a jury. Most relatively minor offences (for example common assault and being drunk and disorderly) are summary offences.

Surety

A guarantor of payment or performance if another fails to pay or perform. Sureties may be provided by a bonding company which “posts a bond” for a guardian, an administrator or a building contractor. Most surety agreements require that a person looking to the surety (asking for payment) must first attempt to collect or obtain performance from the responsible person or entity.

Third Party Orders

Section 60 of Part IV of FLA 1996 concerns ‘third party orders’. This section gives the Lord Chancellor powers to enable a prescribed person, or category of person, to act on behalf of victims of domestic violence in obtaining occupation or non-molestation orders. However, Section 60 is not currently in force, nor are there any plans to implement it in the near future.

Without notice (previously ‘ex-parte’)

An application made by one party to start court proceedings in the absence of the other party (often applied for under the FLA 1996 because of the urgency of the application to protect the applicant).

Annex D: Reference sources and further reading

ACPO Police-Family Disclosure Protocol:

- Explanatory Memorandum Protocol (as used in the pilots including procedure and forms) <http://www.dca.gov.uk/family/metpol-expmem.pdf>;
- Metropolitan Police Service (MPS) version <http://www.dca.gov.uk/family/metpol-protocol.pdf>;
- Northern Circuit version (for areas outside of London/MPS) [please ignore the reference to it being 90 pages long – it is only 11 pages long] <http://www.dca.gov.uk/family/metpol-northerncircuit.pdf>;
- Standard Reply and Request Forms – Annexes B and C: <http://www.dca.gov.uk/family/stdreq-form-annexb.doc> <http://www.dca.gov.uk/family/stdpol-replyform-annexc.doc>
- Evaluation Report (a limited number of hard copies are still available from HMCS): <http://www.dca.gov.uk/family/police-info-family-proceedings.pdf>

To access these documents on the HMCS website click on:

http://www.hmcourts-service.gov.uk/infoabout/family_law/index.htm

Go to the section that says 'Part IV of the Family Law Act 1996' there is now a link in the right hand box 'Further Information' called 'Domestic Violence Guidance and Information' – this will take you to the DCA site.

Broken Rainbow: Support for lesbian, gay, bisexual and transgender (LGBT) people experiencing domestic violence. **HELPLINE** 08452 60 44 60

Mondays to Fridays 9am–1pm and 2pm–5pm Staffed by LGBT people.

<http://www.broken-rainbow.org.uk/>

CAADA – Co-ordinated Action Against Domestic Abuse

[formerly CRARG <http://www.crarg.org.uk/index.html>]

info@caada.org.uk

Tel: 01749 812968

Working to create a consistent, professional and effective response for all survivors of domestic violence and in particular those at high risk, through delivering services directly to advocacy projects, their local multi-agency partners and also through work with funders, policy advisers and government.

Cabinet Office guidelines for dealing with domestic violence in the workplace

http://www.civilservice.gov.uk/management/domestic_violence/publications/doc/empl_leaf_21oct04.doc

http://www.civilservice.gov.uk/management/domestic_violence/publications/doc/domestic-violence_lm_leaf.doc

Community Legal Service Direct website: 'www.clsdirect.org.uk'. The website contains an eligibility calculator and access to leaflets including one entitled "Domestic Violence, abuse and harassment" as well as others on related topics such as divorce and separation.

Corporate Alliance Against Domestic Violence: a group of progressive companies and organisations working individually and collectively to address the impact of domestic violence in the workplace. <http://www.corporateallianceuk.com/home.asp>

Court Fees: Do you have to pay them? – Court Service leaflet EX160A. EX 160 - application form for fee exemption or remission.

(note) http://www.hmcourts-service.gov.uk/HMCSCourtFinder/GetLeaflet.do?court_leaflets_id=172

(application) http://www.hmcourts-service.gov.uk/HMCSCourtFinder/GetForm.do?court_forms_id=168

Crown Prosecution Service website www.cps.gov.uk

- Crown Prosecution Service (February 2005) *Policy for Prosecuting Cases of Domestic Violence* Booklet, <http://www.cps.gov.uk/publications/docs/DomesticViolencePolicy.pdf>
- *How Prosecution Decisions are Reached*
<http://www.cps.gov.uk/publications/docs/DomesticViolenceLeaflet.pdf>

Dealing with cases of Forced Marriage – Guidance for Education Professionals
<http://www.fco.gov.uk/Files/kfile/Dealing%20with%20cases%20of%20Forced%20Marriages.pdf>

Dealing with cases of Forced Marriage – Guidance for Police.
<http://www.fco.gov.uk/Files/kfile/InteractiveForcedMarriage091106.pdf>

Department for Constitutional Affairs website www.dca.gov.uk

Department of Health, Responding to Domestic Violence a handbook for health professionals, 2005: <http://www.dh.gov.uk/assetRoot/04/12/66/19/04126619.pdf>

Domestic Violence Law and Practice, (Fifth Edition 2006) [District Judge] Roger Bird
[ISBN: 0 85308 974 4]

DYN – Wales Domestic Abuse Helpline for men www.dynproject.org/
029 2048 9500 – Cardiff only / 0808 801 0321 – outside Cardiff

The Dyn Project offers a confidential safety planning and advocacy service for men who have experienced domestic abuse. The Project works with gay, bisexual, transgender and heterosexual men in Cardiff and across Wales and can offer a range of services and resources to assist men in abusive relationships. These include information, advice and access to a range of support services

Forced Marriage Unit
contact 0207 008 0151 www.fco.gov.uk

The Forced Marriage Unit is a single point of confidential advice and assistance for those at risk of being forced into marriage overseas.

HM Courts Service website – www.hmcourts-service.gov.uk

Home Office website www.homeoffice.gov.uk
Leaflet: *You don't have to live in fear ...* <http://www.crimereduction.gov.uk/isp21.pdf>

IMKAAN <http://www.imkaan.org.uk/pub/index.php?id=8>
Mission Statement: To provide strategic advocacy and targeted organisational support to refuges serving the needs of Asian women and children experiencing domestic violence.

Immigration Advice Service - 020 7357 6917 / www.iasuk.org

Law Society's *Family Law Protocol* 2nd edition
<http://www.lawsociety.org.uk/search/view=query.law#>

Legal Services Commission website www.legalservices.gov.uk

- eligibility counter http://www.legalservices.gov.uk/civil/whatis_calculator.asp
- Funding Code www.legalservices.gov.uk/civil/guidance/funding_code.asp

Mens Advice Line www.mensadvice.org.uk.

Helpline 0808 801 0327

National Delivery Plan and Report

<http://www.crimereduction.gov.uk/domesticviolence/domesticviolence51.pdf>

National Domestic Violence Helpline

0808 2000 247

See also WAFE, Refuge websites

Northern Ireland Regional Forum on Domestic Violence, Ending the Pain and Healing the Hurt – *A Practical Guide for Faith Communities Responding to Domestic Violence*, October 1999 [Northern Ireland Women's Aid]

Northern Ireland Strategy [February 2006]

www.nio.gov.uk

Tackling Violence at home

Northern Ireland Women's Aid / Helpline 0800 917 1414

www.niwaf.org

Refuge

www.refuge.gov.uk

Refugee council 020 7346 6777

www.refugeecouncil.org.uk

Resolution - first for family law

www.resolution.org.uk

Formerly the Solicitors' Family Law Association

direct line: 01689 899 585

RESPECT

0845 122 8609

www.respect.org.uk

Respect is the UK membership association for domestic violence perpetrator programmes and associated support services. Key focus is on increasing the safety of those experiencing domestic violence through promoting effective interventions with perpetrators.

Rights of Women

<http://www.rightsofwomen.org.uk/>

Injunction handbook order form

http://www.rightsofwomen.org.uk/pdfs/dv_2nd_ed.pdf

- Free Legal Advice Line for women by women: 020 7251 6577
Open Tuesdays, Wednesdays and Thursday 2–4pm / 7–9pm: Friday, 12–2pm.
- Free Sexual Violence Legal Advice Line for women by women: 020 7251 8887
Open Mondays 11am-1pm and Tuesdays 10am-12pm.

Southall Black Sisters

www.southallblacksisters.org.uk/

Tel: 020 8571 9595

southallblacksisters@btconnect.com

Victim Support website

www.victimsupport.org.uk

Victim Support Witness Service leaflet, *Going to Court*

http://www.victimsupport.org.uk/vs_england_wales/coping_with_crime/criminal_justice_system/going_to_court_leaflet.pdf

Welsh Women's Aid / Domestic Abuse Helpline

Helpline : 808 8010 800

www.welshwomensaid.org

Welsh Women's Aid is the leading provider of services aimed specifically at helping vulnerable women and children who are experiencing domestic violence and abuse in Wales. Welsh Women's Aid is the national umbrella organisation with a membership of 35 local Women's Aid Groups situated throughout Wales

Women's Aid

www.womensaid.org.uk

This includes information on the helpline, refuges and contacts to order leaflets

Young people and vulnerable adults facing forced marriage. Practice guidance for social workers: <http://www.fco.gov.uk/Files/kfile/Forced%20Marriage%20Guidelines%20for%20social%20workers.pdf>