

## Injunctions - what to expect

If you have been experiencing domestic violence, you may have been advised by the police to 'get an injunction'. This paper tells you what an injunction is and how you set about obtaining one.

### What is an injunction?

An injunction is a restraining order, prohibiting someone from certain types of behaviour. It is ordered by the family court, to protect someone from being verbally or physically abused.

It can forbid the Respondent from

- Intimidating, harassing or threatening you or the children
- Using or threatening to use violence against you or the children
- Coming near you
- Coming near your house

### How do I get one?

At your first appointment with your solicitor, she will ask you for **details** of the abuse you have been experiencing, and advise you as to whether or not she thinks you have a case for an injunction. She will be looking for incidents which have occurred within the last six months, what you did about them, and how things are at the moment. She may ask you to go home and write down a history of dates and events so that they are clear.

She will also assess you for **legal aid**, so that you know whether or not you will have to pay for her advice and assistance. You will need to show her proof of income for this. You will be advised against trying for an injunction if the Respondent is in prison or on bail, because the legal aid people will be unlikely to grant you legal aid when you are already 'protected'. You will have to wait until the Respondent is in the clear.

If your solicitor gives you the go-ahead, she will create a **statement** for you, and you will be asked to check it carefully and swear it. She may also use any statement you made to the police. She will file the statements at court, and be given a hearing date. She will then serve all the papers on the Respondent. From this point on, the Respondent

knows you are seeking an injunction, but it is not yet in place to protect you. You need to think about this, and how much of a risk it poses.

### Court Hearings

If you are frightened that the Respondent will 'kick off' and harm you once he knows you have applied for an injunction, you can apply for an injunction without giving him any notice of your application. This involves going down to court with your solicitor and asking any available judge to hear your case and grant you the injunction on the spot. Your solicitor will advise you whether your case warrants an application 'without notice' like this. If it does, and the judge grants it, you will proceed to the next hearing with the protection of an injunction already in place

At the first full hearing the Judge will order the Respondent to file his own statement within, say fourteen days, and make any other directions he thinks necessary. This hearing will take about half an hour. You will be in court with the Respondent, though we can arrange separate waiting areas. You will not be asked to give any evidence at this hearing. The judge will set the date for the next hearing.

At the next hearing, the Respondent's barrister will cross-examine you, and your barrister will cross-examine the Respondent. The judge will decide on the evidence whether you ought to be granted an injunction and/or an occupation order. This hearing will take most of the day. You will be in court with the Respondent, though we can arrange separate waiting areas.

If you want to avoid cross-examination, you can agree to accept an **undertaking** from the Respondent without the evidence being heard. This is a solemn promise not to harm you. If the Respondent breaches his undertaking, you can take him back to court, but he cannot be arrested by the police. It is therefore slightly less effective, but avoids a day in court.

### How long does an injunction last?

An injunction is usually set to last six months or a year.

## What good does an injunction do?

A breach of an injunction is now an arrestable offence. So, once the injunction has been served on the Respondent, the police can arrest him if he threatens you or harms you.

An injunction does not of itself keep the Respondent away from you: it just gives the police the power to pick him up if he bothers you.

## Occupation Orders

An Injunction can be coupled with an Occupation Order, stating that

- You are entitled to occupy the house
- That the Respondent is required to vacate it or vacate part of it
- That the Respondent is not to come near the house
- That you are to be re-admitted to the house

An occupation order will require the Respondent to get out within, say, fourteen days, or a month.

Please note the following:

1. There is no transfer of legal title: it is simply an order requiring one party to leave and the other to re-enter.
2. You can apply if you and the Respondent are spouses, cohabitees, former spouses or former cohabitees, whether you personally have a legal right to occupation or not .
3. The court look at the following factors:
  - a. The housing needs and resources of the parties and the children
  - b. The parties' financial resources
  - c. The likely effect of on the parties of the court's decision not to make an order
  - d. The parties' conduct
4. The court must also apply the balance of harm test: Is the harm which you (or any child) is likely to suffer at the hands of the Respondent if the order is *not* made greater than the harm you are likely to suffer if the order *is* made?

## Legal Aid

The income limit is waived for victims of domestic violence. This means that you will qualify for legal aid, whatever your income, even if it exceeds the current gross cap (currently £2657 per month).

However, you might be required to pay a contribution from your income towards your costs.

£301 – 443	$\frac{1}{4}$ income over £296
£444 – 587	£36.75 + $\frac{1}{3}$ of income over £443
£588 +	£84.75 + $\frac{1}{2}$ income over £587

The gross capital limit (currently £8,000) is also waived, but contributions may be payable.

## Homelessness

1. One of the problems facing a separating couple is: who will be re-housed by the council? Two of the relevant criteria here are
  - a. intentionality
  - b. priority need.
2. If a couple simply separate, the one who leaves could be said to be intentionally homeless – unless there is DV of which she or he is a victim. There is a low threshold for DV to cancel intentionality: it should not be necessary for the victim to show a court order proving it before she is offered temporary accommodation.
3. If one of them has care of the child, they acquire priority need. Likely to be the mother. But not necessarily so. Increasingly, couples want to share residence 50/50: fathers give up work and go on to Income Support in order to be able to do so. Courts will accept a shared arrangement, provided the timetable is not too disruptive. How does the parent prove they have the care of the child? –receipt of child benefit OR letters between solicitors recording the agreement.