



INJUNCTIONS

If you have been the victim of violence, threats of violence or harassment, you may be able to apply to the Court for an order known as an injunction, to prevent another person from using or threatening violence against you or harassing you. There are different types of injunction which can be applied for and the choice will depend on the particular circumstances of your case and your relationship with the person against whom you wish to obtain an Order. The main types of available injunction are listed below:-

ORDERS UNDER THE FAMILY LAW ACT 1996 (Part IV)

You can apply for an order under Part IV of the Family Law Act 1996 if the person against whom you wish to obtain an order, “the Respondent”, is classed as an “associated person”. Associated persons who may apply to the Court for protection include husbands/wives; divorced couples; cohabitants; former cohabitants and a wide range of related persons who live or have in the past lived in the same household, and those who have agreed to marry. Where protection of a child is sought, associated persons include parents, both natural and adoptive and those persons who have parental responsibility.

NON-MOLESTATION ORDERS

Under Part IV of the Family Law Act 1996, a person who has suffered violence, threats of violence or significant harassment can apply to the Family Proceedings Court (Magistrates); the County Court or the High Court for a non-molestation Order. The choice of Court will depend on the complexity and relevant issues in the case. The non-molestation order would prohibit the Respondent from using or threatening violence against you (“the Applicant”) and/or any relevant child for whom protection is sought.

The Court would generally specify which particular acts are prohibited so that both parties can understand the terms of the order and enable it to be specifically enforced.

In most cases, the Court will require the application for an injunction to be made on notice (that is, by providing the Respondent with full details of the application made and the allegations made in support of that application). In exceptional circumstances, eg where there is evidence of a real and immediate risk of significant harm to the Applicant, it is possible to apply without notice to the other party. In addition, the Court might make a without notice order where there is reason to believe that the Respondent knows of the proceedings but has deliberately evaded service or where the Applicant may be deterred or prevented from pursuing the application. If a without notice application is made, then the first Hearing would be listed as a matter of urgency. If the application were successful and a without notice order was made, this would last for a very limited period and a further Hearing, on notice, would be listed to allow the Respondent to attend and make representations.

In certain cases, particularly where an Applicant has suffered actual bodily harm and the Court considers that she/he is likely to be subject to bodily harm again, the Court may attach a power of arrest to the non-molestation order. In appropriate cases, the Court can attach a power of arrest to a without notice order.

The non-molestation order may be varied on application by the Applicant, the Respondent or by the Court of its own volition, if the circumstances justify variation.

Occupation Order

Occupation Orders deal with individual rights of occupation of a property and can be made in terms which exclude the Respondent from all or part of the home and in some cases, an area surrounding the home. An occupation order can also be made to confirm that an Applicant has the right to live in the home. When deciding whether to grant an occupation order, the Court will consider all the circumstances of the case which will

include the need to secure the health, safety and welfare of the Applicant and any relevant child. As an occupation order can have very serious consequences for the Respondent, very stringent tests are applied. In extreme circumstances, it is possible for an occupation order to be made on a “without notice” basis and in appropriate cases, the Court can attach a power of arrest to an Occupation Order.

Protecting your Interest in Owner-Occupied Accommodation

In certain circumstances where the parties are or were living together in owner-occupied accommodation, it is possible to protect one party’s interests in that property by registering a notice against the title. This would have the effect of preventing the other party from selling or mortgaging the property.

Injunction under the Protection from Harassment Act 1997

This Act is unusual in that it allows for both civil proceedings and criminal proceedings to be brought. An application for an injunction can be made against a person who pursues a course of conduct, which amounts to harassment, against the Applicant. If the particular circumstances of the case justify, a criminal prosecution might be brought by the police and, in circumstances where there is extreme violence, then a first complaint should be made to the police. There is also a provision for damages to be awarded for anxiety caused by the harassment or any financial loss arising from it. An application for injunction under the Protection from Harassment Act 1997 is usually pursued through the county court.

An Application for an Injunction in Assault and Trespass Proceedings

Both the County Court and the High Court have the power to grant an injunction in respect of trespass to land, where there has been an assault and battery, or where the same has been threatened. These proceedings are rarely used nowadays and will generally be used only where a non-molestation order or injunction under the Protection from

Harassment Act 1997 is not available. The Court has no power to grant a power of arrest in such proceedings.

What Should I do if the Respondent Attempts to Contact Me?

Whether or not an Order has been made, if you feel you are at risk, you should immediately contact the police and ask for their assistance and contact your solicitor at the next available opportunity. Where an Order has been made with a power of arrest attached, your solicitor will lodge a copy of that Order with your local police force. If the Respondent continues to threaten, harass or use violence against you, you should contact the police to ensure your immediate protection and thereafter contact your solicitor at the first available opportunity when appropriate action may be taken. That may include applying to the Court for the Respondent's committal to prison for breach of the injunction or order.

Undertakings

Where an application has been made to the Court for an injunction or order, the Respondent may oppose the application, denying the allegations made, but may nevertheless agree to give an undertaking (a binding promise), to the Court not to behave in a certain way, eg an undertaking not to use or threaten violence or harass the Applicant. In doing so, the Respondent would not be admitting any of the conduct complained of. Applications for injunctions are frequently resolved by the giving of undertakings and will save the Court the time and expense of a fully contested Hearing. If the Respondent breached the terms of his undertaking he may be brought back before the Court and an application made for his committal to prison. However, a power of arrest may not be attached to an undertaking.

What Happens if I decide to Withdraw the Application?

If you decide to attempt a reconciliation with the Respondent, or for some other reason you decide not to pursue the matter, then you may withdraw your application for an injunction at any time before the final Order is made. If proceedings are withdrawn, then they would be at an end. You would no longer have the protection of the Court and in the event of your experiencing similar difficulties in the future, fresh proceedings must be commenced. For this reason, we would advise that you do not make a decision to withdraw proceedings without giving the matter very careful consideration. Where an Order has been granted, and you wish to effect or attempt a reconciliation, you should apply to the Court to vary or discharge the injunction order by consent. Should you decide to adopt this course of action, we will discuss the matter further and advise you fully at the appropriate time.

Naim Qureshi

Partner-Family Department

Child & Child

14 Grosvenor Crescent, London SW1X 7EE

Tel 020 7201 5599

The information in this article is intended for general guidance only. It provides useful information in a concise form and is not a substitute for obtaining legal advice. If you would like advice specific to your circumstances please contact us.