

GUIDE TO INJUNCTION CASES*

WHAT IS AN INJUNCTION?

Injunctions are orders made by the court to prevent someone from doing a certain act.

ARE THEY CALLED SOMETHING ELSE?

Yes they can be. Lawyers often refer to these orders as non-molestation or occupation orders. A non-molestation order prohibits a person from assaulting, threatening, harassing, pestering or communicating with another person. An occupation order prevents a person coming onto your property or once they have left from coming back onto the property. The order can also order the person to keep out of a zone around the property or keep off certain roads.

In some instances the Magistrates Court after criminal proceedings can make a Restraining Order. This order prevents a person committing certain acts and sometimes keeping them away from certain places.

WHO CAN APPLY FOR AN ORDER?

Any persons who are living within the same household, that usually means people who are married or who are living together, but it can also mean siblings or parents and children.

HOW DO I GET SUCH AN ORDER?

You need to make an application with a statement in support to explain why you need the court to protect you. If there is a real risk that the person who has assaulted you will react badly when they receive the papers then the court has power to make an order without the other person going to court on the first occasion. Once the court makes such an order the order has to be handed to the other person by a process server. In cases where it is safe to give the other person a copy of the application and statement beforehand then these are usually sent to court first and once a court date has been set, all the papers are then handed personally to the other person so that he/she knows when to attend.

WILL YOU HAVE TO SPEAK IN COURT?

At court it is rare for you to have to speak, but in some cases the Judge may want to ask some questions of you. If the Judge decides that you do need the courts protection the order is usually made for between 6-12 months. If the other person against whom you are seeking an order denies what you have said then the matter may have to be adjourned for a hearing where you will both get a chance to file statements and be asked questions.

HOW LONG DOES IT TAKE TO GET AN ORDER?

If a matter is really urgent we can usually make an application within 24 hours and the matter can be heard within 48 hours. If the application can be made with the other person knowing about it then we still make the application within 48 hours but it can take 7 – 14 days for the first hearing.

WHAT HAPPENS IF THE OTHER PERSON BREAKS THE ORDER?

If the Order is broken by the other side it is a criminal offence. You can call 999 for a serious 'breach'. The police will take a statement and arrest the offender just like when any crime is committed.

IS THERE LEGAL AID FOR THIS?

Yes this has always been the case and you DO NOT need a MARAC letter or other evidence to apply for legal aid. Legal aid is available as a matter of right for injunction cases. It is still means tested so we have to complete forms with bank statements attached. If you are working you may well have a contribution to pay on a monthly basis.

Before you can apply for legal aid we usually have to write to the other person and ask them to stop behaving the way they are. In addition if there is any harassment or assault then the matter must be reported to the police before applying for legal aid. This is always the case, unless the matter is very urgent and there is no time or it is unsafe to do this.

You can check whether you will qualify for legal aid on www.justice.gov.uk and following the links for legal aid.

CAN I STILL GET AN INJUNCTION IF I HAVE NOT BEEN ASSAULTED?

The definition of domestic violence has recently been widened to include abuse which is psychological, physical, sexual, financial or emotional. Abuse can also include controlling or coercive behaviour, these are defined widely.

WHAT SUPPORT IS THERE AVAILABLE FOR ME?

Womens Aid (or Hafan Cymru) are organizations that have counsellors and advisers who have many years of experience helping the victims of domestic abuse. They can signpost you to what sort of support is available to you if they cannot assist themselves. The police have a dedicated team who deal with domestic violence.

*this is not intended to be a definitive guide. Please always contact us for advice.