Guidance Non Molestation and Harassment Orders

**Guidance**

Where a court has made injunctions under the Family Law Act 1996 or The Protection from Harassment Act 1997 or where criminal sanctions have been imposed there may be an increased risk and this must be assessed at all stages of the assessment process. The assessor should consider

* The type of order in place
* The terms and conditions of the order
* Whether any breaches have already occurred
* Whether a breach may be of concern to the victim
* The current legal timetable for the order
* How the order may be protective in the current application
* How the order may impact on the application and potential child arrangements
* Any findings made by the court

The presence of an injunction order should be a factor to consider within your assessment as it may demonstrate a potential for increased risk. Any arrangements made for children either interim or final, should take into account all the risk and protective factors that exist.

**Civil Orders**

**There are two main types of injunctions available under Part IV of the Family Law Act 1996:**

* **A non-molestation order**
* **An occupation order**

A **non-molestation order** is aimed at preventing a partner or ex-partner from using or threatening violence against the victim or the child, or intimidating, harassing or pestering the victim.

An **occupation order** regulates who can live in the family home, and can also restrict an abuser from entering the surrounding area.

A breach of a non-molestation order is a criminal offence; however the civil court can still hear the matter where it is appropriate.

In circumstances of immediate danger, an application “without notice” (or Ex parte) can be made to the court without the perpetrator being given advance notice if the hearing

In order to apply for one of these orders the applicant must be an “associated person”. ie

* Previously married or engaged to be married
* Married or in a civil partnership
* Previously in a civil partnership or had agreed to form a civil partnership
* are or were living together (this includes same-sex and opposite-sex couples)
* live or have lived in the same household, for example as a flat share (but not as a tenant, border, lodger or employee)
* are relatives, including: parents, children, grandparents, grandchildren, siblings, uncles, aunts, nieces, nephews or first cousins (whether by blood, marriage, civil partnership or cohabitation)
* have a child together
* have or had parental responsibility for the same child
* are parties to the same family proceedings for the same child
* are or were in an intimate personal relationship of significant duration

If the alleged victim is not an associated person, and cannot make an application under the Family Law Act, they can make an application for an injunction under the Protection from Harassment Act 1997 (PHA) if there is evidence of harassment, threatening behaviour or stalking after a relationship has ended.

**Occupation orders** Applicants for an occupation order have to have a legal right to occupy the home and the respondent must be an associated person. The court will apply a “balance of harm” test when deciding whether to make the order.

**Criminal Orders**

**Harassment**

The term harassment is an act which 'causes alarm or distress and 'putting people in fear of violence' both of which are offences under the Protection from Harassment Act 1997. The term can include harassment by two or more defendants against an individual or harassment against more than one victim. It can include repeated attempts to impose unwanted communications and contact upon a victim in a manner that could be expected to cause distress or fear in any reasonable person.

The order can be used to prevent continued stalking and harassment by defendants, including those who are given sentences of imprisonment

<http://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/#a02a>

**Domestic Violence Prevention Orders Policy Background**

1. Domestic Violence Protection Orders (DVPOs) and Domestic Violence Protection Notices (DVPNs) were rolled out across all 43 police forces in England Wales from 8 March 2014. DVPOs are a new civil order power that fills a “gap” in providing protection to victims by enabling the police and magistrates courts to put in place protective measures in the immediate aftermath of a domestic violence incident where there is insufficient evidence to charge a perpetrator and provide protection to a victim via bail conditions.

2. A DVPN is an emergency non-molestation and eviction notice which can be issued by the police, when attending to a domestic abuse incident, to a perpetrator. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require in such a situation. Within 48 hours of the DVPN being served on the perpetrator, an application for a DVPO may then be made by the police to the magistrates’ court. A DVPO can prevent the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. This allows the victim a degree of breathing space to consider their options with the help of a support agency. Both the DVPN and DVPO contain a condition prohibiting the perpetrator from molesting the victim.

3. The introduction of DVPOs followed a review in 2009 led by Chief Constable Brian Moore (the then National Policing Lead for Violence and Public Protection) on serial perpetrators of domestic violence. The Domestic Violence Protection Notice (DVPN) and Domestic Violence Protection Order (DVPO) were introduced by sections 24-33 of the Crime and Security Act 2010. The relevant sections were commenced from 30 June 2011 for one year in three pilot areas – West Mercia Police, Wiltshire Police and Greater Manchester Police (GMP).

4. The pilot ended on 29 June 2012. It found DVPOs reduced re-victimisation compared to cases where arrest was followed by no further action – on average, one fewer additional incident of reported domestic violence per victim over an average follow-up period of just over a year. The reduction in re-victimisation was greater when DVPOs were used in cases where there had been three or more previous police attendances. The pilot also found that front-line practitioners and victims viewed DVPOs positively. An independent evaluation of the pilot can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/260897/horr7 6.pdf

**Domestic Violence Prevention Orders > Process**

DVPOs are based on a two-step process:

a. *First step* - on being called to an incident of domestic violence, if the police have reasonable grounds to believe the victim remains at risk of domestic violence, they can choose to issue an emergency non-molestation and eviction notice – the Domestic Violence Protection Notice (DVPN). A DVPN can be issued without the consent of the victim. Because the DVPN is a police-issued notice, it is effective from the time of issue, thereby giving the victim the immediate support they require in such a situation. The issuing of a DVPN requires police authorisation at superintendent rank or above.

b. *Second step* - within 48 hours of the DVPN being served on the perpetrator, an application to a magistrates’ court for a Domestic Violence Protection Order must then be made by the police and heard by the court. Sundays and public holidays are

excluded from this 48 hour time limit. The DVPN continues in effect until the court has reached a decision. If the court rules that the victim requires continued protection, they may issue a DVPO which can last for a minimum of 14 days to a maximum of 28 days. Breach of a DVPO would be dealt with under the provisions of the Magistrates’ Courts Act 1980, which applies to breach of any order of the court. The perpetrator could be committed to prison for up to two months or fined up to £5,000. Breach of a DVPO is a civil Contempt of Court, treated as a breach of a Civil Order under Section 63 of the Magistrates’ Courts Act. Section 57 (a) of the Act allows for the transfer of civil proceedings.

<https://www.app.college.police.uk/app-content/major-investigation-and-public-protection/domestic-abuse/arrest-and-other-positive-approaches/domestic-violence-protection-notices-and-domestic-violence-protection-orders/>