

A GUIDE TO DOMESTIC VIOLENCE AND THE LAW



It is estimated that domestic violence affects one in four women. If you are experiencing domestic violence there are a number of ways the law can protect you. This information sheet sets out your legal options but we understand that these may not be right for you. For alternatives to going to the Police or the courts please seek advice from the other domestic violence organisations whose details are in the 'Other useful telephone numbers' section at the end of this information sheet.

What is domestic violence?

There is no legal definition of domestic violence in the law of England and Wales. For the purposes of this information sheet, domestic violence means any violence or threat of violence that takes place in or outside the home between family, household members or partners in existing or previous relationships. It can include mental, emotional, financial, physical and sexual violence. This includes harassment, for example persistent letters, telephone calls, text messages or e-mails, and psychological or mental abuse.

Almost all domestic violence is directed by men against women, but it can and does occur in same-sex relationships, and in a small minority of cases, by women against men. Although we refer here to the abuser as 'he' we recognise that this is not always the case.

How can the law protect you?

The police can help

Call the police for emergency assistance. **Dial 999 or textphone 0800 112 999.**

They may offer you immediate help by attending your home.

They may arrest your abuser if:

- They know or suspect his involvement in committing a crime; and
- They have reasonable grounds for believing that his arrest is necessary.

They may impose bail conditions on him while they investigate the matter further. The conditions can include not contacting you or returning to your home.

For more information on reporting a crime to the police see our **Guide to Police Station Procedures**.

When the police have completed their investigation they will pass the information they have on to the Crown Prosecution Service (the CPS) who will decide whether he will be charged with a criminal offence or not. The CPS can only charge someone with an offence if they have enough evidence to provide a 'realistic prospect of conviction' and it is in the public interest. Once he is charged he will go before a court. The court can either remand him in custody until his trial or release him on bail. The Court can impose any bail condition on him that it thinks is necessary.

If the CPS decide not to charge him with an offence he may be cautioned (if he accepts responsibility for his behaviour) or no further action may be taken against him. A record of what happened will be kept by the police which may be helpful if you decide to get an injunction against him or you need help from the police in the future.

Depending on what offence(s) he has committed, under the **Protection From Harassment Act 1997 (PFHA)** the criminal court may make a restraining order against your abuser. Under the **Domestic Violence Crime and Victims Act 2004 (DVCVA)** the powers of the criminal court will be strengthened to enable them to impose a restraining order on your abuser even if he is found not guilty of committing an offence. Seek legal advice about whether this has become law and applies to you.

If you have experienced domestic violence you should receive an enhanced service from the police, CPS and other agencies involved in the criminal justice system.

This includes being informed within 24 hours if he is arrested, charged or released on bail. For more information about this see **The Code of Practice for Victims of Crime** published by the Office for Criminal Justice Reform (see below).

The police and CPS take domestic violence very seriously and they may take action against your abuser even if you do not want them to. If the case goes to trial the court can order you to attend and give evidence against your abuser. For many reasons, women decide they do not want to involve the police. See Other useful telephone numbers at the end of this information sheet for details of support organisations who may be able to help you decide what to do.

You can apply for an injunction from the Court

An injunction is a type of court order which forbids your abuser from doing certain things, such as being violent and abusive towards you, or orders him to do certain things, such as leave your home. If your abuser disobeys the order he can be punished by being fined or sent to prison.

There are two kinds of injunction available under the **Family Law Act 1996** – **non-molestation orders** and **occupation orders**.

You can only apply for these types of orders if you are '**associated**' to your abuser. You are associated to your abuser if you:

- are or were married or in a civil partnership;
- are or were living together as a couple (including same-sex couples);

- are or were engaged to be married or agreed to enter into a civil partnership;
- are or were living in the same household (this includes flat mates);
- are relatives (this includes half blood and step relatives, people who would be in-laws if you were married or in a civil partnership and now includes first cousins);
- are parents of the same child or involved in the same family court case.

The DVCVA will also create a new category of:

- are or were involved in an intimate relationship of significant duration.

Seek legal advice to find out whether this has become law and applies to you.

Before making your application we would strongly advise that you check whether you are legally ‘associated’ to your abuser. If you are not, you may be able to apply for a different kind of injunction under different legislation such as the PFHA.

A non-molestation order will protect you from violence or harassment. Your abuser does not have to have been physically violent towards you. It can:

- forbid your abuser from being violent towards you or any children in your family, from threatening violence or from harassing, pestering or intimidating you in many different ways;
- stop him from coming within a certain distance of your home;
- forbid him from damaging or disposing of your belongings.

You can apply for a non-molestation order even if you want to continue living with him.

When deciding whether to grant a non-molestation order the court will consider all of your circumstances, including the need to secure the health, safety and well being of you and any children. You therefore need to show the court how your health, safety or well-being or that of your children is at risk if you are not granted the order.

An occupation order deals with who lives in your home. There are different types of order that the court can make. It can:

- order your abuser to move out of the home or to stay away from the home;
- order him to stay a certain distance away from the home;
- order him to stay in certain parts of your home;
- order him to allow you back into the home if he has locked you out;
- order him to pay the mortgage, rent or bills for the home;
- order him not to damage or destroy the home.

The type of occupation order you can apply for depends on whether you or your abuser are legally entitled to occupy the property and on the type of relationship you have. Before making your application we would strongly advise you to seek legal advice.

To decide whether to grant an occupation order the court will consider things like the housing needs and resources of you, your

abuser and any children, the financial resources of you both, the likely effect any order, or not making an order, will have on you, your abuser and any children, you and your abuser's behaviour to one another and the length of your relationship.

The court can make both a non-molestation order and an occupation order if it is appropriate.

If the court is satisfied that your abuser has been violent or has threatened violence against you it can attach a **power of arrest** to your order. This means that if your abuser disobeys the order the Police can arrest him and bring him to court to be punished.

The DVCVA will make it a **criminal offence** to disobey a non-molestation order. This will mean that once it becomes law breaches of non-molestation orders will be dealt with in the criminal courts and not in the civil court. Seek legal advice to find out whether this has become law and applies to you. Breaches of occupation orders will continue to be dealt with in the civil court.

Court procedure

You will need to complete an application form FL401 and prepare a sworn statement giving details of your relationship, any relevant children, past history of violence and the most recent events which led you to make the application. You will also have to attend one or possibly more court hearings.

You can make your application in either your local **Family Proceedings Court** or **County Court**.

If you need an injunction urgently or are scared that your abuser will cause you further harm if he is aware you are going to court you can make your application **“without notice”** to him. This means that the court can consider your application without your abuser being present. The court will have to be persuaded that there are good reasons to make the order urgently. A supporting report from the police or your Doctor may help.

Your abuser must be handed the order personally together with a copy of your application and statement. **You are only protected once he is aware of the order.**

If you applied for and were granted your order without notice to your abuser the court is likely to organise another hearing to give him an opportunity to put his side of the story. You will have to attend this hearing and you may have to give evidence. The Court will consider all the evidence and decide whether to grant a further order or not.

Depending on the facts of your case and your financial circumstances you may be eligible for public funding (formerly Legal Aid). There are a number of conditions to applying for public funding, including considering whether your abuser should be sent a warning letter before you apply to the court (this will not be appropriate if you are at risk from further violence).

For women who are not eligible for public funding and cannot afford a solicitor we have produced the Domestic Violence DIY Injunction Handbook which gives a step-by-step

guide to making an application for a non-molestation and/or occupation order. To purchase a copy contact our admin line on 020 7251 6575/6576 or visit www.rightsofwomen.org.uk.

Other options

If you do not wish to involve the police or apply for an injunction or are unsure, there are many other organisations who can offer advice or support (see Other useful telephone numbers section below).

If you are forced to flee your home because of domestic violence you can approach your Local Authority's Homeless Persons Unit or Housing Office for help. Under the **Housing Act 1996** and the **Homelessness Act 2002** if you flee your home permanently or temporarily because of domestic violence your local authority

has a duty to provide you with temporary accommodation while they decide whether you are in priority need for further housing assistance. You will be considered to be in priority need if you are vulnerable because domestic violence has occurred.

You may be able to get temporary accommodation for you and your children in a refuge while you decide what to do next. Contact the National Domestic Violence helpline for information about refuges and other support services.

The law relating to domestic violence is complex and we have provided a very basic overview of terminology, law and court practice and procedure. We would strongly advise you to seek legal advice by either telephoning our legal advice line or contacting a solicitor.

Please note that the law referred to in this information sheet is as it stood at the date of publication. The law may have changed since then and accordingly you are advised to take up to date legal advice. Rights of Women cannot accept responsibility for any reliance placed on the legal information contained in this information sheet. This information sheet is designed to give general information only.

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For free confidential legal advice on family law including domestic violence, divorce and relationship breakdown, children and contact issues call the Rights of Women Advice line on 020 7251 6577 (telephone) or 020 7490 2562 (textphone).

Tuesday, Wednesday and Thursday 2pm – 4pm and 7pm – 9pm

Friday 12noon – 2pm

For free legal advice on sexual violence and the criminal law please call our Sexual Violence Advice line on 020 7251 8887 (telephone) or 020 7490 2562 (textphone).

Monday 11am – 1pm or Tuesday 10am – 12noon

Other useful telephone numbers

Asian Women's Resource Centre	020 8961 6549	www.asianwomenscentre.org.uk
Broken Rainbow (services for LGBT people experiencing domestic violence)	08452 604 460	www.brokenrainbow.org.uk
Chinese Information and Advice Centre Women's Support Project	020 7462 1281	www.ciac.co.uk
Community Legal Service Direct (for finding a family solicitor)	0845 345 4345	www.clsdirect.org.uk
Criminal Justice System for England and Wales (includes the Victims' Code and other useful information)		www.cjsonline.gov.uk
Jewish Women's Aid National Helpline	0800 591203	www.jwa.org.uk
Muslim Women's Helpline	020 8908 6715 020 8904 8193	www.mwhl.org
National Domestic Violence Helpline	0808 2000 247	www.womensaid.org.uk
NSPCC Child Protection Line	0808 800 5000	www.nspcc.org.uk
Relate	0845 130 40 10	www.relate.org.uk
Resolution (for finding a family solicitor)	08457 585 671	www.resolution.org.uk
Samaritans	08457 909090	www.samaritans.org.uk
Shelterline	0808 800 4444	www.shelter.org.uk
Southall Black Sisters	020 8571 9595	www.southallblacksisters.org.uk

Rights of Women, 52-54 Featherstone Street, London EC1Y 8RT

Office/Admin: 020 7251 6575/6 textphone: 020 7490 2562

Fax: 020 7490 5377

email: info@row.org.uk

website: www.rightsofwomen.org.uk

Industrial and Provident Society No: 23221R

