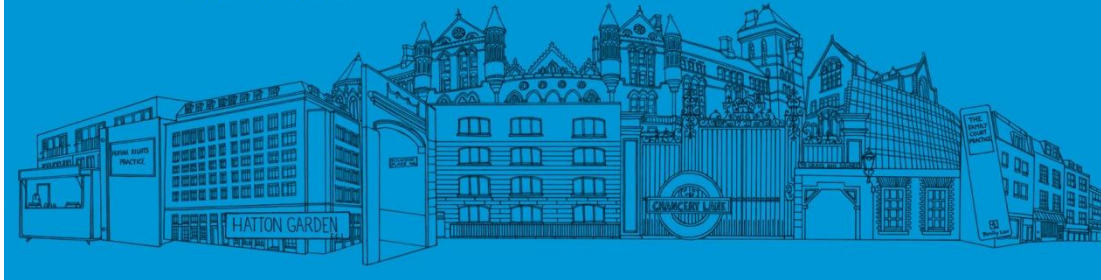


coram
chambers



LawWorks: Domestic Violence Training

Dr Bianca Jackson
Family Law Barrister
Coram Chambers

Definition of Domestic Violence and Abuse

The cross-government definition of domestic violence and abuse is: any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to:

- psychological
- physical
- sexual
- financial
- emotional

Controlling behaviour

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.

What does Domestic Violence/Abuse Look Like? (i)

Sexual violence: using force, threats or intimidation to make you perform sexual acts, having sex with you when you don't want to have sex, any degrading treatment based on your sexual orientation.

Physical violence: punching, slapping, hitting, biting, pinching, kicking, pulling hair out, pushing, shoving, burning, strangling.

Non-Physical Violence



What does Domestic Violence/Abuse Look Like? (ii)

Destructive criticism and verbal abuse: shouting/mocking/accusing/name calling/verbally threatening.

Pressure tactics: sulking, threatening to withhold money, disconnect the telephone, take the car away, commit suicide, take the children away, report you to welfare agencies unless you comply with his demands regarding bringing up the children, lying to your friends and family about you, telling you that you have no choice in any decisions.

Disrespect: persistently putting you down in front of other people, not listening or responding when you talk, interrupting your telephone calls, taking money from your purse without asking, refusing to help with childcare or housework.

Breaking trust: lying to you, withholding information from you, being jealous, having other relationships, breaking promises and shared agreements.

What does Domestic Violence/Abuse Look Like? (iii)

Isolation: monitoring or blocking your telephone calls, telling you where you can and cannot go, preventing you from seeing friends and relatives.

Harassment: following you, checking up on you, opening your mail, repeatedly checking to see who has telephoned you, embarrassing you in public.

Threats: making angry gestures, using physical size to intimidate, shouting you down, destroying your possessions, breaking things, punching walls, wielding a knife or a gun, threatening to kill or harm you and the children.

Walking on Eggshells



What Does Domestic Abuse Look Like in the LGBT community/communities?

- Threatening to “out” the person (to disclose their sexual orientation or gender identity without their consent);
- Criticising someone for not being a “real lesbian”, a “real gay,” or a “real bisexual” – or, in respect of transgendered men and women, not a “real man” or a “real woman”
- Playing on fears that no one will help them because the professionals, such as the police and judiciary are homophobic, biphobic, or transphobic.
- Isolating the person from the LGBT community.
- Emphasising that no one will help them because they deserve the abuse (by virtue of their sexuality or gender identity).

Signs of Domestic Abuse/Violence Specific to the Trans Community

- Deliberately mis-gendering the person.
- Physically assaulting surgically or medically altered body parts.
- Withholding money for transition (or other) health care, or withholding/destroying medication or hormones.
- Coercing the victim to get medical or surgical treatment to change his/her body back to what the abuser wants it to be.
- Targeting sexual or emotional abuse toward parts of the body that the victim may be ashamed of or detached from.
- Ridiculing the victim's gender identity by criticising his/her appearance, dress, voice quality and so on.
- Criticising the victim's sexual performance affected by hormones.
- Forcing the victim to expose scars.
- Refusing to use victim's preferred pronoun or name.
- Attacking the victim when he/she informs the perpetrator that he/she plans to transition.

Who are the Victims/Perpetrators of Domestic Violence?

Anyone can be the victim or perpetrator of domestic violence/abuse, regardless of gender, race, sexual orientation, religion, or (dis)ability.



Some Statistics

An estimated 1 in 4 women and 1 in 5 men experience domestic abuse/violence.

One incident of domestic violence is reported to the police every minute.

An estimated **4.6 million** women in England and Wales have experienced domestic abuse since the age of sixteen.

In England and Wales, **two women** on average are killed each week by their partner or ex-partner.

25% of the lesbian, gay, and bisexual community experience domestic abuse, which is the same rate of domestic abuse perpetrated against heterosexual women.

80% of the trans community experience domestic abuse.

Legal Remedies in the Family Courts

Part IV of the Family Law Act 1996 (“FLA 1996”):

- 1) **Non-Molestation Orders:** A **non-molestation order** is aimed at preventing the perpetrator from using or threatening violence against the victim (and/or his/her child), or intimidating, harassing or pestering the victim, in order to ensure the health, safety and well-being of him/her and his/her children.
- 1) **Occupation Orders:** An **occupation order** regulates who can live in the family home, and can also restrict the abuser from entering the surrounding area.

Who can apply for these orders?

S.62(3): Associated Persons

(3) For the purposes of this Part, a person is associated with another person if—

(a) they are or have been married to each other;

(aa) they are or have been civil partners of each other;

(b) they are cohabitants or former cohabitants;

(c) they live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder;

(d) they are relatives;

(e) they have agreed to marry one another (whether or not that agreement has been terminated);

(ea) they have or have had an intimate personal relationship with each other which is or was of significant duration;

(eza) they have entered into a civil partnership agreement (as defined by section 73 of the Civil Partnership Act 2004) (whether or not that agreement has been terminated);]

(f) in relation to any child, they are both persons falling within subsection (4); or

(g) they are parties to the same family proceedings (other than proceedings under this Part)

1) Non-Molestation Orders



Part IV, FLA 1996, s.42: Non-Molestation Orders

(1) In this Part a “non-molestation order” means an order containing either or both of the following provisions—

(a) provision prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent;

(b) provision prohibiting the respondent from molesting a relevant child.

(2) The court may make a non-molestation order—

(a) if an application for the order has been made (whether in other family proceedings or without any other family proceedings being instituted) by a person who is associated with the respondent; or

(b) if in any family proceedings to which the respondent is a party the court considers that the order should be made for the benefit of any other party to the proceedings or any relevant child even though no such application has been made.

What is “molestation”?

- “Molestation” is not defined in the statute.
- It has been considered to be synonymous with “pester”.
- Behaviour that falls under the definition of domestic abuse will constitute “molestation”.

Common Provisions in a Non-Molestation Order (1)

Non-Molestation Order – Applicant

The respondent, [YY], must not use or threaten violence against the applicant, [XX], and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent, [YY], must not intimidate, harass or pester the applicant, [XX], and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent, [YY], must not telephone, text, email or otherwise contact or attempt to contact the applicant, [XX], [except for the purpose of making arrangements for contact between the respondent and the children of the family] / [except through [his]/[her] solicitors [*insert name, address and telephone number*]].

The respondent, [YY], must not damage, attempt to damage or threaten to damage any property owned by or in the possession or control of the applicant, [XX], and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent, [YY], must not damage, attempt to damage or threaten to damage the property or contents of [the family home]/[insert property], and must not instruct, encourage or in any way suggest that any other person should do so.

Common Provisions in a Non-Molestation Order (2)

Non-Molestation Order - Zonal

The respondent, [YY], must not go to, enter or attempt to enter [the family home] / [*insert property*] / [any property where he knows or believes the applicant, [XX], to be living], and must not go [within [*insert*] metres of it] / [along the road(s) known as [*insert*]], except that the respondent may [go to the property [without entering it]] / [go along the road(s) known as [*insert*]] for the purpose of collecting the children of the family for, and returning them from, such contact with the children as may be agreed in writing between the applicant and the respondent or in default of agreement ordered by the court.

Common Provisions in a Non-Molestation Order (3)

The respondent, [YY], must not use or threaten violence against the child[ren] of the family, and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent, [YY], must not intimidate, harass or pester the child[ren] of the family, and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent, [YY], must not telephone, text, email or otherwise contact or attempt to contact the child[ren] of the family [except for such contact as may be agreed in writing between the applicant and the respondent or in default of agreement ordered by the court].

The respondent, [YY], must not [between the hours of 08:30 and 16:00] go to, enter or attempt to enter the school premises known as [*insert*], and must not go [within [*insert*] metres of it] / [along the road(s) known as [*insert*]], except [by prior written agreement with the applicant] / [by prior written invitation from the school authorities].

When Will the Court Make a Non-Molestation Order?

The criteria for the making of a non-molestation order are in s 42(5), namely 'all the circumstances including the need to secure the health, safety and well-being of the applicant or of any relevant child'. The following three principles should be considered when deciding whether to grant a non-molestation injunction:

- (a) there must be evidence of molestation (*C v C (Non-Molestation Order: Jurisdiction)* [\[1998\] 1 FLR 554](#), FD);
- (b) the applicant (or child) must need protection; and
- (c) the judge must be satisfied on the balance of probabilities that judicial intervention is required to control the behaviour which is the subject of the complaint (see for example *C v C* [\[2001\] EWCA Civ 1625](#)).

Expiry Date



Expiry Date

A non-molestation order must have an expiry date – it cannot go on indefinitely.

* Exception to this is where there is a history of expired injunctions and the court can direct the order “until further order”.

A non-molestation Order can be extended or discharged by application.

Breach of a Non-Molestation Order = Criminal Offence



Part IV, FLA 1996, s.42A: Offence of Breaching a Non-Molestation Order

- (1) A person who without reasonable excuse does anything that he is prohibited from doing by a non-molestation order is guilty of an offence.
- (2) In the case of a non-molestation order made by virtue of section 45(1), a person can be guilty of an offence under this section only in respect of conduct engaged in at a time when he was aware of the existence of the order.
- (3) Where a person is convicted of an offence under this section in respect of any conduct, that conduct is not punishable as a contempt of court.
- (4) A person cannot be convicted of an offence under this section in respect of any conduct which has been punished as a contempt of court.
- (5) A person guilty of an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both.

2) Occupation Orders



Gateways

s.33: “Home Rights”

s.35: One former spouse or former civil partner with no existing right to occupy.

s.36: One cohabitant or former cohabitant with no existing right to occupy.

S.37: Neither spouse or civil partner entitled to occupy.

s.38: Neither cohabitant or former cohabitant entitled to occupy.

s.33(1): Occupation orders where applicant has estate or interest etc. or has home rights

1) If—

(a) a person (“the person entitled”)—

(i) is entitled to occupy a dwelling-house by virtue of a beneficial estate or interest or contract or by virtue of any enactment giving him the right to remain in occupation, or

(ii) Has home rights in relation to a dwelling-house, and

(b) the dwelling-house—

(i) is or at any time has been the home of the person entitled and of another person with whom he is associated, or

(ii) was at any time intended by the person entitled and any such other person to be their home,

the person entitled may apply to the court for an order containing any of the provisions specified in subsections (3), (4) and (5).

[...]

Who has “home rights”? s.30: Rights concerning home where one spouse or civil partner has no estate, etc.

(1) This section applies if—

(a) one spouse or civil partner (“A”) is entitled to occupy a dwelling-house by virtue of—

(i) a beneficial estate or interest or contract; or

(ii) any enactment giving A the right to remain in occupation; and

(b) the other spouse or civil partner (“B”) is not so entitled.

(2) Subject to the provisions of this Part, B has the following rights (“home rights”)—

(a) if in occupation, a right not to be evicted or excluded from the dwelling-house or any part of it by A except with the leave of the court given by an order under section 33;

(b) if not in occupation, a right with the leave of the court so given to enter into and occupy the dwelling-house.

What Does an Occupation Order Do?

33(3) An order under this section may—

- (a) enforce the applicant's entitlement to remain in occupation as against the other person ("the respondent");
- (b) require the respondent to permit the applicant to enter and remain in the dwelling-house or part of the dwelling-house;
- (c) regulate the occupation of the dwelling-house by either or both parties;
- (d) if the respondent is entitled as mentioned in subsection (1)(a)(i), prohibit, suspend or restrict the exercise by him of his right to occupy the dwelling-house;
- (e) if the respondent has home rights in relation to the dwelling-house and the applicant is the other spouse or civil partner, restrict or terminate those rights;
- (f) require the respondent to leave the dwelling-house or part of the dwelling-house; or
- (g) exclude the respondent from a defined area in which the dwelling-house is included.

Criteria for the Making of an Occupation Order: General

33(6) In deciding whether to exercise its powers under subsection (3) and (if so) in what manner, the court shall have regard to all the circumstances including—

- (a) the housing needs and housing resources of each of the parties and of any relevant child;
- (b) the financial resources of each of the parties;
- (c) the likely effect of any order, or of any decision by the court not to exercise its powers under subsection (3), on the health, safety or well-being of the parties and of any relevant child; and
- (d) the conduct of the parties in relation to each other and otherwise.

Criteria for the Making of an Occupation Order: Balance of Harm Test

s.33(7) If it appears to the court that the applicant or any relevant child is likely to suffer significant harm attributable to conduct of the respondent if an order under this section containing one or more of the provisions mentioned in subsection (3) is not made, the court shall make the order unless it appears to it that—

(a) the respondent or any relevant child is likely to suffer significant harm if the order is made; and

(b) the harm likely to be suffered by the respondent or child in that event is as great as, or greater than, the harm attributable to conduct of the respondent which is likely to be suffered by the applicant or child if the order is not made.

(8) The court may exercise its powers under subsection (5) in any case where it considers that in all the circumstances it is just and reasonable to do so.

Part IV, FLA 1996, s.47: Breach of Order

47 Arrest for breach of order.

(2) If—

(a) the court makes an occupation order; and

(b) it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child,

it shall attach a power of arrest to one or more provisions of the order unless satisfied that in all the circumstances of the case the applicant or child will be adequately protected without such a power of arrest.

Non-Molestation Order (zonal provision) versus Occupation Order

A zonal provision in a non-molestation order is a “stay away” clause.

An occupation order is a “get out” order, requiring the perpetrator to leave the property.

The court can make both orders simultaneously.

What Happens in Practice?



Making an Application

Apply for an order

- Check if you're eligible to apply for a [non-molestation order](#) or an [occupation order](#).
- Download and fill in the [application form](#) [FL404] and make 2 copies.
- Write your witness statement telling the court what has happened and asking for the relevant order.
- At the bottom of the witness statement write a statement of truth. Use the following words: "I believe that the facts stated in this witness statement are true." Sign and date the statement of truth.
- Download and fill in [form C8](#) if you want to keep your address and telephone number private.
- Deliver or send all the documents to a [court which deals with domestic violence cases](#) – You need to make an appointment.

Cost of Making an Application

A policy decision has been made that no fee will be charged on an application for an occupation or non-molestation order from 22 April 2014 (Family Proceedings Fees (Amendment) Order 2014).



Part IV, FLA 1996, s.45: Ex Parte Orders

- (1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
- (2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including—
 - (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
 - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
 - (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved—
 - (i) where the court is a magistrates' court, in effecting service of proceedings; or
 - (ii) in any other case, in effecting substituted service.
- (3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.

Legal Aid

A person might be able to get legal aid if he/she has evidence that his/she or his/her children have been victims of domestic abuse or violence and he/she can't afford to pay legal costs.

He/she can ask for evidence from:

- the courts
- the police
- a multi-agency risk assessment conference (MARAC)
- social services
- a health professional, eg a doctor, nurse, midwife, psychologist or health visitor
- a refuge manager
- a domestic violence support service
- His/her bank, eg credit card accounts, loan documents and statements
- His/her employer, or education or training provider
- the provider of any benefits he/she has received.

A victim does not have to get evidence before talking to a legal aid solicitor, but they'll need to see it before deciding whether you can get legal aid.

Part IV, FLA 1996, s. 46: Undertakings

(1) In any case where the court has power to make an occupation order or non-molestation order, the court may accept an undertaking from any party to the proceedings.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) The court shall not accept an undertaking under subsection (1) [F1instead of making an occupation order] in any case where apart from this section a power of arrest would be attached to the order.

[F2(3A)The court shall not accept an undertaking under subsection (1) instead of making a non-molestation order in any case where it appears to the court that—

(a) the respondent has used or threatened violence against the applicant or a relevant child; and

(b) for the protection of the applicant or child it is necessary to make a non-molestation order so that any breach may be punishable under section 42A.]

(4) An undertaking given to a court under subsection (1) is enforceable as if [F3the court had made an occupation order or a non-molestation order in terms corresponding to those of the undertaking].

Helpful Resources

Government website:

<https://www.gov.uk/guidance/domestic-violence-and-abuse>

Women's Aid: <http://www.womensaid.org.uk/>

National Centre for Domestic Violence:

<http://www.ncdv.org.uk/>

Questions?



coram chambers

