



Cardiff

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Essential Legal Skills



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Nuts and bolts!

Clive Thomas





Make a difference in Cardiff

A discovery event for legal superheroes!



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Lawyers Care



Cardiff & District
Law Society

Kindly sponsored by : **Watkins & Gunn**





ATTENDANCE NOTE

Client Initials:	
Volunteers Attending:	
Date:	
Type of Matter(s):	
Who referred client: (Outreach Worker/Organisation)	

Details of meeting:

Total Time Spent: _____

Details of any Signposting _____

STATISTICAL INFORMATION:

Gender:

Male Female

Age:

17-24 25-34 35-49 50-64 65+

Disability:

Not considered disabled Mental health condition Learning disability/difficulty
Long-standing physical illness or health condition Mobility impairment

Housing Situation Prior to Homelessness:

Living with partner Living with parents Tenant Owned own home
Prison leaver Travelling Community

Reason For Homelessness:

Evicted Family/relationship breakdown Debt/arrears Release from prison
Unmet support needs other (please state)

Length of Time Since Lived In Permanent Stable Housing:

Months (please state) 1 – 4 years 5 – 9 years 10 – 14 years 15+ years





Cardiff
Lawyers Care

Advising at the Clinic

Jonathan Williams

Housing Law in Wales

Christopher Simmonds of Virgo Consultancy Services Ltd

Types of Tenancy

- The most common types of tenancy in Wales are:
 - Secure Tenancy
 - Assured Tenancy
 - Assured (Shorthold) Tenancy

Secure Tenancy

- Usually a tenancy between a Local Authority and a tenant.
- Most secure tenancies are granted for an indefinite period with the rent being paid on a periodic basis for example weekly or monthly.
- Usually begin as introductory tenancies with a 1 year probationary period
- Possession can only be granted when certain grounds are met.
- Grounds of Possession are set out in Schedule 2 of the Housing Act 1985

Secure Tenancy – Grounds of Possession

Grounds 1-8. Court may order possession if it considers it reasonable to do so.

- Ground 1 – Rent arrears or breach of other term of tenancy
- Ground 2 – Nuisance, annoyance or illegal activity
- Ground 2A – Domestic violence
- Ground 2ZA – Offence during a riot
- Ground 3 - Waste, neglect or causing deterioration of the dwelling

Secure Tenancy – Grounds of Possession

- Ground 4 – Ill treatment of furniture
- Ground 5 – False statement made in order to obtain tenancy
- Ground 6 – Premium taken on a S92 assignment of the tenancy
- Ground 7 – Conduct of tenant of an employment linked dwelling is such as to make continued occupation inappropriate
- Ground 8 – Possession of premises required while works are completed

Secure Tenancy – Grounds of Possession

Grounds 9-11 give the court power to grant possession if suitable alternative accommodation is available.

- Ground 9 – Overcrowding of the dwelling house
- Ground 10 – Demolition or reconstruction of the premises which requires the LL to have possession.
- Ground 10A – The dwelling is situated in an area subject to an approved redevelopment scheme.
- Ground 11 - Where continued occupation of the dwelling would conflict with the charity LL's objectives.

Secure Tenancy – Grounds of Possession

- **Grounds 12 – 16** -Where the court may make an order for possession if it considers it reasonable to do so and suitable alternative accommodation is available.
- Ground 12 - An employment related tenancy is required for a new employee
- Ground 13 – A specially designed dwelling house is required for a disabled person
- Ground 14 – The dwelling is required by a housing association or housing trust for a special needs person
- Ground 15 – The dwelling is required for a special needs person where a social service or special facility is provided in close proximity
- Ground 16 – under occupancy by a successor tenant who is not the spouse of the original tenant

Secure Tenancy – Mandatory Ground of Possession

- Relates to Anti Social Behaviour
- The court MUST grant possession when one of the following conditions are met:
 - Conviction of a serious offence
 - Breach of a Anti Social behaviour injunction
 - Breach of a closure order
 - A closure order has been made in relation to the property
 - Breach of an abatement notice in relation to noise nuisance
- Tenant is entitled to a right of review

Assured Tenancies

- An assured tenancy is usually held between a Housing Association and an occupier
 - Usually granted for an indefinite period on a periodic basis
 - Can begin with a year 'starter tenancy' which is an assured (shorthold) tenancy that converts into an assured tenancy after a year.
 - Can only be ended when certain grounds are met
 - Grounds for possession set out in Schedule 2 of the Housing Act 1988

Assured (Shorthold) Tenancies

- An assured (shorthold) tenancy is usually held between a private landlord and an occupier
 - Usually granted for a fixed term
 - Can be ended on a no fault basis as long as certain procedural requirements are made out (section 21 Housing Act 1988)
 - Can be ended when certain grounds are met
 - Grounds for possession set out in Schedule 2 of the Housing Act 1988

Assured and Assured
(Shorthold) Tenancies –
Grounds of Possession

Grounds 1-8 – Mandatory Grounds of Possession- The Court must grant possession if any of the following grounds are made out

- Ground 1 - Owner occupation (prior notice ground)
- Ground 2 - Repossession by lender (prior notice ground)
- Ground 3 - Out of season holiday let (prior notice ground)
- Ground 4 - Lets to students by educational institutions (prior notice ground)
- Ground 5 - Minister of religion (prior notice ground)
- Ground 6 - Redevelopment
- Ground 7 - Death of assured tenant
- Ground 7A - Antisocial behaviour
- Ground 7B - No right to rent
- Ground 8 - Serious rent arrears

Assured and Assured
(Shorthold) Tenancies –
Grounds of Possession

The court will only grant possession if any of the following grounds are made out and the court considers it reasonable to do so:

- Ground 9 – Suitable alternative accommodation
- Ground 10 – Rent arrears
- Ground 11 – Persistent delay in rent payments
- Ground 12 – Breach of tenancy obligation
- Ground 13 – Deterioration in the condition of the property or common parts
- Ground 14 – Nuisance, annoyance, illegal or immoral use of the property
- Ground 14A – Domestic violence
- Ground 14ZA – Offence during a riot
- Ground 15 – Deterioration of furniture
- Ground 16 – Employee of landlord
- Ground 17 – Recovery of possession where grant is induced by false statement

Assured and Assured (Shorthold) Tenancies – Notice Periods

- Standard Notice Periods
 - for grounds 1, 2, 5, 6, 7, 9 and 16 – the date specified must be at least two months after service (or a period equivalent to the contractual period of the tenancy, if longer)
 - for ground 14 – court proceedings for claims can start immediately. An NSP served under ground 14 must state that court proceedings may be started immediately and give a date when the landlord requires the tenant to leave the property^[14]
 - for all other grounds (except 7A) – the date specified must be at least two weeks after service.
- Coronavirus
 - From 29 September 2020, -6 months' notice except for grounds relating to anti social behaviour which have reverted to pre covid notice periods
 - between 26 March 2020 and 23 July 2020 –3 months notice
 - between 24 July 2020 and 28 September 2020 6 months notice except for grounds relating to ASB which is 3 months.

Section 21 Housing Act 1988

- Landlords must follow certain steps to evict assured shorthold tenants
- A landlord is able to use the 'section 21' or 'no fault' procedure to evict a tenant if they are a periodic assured shorthold tenant.
- To use the 'section 21' procedure, the landlord must serve a 'section 21 notice' which must:
 - be in writing
 - be at least 2 months long (or the amount of time between rent payments, whichever is longer).
- A landlord can give a section 21 notice at any time before the end of the fixed term but it can't end until the end of the fixed term. If the notice is served before the end of a fixed term, the period of the notice only has to be 2 calendar months, and doesn't have to end on the last day of a rental period.

Section 21 Housing Act 1988

- If their tenancy has been periodic from the start, and did not have an initial fixed term, the notice must also:
 - end on the last day of a rental period
 - state that it is by virtue of Section 21 of the Housing Act 1988.

CORONAVIURS

- between 26 March 2020 and 23 July 2020 – 3 months notice
- from 24 July 2020 -6 months notice

Section 21 Notice – Defences

- If landlord is not registered with Rent Smart Wales, or has either not obtained the proper licence, or appointed an agent who is licensed, any section 21 notice they give is invalid.
- If landlord has not protected a deposit with a tenancy deposit scheme and given certain prescribed information within 30 days then they cannot evict using the section 21 procedure.
- If landlord or agent has charged a banned letting fee and has not repaid it, or has failed to return a holding fee, they cannot serve a section 21 evict using the section 21 procedure.

Homelessness

- Homelessness in Wales is dealt with under the Housing (Wales) Act 2014
- Section 55 defines homeless as:
- A person is homeless if there is no accommodation available for the person's occupation, in the United Kingdom or elsewhere, which the person—
 - (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
 - (b) has an express or implied licence to occupy, or
 - (c) occupies as a residence by virtue of any enactment or rule of law giving the person the right to remain in occupation or restricting the right of another person to recover possession.
- A person is also homeless if the person has accommodation but—
 - (a) cannot secure entry to it, or
 - (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where the person is entitled or permitted both to place it and to reside in it.
- A person is not to be treated as having accommodation unless it is accommodation which it would be reasonable for the person to continue to occupy.
- A person is threatened with homelessness if it is likely that the person will become homeless within 56 days.

Section 73- Duty to help to Secure

- A local authority must help to secure that suitable accommodation is available for occupation by an applicant, if the authority is satisfied that the applicant is—
 - homeless, and
 - eligible for help.
- Once the local has decided that a person is eligible and homeless, it must take 'reasonable steps' to help them secure suitable accommodation.
- Examples of the reasonable steps a council could take are:
 - providing a grant or a loan to pay a tenancy deposit or rent in advance on a new home
 - helping them set a realistic budget so that they can afford to pay for somewhere new
 - helping them apply for accommodation with another organisation
 - helping them arrange or apply for private rented accommodation
 - if they are at risk of abuse, helping them find a safe home or refuge, and/or referring them for legal advice if needed
 - helping them with an application for a Discretionary Housing Payment or to the Discretionary Assistance Fund
 - providing them with a furniture pack for a new home.

Section 73- Circumstances when duty ends

- The Local Authority's duty under s73 will end in one of the following circumstances:
 - A period of 56 days has passed
 - The council is satisfied that it has taken all reasonable steps
 - The applicant finds suitable accommodation which is likely to be available to you for the next 6 months
 - The Applicant refuses an offer of suitable accommodation
 - The Applicant is no longer eligible
 - There has been a mistake of fact
 - The Applicant withdraws the application
 - The Applicant unreasonably fails to co-operate with the council

Emergency Accommodation

- A local authority must secure that suitable interim accommodation is available for an applicant and her/his household if it has reason to believe that the applicant may:[\[1\]](#)
 - be homeless
 - eligible for help, and
 - have a priority need for accommodation.
- Having 'reason to believe' is a lower test than 'being satisfied'. If the authority is in any doubt about whether or not the applicant meets any of these criteria, then it must accept an interim duty to accommodate pending completion of its enquiries

Section 75 – Duty to Secure Accommodation

- A local authority must secure that suitable accommodation is available for the applicant and her/his household, if satisfied that the applicant:
 - does not have suitable accommodation available for occupation for at least six months from the date that s/he received the notice of end of the 'help to secure' duty
 - is eligible for help
 - has a priority need for accommodation, and
 - is unintentionally homeless (but only where the authority is having regard to intentionality and for permitted categories of applicants), **or** (from 2 December 2019) is intentionally homeless but in a prescribed category of intentionally homeless applicants to whom the final duty is owed

Ending of the duty to secure

- The duty to help secure will end in one of the following circumstances:
 - Acceptance of suitable accommodation
 - Refusal of suitable temporary accommodation
 - Refusal of an offer for social housing
 - Refusal of private rented sector offer
- The final duty will also end if the applicant:
 - becomes homeless intentionally from suitable temporary accommodation
 - voluntarily ceases to occupy suitable temporary accommodation as her/his only or principal home
 - becomes ineligible for help
 - is notified that a mistake of fact led to the duty arising in the first place
 - withdraws the application
 - unreasonably fails to co-operate with the authority

Reviews of Decisions

- An applicant has the right to request a review of the following decisions—
 - a decision of a local housing authority as to the applicant's eligibility for help;
 - a decision of a local housing authority that a duty is not owed to the applicant under section 66, 68, 73, or 75
 - a decision of a local housing authority that a duty owed to the applicant under section 66, 68, 73, or 75 has come to an end
- A request for review must be made before the end of the period of 21 days
- The decision will then be reviewed by the Local Authority

Appeals

An applicant who has requested a review under may appeal to the county court on any point of law arising from the decision or, as the case may be, the original decision or a question as to whether reasonable steps were taken if the applicant—

- is dissatisfied with the decision on the review, or
- is not notified of the decision on the review within 56 days

An appeal must be brought within 21 days of the applicant being notified of the decision or, as the case may be, of the date on which the applicant should have been notified of a decision on review.

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Homelessness Legal Advice Clinic

Family Matters



Family Matters

Private

- ▶ Divorce & Financial (Not discussed today)
- ▶ Separation (Not discussed today)
- ▶ Children
- ▶ Domestic violence (Leah)

Public

- ▶ Social services involvement

Private Family Matters

- ▶ Legal Aid only available to victims of domestic abuse
- ▶ Strict evidential proof required
 - The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 – Evidence Requirements for Private Law Family Matters
- ▶ Two gateways to be aware of:–
 - DV
 - Financial (means tested)

NB:– Exemption to DV proof if seeking advice in respect of DV itself e.g. warning off letter or Non-Molestation Order. Financial gateway still applies.

Merits test will also apply if seeking a legal aid certificate but this will be a matter for the solicitor, not the clinic.

DV Gateway – Examples

- ▶ Letter or report from GP or relevant health professional
 - ▶ Letter from domestic violence organisation
 - ▶ Bail conditions
 - ▶ Caution
 - ▶ Conviction
 - ▶ Restraining Order/Non-molestation Order
 - ▶ MARAC meeting and plan put in place to protect victim
 - ▶ Child abuse
- ▶ NB:– Not enough to be a victim, have to be able to prove it. A lot of people unfortunately fall short of this.

Financial Gateway

▶ Key Card 56

- No more than £100,00 in equity in property
- Less than £8,000 in savings
- Gross income not to exceed £2,657 per month
- Less than £733 disposable income (after allowable deductions)

▶ Passporting Benefit

- Automatically eligible
- Most common is Universal Credit
- Other examples include Income Support, Income Based Job Seekers Allowance, Income Related Employment and Support Allowance

- NB:– Likely most people experiencing homelessness will pass the financial gateway – domestic violence gateway likely to be the barrier to legal aid.

Children

► Advice

- All parents entitled to a relationship with their child(ren) as long as welfare of child requires it. See Welfare Checklist at Section 1 Children Act 1989. The Court shall have regard in particular to:-

a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) his physical, emotional and educational needs;

(c) the likely effect on him of any change in his circumstances;

(d) his age, sex, background and any characteristics of his which the court considers relevant;

(e) any harm which he has suffered or is at risk of suffering;

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) the range of powers available to the court under this Act in the proceedings in question.

- Mothers automatically have parental responsibility. Father's will if named on the birth certificate, married to the mother at time of the child's birth or subsequent marriage, by way of a parental responsibility agreement or parental responsibility order. Lack of parental responsibility does not prohibit contact.

Children continued...

▶ Process

- Court should be a last resort
- First step is to try reach agreement where possible with mother of the child(ren)
WARNING:– Bail conditions/Protective Injunction
- Mediation
DV exemption
- Application to Court for a Child Arrangements Order

NB:– Risks associated with homelessness will be considered such as poor mental health, substance misuse, criminal behavior/history, domestic violence but contact may still be directed by the Court if those risks can be managed. This could potentially be through supervised contact in a contact centre or supervised by a third party (e.g. family member).

Children continued...

▶ Form C100

- Application for “Child Arrangements Order – Contact” and if father does not have parental responsibility can also state on form that seeking an order for this at the same time.

▶ Form C2

- Should also be completed where father does not have parental responsibility

▶ Fee Remission Form

- Discount or full exemption on Court Fee – currently set at £215
- Will need to attach financial proof e.g. bank statements unless on a Passporting Benefit

Social Services Involvement

Automatically eligible for Legal Aid if the homeless person is a parent or someone with parental responsibility for the child for the following:-

- ▶ Public Law Outline Meeting (PLO)
- ▶ Care Proceedings (Application for a Care Order made by a Local Authority)

INFORM MEMBER OF THE WALLICH SO REFERRAL CAN BE MADE TO A SOLICITOR

Social Services Involvement continued...

There are other forms of social services involvement where the client may or may not be entitled to legal aid such as:-

- ▶ Contact with a Child in Foster Care
 - ▶ Discharge of a Care Order

Legal Aid is not available for a Child Protection Conference but we may still be able to provide some initial advice free of charge.

INFORM MEMBER OF THE WALLICH SO REFERRAL CAN BE MADE TO A SOLICITOR

Watkins & Gunn

Homelessness Legal Advice Clinic

Family Matters – DOMESTIC ABUSE & RESTRAINING ORDERS

HOW TO ADVISE...

➤ VICTIM

(person who has fled domestic violence, leaving a family home, or fleeing a perpetrator)

➤ ALLEGED PERPETRATOR

(person who has been ordered to leave family home / stay away from victim by way of Court order, via police advice, police action)

THE VICTIM

Who is affected by domestic violence?

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.

This legal guide is designed to give information about –

- ▶ support available
- ▶ the protection available to a victim –
 - i. police
 - ii. through the Family Court.

SUPPORT AVAILABLE

- ▶ **Refuges** – Provide emergency temporary accommodation for women and children fleeing abuse. They are safe and confidential. Refuges give women time and space to make decisions about their future, and usually provide wrap-around support from specialist staff.
- ▶ **Outreach support** – Based in the community, outreach workers provide women with a range of practical and emotional support. They can usually meet you wherever is safest and more convenient for you.
- ▶ **IDVAs** – Independent Domestic Violence Advocates provide expert guidance for women, particularly those going through the civil and criminal justice systems. If your case is referred to a 'MARAC', it will likely be an IDVA who supports you.
 - ▶ **Services for minoritised women** – Black and minoritised women may face additional barriers to accessing support, or have specific needs best met by women from within their community.
 - ▶ **Services for men**



Llinell Gymorth Live Fear
Byw Heb Ofn Free Helpline

0808 80 10 800

ffôn • tecst • sgwrsio byw • ebost
call • text • live chat • email

WOMENS
AID

<https://www.welshwomensaid.org.uk/>

Help for men

- ▶ <http://www.saferwales.com/domestic-abuse>
- ▶ Call the **Dyn Wales Helpline** for support and advice on **0808 801 0321** (open Monday to Friday 9am–5pm)
- ▶ For 24-hour support, call the **Live Fear Free Helpline** on **0808 80 10 800**

BAWSO

Bawso is an all Wales, Welsh Government Accredited Support Provider, delivering specialist services through their projects which support over 4,000 people every year in Wales. They provide support, advice and information from offices in Cardiff, Merthyr Tydfil, Newport, Swansea and Wrexham. Their service delivery projects include:

Women

Refuge

Safe House

Floating Support

Outreach & Resettlement

Human Trafficking- Diogel Project

Female Genital Mutilation

IRIS (Identification and Referral to Improve Safety)

Children and Young People

Men

Partnership Services

Housing Support for BME Families

Support can be accessed through self referrals by contacting Bawso directly, through any other person or referral from other professionals. To apply or make a referral please contact the 24 hour helpline: **08007318147** or contact our [Regional Offices](#).

24Hr Helpline 0800-731 8147

Watkins & Gunn

- ▶ Our Family team are here to help anyone who is experiencing domestic violence and we encourage those who are living in fear to come forward.
- ▶ Our experienced Family Solicitors can help stop the abuse.
- ▶ We can assist you from our offices in Cardiff, Newport, Pontypool in South Wales.
- ▶ Also we have adapted all of our systems and invested in technology to enable us to assist you remotely – we can take instructions from you by video call or telephone; you can sign forms or letters digitally; we can even verify ID remotely.
- ▶ We offer the following legal support and services to help people who are experiencing difficulties in their relationships:
 - ▶ *‘Warning off’ letter Order
 - ▶ *Non-molestation order
 - ▶ *Protection from Harassment
 - ▶ *Occupation
- ▶ Domestic Violence Legal Clinic
- ▶ We are offering 30-minute free consultations to discuss things further and to provide advice and support to victims.
- ▶ Victims of domestic abuse may also be eligible for Legal Aid, provided they meet the eligibility criteria, which will then help cover some or all legal costs. [Natalie will touch on this]
- ▶ We offer a free 30-minute free consultations at our Domestic Violence Clinic.
- ▶ If you are not eligible for Legal Aid we have a competitive costs structure and flexible payment options which we will clearly explain to you from the start and at regular stages throughout your case. We also have a range of fixed price options in appropriate cases, including unbundled (clear and separate) services for discrete pieces of work.
- ▶ Contact Us
- ▶ Call 01495 768938
- ▶ E-mail family@watkinsandgunn.co.uk
- ▶ Text “LEGAL 55” to 67777

Non Molestation and Occupation Orders

There are two types of injunction you can apply for in the Family Court to protect yourself from domestic violence:

1. an occupation order to exclude someone from your home, and
2. a non-molestation order to prevent someone from being violent, threatening violence, harassing or intimidating you

The screenshot shows a mobile browser view of the FL401 application form. The address bar displays 'assets.publishing.service.gov.uk'. The form title is 'Application for: a non-molestation order or an occupation order'. It includes a table for court details, a note about serving documents, and sections for 'About you (the applicant)', 'About the respondent', and 'The Order(s) for which you are applying'. The 'About you' section includes a field for the solicitor's fee account number. The 'About the respondent' section asks for name, address, and date of birth. The 'The Order(s)' section has checkboxes for 'a non-molestation order', 'an occupation order', and a box for 'without notice'. The footer contains the form number 'FL401 Application for a non-molestation order or an occupation order (04/17)' and the copyright notice '© Crown copyright 2017'.

Procedure

- ▶ You can make an application for a non molestation order and/or an occupation order at the Family Court.
- ▶ The application form is a FL401 which is available from any court or to download from the Ministry of Justice's website. [see left]
- ▶ There is no court fee for applying for a domestic violence injunction.
- ▶ Need to prepare a witness statement giving details of relationship, any relevant children, past history of violence and the events etc.
- ▶ If an urgent injunction is necessary it can be made without notice to him perpetrator.
- ▶ This means that the court can consider an application without your abuser being present. The court will have to be persuaded that there are good reasons to make the order urgently
- ▶ If granted an order without notice to the abuser the court is likely to organise another hearing to give him an opportunity to put forward his side of the story.

FUNDING

Funding for domestic violence injunctions

The application for a domestic violence injunction at the family court is free.

You may be eligible for legal aid to cover the cost of your lawyer, if you meet the financial criteria (the means test) and the test for whether it is reasonable to provide legal aid for your case (the merits test).

If you cannot access a solicitor or barrister then you can make the applications yourself, without a lawyer.

You can take a McKenzie Friend with you to court.

▶ Serving the orders

Order has to be served on abuser.

This means giving him a copy and it should be done using a process server or through the court, by the court bailiff.

A process server is a person whose job it is to serve documents on people and they will charge a fee.

The respondent must know there is an injunction in place to be responsible for breaching any part of it. You are only protected once he is aware of the order. A copy of the order should also be sent to your local police station.

▶ What if the injunction is ignored or not followed by my abuser?


If your abuser breaches the injunction you will need to enforce the injunction. This means asking the courts to take further action. The process for enforcing the order varies, depending on whether you have a non-molestation order or an occupation order. If there is a penal notice attached, the police can take action for breach.

ALLEGED PERPETRATOR

▶ RESTRAINING ORDERS

- ▶ This is a criminal matter.
- ▶ **Section 5 of the Protection from Harassment Act 1997** enables the Court to impose restraining orders following a conviction for any criminal offence when it is considered necessary to protect a person from conduct which amounts to harassment or which will cause fear of violence.
- ▶ **Section 5(4) of the PHA 1997** permits a prosecutor, defendant or any other person named in the restraining order to apply to the original court for the order to be varied or discharged.
- ▶ If a defendant is seeking to vary or discharge a restraining order, a criminal defence solicitor can do this on their behalf. An application must be made in writing and sent to the relevant sentencing court and the CPS, in particular requesting the CPS to provide the original file under which the order was made at court.
- ▶ The application should explain, by way of a witness statement from the defendant and other requisite witnesses, what material circumstances have changed since the restraining order was made and why the restraining order should be varied or revoked as a result. It is the role of the defence solicitor to satisfy the court that the order is no longer necessary in its current form, or in its totality.
- ▶ ***Referral will need to be made to a Criminal Solicitor.***


Respondent to Non Molestation and Occupation Orders

- ▶ When a person makes an application for a non-molestation order, they are entitled to make that application without telling the person, against whom the order is sought.
 - ▶ This is because there are some cases where a person would seek to prevent another from even making the application at all, and so without notice orders are designed to protect against such scenarios.
 - ▶ Should the court grant the order, it only becomes effective once the person whom it is made against is made aware of it (typically by personal service, but this is not compulsory).
- 

Respondent to Non Molestation and Occupation Orders cont...

- ▶ non-molestation orders and occupation orders require some careful thought and consideration when responding to them.

THINGS TO CONSIDER...

- ▶ When is the next court hearing?
 - ▶ What is challenging the order actually going to achieve?
 - ▶ Get early legal advice.
 - ▶ Gather your evidence.
 - ▶ Remember to adhere to the terms of the order.
- 

Things to consider

A. When is the next court hearing?

- ▶ There has to be a hearing within 14 days of the order being made, on a specified date.
- ▶ This of course enables a person responding to the application to attend at court and put their case, without the onus being on them to actually request a court date is listed.
- ▶ It is important for a respondent to attend at the next hearing, not only so the court is clear of their position, but also because the court is permitted to make orders even in their absence.

B. What is challenging the order actually going to achieve?

- ▶ A respondent should always consider what challenging the order is actually going to gain.
- ▶ If a person opposes the order and succeeds in proving the applicant wrong, it isn't like you see on the television and everyone is suddenly aware that the ex-partner has now been branded a liar, with the respondent being able to hold their head up high.
- ▶ What it does do is create further animosity between the parties (which can be particularly unhelpful if there are children involved), as well as adding pressures of both time and money.
- ▶ Instead, a respondent can either not oppose the order or agree to undertakings (which is a promise to the court not to do things) on the basis that they do not accept the allegations that have been made against them – this avoids the need for a contest, shows the court you are not simply in it to prove the applicant a liar, and inevitably is only preventing a person from what they should not be doing anyway (i.e. assaulting the applicant).

Things to consider

▶ C. Get early legal advice.

- ▶ Many respondents will tend to attend the hearing, only to tell the Judge that they would like an adjournment to see a legal professional.
- ▶ At that point, the case will end up having a minimum of three hearings before one can see any real progress being made.
- ▶ Legal aid no longer available as a respondent to these types of applications.
- ▶ Worthwhile investment to obtain legal advice, even if that is limited to a conference as to what approach to take at a forthcoming hearing.
- ▶ We can offer a person invaluable guidance as to how to respond to such applications, and that person will inevitably have a solid insight into the law, as well as an understanding of the particular practices of that court

▶ D) Gather your evidence.


- ▶ If agreeing to an order/undertakings on the basis you do not accept the allegations is not an option, give careful consideration to the evidence that you need to help support your case.
- ▶ The applicant will have their own statement, but may also have witnesses, medical and police evidence – what do you have to rebut their allegations?
- ▶ The court approaches these cases on the understanding that it is for the applicant to prove their case on the balance of probabilities (i.e. 51%) – if you are unable to get any independent evidence to support your case, it is likely that this will make it all the more difficult to successfully oppose the application.

Things to consider...

E) Adhere to the terms of the order.

- ▶ Before the court hears your initial position (and possibly after if the case is being listed to entertain a fully contested hearing), then the order will usually remain in place.
- ▶ This will specify terms, typically that you must not contact the applicant/attend at their house etc.
- ▶ It is vital that these terms are adhered to for the life of the order, firstly because it will make an incredibly poor impression on the court if not, but also because breach of an order is a criminal offence and one could therefore find themselves arrested/with a conviction simply for ignoring the order.
- ▶ **Courts take these matters very seriously and, irrespective of whether the order is justified, whilst it exists, it must be adhered to.**

Statement for the Court

- ▶ Remember – it is easy to get caught up in the emotional aspects of the case, particularly if the Respondent feel that the applicant is lying or presenting evidence that has been taken completely out of context.
 - ▶ Usually for a return hearing, the Respondent will have the opportunity to prepare a Statement in support of their opposition.
 - ▶ If a Respondent cannot afford a Solicitor then you could offer support in preparing the statement.
 - ▶ A statement will need to set out the person's version of events and providing evidence, for example, texts, emails, bank statements and anything else that backs up their side of the story.
- 

Can you see your children if there is a Non-Molestation Order?

- ▶ A Non-Molestation Order does not automatically mean you cannot see your children. However, the nature of such Orders often makes contact arrangements more difficult. For example, if you are not allowed to approach your former partner and the children primarily live with them, picking up or dropping off your children can become challenging.
- ▶ This would need to be navigated carefully at a hearing.
- ▶ The court will never allow a Respondent to be deprived of contact to their children unless it is in their best interests (and typically, it is considered best for a child to have healthy, regular contact with both parents).
- ▶ We can also help you apply for a range of court orders to help you sort out arrangements for children if your former partner will not cooperate, such as Child Arrangements Orders and Specific Issue Orders. [Natalie will touch on this].

Thank you for listening and we hope you enjoy the
experience.

Watkins & Gunn

Criminal Law

How to help people get the advice they need

Sarah Grace – Hutton's Law

Access to Justice needs affecting homeless people

- There are shocking statistics demonstrating the dire effect on conviction and re-conviction rates of people experiencing homelessness. In 2019, the Ministry of Justice published figures which show that two thirds of ex-prisoners who are homeless re-offend within one year. Stable accommodation and employment are the two main protective factors in keeping individuals out of the criminal justice system.

Advice Needs

- When accused of a criminal offence, people may seek advice at various stages of the process.
- A criminal allegation commences with an investigation by the police
- Depending on the nature of the allegation a decision whether or not to charge is made either by the police or the Crown Prosecution Service
- Depending on the circumstances an offence may be dealt with by means of an out of court disposal at the police station stage
- If a charging decision is made all cases start in the Magistrates Court
- Some offences proceed to the Crown Court

Funding at the Police Station

- Access to legal advice at the police station is non-means tested for everyone
- A person can request a specific firm or solicitor with a Criminal Contract
- A person can request to be represented by the Duty Solicitor. The Duty Solicitor rota consists of members of local firms and is completely independent of the police
- Free and independent legal advice is available 24/7/365
- No matter how minor the allegation anyone interviewed under caution as volunteer or under arrest is entitled to free representation.

Funding at Court

- Means testing applies in both Magistrates and Crown Courts
- A person on a passported benefit will automatically qualify for means
- A person in receipt of less than £12,475 will qualify for means in the Magistrates Court
- A person with less than £37,500 will qualify for means in the Crown Court
- In all cases, any application must pass an Interests of Justice test
- A Court Duty Solicitor is available to deal with imprisonable matters on one occasion only

Interests of Justice Test and Sentencing Guidelines

- The interests of Justice test is linked to the potential for loss of liberty or whether there are any issues of law which would justify publicly funded representation.
- The Magistrates Court Sentencing Guidelines are available online:
[Sentencing Guidelines for use in Magistrates' Courts – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/sentencing-guidelines-for-use-in-magistrates-courts)
- The Guidelines assist in identifying aggravating and mitigating features which make it more or less likely that a person may be at risk of custody or some other restriction on their liberty

Issues of Law

- Common examples include:
- Self-defence/ defence of another
- Lack of dishonesty
- Alibi
- Challenge to forensic evidence
- Consent

Issues affecting the individual

- Literacy and numeracy
- Mental Health
- Language
- Connection to the Complainant

Sentence Issues

- People on Community/ Suspended Sentence Orders imposed by the court are supervised by the Probation Service
- A recurring factor in the breakdown of an Order is homelessness
- The Probation Service is best placed to help a person if they are kept informed of emerging issues
- The Probation Service can issue Breach Proceedings to ask for a case to come back to court and a different sentence be imposed, most frequently custody
- Legal Aid is available for Breach cases subject to means and the Interests of Justice test

Conclusion

- This is a brief overview of how a person facing an allegation can access legal advice
- In most cases a person experiencing homelessness will qualify for court representation on means subject to the interests of justice test
- The Magistrates Court Sentencing Guidelines will assist you with a triaging exercise
- Firms with a Criminal Contract are happy to receive a referral even if at short notice
- The Duty Solicitor is available at both the Police Station and at Court



Cardiff

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