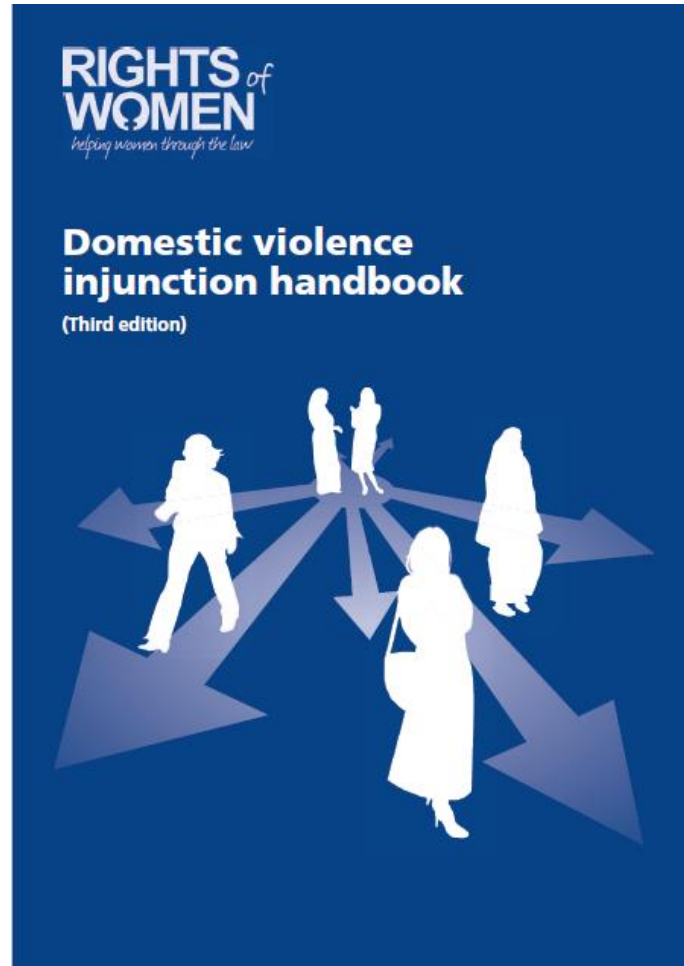
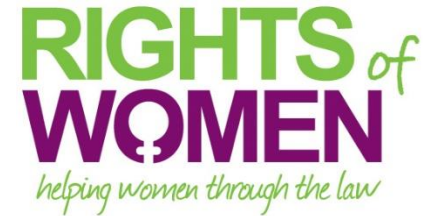


Domestic Violence Injunctions Handbook

RIGHTS of
WOMEN
helping women through the law



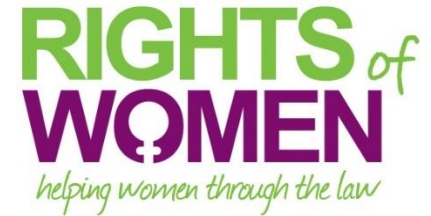
Rights of Women



Rights of Women is committed to securing **justice, equality and safety in the law for all women** by

- offering free confidential legal advice to women on our advice lines on **family law, criminal law and immigration and asylum law**
- FLOWS discussion forum
- WoMan network
- publishing legal guides and handbooks on women's rights
- lobbying and campaigning to improve law and policy for women

Domestic violence injunctions handbook



- Protection that may be available if domestic violence is reported to the police
- Law in relation to non-molestation orders and occupation orders
- Preparing and making an application
- Preparing for the hearing and representing yourself in court
- Enforcing the injunction
- Information on harassment injunctions, forced marriage protection orders, female genital mutilation orders
- Example documents and helpful tips to guide women without lawyers through the application process

Available to order online: www.row.org.uk/getinformation

Domestic violence: P6

1.4 What is domestic violence?

There is no legal definition of domestic violence in the law of England and Wales. The United Kingdom government defines domestic violence as:

“Any incident or pattern of incidents of controlling, coercive or 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. This can encompass but is not limited to the following types of abuse:

- *Psychological abuse*
- *Physical abuse*
- *Sexual abuse*
- *Financial abuse*
- *Emotional abuse*

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 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.

This definition, which is not a legal definition, includes so called ‘honour’ based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group.”

Criminal, civil and family justice: P6

Example: Demi and Gus live together and have 2 children. Demi wants Gus to leave the family home so she and the children can live in the home safely. Demi can:

- Report the violence to the police. The police may charge him with a criminal offence and he will be taken to the criminal court. If he is found guilty he may be sent to prison or be punished in another way
- She could also make an application herself to the Family Court for an injunction forbidding Gus from being violent towards her and forcing him to leave the home and not return. She would need to prepare forms and statements and go to court to get the injunctions

Chapter 2 Reporting an offence to the police

- How to report to the police and what happens after she reports
- Protections that might be available
 - Arrest
 - Bail conditions (note since the handbook was published rules on bail conditions have changed)
 - Cautions
 - Restraining orders

What do we mean by “injunction”?

Any order that prevents or prohibits behaviour.

Criminal justice injunctions:

- Restraining orders
- Domestic violence protection notices/orders

Family law injunctions:

- **Non-molestation orders**
- **Occupation orders**
- Forced marriage protection orders
- Female genital mutilation protection orders
- Harassment injunctions

Chapter 4:

Non-molestation orders

Non-Molestation order:

an order which forbids the respondent from molesting the applicant

May include:

- Not to molest the applicant.
- Not to be violent, threaten violence, harass, intimidate or pester the applicant or **any relevant children (p.15)**
- Not to damage or threaten to damage property
- Not to contact either directly or indirectly, the applicant or relevant children
- Not to go to certain places....

Occupation orders

Occupation order:

An order that controls a person's right to occupy a property

May include:

- The right to occupy the property if you don't already have that right
- The right to return to a property you have left or,
- Restriction on the respondent's use of the property, e.g. excluding them from certain areas
- Removing the respondent from the property
- Require the respondent to continue to pay the rent/mortgage/bills

Associated persons

P.14

Are the applicant and respondent associated persons?

s62 FLA 1996

A person is associated with another person if:

- they are or have been married
- they are or have been civil partners
- they are cohabitants or former cohabitants
- they live or have lived in the same household (but NOT employee, tenant, lodger or boarder)
- they are relatives (including step parents, half siblings, niece and nephew, first cousins etc.)

Associated persons

- they have or had agreed to marry or enter a civil partnership
- they are parents of the same child
- they have parental responsibility for the same child
- they are parties to same family proceedings
- they have or have had an intimate personal relationship of significant duration

Associated persons

Example: Judy and Dev have been living together as a couple for 12 months. Dev's brother, Ajay, has become abusive towards Judy and keeps coming to their home to harass her. Judy and Ajay are relatives because Ajay is the brother of Judy's cohabiting partner. This means Judy and Ajay are associated and Judy can apply for a non-molestation order.

Example 2: Leticia and Paul have been friends for 2 years. They have never had a physical relationship and they have never lived together. Recently Paul has started to follow Leticia after work and wait outside her house. Leticia and Paul have not had an intimate personal relationship so they are not associated, and she cannot apply for a non-molestation order. She can report Paul to the police or apply for other orders under the Protection from Harassment Act 1997 (see **chapter 6**).

Non-molestation orders

How does the court decide whether to make an order?

The court shall have regard to all the circumstances of the case including the need to secure the **health, safety and well-being** of the applicant and any relevant child.

The order can last for a specified time or until further order.

Occupation orders: Balance of harm test p.21

The court will consider:

- whether the applicant or children are likely to suffer significant harm if the order is not made and
- whether the respondent or any children are likely to suffer significant harm if the order is made and the harm is as great or greater than the harm likely to be suffered by the applicant or child if the order is not made

Occupation orders: Other factors to consider

Court must consider the following for all parties and any relevant child:

- Housing needs and resources
- Financial resources
- Likely effect of the decision not to make an order on health, safety and wellbeing of applicant and any relevant child
- Conduct
- *Length of time since separation*
- *Any other pending applications*

How might the balance of harm test and other factors apply in this example?

Example: Fatima and Mohammed are married and have a child aged 8. Mohammed has been violent towards Fatima throughout the marriage. He controls all of the finances and he also controls where Fatima goes and who she speaks to. Fatima has applied for a non-molestation order and occupation order. Fatima has matrimonial home rights for the house they live in, which is owned by Mohammed in his sole name. Fatima has no other properties, is unemployed and relies on Mohammed for money. Mohammed works full time and owns another property which he rents out to tenants. Fatima thinks he has savings but she does not know how much as he is very secretive about this. Mohammed's parents live nearby and have a large house with spare bedrooms. Fatima has no other family in this country.

Occupation orders

- Maximum duration and provisions of the occupation order depend upon applicant and respondent's existing entitlement to live in the property.
- See pages 17-21

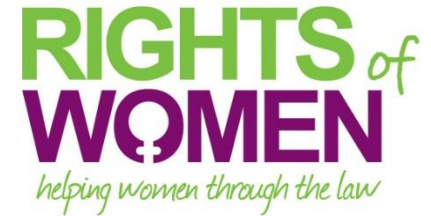
Occupation order: power of arrest

- Applicant can ask for a power of arrest
- A written direction to the police that they can arrest the respondent if they have reasonable grounds to suspect he has breached the terms of the occupation order
- A power of arrest can only be attached to certain provisions in the order
- The test is whether the respondent has used or threatened violence
- Can only be attached to an occupation order, not a non-molestation order

Warning letter

- Optional
- A letter warning the abuser that if his behaviour continues she may take further legal action
- Explained on **Page 24** and example on **page 64**
- Be careful – consider whether it is safe

Is legal aid available?



- Legal aid is available to apply for non-molestation orders and occupation orders
- It is subject to a means test
- It is NOT subject to the domestic violence gateway
- If you think she may be eligible, signpost to a legal aid lawyer
- www.civil-eligibility-calculator.justice.gov.uk

Application procedure

Chapter 5

Notice

p.23

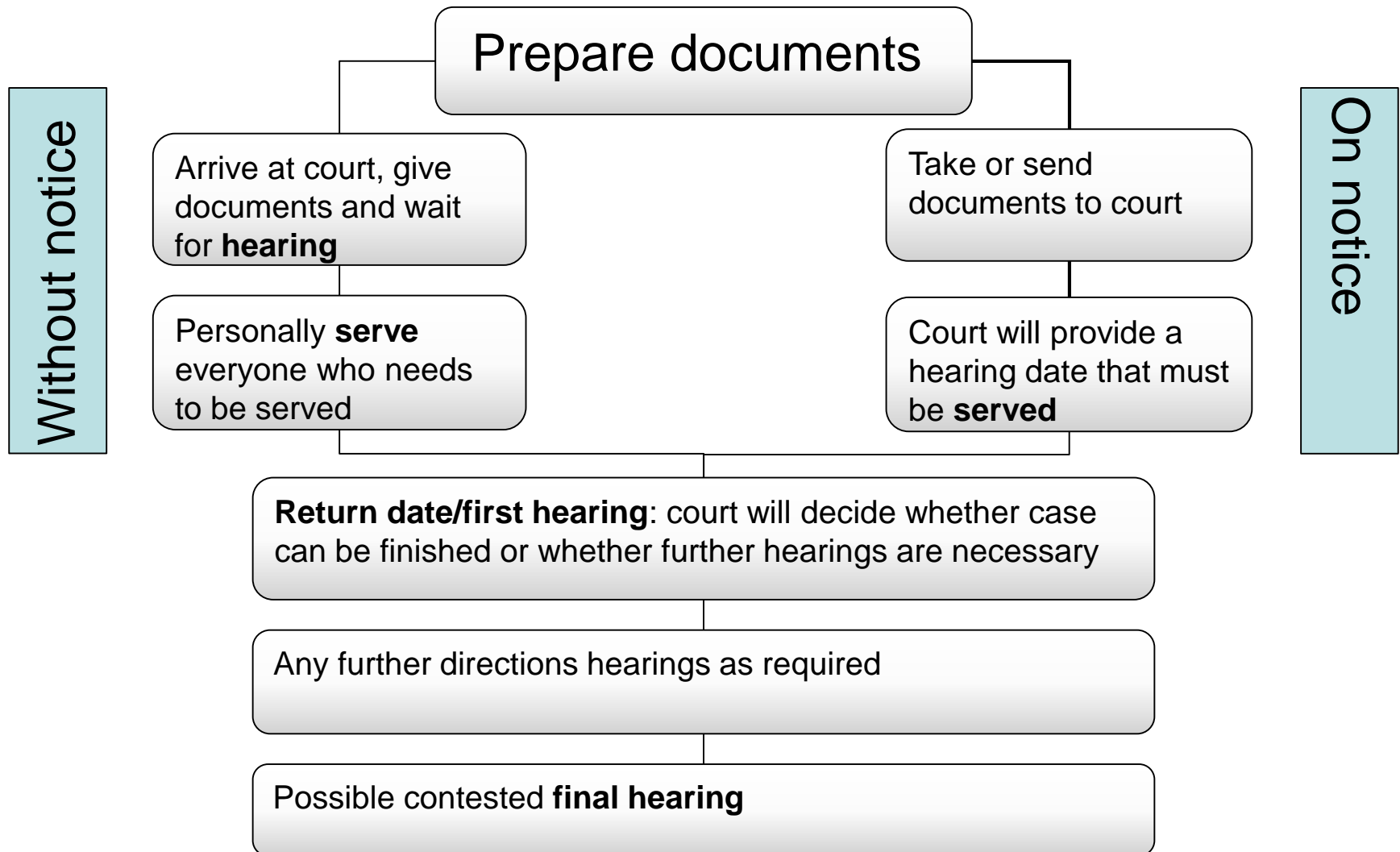
- On notice (at least 2 days)
- Abridged notice / short notice
- Without notice (ex-parte)

Without notice applications p.23

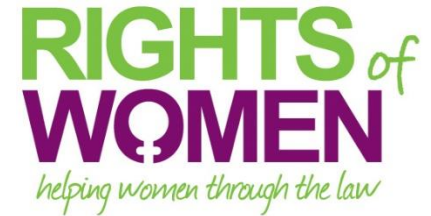
The court shall have regard to all the circumstances including:

- (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 in effecting service or substituted service.*

Application Procedure

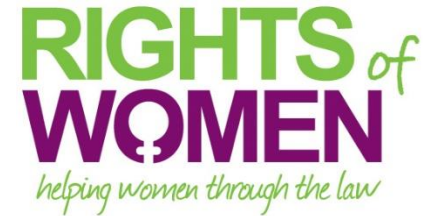


Prepare documents



1. Application form: **FL401**
2. Witness statement
2. If necessary, confidential contact details on form **C8**

Preparing the documents



- Tips on completing the application form FL401 on p.26 and example on p.65
- Tips on preparing the statement on p.29 and example on p.75
- Remember not to include her address on FL401 or statement if she wants to keep this confidential. Complete form C8.

Supporting evidence

Consider what supporting evidence can be attached to the statement as “exhibits”, for example:

- Letters / reports GPs, hospital records
- Letters or reports from social workers or support workers
- Police reports
- Abusive emails, letters, texts from the respondent
- Photographs of any injuries

Issue application

- **How many copies?**

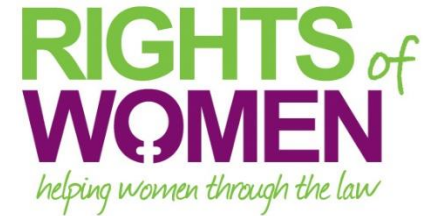
Take **3 sets** of the documents for issuing: 1 for the court, 1 for the applicant, 1 for the respondent

- **Which court?**

The most local **Family Court**

<https://courtribunalfinder.service.gov.uk/>

What do I do when I get to court?



- Go to the counter and explain that you need to apply for an urgent injunction and you need to see the judge today.
- Give them all copies of the forms.
- The forms will be issued (stamped) and you will be asked to wait until a judge becomes available.

Without notice hearing

-
- The hearing is likely to be before a district judge or magistrates
 - Make a note of the order
 - If any new or additional oral evidence is given at the hearing which is not already in the papers then this may need to be put into a statement to give to the respondent (this is very rare but can be handwritten at court – get a copy before you leave)
 - After the hearing, wait in the court building for the order to be typed and take it with you, or arrange for a process server to collect and serve the order

Service

p.35

-
- Application documents and order must be served.
 - Non-Molestation Order will not take effect until it is served upon the respondent. The applicant must not serve the respondent.
 - Service by process server. Process servers normally provide the statement for you to send to the court. Process servers charge.
 - Service by court bailiff. Can be cheaper, but slower.
 - Service by anyone else (except the applicant) – person who served documents should complete a statement of service using form FL415

Service

- Send statement of service to court
- Serve a copy of any NMO on the police, together with the statement of service (usually the Community Support Unit)
- Notice upon mortgagee/landlord using form FL416 (if you have an occupation order)

Return date

p.37

What is a return date?

If the court makes a without notice non-molestation order
“it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing”

Return date

- Considerations before the return date:
 - File statement of service
 - Do you need police disclosure? If so, follow the Police Disclosure Protocol. For the Metropolitan Police Disclosure Protocol go to:
<http://content.met.police.uk/Article/Disclosure-in-Family-Proceedings/1400018826461/1400018826461>
 - Consider what other evidence you may need to file so you can ask for permission at the hearing
- Special measures

Return date

Possible outcomes at the return date/first hearing:

- The **respondent fails to attend**: Provided there is proof of service, court may allow the orders to remain in place / extend the date they expire
- The **respondent admits to the allegations**: Likely that court will allow the orders to remain in place / extend the date they expire
- The **respondent denies the allegations but agrees to the orders remaining in place**: Likely that the court will state in the pre-ambule that the respondent has not made any admissions and no findings have been made

Return date/first hearing

What if the respondent does not agree to the order staying in force?

- The **respondent denies the allegations but agrees to provide undertakings** on the basis that the orders are discharged
- The **respondent denies the allegations and contests the application**: The matter will be listed for final hearing with directions for further evidence, schedule of allegations etc. Orders normally remain in place until the next hearing.

Undertakings

- The abuser makes a promise to the court instead of the court making an order
- Avoids a full hearing
- Can still be punished for breach but no immediate enforcement
- Applicant must either apply for warrant of arrest or committal proceedings if enforcement needed

Final Hearing

Most cases will finish at the return date hearing. If not, judge may list a contested hearing or final hearing.

- Both parties and any relevant witness will give oral evidence and be cross-examined
- Judge will decide whether allegations are true on balance of probabilities i.e. whether it is more likely to have happened than not
- Judge will decide whether the order should be extended, varied, or discharged
- Think about special measures in advance

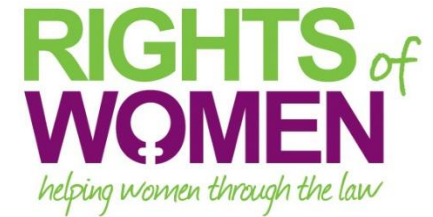
Enforcement: non-molestation order p.43

- Breach of a non-molestation order is a criminal offence
- Applicant can report the breach to the police. Police will investigate, and if appropriate arrest and charge the abuser.
- Maximum sentence: 5 years in prison or a fine or both (in crown court) or 12 months in prison or a fine or both (in magistrates court)
- Alternative option: take the respondent back to the Family Court and pursue committal proceedings (an application for him to be sent to prison)

Enforcement: occupation orders

- Only option is to start committal proceedings for **contempt of court** (disrespecting or disobeying the court)
- If power of arrest attached to occupation order then call police and request that he be arrested and then taken to family court for committal proceedings
- Can be fined, required to complete unpaid work or imprisoned

Contact details



Kate Buchanan:

kate.buchanan@lawworks.org.uk

Mandip Ghai:

mandip@row.org.uk