

## Harassment and Domestic Violence

There are two laws which strengthen both the criminal and civil law in order to assist victims of domestic violence. They are the Protection from Harassment Act 1997 and the Family Law Act 1996.

### The Protection from Harassment Act 1997

This Act makes it a criminal offence to harass somebody. It also enables a victim of harassment to make a civil claim for compensation as a result of any anxiety caused by the harassment. A victim can also apply for a civil injunction to stop the harassment.

Harassment is an offence and includes alarming an individual or causing them distress. A person found guilty of harassment can receive a prison sentence of up to six months plus a fine. It is also an offence to "put a person in fear of violence". The victim must fear on at least two occasions that violence will be used against him. A person found guilty of putting an individual in fear of violence can receive a prison sentence of up to five years plus a fine.

In addition if an individual is found guilty of either of the above offences the court can make orders protecting the victim from further conduct which either amounts to harassment or will cause them to fear violence.

### The Family Law Act 1996 (Part IV)

The Family Law Act 1996 simplifies the civil law and increases the options available to victims as well as increasing the range of orders the court can make.

People who can apply to the court for an order:

- People who are or have been married to each other.
- Cohabitants or former cohabitants, including those in a same-sex relationship.
- People who live or have lived in the same household (but not if there has been a commercial relationship - landlord and tenant).

- Close relatives (this includes parents, grandparents, children, grandchildren, step-parents, stepchildren, brothers, sisters, uncles, aunts, nieces and nephews and includes in-laws and relatives of half blood).
- People who are or were during the last three years engaged to each other.
- The parents of a child or an individual with parental responsibility for that child.
- People who are parties to the same family proceedings.
- A new category is due to be introduced for people who are or have been in an intimate personal relationship of significant duration.

### Orders that the court can make:

#### 1. Non molestation order:

This is an injunction order preventing an individual from "molesting" another individual. Although molestation is not actually defined by the Act it includes being violent towards another, threatening somebody and pestering. Pestering could, for example, include making menacing telephone calls. New legislation is due to come into force which will make it a criminal offence for a person to breach a non-molestation order made against them.

#### 2. Occupation orders:

Occupation orders are about who will live in the home and who must stay away, which can include an order enabling one person to return to the home. The court apply what is known as a 'balance of harm' test in deciding whether or not to make an occupation order and decide which will cause greater harm, making an order or not, having considered all the

facts of the case.

#### 3. 'Without Notice' orders:

The court can make both occupation and non molestation orders 'without notice'. This means that the order can be made without the other party being present at court. This would be appropriate where, for example, an individual urgently required protection and would be in danger if the other was informed of the hearing.

#### 4. Power of Arrest

In most cases where there has been violence or a threat of violence a power of arrest will be attached to the injunction. This enables the police to make an immediate arrest when an individual breaches the injunction.

### How can Warners Help You?

We appreciate that very often people in a domestic violence situation simply want to know where they stand legally. We understand that people may want to know what their options are and then have a period to plan how they are going to proceed.

We always endeavour to offer sympathetic advice to help with your individual situation. We know that both men and women can be victims of domestic violence and have found from experience that women often prefer to see a female solicitor. If you would prefer to see a female then simply tell our receptionist.

Naturally all clients are concerned about costs. Very often people in this situation do not have immediate access to funds and we appreciate this. We do offer a free initial half hour consultation and will explain our charging basis then, so that you will know what to expect.

Please note we do not undertake legal aid work.