



Taylor *Bracewell*

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Family Law

Injunctions v1

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Injunction (Non-Molestation Orders)

There are two ways in which an Injunction can be obtained - Ex parte or on Notice.

An ex parte application is one which is made without the other person in the case knowing about it. Such applications can only be made where there is **exceptional urgency**. If an application is granted, the Injunction will forbid the other party from such things as: -

- (a) using or threatening unlawful violence against the Applicant *and the children*
- (b) sending any threatening or abusive letters, telephone calls, text messages or other communication to the Applicant *and the children*
- (c) communicating directly with the Applicant whether by letter, telephone, text messages or other means of communication except through Solicitors;
- (d) Coming within a certain distance of the Applicant's property
- (e) Coming within a certain distance of the Applicant's place of work
- (f) Threatening the Applicant in anyway
- (g) Damaging or attempting to damage or threatening to damage any property belonging to the Applicant or jointly owned by the parties
- (h) Damaging or attempting to damage or threatening to damage any of the contents of the Applicant's property

The terms of an injunction order can be worded to suit the needs of the individual Applicant.

The Court can also make an Order requiring one party to vacate the property (known as an Occupation Order). When deciding whether to make such an Order, the Court will consider both parties' conduct, the housing needs and financial resources of both parties, *the needs of the children* the likely effect of an Order on the health, safety and wellbeing of both parties and all the circumstances of the case. Occupation Orders are not usually made on an ex-parte basis, unless there are exceptional circumstances for doing so.



As of the 1st July 2007, the breach of an Injunction is now a criminal offence. Therefore if the police are advised that there has been a breach of the injunction order, they should arrest the other party if they have reasons to believe a breach has occurred. The other party will then attend at the police station and will appear before the criminal courts. This carries a maximum prison sentence of five years. The other party is also at risk of other criminal punishments such as fine or community work. Prior to the 1st July 2007 a Power of Arrest was attached to injunction orders.

The Court may however still attach a Power of Arrest to an Occupation Order. This means that if the Police are advised of a breach, they must arrest the other party without having to first obtain a Warrant if they have reasonable cause to believe that the other party has breached the Order. They would have to bring the other party before a Judge within 24 hours excluding Sundays, Christmas Day and Good Friday.

If there is a breach of the Injunction/Occupation Order but the other party has not been arrested by the police, the Applicant can again consider applying to the Court for a Warrant of Arrest or for the other party's committal to prison for Contempt of Court. Such proceedings would take place in the original Court where the Order was obtained. If the other party has breached the Occupation Order it is unlikely that they will be arrested and you will have to apply to the Court. You may firstly need to obtain Public Funding to cover the costs of an application to Court for breach proceedings. This may be difficult in some cases as the Legal Services Commission believe action should be taken through the criminal courts.

Procedure

1. To make an Application to Court for an Injunction or occupation order, it is necessary to file with the Court an Application together with supporting Statement setting out the history of the case and recent events.
2. Ex-Parte Application

The Applicant with their Solicitor will attend Court to personally issue the Application. The Judge will consider the papers on the day in Chambers (i.e. a private hearing). The Applicant will need to attend before the Judge but will not usually be asked any questions. If satisfied with the merits of the case, the Judge may make an Order. The case will then be listed for a review hearing on the next available Court date. A copy of the Application and any Court Orders are then personally served upon the other party informing them to attend Court on the next



occasion. Any Orders made will not be effective and in force until a sealed copy of the order has been personally served on the other party.

3. On Notice Application

The application is issued in Court without attendance from the Applicant or their Solicitor. The Court will list the case for hearing on the next available date. A copy of the Application together with Notice of the hearing is personally served upon the other party.

4. The Applicant attends the Court hearing. The other party is also required to attend. If the other party does not attend, the Judge will be asked to deal with the application in their absence. If the other party is in attendance, they may consent to the making of the Order or they may oppose the application. If the other party consents, the matter is concluded on that date. If the application is opposed the case will be adjourned to be listed for a final contested hearing on another day.
5. In between the above hearing and the final Court date, the other party will file a Statement setting out their arguments as to why an order should not be granted.
6. The final contested hearing will take place in a Court room (i.e. not in private). The Applicant will give their evidence first and will be cross examined by the legal representative for the other party. The other party will give their evidence and will be cross examined by the Applicant's legal representative. The Judge can ask questions of either party. After hearing all of the evidence before the Court, the Judge will make a final decision in the case as to the granting of any orders.

Once any Orders have been made, a sealed copy of the Order must be personally served on the other party for the Order to be effective and in force.

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