

Domestic Abuse

What is Domestic Abuse?

The Government definition 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”.

Controlling behaviour is a range of acts designed to make a person subordinate or dependant by:

- Isolation them from sources of support.
- Exploiting their resources and capacities for personal gain.
- Depriving them of the means needed for

independence, resistance and escape.

- Regulating their everyday behaviour.

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

Domestic abuse covers more than physical violence. It includes verbal, sexual, emotional or other psychological abuse, harassment or controlling behaviour.

It can include financial and indirect controlling behaviour.

It does not have to involve physical aggression.

It can include forced marriage, female genital mutilation, stalking, violence, abuse of the elderly, infirm and vulnerable, male or female, and can be delivered using social media and technology including spyware.

Violence often escalates from threats and verbal abuse.

Impact of Domestic Abuse

According to research presented by Women’s Aid:

- 46.2% of women in refuges have spent between two and ten years in the abusive relationship.
- 17% of woman of those women endured a violent relationship for more than ten years.
- 40.9% of women using community-based domestic abuse services had spent between two and ten years in the abusive relationship.

Continued ...

For further information please contact our Family department:



0844 6300 012



info@nevesllp.co.uk

Neves
SOLICITORS
At your side.

- Of that group, 24.1% had endured a violence relationship for more than ten years.
- Women in poverty were particularly likely to experience the most extensive violence and abuse; one report found that 14% of women in poverty have faced extensive violence and abuse compared to women not in poverty (6%).
- A survey of women using specialist (black, minority ethnic and refugee) domestic abuse services found that 96% reported experiencing psychological, emotional and verbal abuse. 72% had experienced physical violence and 30% had experienced attempted and/or threats of murder from the perpetrator.
- Disability – those suffering a disability including those suffering from learning difficulties experience the full range of abusive behaviour and can experience additional difficulties in accessing justice and support.
- According to research quoted by Women's Aid between 1 January 2009 and 31 December 2015, 936 women were killed by men in England and Wales. Most were killed by a man known to them. 598 (64%) women were killed by men identified as current or former partners.
- Financial abuse can be a significant barrier to leaving an abuser. 52% of women respondents to a Women's Aid/TUC study who were still living with their abuser, said they could not afford to leave because they had no money of their own.
- According to research quoted by Women's Aid, domestic abuse costs society an estimated £15.75bn per year in costs to services, economic output, human and emotional costs.

40% to 60% of woman experiencing domestic violence are abused whilst pregnant

Children

It is now obvious that children growing up in households where there is domestic abuse will suffer harm, but that has not always been the case. In 2000, at the request of the Court of Appeal, Drs Clare Sturge and Danya Glaser presented evidence to the court in four cases concerning parental contact with children where there were allegations of domestic violence. *Re L & Others (Contact, Domestic Violence) [2001] FAM260 Experts' Court Report; [2000] Family Law 2015.*

This report focused attention on the need for the court to view domestic violence as harmful to children and not simply as an issue between adults which does not affect the children.

The report stated: "Domestic violence involves a very serious and significant failure in parenting – failure to protect the child's carer and failure to protect the child emotionally (and in some cases physically – which meets any definition of child abuse)".

Dr Sturge and Dr Glaser's report considered circumstances where it might be appropriate to make an order for no contact. The report suggested that without the following, the balance of advantage and disadvantage should be seen as tipping against contact:



For further information please contact our Family department:



0844 6300 012

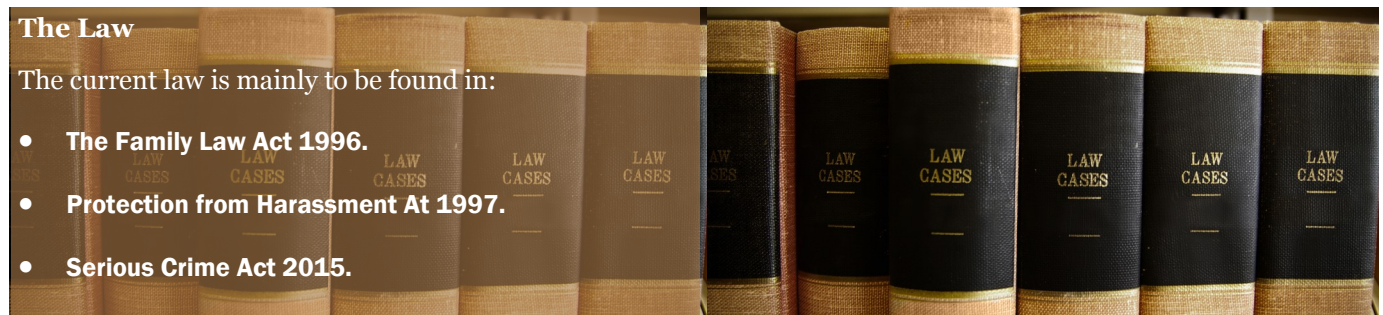


info@nevesllp.co.uk

Neves
SOLICITORS
At your side.

- Some acknowledgement of the violence;
- Some acceptance of responsibility for that violence;
- Full acceptance of the inappropriateness of the violence, particularly in a domestic and parenting context and of the likely ill effects on the child;
- An interest in the child's welfare and full commitment to the child;
- A wish to make amends to the child and work towards the child recognising the inappropriateness of the violence and of the attitude to and treatment of the mother, and helping the child to develop appropriate values and attitudes;
- An expression of regret and demonstration of understanding the impact of their behaviour on the ex-spouse or partner in the past and present;
- Indications that the parent seeking contact can reliably sustain contact.

Respecting the child's wishes to contact to be given appropriate weight depending on the age of the child and the impact on the child of ignoring their wishes, the report suggested that whatever the child's age, their wishes should be taken into account. A child's wishes will carry considerable weight above the age of ten; ages six to ten are an intermediate stage, and the wishes of a child under the age of six carry least weight. Often the views of a child under the age of six are "indistinguishable in many ways from the wishes of the main carer".



Remedies

Under the Family Law Act 1996 Associated Persons can obtain:

- Non-molestation orders;
- Occupation orders:
 - With or without power of arrest or penal notices.

Applications for protection under the Family Law Act 1996 are confined to Associated Persons which is a wide group of connected people such as:

Associated Persons

- They are, were or intend to be married to each other;
- They are, were or intend to be civil partners to each other;
- They are or were cohabitants;
- They live or have lived in the same household in a familiar relationship;
- They have or have had an intimate personal relationship of significant duration with each other;

- In relation to a child they are either:
 - A parent of the child; or
 - They have or have had parental responsibility for the child

- They are relatives

NB: Relatives includes parent, step-parent, child, step-child, grandparent, grandchild, spouse, former spouse, civil partner, former civil partner, sibling, uncle, aunt, niece, nephew or first cousin of that person or of that person's spouse.

Non-Molestation Order

A non-molestation order will require the defendant not to molest, harass or interfere with the applicant whether by him/herself or by any other person. It can include a "stay away/zonal order i.e. stating that the respondent must not approach within, say, one hundred yards of the applicant's home. Breach of a non-molestation order is an arrestable criminal offence.

For further information please contact our Family department:



0844 6300 012



info@nevesllp.co.uk

Neves
SOLICITORS
At your side.

Occupation Order

An occupation order can define arrangements for living in a property either excluding another occupier or defining or specifying rooms into which they can and cannot go or times which they can or cannot be present, for example a kitchen.

An occupation order grants the applicant the right to occupy a dwelling house.

The applicant must be an Associated Person but there are additional categories governing the status of the applicant and different possible outcomes depending on the status of the applicant. For example where a former spouse or civil partner has no existing rights to occupy the property their application is governed by Section 35 of the FLA 1996 and an order can be made allowing that person to reside at the property for six months and such order can be renewed repeatedly whereas where **one** cohabitant or former cohabitant with no existing right to occupy makes an application, they can be granted an order allowing them to reside in the property for six months with only one renewal. There are other variations depending on the circumstances attaching to the applicant.

Power of Arrest and Enforcement

Where the judge has heard evidence and has made a finding of fact as to that evidence, a power of arrest can be attached to an Occupation Order. This gives the police the power to arrest for a breach.

It is no longer possible to have a power of arrest attached to a Non-Molestation Order because the law provides that breach of an NMO is an arrestable criminal offence.

Where parties have not gone through the process of giving evidence and of allowing the judge to make a finding of fact, a party can offer an undertaking. Subsequent breach of that undertaking would constitute contempt of court which is ultimately punishable by imprisonment. Breach of an undertaking is enforceable by the court, not by the police.

Penal Notice

The court can attach a penal notice to any part of its order.

A penal notice is a warning on an order or part of an order that breach may result in a finding of contempt of court which can be punishable by imprisonment, a fine or sequestration of assets.

Protection from Harassment Act 1997

The Protection from Harassment Act 1997 provides protection to people who are not Associated Persons for example a neighbour or a stalker. This legislation was used for example by Huntingdon Life Sciences when seeking protection for its staff from protesting animal rights campaigners. The applicant has to show a course of conduct that is not a single incident. That conduct must amount to harassment.

The Protection from Harassment Act is a hybrid which means that it can either be pursued in the civil courts by an individual applicant or the CPS can use it to prosecute in the criminal courts. The civil court has a lower standard of proof than the criminal court. In the civil courts one must establish the likelihood of an allegation being true on the balance of probabilities i.e. it is more likely than not that the incident occurred whereas in the criminal courts the allegation must be proved beyond reasonable doubt. For the individual the civil proceedings are more expensive whereas the criminal proceedings will be conducted by the CPS thus reducing costs.

Applications which are made in the civil courts do not carry an automatic or any power of arrest. If there is a breach, one has to apply for a warrant for arrest.

It is possible to have an exclusion zone imposed.

In civil proceedings one can apply for damages.

Breach of an order made in criminal proceedings is an offence which carries a penalty of imprisonment of up to six months or a fine.

For further information please contact our Family department:



0844 6300 012



info@nevesllp.co.uk

Neves
SOLICITORS
At your side.

Serious Crime Act 2016

This is the Act which, amongst other things, introduced the concept of controlling or coercive behaviour in an intimate or family relationship.

The offence is committed if:

- a) A person ("A") repeatedly or continuously engages in behaviour towards another person ("B") that is controlling or coercive;
- b) At the time of the behaviour A and B are personally connected;
- c) The behaviour has a serious effect on B, the victim; and
- d) A, the perpetrator knows or ought to know that the behaviour will have a serious effect on B, the victim.

A personal connection constitutes an intimate personal relationship between the parties if:

- the parties live together; and
- are either members of the same family; or
- have previously been in an intimate personal relationship with each other.

Behaviour has a serious effect on the victim if:

- it causes the victim to fear on at least two occasions that violence will be used against the victim; or
- it causes the victim serious alarm or distress which has a substantial adverse effect on the victim's usual day-to-day activities.

"Ought to know" is that which a reasonable person in possession of the same information would know.

"Ought to know" is that which a reasonable person in possession of the same information would know.

Domestic Violence Protection Notices (DVPN) and Domestic Violence Protection Orders (DVPO)

The police can issue DVPN or (DVPO). These provide temporary protection for up to 28 days.

A DVPN is a notice which the police serve against an individual aged over 18 where the police reasonably believe he or she has been violent or has threatened violence and that the victim needs protection. The police can serve a DVPN even if the victim does not agree. It places conditions on the person which may include:

- Stopping him or her from entering and being within a certain distance of the home
- Stopping him or her making the victim leave or excluding them from the home
- Requiring the perpetrator to leave the home.



A DVPO is obtained from the magistrates' court. It can last for a minimum of 14 days and a maximum of 28 days. The court will hear an application for a DVPO within 48 hours and can impose conditions. Breach of the conditions can result in the person in breach being arrested and kept in custody and can result in a fine of up to £5,000.00 or imprisonment for two months.

Warning Notices

The police can issue warning notices following allegations of harassment. They may be known as police information notices, harassment warning notices, early harassment notice or by some other title. They are issued at the discretion of the police and do not constitute formal legal action but assist the police in

For further information please contact our Family department:



0844 6300 012



info@nevesllp.co.uk

Neves
SOLICITORS
At your side.

identifying families and situations where it is appropriate to be particularly responsive or even proactive.

Warning notices can be used as evidence in court proceedings.

What to do if you are a victim or supporting a victim

Public Funding (Legal Aid)

Public funding is available in some limited areas of legal advice including domestic violence cases concerning home rights, occupation orders and non-molestation orders under Part IV of the Family Law Act 1996 and for injunctions following assault, battery or false imprisonment. It is also available for forced marriage protection order cases. It is also available in private Family Law matters where there is evidence that there has been or there is a risk of domestic violence.

The victim needs to find a legal aid solicitor, that is a firm which has a contract with the Legal Aid Agency.

Legal aid is available as follows:

- Legal Help (payment to lawyer £86) covers basic advice to the client and some limited correspondence.
- Family Help (lower).
- Family Help (higher). This is available where there is evidence of domestic abuse or child protection issues and is then available for children cases and finances cases. It is not available for free-standing domestic abuse cases.
- Legal Representation is available for cases concerning children and finance where domestic abuse is taking place or there are child protection issues, and is available for domestic abuse cases.

An applicant is eligible for legal advice or representation in Family Law cases if s/he is a victim of domestic violence or at risk of suffering domestic violence. Domestic violence can be physical, emotional or financial abuse.

Evidence as to domestic violence must be available when the victim makes the application and the evidence which is acceptable is set out in Regulations.

Children / Contact Disputes

Where allegations of domestic abuse have been established, in contact disputes, the court can refer the perpetrator to undertake an activity (activity direction) such as attending a programme, class or counselling to help to establish, maintain or improve the involvement in the life of the child of that person.

For Emergencies (thanks to Women's Aid who provided much of this information)

- Keep a fully charged mobile phone at hand
- Know the emergency and local police station numbers and the numbers of relevant organisations such as Social Services or Domestic Violence Support Agencies.
- Know telephone numbers for trusted friends and relatives by heart.
- Ask friends and relatives to keep in daily contact if appropriate.
- Have a code word to use in calling others to identify that the police should be alerted.
- Keep the car fuelled with a spare key at hand.
- Keep a bag of essential items at a place of safety containing cash, clothing, important documents, a spare mobile phone and telephone numbers.



For further information please contact our Family department:



0844 6300 012



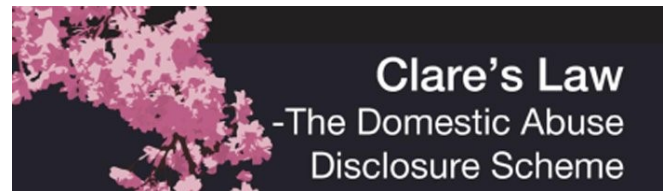
info@nevesllp.co.uk

Neves
SOLICITORS
At your side.

- Ensure that the home is securely protected if living alone. Ask the police for advice on how security can be updated.
- Consider using a domestic violence mobile phone app. Many applications can connect victims with local domestic violence services and will automatically call 999 when a single button is pressed. The mobile phone should always be password protected.
- Call 999 in an emergency.
- Call 101 The Police.
- Call National Domestic Violence Helpline 08 088 088 088.
- Keep a log.
- Those working with children or who become aware in their professional capacity of concerns around the safety of children have a duty to inform Social Services.

Domestic Violence Disclosure Scheme

The DVDS also known as **“Clare’s Law”** or **“The right to ask”** enables members of the public to ask the police for information where there is a concern that a partner may pose a risk. Checks are carried out through the Police National Computer, the Police National Database and local intelligence systems. If these checks reveal a record of abusive offences or other information substantiating concerns that there is a risk from that individual it is at the discretion of the police whether or how to share the information.



Requests can be made directly to a police station. Friends and family may also request the same disclosure if they believe someone to be at risk of domestic violence. Information shared must only be used for safeguarding the potential victim. The police will exercise discretion as to how and if such information is shared and disclosure must be proportionate.

Appropriate agencies may also seek disclosure about an individual.

Development

The current domestic abuse regime is clearly complicated and potentially confusing. The limitations on legal aid mean that many parties now represent themselves at court. The Government has recently proposed creating a single protection order applicable across the criminal, family and civil courts to support victims of domestic abuse. The Government has said that the absence of a single order applicable across the criminal, family and civil courts “can lead to confusion for victims and practitioners in domestic abuse cases and problems with enforcement.”

The Government also proposes to create a new statutory definition recognising abuse that happens in all types of relationships.

What’s missing?

Training

Anecdotally, delivery of good quality support from the police, seems to be patchy. According to Women’s Aid research amongst 450 abuse practitioners 62% felt that frontline police officers needed better training.

Legal Aid

There are legal aid deserts in the country. The number of legal aid lawyers has dropped very considerably. There is for example only one legal aid lawyer in St Albans. It can be difficult to find a legal aid lawyer.

Inevitably when the work is so poorly paid and the number of lawyers available is so few, there can be an impact on the quality of service delivered. Again anecdotally Women’s Aid appear to provide very good support including help with advocacy.

For further information please contact our Family department:



0844 6300 012



info@nevesllp.co.uk

Neves
SOLICITORS
At your side.

Harpenden Office

Tollgate house
69-71 High Street
Harpenden, Herts
AL5 2SL
Tel: 01582 715234

Luton Office

AW House
6-8 Stuart Street
Luton
LU1 2SJ
Tel: 01582 725311

Milton Keynes Office

Aurora House
Deltic Avenue
Rooksley, Milton Keynes
Mk13 8LW
Tel: 01908 304560

All information correct as at 5 July 2018.

For further information please contact our Family department:



0844 6300 012



info@nevesllp.co.uk

Neves
SOLICITORS
At your side.