warnergoodman LLP family

safer portsmouth partnership

Have you left your partner or are you planning to leave?

A guide to accessing protection and support through the courts

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Welcome

We know that this can be a distressing time and there is a lot to think about, so we hope that this will help to explain your options.

The Early Intervention Project have written this booklet in partnership with Warner Goodman LLP to give you some basic information about your options.

It is not a substitute for legal advice, but a starting point to help you understand what help is available to you.

If you have any questions please do not hesitate to get in touch with us.

Very best wishes,

Ann Marie

Legal aid

What is legal aid?

Legal aid is a public fund that can help you pay for your legal advice and/or representation. Legal aid is there to help people who otherwise couldn't afford a solicitor. Legal aid is not available for everything and there are some restrictions as to who can get legal aid and how much you can get.

Can I get legal aid?

When you go to see a solicitor, they will assess you for legal aid. Sometimes, people are eligible for all or part of their fees to be paid for by legal aid.

When you see a solicitor, you will give them details of your income, benefits and property and they will use this information to decide if you can afford to pay your legal fees or not.

You can ask for legal aid to help you with the cost of pursuing an injunction. If you have been the victim of domestic abuse then you may be eligible for legal aid for other proceedings such as residency or child contact.

What if I am not entitled to legal aid?

If you have been assessed for legal aid and you are not eligible, then you can still seek protection through the court.

You may represent yourself and prepare your own paperwork, but you will have to pay the cost of putting your application into court and the cost of serving any orders granted. The cost of these orders is approximately £200.

A domestic abuse caseworker can support you through this process.

I want to pursue an order through the civil court – where do I start?

The best thing to do in the first instance is to contact a local solicitor's firm and speak to someone from the Family Department.

You can find out about solicitors in your area in the Yellow Pages or by searching on the Law Society website: **www.lawsociety.org.uk/find-a-solicitor**

The solicitor should be able to either give you an indication over the phone as to whether you would be entitled to legal aid, or they may invite you in for an appointment where this can be explored in more detail.

What would I need to bring to an appointment?

A solicitor will tell you more about this before your appointment. However usually they would require three months' bank statements, proof of identification (such as a passport) and proof of any benefits you receive, such as a letter from the Department of Work and Pensions.

Injunctions

What are injunctions?

An injunction is a court order that can offer you protection from the perpetrator of the abuse. It can specify what someone can or cannot do. For example, it could prohibit your abuser from contacting you or coming to your property.

There are two main types of injunction you could obtain to protect you from domestic abuse: a Non-molestation Order and an Occupation Order.

The person that applies for the protection of an injunction is known as 'the applicant' and the person who is bound by the injunction is known as 'the respondent'.

What will a Non-Molestation Order do?

A Non-Molestation Order can protect you from violence and/or harassment. You do not have to have experienced violence in order to apply for a Non-Molestation Order – you can apply for one on the basis that you have been harassed, pestered or intimidated.

A Non-Molestation Order can forbid your abuser from:

- Being violent or threatening violence towards you
- Harassing you
- Coming within a certain distance of your home.

If there are additional things that you feel may make you safer, for example you may want the abuser to be prevented from approaching your place of work, then you can request this as an additional clause.

What will an occupation order do?

An Occupation Order deals with who can live in the family home. An Occupation Order can order your abuser to:

- Move out of the home
- Keep a certain distance away from the home
- Allow you back in the home if they have locked you out
- Continue to contribute financially towards rent or mortgage payments, even if they are expelled from the home.

How are these orders enforced?

Non-Molestation Orders have a 'power of arrest' attached and this means that if your abuser breaches the order then they can be arrested and dealt with via the criminal courts.

Any breaches of a Non-Molestation Order must be reported to the police.

If you obtain an Occupation Order, this may have a power of arrest attached which means it will be enforced in the same way as the Non-Molestation Order.

If your Occupation Order does not have a power of arrest attached then you can speak to your solicitor about taking any breaches back to the civil court.

How do I get a Non-Molestation Order or Occupation Order?

The first thing to do would be to go and see a solicitor to discuss making an application.

If you are unable to see a solicitor then your domestic abuse case worker can support you in making your own application.

An application can be made on an emergency basis which means that your abuser would not be aware you are making the application. You would present your case in front of a judge and the judge will decide whether there are grounds to grant the order without the other person present.

It may be that, after discussing your situation with your solicitor or

domestic abuse caseworker, it is felt that there may not be enough evidence to apply to the court on an emergency basis. This means that the court will set a date for both you and the perpetrator to attend a hearing to discuss the injunction(s) and the judge will make a decision with both of you there.

Whether your original application is on an emergency or non-emergency basis, there will be a hearing where the perpetrator will be invited to court and given an opportunity to contest (or 'disagree with') the order. You will need to attend all hearings, however your abuser may decide not to attend. Your domestic abuse case worker can support you through this hearing.

If you are representing yourself, you will need to speak to the judge to explain why you want the protection of a civil order. Your domestic abuse case worker can assist you in preparing your paperwork and offer moral support for such a hearing, but they will not be able to speak on your behalf in the court room.

Once the judge has approved the order, it will need to be served to the abuser. Please keep in mind that the order is not enforceable until the perpetrator has received a copy of it.

The process of giving the order to the abuser is known as 'serving' and this is usually carried out by a 'process server' who can officially log down that the abuser has received a copy of the order. Once the order is 'served' it becomes active.

Orders can be granted for various amounts of time, at the discretion of the judge. Usually, injunctions are made for 6 months or 12 months, although it is possible for them to be shorter or longer.

Will I definitely be granted an order if I apply for one?

There is a possibility that the judge may decide not to grant an order, but there are other things that the judge can do to protect you, such as take an undertaking from your abuser. An undertaking is a promise to the court, and this promise can be that the perpetrator will not threaten or abuse you.

What is an undertaking?

An undertaking does not have a power of arrest attached and so the police will not be able to arrest for any breaches unless the actions of the perpetrator constitute a criminal offence in their own right. You can take the perpetrator back to the civil court if there are breaches and they can be punished by the judge in the civil court.

After the order is made

When the order is 'served' the process server or your solicitor will confirm this to you. You will also get a copy of the order so you can clearly see what the conditions of it are and what your abuser needs to stick to.

If there are any breaches of the order it is really important that these are reported to the police so they can take appropriate action. You can also keep your solicitor and domestic abuse case worker updated about any breaches.

Children

Why do I need to think about arrangements for the children?

If you are thinking about, or in the process of, separating from your spouse or partner, arrangements will often need to be made in relation to any children.

Where there have been incidents of domestic abuse, very careful consideration will need to be given as to what arrangements are appropriate to ensure that the children are safe.

Consideration will need to be given to who the children should live with (the 'resident parent') and what contact there should be, if any, between the children and the non-resident parent.

- Should contact be supervised or unsupervised?
- What handover arrangements should there be?
- Should there be any conditions placed on contact?
- Where should contact take place?
- How long should contact be for, and how regularly?
- What if the non-resident parent does not return the children?

These are all very valid and often-encountered problems.

Parents are encouraged to attempt to agree arrangements between themselves either directly, with the aid of solicitors, or in mediation.

Courts do not intervene and make orders in relation to children unless there is a need for an order.

Reaching agreements concerning arrangements for the children, however, is often not possible or indeed advisable where there have been incidents of domestic abuse or concerns with substance misuse, criminal activity and mental health issues.

In such cases, arrangements in relation to the children are often resolved in the courts either by an application by the resident parent or the non-resident parent.

This leaflet intends to help simplify the process. It cannot cover every

eventuality but it aims to address some of the most common issues in such cases. It is not a substitute for obtaining legal advice.

What is Parental Responsibility?

The concept of Parental Responsibility (PR) runs throughout the Children Act. PR refers to the duties and obligations owed to a child. It does not refer to rights over a child or shared residence. It does not allow a holder to control and interfere with a child's activities.

The birth mother of a child automatically has PR.

Where a child's parents are married to each other at the time of birth both the mother and the father automatically have PR.

A father can acquire PR by marrying the child's mother, by being registered on the birth certificate as father (effective since 1st December 2003) and by entering into a PR agreement with the mother.

In addition, a father can also apply to the courts for a PR order. When deciding whether to make PR orders, a court considers what is in the child's best interests. The court considers the father commitment to the child, the father's attachment to the child, and the father's reasons for applying for the PR order.

Parental Responsibility is shared: one person does not lose it when another gains it. If a father applies for PR, more often than not PR will be awarded by the court if they think it is in the best interests of the child. This is, however, entirely separate to issues concerning contact and residence.

PR continues until the child is aged 18 or the court, on the application of a parent with PR, terminates it (which happens very rarely).

A person with PR for a child can have access to health and educational records and sign consent forms for medical treatment or school activities.

Changing a child's surname can only be done with the written consent of everyone with PR (or the permission

of the court) where there is a Residence Order in force (see below).

What is a Residence Order?

A Residence Order decides where a child is to live and with whom.

Often there is no dispute about who a child will live with. It is often very clear who has been the primary carer of the child and who will continue to be the primary carer of the child. In these cases, a court is highly unlikely to consider the need to make a Residence Order.

Courts do not make Residence Orders unless there is a need for a one, when where a child is to live and with whom is in dispute.

A Residence Order gives the holder PR for a child if they do not already have PR. A Residence Order will last until the child is 16 unless the circumstances of the case are exceptional and the court determines that the order should last until the child is 18.

A Residence Order can be granted to more than one person and the court can make shared Residence Orders if it is felt that the child should spend roughly equal amounts of time with each parent.

Residence Orders, save for exceptional circumstances, are not made by a court on an emergency/ without notice basis (i.e. without hearing from the other parent).

What should I do if my child isn't returned as agreed?

If a child has not been returned to the parent with care by the other parent at the end of a contact visit, then an emergency application can be made in conjunction with a specific issue order to seek the child's return to the parent with care.

In such cases, the courts invariably make emergency orders requiring the child to be returned to the parent with care preserving the status quo. A subsequent on notice hearing would then be listed to hear from the non-resident parent.

What are Specific Issue Orders and Prohibited Steps Orders?

These are orders that the court can make in the event of disagreement between the holders of PR for a child.

Common Specific Issues applications concern:

- Which school a child should attend
- Which religious persuasion a child is brought up in
- Whether the resident parent and the child should be able to relocate with the child (whether abroad or within the UK)
- Whether the child's surname should be changed.

Prohibited Steps Orders prohibit someone from taking a particular course of action as far as a child is concerned. Common examples include orders preventing a person from removing a child from school or preventing a person taking a child out of the area.

What are Contact Orders?

A Contact Order is an order requiring the parent with care of the child to allow a child to visit, stay or have contact with another person named in the order.

It is the child's right to have contact and not the parent's. This is commonly confused.

Most applications to the court concern contact. The court will consider whether direct contact (face to face contact) is safe and appropriate or whether contact should be indirect (letters, cards, telephone and email). The court will consider the frequency and duration of contact.

Contact arrangements are often defined in the order for the avoidance of doubt. The court will consider the venue for contact. The court will also consider whether any supervision arrangements for contact are appropriate – a particularly relevant consideration in cases where there has been domestic abuse.

Direct contact may be considered appropriate on a supervised basis, either at a child contact centre (generally short-term measures, used as a stepping stone for eventual contact away from a centre), or supervised by a third party.

Conditions can and often are placed on contact orders to address issues concerning handovers, collection and return arrangements and require a child's immediate return to the parent with care once contact is over. In cases of domestic abuse, a court can and often does make contact activity directions or conditions, requiring a non-resident parent to attend and engage with a domestic violence perpetrators programme and parenting classes to address offending behaviour.

Contact Orders generally continue until a child is 16 years of age unless the court considers there are exceptional circumstances, in which case the order runs until a child is 18 years old.

Private Law Children Court proceedings

(not involving the Local Authority)

Most commonly, applications to the court concern contact and are made by the non-resident parent.

If there have been incidents of domestic abuse then you should raise this in response to the application at the start of the case.

The first hearing will either be at a county court before a district judge or a family proceedings court before a legal advisor and/or a lay bench of magistrates.

Children and Family Court Advisory and Support Service (CAFCASS)

Before the first hearing, CAFCASS are required to carry out what is known as safeguarding checks.

Safeguarding checks consist of police checks, Local Authority enquiries and telephone interviews with the resident parent and non-resident parent before the hearing. The aim

of safeguarding is to identify any risks or safety issues at the outset of the case.

If there have been incidents of domestic abuse and/or you are concerned with issues of substance abuse or mental health issues, these issues and concerns should be raised at the beginning of the case.

A Form C1A should be filed in cases where the resident parent believes that they and/or the child have suffered, or is at risk of suffering harm from the non-resident parent. The Form C1A requires, in summary format, details of the incidents of domestic abuse and other safety issues and concerns to be set out.

CAFCASS are required to write to the court before the first hearing to report the outcome of the safeguarding enquiries.

A CAFCASS officer will attend the first hearing. The purpose of the first hearing is for the court, with the assistance of the CAFCASS officer to identify the agreed issues and issues in dispute. A court will usually give timetabling directions to enable the issues in dispute to be resolved.

CAFCASS will suggest to the court means of resolving the issues. While local practice differs slightly, generally CAFCASS will meet separately with the resident and the non-resident parent at court. If domestic violence has been raised as an issue by the resident parent in opposition to contact before or at the first hearing the CAFCASS officer is likely to go through the allegations with the resident parent. At all times, the court and CAFCASS are required to be alert to any risks or safeguarding issues that have been identified.

These risk issues may and often do include:

- Allegations of domestic violence
- Allegations of substance misuse
- Allegations of unreasonable or excessive chastisement
- Current or previous involvement with social services
- Current or previous criminal offending
- Mental health concerns, etc.

Domestic violence does not just mean physical violence. It includes harassment, threatening or intimidating behaviour and any other form of abuse which directly or indirectly may have caused harm to the resident parent and/or the child, or which may give rise to the risk of harm.

The court is under a duty at all stages of the proceedings to identify whether domestic violence is raised as an issue by a party.

Fact finding hearing

If the domestic abuse is wholly or partially disputed by the non-resident parent, the court will consider whether or not to give directions for a fact find hearing.

A fact find hearing (also known as a split hearing) is a separate hearing for the court to determine the facts when matters of domestic violence are disputed, before going on to another hearing (the substantive hearing) to determine the contact application and whether contact is in a child's best interests.

In cases of disputed allegations of domestic violence, a fact find hearing is not, however, inevitable. There has been a recent trend of moving away from having fact find hearings unless absolutely necessary, because of the delay that these cause to proceedings.

When deciding whether or not to have a fact find, the court will need to assess the seriousness of the allegations made and whether, if findings of fact were made in relation to these allegations, whether these findings would materially influence whether or not the court would make a final or interim order for contact. It may well be that the court feels that findings of fact as to disputed allegations of domestic violence can be made by the court at the substantive hearing without a separate or split hearing being necessary.

If the court determines a fact find is necessary or may be necessary, the court will generally ask the resident parent to file a statement detailing the allegations that they are making and for the non-resident parent then to respond to this statement. If lots of allegations are raised the court

may decide to select a specimen set of allegations to be considered.

Third party disclosures

Other directions that could be made by a court may provide for material to be disclosed by certain third parties.

Often such third party material includes police disclosure or social services disclosure. Evidence from a GP or disclosure of medical records may also be sought if it is alleged physical injuries have been sustained.

Some courts then list a further directions hearing to consider the statements and responses. The court will assess what admissions, if any, are made and then determine whether a full fact find is necessary.

With or without a further directions hearing, if the court decides a fact find is necessary it will list the case for a fact find hearing. This is a contested hearing where evidence is heard.

The length of the fact find hearing will depend upon the number and seriousness of the allegations, numbers of witnesses, volume of third party material, etc. Typically, however, hearings of one or two days may be required and often more.

Whether a court orders any contact before a fact find depends on what contact is sought and the nature of the allegations and issues.

Indirect contact (letters, cards or telephone contact) may be considered rather than direct contact (face to face) in the interim.

If, however, a non-resident parent is opposed to contact in principle because of incidents of domestic violence then a court is unlikely, in the absence of agreement, to make any order for contact on an interim basis until findings of fact have been made.

At the fact find hearing itself the court will go through the allegations. It will hear oral evidence. The court will then decide on the balance of probabilities (i.e. more likely than not) whether the incidents occurred or did not occur. At the conclusion of the fact find hearing, the judge will give a judgement. This judgement will be recorded so that a transcript of the judgement can subsequently

be obtained and used to inform the remainder of the proceedings.

If a court makes findings of fact of domestic abuse against a non-resident parent this does not mean that no contact will then be ordered. There is no presumption against contact if findings are found. It depends case by case on what findings are made and how serious these findings are considered to be.

Section 7 Reports

At the conclusion of the fact find, the court is likely to give further directions to set the case down for the substantive/disposal hearing. These directions may include directing CAFCASS or the Local Authority to prepare what is known as Section 7 Report (formerly known as a Welfare Report). The Section 7 report will advise the Court, in light of the findings of fact made, whether contact is felt to be in the child's best interests and whether any further directions are required before the disposal hearing.

Other directions

Such other directions may include assessments being directed for the risks of contact in light of the findings of fact made.

Contact activity conditions and direction

Following findings of fact being made, the court will also consider whether or not to make a contact activity condition or contact activity direction as a precondition to contact starting. Such preconditions could include attending anger management classes, parenting information programmes and/or domestic violence perpetrators courses, etc.

While it is impossible to generalise, if significant findings of fact have been made then it is unlikely that anything other than supervised direct contact would be ordered. This direct contact would probably be at a child contact centre. The contact centre would need to carry out its own risk assessment before accepting a referral for contact.

The decision as to whether contact is then in a child's best interests must be made by the court at a substantive hearing, if no agreement can be reached. Each case turns on its own facts. The following factors are, however, often relevant to the court's final decision whether contact is ultimately ordered.

Firstly, the court will examine the ability of the non-resident parent to recognise their behaviour and assume responsibility for their behaviour.

Secondly, the court will determine whether the non-resident parent accepts that changes need to be made and will examine whether the non-resident parent can or has made genuine efforts to change. Demonstrated change as opposed to just a willingness to change is what the court are looking for.

The court is often assisted in this assessment by expert evidence (e.g. from a psychologist) and/or reports from providers of any anger management and/or domestic violence perpetrators courses attended by the non-resident parent. The Court will also examine the reasons for the offending person seeking contact.

Safety planning

What is a safety plan?

A safety plan is unique to each individual and includes basic safety principles and advice that can be used to keep someone safe.

These can include basic safety measures such as making sure you have access to a phone at all times; carrying a personal alarm and having a friend or family member to stay with if you need somewhere safe to stay.

Why is it important to have a safety plan?

If you are planning on pursuing protection through the courts then at some point during the proceedings your abuser is going to be made aware of this and asked to attend court.

This may raise the risk to yourself and your family, so it is important that you have thought about how you can keep yourself safe as proceedings move on.

By following some basic safety advice, you can ensure that you are as safe as possible.

What could I put in my safety plan?

Your domestic abuse support worker will be happy to discuss safety planning with you and explore all your options.

Below is some basic safety planning that you can use, but it is not exhaustive – there may be other things that you feel will increase your safety, the examples below are just a guide.

1. Keep a mobile phone on you at all times, fully charged. You can use this phone to call police in an emergency.
2. Do not hesitate to call the police on 999 if you feel threatened, intimidated or in immediate danger.
3. Think about where you would stay if it was unsafe to remain in your home. Can you stay with a family member or friend? If you have nowhere safe to stay you can call the National Domestic Violence Helpline, 24 hours a day, 365 days a year, on

0808 2000 247 to find a space in a women's refuge.

4. If you are going to remain in your property, make sure you secure it as best you can. Ensure all doors and windows are locked, that your smoke alarms are working and that you are able to get out of the property safely if you need to.
5. Pack a small bag with essential items in case you need to leave your home quickly. These items can include important documents such as passports, a small amount of money to pay for any travel, essential medication and any other items you feel you would need.
6. If you are working with any other professionals, it is worth speaking to them about what you are experiencing. These professionals may include social workers, GPs, housing officers or health visitors.

Your notes

Early Intervention Project
Civic Offices, Guildhall
Portsmouth PO1 2AL
Telephone: 023 9268 8586
Email: eipidva@portsmouthcc.gov.uk

www.saferportsmouth.org.uk

This leaflet was created with the guidance and support of:

warnergoodman LLP family

Warner Goodman LLP is a long established firm in Hampshire with offices in Portsmouth, Fareham and Southampton. The firm specialises in family law and offers a full range of family services including divorce, children matters, matters involving social services and injunctions.

The firm is passionate about helping the victims of domestic abuse get the legal protection that they need and working in partnership with the Early Intervention Project to achieve this aim. The firm has a contract to undertake family legal aid work and offers the full range of legally aided assistance.

*To arrange a meeting with any of our family team at one of our offices most convenient to you please phone our freephone number **0800 91 92 30** or **023 8071 7431**. Alternatively, please email **enquiries@warnergoodman.co.uk** or access our website for more information: **www.warnergoodman.co.uk***

designed by design@portsmouthcc.gov.uk

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