



Injunctions

December 2020

On the breakdown of a marriage or relationship, either party or children may need protection.

The law aims to provide immediate protection for those who need it and if you find yourself in this position, then it is imperative that you act quickly.

The Police can also provide immediate assistance. Guernsey Police have a dedicated team of officers based in the Family Personal Protection Unit (PPU), who have been trained in all aspects of domestic violence, abuse and harassment. The PPU can be contacted on (01481) 719458.

Rapid Police intervention can often protect spouses and children on a short term basis, but Police involvement may not provide a long term solution if a spouse or partner refuses to vacate the property or persists in violence or harassment. In those circumstances, it may be necessary to apply to the Court for an injunction.

An injunction is an order requiring someone, usually a spouse or ex partner, to do or not to do, something specified in the order.

Either party to a marriage, cohabitants who live in the same household and people who have previously cohabited in the same household as husband and wife can apply for an injunction.

The main orders available are:

- Non-molestation Order
- Ouster Order
- Interim Occupation Order
- Harassment Order

NON-MOLESTATION ORDER

The word molestation is a very widely defined term and includes use or threats of violence, harassment or intimidation. Such orders will prevent an ex-partner or spouse from using or threatening violence against you and your children. Orders can also be made to prevent your spouse or partner from inciting or encouraging others to harass you or your children.

OUSTER ORDER

An ouster order requires the named party to leave or not to re-enter the family home. Ouster orders are often granted in conjunction with non-molestation orders. They can also exclude a party from an area around the property and other specified buildings or places where

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the threatened party or the children may visit, such as a school or place of work.

In practice, ouster orders are regarded as a draconian step and will only be made in cases where removal of a party is required for protection. It is very rare indeed for an ouster order to be made *ex parte* i.e. without the offending party receiving prior notice of the application.

INTERIM OCCUPATION ORDER

These orders are very similar to ouster orders in that they can exclude a party from a family home or part of a property and in cases where a divorce petition has been issued.

HARASSMENT ORDER

The Protection from Harassment (Bailiwick of Guernsey) Law, 2005 creates a criminal offence of harassment and gives the Court power to impose criminal sanctions.

In addition, the same law provides for extensive civil remedies for harassment.

The legal definition of harassment is very wide in that it covers any course of conduct which may be regarded as harassment.

What is an undertaking?

An undertaking is a solemn promise made to the Court not to use or threaten violence or to enter property. A party facing injunction proceedings will frequently offer to give an undertaking to the Court in preference to an order being made against him. Once given, the undertaking has the same force as an order, so that any breach of the undertaking is potentially a contempt of Court.

In practical terms, the only difference between an undertaking and an order is that you cannot have a Power of Arrest attached to an undertaking.

What is a Power of Arrest?

The Court has power to grant a Power of Arrest in cases where there has been use or threats of violence against the applicant or a child, and if a Power of Arrest is required to provide adequate protection. If a Power of Arrest is attached to an injunction order then a Police Officer may arrest if he has reasonable grounds to believe that the injunction order has been breached. Once arrested, the individual will be brought before the next sitting of the Magistrate's Court to be dealt with.

What is an *ex parte* application?

An *ex parte* application is an emergency application brought before the Court without giving notice of the application to the other party. In practice, applications for an *ex parte* injunction should only be made in cases where it is absolutely necessary to protect the applicant or children.

Ex parte injunction orders should be granted for the shortest possible time and should include a hearing date requiring both parties to attend, at which the Court can then review the orders required having heard evidence from both parties. *Ex parte* applications for ouster

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injunctions will only be granted in cases of extreme urgency.

Can I change the locks?

If you are married or if you jointly own or rent a home, then neither party has the right to lock the other out. Both parties have a right to continue to occupy the family home until and unless an order is made by the Court. In the event that you are locked out of your property or you need protection, you must seek urgent legal advice.

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