

Injunctive Relief

Protection from Harassment Act 1997

The civil side of the Protection from Harassment Act 1997 applies in England, Wales and Scotland.

The victim can obtain an injunction (i.e. an order from a court that the person stop doing the acts that amount to stalking or harassment) and damages for anxiety and any financial loss they have suffered.

If the stalker breaches the injunction (in other words, does something which the court has ordered him not to do) that is either:

- a) A criminal offence -- for which they can be arrested by the Police, prosecuted by the CPS and imprisoned by a criminal court for up to 5 years, or
- b) A contempt of court -- for which you can apply to the civil court for them to be imprisoned for up to 2 years

The victim decides whether they would like to make a report to the police or apply to the civil court.

To obtain an injunction, victims can speak to a civil law solicitor. If they wish they can represent themselves to lower the cost as they would only need to pay the court fees. If they would prefer to do this then they can go to their local civil court and ask for the relevant forms.

Non-molestation order

This type of injunction is only available for situations where the stalker and the victim are ex intimates or family members.

A non-molestation order prohibits the stalker from contacting them directly or indirectly and from coming near to their home or place of work. It can also include prohibitions specific to their situation but the above are the two core restrictions.

A non-molestation order has automatic powers of arrest attached, so when the victim receives a copy of the non molestation order, they should provide a copy to their local police station. Then, if the stalker breaches the non-molestation order, the victim can make a report to the police and the police can act accordingly.

The order may last for a specific period (usually six months) or it can be until ‘further order’ which means it lasts until the perpetrator applies for it to end. Applications can be made to extend an order and this should be done before the order expires.

We would recommend that victims speak to a family law solicitor for assistance on this matter. If there has been physical violence recently then they may be eligible for free assistance from the National Centre for Domestic Violence and their telephone number is 0844 8044 999. Victims can represent themselves in court which means they only have to pay court fees and not solicitor’s fees on top of that. If they wish to do this they can go to their local civil or family court and ask for the relevant application forms.

Undertaking

This is an alternative to a non-molestation order. It is where the court requires the perpetrator to promise to leave the victim alone (this can be done in exactly the same terms as a non-molestation order). If they then breach the undertaking the victim can apply for their committal to prison.

Restraining Order

This is the one injunction that is granted by a criminal court rather than a civil court.

If a defendant is found guilty under the Protection from Harassment Act 1997 the court can impose a restraining order. However, even if a defendant is acquitted under the Domestic Violence, Crime and Victims Act 2004, the court can impose a restraining order if the ‘court considers it necessary to do so to protect a person from ongoing harassment from the defendant’.

As listed on the CPS guidance website https://www.cps.gov.uk/legal/s_to_u/stalking_and_harassment/#a03b types of restrictions can include:

- not (either alone or by means of agents) to directly or indirectly contact, harass, alarm, or distress the victim and others as appropriate;
- not to knowingly approach within the boundary of (specify street or road names and attach a copy of an annotated map to clarify parameters) any premises where the victim and others as appropriate reside, work or frequent;
- not to telephone, fax, communicate by letter, text, electronic mail or internet with the victim and others as appropriate, or to send or solicit any correspondence whatsoever;

- not to display any material relating to the victim on social networking sites including YouTube, Facebook and Twitter;
- not to retain, record or research by any means, private, confidential or personal facts, or information relating to the victim and others as appropriate:
or
- not to use a different name or to change names without immediately notifying the court and/or the police.

The order can be granted for a specified or indeterminate period of time which means it is for the defendant to show to the court that they no longer present a risk to the victim.

Restraining orders can also be considered where the defendant receives a custodial sentence. This is because stalkers have been known to continue to harass the victim from within prison, such as via letters, calls or third parties. The prison can be informed of the existence of an order by the police. The order can and sometimes should exceed the custodial period.

The restraining order means that they cannot contact or come near the victim. If without reasonable excuse the perpetrator does anything which they are prohibited from doing they are guilty of an offence and could be imprisoned for a term not exceeding five years, or a fine, or both.

Civil Restraint Order

A civil restraint order stops someone from being able to issue proceedings in a civil court without first going before a judge to get permission. This would be a potential route for victims who are being harassed using the law, for example an offender may be bringing numerous court proceedings against them, causing the victim stress and costing them a lot of money. A Civil Restraint Order can usually only be used if the offender has brought two or more cases against the victim which were 'totally without merit'.