Fighting Domestic Violence - United Kingdom

4. Protection for domestic violence victims and relief granted

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# 4.1 Civil protection orders

# 4.1.1 Are there civil protection orders available to victims of domestic abuse?

**England and Wales**

The main forms of protection orders currently available in England and Wales for domestic violence victims are:

non-molestation orders (NMOs)[66]

occupation orders (OOs)[67]

restraining orders[68]

domestic violence protection orders ("DVPOs)[69]

**NMOs and OOs**

The aim of an NMO is to stop the perpetrator ("**Respondent**") from "molesting" an individual or a child (the victim or "**Applicant**"). This would include stopping them from using or threatening violence, intimidation or harassment.

An OO is intended to exclude the Respondent from the home that it shares (or intended to share) with the Applicant.

Both NMOs and OOs can be applied for directly by the victim of the domestic violence (although it is recommended that a solicitor be engaged to assist with this).

There is no specific provision in the legislation in relation to NMOs or OOs to allow for temporary custody of a child following the imposition of an NMO or OO, or to provide for specific child protection orders. However:

the NMO can contain a specific provision prohibiting the Respondent from molesting a relevant child[70] [71]

the court does take into account whether children are involved when considering an OO, and will make sure that the well-being of the child is protected

The Respondent must be someone with whom the Applicant is "associated." This means that they must be related through one of the following means:

relative

co-habitant

married, divorced or intended to be married to

currently in or were in or intended to enter into a civil partnership

live or have lived in the same household as a family

have or have had an intimate personal relationship of significant duration with each other

are a parent of the relevant child or have or had parental responsibility for the child[72]

A child (i.e., someone under the age of 16) can apply for an NMO with the permission of the court and an Applicant can apply if they are a parent of a relevant child or have parental responsibility for the child along with the Respondent.

To apply for an OO, the house in question must have been (or intended to be) the home of the Applicant and the Respondent. In addition, there are particular provisions in place depending on whether the Applicant is entitled to occupy the house (e.g., by way of beneficial interest); if only the Respondent is entitled to occupy the house (but the Applicant is a (former) spouse/civil partner/ cohabitant of the Respondent); or if neither the Applicant nor the Respondent has a right to occupy the house.[73] The Applicant will have to apply for an OO under the relevant section of the Family Law Act 1996, depending on into which of these categories they fall.

If the Respondent breaches the terms of an NMO, they can be charged with a criminal offense, whereas breaching the terms of an OO is not a criminal offense. However, it is possible to request that the police arrest the Respondent for contempt of court if they breach an OO, and enforcement of the OO can then be dealt with by the civil courts.

The legislation does not stipulate a time limit for an NMO or OO.

**Restraining orders**

A restraining order is another form of civil behavior order available to victims of domestic violence.[74] Unlike NMOs and OOs, a restraining order can only be made by the court on the conviction or acquittal of the Respondent for a criminal offense. It is a preventative measure intended to protect the victim.

There is no specific provision in the legislation on restraining orders to allow for temporary custody of a child following the imposition of an order, or to provide for specific child protection orders.

The court will only make a restraining order if it is considered necessary to protect the victim from harassment or conduct that will put them in fear of violence.[75] The use of restraining orders is not solely restricted to domestic abuse cases. Guidance from the CPS (the authority responsible for prosecuting crimes in England and Wales) on restraining orders states that they are most appropriate in the following circumstances:

where the defendant and the victim/witness know each other, e.g., domestic violence cases

where the parties have ongoing contact, e.g., where the victim runs a local business

where there is evidence that the victim has been targeted by the defendant (e.g., continued minor public order offenses or criminal damage)[76]

When deciding whether to make a restraining order, the court may take into account the evidence presented to it during the criminal trial, but may also require further evidence.

It is a criminal offense to breach a restraining order without a reasonable excuse. This could lead to imprisonment of up to five years, or a fine, or both.

There is no specific time limit per se, but restraining orders will be made by the court on conviction or acquittal of the Respondent.

**DVPOs**

In addition to the orders described above, there are certain powers available to the police to provide instant protection to domestic violence victims in the immediate aftermath of a domestic violence incident. Since 8 March 2014, it has been possible for police forces in England and Wales to issue DVPNs. A DVPN can be issued by a member of the police force (not below the rank of superintendent) against a person over the age of 18 if they have reasonable grounds for believing that:

the person has been violent toward, or threatened violence against, an associated person; and

the DVPN is necessary to protect that associated person from the violence, or threat of violence.[77]

The definition of an associated person is the same as that described above in relation to NMOs and OOs.[78]

The DVPN can offer various forms of protection to the victim, such as requiring that the Respondent (the perpetrator) leave the victim's home for a 48-hour period.

Once a DVPN has been issued, a police constable must apply to a magistrates' court within 48 hours for a DVPO.[79] If granted, this extends the protection offered by the DVPN for an additional 28 days.

Often a DVPO will be made before any criminal charges have been brought against the Respondent.

There is no specific provision in the legislation on DVPNs and DVPOs to allow for temporary custody of a child following the imposition of an order or to provide for specific child protection orders.

If the Respondent breaches the DVPN or DVPO, they may be arrested by the constable if the constable has reasonable grounds for believing that the Respondent is in breach.

DVPNs and DVPOs were introduced in order to ensure that the police and magistrates' court could offer protection to victims of domestic violence in situations where there is insufficient evidence to charge the Respondent with a criminal offense.[80]

**New regime: domestic abuse protection order**

On 3 March 2020, the UK government reintroduced the Bill into Parliament, which proposes a new civil domestic abuse protection notice (DAPN) and a new civil domestic abuse protection order (DAPO) to replace DVPNs and DVPOs. These widen the scope of protection to cover all forms of domestic abuse, including that which is not physical (such as controlling or coercive behavior).

If the Bill is brought into force, it will repeal all existing DVPOs (at the time of writing, it is unclear whether the DVPOs that are still in effect at the time the Bill is passed will be replaced by DAPOs automatically). NMOs and restraining orders will remain in place, but only so that they can be used in nondomestic abuse situations, where the abuser is not associated with the victim (i.e., not a former partner or family member, etc.).

Similar to a DVPN, a DAPN will be issued by the police to provide immediate protection to a victim following an incident. One of the key issues with the current system, which the proposed new regime is designed to rectify, is the absence of criminal sanctions if a DVPO is breached and the fact that it can only last for a maximum of 28 days. If the Respondent breaches a DAPO, they will have committed a criminal offense with a maximum penalty of five years' imprisonment and/or a fine.

DAPOs will also allow for the imposition of both prohibitive and positive requirements on the Respondent, such as requiring them to attend a mental health assessment.[81]

The key provisions of the Bill that relate to the protection of victims of domestic abuse will apply only to England and Wales.[82]

**Scotland**

The main civil protection orders available to victims of domestic violence in Scotland are as follows:

interdicts

exclusion orders

non-harassment orders

**Interdicts**

An interdict is a civil court order that instructs the Respondent not to do something, e.g., to refrain from a particular behavior or to stay away from a particular person or location. An interdict is equivalent to an injunction under the law of England and Wales.

Interdicts can be used in various situations to cover different types of behaviors, including domestic abuse. For example, an interdict could prevent a Respondent from: threatening or assaulting (physically or verbally) the Applicant or their child; removing belongings from the Applicant's home; coming within a certain distance of the Applicant's home, place of work, child's school; or doing anything that might frighten the Applicant or their child.[83] While there is no specific provision for the temporary custody of a child following the obtainment of an interdict, the well-being of the child is clearly of relevance.

The Applicant can apply for a common law interdict (also known as a non-molestation interdict) to prevent certain conduct that amounts to an illegal act by a former partner (such as a spouse, civil partner or cohabitant). In addition, statute provides for specific interdicts for various domestic situations, as follows:

**Matrimonial interdict**: This can be used to restrain or prohibit the behavior of one spouse toward the other spouse or toward a child of the family.[84] This can include prohibitions on a spouse entering or remaining in a matrimonial home or any other residence occupied by the Applicant, or the Applicant's place of work, or any school attended by a child in the permanent or temporary care of the Applicant.[85]

**Civil partners interdict**: This is known as a "relevant interdict" and provides civil partners with the same protections as offered by the matrimonial interdict.[86]

**Domestic interdict**: This is the same as a matrimonial interdict, but for cohabiting couples.[87]

If the Applicant obtains an interdict, they can apply to the court for a determination that the interdict is a domestic abuse interdict.[88] This can be done if the Applicant and Respondent were spouses, civil partners, cohabitants or in an intimate personal relationship.[89] This can be beneficial to the Applicant because a domestic abuse interdict may lead to higher penalties. Penalties include: on summary conviction (i.e., conviction in a magistrates' court, the lowest criminal court), a Respondent can be imprisoned for up to 12 months and/or receive a fine; and on conviction on indictment (i.e., conviction following a jury trial in the crown court), a Respondent can be imprisoned for up to five years and/or fined.[90]

In contrast, a breach of an interdict that is not a domestic abuse interdict is harder to pursue. The Applicant would have to bring a separate action and prove the breach beyond reasonable doubt.

Another option available to the Applicant is to apply for a power of arrest to be attached to the interdict. This would mean that the police may arrest the Respondent on reasonable suspicion of breach, as long as there is a risk of further abuse or breach if the Respondent is not arrested.[91]

If the interdict is a matrimonial interdict, relevant interdict or domestic interdict and is made alongside an exclusion order (see below), the court must attach a power of arrest if it is sought.[92] In the case of any other interdict, the court will attach a power of arrest if it is satisfied that it is necessary to protect the Applicant from risk of abuse.[93]

The legislation does not stipulate a time limit for obtaining an interdict.

**Exclusion orders**

An interdict cannot be used to evict the Respondent from the home that it shares (or shared) with the Applicant if they have occupying rights. However, the Applicant can apply for an exclusion order, which is a protective court order that suspends the occupancy rights of a spouse, civil partner or co-habitant if necessary for the protection of the Applicant or their child.[94] The Applicant does not have to be physically living in the home at the time of applying for an exclusion order.

There is no specific provision in the legislation on exclusion orders to allow for temporary custody of a child following the imposition of an order or to provide for specific child protection orders.

The legislation does not stipulate a time limit for obtaining an exclusion order.

**Non-harassment order**

An Applicant can also apply for a non-harassment order (or restraining order), which will prevent the Respondent from engaging in particular conduct. Non-harassment orders cover all situations, but are also applicable to domestic abuse situations in Scotland.[95] Breach of a non-harassment order is a criminal offense.[96] On summary conviction, the Respondent can be imprisoned for up to six months and/or fined; conviction on indictment can lead to imprisonment for up to five years and/or a fine.[97]

A non-harassment order may include provision for the order to apply in favor of a child usually residing with the victim or the Respondent if the court is satisfied that it is appropriate for the child to be protected by the order.[98]

In addition, a non-harassment order can be imposed following conviction of a criminal offense for domestic abuse.[99] The Domestic Abuse (Scotland) Act 2018, which came into force on 1 April 2019, introduced a new criminal offense of domestic abuse, which included psychological abuse. If an individual is convicted under this Act, the court is required to consider making a non-harassment order against that person.[100]

No action will be brought unless it is commenced within three years of: (a) the date on which the alleged harassment ceased; or (b) the date (if later than the date in (a)) on which the pursuer in the action became (or on which it would have been reasonably practicable for them to become) aware that the Respondent was a person responsible for the alleged harassment or the employer or principal of such person.[101]

**New regime: emergency protective orders**

In October 2019, the Scottish government announced that it would introduce a further protective order for domestic abuse victims: emergency protective orders (these have not yet come into force). These are intended to grant immediate, short-term powers to police to remove perpetrators from the home to protect victims (regardless of who has occupying rights). Prior to the announcement in October 2019, a consultation on these measures was conducted by the Scottish government and resulted in almost unanimous agreement that the police should be granted these immediate powers.

**Northern Ireland**

Victims of domestic violence in Northern Ireland have the following protection orders available to them:

non-molestation orders (NI NMO)[102]

occupation orders (NI OO)[103]

restraining orders[104]

In addition, a new Domestic Abuse and Family Proceedings Bill is passing through the Assembly, which will include a new offense of coercive and controlling behavior.

**NI NMOs and NI OOs**

The NI NMOs and NI OOs are similar to those available in England and Wales. An NI NMO is an order that can be granted by a judge to stop the Respondent from molesting the Applicant (an associated person) or a relevant child. It can also provide for more specific prohibitions on identified conduct. An "exclusion zone" can be added to the NI NMO to prevent the Respondent from accessing certain locations, such as the area in which the Applicant lives, works, or where their children go to school.

An NI OO is an order that can be granted by a judge to regulate access to and occupation of a property that is (or has been) the shared home of associated persons (i.e., the Applicant and Respondent), including to:

enforce the Applicant's right to remain in occupation of a property against the Respondent

require the Respondent to permit the Applicant access to the property

require the Respondent to permit the Applicant to have peaceful use and enjoyment of the property or part of it

exclude the Respondent from an area in which the property is included

require the Respondent to leave the property or part of it

prevent the Respondent from selling their share in the property (if applicable)

The definition of "associated person" is broadly the same as stated above in England and Wales (but also specifically refers to adopted children).[105]

There is no specific provision in the legislation on NI NMOs and NI OOs to allow for temporary custody of a child following the imposition of an order or to provide for specific child protection orders. As in England and Wales, when considering an NI OO, the court will have regard to all of the circumstances, including the housing needs and resources of each party and any relevant child, and the health, safety or well-being of the parties and any relevant child.[106]

The legislation does not stipulate a time limit for NI NMOs or NI OOs.

**Restraining orders**

Similar to England and Wales, the court can grant a restraining order on conviction or acquittal of the Respondent in order to protect the victim from conduct that amounts to harassment or will cause a fear of violence. The order will prohibit the Respondent from doing anything described within it.

There is no specific provision in the legislation on restraining orders to allow for temporary custody of a child following the imposition of an order or to provide for specific child protection orders.

If the Respondent does anything that they are prohibited from doing under the terms of the restraining order, they will be guilty of an offense and liable on conviction on indictment to imprisonment for a term not exceeding five years and/or a fine, and on summary conviction for a term not exceeding six months and/or a fine.[107]

The legislation does not stipulate a time limit, but it is noted that the order is made on conviction or acquittal.

**Specific child protection orders**

There are a number of orders that are available in England and Wales, Scotland, and Northern Ireland for the protection of children (which are not restricted to domestic abuse cases). For example:

**Child assessment orders**: These are available if there is reasonable cause to suspect that the child is suffering or is likely to suffer significant harm and an assessment of the child is required to determine this.[108]

**Child protection orders/emergency protection orders**: Such an order can be made by the court in order to protect a child by, for example, removing the child to particular accommodation, preventing the child's removal from a hospital, or granting parental responsibility for the child to the applicant.[109]

**Child arrangement orders**: This is an order that can be used to determine, in the course of family proceedings, with whom and when a child is to live, spend time or otherwise have contact.[110]

**Care and supervision orders**: This is an order placing the child in the care or supervision of a designated local authority.[111]

**Data on how often civil protection orders are issued**

**England and Wales**

**NMOs and OOs**

Between January and March 2020, 8,022 applications were made to the family court for domestic violence remedy orders. The majority of these applications (83%) were for NMOs. Applications for NMOs were up 12% compared to the same period in 2019.

Between the same period, 8,716 domestic violence orders were made and 93% of these orders were NMOs, up 9% compared with the equivalent quarter in 2019.[112]

The Metropolitan Police (the police force responsible for London) had 62 recorded reports to police of breaches of NMOs in 2016-17 and 84 in 2017-18.[113]

The North Yorkshire Police recorded:

95 breaches of NMOs in 2015/16

70 breaches of NMOs in 2016/17

61 breaches of NMOs in 2017/2018[114]

The West Midlands police recorded:

322 breaches of NMOs in 2017

381 breaches in 2018

518 breaches in 2019[115]

Between January and March 2020, 17% of the 8,022 applications made to the family court for domestic remedy orders were for OOs. Applications for OOs increased by 8% compared to the same period in 2019.

Of the 8,716 domestic violence orders made by the court between January and March 2020, 7% were OOs, up 1% compared with the equivalent quarter in 2019.[116]

**Restraining orders**

The Metropolitan Police recorded 136 reports to police of breaches of restraining orders in 2016-17 and 205 in 2017-18.[117]

The North Yorkshire Police recorded 126 breaches of restraining orders in 2015/16; 147 breaches of restraining orders in 2016/17; and 182 breaches of restraining orders in 2017/18.[118]

In 2013, 20,356 restraining orders were issued by the courts in England and Wales; 21,508 were issued in 2014; and 23,057 were issued in 2015.[119]

**DVPNs and DVPOs**

In England and Wales in the year ending March 2019:

4,349 DVPNs were issued

5,859 DVPOs were made

27,787 NMOs were made (an increase of 22% over the past nine years)[120]

The Metropolitan Police recorded the following statistics:

164 crime incidents flagged for DVPN were granted and breached between 1 January 2016 and 31 December 2016

138 crime incidents flagged for DVPO were granted and breached between 1 January 2016 and 31 December 2016

**Scotland**

**Interdicts**

Civil justice statistics in Scotland were as follows:

The number of interdicts initiated in 2016-2017 was 265 and in 2017-2018 was 310.

The number of interdicts disposed of 2016-2017 was 146 and in 2017-2018 was 156.[121]

**Exclusion orders**

Civil justice statistics show that:

The number of exclusion orders initiated in 2016-2017 was 10 and in 2017-2018 was eight.

The number of exclusion orders disposed of 2016-2017 was six and in 2017-2018 was five.[122]

**Non-harassment orders**

There is no accessible information regarding the statistics for non-harassment orders in Scotland.

**Northern Ireland**

**NI NMOs and NI OOs**

In 2018 and 2019, the number of breaches of NI NMOs fell to their lowest levels since the data series began in 2004 to 2005.

Between July 2018 and June 2019, there were 592 breaches of NI NMOs recorded, compared with 717 breaches between July 2019 and June 2020.[123]

There is no equivalent publically available information regarding NI OOs.

**Restraining orders**

There is no accessible information regarding the frequency with which restraining orders are granted in Northern Ireland.

# 4.1.2 Who can petition for civil protection orders?

Please refer to section 4.1.1.

# 4.1.3 Are there temporary custody of a child or child support orders?

Please refer to section 4.1.1.

# 4.1.4 Is there a provision to order the abuser to move out or stay away from places that the victims frequent?

Please refer to section 4.1.1.

# 4.1.5 Are there any other types of emergency, preventive and civil protection orders?

Please refer to section 4.1.1.

# 4.1.6 Can these orders be requested by direct or indirect victims or legal representatives in children's cases?

Please refer to section 4.1.1.

# 4.1.7 Are there different types of civil protection orders, e.g., for a short- term period?

Please refer to section 4.1.1.

# 4.1.8 Are ex parte orders permitted without the aggressor being present?

Please refer to section 4.1.1.

# 4.1.9 Do emergency orders also extend protection for abuse and intimidation to family members of the victim?

Please refer to section 4.1.1.

# 4.1.10 How long do the orders last?

Please refer to section 4.1.1.

# 4.1.11 Please provide any data or hyperlinks to government or NGO websites that include information on how often civil protection orders are issued, and any relevant demographics information, e.g., police reports, convictions, etc.

Please refer to section 4.1.1.

# 4.2 Steps for receiving a protective order

# 4.2.1 What documentation is needed to obtain a civil protection order?

**England and Wales**

**NMOs and OOs[124]**

A victim of domestic abuse can apply directly to the court for an NMO or an OO. In order to do this, they will have to complete and send an application form (Form FL401, available to download from the internet) to a civil court (i.e., the local family or county court).[125] The Applicant can use the following link to find out the details of their local court: <https://courttribunalfinder.service.gov.uk/search/>. Guidance on how to complete the form is included in the form itself.

Alongside the form, a statement must be provided giving details in support of the application. This will include the history of the abuse, as well as any evidence (such as text messages, photos of injuries, etc.) that is considered relevant. The Applicant must sign and date a statement of truth at the bottom of this written statement verifying that the information provided is truthful and stating:

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

If the Applicant does not want their address or telephone number to be made available to the Respondent, they should not include them in the application form. Instead, the Applicant should complete Form C8 with their confidential contact details to be provided to the court.[126] This form can be downloaded from the UK government's website or can be provided by the local civil court.

Two or three copies of this written statement and the application form must then be provided to the court, along with a draft NMO or OO order.

In emergency cases, the court can grant an interim order.[127] In such cases, the application is made without notice to the Respondent, i.e., they are not provided with a copy of the application after it is filed/before a hearing takes place. The court is likely to allow this in situations where there may be an immediate risk of harm to the Applicant or a relevant child if the order is not made immediately. If the Applicant is applying without notice to the Respondent, they must explain their reasons for this in their written statement accompanying the form.

The court will then arrange a second hearing at a later date to decide whether to grant a final order. The Respondent will attend this second hearing and will have the opportunity to put their case to the court. At the end of the hearing, the court will decide whether or not to grant the final order.

In nonurgent cases, the application will be made on notice to the Respondent. This means that a copy of the application form, witness statement and any notice of hearing or directions set by the court must be provided to ("served on") the Respondent. The Applicant must not serve these documents on the Respondent. Instead, their solicitor should do it or, if they do not have a solicitor, they can request that the court serve the documents on the Respondent.[128]

At the time of writing and in light of the COVID-19 pandemic, it is possible to register online to a digital service through which an application for an NMO or OO can be made (<https://flows.courtnav.org.uk/register>).

**Restraining orders**

A restraining order will either be made directly by the court of its own volition, or the prosecutor can make an application to the court following the conviction or acquittal of the defendant.

The police will be invited to make representations to the prosecutor regarding restraining orders and will be expected to confirm whether they have taken into account the views of the victim. In cases where the victim does not want a restraining order to be issued, the prosecutor must make the court aware of this, as it is ultimately a matter for the court to decide.

**DVPNs and DVPOs[129]**

As stated above, a DVPN can only be issued by a police officer of the rank of superintendent or above. The consent of the victim is not required and a DVPN may be issued even where the victim specifically states that it does not want a DVPN, for example in cases where there is evidence of coercive or controlling behavior. The police officer must take into account the involvement of any children (defined as anyone under the age of 18) when deciding whether to issue a DVPN.

The police officer must then apply to the magistrates' court for a DVPO, which extends the protection offered by a DVPN to up to 28 days.

**New regime: DAPOs[130]**

Whereas DVPNs and DVPOs can only be issued and applied for by the police, the new regime is intended to broaden the application routes to allow victims and specific third parties such as local authorities to make a direct application to the family court, as well as to allow criminal, family and civil courts to make a DAPO during existing proceedings (which do not have to be domestic abuse-related). The intention is for legal aid, i.e., public funding, to be available for victims who directly apply for an order and there will be no fee required.

**Scotland**

Interdict,**[131]**exclusion order**[132]** and non-harassment order**[133]**

Each of these orders can be applied for directly by the victim by making an application to the sheriff court or the court of session. It is recommended that the Applicant seeks the help of a solicitor, who will assist in preparing a legal document (known as an initial writ), summarizing the facts of the case, including the type of abuse or conduct and why the Respondent is likely to repeat this again.

In most cases, only the Applicant or their lawyer can make the application, i.e., a third party (such as a domestic abuse charity) cannot do it on the victim's behalf.

An application for an exclusion order must be made by the Respondent's spouse, civil partner, cohabitee and/or occupier of the family home. At the time of making the application, the Applicant does not have to be living in the house with the Respondent (for example, if they are seeking shelter elsewhere).

In cases of emergency or where there is an immediate risk to the victim or child, it is possible to apply for an interim interdict or an interim exclusion order, which will be granted as soon as the application is made, prior to any court hearing. As with an interim NMO and OO, the court will then consider (usually at a hearing) whether it is appropriate to put a final interdict or exclusion order in place. The Applicant may be required to attend the court hearing to give evidence at this stage, if the Respondent decides to defend the case.

If an interim exclusion order has not been applied for, the Respondent will have a period of 21 days from when the legal papers are served on it, to tell the court if it wants to defend the action. During this period, no protective steps will be taken. If the Respondent decides to defend the action, there will be a court hearing.

The court process for a non-harassment order can take a long time and it is therefore beneficial to make an application for an interim interdict at the same time to prevent the harassment immediately.

**Northern Ireland**

**NI NMOs and NI OOs**

As in England and Wales, the victim can directly apply for an NI NMO and NI OO. The Applicant must make the application using court form F1 (available to download from the internet).[134]

In situations where there is an immediate risk to the victim or relevant child (or where an incident has occurred recently (i.e., within seven days)), the Applicant can make an emergency application for either an NI NMO or an NI OO or both. As in England and Wales, this will mean that the Respondent is not notified of the application before the order is granted. The order will be granted on a short-term basis to provide immediate protection. A court hearing will subsequently be arranged and both the Applicant and the Respondent will be summoned to attend.

**Restraining order**

As in England and Wales, this is awarded by the court on conviction or acquittal for an offense. The victim does not directly apply for a restraining order. Please see above for further information.

# 4.2.2 Does the victim need to attend a hearing?

Please refer to section 4.2.1.

# 4.2.3 Can you request remedies?

Please refer to section 4.2.1.

# 4.2.4 Are there time limits?

Please refer to section 4.2.1.

# 4.2.5 Are there different rules in emergencies?

Please refer to section 4.2.1.

# 4.3 Judicial discretion

# 4.3.1 What discretion does a judge have in granting a civil protection order or other protective orders?

**England and Wales**

**NMOs and OOs**

An NMO or OO can only be granted with the court's permission and the court (i.e., the judge)[135] retains discretionary powers to make such an order.

In deciding whether to make an interim NMO or OO, without notice to the Respondent, the court will consider:

any risk of significant and immediate harm to the Applicant or relevant child, from the Respondent

whether it is likely that the Applicant might be deterred or prevented from making an application if the order is not granted immediately

whether there is reason to believe that the Respondent is deliberately evading service of the legal papers and the Applicant or relevant child would be seriously prejudiced by any delay this would cause[136]

The court will then subsequently grant the Respondent the opportunity to defend the order at a full hearing. The hearing will be held in private, unless the court orders otherwise.

There are a number of factors that the court is likely to consider at the hearing, including the harm that might be caused to the Applicant or their child if the order is not granted and the impact on their health, safety and well-being.

Specifically in relation to OOs, the court will likely take into consideration the housing situation and financial resources of both parties. If the Applicant is not entitled to occupy the house, but is a cohabitee (or former cohabitee) of the Respondent, the court will likely consider the length of their relationship and the length of time since the relationship ended.

Specifically in relation to NMOs, the court may take into account whether the Applicant has taken any other steps to seek support, other than applying to the court (e.g., calling the police). If they have not done so for cultural reasons, this should be included in their witness statement.[137]

**Age limits on obtaining orders**

If the victim is under the age of 16, they cannot apply for an NMO or an OO without the court's permission. The court will grant permission if satisfied that the child has sufficient understanding of the application.[138] If the victim is under the age of 16, then they must apply to the court for permission to make an application for an NMO or an OO. The same form should be used as referred to above — Form FL401.[139]

If the victim is 16 or 17, they should seek the help of someone over the age of 18 to assist them in making the application. This person will be known as a "next friend." They should also make the application in a county court.

**Restraining orders**

The test that the court will consider when deciding whether to make a restraining order will be whether it is necessary to protect the victim from conduct that will put them in fear of violence. The standard of proof is a civil one, and therefore it must be decided on the balance of probabilities, i.e., the evidence will be assessed on the basis of whether it is more likely than not to have occurred.

The court is entitled to consider any of the evidence presented to it during the course of the criminal trial in order to determine whether a restraining order is necessary either post-conviction or post-acquittal. In addition, both the prosecution and defense may provide additional evidence for the court to consider. It is possible for prosecutors to request a restraining order at the outset, before any evidence has been put forward during the trial. Evidence must be presented by the prosecutor when making this application.

**Age limits on obtaining restraining orders**

There is no specific provision on restraining orders in the legislation, but it should be noted that the court (rather than the victim) applies for the restraining order.

**DVPNs and DVPOs**

A DVPN will be issued by a police officer of the rank of superintendent or above. The permission of the court is not required (and therefore the court's discretion is not relevant). When deciding whether to issue a DVPN, the police must have specific regard to:

the welfare of any children (i.e., anyone under the age of 18), regardless of whether the child is an associated person

the opinion of the victim

any representations made by the Respondent

the opinion of any other person who lives in the premises to which the provision would relate[140]

Consideration should be given to the following:

what the DVPN will seek to achieve and why this cannot be obtained by other means

whether the only option to reduce the risk or threat of violence is to remove the Respondent from the address and prevent their re-entry[141]

A magistrates' court will decide whether to issue a DVPO. The court may make a DVPO if it is satisfied on the balance of probabilities that the Respondent has been violent toward, or threatened violence toward, an associated person, and the making of the DVPO is necessary to protect that person. As with a DVPN, the court will take into consideration the welfare of any person under the age of 18, and the opinion of the victim and any other person who lives on the premises to which the provision would relate.[142] The court may decide to issue a DVPO even if the victim does not wish it.[143]

**Age limits on obtaining DVPNs and DVPOs**

As with restraining orders, the victim does not directly obtain a DVPN or DVPO (as noted above, DVPNs will be issued by police officers and DVPOs by the court). In terms of age limits, it is worth noting that the perpetrator must be over the age of 18.

**Scotland**

**Interdicts, exclusion order, non-harassment order**

The court has the power to grant each of these interdicts or orders. The standard of proof is civil, meaning that the court has to decide from the evidence whether it is more likely than not that the Respondent is abusing or harassing the Applicant.

The court will consider the following when deciding upon an interdict:

whether the behavior to be banned is unlawful

whether the Respondent is likely to repeat the abusive conduct

if there is the risk of immediate harm

whether the behavior can be clearly explained so the Respondent can understand what they are banned from doing

if the interdict is considered necessary for the Applicant's protection[144]

When granting an exclusion order, the court must be satisfied that it is necessary for the protection of the Applicant or any child of the family from any conduct (including threatened or reasonably apprehended conduct) of the Respondent that would cause harm to the physical or mental health of the Applicant or the child.[145] This is a fairly strict test and it can be difficult to demonstrate without strong evidence.

**Age limits on obtaining orders in Scotland**

There is nothing in the legislation in relation to interdicts, exclusion orders and non-harassment orders that suggests that there is an age limit on obtaining these orders.

**Northern Ireland**

**NI NMOs and NI OOs**

The court has discretionary powers to grant an NI NMO or OO.

When deciding whether to grant an NI NMO, the court will consider the need to secure the health, safety and well-being of the Applicant and any relevant child.

When deciding whether to grant an NI OO, it will consider a number of factors, including:

the housing needs and financial resources of the Applicant and Respondent, and any relevant child

the likely impact of granting (or not granting) the order on the health, safety or well-being of the parties and of any relevant child

the conduct of the parties to each other

the length of time that has elapsed since the end of the relationship (if applicable) or since they stopped living together

whether there are children involved, who are both parties' responsibility

If the Applicant or relevant child is likely to suffer significant harm because of the Respondent's conduct, then an OO should be made (although the court should balance this harm against any harm likely to be caused to the Respondent[146] or relevant child by the order being made).

**Restraining orders**

The court will make a restraining order of its own volition at the conclusion of criminal proceedings or if they are asked to consider it by the prosecution. The police can also include a recommendation to the prosecution at the outset.

The court will make a restraining order on the acquittal of the Respondent if it considers it necessary to do so to protect a person from harassment.

**Age limits on obtaining orders in NI**

There is nothing in the legislation in relation to NI NMOs and NI OOs, and restraining orders, which suggests that there is an age limit on who can obtain the orders.

# 4.3.2 Are there age limits on who can obtain orders?

 Please see section 4.3.1.

# 4.4 Restitution and remedies available to victims

# 4.4.1 Can victims obtain reimbursement for costs and restitution paid?

**Harassment**

**Scotland**

In Scotland, the Applicant can ask the court to grant it damages, as part of the court action for a non-harassment order. If the court finds in favor of the Applicant, it will order that the Respondent pay to the Applicant an amount of damages to reflect the level of harassment experienced by the Applicant. The Respondent could be liable to cover any expenses incurred by the Applicant, such as loss of earnings if the Applicant had to take time off work, or compensation for any injuries suffered as a result of the harassment.

**England, Wales and Northern Ireland**

Similarly, in England, Wales and Northern Ireland, a civil application can be brought for damages caused by harassment.[147] It is an offense for an individual to pursue a course of conduct that amounts to harassment of another individual and that they know or ought to know amounts to harassment. A victim of this behavior can bring a claim in civil proceedings against the perpetrator.

If this claim is successful, the Applicant may be awarded damages for (among other things) anxiety caused by the harassment and any financial loss arising from it.

In addition, the court may award an injunction against the Respondent to restrain them from doing anything that amounts to harassment. A breach of this injunction is an offense and the Respondent can be liable for conviction on indictment to imprisonment for up to five years and/or a fine and on summary conviction to imprisonment for up to six months and/or a fine.

**Violent crime**

Finally, the Criminal Injuries Compensation Scheme is available to individuals in Great Britain (i.e., England, Scotland and Wales).[148] In England and Wales, a victim may be eligible for compensation if they are a victim of violent crime; a close relative has died because of a crime; or they witnessed a serious crime, intervened and were seriously injured.

In Northern Ireland, a victim of crime may be able to claim for loss of earnings or earning capacity if they have been off work or incapacitated for longer than 28 weeks.

Following amendments to legislation that came into force on 9 June 2020, victims may now be able to make a claim for compensation under the Criminal Injuries Compensation Scheme for historic crimes that occurred in Northern Ireland between 1 March 1969 and 30 June 1988, for which they were previously denied (or discouraged from applying for) due to the 'same household' rule.[149] Victims need to make a claim within two years of 9 June 2020[150] and still need to meet the eligibility criteria set out under the scheme.

Further information on the Criminal Injuries Compensation Scheme is in Section 2 of this guide.

# 4.4.2 Can they recover wages and profits lost?

Please see section 4.4.1.

# 4.4.3 Is a separate civil process required?

Please see section 4.4.1.

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