Fighting Domestic Violence - United Kingdom

6. Special issues

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# 6.1 Battered woman syndrome

# 6.1.1 Can lawyers present evidence of battered woman syndrome or other domestic abuse as an affirmative defense to crimes that the battered woman has committed? (Note: Battered Woman Syndrome is accepted by courts in certain jurisdictions to show that battered women can use force to defend themselves and sometimes kill their abusers due to abusive and life-threatening situations.)

Neither battered woman syndrome, nor domestic abuse,[220] are affirmative defenses under UK law. However, they have been raised in various cases with the aim of supporting a defense of duress[221] or, in murder/manslaughter cases, a defense of loss of control or diminished responsibility.[222] Further detail about these defenses is set out below.

**Duress**

In England, Wales and Northern Ireland, duress is a defense at common law to all crimes except murder and attempted murder.[223] There is no definitive statement of the scope of the defense, but the court of appeal has set out the following two elements of duress:[224]

the defendant was impelled to act because, as a result of what they reasonably believed the coercer had said or done, they had a good cause to fear death or serious injury

a sober person of reasonable firmness, sharing the defendant's characteristics, would have responded in the same was

All of the authorities recognizing duress as a defense have involved threats of death or grievous bodily harm. Furthermore, in *R v Quayle* [2005] 1 All ER 988, it was held that "an imminent danger of physical injury" was required. It is clear that a threat of serious psychological injury will not suffice.[225]

The defense of duress does not exist in Scotland. In Scotland, coercion is a defense at common law to all crimes except murder and attempted murder. The elements of the defense were set out in *Thomson v HM Advocate* as being where:[226]

following threats, there is an immediate danger of violence, in whatever form it takes

there is an inability to resist or avoid that immediate danger

**Loss of control**

In England, Wales and Northern Ireland, loss of control is a partial defense to murder. If successful, the partial defense reduces the offense to an act of voluntary manslaughter rather than murder.[227] There are three components to the defense:

the defendant's acts and omissions in doing or being a party to the killing resulted from their loss of self-control

the loss of self-control had a qualifying trigger (broadly defined as the defendant's fear of serious violence, circumstances of an extremely grave character that caused the defendant to have a justifiable sense of being seriously wronged, or a combination of these)[228]

that a person of the same sex and age, with a normal degree of tolerance and self-restraint and in the circumstances as the defendant, might have reacted in the same or in a similar way

The law specifically notes that it does not matter whether the loss of control was sudden.[229] Sexual infidelity does not constitute a "qualifying trigger."[230]

The defense of loss of control does not exist in Scotland. In Scotland, provocation is a partial defense to murder. If successful, the partial defense reduces the offense to culpable homicide on the grounds of provocation, rather than murder. The defense applies (in relation to provocation taking the form of violence (and not solely verbal provocation))[231] where there is a loss of control and a reasonably proportionate relationship between the conduct amounting to the provocation and the actions of the accused.[232] Loss of control based on sexual infidelity can also constitute provocation in Scotland.[233]

**Diminished responsibility**

In England, Wales and Northern Ireland, diminished responsibility is a partial defense to murder. If successful, the partial defense reduces the offense to an act of voluntary manslaughter rather than murder.[234] There are four components to the defense:[235]

The defendant was suffering from an abnormality of mental functioning (meaning a state of mind so different from that of ordinary human beings that a reasonable person would term it abnormal).[236]

It had arisen from a recognized medical condition (which can be found in the World Health Organisation's International Classification of Diseases (ICD-10) and the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-IV). Note that the DSM-IV includes "battered woman syndrome" as an off-shoot of post-traumatic stress disorder).[237]

It had substantially impaired their ability either to understand the nature of their conduct or to form a rational judgement or to exercise self-control (or any combination).

It provided an explanation for their acts and omissions in doing or being a party to the killing.

In Scotland, diminished responsibility is a partial defense to murder. If successful, the partial defense reduces the offense to culpable homicide on the grounds of diminished responsibility, rather than murder. The defense applies where the defendant's ability to determine or control conduct was, at the time of the conduct, substantially impaired by reason of abnormality of mind (including mental disorder).[238]

# 6.2 Domestic violence in the workplace

# 6.2.1 Can courts issue orders to protect employees suffering from domestic violence?

We have found no court orders that are specifically available in relation to employees.[239]

However, other forms of civil orders are available to victims of domestic abuse that an employee may be able to utilize (including, for example in England and Wales, DVPNs and DVPOs, injunctions, NMOs, restraining orders and criminal behavior orders; in Scotland interdicts and non-harassment orders. See Section 4 for more detail).[240]

# 6.2.2 Can departure be deemed "for good cause" if related to domestic violence?

If a person voluntarily leaves paid employment without having "good reason," the state benefits that they may be entitled to could be "sanctioned." There are three levels of sanctions: lower, intermediate and higher level. Leaving a job without good reason attracts a higher level sanction, meaning that state benefits may be stopped for 13 to 26 weeks.[241] The exact length of sanction will depend on whether the claimant has had earlier sanctions.

"Good reason" is not defined in legislation. The government's advice to decision-making staff in relation to benefit payment, states that decision-makers should, "take into account all relevant information about the claimant's individual circumstances and their reasons for any failures when considering whether to sanction a claimant." Benefit claimants may have to provide information and evidence to show "good reason."

The government's advice to decision-making staff specifically notes that where a benefit claimant is the victim of domestic violence, this may be treated as contributing to a "good reason."[242] The guidance provides that, "claimants who are forced to leave employment because of threatened or actual domestic violence from an estranged family member are to be treated as having good reason for so doing." This would be where keeping a job would represent a risk to a person's safety, for example because:

the estranged spouse, partner, or family member would know where they work and could inflict harm on them; or

retaining a job would be likely to expose the claimant to the area or place their estranged family member resides, works or habitually travels to or visits.

Where a benefit claimant has been the recent victim of domestic violence, any "work-related requirements"[243] (e.g., attending work-focused interviews, work preparation, work search and work availability) imposed on them in order to qualify for state benefit, may be eased provided that certain conditions are met.[244]

These conditions include that the Claimant must:

make a notification that domestic violence has been inflicted on or threatened against them during the past six months

as at the date of the notification, not live with the person who inflicted or threatened the domestic violence on them provide evidence that:

their circumstances are consistent with having had domestic violence inflicted or threatened against them in the past six months

they made contact with a person acting in an official capacity (e.g., a health care professional, police officer, registered social worker or the claimant's employer) regarding the incident during the six-month period

The 13-week period will run from the date the notification at (a) above is made.

# 6.2.3 Can family members of domestic violence victims take reasonable leave to help the victim seek treatment or obtain help and services?

There are no specific provisions under UK employment law for family members of domestic violence victims. Family members may, however, have the right to take reasonable leave under the "time off for dependents" provisions described below, which could be utilized by the family members of domestic abuse victims.

An employee has the statutory right to take a reasonable amount of unpaid time off in order to take action that is necessary, such as:

to provide assistance on an occasion when a dependent falls ill or is injured or assaulted

to make arrangements for the provision of care for a dependent who is ill or injured

because of the unexpected disruption or termination of arrangements for the care of a dependent[245]

The following definitions apply to the above:

"Employee" is someone who works under an employment contract (i.e., not workers who are not employees or the self-employed).[246] The right applies to all employees with no requirements as to length of service. It also does not matter if the employee works full-time or part-time or on a permanent or temporary basis.

"Reasonable amount of time off" is not defined or limited and will depend on the nature of the incident and the employee's individual circumstances.[247]

"Action that is necessary" will depend on the facts of the case. In determining whether action is necessary, factors to be taken into account may include, "the nature of the incident which has occurred, the closeness of the relationship between the employee and the particular dependant and the extent to which anyone else was available to help out."[248]

"Illness, injury or assault" includes mental[249] or physical illnesses that do not have to be life-threatening or need full-time care.[250]

"Dependent" means a spouse, child, parent, person who lives in the same household as the employee (other than employees, tenants, lodgers or boarders) or persons who reasonably rely on the employee for such assistance/to make such arrangements.[251]

The employee must tell their employer the reason for their absence as soon as reasonably practicable. Where this is prior to the absence, the employee must also tell the employer how long they expect to be absent.

To the extent that leave cannot be taken pursuant to the statutory right mentioned above, it may be possible for the employee to agree unpaid or annual leave with the employer, although this is at the discretion of the employer.

# 6.3 Immigration

# 6.3.1 Does the law include provisions that are intended to prevent abusers who are citizens or permanent residents from using immigration laws to perpetrate domestic violence against their spouse?

There are specific provisions to allow a person to apply for settlement (or "indefinite leave to remain") if they are in the UK on a temporary visa as the partner of a British citizen or person settled in the UK and their relationship has ended because of domestic violence.[252]

The requirements to be met to be granted indefinite leave to remain in the UK as a victim of domestic violence are set out in the "Immigration Rules Appendix FM: family members" ("**Immigration Rules**").[253] Broadly, the applicant must:

be in the UK

meet the suitability requirements set out in Section S-IRL of the Immigration Rules (an application may be refused if, for example, the applicant has got a criminal record, provided false or incomplete information to the Home Office or broken immigration law)

meet the eligibility requirements set out in Section E-DVILR of the Immigration Rules (which broadly require that the applicant: (i) was previously granted leave as the partner of a British citizen or person settled in the UK;[254] and (ii) proves that they were the victim of domestic violence and that their relationship has ended as a  result)[255]make a valid application for indefinite leave to remain as a victim of domestic abuse

As set out at para c(ii) above, an applicant must prove that they were the victim of domestic violence and that their relationship has ended as a result. The Immigration Rules do not specify what evidence or documents should be submitted with an application to prove domestic violence. Home Office policy states that:

All evidence submitted must be considered and a conclusion drawn as to whether there is sufficient evidence to demonstrate that, on the balance of probabilities, the breakdown of the relationship was as a result of domestic violence.[256]

Home Office policy also includes a table setting out the type of evidence that may be produced, listing the value of such evidence and any additional information that would be required. The list includes:

criminal conviction/police caution (conclusive)

DVPO /forced marriage protection order (strong)

arrest/police report of attendance at domestic violence incident/medical report from UK hospital or GP confirming injuries or condition consistent with domestic violence (moderate)

letter or statement from official source (such as an advice agency or refuge)/statement from applicant (weak)

There are also provisions to help a person who is in the UK on a temporary visa as the partner of a British citizen or person settled in the UK where the relationship has ended because of domestic violence and they have no money to support themselves. The "destitution domestic violence concession" offers domestic abuse victims three months' leave outside the Immigration Rules with the ability to apply for access to public funds. This provides the opportunity to gain a temporary immigration status independent of the abuser and to fund safe accommodation, where victims of domestic abuse may consider applying for indefinite leave to remain or deciding to return to their country of origin.

# 6.3.2 If battered immigrants cooperate with law enforcement in domestic violence, can they obtain immigration remedies?

We have found no specific provisions for immigration remedies to be granted as a result of a domestic abuse victim's cooperation with law enforcement.[257] From a practical perspective, law enforcement's involvement may provide helpful evidence in forming part of a case to apply for leave to remain in the UK (see above for more detail), but there is no guarantee.

# 6.3.3 Does domestic violence law discuss asylum accessibility?

The rules allowing a victim of domestic violence to apply for settlement (or "indefinite leave to remain") in the UK do not apply to people seeking asylum in the UK.

The Home Office has published guidance for responding to reports of domestic abuse from asylum seekers.[258] The guidance recognizes that, "asylum seekers who are victims of domestic abuse may be in a particularly vulnerable position, as their immigration status is uncertain whilst they are awaiting a decision on their asylum claim." The guidance explains what caseworkers and Home Office accommodation providers must do in situations where an asylum seeker reports an incident of domestic abuse whilst their asylum claim is being considered. The guidance also applies to victims who have been refused asylum if they are eligible for asylum support.

The guidance prioritizes providing safe accommodation for a person who is the subject of a report of domestic abuse and any children. It also prioritizes providing appropriate support for the victim and any children.

In June 2019, the House of Lords, House of Commons Joint Committee published a report that criticized the Bill for failing to include additional protection for migrant women with uncertain immigration status.

In particular, it noted that:

the sharing of information between public authorities (i.e., police forces and the Home Office for immigration control) can act to deter some victims of domestic abuse with uncertain immigration status from coming forward

the provisions under the Immigration and Asylum Act 1999 barring individuals from having recourse to public funds can prevent some victims of domestic abuse with uncertain immigration status from accessing refuges and other support services

The Joint Committee's report contained arguments that this was not compliant with the requirements of Article 4, paragraph 3 of the Istanbul Convention, which requires protection to be provided without discrimination on any ground, including migrant and refugee status.[259]

The Home Office published a review of findings in response to the Joint Committee report in July 2020. The Home Office concluded that further evidence was needed before policy decisions could be made.[260] No immediate amendments to the Bill to address the protection afforded to migrant women with uncertain immigration status are therefore expected.

# 6.4 Armed forces

# 6.4.1 Can a victim seek a military protective order if the abuser is in active military?

No. However, victims from within the military community can access local civilian support services. In addition, there are several Forces-specific helplines and advice lines available, including the Naval Service Family and People Support (NS FPS); Army Welfare Service; RAF Soldiers, Sailors and Airmen and Families Association (SSAFA) support; Forcesline; Chaplaincy support; Families Federation; HIVE Information Centres; and Charity Support.[261]

A Practitioner's Handbook has also been published by the Armed Forces in relation to domestic abuse.[262] This handbook highlights two potential remedies available in terms of protective orders:

The DVDS, also known as Clare's Law, provides the public a formal way of requesting information about a partner's past. Under this Scheme, if a person has a history of violence, the police can disclose information in order to protect people at risk of harm.

The police can apply for DVPNs and DVPOs to prevent further violence between partners. These orders may be used following certain domestic violence incidents, and prevent someone from contacting their partner for 48 hours. On top of this 48 hours, the police may also apply for an extension of this order from a magistrates' court for an additional 14 or 28 days. They are used to create breathing space for victims and, when it is thought appropriate, can be applied without the victim's consent.

Further information about the DVDS is available in Section 5 of this report. Further information about DVPNs and DVPOs is available in Section 4.

In terms of service personnel who are stationed overseas, the current draft of the Bill will extend the jurisdiction of the UK courts so that, where appropriate, UK nationals and residents who commit certain violent and sexual offenses outside the UK may be brought to trial in the UK.

The Bill will extend the jurisdiction of the courts:

in England and Wales, to relevant offenses committed outside the UK by a UK national or a person habitually resident in England or Wales

in Northern Ireland, to relevant offenses committed outside the UK by a UK national or a person habitually resident in Northern Ireland

in Scotland to relevant offenses committed outside the UK by a UK national or a person habitually resident in Scotland

Changes introduced under the Bill for armed forces personnel, include:

provisions requiring a senior police officer who issues a DAPN to a person, to also make reasonable efforts to inform such person's commanding officer, if that person is in the armed forces

that any breach of a protection order by an armed forces member, will mean that the issuing of a prior protection notice will also be admissible as evidence should charges be brought against that person

that an armed forces member, who is convicted, cautioned or charged with a domestic abuse offense, would not be able to cross-examine a witness who is the victim in person (or alleged victim)

In addition, it is proposed under the Bill that where a DAPN is served on a member of the armed forces (in practice, this is likely to be by the Ministry of Defense Police), and the notice prohibits the perpetrator from entering — or requires them to leave — service accommodation, the senior officer giving the notice must make reasonable efforts to inform the perpetrator's commanding officer that the DAPN has been issued. The definition of service accommodation in the Armed Forces Act 2006 includes any building or part of a building that is occupied for the purposes of any of Her Majesty's forces but is provided for the exclusive use of a person subject to service law, or of such a person and members of his or her family, as living accommodation.[263]

Further protections and immigration assistance may be available to spouses of service personnel who are not UK nationals/do not have the right to reside in the UK without their spouse to allow them to apply for indefinite leave to remain in cases of domestic abuse. Further information about immigration law protections in relation to domestic abuse, are available in Section 6.3 above.

# 6.5 Child custody and child/spousal support

# 6.5.1 Do judges follow special rules to determine custody or visitation of children in domestic violence cases?

Following criticism and complaints, reforms were introduced into the family courts in January 2017.[264] These reforms, introduced as amendments to existing court procedural rules (known as **practice direction 12J**[265] of the court procedural rules), include a requirement that all the judiciary have further training on domestic violence and act to ensure women and children are protected.

The revisions to practice direction 12J signaled a marked departure from prior versions of practice direction 12J.

Before this revision to the practice direction, in 1984, and for the subsequent 40 or so years, the common view held by the courts was:[266]

For a long time now it has been accepted by everybody who has much experience in these sad cases of broken unions of parents that, save in exceptional circumstances, it is of very real importance in the interests of a child's emotional health as he or she grows up that there should be contact with the noncustodial parent.

Although the new practice direction 12J is a step toward ensuring greater consistency and protection of victims, research by Queen Mary School of Law and Women's Aid has made a number of recommendations as to how practice direction 12J could be further strengthened, given concerns that it is not being properly implemented or that the judiciary is not being properly trained:[267]

**Improved use and awareness of Practice Direction 12J – Child Arrangements and Contact Orders: Domestic Abuse and Harm** To maximise the impact of the recently revised guidance, the Judicial College, the Magistrates Association and HMCTS [Her Majesty's Courts and Tribunals Service] should continue with and expand their current educational provisions to ensure that all family court professionals have specialist training on what the guidance means in practice. This training should incorporate the links and overlaps between the practice direction and human rights. **Create a national oversight group for the implementation of Practice Direction 12J** The Ministry of Justice should create a mechanism for oversight of the judiciary in child contact cases involving domestic abuse. This could be an independent, national oversight group overseeing and advising upon the implementation of Practice Direction 12J.

# 6.5.2 Can the judge consider the testimonies of the other spouse and the children when determining custody?

The court can consider the testimony of the other spouse as well as the testimony of children. When determining custody, the court must conduct a fact-finding hearing or other hearing of the facts where domestic abuse is alleged. Through this hearing, the court can ensure that the allegations are properly put and responded to by each party. The fact-finding hearing or other hearing can be an inquisitorial (or investigative) process, which at all times must protect the interests of all involved. As either party is capable of lying, the court is trying through these fact-finding hearings to look through a mere "he said-she said" to arrive at what the actual facts are. At the fact-finding hearing or other hearing:

each party can be asked to identify what questions they wish to ask of the other party, and to set out or confirm in sworn evidence their version of the disputed key facts (currently the parties may question one another directly, which has led to concerns of unfairness, intimidation, threats of violence and other abuses with regards to domestic violence cases, for example, where a victim is being questioned directly by their abuser. Note: the Bill will seek to re-balance and address such confrontational approaches by not allowing the cross-examination of victims by their abusers).

the judge should be prepared, where necessary and appropriate, to conduct the questioning of the witnesses on behalf of the parties, focusing on the key issues in the case.

According to para. 35-37 of practice direction 12J,[268] the court must take the following factors into account when deciding child arrangement orders where domestic violence or abuse has occurred:

The court should ensure that any order for contact between the child and the perpetrator will not expose the child to an unmanageable risk of harm and will be in the best interests of the child.

 1. Where domestic abuse is established, the court should apply the welfare checklist with reference to the domestic abuse that has occurred as well as any expert risk assessment. The court should in each instance, consider:

 a. any harm that the child and the parent with whom the child is living has suffered as a consequence of that domestic abuse

 b. any harm that the child and the parent with whom the child is living is at risk of suffering, if a child arrangements order is made

 2. The court should make an order for contact only if:

 a. it is satisfied that the physical and emotional safety of the child and the parent with whom the child is living can, as far as possible, be secured before, during and after contact

 b. that the parent with whom the child is living will not be subjected to further domestic abuse by the other parent

Practice direction 12J also requires that the court should further consider:

the effect of the domestic abuse on the child and on the arrangements for where the child is living

the effect of the domestic abuse on the child and its effect on the child's relationship with the parents

whether the parent is motivated by a desire to promote the best interests of the child or is using the process to continue a form of domestic abuse against the other parent

the likely behavior during contact of the abusive parent and its effect on the child

the capacity of the parents to understand the effect of past domestic abuse and the potential for future domestic abuse

 See Section 5.4 for further information about child witnesses in court.

# 6.6 Housing rights of domestic violence victims

# 6.6.1 Does the law include any barriers to prevent landlords from forcing a tenant to move out because they are victims of domestic violence?

The law does not include any provisions that specifically protect victims of domestic violence from eviction by landlords.

If the victim of domestic violence is a spouse or a civil partner to their abuser, they may have home rights under Section 30 of the Family Law Act 1996 (FLA) if their abuser is entitled to occupy a property by virtue of a beneficial estate, interest or contract, or an enactment giving the right of occupation (Section 30(1), FLA). Specifically, Section 30(2) of the FLA grants someone who has home rights protection from eviction or from being excluded from the property they occupy.[269]

In particular, under home rights,[270] the nonowning spouse or civil partner has the right to:

occupy the matrimonial home and not to be excluded, except by court order

(if not occupying the home), obtain a court order to regain entry and to live there

register rights of occupation as a charge on the property

occupy the home as if s/he were the owner

pay the mortgage or other outgoings that are to be treated as if paid by the owner. This gives a right to pay the mortgage, but does not mean that the nonowning spouse or civil partner can be held legally liable for the owner's arrears, unless a court order has been made transferring liability

apply to be joined in any mortgage possession proceedings taken against the spouse

be notified by the lender of any possession action, provided that matrimonial home rights have been registered

apply for an order to provide that the matrimonial home rights are not brought to an end by death or termination of the marriage

# 6.6.2 Does the law allow a tenant to terminate his/her lease early due to domestic violence?

There is no legal right to terminate a lease early due to domestic violence. Tenants can terminate residential tenancies only in the following situations:

exercising a break clause in the tenancy agreement

after negotiating a surrender with landlord

assigning to a new tenant or sublet to a subtenant

expiry of fixed term[271]

However, this does not preclude victims of domestic violence from leaving the property in which they live and seeking housing assistance from local authorities. Local authorities in England have certain legal duties under Part VII of the Housing Act 1996 (HA) to those who apply to the local authority as being homeless. Furthermore, the Homelessness Reduction Act 2017 (HRA) places duties on local authorities to prevent homelessness at an early stage.

The HA stipulates that a person will not be treated as having accommodation unless it is accommodation that it would be reasonable for them to occupy.[272] Under the HA, it is not reasonable for a person to continue to occupy accommodation if it is probable that this will lead to domestic violence.[273] The law therefore recognizes that victims of domestic violence have extremely limited housing options. The Homelessness Code 2018 ("**Code**") also provides further guidance on how victims of domestic violence should be treated by housing authorities:

Following an application for assistance under Part 7 of the 1996 Act [the HA], whether an applicant is threatened with homelessness or is actually homeless will be a matter for the housing authority to assess taking into account all of the relevant circumstances. For example, a person at risk of domestic violence or abuse may be threatened with homelessness because a perpetrator is soon to be released from custody (and so the person is likely to become homeless within 56 days); but would be actually homeless if the perpetrator was in the community and presented a risk to them at their home (and so it is not reasonable for the person to continue to occupy the accommodation).[274]

 The Code also offers guidance as to how authorities can manage the challenging realities of assisting victims of domestic violence. For example, the Code states that it is essential that housing authorities do not approach the alleged perpetrator, since this could generate further violence and abuse.[275]

# 6.6.3 Can an order exclude the abuser from the residence?

Yes, there are various types of orders that victims or landlords can apply for to bar perpetrators from entering the home of a victim.

Victims can apply for an OO under Sections 35-38 FLA if they satisfy certain criteria (a victim must have a right to occupy the property, be a former spouse or civil partner of the perpetrator or be a cohabitant or former cohabitant).[276] An OO can last for up to six months and gives a victim the right to occupy a property. OOs can also exclude a perpetrator from the area around the home and make practical arrangements regarding the payment of rent. If the court is satisfied that the perpetrator has used or threatened violence against the victim or a relevant child, a power of arrest can be attached to the order under Section 47 FLA. The effect of a power of arrest is that a perpetrator can be arrested without a warrant if they breach the order. If a power of arrest is not attached to an OO, a victim can apply to the relevant judicial authority (e.g., the police) for the issue of a warrant of arrest if the order is breached.

Victims can also apply for NMOs under Section 42 FLA, which prohibits a perpetrator from molesting them or a relevant child. An NMO can include a term that forbids the perpetrator from going to, entering or attempting to enter the victim's home at a specified address and prohibits them from coming within a specific number of meters of it. Stay away or zonal orders can also be issued as part of an NMO, which prohibits the perpetrator from going to, entering (or attempting to enter) a defined area. Under Section 42(5) FLA, when deciding whether to grant an NMO, the court will consider all the circumstances, including the need to secure the health, safety and well-being of the applicant or a relevant child. There is no statutory definition of molestation, but the court has typically found the following to be qualifying:

acts and threats of violence

hanging posters around railings of the victim's workplace

searching through the victim's handbag

sending aggressive letters to the victim

sending nude photographs of the victim to newspapers

The duration of an NMO is at the discretion of the judge and could be made for a practically indefinite period, although they are commonly made for between three months and a year. A breach of an NMO without a reasonable excuse is a criminal offense, and the police can therefore intervene while a breach is happening. The perpetrator would also be guilty of contempt of court, the effect of which is that a person may be fined, stripped of particular assets or imprisoned.[277]

DVPOs and DVPNs were introduced in March 2014 under Sections 24-23 of the Crime and Security Act 2020 and have been described in detail elsewhere in this report (e.g., Section 4), but also offer protection for victims against their abusers.

Certain social landlords can also apply for an injunction prohibiting anti-social behavior under Section 153 HA. The landlord must be a local authority, a housing action trust or a private registered provider of social housing to apply for an injunction. Section 153 injunctions can be applied for where immediate action is required to stop violence, threats of violence or serious damage to property. In a domestic violence situation, landlords may apply for an antisocial behavior injunction (ASBI) under Section 153A. An application for an ASBI can be made to prevent an individual engaging in housing-related conduct capable of causing nuisance or annoyance. The individual engaging in the conduct does not need to be a tenant, and the ASBI could be used against perpetrators of domestic violence. However, injunctions sought under Section 153 should not be the first port of call as they do not necessarily have the aim of tackling domestic violence and they require the landlord to act rather than the victim.[278]

It is worth noting that, although various mechanisms exist to exclude perpetrators from the residence, these injunctions do not necessarily guarantee the safety of the victim. Paragraph 21.30 of the Code includes the following word of caution for housing authorities:

Housing authorities should recognise that injunctions ordering a person not to molest (non-molestation orders), or not to live in the home or enter the surrounding area (occupation orders) may not be effective in deterring some perpetrators from carrying out further violence, abuse or incursions, and applicants may not have confidence in their effectiveness. Consequently, applicants should not be expected to return home on the strength of an injunction. To ensure applicants who have experienced actual or threatened violence get the support they need, authorities should inform them of appropriate specialist organisations in the area as well as agencies offering counselling and support.[279]

# 6.6.4 Can abusers be forbidden by court orders to alienate or mortgage the property in his/her name if it is the family domicile?

There do not appear to be any legal provisions that forbid abusers to alienate or mortgage property in his/her name if it is the family domicile. Sections 54-56 FLA would govern the ability of a property owner to mortgage their property where the property is deemed to be a family home. Under Section 54(3) FLA, an individual with home rights under Section 30 FLA, or who has by virtue of an OO been given the right to occupy, does not have any greater right against a mortgagee to occupy the property than the property owner.

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