



When the silence is broken... what does the law say?

Information about the law's response to the
issue of domestic violence and abuse

part of the Dignity initiative



The law's attitude to domestic violence and abuse past and present

One hundred years ago, it was legal for a man to beat his wife, provided he used a stick no thicker than his thumb.

Before 1970, you would have been hard pressed to persuade a judge to grant an injunction restraining a violent spouse or having him or her (but almost always him) removed from the matrimonial home.

After the Divorce Reform Acts of 1969 and 1973, the position improved for married women (and men), and if there were divorce proceedings underway, you could ask the judge in those proceedings to grant a non-molestation order. If things were really bad, you might even persuade the judge to make an order requiring the violent husband to leave, but only usually if there were children. If you were not married, then there was no relief through the courts other than to start an action for trespass to the person.

The position improved gradually between 1970 and 1986 with Parliament passing various Acts which gave both married couples and unmarried couples protection. The drawback to the legislation was that you had to be a couple living together, and there usually had to be violence or the threat of it. In addition, there were about four different pieces of legislation to choose from, each with a slightly different test, and if you chose the wrong one, it was back to square one.

All that changed with the Family Law Act 1996, which repealed all previous legislation governing domestic violence and greatly extended its scope. There has also been an increasing recognition among judges that most "battered" women have suffered significantly at the hands of their partners before seeking relief through the courts. Research shows that most women suffer in excess of 30 instances of violence before they take action.

The Family Law Act 1996

The first big change is that the Court can make an order under the Act in any Family Proceedings, (which includes most proceedings under the Children Act, and under divorce legislation) irrespective of whether it has been asked for. It can also make an order on a freestanding application, and if you are unfortunate enough to apply under the wrong section of the Act, it will not be fatal to your application. All things considered, it is quite a user friendly Act.

Orders Available:

A Non Molestation Order is just that. It can be made for the protection of the applicant, or any 'relevant' child (and your children, be they from this or a previous relationship, will always be relevant). The test for making an order is 'the health, safety, and well-being' of the applicant or the children. The judge must be satisfied that his intervention is necessary, but molestation includes harassment,

physical or verbal abuse designed to threaten or intimidate, which interferes with the applicant leading a normal life.

An Occupation Order can take several forms, but broadly speaking, if the house is, or was intended to be, your home, you can get back in if you have been thrown out, and have your partner excluded from all or part of the property. In deciding whether to exercise its powers under the Act, the court will have regard to:

- ✚ the housing needs and resources of the parties
- ✚ their financial needs
- ✚ the likely effect of not making any order on the health, safety, and well-being of the parties or any child
- ✚ the conduct of the parties

Additionally, the Court must apply the 'Balance of Harm Test'. This gives the court discretion as to whether or not to make the occupation order, but the judge must do so unless circumstances exist which mean that the defendant would suffer more than the applicant if the order were made. There are cases where these circumstances exist, but they are exceptional.

Who can apply?

Anyone who is an 'Associated person' which is not quite anyone, but almost. That phrase includes married couples; divorced couples; cohabitants (including family members and same sex relationships); former cohabitants; people who share a house (but excluding lodgers); engaged couples; parents of a child. It doesn't include your next door neighbour or your son's girlfriend if they haven't lived together, but it is a very widely defined phrase.

Other points of note

If the court is satisfied that there has been actual violence, the judge *must* attach a Power of Arrest to the order, which will have the effect of a police officer arresting anyone against whom an order is made who breaks its terms, and hauling them back before the judge.

Where an Occupation Order is made which excludes the breadwinner from the house, the Judge has powers to make financial orders against that party to ensure that the party who is left in the house has sufficient money to pay the bills.

By a process of trial and error over the last thirty years or so, the law has got it pretty well right with the Family Law Act 1996. If you feel that someone coming to you has appropriate grounds, then it would seem right to tell them to get proper legal advice.

Home Office definition change (March 2013)

Domestic violence and abuse: new definition

The cross-government definition of domestic violence and abuse is: any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between those aged 16 or over who are, or have been, intimate partners or family members regardless of gender or sexuality. The abuse can encompass, but is not limited to:

- ✚ psychological
- ✚ physical
- ✚ sexual
- ✚ financial
- ✚ emotional

Controlling behaviour

Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.

Coercive behaviour

Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim. This is not a legal definition.

For more information see: **www.gov.uk/government/policies/ending-violence-against-women-and-girls-in-the-uk/supporting-pages/domestic-violence**

Domestic violence disclosure scheme

From 8 March 2014, the domestic violence disclosure scheme will be implemented across England and Wales. This follows the successful conclusion of a 1 year pilot in the Greater Manchester, Nottinghamshire, West Mercia and Wiltshire police force areas.

Right to ask

Under the scheme an individual can ask police to check whether a new or existing partner has a violent past. This is the 'right to ask'. If records show that an individual may be at risk of domestic violence from a partner, the police will consider disclosing the information. A disclosure can be made if it is legal, proportionate and necessary to do so.

Right to know

This enables an agency to apply for a disclosure if the agency believes that an individual is at risk of domestic violence from their partner. Again, the police can release information if it is lawful, necessary and proportionate to do so.

Domestic violence protection notices and orders

Domestic violence protection orders (DVPOs) are being implemented across England and Wales from 8 March 2014. This follows the successful conclusion of a 1 year pilot in the West Mercia, Wiltshire and Greater Manchester police force areas.

Domestic violence protection orders are a new power that fills a gap in providing protection to victims by enabling the police and magistrates to put in place protection in the immediate aftermath of a domestic violence incident.

With DVPOs, a perpetrator can be banned with immediate effect from returning to a residence and from having contact with the victim for up to 28 days, allowing the victim time to consider their options and get the support they need.

Other legislation to be aware of

- ✚ Stalking law England and Wales, 2012
www.stalkinghelpline.org/faq/about-the-law
- ✚ Eve's Law: The government are considering a domestic violence campaigner's proposal for new laws to allow victims to keep their safe house addresses secret in court
www.parliament.uk/edm/2013-14/900
- ✚ Independent Domestic Violence Advisers: IDVAs help keep victims and their children safe from harm from violent partners or family. Serving as a victim's primary point of contact, IDVAs normally work with their clients from the point of crisis, to assess the level of risk.
www.gov.uk/domestic-violence-and-abuse#independent-domestic-violence-advisers

For more information

The best place for information is the Women's Aid Survivor's Handbook. There is a section on 'Your legal rights' and links to other organisations:
www.womensaid.org.uk

The government web portal gives factual information about the relevant laws and policies:
www.gov.uk/government/policies/ending-violence-against-women-and-girls-in-the-uk

Other leaflets available include:

For Ministers:

- P1 *When the silence is broken... what does the law say?*
- P2 *When the silence is broken... prepared to listen*
- P3 *When the silence is broken... marriage... where do you stand?*
- P4 *Why do women stay? Towards a spiritual understanding*
- P5 *What churches need to know about pastoral support for abusers*
- P6 *Agencies which may be able to help*

For Churches:

- CH1 *It doesn't happen here*
- CH2 *The Dignity Coalition Church Charter*
- CH3 *Notes to accompany the Charter*

For Survivors:

- S1 *Breaking the silence... wanting change*

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