

What is a non-molestation order?

A non-molestation order is a form of injunction, designed to protect the applicant from actual harm, or the risk of harm. This could also be extended to provide protection to any relevant children. A non-molestation order has an automatic power of arrest attached and breach carries the risk of imprisonment for up to five years. This means that in the event the order is breached, the applicant can report the breach to the police who must arrest the respondent. It can therefore be a very useful and powerful tool.

What is meant by 'molestation'?

'Molestation' is not defined in the Act, but generally, the order is designed to protect the applicant or children from harm or the risk of harm—there is a wide definition of harm, which is not limited to physical harm. Other, equally invidious examples would also be included and given due weight by the court, to include harassment, controlling behaviour and emotional and/or sexual abuse.

What does a non-molestation order prevent?

A non-molestation order if granted by the Court will prohibit the abuser from using or threatening violence, intimidating, harassing, pestering, or communicating with you. An order could prevent the abuser from coming within a certain distance of you, your home address or even attending your place of work. An order will also prevent an abuser from instructing or encouraging others to do any of those actions.

Who can apply for a non-molestation order?

Applications can be made for a non-molestation order by associated persons, the emphasis being that unless it was clear that the parties were not associated, it should be presumed that they are. A person is associated with another if they are or have been married to each other or civil partners; cohabitants or former cohabitants; they have or had an intimate personal relationship with each other; they lived in the same household; they are relatives; they have agreed to marry one another or enter into a civil partnership.

Application process

Application form FL401 is used for applying for a non-molestation order. The application must contain a detailed statement in support that sets out the physical and emotional abuse you have experienced. It is important to ensure that the statement covers as much pertinent detail as possible, including the dates and times of the incidence and the effects of the abuser's behaviour on you and where possible as well as confirming the identity of any third parties who may have witnessed the event and be able to corroborate it. It is also important that you provide evidence to support your application. This can include text messages/recordings containing the threats of violence or control, photographs of any injuries caused either to you or your property, and any relevant third-party information such as a letter from a domestic violence support worker, counsellor, or police records. Full detail should be given of any relevant third-party assistance, such as where the police have been contacted, and what advice or protective measures were given.

Court procedure for a non-molestation order

An application for a non-molestation order can be made ex-parte (in an emergency situation without the offender being aware) or inter parte (where the offender will be given notice of a court hearing). An ex-parte application means that the evidence will first go before the court without the Respondent having any knowledge of the application or proceedings. This process is naturally reserved for more urgent, high-risk situations. The court may make the non-molestation order sought, which would then be served on the Respondent, with a date given for the parties to return to court (the 'return date'), and for the Respondent to challenge the order if he/she wishes. Alternatively, the court may deem that the contents of the application do not merit the non-molestation order being made ex parte, in which case the matter

will be listed for an initial direction hearing for both parties. Prior to that hearing, the Respondent must be personally served with a copy of the application and all supporting documents no less than two days before the hearing.

The purpose of that first hearing will be to explore briefly whether the matter can be resolved in an appropriate way, or whether written evidence is required, along with a contested hearing.

At a contested hearing, each party will need to give evidence (and be cross-examined) before the court decides whether to grant the non-molestation order sought. This hearing is likely to include an element of 'fact finding', in that the court may well make findings in respect of some or all of the allegations made. This essentially means that the court is deciding whether the applicant has proved each allegation (or each relevant allegation). The burden of proof is the balance of probabilities, therefore a lower standard to the criminal burden. Where findings (or admissions) have been made in relation to the non-molestation order proceedings, for example, Practice Direction 12J of the Family Procedure Rules ensures that the court must have proper regard to the potential impact and risks of granting or continuing contact in those circumstances. Such harm does not need to involve the children directly—the negative impact of witnessing violence or other forms of harm is well recognised.

The court has a wide discretion whether to grant or refuse the relief sought. The criteria are all the circumstances including the need to secure the health, safety and well-being of the applicant and any relevant child. Three principles should be considered by the court when considering whether to grant the order:

- there must be evidence of molestation going on
- the applicant or child must need protection
- the judge must be satisfied that judicial intervention is required to control the respondent's behaviour

How long will a non-molestation order last?

A non-molestation order will last for 12 months, although the judge has the discretion to decide. However, an application could be made to extend the duration if required.

Breaches of a non-molestation order

The breach of a non-molestation order is a criminal offence with a possible prison sentence of up to five years. If the order is breached then an arrest may follow, charges brought before a criminal court. This would be the responsibility of the crown prosecution service.

Is granting an order the only option available to the court?

In certain circumstances, it may be appropriate for the court to accept undertakings from the Respondent, addressing various concerns, for example not to attend within a certain distance of the applicant's property, not to harass, intimidate or pester the applicant (nor encourage anyone else to do so). An undertaking is a binding promise to the court—breach of an undertaking puts the Respondent in contempt of court. However, the advantage of concluding the matter by way of undertakings is that there will be no requirement for further proceedings, with the associated costs and stress involved. The applicant may well be able to secure the protection they require, while the Respondent has made binding commitments without the risk of a contested hearing, and without risking findings being made against them.

The court cannot accept undertakings in circumstances where the respondent admits, or it appears to the court that the Respondent has used or threatened violence against the applicant or a relevant child. If that allegation is denied, then it is likely that the court will need to proceed with a fact-finding hearing.

In the event that undertakings are not accepted, or appropriate, it is also possible to agree on the terms of a non-molestation order based on there being no admissions or findings. A power of arrest will attach to this order, even if made by consent; however, there might be an advantage for the Respondent of resolving matters on this basis without incurring the costs of a final hearing, and/or the risks of findings being made.