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Department for
Constitutional Affairs
Justice, rights and democracy

Domestic Violence

A Guide to Civil Remedies and Criminal Sanctions

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Foreword by Rosie Winterton MP

Domestic violence affects and damages whole families across all social classes. The affects are far reaching not only for the families concerned but society in general. We all bear the costs and consequences – not only through the public purse, but more importantly, in terms of the social outcomes for victims, particularly children. In the twenty first century it is shocking to realise that every week, two women die as a result of domestic violence, and that domestic violence accounts for 25% of all violent crime.

As a society we should no longer be prepared to tolerate such behaviour and must continue to send clear messages to victims and perpetrators alike that acts of domestic violence are taken seriously. But we must do more – and we will. We need to raise public awareness; help victims to get the advice and support they need; expect professionals to be well trained and empathetic; and ensure that the court system helps and supports victims. My Department, working closely with others, is taking forward all of these issues. And we have a particular responsibility for how the system treats people affected by domestic violence. We want to make sure that victims of domestic violence have a swift and effective route to protection and perpetrators of violence are brought to justice.

Although there are some examples of good practice, we must improve the interface between the civil and criminal courts. My Department plans to learn from and build on identified examples of good practice to ensure closer working between the criminal, civil and family courts, the better to put first the needs of all victims of domestic violence. For example, the Court Service is considering various initiatives to help vulnerable witnesses, including the use of screens in court rooms, separate entrances and exits and waiting rooms. It is also considering extending these resources to courts with family jurisdiction.

This Guide is a further step toward ensuring incidents of domestic violence are tackled as effectively as possible. I hope that all practitioners will welcome its publication and find it a useful source of information.

Rosie Winterton

Introduction

This guide sets out the civil remedies and criminal sanctions that are currently available through the courts to victims of domestic violence. It is intended for statutory and voluntary service providers who deal with the impact of domestic violence. It is not intended to be a self-help guide for members of the public. Further information about guidance and leaflets is at Annex D.

How do we define domestic violence?

There is no universally accepted definition of domestic violence. The 1993 Home Affairs Select Committee (HASC) Report on Domestic Violence used the following definition:

> *"any form of physical, sexual or emotional abuse which takes place within the context of a close relationship. In most cases, the relationship will be between partners (married, cohabiting, or otherwise) or ex-partners".*

The inter-governmental initiative, *Raising the Standards,* uses a fuller explanation:

> *"Domestic Violence and abuse is best described as the use of physical and/or emotional abuse or violence, including undermining of self-confidence, sexual violence or the threat of violence, by a person who is or has been in a close relationship.*
>
> *"Domestic Violence can go beyond actual physical violence. It can also involve emotional abuse, the destruction of a spouse's or partner's property, their isolation from friends, family or other potential sources of support, threats to others including children, control over access to money, personal items, food, transportation and the telephone, and stalking.*
>
> *"It can also include violence perpetrated by a son, daughter or any other person who has a close or blood relationship with the victim. It can also include violence inflicted on, or witnessed by, children. The wide adverse effects of living with domestic violence for children must be recognised as a child protection issue. They link to poor educational achievement, social exclusion and to juvenile crime, substance abuse, mental health problems and homelessness from running away.*
>
> *"Domestic Violence is not a "once-off" occurrence but is frequent and persistent aimed at instilling fear into, and compliance from, the victim."*

The focus of the Government's strategy is on domestic violence perpetrated by men against women and the impact of this violence on children. In this guide we therefore refer to applicants, victims, or survivors as "she", and respondents and/or abusers as "he". However, we acknowledge that men and same-sex partners can equally be victims of domestic violence. The information here is valid for both sexes.

What remedies and sanctions are available?

A number of options are available in the courts. The different routes taken by survivors will depend on various factors, including:

- the severity and/or nature of the violence or harassment;
- the familial relationship between the abused and the abuser;
- the stricter burden of proof required by the criminal courts compared to the civil courts. (In criminal proceedings a case has to be proved "beyond reasonable doubt" whereas in civil proceedings the court will arrive at its decision on the "balance of probabilities".);
- the wishes of the survivor about the protection they require from the law; and
- the actual and perceived protection the law can deliver in practice, as well as the availability of appropriate support services.

Part I of this guide explains the steps that victims of domestic violence can take to pursue civil action in county courts, family proceedings (magistrates') courts, or the High Court.

Part II explains remedies available through the criminal courts, including magistrates' courts and crown courts.

21 February 2003

PART I: CIVIL REMEDIES

The legislation

There are five Acts that apply in varying degrees to domestic violence in the civil jurisdiction:

- Part IV of the Family Law Act 1996 (FLA 1996);
- The Protection from Harassment Act 1997 (PHA 1997) – which also contains criminal sanctions;
- The Housing Act 1996 (HA 1996);
- The Children Act 1989 (CA 1989); and
- The Adoption and Children Act 2002 (AChA 2002).

In the following pages, we set out the main civil remedy provisions under each Act and offer guidance on how to pursue a specific course of action.

Part IV of the Family Law Act 1996

Part IV of the Family Law Act 1996 (FLA 1996) provides a civil remedy for molestation, violence and occupation. Its purpose is to protect people who experience domestic violence in a family relationship. There are strict criteria about who can apply for an injunction or occupation order to protect themselves under this Act; these are outlined below.

Under the FLA 1996, the court can grant occupation orders and non-molestation orders.

An occupation order regulates the occupation of the home shared by the couple and their children to protect any party or children from domestic violence. The order can exclude an abuser from the property altogether, or divide the property to exclude him from part of the accommodation. If a respondent has already left the property, an occupation order may, therefore, be used to prevent him from re-entering and/or coming within a certain area of the property.

There are numerous types of occupation order (see below) but the most common will say something along the lines that the respondent must leave the applicant's property and, having left the property, must not enter or attempt to re-enter it, or come within a specified distance. The order will also include notice of any further hearing dates and the length of time the order is to last. Generally, the duration of these orders is between six months and one year but it can be until "further order".

Before issuing such an order the court will apply the "balance of harm" test, which includes the concept of significant harm. This is a test to find out which person and/or child or children living with them will be at most risk if an order is made, or is not made. If the court applies the balance of harm test in the case of spouses or former spouses, it has a mandatory duty to make an order. The court also assesses the party's circumstances according to the 'relevant factors' set out in section 33 (6) of the Act.

A non-molestation order is used to restrain someone from causing or threatening violence to the applicant or to any children, or from molesting them. The Act does not define molestation but it can include intimidation, pestering, threats and harassment. The actual wording of non-molestation orders forbids the respondent from using or threatening violence against the applicant and instructing, encouraging or in any way suggesting that any other person should do so. It can also forbid the respondent from intimidating, harassing or pestering the applicant and instructing, encouraging or in any way suggesting that any other person should do so. This wording is also used to protect any children named in the application from the respondent.

The protection of children from violence, or the threat of violence, applies to any "relevant child". A relevant child is defined as:

- Any child who might be expected to live with either of the parties involved;
- Any child who is the subject of adoption or Children Act proceedings; and
- Any other child whose interests the court considers relevant.

The criteria for who can apply for an occupation order, and the types of orders which the courts can make, are more complicated than those relating to non-molestation orders and are dealt with in more detail below. If you apply for a non-molestation order you may also apply for an occupation order, using the same application form, provided your case meets the relevant criteria.

Section 60 of Part IV of FLA 1996 concerns 'third party orders'. This section gives the Lord Chancellor powers to enable a prescribed person, or category of person, to act on behalf of victims of domestic violence in obtaining occupation or non-molestation orders. However, Section 60 is not currently in force.

Orders are either 'on-notice' or 'without notice'. These terms are also explained below.

Applying for non-molestation and occupation orders

Who can apply?

A list of those who are eligible to apply for a non-molestation and/or occupation order under the FLA 1996 is at Annex A. The principle is that eligibility is based on association through family relationships and/or cohabitation.

In theory, children under 16 years old may apply for an order under FLA 1996 but they need permission to do this from the High Court. If this is granted, they will require substantial assistance from all the agencies involved. To grant permission, the court must be satisfied that the child has sufficient understanding to make the necessary application. If the court grants permission, the case will be transferred to a county court to deal with the non-molestation and/or occupation order.

If the applicant is under 18 years old they are required to have a "next friend" to assist them with the application. The next friend does not need to have a legal background or professional qualification.

Where to obtain orders

An application can be made for either or both of these orders in any county court with family jurisdiction and in a magistrates' court that is also a family proceedings court (FPC).

Particularly complexes cases that start in FPCs are sometimes transferred to the county courts. There are also certain types of applications for occupation orders that cannot be dealt with by magistrates.

If a person involved in an application wishes to appeal the order to transfer they must lodge their appeal with the appropriate court (see below) within 14 days of the original order being made.

How to apply

Applicants can instruct a solicitor (preferably one with experience of domestic violence work) make an application direct to the court itself. If solicitors are instructed it will be more expensive to bring the case to court.

There are no restrictions about applying in person (on one's own behalf) but, if applicants do this, they must be prepared to complete the relevant forms and statements themselves and to explain their case before the court. Court staff can help by explaining court procedures, but they cannot provide legal advice on the merits of individual cases, or give advice about probable outcome. However, additional support and information can be obtained from voluntary support organisations, such as the local Women's Aid refuge, outreach service or Victim Support. These organisations might also suggest where to obtain legal advice but they do not generally offer this themselves.

What does the process cost?

At present the cost of issuing a Family Law Act (FLA) application in the county court is £40 – there is no fee for an application made in the magistrates' courts. Any subsequent applications made under the Act are also £40. Applicants who decide to act on their own behalf have to pay this fee when they file the application. However, they might be exempt or have some remission from paying the fee – as explained in the Court Service Leaflet EX160A, *court fees do you have to pay them?* An officer of the court will waive the fee if the case meets one or more of the following the criteria:

- The applicant and her partner receive Income Support;
- The applicant receives Income-based Job Seeker's Allowance;
- The applicant receives Working Families' Tax Credit;
- The applicant or her partner receive Income Support, or Income-based Job Seeker's Allowance, Working Families' Tax Credit, or Disabled Person's Tax Credit **and the applicant receives** 'Legal Help' and are involved in a civil case; or
- They are involved in a family case and receive 'Legal Help'.

There is more information about this in the Court Service leaflet, EX160A,

Applicants who instruct a solicitor should bear in mind they must pay both the court fees and the solicitor's legal costs. Such applicants may qualify for assistance under Community Legal Services Funding (previously known as Legal Aid). To qualify for this they must pass the statutory means test and must show reasonable grounds to pursue the case.

Is there funding help to pursue a case?

Both parties are entitled to apply for public funding. All cases are judged on their individual circumstances and measured against the criteria set out in the Legal Services Commission Funding Code. The Funding Code – Decision-Making Guidance states that "Legal Representation will, rather than may, be refused where the prospect of success of obtaining the order sought is poor or the cost benefit Criterion is not met." The Criterion for cost benefit is set out in the Funding Code at section 11.10.03. This states that "Legal Representation will be refused unless the likely benefits to be gained from the proceedings for the client justify the likely costs, having regard to the prospects of obtaining the order sought and all other circumstances."

Defendants (perpetrators/respondents) are less likely to get public funding under these criteria although it would not be impossible.

Applying for funds to pursue a case might take time because each case is treated on its own merits. In the case of an urgent domestic violence injunction proceeding, a solicitor who is contracted with the Commission can use devolved powers to grant an emergency certificate of Legal Representation.

At the time of publication of this guide, people receiving Income Support or Income-based JobSeeker's Allowance automatically qualify financially for funding to carry out a particular application in court. Otherwise, people may receive non-contributory help if they have a gross monthly income of less than £2,250 (a higher gross income limit applies if the applicant has more than four dependent children), a monthly disposable income below £263 and disposable capital of £3,000 or less. If their monthly disposable income is between £263 and £695, or disposable capital is between £3,000 and £8,000, they will be offered funding on the basis that they agree to pay contributions towards their legal costs. **NB:** These figures will be further revised in line with the annual up-rating of State Benefits (around April each year).

Even where there is no contribution required from capital and/or income the "statutory charge" may apply so that public funding operates as a loan. In such cases the costs of the funded client are required to be paid out of any property or money recovered or preserved. This can be so where the client is involved in injunction proceedings and ancillary relief proceedings.

In domestic violence cases, the Funding Code requires the applicant to state clearly what action has already been taken by the Police and what other protection, if any, is already in place, or if a former application has failed. Public Funding is generally not granted where bail conditions are in effect unless these are likely to be lifted shortly following the determination of a criminal prosecution. It is also required that the perpetrator is sent a letter advising him that proceedings are being taken against him, unless in the circumstances of the particular case it would not be appropriate to do so. There are exceptions to this requirement, for example where it would not be appropriate to give notice to the perpetrator because of the fear of further violence.

It is important to realise that the Commission considers cases on their individual merits. Practitioners should always consider applying for funding and should provide as much information as possible to the Commission about the circumstances of the case.

What are on-notice applications?

On-notice applications are where all parties are sent notices to appear at a court hearing.

Once the application has been filed with the court or FPC:

- It is given a case number and listed for hearing before either a District or Circuit Judge, or a bench of magistrates. A date could be set any time from a week to four weeks later, depending on court business;

- An on-notice application must be given to the respondent in person, either by the applicant or her agent, not less than two days before the date of the hearing (solicitors usually employ process servers to do this)

- The respondent will be served with the FL401 application, statement in support and form FL402 – notice of hearing date; and

- When the respondent has received the relevant papers, the applicant must file a statement of service with the court (form FL415 is available from the court or FPC).

What are without notice applications?

These used to be called 'Ex-parte' applications. They are heard without notifying the respondent (therefore in his absence). The procedure for applying for a without notice application is virtually the same as for on-notice applications. The only difference is that when the applicant comes to court to issue the application, she goes before the judge/magistrate the same day. In her sworn statement, she must also include the reasons why the court should deal with the application without notifying the respondent first.

Section 45 of the FLA 1996 contains the statutory provisions on without notice applications and the guidelines that courts should follow when deciding whether to hear an application without notice. The court must consider whether, on the balance of probability, there is a risk of harm to the applicant (or any children) if an order is not made immediately. If a non-molestation and/or occupation order is made without notice, the court has to give a date for a full hearing so that the respondent has an opportunity to attend court personally.

Without notice applications are usually granted, but if one is refused by the court (and this does happen occasionally), the court ensures that a hearing takes place quickly, usually within a week. Non-molestation orders are more likely to be given without notice than occupation orders.

How to apply for non-molestation orders

An applicant should:

- Complete form FL401 (copies are available at the court);

- State her relationship with the respondent (by ticking the relevant box);

- Indicate briefly, in the space provided, what remedy she seeks;

- Complete form C8 if she wishes to omit her address from the FL401 form – no permission from the court is needed for this; and

- File a sworn statement in support of her application (this should outline the main facts upon which she relies, including details of any criminal activity and intervention by the police).

With court permission, the FL401 can be supported by oral evidence instead. In cases of extreme urgency the court may be prepared to accept the application without a statement in support, but it is usual practice for the court to ask the applicant to ensure she files it at a later date.

How are occupation orders different?

Occupation orders are more complicated than non-molestation orders for various reasons, but mainly because there are five different sections of Part IV of the Family Law Act 1996 that relate to this issue (sections 33, 35, 36, 37 and 38).

Granting an order depends on the relationship of the parties involved and whether the applicant has existing occupation rights.

It is important to bear in mind that applicants can only seek an occupation order in relation to a property which either is, has been, or is intended to be the home of the parties involved. For example, an order cannot be made which concerns a property that has been bought for investment purposes.

What are the types of occupation orders?

The court can make many different orders under the FLA 1996. Some are listed here to give an idea of what the applicant could expect to obtain. An order can:

- Allow the applicant to occupy the home or part of the home;

- Forbid the respondent to occupy the home or a specific part of it;

- Require the respondent to leave the home (by a certain time and date);

- Require the respondent not to return to the address stated;

- Require the respondent not to evict the applicant from the home;

- Require the party in occupation of the home to take reasonable care of it;

- Regulate the use of the furniture and chattels in the home; and

- Require either the applicant or respondent to continue to pay the mortgage or rent for the home.

Occupation orders may also include penal notices and the court can also order a Power of Arrest (see below) to be attached. However, the court cannot attach a Power of Arrest to an order to take reasonable care of the home, to pay the mortgage or rent, or one concerning the use of furniture or chattels. As a result of an existing gap in the law, the court cannot enforce payment of mortgage or rent.

Applicants can obtain occupation orders without notice following the same procedures as outlined for non-molestation orders. If a respondent breaches an occupation order, the applicant has the same enforcement procedures available as with non-molestation orders.

Who can apply for an occupation order?

There are three categories of people who can make an application for an occupation order:

- entitled persons;

- non-entitled persons; and

- persons with matrimonial home rights.

An ‘entitled’ person has some legal right to occupy a property as the freehold owner, tenant or contractual licensee. A ‘non-entitled’ person has no such rights.

The type of order for which a victim of domestic violence may apply depends on whether she is entitled or non-entitled. If not entitled, her type of application depends on whether she was married to the respondent. An entitled applicant can apply for an order under Section 33 of the FLA, while a non-entitled person can apply under Sections 35, 36, 37 or 38.

An entitled person who applies for an occupation order must show that she is associated to the respondent, for example, by marriage or cohabitation. A list of the definitions of association is at Annex A.

What do hearings and orders involve?

Non-molestation and occupation hearings for FL401 applications take place "in chambers" private (in the judges' room) at the county court. They may also take place in FPCs, in which case the public is excluded from the courtroom. Applicants may be required to give oral evidence to the court. The length of a hearing varies, depending on the complexities of the case and whether the respondent disputes the allegations. After hearing the case the court can:

a) dismiss the application (this rarely happens); or

b) make a non-molestation and/or occupation order; or

c) accept an 'undertaking' (see below) from the respondent in terms that have been agreed between both the applicant and the respondent.

What are 'undertakings'?

An undertaking is an option that allows the parties to settle their dispute without a full hearing. It is a promise made to the court to do, or not to do, certain things. **It is not an admission of guilt.** The respondent can give an undertaking without having to admit to the allegations made against him. An undertaking cannot, therefore, be used in subsequent criminal proceedings as evidence of a criminal charge or as proof that any violence has occurred. Nor does it provide any factual evidence that the abuse took place.

The court cannot attach a Power of Arrest to an undertaking, but breaking an undertaking is still contempt of court and is as enforceable as any other order of the court. The undertaking (which is usually worded similarly to a non-molestation order) must be signed by the person who gives it. The court usually serves form N117/FL405 on both parties before they leave the hearing.

Can the order be changed?

If the respondent or applicant wish to vary (change the terms) or discharge (cancel) an occupation order, non-molestation order, or both, they must apply to the court on-notice. The court will arrange a further hearing.

Are there applications in other courts?

Practitioners should note that especially in private law cases in the civil and/or family courts (cases between individuals), the court is unlikely to know about any other actions pending in the criminal court – unless they ask. For example, a court hearing a contact application would not automatically be

aware of a pending criminal case in which bail restrictions apply preventing the respondent (alleged perpetrator) from moving away from the family home. Legal representatives are well advised to ask their clients about other actions. They should also ensure that the court is aware of all previous or current proceedings where it is permissible under the rules of evidence to mention them.

In Part II of this guide, we return briefly to the issue of evidence and sharing information between the jurisdictions. (See under the section on the role of the Crown Prosecution Service.)

Can you appeal?

An appeal may be lodged when both parties have attended a hearing and one or both parties are unhappy with the order given. The appeal must be lodged within 14 days of the date that the original order was made. If an appellant is unable to lodge an appeal in this time, he or she may apply to the same court that made the order for permission to take more time to prepare an appeal.

The appeals are heard in different courts from the ones which made the original order:

- Orders made in the magistrates' court are appealed at the High Court;
- Orders made in the Family Proceedings Court are appealed in the Divisional Court of the High Court;
- Orders made by a District Judge of the county court are appealed before a Circuit Judge in the county court;
- Orders made by a District Judge of the High Court are appealed before a High Court Judge in the same area; and
- Orders made by a Circuit Judge are appealed at the Court of Appeal.

What does Power of Arrest involve?

Power of Arrest (POA) enables a police officer to arrest a respondent, without a warrant, if he is reasonably suspected to be in breach of provisions in an order. The main benefit to the applicant is that she does not need to make a separate application to the court for a warrant for arrest to be issued. Once arrested, the police are required to bring the respondent before the court (that is, to the same level of court that made the original order) within 24 hours (beginning at the time of his arrest). If the court cannot deal with the matter within that time, it has the power to remand the perpetrator in custody or on bail.

Courts can attach a POA to an order (or to certain provisions in the order) whether they are on-notice and without notice. In some circumstances, the court must attach a POA to an order; for example, when it conclusively finds that there has been violence, or a threat of violence, against the applicant and that the applicant (and children) will not be adequately protected without a POA.

POAs must state a date when they will expire. Occasionally, they may expire before the orders to which they are attached expire. For example, this may be the case where the POA applies only to part of an order.

The POA form, FL406, must state clearly all the parts of the order to which a POA is "attached". The form must be delivered to the officer in charge of any police station that covers the applicant's address. This must be accompanied by a statement from the applicant (or her solicitors) that the respondent has been served or informed of the terms of the order.

When may a Warrant for Arrest be required?

Where a POA has not been attached to the order, or it has only been attached to some provisions in the order and the respondent is in breach of a non-molestation or occupation order, the applicant must apply to the same civil court for a warrant for arrest. The application is made without notice (as explained above) on form FL407 and must be supported by sworn evidence. If the court is satisfied that the respondent has not complied with the terms of the order, a warrant for arrest is issued (form FL408). This is sent by the court to the officer in charge at the police station covering the applicant's area.

What is a Penal Notice?

The following wording is used in both the undertaking form and the order form: **"You must obey the instructions contained in this order. If you do not, you will be guilty of contempt of court, and you may be sent to prison."**

This is known as a penal notice. If the respondent fails to obey the order or undertaking, the applicant can apply to the same court for a committal hearing. At these hearings the respondent has to "show cause", that is, to explain why he should not be sent to prison. If he fails to provide an adequate explanation for his actions, the judge can sentence him for contempt of court.

What does the court do when an order is breached?

When a respondent is arrested and brought before the court, the court can:

- Deal with the matter immediately and make the necessary order; or
- Adjourn the matter (the case must be brought back to court within 14 days of the arrest) and release the respondent; and
- Give the parties not less than 2 days' notice of the adjourned hearing date.

At the committal hearing the court decides whether or not the order has been breached and, if the finding is that it has, decide what punishment to give. The magistrates' court can currently hand down a custodial sentence of up to two months and the county court up to two years. Most committals are for weeks or months rather than years. In many cases courts make a suspended committal order which means the respondent is not sent to prison provided he complies with the terms of the order.

What are the types of remand?

- **Remand in custody**: The respondent is held in custody, to be brought back before the court at the end of the committal (no longer than 8 clear days from this decision). If the remand period is no longer than 3 clear days, the respondent may be held in the police station.
- **Remand on bail:** The respondent may be remanded "on his recognisance" which means he is not kept in custody but must follow any conditions set by the court. These may include the payment of money as a bond to ensure the respondent returns to the hearing; or it may require someone vouching a bond of money on the respondent's behalf. This remand period cannot exceed 8 clear days unless both parties agree to a longer period. However, an adjourned hearing cannot be more than 14 days after the respondent's arrest.
- **Further remand:** If the respondent is unable to appear before the court because of illness or another difficulty, the remand period can be extended to allow for this.

Protection from Harassment Act 1997 (civil)

The Protection from Harassment Act 1997 (PHA 1997) contains both criminal and civil remedies for domestic violence. We explain the criminal sanctions in Part II of this guide.

The remedies in this Act overlap with those in the Family Law Act 1996. The PHA 1997 was originally designed to address the problem of "stalking" but it has also been used by people who cannot apply for an order under the FLA 1996 because they do not meet the necessary requirement for "association" through family relationships and/or cohabitation.

The PHA 1997 provides civil remedies for restraining respondents and for seeking damages for harassment offences. They include injunctions and claims for damages. This Act contains no provision for the court to make occupation orders and is limited to non-molestation orders.

Who can apply?

Anyone can apply for an injunction or damages against anyone else under this Act.

Under section 3 of the Act, proceedings can be based on "an actual or apprehended breach of section 1". This contrasts with criminal proceedings under the Act which require proof of a "course of conduct", meaning that the defendant has harassed the claimant on at least two previous occasions.

Which courts are involved?

Applications under section 3 of the Act can be made to the High Court or the county court. Magistrates' courts cannot deal with these cases.

How do applicants apply?

If the police decide to take criminal proceedings under sections 2 or 4 of the Act, it would not be necessary to pursue civil proceedings at all. If an applicant decides to pursue civil proceedings under section 3, she can either act on her own behalf or appoint a solicitor. Involving a solicitor is more expensive, unless applicants can get public funding (see page 10). And applicant acting in person must be prepared to complete all the relevant forms and plead her case before the court if the case comes to trial.

In pursuing a claim or injunction, applicants have various options. They may:

1) issue a claim for a specified amount (damages for a fixed sum); or

2) issue a claim for an unspecified amount (damages for an unspecified sum of money); or

3) issue an injunction application either with or without a money claim.

Whatever their choice, applicants need to fill form N1 (which can be obtained by the court). The fee payable depends on the remedy sought, as does the procedure through the court. However, if applicants pursue option 3 above, a hearing will be set before a District or Circuit Judge.

Claimants choosing option 1 above may not be required to appear before the judge. If a defendant does not respond to the claim and fails to file a defence, a claimant can ask the court to enter judgement in default. In these cases, attendance at court is not necessary. In an emergency, claimants can apply to the court for an interim, or temporary, injunction (using form N244) before an application for full proceedings is issued.

What enforcement is there under PHA 1997?

Breach of an order under this Act is a criminal offence. There is no provision under the Act for attaching a Power of Arrest as in FLA 1996. But when the court grants an injunction in order to restrain a defendant, and a claimant states that the defendant has breached this order, she may apply for a warrant of arrest (through the court where the order was made). A warrant can only be issued if the application is substantiated on oath and the judge has reasonable grounds for believing that the defendant has not complied with the order, or part of the order. A warrant would then be served by the court on the officer in charge of the local police station covering the applicant's area.

Alternatively, a claimant can make a 'committal application' – an application to commit a defendant to custody or prison. The application, once issued by court staff, will be listed for a hearing. The defendant must then "show cause" why he should not be committed to prison for disobeying the order.

Housing Act 1996

This Act is an indirect means of protecting women who experience domestic violence because it relies on a third party – their landlord – applying for a possession order. Only a landlord – or more specifically, a local authority or social landlord – can take action under this Act if it is brought to their attention, or it is alleged, that a tenant is being violent towards another tenant.

This civil remedy also depends on the tenant who is experiencing domestic violence leaving the property with no intention of returning. It is, therefore, simply a way that the landlord can regain a property by taking action against an abuser who remains in occupation. It does not enable the victim of violence to stay in the property. Nor does it provide any protection – in the form of an injunction – in another location.

Children Act 1989

An amendment to the Children Act 1989 permits the court to attach a requirement, with Power of Arrest if necessary, to remove a suspected child abuser from the home.

The court will only make these orders, under section 8 of the Act, when the request for exclusion is part of an application for an Emergency Protections Order (EPO) or an Interim Care Order (ICO). Previously, if the court made an EPO or an ICO, it was the child who was removed from the home and not the suspected abuser.

The court will only order the exclusion of a suspected abuser if strict criteria are met. For example, the court may require a statement from the Local Authority to the effect that there is reasonable cause to believe that the child is likely to suffer significant harm if the suspected abuser is not removed from the home.

Local authorities usually make these types of applications to the family proceedings court. If they seek an exclusion order, they have to file a separate statement of evidence supporting the application.

The Adoption and Children Act 2002

The Adoption and Children Act was passed in November 2002. This Act now makes clear that when a court is considering applications under section 8 of the Children Act 1989 and it is also considering whether a child has suffered, or is likely to suffer harm, it must consider harm that a child may suffer not just from domestic violence, but from witnessing it.

This amendment provides guidance for the courts that add to existing guidelines – for courts and professionals involved – on contact and domestic violence.

PART II: CRIMINAL SANCTIONS

The Legislation

Sections of the following Acts apply to domestic violence cases:

- The Police and Criminal Evidence Act 1984 (PACE);
- The Criminal Justice Act 1998;
- The Criminal Justice Act 1988;
- The Offences Against the Person Act 1861;
- The Sexual Offences Act 1956;
- The Public Order Act 1986;
- The Criminal Damage Act 1971;
- The Criminal Justice and Public Order Act 1994;
- The Youth Justice and Criminal Evidence Act; and
- The Protection from Harassment Act 1997 (PHA).

There is no specific offence of 'domestic violence' under criminal law. The charge, therefore, reflects the particular circumstances of the abuse or violence. This means that there are many offences that may apply to violence in a domestic context. These are a few examples:

- A person accused of choking, strangling or suffocating can be charged with common assault or actual/grievous bodily harm, or the specific offence of attempting to choke, strangle or suffocate;
- A person accused of locking another person in a room or house or preventing them from leaving, can be charged with false imprisonment or harassment;
- A person accused of violence resulting in death can be charged with murder or manslaughter;
- A person accused of damaging or destroying property can be charged with criminal damage; and
- A person accused of enforced sexual activity can be charged with rape, indecent assault or harassment.

Magistrates' courts deal with all domestic violence cases initially, since they tend start as criminal offences. Depending on the severity of the offence, cases may then be sent to the crown court. For example, serious offences such as rape are always referred from magistrates' courts to the crown court, whereas magistrates' courts usually deal with all but high value cases of criminal damage.

Survivors of domestic violence cannot insist that the Crown Prosecution Service (CPS) pursues a criminal prosecution. If the CPS decides not to proceed with a case, for reasons outlined below, then the survivor may consider pursuing a civil rather than criminal remedy. However, the CPS has a policy to prosecute in all cases wherever possible.

What is the police response to domestic violence?

Many police authorities have Domestic Violence Units, or Domestic Violence Liaison Officers attached to local police stations. Designated officers are there to offer support to survivors of domestic violence. All forces have Community Safety Units attached to local police stations which can also provide information and advice to survivors. The units deal with various community problems, including racial abuse, neighbour nuisance and other issues.

When the police are called to a scene of domestic violence they will typically:

- Carry out an initial investigation and identify witnesses.

- Arrest the offender if he is still there and they have grounds to do this (they do not need a warrant to arrest someone they suspect has committed or is about to commit a violent offence or breach of the peace; nor do they need to have witnessed an assault themselves).

- Try to obtain a statement from the victim at the time, away from the suspect, even if the statement is brief and basic. This will help them to interview the suspect at the police station immediately and then provides grounds to charge him, if appropriate, and to take him to the magistrates' court. The police can usually keep a suspect in custody at the police station for no more than 24 hours, and they can impose only limited conditions if they release him on police bail (see below).

- Sometimes, ask the survivor to see the Forensic Medical Examiner (FME). If she agrees, the police may escort her to the police station for an examination. In some cases, the FME will be called by the police to attend the victim at the scene. If she is reluctant to see an FME she will be urged to visit either her GP or local hospital as quickly as possible. This not only ensures a proper medical assessment for treatment but also obtains medical evidence that can be used as evidence for the court case.

- Advise the survivor, as required by the force's own domestic violence strategies, of other options available to her, for example obtaining an injunction under civil proceedings. The police would also provide her with contact addresses for support organisations, advocacy groups or local refuge services such as Women's Aid or Victim Support. The victim's consent is required before the police can pass any information to Victim Support but this organisation can be conducted direct

The police are responsible for investigating the matter and deciding whether to charge the suspect. Sometimes they will seek advice from the CPS about making a charge on the strength of the evidence and prospect of conviction.

The defendant must be formally charged within 24 hours of arrest, unless an extension has been granted. Once the police have charged the suspect, the CPS has to decide whether to continue with the prosecution. We deal with the CPS role in more detail below.

What does police bail involve?

The police decide whether to bail the defendant, which means releasing him either before charge, while they make further enquiries, or after the charge, pending a court hearing. Defendants on bail are listed to appear in court on the first available date, usually within two or three days of bail conditions being imposed. The police may decide to keep the defendant in custody to appear before the magistrates' court the next day.

At the hearing the court will decide whether the defendant should be bailed or kept in custody until the full hearing. There is a presumption in favour of bail. If the court is asked to remand the defendant in custody, the prosecution must show that bail conditions would not be enough to prevent the defendant from committing further offences or interfering with witnesses, or to ensure that he will attend the full hearing.

There are various conditions that courts can impose on a defendant:

- He must not contact, either directly or indirectly, a named person; and/or
- He must not go to a named place; and/or
- He must reside at a named place; and/or
- He must report to a named police station on a given day or days at a given time.

Although similar, these conditions should not be confused with civil non-molestation and occupation orders.

When the court imposes bail, it uses a standard form to record the decision and any conditions. If a defendant breaches any of his bail conditions he can be arrested and the court has the power to remand him in custody. Once the criminal case has been concluded, bail conditions cease to have effect. The defendant is therefore no longer restricted from contacting the survivor/witnesses or from visiting or entering the family home. Further protection will only be given if a restraining order has been granted in criminal proceedings under the PHA 1997 or if a civil injunction order was made either under the PHA 1997 or the FLA 1996.

What is the role of the Crown Prosecution Service (CPS)?

There are 42 CPS regions. In each there is a national domestic violence co-ordinator with extensive experience in prosecuting domestic violence cases and other cases. The areas are similar to the police commission areas although the police have an extra City of London area.

After the police have charged a defendant they refer the file to the CPS who decides whether to proceed with the case. The decision to prosecute is only taken by a prosecutor experienced in dealing with domestic violence cases and is based on two tests set out in the Code for Crown Prosecutors:

1) evidential test – there must be sufficient evidence to provide a reasonable prospect of conviction;

2) public interest test – if the case passes the evidential test (and only if it does) the CPS must go on to consider if a prosecution is in the public interest.

There are many factors to be taken into account under this test, including the consequences for the survivor of the decision whether or not to prosecute, and the views of the survivor.

If the survivor decides to withdraw support for the prosecution, or does not wish to give evidence, the case is not necessarily dropped. For example, the CPS may be able to continue on the strength of other evidence gathered at the scene by the police. Alternatively, a witness may be compelled to attend court (although in practice the courts rarely use this power). In some domestic violence cases the violence is so serious, or the previous history shows such a real and continuing danger to the survivor or the children or other people, that the public interest in proceeding with the prosecution outweighs the survivor's wishes. As a rule, the CPS prosecutes all cases where there is enough evidence and there are no other factors preventing them from doing so.

If the survivor informs the police that she wishes to withdraw the action, the CPS asks the police to take a written statement explaining her reasons, confirming whether her original statement was true, and asking if she has been pressured into taking this decision. The police are asked their opinion about her responses. If it is suspected that the victim may have been put under undue pressure to withdraw the case, the CPS may ask the police to investigate the matter further.

The CPS recognises that the use of previous civil proceedings as evidence in criminal proceedings is problematic, not least because family matters in the civil courts are generally held in chambers. As such, any evidence given privately to the judge should not be disclosed. But if the CPS learns of any breaches of civil injunctions or occupation orders, they will usually consider this relevant in providing extra weight in the prosecution of criminal cases.

There are details of how the CPS prosecutes domestic violence cases in its revised policy, published in November 2001 (www.cps.gov.uk).

What about court attendance and waiting times?

As mentioned above, the majority of domestic violence criminal cases are dealt with by the magistrates' courts; a small proportion is referred to the Crown Court, as explained below. The waiting time for trials in both types of court can vary from a couple of weeks to a several months. The waiting times depend on the location and the workload of the court.

A case goes to the Crown Court for a number of reasons including:

- It is an "either-way" (see glossary) offence that is not considered suitable for summary trial;
- It is indictable only (see glossary);
- The defendant wishes the transfer; and
- The magistrates do not consider their powers of sentencing to be sufficient.

Whatever the stage of the criminal proceedings, the police are duty bound to inform the survivor of any developments, especially of decisions regarding bail. The police will inform the victim about Victim Support, and the Witness Service available in every criminal court. The Witness Service provides support and information for witnesses, victims, their friends and family before, during and after a hearing. It can arrange pre-trial visits to the court, if requested. The full service to witnesses is set out in Victim Support's leaflet, *Going to Court*, which the police should give to witnesses. The police can also put victims in touch with other local support organisations.

How is a case listed?

The police's Criminal Justice Unit asks all parties for dates to avoid before a case is listed for trial – also for telephone numbers and addresses where parties can be reached at short notice.

Cases are listed for specific dates in the magistrates' courts, allowing a reasonable amount of time between the initial notification a hearing and the date for which it has been arranged.

In the Crown Courts, cases are either listed for specific dates or put in an early-warned list that covers a period of about two weeks. In the latter instances, the parties may be warned of the hearing the evening before the trial date.

If either of the parties cannot be contacted, the case is adjourned to a later date. Witnesses are not required to attend if the defendant pleads guilty.

What is the role of witnesses?

Due to the nature of domestic violence, the victim is often the only witness to the offence and is, therefore, the key witness for the court case. This can be avoided only if the defendant pleads guilty or if there is very strong supporting evidence from other sources, such as neighbours, police, or medical staff, which can be put before the court.

Under Section 23 of the Criminal Justice Act 1988, a witness can give evidence by a written sworn statement rather than in person. There are very limited circumstances in which such applications can be made or granted. The court must first be satisfied of a number of factors; for example, if the witness is ill, in fear, or is prevented from giving evidence. Once so satisfied, the court must also consider whether, in the interests of justice, the statement is usable as evidence in place of the witness appearing in person.

Courts tend to be reluctant to allow these applications because the defendant's legal team is then denied the opportunity to cross-examine the witness – particularly if the witness is the only witness to the offence.

From July 2002, new measures were introduced, following legislation in the Youth Justice & Criminal Evidence Act 1999, which can be applied to all 'victims'. These require the police to identify vulnerable or intimidated witnesses at an early stage. This allows the CPS to consider the situation with the victim, and the magistrates' court or crown court to decide on any special measures to assist the victim when giving evidence. Special measures may include: separate waiting rooms and facilities for victims and witnesses; giving evidence from behind a screen, or via a TV/video link; or clearing the public gallery. However, it should be remembered that special measures

apply in each case, according to the provisions set out in sections 16 and 17 of the Act. A table summarising those provisions is at Annex B. More information about special measures is available on the Home Office website.

What does a conviction involve?

For the defendant to be convicted of a criminal offence, the jury has to be sure of the defendant's guilt "beyond reasonable doubt" rather than on the "balance of probabilities" as in civil matters. If the jury is not sure, it has no choice but to acquit the defendant.

If the defendant is found guilty of the charges against him, then the possible sentences that can be imposed are quite varied in theory. Compared to civil cases, criminal cases offer further options that aim to modify the perpetrator's future behaviour. Civil cases primarily provide protection for the applicant in the immediate term.

In practice, the court only uses a narrow selection of options. Relatively few defendants are sent to prison and very few are fined. Magistrates tend to give restraining orders (under the PHA 1997), binding over orders (see glossary), conditional discharges (see glossary) or community penalties.

Section 33 of the Powers of Criminal Courts (Sentencing Act) 2000, currently defines a community penalty order as meaning any of the following:

- A curfew order;
- A probation order;
- A community service order;
- A combination order;
- A drug treatment and testing order;
- An attendance centre order;
- A supervision order; or
- An action plan order.

In some locations, community penalties may involve initiatives such as the Duluth Project, in which defendants undertake programmes designed to address their behaviour while programme organisers keep in contact with the survivor to verify the defendant's self-assessed improvement. In such programmes, the defendant is referred back to the magistrates' court if he fails to complete the programme. However, not all locations have such programmes.

Protection from Harassment Act 1997 (criminal)

The main advantage of this Act is its availability to women who have not lived with their abusive partner, nor had children with him. The PHA 1997 is a significant remedy for victims who cannot seek protection under the Family Law Act 1996 because they do not fall within the strict criteria for applicants set out by that Act (see Annex A and Part I of this Guide).

Criminal proceedings under PHA 1997 can result in a conviction that may carry a restraining order. The restraining order can prohibit the offender from a wide range of conduct, but it cannot make any orders concerning property rights.

In addition to providing civil remedies (as detailed in Part I), the Act also provides for two criminal offences: criminal harassment (under section 2); and fear of violence (under section 4). Criminal harassment is classed as a summary offence and is tried in the magistrates' court. Fear of violence can be tried as either a summary offence or an indictable offence in the Crown Court.

- Section 2: under this section a person must not pursue a course of conduct which amounts to harassment of another and which he knows, or ought to know, amounts to the harassment of another, that is, if any "reasonable person" in possession of the same information would regard the conduct as harassment. A "course of conduct" must involve conduct on at least two occasions

- Section 4: under this section a person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against them is guilty of an offence, if he knows, or ought to know, that this will cause the other fear

The police have the power to arrest and charge anyone whom they suspect of committing either of the above offences, and the CPS can prosecute if the case meets their criteria for deciding whether to proceed.

Annex A: Who is an associated person?

Concerning Occupation Orders (section 62(3) of the FLA 1996)

- They are or have been married to each other.
- They are cohabitants or former cohabitants.
- They live or have lived in the same household, otherwise than merely by reason of one of them being the other's employee, tenant, lodger or boarder.
- They are relatives.
- They have agreed to marry each other (whether or not that agreement has been terminated).
- In relation to any child they are both persons falling within subsection (4) which provides that a person falls within its scope if:
  1) He is a parent of the child; or
  2) He has or has had parental responsibility for the child.

They are parties to the same family proceedings (other than proceedings under Part IV of the FLA 1996).

Concerning Non-Molestation Orders (FLA 1996)

If the respondent falls within any of the categories below an application can be made:

a) In relation to the applicant:

- Spouse
- Former spouse
- Cohabitant
- Former cohabitant

b) In relation to the applicant or to any class of person in a):

- Father
- Mother
- Stepfather
- Stepmother
- Son
- Daughter
- Stepson
- Stepdaughter
- Grandmother
- Grandfather
- Grandson
- Granddaughter
- Brother
- Sister
- Half- or step-brother or sister
- Uncle
- Aunt
- Niece
- Nephew

c) In relation to any of the persons in b):

- Spouse
- Former spouse
- Cohabitant
- Former cohabitant

d) • Someone who lives, or has lived, in the same household.

e) • Someone whom the applicant has agreed to marry; where agreement terminated, only within 3 years of termination.

f) • Where the applicant is the parent of a child or has parental responsibility for a child, any other parent or person having parental responsibility.

g) • Where a child has been adopted or freed for adoption:
  i) a natural parent, or the parent of such a natural parent, is associated with;
  ii) the child or a parent of the child by virtue of an adoption order, or a person who has applied for an adoption order, or any person with whom the child has at any time been placed for adoption.

Anyone in class i) may apply for an order against anyone in class ii).

h) • the other party to any family proceedings.

NB: The criteria used for determining who can apply for an order under Part IV of the Family Law Act 1996 is relatively wide as can be seen above. In general, if a survivor of domestic violence is related to the perpetrator of the violence, this Act can be used as a remedy. However, the Act cannot be used in situations where the survivor has never lived with, been married to, or had children with the perpetrator of the violence.

Annex B: Special measures for vulnerable or intimidated witnesses

The table below sets out the special measures provided in the 1999 Youth Justice & Criminal Evidence Act (1999) (YJCE Act) available since 24 July 2002 and to the courts in England and Wales in which they are available.

Special measure	Reference in 1999 YJCE Act	Implementation in the Crown Court for vulnerable witnesses (s.16)	Implementation in the Crown Court for witnesses in fear or distress (intimidated witnesses) (s.17)	Implementation in magistrates' courts for vulnerable witnesses (s.16)
Screening witness from the accused	s.23	24 July 2002	24 July 2002	–
Evidence by live link	s.24	24 July 2002	24 July 2002	4 July 2002 for child witnesses in cases involving sexual offences, violence (including threats and cruelty)
Evidence given in private	s.25	24 July 2002	24 July 2002	–
Removal of wigs and gowns	s.26	24 July 2002	24 July 2002	Not applicable
Video recorded evidence in chief	s.27	24 July 2002	–	24 July 2002 for child witnesses in cases involving sexual offences, violence (including threats and cruelty)
Aids to communication	s.30	24 July 2002	N/A	–

KEY: YJCE Act 1999 = Youth Justice & Criminal Evidence Act 1999

Annex C: Glossary of terms

Bail

The release by the police or court of someone held in custody while awaiting trial or appealing against a criminal conviction. Conditions may be imposed on someone released on bail, for example payment of a specified sum to the court if he fails to appear on the date set by the court.

Binding over (to keep the peace)

Used by magistrates' courts to mark behaviour that might lead to a breach of the peace in the future – a method known as 'preventative justice'. This power can be used alone or in connection with criminal offences, in addition to any penalty. 'Bind overs' can be made on application (or 'complaint') of a private individual (such as a neighbour) or by the court itself. If the person bound over fails to keep the peace for the time specified by the court (usually 12 months) a magistrates' court may order forfeiture in whole or in part. This means the court would implement the sentence set as a condition of the binding over.

Care order

An order under the Children Act 1989 which places a child under the care of a Local Authority. An application can only be made by a Local Authority, NSPCC or a person authorised by Secretary of State. The court has the power to make a care order only when it is satisfied that a child is suffering, or is likely to suffer, significant harm either caused by the care, or lack of care, given by the child's parents.

Claim form (civil)

A formal, written statement setting out details of the remedy sought by the claimant. The form may also contain particulars of the claim, including background information such as dates and location of events relevant to the case. If these are not included on the claim form they can be forwarded to the court up to 14 days after the claim is filed in court.

Commital hearing (civil)

A method of enforcing judgment by obtaining an order that a person is committed to prison. It is most commonly sought when that person has committed a contempt of court, for example by disobeying an order of the court.

Conditional discharge

An offender may be conditionally discharged for up to three years. The condition is that he or she does not commit another criminal offence in that period. The discharge will then lapse. If a fresh offence is committed during the period fixed by the court, the offender can be sentenced afresh for the offence in respect of which the conditional discharge was made. The offender will then face sentence for two matters, the old and the new. Conditional discharges also rank as convictions.

Contempt of court

Disobeying a court judgment or process, for example breaching a non-molestation order is a contempt of court. The subject of the order (the respondent) is warned that he risks imprisonment for contempt if he disobeys the order, by the fact that a penal notice is attached.

Crown Prosecution Service

A Government Department completely independent of the police but working closely with them at all times. The CPS prosecutes people in England and Wales who have been charged by the police with a criminal offence. It also advises the police on possible prosecutions; reviews prosecutions started by the police to ensure the right defendants are prosecuted on the right charges before the appropriate court; prepares cases for court; prosecutes cases at magistrates' courts; and instructs counsel to prosecute cases in the Crown Court and higher courts. In some cases, CPS lawyers appear in the Crown Court and other higher courts.

"Either way"

Can refer to a case that is "triable either way" or an "either way offence". This means a case can be tried either in the magistrates' court or the crown court. The choice depends on the outcome of a procedure known as mode of trial. Common examples of the kind of offence that might go "either way" and that might be related to domestic violence are:

- Theft.
- Deception.
- Criminal damage where the value is more than £5,000.
- Assault occasioning actual bodily harm.
- Possession or supply of certain prescribed drugs.

Emergency protection order

An order made under the Children Act 1989 that gives a Local Authority or NSPCC the right to remove a child to suitable accommodation for a maximum of 8 days if there is reasonable cause to believe a child is suffering, or likely to suffer significant harm unless the order is made.

Ex-parte – see Without notice

Indictable offence

An offence that may be tried on indictment, which means by jury in the Crown Court. Most serious offences (murder, rape) are indictable. They will start in the magistrates' court and once the magistrates have deemed that the offence is indictable the case will be referred to the Crown Court.

Injunction

A remedy in the form of a court order addressed to a particular person that either prohibits him from doing, or continuing to do, a certain act, or orders him to carry out a certain act.

Liquidated/unliquidated claim

A liquidated claim is a claim for damages for a specified amount of money, for example £1,000. An unliquidated claim for damages is for an unspecified amount of money, for example not more than £10,000. The judge hearing the case will fix the amount awarded.

Non-molestation order

An order under the Family Law Act 1996 restraining a person from attacking or going near someone associated with the respondent, or from otherwise doing what the court orders him not to do.

On-notice application

Application listed for hearing by the court for which all parties to the action are notified of the date and time of the hearing.

Penal notice

A notice that can be attached to civil orders warning a party or parties that if they do not obey the order, or certain provisions in the order, they will be in contempt of court and may be sent to prison. Penal notices are mandatory on non-molestation orders, but discretionary in respect of other orders. If an applicant (victim) feels that the respondent (perpetrator) is likely to ignore or break the penal notice, the applicant has to apply to the court herself to have a power of arrest attached in order for the respondent to be arrested and committed to court.

Power of arrest

A power attached to a non-molestation or occupation order which enables the police to arrest, without warrant, a person whom they have reasonable cause to suspect of being in breach of the order to which the power is attached, even though that person may not be committing a criminal act. It is not mandatory to attach a power of arrest to a non-molestation or occupation order. The benefit here being, where a power of arrest is attached, the applicant does not have to go to court to ask for the respondent to be arrested since the police can arrest him without a warrant.

Process server

An authorised person, typically an 'officer of the court' responsible for delivering legal documents to people – usually defendants or respondents.

Remand

Committing an accused person to custody or releasing him on bail. If the suspect is remanded in custody he will be sent to the local prison.

Summary offence

An offence that can only be tried summarily, which means before magistrates and without a jury. Most relatively minor offences (for example common assault and battery) are summary offences.

Surety

A guarantor of payment or performance if another fails to pay or perform. Sureties may be provided by a bonding company which “posts a bond” for a guardian, an administrator or a building contractor. Most surety agreements require that a person looking to the surety (asking for payment) must first attempt to collect or obtain performance from the responsible person or entity.

Without notice (previously ‘ex-parte’)

An application made by one party to start court proceedings in the absence of the other party (often applied for under the FLA 1996 because of the urgency of the application to protect the applicant).

Annex D: Reference sources and further reading

Application for a fee exemption or remission – Court Service leaflet EX160

Barnados Training Resource, *Making an Impact – children and domestic violence* NSPCC, 1998

Community Legal Service website – www.lcd.gov.uk/comlegser/comlegfr.htm

Community Legal Service website: 'Just Ask!' www.justask.org.uk/legalhelp/leaflets.jsp?lang+en (There are no leaflets on domestic violence at time of going to press but there are related topics on going to court, divorce, personal injury etc.)

court fees do you have to pay them? – Court Service leaflet EX160A

Court Service website – www.courtservice.gov.uk

Crown Prosecution Service, *Guidance on Prosecuting Cases of Domestic Violence* Booklet, November 2001

Crown Prosecution Service, *Policy for Prosecuting Cases of Domestic Violence* Booklet, November 2001

Crown Prosecution Service website: www.cps.gov.uk

Darlington Domestic Violence Forum, *Need an Injunction?* www.ddvf.org/legal/legal_help.htm

Department of Health, *Domestic Violence – A Resource Manual for Health Care Professionals*, March 2000

Domestic Violence and Protection from Harassment, (Third Edition 2001) [District Judge] Roger Bird,

Home Office leaflet, *Loves Me Loves Me Not*, 2002 (replaced *Break the Chain*)

Home Office leaflet, *Witness in court*

Home Office website – www.homeoffice.gov.uk

Introduction to the Criminal Justice Process, Bryan Gibson, Paul Cavadino [ISBN 1 872870 09 0]

Law Society's guide to best practice for solicitors practising family law in England and Wales, *Family Law Protocol*, 2002 [ISBN 1 85328 885 3]

Legal Services Commission Funding Code

Legal Services Commission website – www.legalservices.gov.uk

Lord Chancellor's Department website – www.lcd.gov.uk

Northern Ireland Regional Forum on Domestic Violence, *Ending the Pain and Healing the Hurt – A Practical Guide for Faith Communities Responding to Domestic Violence*, October 1999

Stalking and other forms of harassment – An investigator's guide, Detective Inspector Hamish Brown, Metropolitan Police Service, 2000

Victim Support website – www.victimsupport.org.uk

Victim Support's Witness Service leaflet, *Going to Court*

Women's Aid Federation of England website: www.womensaid.org.uk
(This includes information on the helpline, refuges and contacts to order leaflets: *Domestic Violence and Legal Protection*, *Domestic Violence and Housing*, *Health and Domestic Violence*.)