

Legal Remedies Workshop

Welcome and Introductions

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Introducing the Guidance

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Domestic Violence and Abuse: Legal Remedies

‘Information about the criminal and civil law surrounding domestic violence and abuse in Northern Ireland.’

- **Practitioners working with families experiencing domestic violence/abuse are often challenged by the complexity of the legal options and remedies available to victims of domestic violence and abuse.**
- **Many victims do not know or understand the legal options available to them and are confused and intimidated by the legal processes.**

‘ would like some advice please I have a non molestation order on an ex partner who continues to harass me I also got this order because he assaulted me what I want to know is if I go back to the solicitor and ask for it to be amended so that he cant come within 50 metres of me for instance then what happens if I walk into a place and he’s there do I have to leave or does my ex partner have to leave any advice would help thanks’

(Netmums Forum 2013)

➤ ***‘My client said the non-molestation order was breached. He was outside her house! However the police said it wasn’t a breach of the order?’***

(Family and Child Care SW)

➤ ***‘I need a Non-molestation Order but I have a part-time job. I don’t know if I can afford it?’***

(Victim)

***‘ I have just recently served my ex partner a non molestation order without notice. He has been served the notice and need to return to court in a couple of weeks time. (I went to court on my own and applied with no support, gave my written evidence and application to the judge - hence why I am asking these questions)
If he does not turn up what happens?
Do I need to go? If I do what is required by me?’***

(Netmums Forum Oct.14)

Purpose

In response to issues raised by victims and a range of partnership agencies, members of the Belfast Domestic Violence Partnership Protection and Justice Working Group have developed “**Legal Remedies**” guidance.

Aim

The guidance aims to assist frontline staff working with families experiencing domestic violence and abuse understand the legal options available to victims and provides comprehensive information about the criminal and civil law surrounding domestic violence and abuse in N. Ireland.

Anticipated Key Learning

- To introduce the Legal Remedies Guidance to staff from a range of partnership agencies
- The legal options including Non-Molestation and Occupation Orders
- Legal Aid
- Stalking and Harassment
- Policing and Enforcement

The Guidance Document

- 3.0 Legislation – Orders available to victims via The Family Homes and Domestic Violence (N.I.) Order 1998.
- 3.2 Legal Aid and Financial Eligibility – an explanation and sample financial assessment.
- 3.3 Stalking and Harassment – The Protection from Harassment (N.I.) Order 1997

Continued....

➤ 4.0 Policing

PSNI response to Domestic Violence, in particular the Orders outlined previously.

➤ 5.0 Other options to Victims.

➤ 6.0 Support for Victims and Witnesses.

➤ 7.0 Appendices

What protection does the law offer?

Anne Caldwell

Solicitor

Flynn &McGettrick

CURRENT DEFINITIONS

- Domestic Violence and abuse is “threatening, controlling, coercive behaviour, violence or abuse (psychological, physical, verbal, sexual, financial, or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender or sexual orientation) by a current or former intimate partner or family member
- Sexual violence and abuse is any behaviour (physical, verbal, virtual/digital) perceived to be of a sexual nature which is controlling, coercive, exploitative, harmful, or unwarranted that is inflicted on anyone, irrespective of age, ethnicity, religion, gender or sexual orientation) without their consent or understanding

BACKGROUND TO THE LEGISLATION

- **Family Homes and Domestic Violence Order (NI) 1998**
- **Legal remedies broadened**
- **Inadequacies of old system**
- **Introduced Non- Molestation and Occupation Orders**
- **Remedies available to wider group of people**
- **Breaches of the orders designated criminal offences**

CIVIL REMEDIES

- **Family Homes & Domestic Violence (FHDV) Northern Ireland Order 1998**
- **Protective Civil Orders**
- **Available in the Magistrates Court, County Court or High Court**

WHO CAN APPLY

- Articles 2 & 3 of FHDV (NI) Order
- Associated persons
- Relatives
- Cohabitees
- Relevant child

NON-MOLESTATION ORDERS

- Article 20 of the FHDV (NI) Order
- Protection from any form of molestation
- What is molestation?
- What does the court have to consider?
- Nature of the court order- general or specific
- Use of exclusion zones
- Length of the Order

OCCUPATION ORDERS

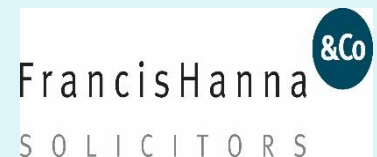
- Articles 11-16 of FHDV (NI) Order
- Purpose of the Order
- Criteria for granting
- Combined with Non -Molestation Order become protective

OTHER PROTECTION AVAILABLE

- **Protection from Harassment (NI) Order 1997**
- **Stalking Legislation**
- **Offence of Harassment**
- **Offence of putting a person in fear**
- **Restraining Orders**

Procedure and Legal Aid

Claire Edgar, Solicitor
Francis Hanna & Co



What steps to take if you suffer from domestic abuse

- Contact the Police immediately
- Seek medical assistance
- Take pictures of any injuries sustained
- Contact your Solicitor as soon as possible
- Your Solicitor can prepare an application to the Court for Orders for your protection

What your Solicitor will need to know

Your Solicitor will ask you questions about your relationship with the alleged perpetrator (known as the Respondent) so that they can draft a statement on your behalf for the Court including:

- Details of the domestic abuse which took place
- Details of any historical incidents of domestic abuse
- If there is or has been any Police or Social Services involvement
- If you have contacted your GP or attended hospital because of the Respondent
- If an Occupation Order is required, does the Respondent have other accommodation

At Court

- When you arrive at Court you will be met by your Solicitor
- The Solicitor will take you through your statement, ask you to sign it and the Court application form (Form F1)
- These documents are lodged with the Court
- You will then be asked to come into the Courtroom and the Solicitor will take you through your statement to the District Judge
- The District Judge may ask you questions directly
- The District Judge will issue the Ex-parte Orders

Going forward

- When the Ex-parte Orders are issued the Court will list the case for Inter-parties Hearing
- At Inter-parties Hearing the Respondent has an opportunity to indicate to the Court whether they intend to defend the case
- If the matter proceeds your Solicitor may seek adjournments to allow them to obtain any medical or police evidence which may help your case. Your Order will remain in place in the interim.

Concluding the case

The case may conclude in four ways:

- Withdraw application

You may no longer want or require the protection of an order

- Hearing

Both parties will provide evidence to the Court and the District Judge will make a decision on whether to grant a Full Non-Molestation Order

- Consent to an Order

The Respondent may agree to a Full Order being granted for a period of time and there would be no need for a Hearing

- Undertakings

The Respondent may agree to provide a formal undertaking which stipulates that they will not pester, harass or intimidate the victim

Legal Aid

- Everyone applying for a Non-Molestation Order or a Non-Molestation Order combined with an Occupation Order is eligible for legal aid.
- An applicant for an Occupation Order **only** is not automatically eligible for legal aid and will need to be assessed to see if they are financially eligible.
- A financial assessment is carried out on a legal aid “Green Form” by the solicitor.

Legal Aid

- If a client's income or capital is above a certain amount they will have to make a "one off" contribution to legal aid. The rest of the legal costs are met by legal aid no matter how long the case goes on for.
- Respondent's income and capital are not included
- A client need only be eligible at the time of signing the Green Form.
- Client will continue to benefit from legal aid even if their income subsequently increases.
- Some solicitors firms may agree to the client paying the contribution by instalments.

Three examples of financial assessments

Client receives passport benefit

- A person in receipt of income support, income based jobseekers allowance, guaranteed state pension credit or income related ESA is automatically eligible to legal aid and will pay no contribution to their legal costs

Three examples of financial assessments

Client with disposable income up to £234 per week

Example:

Income

Gross wages		£155	per week
Tax credits	£250		per week
Child benefit		<u>£ 41</u>	per week
Total income		£446	per week

Deductions

Income Tax		£31	per week
National Insurance	£2		per week

Contributions

Dependant deduction for three children £198.99
(66.33 x 3)

Total deductions £231.99

Total weekly disposable income £214.0

(income less deductions)

Total contribution £119.00



Extract from Green Form

GROSS INCOME	
Client	£
Spouse/partner	£
Child Benefit	£
Other-please specify	£
TOTAL GROSS INCOME	£

DEDUCTIONS AND ALLOWANCES	
Income Tax	£
N.I. Contribution	£
Spouse/Partner	£
Maintenance paid	£
Dependent Children and/or other dependents under 16	£
Dependent Children and/or other dependents 16 and over	£
TOTAL DEDUCTIONS AND ALLOWANCES	£

Financial eligibility calculation to confirm	
Total Gross Income	£
Less total deductions	£
Total disposable income	£
Contribution due	£

Extract from key card

DEPENDANT DEDUCTIONS

£66.33 in the case of each dependent child or dependent relative aged under 20.

NOTES

- Entitlement is calculated from the first Monday in September following the relevant birthday
- No deduction can be made in respect of a foster child
- If anyone with whom the client normally resides as a couple, including a person of the same sex, is seeking advice in connection with a matter in which there is a contrary interest, the money received for normal household expenses should not be included as part of the clients separate income.
- An applicant will be ineligible for Advice and Assistance if the Disposable Income exceeds £234.

CLIENT'S CONTRIBUTIONS

<u>Disposable Income not exceeding</u>	<u>Contribution</u>	<u>Disposable Income not exceeding</u>	<u>Contribution</u>
£100 per week	Nil	£170 per week	£70.00
£107 per week	£7.00	£177 per week	£77.00
£114 per week	£14.00	£184 per week	£84.00
£121 per week	£21.00	£191 per week	£91.00
£128 per week	£28.00	£198 per week	£98.00
£135 per week	£35.00	£205 per week	£105.00
£142 per week	£42.00	£212 per week	£112.00
£149 per week	£49.00	£219 per week	£119.00
£156 per week	£56.00	£226 per week	£126.00
£163 per week	£63.00	£234 per week	£134.00

Three examples of financial assessments

Client with disposable income over £234 per week

- A client's one off contribution will be £134 plus the amount of weekly income over £234
- e.g. someone with disposable weekly income of £300 would pay a contribution of £200 i.e. £134+ £66
- Where a client has capital savings of any amount over £3000 they will be required to make an additional one off contribution of £100.

What documents you will need for legal aid

If you are:

- **Working** – you must bring your most recent payslip
- **Receiving benefits** – you must bring a letter/ bank statement confirming the amount paid to you
- **Working and receiving benefits** – you must bring both sets of documentation with you
- **Have no recourse to Public Funds** – evidence of any financial support

These documents must be provided to your Solicitor within 5 days of attending Court

Conclusion

- Domestic abuse can happen to anyone at any time
- The law is there to help all victims of domestic abuse regardless of their age, gender or social circumstances
- Your Solicitor will talk you through each and every step you need to take
- Taking steps to seek legal protection against domestic abuse can seem very daunting but experienced and sensitive professionals can help.

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Public Protection Unit

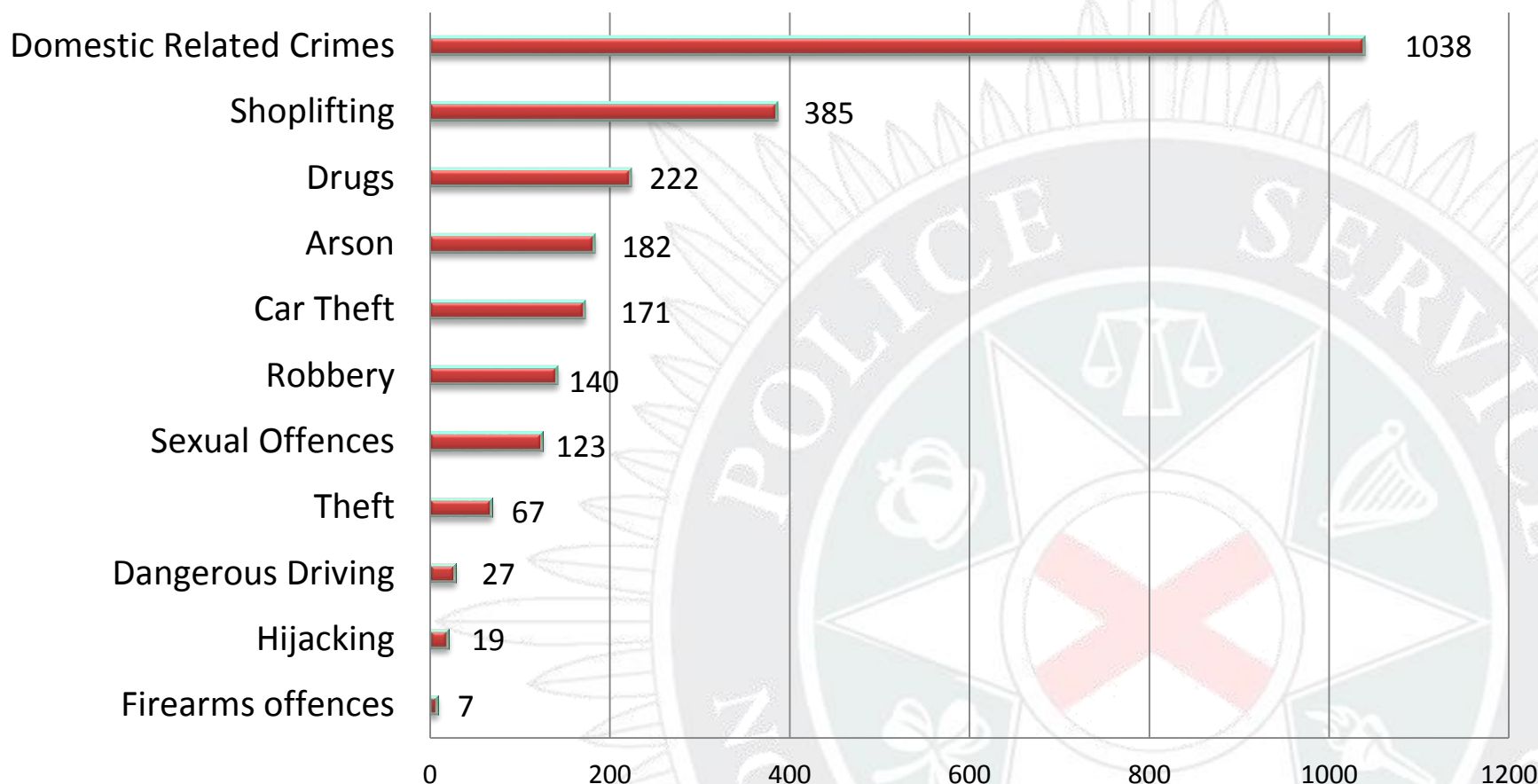
Belfast City Policing District North & West Belfast

Joanne Eakin
Domestic Abuse Sergeant
Antrim Road



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Breakdown of Crimes North Belfast 2013 - 2014





Domestic Abuse

- To protect the lives of both adults and children who are at risk as a result of domestic abuse;
- To investigate all reports of domestic abuse;
- To facilitate effective action against alleged perpetrators so that they can be held accountable through the criminal justice system;
- To adopt a proactive multi-agency approach in preventing and reducing domestic abuse.



Orders

Non Molestation Order

- In relation to a person
- Ex-parte service by Police
- Interim Order posted by courts
- Power of arrest (POA)

Occupation Order

- In relation to a dwelling
- Ex-parte service by Police
- Interim Order posted by courts
- **No power of arrest** (unless with Non Molestation Order)



Difficulties - Orders

- Service
- Proving a breach
- Applicant “allowing” a breach
- Granted to reside in same household
- Occupation Order - no power of arrest on its own
- Issues if Child Contact Order also in force
- General wording
- Cost



Stalking & Harassment

- 2 types of offences
 - Article 4 pursues a course of conduct (unwanted and repeated behaviour) (cause alarm/distress)
 - Article 6 + putting people in fear of violence (Injured Party fears violence will be used)
- At least on 2 occasions
 - Warned after one occasion by Injured Party, Solicitor or Police
- Police will issue a Police Information Notice (PIN)



Police Information Notice

- Police Form
 - Not court order or a criminal record
 - Letter outlining an allegation of harassment
 - Outlines what harassment is
 - Possible offence if the behaviour continues
 - Signature requested – understanding
 - Copy given to person
- No caution/investigation at this stage
- Recorded on Police computer
- No time limit set
- Request Injured Party to record all communication



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Bail

- A set of conditions
 - Police Bail/Pre-Charge Bail
 - Court Bail/Post-Charge Bail
- To ensure alleged perpetrator will show up
- Breaches
 - Power of arrest
- Only short term measure
 - Make use of other protective measures



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Coffee Break

“The Law on your side”

Questions / Discussion