

Injunctions – What will the Court consider?

If you are thinking of applying for an injunction, you will need to ensure that you qualify as an Associated Person and you will need to know the procedure. However, it is also important to know what the Court will consider when deciding whether to make an Order.

Considerations

Whether on an application for a Non-Molestation Order and/or an Occupation Order, the Court will have regard to all the circumstances including:

- The housing needs and housing resources of each party and any children.
- The financial resources of each party.
- The likely effect of any Order, or of any decision not to make the Order, on the health, safety and wellbeing of each party and of any children.
- The conduct of the parties in relation to each other and otherwise.

The Court will apply 'the balance of harm test'. If it appears to the Court that you or any children are likely to suffer significant harm attributable to the conduct of the other party, the Court must grant an injunction unless it appears to the Court that making the Order would be more harmful than not.

There are additional factors to consider when the Court is considering the making of an Occupation Order. This is because the Occupation Order interferes with property rights. The considerations vary depending upon whether you were married or cohabiting and upon whether you have standalone rights to occupy the property:

If you have no right to occupy but were married, the Court must consider:

- The length of time since you last lived together.
- The length of time since the marriage was dissolved or annulled (if relevant).
- The existence of any current other legal proceedings between you relating to the legal or beneficial ownership of a property.

If you have no right to occupy but were cohabiting, the Court must consider:

- Whether either of you have any children.
- The length of time during which you lived together
- The length of time which has elapsed since you stopped living together; and
- The existence of any current legal proceedings relating to the legal or beneficial ownership of property.

To find out more, please refer to the information sheets which can be found on our website under Resources.

-  Urgent Applications
-  Injunctions - Associated Persons
-  Procedure for Injunctions