

## **DOMESTIC VIOLENCE**

Domestic violence occurs in every Social and Economic grouping of Society. There is no specific type of person to whom it occurs and there is no specific type of home in which it happens. Whilst women are usually the victims of domestic violence men may also be victims. Unfortunately men are less likely to bring the matter to the attention to the Gardai or bring the matter before the Courts.

Domestic violence includes physical, emotional, psychological and sexual abuse in adult relationships (the legal protection also covers dependent persons who are exposed to domestic violence).

No one should have to endure violence from another person in any relationship. Anyone who suffers any incident of domestic violence should make a complaint to the Gardai about the incident or incidents, attend their medical practitioner if they have suffered injury, document the injury and if there are physical symptoms take photographs of the injury, and attend with their Solicitor to make an application to the Courts for the appropriate Order to ensure their safety and wellbeing.

There are a number of support groups around the county established to help victims of domestic violence. Crisis accommodation and refuges are also available in the larger towns and cities.

Initially victims of Domestic violence had to rely on the Criminal Law to bring their cases before the Courts. The Family Law (Maintenance of Spouses and Children) Act 1976 introduced the remedy of a Barring Order which excluded the violent spouse from the Family Home for a 3 month period. The current legislation governing Domestic Violence is comprised in the Domestic Violence Acts 1996 to 2011. The Domestic Violence Act 2018 has been signed into law but not yet commenced.

The Main aims of the Domestic violence legislation are:

- To protect spouses and children and other dependent persons and persons in other domestic relationships where their safety and welfare is at risk because of the conduct of the other person in the domestic relationship.
- To increase the powers of the Gardai to arrest without warrant in certain circumstances.
- To provide for the Hearing at the same time of applications to Court for other Orders regarding custody and access, maintenance, conduct leading to the loss of the Family Home, restrictions on the disposal of household chattels

and child care orders.

The legislation provides for the making of a Protection Order which is temporary in nature and orders the Respondent (the person committing the offence) not to use violence or threaten to use violence against, molest or put in fear the Applicant (the person who has suffered the violent behaviour) or any dependent persons. Where the parties do not live together it also provides that the Respondent should not watch or beset the place where the Applicant or the dependent person resides.

The Protection Order is an Ex – Parte Application which allows the Applicant to make an application to the Courts without notice to the Respondent. The Protection Order only lasts until the Court determines the outcome of the Safety Order or Barring Order Application. However it is important to note the Protection Order does not bar the Respondent from the family home.

When a Protection Order is granted it is served on the Respondent together with details of the intended date of the application for a Safety Order or Barring Order Application. This gives the Respondent an opportunity to consult with his or her solicitor to prepare for the Court hearing. There are serious consequences for a breach of a Protection Order.

## **BARRING ORDER**

A Barring Order provides among other things that the Respondent should leave the place where the Applicant or the dependent person resides and prohibits the Respondent from entering that place. The Court may also prohibit the Respondent from:

- Using or threatening to use violence against the Applicant or any dependent person.
- Molesting or putting in fear the Applicant or any dependent person.
- Attending at or in the vicinity of, or watching or besetting a place where the Applicant or the dependent person resides.

The Court must find that there are reasonable grounds that the safety or welfare of the Applicant or any dependent person is at risk before making a Barring Order.

A Spouse does not have to show any ownership interest in the property, the subject matter of the barring application. However an Applicant who is not a spouse seeking a Barring Order must have at least a 50% ownership interest in the property and they must have lived as husband and wife for six months in total out of the nine months prior to the making of the application. The Barring Order may be granted for a period of three years with permitted limited extensions of this period subject to further Court Applications.

The persons who are entitled to make an application for a Barring Order are:

- Spouses and former spouses

- Civil Partners
- Cohabitants who have lived as husband and wife for 6 months in total out of the previous nine months and where the Applicant has at least a 50% interest in the property.
- Parents of an adult child (provided they meet the ownership requirements).
- The Health Service Executive (HSE) on behalf of the entitled “aggrieved person” who may be an adult or a dependent person.

There are also provisions in the legislation for the granting of an Interim Barring Order where the Applicant can make an Ex – Parte Application and if successful obtain an Interim Barring Order which is valid for 8 working days. However it should be noted that the conditions for the granting of such an Order are stringent as the Order is seen to infringe property rights and only in exceptional cases are these Orders granted where there is an immediate risk of significant harm to the Applicant and where the granting of a Protection Order is thought to be insufficient.

### **SAFETY ORDERS**

A Safety Order is effectively a long term Protection Order which can be granted for up to five years. A Safety Order does not bar a Respondent from the residence of the Applicant but prohibits him or her from using or threatening to use violence against, molesting or putting in fear the Applicant or a dependent person and if the Respondent is residing elsewhere, watching or besetting the place where the Applicant or dependent person resides.

The following persons can make an Application for a Safety Order:

- Spouses
- Civil Partners
- Cohabitants
- The parent of an adult child
- Persons of full age residing in mainly non-contractual relationships e.g. two relatives living together
- A person with whom you have a child, even though you may have never lived with them
- The Health Board on behalf of an entitled “aggrieved person” who may be an adult or a dependent person.

As already stated there are serious consequences for a breach of any of these Court Orders and they can result in Criminal Proceedings being brought against the Respondent for a breach of such an Order.

However for victims of domestic violence who fall into these categories, The Non Fatal Offences Against The Person Act 1997 provided for remedies in relation to crimes of assault, assault causing harm, assault causing serious harm and threats to kill. The Act also introduced new crimes of coercion and harassment to cover stalkers.

Domestic violence can be a once off event or can be continuous and is very often a cycle which is repeated through the generations of a family. Break the cycle now.

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