Belfast Area
Domestic & Sexual Violence
and Abuse Partnership

DOMESTIC VIOLENCE AND ABUSE: LEGAL REMEDIES

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

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1.0 Introduction

The Belfast Domestic & Sexual Violence and Abuse Partnership Protection and Justice Working Group has issued this guidance to help professionals and victims understand the law and the protection options available to individuals experiencing domestic abuse.

The guidance does **not** consider the legal options available to children under the Children Order N.I.1995. It is intended to provide general information on possible legal options. It should not replace legal advice and consideration should always be given to obtaining legal advice.

Domestic Violence and Abuse is:

'threatening, controlling, coercive behaviour, violence or abuse (psychological, virtual physical, verbal, sexual, financial or emotional) inflicted on anyone (irrespective of age, ethnicity, religion, gender, gender identity, sexual orientation or any form of disability) by a current or former intimate partner or family member'

(Stopping Domestic and Sexual Violence and Abuse in Northern Ireland Strategy 2016)

The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 defines abusive behaviour as:

- Behaviour (including towards others) that would have the effect of:
    - making the victim dependent on the abuser;
    - isolating them from friends, family members or other sources of social interaction or support;
    - controlling, regulating or monitoring their day to day activities;
    - depriving or restricting their freedom of action; or
    - making them feel frightened, humiliated, degraded, punished or intimidated.
- Violent behaviour (includes both physical and sexual); or
- Threatening behaviour.

This is not an exhaustive list.

Abusive behaviour could include (but is not limited to) coercive control, psychological/emotional abuse, verbal abuse, physical abuse, sexual abuse, economic abuse, online and technological abuse.

2.0 Northern Ireland Court System

Victims of domestic abuse come in contact with the court system in one of two ways.

Civil Court

A civil court deals with a wide range of disputes including family matters such as, child arrangements, divorce and protection orders where domestic violence is alleged. It is to a civil court that a victim applies for non-molestation and occupation orders.

Criminal Court

A criminal court deals with criminal offences when it is alleged that someone has broken the law, for example, by committing the domestic abuse offence or any other offence aggravated by domestic abuse or by breaching a non-molestation order (a breach means failing to comply with a court order). Victims come in contact with the criminal court as a witness in proving the crimes. Crimes are prosecuted/brought before the court by Police and the Public Prosecution Service (PPS).

3.0 The Legislation

3.1 The Family Homes and Domestic Violence (NI) Order 1998

This is the legislative framework which allows victims of domestic abuse to apply for protective civil orders. These are usually granted in the Domestic Proceedings Court (Magistrates Court) but can also be made by the County Court and High Court.

There are two types of orders which the victim can apply for;

(i) Non-Molestation Orders (Article 20)

(ii) Occupation Orders (Article 11-19)

People who apply for these orders (victims) are known as the **'Applicant.'** People against whom an order is sought (alleged perpetrator) are known as the **'Respondent.'**

a. What is a Non-Molestation Order?

A non-molestation order is an order that a Judge can grant to stop or prevent a person from abusing, harassing, pestering, using or threatening to use violence against another person in any way. It can be general in nature for example that "x shall not molest." It can be more specific setting out particular acts which are forbidden and deemed to be an act of molestation. **(See sample Non-Molestation Order at Appendix 1 and 2).**

A non-molestation order can specifically include children or in some cases may be made for children alone.

The Court also has the power to attach an **"exclusion zone"** to the order which means that an alleged perpetrator can be excluded from certain places such as the street or area in which the victim lives, works or the school which their children attend.

b. What is an Occupation Order?

An occupation order is an order that a Judge can make to declare who has the right to occupy a property. The Judge who makes the decision will look at many things when deciding whether to make an occupation order, like whether or not the person has other accommodation available.

An occupation order may be made in addition to a non-molestation order or as a stand-alone order. When it is granted alongside a non-molestation order it offers added protection to victims by preventing the alleged perpetrator from living in the family home **(See sample Occupation Order at Appendix 3).**

Once the order (s) are served on the Respondent, breach of a non-molestation order or a non-molestation order coupled with an occupation order is a criminal offence.

c. Who can apply for Non-Molestation and Occupation Orders?

The legislation sets out the categories of people who can apply for these orders. Generally, a victim can apply for an order against someone who is a family member or has lived with them in a familial relationship.

The following are the specific categories of people who can apply (known as **associated** persons).

A person is associated with another person if:

- they are or have been married to each other.
- they are or have been civil partners of each other.
- they are co-habitees or former co-habitees
- 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.
  "Relative", in relation to a person means:
  a) the father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, grandmother, grandfather, grandson, or granddaughter of that person or of that person's spouse or former spouse or
  b) the brother, sister, uncle, aunt, niece or nephew (whether of the full blood or of the half blood or by affinity) of that person or of that person's spouse or former spouse.

And includes, in relation to a person who is living or has lived with another person, as husband and wife, any person who would fall within paragraph (a) or (b) if the parties were married to each other:

- they have agreed to marry one another.
- they have entered into a civil partnership agreement.
- in relation to any child, they are a parent of the child; or has or has had parental responsibility for the child.
- they are parties to the same family proceedings (other than proceedings under this order).

If an alleged perpetrator does not fall under one of these categories a victim may instead be able to apply for protection by way of a civil injunction (See section 5.1).

d. What is an Ex-Parte Order? (Emergency Order)

Both a non-molestation order and an occupation order can be made by an ex-parte application.

If there has been a recent (usually within seven days) incident of abuse a victim can make an **emergency** application to the court for either a non-molestation order or an occupation order or both. These are often referred to as **Ex-Parte orders.** This means that the Respondent (alleged perpetrator) is not notified of the application being made to the court. Ex-Parte orders will only be granted on a short term (interim) basis but are useful in providing urgent protection from further abuse, until such times as the Respondent can be given notice of the application for a full order being sought. The order usually lasts until the next court date.

If the order has been made ex-parte (i.e. in an emergency) then the alleged perpetrator will not have been in court and will not know that the order is in place. In these cases the court order is sent by the court to the Police Service Northern Ireland (PSNI) who will **serve** it on the Respondent (inform the person). **The ex-parte order takes effect once served by the police.**

The Applicant (victim) will also receive a copy of the order by first class post from the Northern Ireland Court and Tribunals Service (NICTS) **(See sample Ex-Parte Non-Molestation Order at Appendix 1)**

If an emergency order is granted by the court, the court will then summons both parties to attend court for a full hearing.

The Respondent (alleged perpetrator) can either confirm that they are agreeable for a full non-molestation and/or occupation order to be made against them, or, they can say that they are not happy with the order being made and can defend themselves against such an order being made.

If the Court refuses to make an ex-parte order the victim can appeal against this refusal without notice being given to the Respondent.

e. What is an Inter-Partes Order?

An inter-partes order is the term used when both the Applicant (victim) and the Respondent (alleged perpetrator) have been given the opportunity to be present or represented in court.

If the order is made when the Respondent is in court, or is represented in court by a solicitor then they are aware from that date that the order is in place.

The order will also be served by first class post by the Northern Ireland Court and Tribunals Service (NICTS) to the Respondent's solicitor's address or the solicitor's firm can access the orders via ICOS Case Tracking Online. Copies of the order are also sent to the police.

If the Respondent was present at the hearing but **not** represented by a solicitor and it is not known if a solicitor is engaged, the order is also served by first class post by NICTS to the Respondent's residence or last known residence.

If the Respondent is not present in court or not represented by a solicitor the order will be sent to the police to be served on the Respondent.
(See sample Inter-Partes Order at Appendix 2)

The inter-partes order is effective from the time that it is granted in court.

The orders granted can last for whatever period the court orders - the average period is 12 months. During this period the order can be varied to meet any changing circumstances.

If domestic violence/abuse persists after the order has expired further orders can be applied for.

The following are relevant forms.

Form F1 Application for a Non-Molestation Order/Occupation Order
https://www.justice-ni.gov.uk/sites/default/files/publications/justice/form-f1-%20application-for-a-non-molestation-order-an-occupation-order.pdf

Form F2 Summons to respondent on an application under the Family Homes & Domestic Violence (Northern Ireland) Order 1998
https://www.justice-ni.gov.uk/sites/default/files/publications/justice/p_uf_F2.pdf

f. Breaching an Order (failing to comply with a Court Order)

Anyone who has been granted a non-molestation and/or an occupation order should expect protection from the alleged perpetrator. It is important to remember that the person on whom the order is served may not keep to the conditions of the order and may continue to try to harass/molest their victim. In this case it is extremely important that all incidents that occur are recorded and reported to the police, so that they can take steps to enforce the order.

Once a person has been served with the order they can be arrested by the police for any breaches.

Whilst these orders are made in the civil court and are civil orders any breaches (further abusive behaviours or not abiding to what the court has directed) are a criminal offence. The person who is alleged to have 'breached' the order can be arrested and taken to a **criminal court**.

It should be noted that when a stand-alone occupation order is breached the police do not have a power of arrest. However, victims should be encouraged to report breaches to the police as other criminal offences may have occurred. They should also seek advice as to what other legal remedies are available.

3.2 What does it cost? - Legal Aid and Financial Eligibility

a. Everyone applying for a non-molestation order and/or a non-molestation order combined with an occupation order is eligible for legal aid for these proceedings in the lower courts (Magistrates courts or equivalents) under Representation Lower legal aid.

b. A financial assessment for Representation Lower legal aid is carried out by the solicitor and they should complete a Domestic Violence Waiver Form if the applicant's income or capital would normally exclude them from being eligible for legal aid.

c. 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 application goes on for, providing the matter is not transferred to the higher courts.

d. A person who would usually be financially ineligible will be granted legal aid. They may be required to make a contribution towards their costs, depending on their income and capital.

e. 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. Advice can be obtained from a solicitor.

It is important to ask your solicitor about legal aid funding as this is available even if you are working and on a high income which would not normally entitle you to legal aid.

3.3 The Domestic Abuse & Civil Proceedings Act (NI) 2021

The Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021[1] introduced a criminal domestic abuse offence for Northern Ireland. The offence came into force on the 22nd February 2022. It does not cover abusive behaviour before that date.

The offence closes a gap in the law by **criminalising a course of abusive behaviour**, that is behaviour that occurs on at least two occasions, against an intimate partner, former partner or close family member. Domestic abuse can take a number of forms and includes controlling or coercive behaviour, psychological abuse, emotional abuse, sexual abuse, virtual abuse, verbal abuse, financial abuse, physical abuse, sexual abuse, economic abuse and threatening behaviour. This ensures that protection is not limited to physically

[1] https://www.legislation.gov.uk/nia/2021/2/contents

violent behaviour.

Two further conditions must be met for the offence to be committed. These are:

a. that a reasonable person would consider that the behaviour in question would be **likely** to cause physical and/or psychological **harm** (hurt or damage, including fear, alarm and distress)[2] and;

b. that the behaviour is carried out with the **intent** to, or is **reckless**[3] as to whether or not it would cause such **harm**. This condition could be met, for example, where the abuser is repeatedly verbally abusive and demeaning towards their partner/connected person but claims that they did not intend the behaviour to cause harm, and the court is satisfied that the accused's behaviour would cause such harm.

- Harm does not actually have to be caused to the victim for the offence to apply.

- The offence applies to both adults and those under 18. Abuse against a child under 16 years of age, by a person who has parental responsibility for that child, is excluded from the scope of the offence (this type of abuse should be dealt with under child protection provisions such as section 20 of the Children and Young Person Act (Northern Ireland) 1968).

- Abuse carried out abroad can form part of the domestic abuse offence, where the accused normally lives in Northern Ireland or is a UK national.

- The legislation also includes two **child aggravators**, where the offence is aggravated by virtue of the involvement of a young person. The aggravator enables the sentencing to be increased up to the maximum available.

The first child aggravator applies to the domestic abuse offence where the victim is under 18.

The second child aggravator applies where:

- a child saw, heard or was present during an incident of abuse.
- a child is used to abuse another person.
- abusive behaviour is (or threatened to be) directed at a child; or
- a reasonable person would consider that the behaviour would be likely to adversely affect the child.

- The legislation provides for any other offence, other than the domestic abuse offence, to be aggravated where it involves domestic abuse. This could be with, for example, criminal damage, assault or a sexual

[2] The court would also be entitled to take account of any particular vulnerability of the partner/connected person, in considering whether the offender's behaviour would be likely to cause them to suffer physical and/or psychological harm.
[3] Disregarding the consequences or danger; lacking caution; rash.

offence which involves domestic abuse.

- Those subject to the domestic abuse offence, or any other offence aggravated by domestic abuse, are automatically eligible for consideration of special measures when giving evidence also, which could include the use of live links or screens. Also, the accused is prohibited from cross-examining their victim in the criminal court. The Act also prohibits, in family proceedings, cross examination in person or by a party who has been convicted of, given a caution for, or is charged with a specified offence, of a witness who is the victim, or alleged victim, of that offence; and by a party against whom an on-notice injunctive order is in force for the protection of a witness.

- The maximum penalty for the offence is up to **12 months** in prison in Magistrates Court (fine up to £5,000) and **14 years** in Crown Court (fine unlimited).

See more at:
Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 (legislation.gov.uk)

3.4 The Protection from Stalking Act (NI) 2022

The Protection from Stalking Act (NI) 2022 became law on the 26th of April 2022. It creates a new specific offence of stalking, capturing conduct and acts associated with stalking behaviour.

In addition, the Act introduces **Stalking Protection Orders** which came into force in NI on the 19th of October 2023. Such an order is applied for by Police and can prohibit a person from carrying out acts associated with stalking. It can also impose requirements such as attending a perpetrator intervention programme.

Stalking is a pattern of fixated and obsessive behaviour which is repeated, persistent, intrusive and causes fear of violence or alarm or distress in the victim. Stalking involves behaviours towards a person that makes them feel unsafe. The behaviour may be direct or indirect and a stalker may not know their victim at all or know their victim intimately (such as a partner/former partner or a family member or acquaintance).
Stalking can happen to anyone regardless of race, culture, gender, identity, age or sexual orientation and there is no such thing as a 'typical' stalking victim. However, it is important to note that the crime disproportionately affects women and girls.

Under Section 1 of the Protection from Stalking Act (NI) 22 An offence is committed by the perpetrator (referred to as "**A**") if:

- **A** engages in a course of conduct that causes another person (hereinafter referred to as "**B**") to suffer fear, alarm or substantial distress; or
- is such that a reasonable person, or a reasonable person who has any particular knowledge of **B** that **A** has, would consider to be likely to cause **B** to suffer fear, alarm or substantial distress; and

At least one of the further conditions must also apply that:

- **A** engages in the course of conduct with the intention of causing **B** to suffer fear, alarm or substantial distress;
- or that **A** knows, or ought in all the circumstances to have known, that engaging in the course of conduct would be likely to cause **B** to suffer fear, alarm or substantial distress.

Conduct that might cause fear, alarm or substantial distress and amounts to stalking as defined in Section 1(4) can include the following:

- Following **B** or any other person.
- Contacting or attempting to contact **B** or any other person by any means.
- Publishing any statement or other material either;
- Monitoring the use by **B** or by any other person of the internet, email or any other form of electronic communication.
- Loitering in any place (whether public or private).
- Interfering with any property in the possession of **B** or of any other person.
- Giving anything to **B** or to any other person or leaving anything where it may be found by, or given to or brought to the attention of B or any other person.
- Watching or spying on **B** or any other person; (this might include vehicle tracking devices & dash-cams, fitness trackers & smart watches, home security CCTV & doorbells, baby monitors, smart home apps, google & Alexa, tracking through children's devices).

The Act defines 'substantial distress' as distress that has a substantial adverse effect on **B**'s day-to-day activities. Examples of substantial adverse effects may include:

- The victim changing their route to work, work patterns or employment.
- The victim arranging for someone else to pick their children up from school.
- The victim putting additional security measures in place at home.
- The victim changing the way they socialise or stopping altogether.
- Deleting or stopping use of social media accounts.
- Changing phone numbers.
- Not leaving home unaccompanied.
- Changing children's school.
- Moving house permanently or temporarily.

The new stalking offence will apply to situations where the conduct occurs on two or more occasions and causes a person to suffer fear, alarm or substantial distress. It carries a maximum sentence of **10 years** in prison if prosecuted in the Crown court and **12 months** maximum sentence if prosecuted in the Magistrates' court.

If the court cannot be satisfied that the threshold for the offence of stalking has been met, then the court may convict of the alternative

offence of 'threatening and abusive behaviour' provided the evidence adduced amounts to that offence.

The Offence of Threatening or Abusive Behaviour

Section 2 of the Act creates a new offence of threatening or abusive behaviour (TAB). The offence of threatening or abusive behaviour is designed to be used in circumstances where there is either a one-off incident or a course of behaviour where it cannot be shown that there is substantial distress as an impact for the victim.

It is anticipated that this offence would still consist of the elements of the stalking offence but with a lower threshold in respect of the expected impact to the victim(s).

The TAB offence may be committed when three conditions are met - all three conditions must be met for the offence to be complete.

A commits this offence if:

- **A** behaves in a threatening or abusive manner; and
- The behaviour would be likely to cause a reasonable person to suffer fear or alarm; and
- **A** intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour causes fear or alarm.

This offence applies to behaviour of any kind including things said or otherwise communicated, as well as things done. Behaviour can also consist of a single act (e.g. shouting and swearing aggressively during an argument) or a course of conduct (e.g. sending threatening or abusive emails over a course of days or weeks).

There is a vast range of actions that could be threatening or abusive in any given context. The behaviour may be either threatening or abusive and does not need to be both.

The court will determine as a question of fact what constitutes a 'threat' or 'abuse' depending on the particular circumstances of the case.

- A conviction for Threatening or Abusive behaviour carries a maximum sentence of **5 years** in prison in the Crown court and **12 months** in the Magistrates' court.

- Section 3 of the Act relates to extra-territorial jurisdictional powers – this provides that if the course of conduct and therefore the stalking behaviours or offence takes place wholly or partly outside of the UK, if the accused if habitually resident in Northern Ireland it can be treated as though it took place in Northern Ireland. If the person is a UK national, they do not have to be habitually resident in Northern Ireland.

See more at:
Protection from Stalking Act (Northern Ireland) 2022 (legislation.gov.uk)

3.5 Protection from Harassment (NI) Order 1997.

Article 3 (1) prohibits the act of harassment, stating that a person shall not pursue a course of conduct which amounts to harassment of another and which the perpetrator knows or ought to know will cause the victim harassment (which includes alarming the person or causing them distress).

Article 6 of the order provides for the offence of 'putting people in fear of violence.' This occurs when a person whose course of conduct causes another to fear that violence will be used against them.

The alleged perpetrator shall be guilty of an offence if they know or ought to know that their course of conduct would cause the other person to be in fear on each of those occasions.

A course of conduct is conduct that occurs on at least two occasions.

Harassment includes repeated attempts to impose unwanted communications and contact upon a victim in a manner that could be expected to cause distress or fear in any reasonable person.
Article 4 provides for the offence of harassment and states that a person who pursues a course of conduct in breach of Article 4 shall be guilty of an offence and liable on summary conviction to imprisonment of not more than 6 months or a fine not exceeding £5,000, or both.

Sentencing guidelines on harassment and domestic abuse related offences can be found here: https://www.judiciaryni.uk/sentencing-guidelines-magistrates-court-harassment-domestic-offences-0

3.6 Non-Fatal Strangulation

Section 28 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 created a new offence of non-fatal strangulation or asphyxiation. This offence, which is not retrospective, came into effect on the **26th June 2023**. It applies where strangulation or asphyxiation does not result in the death of the victim.

The legislation does not repeal the existing offence of choking with intent to commit an indictable offence under section 21 of the Offences against the Person Act 1861 (OAPA).

Non-Fatal Strangulation (NFS) occurs where pressure is applied to a person's neck or other part of the body which could affect a person's ability to breathe or the flow of blood to their brain. NFS can often leave no visible injury but it is a dangerous crime which can lead to death.

More information can be found here: https://ifas.org.uk/wp-content/uploads/2023/07/Plain-Text-Information-Leaflet-for-Victims.pdf

3.7 What is a Restraining Order?

A restraining order can be made by a Criminal Court against an alleged perpetrator for the protection of a victim. It may specify any conduct or act which is prohibited and which amounts to harassment or will cause a fear of violence. Breach of a restraining order is a criminal offence.

Restraining Orders are provided for under the following legislation:

The Protection from Harassment (NI) Order 1997 (section 7)
http://www.legislation.gov.uk/nisi/1997/1180/contents

Domestic Violence, Crime and Victims Act 2009 (section 13)
http://www.legislation.gov.uk/ukpga/2012/4

Restraining orders can be applied for once criminal proceedings have concluded in court.

Restraining orders may even be made where the defendant is acquitted, to cover the cases where despite the acquittal the court feels the victim of harassment still needs protection. The court can make the order of its own volition or if they are asked to by the prosecution. The onus is on the prosecution to remind the court of its powers particularly on acquittal.

The police, in making a referral to the prosecution, can include a recommendation to the prosecution that such an order needs to be considered.

It is of course still open to any victim to seek a non-molestation order as outlined in Section 3.1 above but the use of this power by the courts would perhaps suggest a more proactive approach by the courts and may offer more seamless protection to victims.

4.0 Policing and Criminal Prosecutions

4.1 Police

The PSNI treat domestic abuse seriously. Due to the extent of the problem, they have dedicated Domestic Abuse Teams to assist in these cases. Police will assess all victims' risk of harm by using the Domestic Abuse Stalking and Harassment and Honour Based Violence (DASH) risk assessment form.

To download a copy go to:
https://safelives.org.uk/sites/default/files/resources/NI%20MARAC%20administration%20templates%20FINAL.pdf

If a person has been the victim of a domestic abuse crime and has reported it to the police, they can expect the police to investigate the crime and arrest the suspect when they have the powers to do so. For further information on the role of the police go to: https://www.psni.police.uk/safety-and-support/keeping-safe/protecting-yourself/domestic-abuse

4.2 Police Bail

If a person has been the victim of a domestic abuse crime and has reported it to the police, they will investigate the crime. While an investigation is ongoing there are three actions that can be taken when dealing with the alleged perpetrator:-

a. Remand in custody – this is appropriate when the risk posed by the person cannot be safely managed by imposing bail conditions.
b. Release without conditions – this is appropriate where the risk posed by the person does not necessitate the imposing of bail conditions or the person does not need to return at a later date.
c. Bail

Bail is the term used when a person arrested for a criminal offence is released from police custody until they next appear in court or at the police station. Generally, in order to grant bail, the police will require security to be given or certain conditions met. Essentially, bail is to try to ensure the defendant returns for the court hearing or to the police station while the police carry out their investigations.

Types of Police Bail
There are two common types of police bail:

- **Bailed without charge (Investigative Bail or Pre-Charge Bail)**

Bail may be granted to a person who has been arrested for an offence before they are charged. The police will allow the defendant to leave the police station, usually under certain restrictions or conditions, (see bail conditions page 16) and the defendant will be given a bail return date to return to the police station.

During the period in which the defendant is on bail, the police will carry out their investigations and then decide if the defendant will be charged when they return for the bail return date. There may be several return bail dates before a defendant finds out if they are to be:
a. Charged;
b. Told that no further action is to be taken; or
c. Released for report (whilst the PPS make a decision on prosecution) with bail conditions no longer in place.

- **Bailed once they have been charged (Post-Charge Bail or 28-day Charge) with an offence.**

Bail may be granted to a person who has been charged with an offence. If the police are confident the defendant will show up at court and not be a threat to the public, they will generally grant bail until the court hearing date subject to certain conditions.

When the defendant has been charged, the police have far greater powers to refuse bail. However, the defendant has not at this stage been found guilty of anything and so cannot simply be imprisoned until a court hearing unless they

pose a danger to a member of the public or there is a real concern the defendant will not show up for the court hearing.

Justification for Bail

In terms of **pre-charge bail**, it is important that the police are given time to investigate the criminal allegations and then have the opportunity to try to ensure the defendant returns to the police station so they can question them after the investigations.

In regard to **post-charge bail** it is clearly important that a defendant is not allowed to 'go on the run' and miss the court hearing or try to intimidate witnesses. However, if there is little danger of this and the defendant has not yet been proven guilty, he will be released at least temporarily.

Bail Conditions

The PSNI will decide which bail conditions to attach to the bail and these can be changed/altered at any stage if agreed by the investigating officer and subject to approval by a judge once the case is before the court .

The following conditions can include:

- Living at a particular address.
- Not contacting certain people, by any means whatsoever.
- Giving your passport to the police so you can't leave the UK.
- Reporting to a police station at agreed times, for example once a week.
- Staying outside a certain distance from an address.
- Access to children must be through a third party and not the victim or injured party.

4.3 Court Bail

When the defendant attends court, either the Investigating Officer or Court Connecting Officer provides details of the offence, connects the accused and then provides details to the Prosecutor of any objection to bail and any conditions sought.

The Prosecutor makes representations to the court and the court determines whether to grant bail and what conditions to attach. When bail is perfected, the defendant will then be released on court bail with conditions. The defendant will normally be represented by their solicitor at this first court appearance.

The PPS will ask the court to remand the defendant in custody if it considers that there is a risk of the defendant:

The starting point is the presumption that bail should be granted. Presumption in favour of bail is underpinned by Article 5 (right to liberty), Article 6.1 (fair criminal trial) and Article 6.2 (presumption of innocence) of European Convention on Human Rights (ECHR). The prosecution cannot simply object to bail being granted.

There are four general grounds upon which the prosecution may rely in opposing the admission of a defendant to bail:

(i) That the accused will not appear for their trial.
(ii) Interference with the course of justice.
(iii) The commission of further offences.
(iv) That the release of the accused will lead to public disorder.

The Judge must grant bail unless the prosecution can demonstrate specific risk. The defendant will enter into a recognisance with the court to pay money if they break the conditions of bail. They may also be required to lodge money with the Court, hand in their passport or have sureties and also sign the recognisance.

When a defendant's application for court bail is successful, there is a requirement for the bail papers to be signed by the District Judge or designated NICTS staff member in the General Office and then served on the defendant.

4.4 Breach of Bail

If the defendant doesn't keep to the Court bail conditions, then they have breached their bail which means they can be arrested again and taken before a criminal court. The court has the power to amend the existing bail conditions or remand the person in custody to await the court hearing. **In practice, breach of police bail may result in the alleged perpetrator simply being re-bailed.**

Bail – note of concern

It should be noted that bail conditions are only a short-term measure and once an investigation has been concluded, they will cease to be in force. So, although they are partially put in place for the protection and safety of the victim and witnesses, they can be withdrawn at any stage of the investigation or court process. Victims should still seek other protective measures available, as outlined in this guidance.

4.5 Prosecuting cases of domestic abuse

Once PSNI have investigated the offending behaviour they will submit a file to the Public Prosecution Service. The Director of Public Prosecutions takes over conduct of all criminal proceedings once the suspect has been charged. The PPS takes cases of Domestic abuse extremely seriously. All domestic abuse cases will be considered in accordance with the PPS Policy for Prosecuting Cases of Domestic Abuse. Prosecutors have received extensive training in the area of Domestic Abuse. For more information please consult the PPS Policy for Prosecuting Cases of Domestic Abuse (2024) | Public Prosecution Service for Northern Ireland (ppsni.gov.uk)

5.0 Other Civil Options

Apart from the remedies discussed in previous pages there are a number of options available to victims of domestic violence and abuse including;

- Civil Injunctions
- Undertakings

5.1 What is a Civil Injunction?

Under **The Protection from Harassment (NI) Order 1997** and under the Court's inherent jurisdiction, a civil injunction may be used when there are no familial relationships i.e. where the parties are not associated persons as listed in paragraph 3.1c "Who can apply for Non-Molestation and Occupation Orders?"

A mandatory injunction is any order requiring a person to take a certain step.

A prohibitory injunction is an order preventing a person from doing something.

There must be evidence of two separate incidents of harassment or physical violence or harm to seek this remedy.

5.2 What is an Undertaking?

An undertaking is a **solemn promise** from one party to another to do something or not to do something. In cases where one party applies for a non-molestation order, the alleged perpetrator (Respondent) sometimes offers to give an undertaking as a promise not to do certain things without having to agree that they have in the past been abusive to the applicant. Undertakings given in the magistrates Court have no legal basis and cannot be actioned by the police. Breach of an undertaking given in the County Court and High Court is a criminal offence.

6.0 Support for Victims and Witnesses

6.1 Victim Information Schemes

If the person who committed a crime has been found guilty and sentenced, the Public Prosecution Service's Victim and Witness Care Unit will give the victim information about the relevant victim information scheme. Victim information schemes are voluntary. The victim won't be told about an individual release unless they register with an information scheme.

There are three victim information schemes in Northern Ireland. If the person who has offended has been:

1) Sentenced to time in prison (6 months or more) – the victim can register for the Prisoner Release Victim Information Scheme (PRVIS).
2) Given probation – the victim can register for the Probation Board Victim Information Scheme.

3) Given a hospital restriction order – the victim can register for the Mentally Disordered Offenders Victim Information Scheme.

See more at https://www.pbni.org.uk/victim-information-scheme

6.2 The Victim and Witness Care Unit (VWCU)

The Victim and Witness Care Unit (VWCU) provides victims with a single point of contact from when an investigation or charge file is submitted to the Public Prosecution Service (PPS), through to and including the outcome of any court proceedings - they are known as the VWCU Case Officer.

For contact details see: Victim and Witness Information | Public Prosecution Service for Northern Ireland (ppsni.gov.uk)

6.3 Special Measures and Remote Evidence Centres

a. Special Measures

Special Measures are a series of provisions that help vulnerable and intimidated witnesses give their best evidence in court and relieve some of the stresses associated with giving evidence. Special measures can include: screens, live links, giving evidence in private, the removal of wigs and gowns, video recorded evidence and aids to communication.

The PPS will apply for Special Measures if the witness so requires. It should be noted however that ultimately the court will decide whether or not to grant special measures, having considered the application, the views of the complainant, any supporting evidence provided and the representations of the defence.

Special Measures can also be used in a civil court for hearings for a non-molestation order or occupation order.

b. Prohibition of cross-examination in person (family or civil proceedings)

The Domestic Abuse and Civil Proceedings (NI) Act 2021 gave the family and civil courts power to prohibit a party from cross-examining a witness. This can be directed by the Judge when particular conditions have been satisfied and when it is deemed to be in the interests of justice.

One or both of the following need to be met:

(i) Quality condition: the witness or party should be able to give evidence in circumstances that enables them to provide their best quality evidence.
(ii) Significant distress condition: the witness or party would be adversely impacted and caused significant distress if they were to be cross-examined in person.

c. Remote Evidence Centres (REC's)

REC's enable vulnerable witnesses to give evidence away from the courthouse, so removing the possibility of encountering the defendant, or their supporters, while at court. It is hoped that use of the REC's will improve the experience of giving evidence for the witness, reduce their anxiety and improve the quality of the evidence given. At present, there are two sites that are operational in NI: one in Craigavon to deal with business from Craigavon Crown Court and one in Belfast to service Laganside Courts. The Belfast REC has multiple live links, waiting rooms and consultation spaces. It is in easy walking distance of the courthouse and features a dedicated child wing and adult facility.

6.4 Victim Support NI Witness Service & NSPCC Young Witness Service

Victim Support operates a Witness Service in every Crown, Magistrates and Youth court across Northern Ireland. Staff and volunteers are trained to provide emotional support and practical information to witnesses, victims and their families. Where children are witnesses, the NSPCC are the lead agency for service provision and do this in partnership with Victim Support.

The Witness Service is free, confidential and available to prosecution witnesses over the age of 18. See more at: http://www.victimsupportni.co.uk/what-we-do/witness-service

The NSPCC Young Witness Service provides support and assistance to children and young people under 18-years-old who have to attend court as prosecution witnesses in Northern Ireland. It's free, independent and confidential.

NSPCC workers and volunteers provide information and advice to children and young people – as well as their family, friends and supporters – before, during and after the trial. See more at https://learning.nspcc.org.uk/services-children-families/young-witness-service/

6.5 Operation Encompass

Operation Encompass was legislated for as part of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 – (Section 26).

It is an early intervention partnership between the PSNI and schools, aimed at providing early support to children who have been victims of domestic abuse. The scheme is very simple: when the PSNI attend a domestic incident where children are either present or directly linked to the victim or perpetrator; they will contact the school the next day to share relevant information about what has happened. This in turn allows the school safeguarding staff to provide immediate emotional support to the child[ren]. The Police do not require parental consent to contact schools as per the Domestic Abuse Information-sharing with Schools etc. Regulations (Northern Ireland) 2022.

For more information please see: Operation Encompass | PSNI or Operation Encompass | Education Authority Northern Ireland (eani.org.uk)

6.6 Assist NI - Domestic & Sexual Abuse Advocacy Service

The advocacy service provides support, information and a single point of contact for victims of domestic or sexual abuse who are progressing through the criminal justice process. Further information on the advocacy service can be found at www.assistni.org.uk.

6.7 Domestic Violence & Abuse Disclosure Scheme (DVADS/Clare's Law)

The Domestic Violence and Abuse Disclosure Scheme came into effect on the 26th March 2018. The scheme aims to keep people safe and alert potential victims of domestic abuse to make an informed choice about their relationship. There are two parts to the scheme – 'Right to Ask' and 'Power to Tell.'

'Right to Ask' – this is when an individual is worried that their partner, ex-partner or someone else's partner has been abusive in the past. The individual can make a direct application to the police for information, either by completing a form on the PSNI website or calling the police on 101.

'Power to Tell' – this is when PSNI decide to disclose information to a person they believe to be at risk of domestic abuse. If a decision to disclose is made, police will tell the potential victim (or person considered best placed to protect them). This disclosure will be made in person and a support worker can attend the meeting with them, if they wish. All disclosures must be treated as confidential and must only be used for the purpose of protecting the person at risk.
The information disclosed will typically be quite general, indicating a risk to the person, rather than specifying the detail of previous offences.

Further information, and the application form, are available at:
https://www.psni.police.uk/safety-and-support/keeping-safe/domestic-abuse/domestic-violence-and-abuse-disclosure-scheme-dvads

6.8 Women's Aid

Women's Aid groups across Northern Ireland provide confidential support, information and emergency accommodation for women and children affected by domestic and sexual abuse. More information on local groups and contact details can be found at www.womensaidni.org/get-help/local-groups/

6.9 Men's Advisory Project

Men's Advisory Project provides specialist counselling services and support to men experiencing abuse in Northern Ireland. More information on MAP services and contact details can be found at www.mapni.co.uk

6.10 Domestic and Sexual Abuse Helpline – 0808 802 1414

The Domestic & Sexual Abuse Helpline, hosted by Nexus on behalf of the Departments of Health, Justice and Communities, is available 24/7 for any individual impacted by domestic or sexual abuse. The helpline provides a range of services including: listening ear/support, emergency accommodation referral, signposting to further support and safety planning. The helpline also offers webchat and email services, available at help@dsahelpline.org and www.dsahelpline.org

6.11 The Rainbow Project/HERe NI

The Rainbow Project is a health organisation that works to improve the physical, mental & emotional health and wellbeing of LGBTQIA+ people and their families in Northern Ireland. They offer counselling services, 1-1 support, sexual health testing, social groups and family support. You can get in touch with The Rainbow Project 9am-5pm Mon-Fri by emailing: info@rainbow-project.org.

HERe NI is an LGBTQIA+ women's organisation that aims to improve the lives of LGBTQIA+ women across Northern Ireland. HERe NI offer a range of social groups, 1-1 support and family support. You can get in touch with HERe NI 9am-5pm Mon-Fri by emailing: hello@hereni.org.

6.12 Sexual Violence and Abuse Support

Nexus

Nexus provide a specialised counselling service to people impacted by sexual abuse and abusive relationships. They provide support to anyone impacted by sexual abuse from age 8 and upwards. Anyone else impacted by abusive relationships/domestic abuse can access support via the 24 Hour Domestic and Sexual Abuse Helpline as referenced above.

The Rowan – Sexual Assault Referral Centre (SARC)

The Rowan is the regional Sexual Assault Referral Centre (SARC) in Northern Ireland. They provide support and services 24 hours a day, all year to children, young people, women and men who have been sexually abused, assaulted or raped in the past or recently.

For more information, please see: https://www.nidirect.gov.uk/articles/rowan-sexual-assault-referral-centre-sarc

Rape Crisis NI – 0800 0246 991 (Monday to Thursday 6pm-8pm)

Rape Crisis Northern Ireland is a non-governmental organisation and support service for anyone who is 18 and over and has experienced serious sexual assault and rape in adulthood. For more information please see https://rapecrisisni.org.uk/

Appendix 1 - Sample Ex-Parte Non-Molestation Order

FAMILY HOMES AND DOMESTIC VIOLENCE (NORTHERN IRELAND) ORDER 1998
ARTICLE 23

NON-MOLESTATION (EX-PARTE)

Applicant — Petty Sessions District of

Respondent — County Court Division of

By the Court of Summary Jurisdiction sitting at — on

Upon the hearing of an application for an Order under Article 23 of the above mentioned Order.

IT IS ORDERED that:

The respondent is forbidden to use or threaten violence against the applicant, and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent is forbidden to intimidate, harass or pester the applicant and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent is forbidden to use or threaten violence against the relevant child (ren) and must not instruct, encourage or in any way suggest that any other person should do so,

AND/OR

The respondent is forbidden to intimidate, harass or pester the relevant child (ren) and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent shall be excluded from prohibited from entering / entering within (measurement) of

This order shall take effect forthwith/upon service of this order/and shall remain in force until /for the period of /until further order.

Service to be effected by Ordinary First class post/ Respondent's Solicitors/ Police Service of Northern Ireland.

ORDERED BY

District Judge (Magistrates' Court)

on

NOTICE: This Order gives you instructions, which you must follow. You should read it all carefully. If you do not understand anything in this Order you should go to a Solicitor, or an Advice Centre or Citizen's Advice Bureau. You have a right to ask the Court to change or cancel the Order, but you must obey it unless the Court does change or cancel it.
You must obey the instructions contained in this Order. If you do not, you may be guilty of an offence, and you may be sent to prison and/or fined.

Appendix 2 - Sample Inter-Partes Non-Molestation Order

FAMILY HOMES AND DOMESTIC VIOLENCE (NORTHERN IRELAND) ORDER 1998

NON-MOLESTATION (INTER-PARTES)

Applicant — Petty Sessions District of

Respondent — County Court Division of

By the Court of Summary Jurisdiction sitting at — on

Upon the hearing of an application for an Order under Article 23 of the above mentioned Order.

IT IS ORDERED that:

The respondent is forbidden to use or threaten violence against the applicant, and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent is forbidden to intimidate, harass or pester the applicant and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent is forbidden to use or threaten violence against the relevant child (ren) and must not instruct, encourage or in any way suggest that any other person should do so,

AND/OR

The respondent is forbidden to intimidate, harass or pester the relevant child (ren) and must not instruct, encourage or in any way suggest that any other person should do so.

The respondent shall be excluded from prohibited from entering / entering within (measurement) of

This order shall take effect forthwith/upon service of this order/and shall remain in force until /for the period of /until further order.

Service to be effected by Ordinary First class post/ Respondent's Solicitors/ Police Service of Northern Ireland.

ORDERED BY
District Judge (Magistrates' Court)

on

NOTICE: This Order gives you instructions, which you must follow. You should read it all carefully. If you do not understand anything in this Order you should go to a Solicitor, or an Advice Centre or Citizen's Advice Bureau. You have a right to ask the Court to change or cancel the Order, but you must obey it unless the Court does change or cancel it.
You must obey the instructions contained in this Order. If you do not, you may be guilty of an offence, and you may be sent to prison and/or fined.

Appendix 3 - Sample Occupation Order

FAMILY HOMES AND DOMESTIC VIOLENCE (NORTHERN IRELAND) ORDER 1998
ARTICLE 11

EX-PARTE OCCUPATION ORDER

Petty Sessions District of

Applicant

County Court Division of

Respondent

By the Court of Summary Jurisdiction sitting at on

Upon the hearing of an application for an Order under Article 13 / Article 14 of the above mentioned Order.

IT IS ORDERED THAT:

The applicant has the right to occupy
and the respondent shall allow the applicant to
do so,

OR

the respondent shall not evict or exclude the applicant from
or any part of it namely (specify part).

IT IS ORDERED THAT:

The respondent shall not occupy

OR

The respondent shall not occupy

The respondent shall leave forthwith within hours/days of
service on him/her of this Order

AND/OR

Having left, the respondent shall not return to, enter
or attempt to enter or go within distance of it.

The respondent shall not dispose of any estate he has in
.

The respondent may remove from.

The respondent shall not obstruct, harass or interfere with the
applicant peaceful occupation of
This order shall take effect forthwith/upon service of this order/and shall remain in force until/ for the period of
until further order.

Service to be affected by Ordinary First class post, Respondent's Solicitors, Police Service of Northern Ireland.

ORDERED by

District Judge (Magistrates' Court)
on

NOTICE: This Order gives you instructions, which you must follow. You should read it all carefully. If you do not understand anything in this Order you should go to a Solicitor, or an Advice Centre or Citizen's Advice Bureau. You have a right to ask the Court to change or cancel the Order, but you must obey it unless the Court does change or cancel it.
You must obey the instructions contained in this Order. If you do not, you may be guilty of an offence,

and you may be sent to prison and/or fined.

Appendix 4 - Other Useful Links

❖ Multi-Agency Risk Assessment Conference (MARAC)

A MARAC is a meeting where information is shared on the highest risk domestic abuse cases between representatives of local police, probation, health, child protection, Women's Aid as well as housing practitioners and other specialists from the statutory and voluntary sectors. After sharing all relevant information about a victim, the representatives discuss options for increasing the safety of the victim and turn these into a co-ordinated action/safety plan.

The primary focus of the MARAC is to safeguard the adult victim. The MARAC will also make links with other agencies in order to safeguard children and manage the behaviour of the perpetrator. At the heart of a MARAC is the working assumption that no single agency or individual can see the complete picture of the life of a victim, but all may have insights that are crucial to their safety. The victim does not attend the meeting.

For further information see: https://belfastdvp.co.uk/themainevent/wp-content/uploads/MARAC-Professionals-A5-Booklet.pdf

❖ Public Protection Arrangements in Northern Ireland (PPANI)

Statutory arrangements were established in October 2008 to assist in the management of risk posed by certain offenders (sexual and violent) in the community who present evidence of likelihood to cause serious harm.

These arrangements are known as the Public Protection Arrangements in Northern Ireland (PPANI).

For further information see: https://www.publicprotectionni.com/

❖ Adult Safeguarding

The Adult Safeguarding Prevention and Protection in Partnership policy provides the following definitions -

An **'Adult at risk of harm'** is a person aged 18 or over, whose exposure to harm through abuse, exploitation or neglect may be increased by their:

a. personal characteristics including age, disability, special educational needs, illness, mental or physical frailty or impairment of, or disturbance in, the functioning of the mind or brain; and/or
b. life circumstances including isolation, socio-economic factors and environmental living conditions.

An **'Adult in need of protection'** is a person aged 18 or over, whose exposure to harm through abuse, exploitation or neglect may be increased by their:

a. personal characteristics; and/or
b. life circumstances; and
c. who is unable to protect their own well-being, property, assets, rights or other interests; and
d. where the action or inaction of another person or persons is causing, or is likely to cause, him/her to be harmed.

The full strategy can be accessed here: https://www.health-ni.gov.uk/publications/adult-safeguarding-prevention-and-protection-partnership-key-documents

Adult Safeguarding Partnership in Northern Ireland
More information can be found here: https://www.health-ni.gov.uk/articles/adult-safeguarding-prevention-and-protection-partnership

❖ Safeguarding Children

Safeguarding Board for Northern Ireland (SBNI)
The Safeguarding Board for Northern Ireland (SBNI) was established by the Department of Health, Social Services and Public Safety (DHSSPS) in 2012 in recognition of the fact that children are more likely to be protected when agencies work in an all-inclusive, coordinated and consistent way.

The SBNI is the key process for agreeing how children's agencies will cooperate to safeguard and promote the welfare of children in Northern Ireland and for ensuring the effectiveness of those agencies. In carrying out our responsibilities, the SBNI will ensure that organisational boundaries between professionals, agencies and sectors do not act as barriers to protecting children and young people up to the age of 18.

For further information see: http://www.safeguardingni.org

The Safeguarding Board Northern Ireland's procedure manual May 2018 can be accessed here https://www.proceduresonline.com/sbni/

Cooperating to Safeguard Children and Young People 2017:
https://www.health-ni.gov.uk/publications/co-operating-safeguard-children-and-young-people-northern-ireland

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www.belfastdvp.co.uk

