St.Mary's
FAMILY LAW SPECIALISTS

# Non-Molestation Orders (A Summary On The New Guidance)

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**A summary on the new guidance on Non-Molestation Orders under the Family Law Act 1996 by the President of the Family Division – 2026**

This guidance will **replace** the Practice Guidance Family Court – Non-Molestation Injunctions Under the Family Law Act 1996 issued on 14 July 2023.

The new guidance has been issued as there has been a rise in FLA applications, the law in relation to domestic abuse has developed and the volume of FLA applications presents a challenge to the court's limited resources.

The revised guidance includes an updated template for a non-molestation order under section 42 of the Family Law Act 1996, together with form FL435 (response to a non-molestation order).

The Family Justice Council additionally issued best practice guidance for practitioners on applications for protective injunctions under the Family Law Act 1996, including a model witness statement and guidance notes.

Much of the previous guidance remains the same, but I have set this out below to set out the full process of this protective injunction.

## The law – without notice (ex-parte) applications

- The test for without notice applications is set out in section 45 of the FLA.
  - (1) The court may, in any case where it considers that it is just and convenient to do so, make an occupation order or a non-molestation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of court.
  - (2) In determining whether to exercise its powers under subsection (1), the court shall have regard to all the circumstances including—
    - (a) any risk of significant harm to the applicant or a relevant child, attributable to conduct of the respondent, if the order is not made immediately;
    - (b) whether it is likely that the applicant will be deterred or prevented from pursuing the application if an order is not made immediately; and
    - (c) whether there is reason to believe that the respondent is aware of the proceedings but is deliberately evading service and that the applicant or a relevant child will be seriously prejudiced by the delay involved in effecting substituted service
  - (3) If the court makes an order by virtue of subsection (1) it must afford the respondent an opportunity to make representations relating to the order as soon as just and convenient at a full hearing.

*Subsections (4) and (5) have not been quoted here.*

## Just and convenient

When determining whether it is just and convenient to make a non-molestation order without notice, the court must apply a contemporary understanding of domestic abuse, as defined in section 1 of the Domestic Abuse Act 2021. This includes recognising forms of abuse beyond physical harm, such as controlling or coercive behaviour and psychological, emotional or economic abuse. An order without notice may be justified where the evidence indicates a pattern of such behaviour and there is a real risk that the applicant could be pressured into withdrawing the application or deterred from continuing if the respondent were given notice. These scenarios are illustrative rather than exhaustive, and in every case the court must carefully assess the statutory criteria in section 45(2) of the Family Law Act 1996 before deciding whether to proceed without notice. This reflects the developments of the understanding of coercive control, and other forms of domestic abuse which may be harder to determine on the basis of the papers.

The court must strike a balance between the applicant's need for protection and the requirement that any interference with the respondent's rights is proportionate. Although section 45 of the Family Law Act does not set a formal test of exceptionality, High Court authority, including R v R [2014] EWFC 48 and DS v AC [2023] EWFC 46, confirms that without notice orders should be made only in exceptional circumstances. Applicants are therefore expected to consider carefully whether proceeding without notice is justified on the facts. Such orders are the exception rather than the rule, though "exceptional" does not mean rare.

Orders made without notice should not exclude a respondent from their home, place of work, or other necessary locations without particularly careful consideration and clear, specific evidence to justify such a significant infringement of the respondent's rights.

Extra care must be given when the respondent has home rights – as an occupation order must be applied for in these circumstances.

## General principles

Courts should have procedures to ensure that all applications for non-molestation orders are referred to a judge on the day of issue if submitted before 4pm, or on the next working day if submitted after 4pm.

When listing any hearing, the court should consider requests for participation directions, including remote attendance, where there are identified vulnerabilities. This includes concerns about the applicant's safety if required to attend court. However, there may be benefits to listing an in-person hearing where the applicant is self-representing, as experience shows that relevant evidence is often brought to court.

Statements in support of without-notice applications should be prepared in line with the Family Justice Council's Best Practice Guidance on Protective Injunction Applications.

## General principles – On Notice Applications

On notice applicants should be listed by the courts in no more than 21 days.

## General principles – Without Notice Applications

Where an applicant seeks an initial without-notice order, the court, applying the overriding objective, may determine the application on the papers, refuse it and list the matter on notice, or list a without-notice hearing. If the court is satisfied that the merits test is met and it is just and convenient to do so, it may make a without-notice order and list a return date within 28 days. Alternatively, the court may refuse the without-notice application on the papers with reasons and list the application on notice within 21 days, with provision for the applicant to seek reconsideration. Where necessary, the court may list a without-notice hearing to enable the applicant to give further evidence.

Applications for without-notice orders must be supported by clear evidence and are subject to careful scrutiny. Where the court considers that the merits cannot properly be determined on the papers, a without-notice hearing should be listed. The court will take account of the position of litigants in person, including any difficulty in presenting their case. A refusal of a without-notice order does not preclude consideration of an order under section 42 of the Family Law Act 1996 at an on-notice hearing.

It will rarely be appropriate to invite further evidence on the papers alone; the usual course is to list a hearing. An application should only be dismissed outright on paper in exceptional circumstances, and any such dismissal must include a right to review at an oral hearing.

## Return hearings

A without-notice order must specify a fixed return date, which must also be included in the hearing notice served with the order; permitting the respondent to apply for a hearing date is not an adequate alternative (although this is often done).

Given that many respondents do not attend return date hearings or do not oppose the continuation of the order, the court should provide a form to be served with the without-notice order enabling the respondent to indicate in advance whether they consent to, do not oppose, or oppose its continuation. This will ensure a lot of court time is saved and not result in any unnecessary attendance.

At the return date hearing, the court may properly explore whether the respondent is willing to submit to the continuation of the injunction without findings of fact, or to offer an undertaking. However, an undertaking should not be accepted where violence has been used or threatened, and a protective order is necessary to ensure enforceability.

Any non-molestation order must have a clearly defined end date, which may be for a substantial period depending on the circumstances. The length of the order is a matter for the judge's discretion, and it is insufficient for an order to specify only a return date without an end date. This is often 6 months or 12 months, but can be longer, as the court deems appropriate.

## Orders and remedies

Non-molestation orders should be:

- protective;
- clear and intelligible to both parties;
- proportionate; and
- readily enforceable

The updated guidance places increased emphasis on **simplified drafting**. Where appropriate, orders should achieve the above principles by:

- prohibiting all direct and indirect contact (including via third parties), subject only to tightly defined exceptions (e.g. solicitors or limited written communication for child arrangements or service of evidence). Separate prohibitions on violence or abuse are unnecessary, as these are subsumed within a no-contact provision and are already criminal offences;
- prohibiting attendance at the applicant's home or any place where the applicant is living or staying, with provision for clearly defined additional exclusions (e.g. schools or workplaces) where required.

Terms such as "harassment", "pestering" or "molestation" are discouraged; as they lack clarity and are difficult to enforce. Orders prohibiting violence or threats will rarely be necessary given existing criminal sanctions.

Orders must reflect the parties' circumstances. Total bans on communication will often be inappropriate, particularly where children or ongoing proceedings are involved. Orders must not prevent the respondent from serving evidence. If parents are communicating through a parenting app, this must be reflected on the order.

Case management provisions (including advocacy attendance or directions for future hearings) should not appear in the body of the injunction but be set out in a separate annex.

Where exclusion zones are imposed, the order must specify named roads or a clearly defined area. Distances (e.g. "within 100 metres") and detachable maps should be avoided unless embedded in the order (applicants should use FL401 box 6.4 to set out precise exclusion details).

Without-notice orders must expressly state the respondent's right to apply to set aside or vary the order under FPR 18.11, without waiting for the return date. The phrase "liberty to apply" is insufficient. Any such application must be listed urgently.

The order must state that it was made in the respondent's absence, that only the applicant's evidence was considered, and that no findings of fact were made. All evidence relied upon must be clearly identified.

To assist enforcement, the parties' dates of birth should appear on the order. Where known, the respondent's email address, telephone number and postal address should also be included. Legal representatives should take active steps to obtain this information, especially if the respondent is unrepresented.

Court administration should ensure that without-notice orders are sealed on the day of making and, where the applicant is represented, sent electronically to their legal representative to enable prompt service.

## Service

Personal service is the default in all cases, whether by court bailiff or process server. A fully completed and legible certificate of service (FL415), including clear details of service and the server's name and signature, must be filed with the court (or an update provided) no later than 24 hours before the hearing, subject to any contrary direction.

Where bailiff service is sought, a D89 should be submitted with the application to avoid delay.

Deemed or substituted service, including service via messaging applications (such as WhatsApp or Facebook Messenger), is discouraged due to enforcement difficulties. Any departure from personal service must be authorised by the court as a last resort. Applications for alternative service must be made formally and detail the attempts made to effect personal service.

Where service is effected by the bailiff, the bailiff or court should notify the applicant. The court must also ensure that a copy of the order is served on the police.

Where a without-notice order is continued unaltered at a return date hearing and the respondent does not attend, service of the continued order may be effected by post or email, provided the respondent was personally served with the original order. However, if the applicant seeks to vary the terms of the without-notice order, such as extending the time period from 6 months to 12 months, this must be served on the respondent.

If the terms of the without-notice order are varied at the return date hearing, the amended order should be personally served on the respondent, whether or not they attended, unless the court expressly directs otherwise and records this on the order.

Where the respondent attends, it may be appropriate to record on the face of the order in. a recital that its terms have been explained to them and that they have indicated their understanding.

## Case management

Courts should have systems in place to identify parallel proceedings under the Family Law Act 1996 and the Children Act 1989 involving the same parties and allegations of abuse. At least one early case management hearing should be arranged to consider both sets of proceedings together, with duplication avoided wherever possible.

Factual findings and evidence should ordinarily be disclosed between proceedings. When applying PD12J, courts should take into account any factual matters already determined in FLA proceedings when deciding whether further fact-finding in children proceedings is required. This should also be explained to litigants in person in the event the matter goes to a contested final hearing.

A reminder is given that litigants in person are prohibited from cross-examination in certain circumstances pertaining to abuse and vulnerability. Appropriate directions for a Qualified Legal Representative should be sought.

**Annex 1: new template for a non-molestation order - https://www.judiciary.uk/wp-content/uploads/2025/12/Annex-1-Non-Molestation-Order-under-Section-42-of-the-Family-Law-Act-1996-1.pdf**

**Annex 2: response to a non-molestation order - https://www.judiciary.uk/wp-content/uploads/2025/12/Annex-2-FL435-Response-to-a-Non-Molestation-Order.pdf**

**This new guidance (along with the new order template and response documents) came into force on Monday 12 January 2026.**

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