



## **President of the Family Division's Guidance 2026**

### **Non-Molestation Orders under the Family Law Act 1996**

1. This Guidance replaces the *Practice Guidance Family Court - Non-Molestation Injunctions Under the Family Law Act 1996* issued on 14 July 2023. It will be effective from 12 January 2026.

#### **Context**

2. The Practice Guidance issued on 14 July 2023 was the first update since 2017 to practice and procedure concerning applications for non-molestation injunctions under s 45 and s 42 of the Family Law Act 1996 ['FLA']. That Guidance noted that in the last decade FLA applications have risen. The law in relation to domestic abuse has developed, and the volume of applications presents significant challenges for the court's limited resources.
3. This Guidance seeks to further refine practice and procedure to reflect those ongoing challenges and ensure that applications under the FLA are dealt with safely, fairly and proportionately.

#### **The Law – Without Notice Applications**

4. The test for whether a non-molestation order should be made without notice (also referred to as *ex parte*) to the respondent is set out at s 45 FLA;

##### **s 45 — Ex parte orders**

*(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) not quoted here).*

5. When deciding whether it is “*just and convenient*” to make an order without notice, the court’s approach must be informed by a modern understanding of domestic abuse, including the definition set out at s 1 of the Domestic Abuse Act 2021 with its specific reference to controlling or coercive behaviour and psychological, emotional or economic abuse. It might, for example, be appropriate to make an order where the initial evidence suggests a pattern of coercive or controlling behaviour, and the court considers it is likely that the applicant could be further coerced or controlled into withdrawing the application; or where the court considers that the abuse (if proven) is likely to have had such an impact on the applicant that they are likely to be deterred from proceeding if the respondent is given notice of an application. These examples are not intended to be exhaustive as, in each case, the court should carefully consider the provisions of s 45(2) FLA before deciding how to proceed.
6. The court must always balance the applicant’s need for protection with the need to limit interference with the respondent’s rights to that which is proportionate. Although s 45 FLA does not establish a test of exceptionality, authority at High Court level (*R v R* [2014] EWFC 48 and *DS v AC* [2023] EWFC 46) has held that a FLA order should only be made without notice to the respondent in exceptional circumstances. Applicants will be expected to consider carefully whether proceeding on a without notice basis is merited on the facts of their case given the test the court must apply. Without notice orders are to be regarded as the exception not the rule, but exceptional does not mean the same as rare.

7. Orders made without notice should not have the effect of barring a respondent from their home or place of work or other necessary location without very careful consideration, specific evidence to justify such an extensive infringement of the respondent's rights, and any order having that effect should be regarded as exceptional.

## **General Principles**

8. The court should have in place procedures to ensure that all applications for non-molestation orders are referred to a judge on the day of issue if before 4pm, or on the next working day if issued after 4pm.
9. When listing any hearing the court should consider requests for participation directions including for remote attendance where there are identified concerns as to vulnerabilities<sup>1</sup> including concerns as to the applicant's safety if they were required to attend court. There may be advantages to listing an in person hearing where the applicant is self-representing as experience shows evidence is often brought to court.
10. Statements in support of applications for a without notice order should be prepared in accordance with the Family Justice Council Best Practice Guidance on Protective Injunction Applications.

### **(1) On Notice Applications**

11. Where the applicant seeks an on notice hearing the court should list an on notice hearing in no more than 21 days.

### **(2) Without Notice Applications**

12. Where an applicant seeks an initial order to be made without notice to the respondent, the court having regard to the overriding objective, may:
  - A. If it is satisfied that sufficient evidence has been provided to meet the merits test for a without notice order, and if it is otherwise just and convenient to do so, make a without notice order on the papers in the terms sought or as deemed

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<sup>1</sup> Part 3AA Family Procedure Rules & Equal Treatment Bench Book July 2024 (May 2025 update) para 71

necessary and proportionate by the judge, listing a 'return date' hearing in no more than 28 days, or

- B. Refuse the application for a without notice order on the papers with reasons and list the application on notice in no more than 21 days. The applicant may seek a without notice hearing for reconsideration of the application within 2 working days, which should be listed within 5 working days. Where the bailiff is to serve the order, the order should specify the date from which the bailiff can attempt service allowing time for the applicant to seek reconsideration, or
  - C. List a without notice hearing to be attended by the applicant within 1 working day to enable them to give such evidence as may be required to enable the court to determine the application. Consideration should also be given when listing, particularly in cases with an applicant representing themselves, to any further directions necessary for the without notice hearing. Court lists should not include the details of the parties.
13. Applications for a without notice order should be supported by evidence justifying the making of such an order and must be carefully scrutinised by the court. If the court considers it is necessary to list a hearing so that it can properly determine the merits of a without notice application, it should do so. The court will consider the difficulties faced by those representing themselves who may not completely understand domestic abuse or have failed to present their case fully. Where the court has applied 12 B, applicants must be informed that even though the court has determined it is not just and convenient to make a without notice order, the court will always consider whether it is necessary to make an order under s 42 FLA at the on-notice hearing.
14. It will seldom be appropriate on initial consideration of the papers to invite the applicant to provide further evidence and re-consider the application on paper; the appropriate course is to list a without notice hearing.
15. Only in exceptional circumstances, such as it being clear that an applicant does not meet the test of association under s 62(3) FLA, would it be appropriate to dismiss an application entirely on paper and any order so doing must always include a right to review at an oral hearing.

### **(3) Return Dates**

16. A return date must be fixed and must be specified in the without notice order and the hearing notice sent alongside it. Giving the respondent permission to apply for a hearing date is not an adequate substitute.
17. Experience shows that a substantial proportion of respondents do not attend return date hearings or do not oppose the continuation of the protective order. The court should provide the respondent with a form, to be served with the without notice order, which invites the respondent to indicate 5 working days before the hearing whether they agree to the order continuing, whether they do not oppose it based on no findings of fact being made, or whether they oppose it. An approved form appears at Annex 2.
18. At a return date hearing it is acceptable and consistent with the overriding objective for the court to explore with a respondent whether they are willing to submit to an injunction continuing in force with no findings of fact being made. If so, the order shall record that the court has made no findings of fact. The court may also explore whether the respondent is willing to give an undertaking. However, the court should not accept an undertaking "where it appears to the court that the respondent has used or threatened violence against the applicant or a relevant child; and for the protection of the applicant or child it is necessary to make a protective order so that any breach may be punishable under section 42A<sup>2</sup>".
19. A non-molestation order must have a fixed end date, which may be for a substantial period such as 6 or even 12 months but which shall be clearly set out on its face. It is not sufficient for a without notice order merely to specify a return date with no end date for the order itself. The period of the order is a matter for the discretion of the judge having regard to all the circumstances of the case.

#### **(4) Orders and Remedies**

20. Non-molestation orders made by the family court should be:
- A. protective
  - B. capable of being understood by both the applicant and respondent;
  - C. proportionate; and

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<sup>2</sup> FLA s 46(3A)

D. readily capable of enforcement.

21. An example of a substantially simplified order appears at Annex 1 and which achieves these objectives by, where appropriate:
- A. Forbidding any contact – whether direct or indirect or mediated through a third party - between the applicant and respondent (save via solicitors/email or text for the purpose of child arrangements or for the purpose of serving evidence). There is therefore no need for clauses forbidding violence, threats, abusive telephone calls as so forth, as these are all prohibited by a no contact provision and are already criminal offences.
  - B. Forbidding the respondent to go to or enter a place where the applicant lives or is staying or where the respondent believes them to be living or staying. If there is a need for an exclusion zone or for an order preventing attendance at other addresses such as a child's school, this could also be included in the non-molestation order.
22. Terms such as forbidding harassment, pestering or molestation are not well understood and are not easily enforceable. Subject to the facts of the case, it is unlikely to be necessary to make orders prohibiting the use of or threats of violence as these are already criminal offences.
23. Non-molestation orders should be proportionate to the parties' circumstances. For example, it is unlikely to be appropriate to bar all communication, particularly where the parties have children or are engaged in other family proceedings. Orders must not have the effect of forbidding the respondent from serving evidence in response to the application.
24. Additional case management matters such as Family Advocacy Scheme wording for advocates' attendance and directions for the next hearing (other than the date and place) should not appear in the body of the injunction order but in a separate annex.
25. If the court decides to exclude the respondent from a geographical area, the order should specify a named road or roads or a clearly defined area and avoid the use of expressions such as '100 metres from the applicant's home'. The use of maps, which can become detached, should likewise be avoided unless they are embedded into the body of the order. Applicants can use box 6.4 of FL401 to specify the details

of the exclusion sought including details of any other exclusions sought such as for schools, nursery and workplaces.

26. An order made without notice must contain a statement of the right to make an application to set aside or vary the order under rule 18.11 in accordance with FPR 18.10(3). The phrase 'liberty to apply' is not sufficient for this purpose. The order must spell out that the respondent is entitled, without waiting for the return day, to apply to set aside or vary the order. If the respondent does apply to set aside or vary the order the court must list the application as a matter of urgency, within a matter of days at most.
27. The without notice order must make it clear that (a) it was made in the absence of the respondent and that the court has considered only the evidence of the applicant and (b) the court has made no finding of fact. Where the evidence is written, it must be identified in the order. Where, exceptionally, the court has received oral or other evidence (e.g., a photograph) that evidence should be recorded on the face of the order or reduced to writing and served with the order.
28. Enforcement will be enhanced if the applicant's and respondent's date of birth is recorded on the face of any non-molestation order, whether made without notice or on notice. In addition, the respondent's email, telephone number and postal address should be added if known. If the respondent's information is not known when a without notice order is made, it should be obtained from the respondent if they attend the on notice hearing. Legal representatives for the applicant should use their best endeavours to obtain this particular information.
29. The court administration should ensure that any without notice order is sealed on the day it is made to facilitate quicker service and, if the applicant is legally represented, sent to the applicant's legal representative by email for service.

## **(5) Service**

30. Personal service of non-molestation orders is the starting point in all cases, whether by court bailiff or by the applicant using a process server. Both bailiffs and process servers must provide a fully complete, legible certificate of service (on form FL415) with sufficient detail to explain how service has been made, and their name as well as their signature should appear clearly on the certificate. These must be filed with the court, or an update provided no later than 24 hours prior to the hearing date

subject to any other direction(s) in the court order. An applicant seeking for the court bailiff to serve the order should submit a D89 form with the application to prevent any future delay.

31. Experience shows that there can be substantial problems with enforcement of orders made where there is deemed or substituted service, including via messaging services. If personal service cannot be made, permission for any other type of service must be ordered by the court as a last resort. Applications by an applicant for permission to serve by other means should be made formally and set out what attempts have been made to personally serve the respondent.
32. The bailiff or court should notify the applicant when service has been made by the bailiff particularly as applicants seeking bailiff service are likely to be self-representing. At the same time the court must ensure that a copy of the non-molestation order is served upon the police.
33. If the court is continuing the terms of a without notice order unaltered at a return date hearing and the respondent does not attend, this order should be served by post or email as the respondent will already have been personally served with the without notice order.
34. If the terms of the without notice order are altered at the return date hearing, the respondent should be personally served with the amended order whether or not they attended the hearing unless the court considers it unnecessary, in which case this should be recorded on the order.
35. If the respondent attends, it may be helpful to record on the face of the order that the court has explained the terms of the order to the respondent and the respondent has understood these.

## **(6) Case Management**

36. Courts should put in place a system for identifying parallel proceedings under the FLA and private law proceedings under the Children Act 1989 where allegations of abuse are made between the same parties and should aim to have at least one case management hearing bringing together the two sets of proceedings at an early stage. The court should avoid duplication. Any factual findings and evidence should normally be disclosed from one set of proceedings into the other. Courts considering



PD12J will have regard to any factual matrix that has already been the subject of determination in FLA proceedings when deciding whether further fact finding in children proceedings is necessary.

37. When giving directions for fact finding under the FLA, courts should keep in mind the provisions of FPR Part 3A and Practice Direction 3AA with respect to vulnerability, and the rules/practice direction relating to prohibition of cross-examination in certain circumstances by litigants in person. The approach set out in *Fact-finding hearings and domestic abuse in Private Law children proceedings – Guidance for Judges and Magistrates* dated 5 May 2022 should also be applied to FLA case management.

**Sir Andrew McFarlane**

**President of the Family Division**

**17 December 2025**

## Annex 1

### Non-molestation Order under Section 42 of the Family Law Act 1996

In the Family Court at	
Case No.	
Applicant	
Respondent	

To  
Of address [unknown]  
Date of birth

### IMPORTANT

**The court made this order against you on [date]. You must obey this order. You should read it carefully. If you do not understand anything in this order you should go to a solicitor, Legal Advice Centre or Citizens Advice Bureau. You have a right to apply to the court to change or cancel this order.**

**If you do anything which you are forbidden from doing by this order, you will be committing a criminal offence unless you have a reasonable excuse. If you are convicted the court could impose a term of imprisonment up to five years or a fine or both.**

**Alternatively, if you do not obey this order, you will be guilty of contempt of court and may be fined or sent to prison.**

Where this order says 'the applicant' it means [NAME].  
Where this order says 'the child/ren' it means [NAME(S)]

### THE COURT ORDERED THAT:

**You must not do any of the following things and you must not ask or encourage another person to do any of the following things for you.**

#### **You must not:**

1. Contact or try to contact or communicate with the applicant in any way or by any means except that (i) you can contact the applicant through solicitors and/or through an agreed third party to make child contact arrangements (ii) you can

contact the applicant directly by *[insert means of communication]* to make arrangements about the child/ren. *[Retain or strike out whichever of (i) and (ii) do not apply]*

2. Go to or enter any place where the applicant lives or is staying or visiting or working.
3. Go to or travel on *[road name]* but (i) you can enter *[road name]* to facilitate contact arrangements for the child/ren which must be agreed in writing or ordered by the court (ii) but otherwise you cannot park your vehicle or leave your bicycle/motorbike or scooter in *[road name]*. *[Strike out whichever of (i) and (ii) do not apply – if there is no need for the Respondent to enter the named road at all, neither (i) nor (ii) will be appropriate].*
4. Contact or communicate with the child/ren in any way or by any means except for any contact or communication which the court has ordered or has been agreed in advance between the parties in writing. *[only include this provision where necessary and justified on the facts].*
5. Track where the applicant is or what the applicant is doing and/or *the child/ren* by any means including but not limited to electronic devices or apps *[only include this provision relating to the child/ren where necessary and justified on the facts].*
6. Damage, interfere with or dispose of, in any way any property belonging to the applicant or jointly owned by you and the applicant unless a court order allows you to dispose of any such property.
7. Post or threaten to post about the applicant and/or *the child/ren* and/or these proceedings on the internet or social media *[only include this provision where necessary and justified on the facts].*
8. Disclose or threaten to disclose private sexual images or films of the applicant to any third party or organisation *[only include this provision where necessary and justified on the facts].*
9. If the applicant does not have solicitors, this order does not prevent you from sending documents in respect of these or any other proceedings directly to them. If the applicant has solicitors, you should send any documents to the solicitors.

This order shall remain in force until 4.00 p.m. on \*\*\*

### **INFORMATION ABOUT THE ORDER**

1. The court made this order after reading the statement made by the applicant [and hearing the following additional information ---- ]
2. The court did not tell you before the order was made, because the court decided there was a risk that the applicant may be intimidated or prevented from making the application.

3. The court has not yet made any decisions about whether the statement made by the applicant is true and has not yet determined what happened if anything.
4. The court will send you the date of a court hearing. A form accompanies this order which you should complete and return to the court no less than 5 working days before the hearing which tells the court what you say should happen.
5. If you do not come to the court hearing the order will stay in place until its end date.
6. If necessary you can ask the court to have the court hearing very urgently but you must explain in writing why it is so urgent and you must send a copy of your explanation to the applicant.
7. When it is not possible to apply within court hours, you can contact the security office at the Royal Courts of Justice (020 7947 6000 or 020 7947 6260) and a duty judge may agree to consider it.
8. Family Procedure Rules Part 3A.2A will apply and the court will put in place special measures as the applicant is assumed to be a person whose participation is diminished by reason of the allegations of domestic abuse.

## **SERVICE**

1. The applicant shall make arrangements for personal service of this order on the Respondent but shall not attempt to serve it themselves OR As the applicant is a litigant in person and has requested bailiff service the court shall arrange for the court bailiff to serve this order on the respondent.

### **Note to the Arresting Officer**

**Under Section 42A of the Family Law Act 1996 breach of a Non-Molestation Order is a criminal offence punishable by up to five years imprisonment. It is not necessary to obtain a warrant.**



FL435

## Response to a non-molestation order

You have been named as a respondent in a non-molestation order application.

Use this form to respond to the application.

Name of respondent

Read the order (form FL404A – Non-molestation order) that was sent with this form carefully.

You must send this completed form to the court so they receive it at least 5 days before the hearing date stated on the order.

### 1. Do you agree with the applicant's statement?

Read the applicant's statement in the order pack and then tick **one** option.

- 1.1** I **agree** with the applicant's statement and agree to the order continuing or a further order being made.
- 1.2** I **do not agree** with the applicant's statement, **but do not object** to the order continuing or a further order being made.  
This is called a 'no admissions' order and records that you agree to comply with the terms of the order.
- 1.3** I **do not agree** with the applicant's statement or there are specifics of the order which I want to be changed, **and** I want the matter to be listed for a **contested hearing** so that I can challenge the applicant's evidence and place my own evidence before the court.

**Note 1.1 and 1.2:** Your case can be dealt with without you having to attend court.

**Note 1.3:** If you tick this box, you must attend court on the hearing date in the order.

If you do not, the court may assume you're not contesting the application and could decide you did what the applicant alleges.

If you want to apply to vary or discharge this order you should complete form **FL403** <https://www.gov.uk/government/publications/form-fl403-application-to-vary-extend-or-discharge-an-order-in-existing-proceedings>. There is no fee for your first application.

## 2. Going to court

### 2.1 Do you need an interpreter at court?

☐ Yes

☐ No. **Go to question 2.3.**

### 2.2 Please tell us what language and/or dialect.

Language

Dialect

### 2.3 Do we need to provide something different in court or when we contact you, because of a disability?

☐ Yes

☐ No

### 2.4 Explain how your disability affects you, giving as much information as you can.

**Note 2:** The court will try to provide you and any witnesses with the special assistance that you ask for. However, this is not always possible and can depend on the facilities available at your local court.

It is a good idea to contact the court before your court hearing to find out whether they can supply the special assistance that you have requested.

**Note 2.3:** We know that people with disabilities sometimes need our help and support to use our services. This can mean that we need to provide something different so you can access and use our services in the same way as a person without a disability.

Explaining how your disability affects you will help court staff or the judge to consider any help we can provide.

### 3. Statement of truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

**I believe** that the facts stated in this form are true.

**The respondent** believes that the facts stated in this form are true. **I am authorised** by the respondent to sign this statement.

#### Signature

Respondent

Respondent's legal representative (as defined by FPR 2.3(1))

#### Date

Day            Month            Year

Full name

Name of respondent's legal representative's firm

If signing on behalf of firm or company give position or office held

**Once you have completed this form, you must send a copy to the court, and to the applicant's legal representative if they have one. This form must arrive at least 5 days before the hearing date.**