



Domestic Abuse Committee of the Family Justice Council

Protocol for process servers: Non-molestation orders

**November
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Introduction

This is to set out clearly an agreed protocol for the service of non-molestation orders and injunctions made by the courts to protect people from violence and harassment.

Without these orders being correctly served on the person against whom they are made, and proper proof of that service, the courts cannot enforce the orders or

punish any breach or the breaking of any term of the order.

All process servers must ensure that the rules of service are followed carefully or the order served will not be enforceable; **orders that are not enforceable do not protect.**

Steps to take

These are the steps which should be taken with orders from both the Family Proceedings Courts (Magistrates Court) and the County Court to put them in force.

1. Service on the respondent against whom the order was made. When the court makes a non molestation order and/ or any other order/s to which a power of arrest is attached the orders are to be set out in Form FL406 or Form FL404a. That form (and any other order of the court made at the same time) must be served directly and personally on the respondent (or he must have been present when the order was made or be told by telephone or told directly in some other way). The respondent does not need to take the form or orders in his hand but some attempt must be made to hand them to him and tell him of their contents.

2. Statement or proof of service. As soon as the respondent has been handed the forms or orders (or told of the details of the order/s and power of arrest by telephone or otherwise) the process server (or person who has told him of the details of the order) must prepare a statement of service which will be served on the relevant police station. This statement will be used as proof that the respondent knew that there were orders made by the court that he had to obey. This statement should be made under oath or affirmation so that it can be relied on in the civil and the criminal courts.

3. Statement requirement for the Criminal Courts.

In addition, so as to comply with legal requirements in the Criminal Courts, all statements must include the following words at the beginning:-

“Criminal Justice Act 1967, s9; Magistrates Courts Act 1908ss5A93 (a) &5B; Magistrates Courts Rules 1981 Rule 70.

This statement consisting of _ pages each signed by me, is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signed”

This should avoid the need for attendance at the criminal courts as statements in this form can be accepted as evidence: without these words they cannot. Therefore, **all statements should start with these words. Proof of service means that orders can be enforced.**

4. Identification. The statement must include details of how the respondent was identified as the person to be served. Identification is important and how it took place must be clearly set out in the sworn statement. Ideally, identification should be from a photograph given to the process server but it can be from a description given to

the process server by someone who knows the respondent well. The respondent admitting his identity is **not** enough on its own, but can be part of the identification. Identification can also be because he was identified by someone else. The statement **must** contain a description of the respondent, as seen by the process server and a detailed description of service or the attempt at service on him.

Proper service means proper protection.

5. Service on the Police. Without delay, the Form FL404a or FL406, and a copy of the statement showing that the respondent has been served with a copy of the order and/or informed of its terms, must be delivered to the officer in charge at that time at the police station for the applicant's address or the police station which has been named (or specified) by the court.