



Stopping Harassment

A Legal Guide

Promoting
justice for
women

Stopping Harassment

Women who have been affected by violence such as rape, sexual assault or domestic abuse often continue to receive unwanted and distressing contact even after the violence itself has stopped. That contact might come from the person who perpetrated the violence or from their family or friends.

If you fear for your safety, we would always recommend that you contact the police.

There are situations where the police might not be able to do what you think is needed to protect you. What is happening might not be enough to amount to a criminal act or there might not be enough evidence to arrest the person who is harassing you. In that situation, you might be able to get a non harassment order from the court to help protect you.

This is a guide that explains:

- **what a non harassment order is and what you need to show the court to get one**
- **what you need to do / show to get an interim interdict**
(a temporary “emergency” order that can be put in place while the court is deciding whether to grant the non harassment order)
- **what the court process is for you to get a non harassment order**
- **whether you can get compensation for harassment**

Remember that this is just a guide and not a replacement for legal advice specific to your situation. We would always suggest that you seek legal advice to help you decide what your options are. You can call our Helplines to speak to one of our solicitors or contact a local surgery to make a face to face appointment with a solicitor.

What is a non harassment order?

What does it do?

A non harassment order is an order that the court can make to help protect you from someone who is harassing you.



A non harassment order can prevent the person who has been harassing you from:

- **calling at the place where you live**
- **approaching you**
- **contacting you in any way**
- **being within 400m of the place where you live / study / work**
- **threatening or abusing you verbally**
- **using physical violence against you**
- **damaging your property**

The right to get a non harassment order comes from the Protection from Harassment Act 1997 (“the Act”). You get the order through the civil rather than the criminal courts. This means that a solicitor acting for you would ask the court for the orders – the police and the procurator fiscal are not involved and a criminal offence does not need to have been committed by the person harassing you.

What is harassment?

If someone is acting in a way which causes you “distress and alarm”, then this can be harassment if they either intend to harass you or what they are doing “occurs in circumstances where it would appear to a reasonable person to be harassment”. That means that the Sheriff (judge) will consider the background and context of what has happened to you in deciding whether you have been harassed..

“Conduct” which amounts to harassment can include the perpetrator saying certain things to you or sending you messages (emails, texts, facebook messages etc). It can also include the perpetrator being present in a particular place / area.

How do you get a non harassment order?

You get a non harassment order from the court. Usually, you would instruct a solicitor to do this for you (though you are able to do it yourself if you would prefer). The Scottish Women’s Rights Centre (SWRC) might be able to represent you – please call our Helpline or book an appointment at one of our surgeries if you would like to check if we can take you on as a client. If we can’t help, we will help you to look for another solicitor.

Your solicitor would prepare a document called an Initial Writ. This document sets out:

- **your details. You are the Pursuer i.e. the person asking for the order**
- **the details of the people you want orders against**
- **what orders you want**
- **why you need these orders**

Can I get any protection while the court is making its decision?

The court process needed to get a non harassment order can take from 6 months to 1 year or possibly longer depending on how busy the court is, whether any of the parties need to apply for legal aid and what procedure at court is needed to make a decision.

If you are being harassed by someone, you will usually want, and need, protection as soon as possible. It is therefore possible for your solicitor to ask for an order called an interim interdict. This is a temporary emergency order that the court can put in place while it goes through the process of deciding whether a non harassment order will be granted.

Your solicitor can ask for the interim interdict and a “pre service” hearing. This is the hearing where the Sheriff (judge) will decide whether to put the interim interdict in place. Usually, this hearing will take place as soon as possible (often the day after papers are lodged at court) without the perpetrators being given any notice.

To put the interim interdict in place, the Sheriff needs to agree that:

- **there is, at least, a reasonable argument that you have been harassed**
- **the consequences of an order not being in place would be worse for you than the consequences for the person (or people) harassing you if an order is put in place**

If the interim interdict is granted, the Initial Writ and the court order putting the interim interdict in place would be given to the person or people who have been harassing you.

The court will then usually arrange another hearing (“Second Hearing”). This hearing will normally be around 1 – 2 weeks after the first hearing. At that hearing, those who have been harassing you can come and argue that the interim interdict should not be in place.

If the court agrees with you, the interim interdict will remain in place. If the people who have been harassing you can persuade the court that either (a) you do not have a reasonable argument that they have been harassing you or (b) the consequences for them of the interim interdict being in place would be worse than the consequences for you if the interim interdict was not in place, then the interim interdict might not remain in place.

Even if the court decides that the interim interdict should not remain in place, you can continue with the court action to ask for the non harassment order. However, you wouldn't have any protection in place while the court makes its decision.

What happens if those harassing me ignore the interim interdict and continue with the harassment?

Your solicitor can ask the Sheriff to attach a power of arrest to the interim interdict. To get this, your solicitor would need to explain to the Sheriff at the second hearing that a power of arrest is needed to protect you. If this power is granted it means that if the harassment continues you can tell the police and the police have the power to arrest those harassing you.

Even if you don't get the power of arrest, ignoring the interim interdict is still contempt of court. You can report this to the police and your solicitor can tell the court about it. The person or people who have ignored the interim interdict could be charged with contempt of court. If no power of arrest was in place before, it is likely that the Sheriff will now agree to put one in place.

What happens after the Second Hearing?

After the Second Hearing, the court action might be put on hold (sisted) if either you or the people you have asked for the non harassment order against apply to get legal aid. That can take around 1 – 2 months.

Once that has been done, the process is as follows:

- **those harassing you would have 21 days to lodge a document at court (“Notice of Intention to Defend”) telling the court that they will be defending the court action**
- **they will then have around 2 weeks to give written defences to the court explaining why they don't think the non harassment order should be granted**

(continued overleaf)

- **there is then an 8 week period of “adjustment” i.e. where you and those harassing you can make changes to the written documents** (the “Initial Writ” and “Defences” that you have both given to the court)
- **there is then an Options Hearing i.e. a hearing to decide what kind of full hearing should take place** (as detailed below). **That can be continued once for 4 weeks to a second Options Hearing**
- **the court will then arrange a date for a full hearing. This will either be:**
 - **a Proof** (like a trial i.e. a hearing on the evidence)
 - **a Debate** (a hearing on legal arguments)
 - **a Proof Before Answer** (a hearing on evidence and on legal arguments)

Do I need to go to court?

Unless the Sheriff orders you to (which would be very unusual) you would not need to go to court until there is a Proof or a Proof Before Answer. At that, you will almost definitely need to come and give evidence about the harassment you have suffered.

Most women who are victims of harassment will, understandably, be very reluctant to come and give evidence at court. Your harassers and their family and friends could be there and being a witness in court is a difficult thing to do. However, unless you come to tell the court what has happened to you, the court will not have enough information to give you the non harassment order.

To try and make coming to court easier for you, your solicitor can ask the court to have you treated as a vulnerable witness. The court would agree to you being classed as a vulnerable witness if the Sheriff agrees that the “quality of the evidence” would be adversely affected by your distress at having to give evidence i.e. that you would be so nervous / distressed by giving evidence that you would not be able to properly tell the court what has happened.

As a vulnerable witness, your solicitor could ask the court to let you give evidence by video link, by commission (i.e. you give evidence outside the court to a person who takes it down and then gives it to the court) or behind a screen. Almost always, the Sheriff will want you to actually be in court and therefore normally you would need to come to court and give evidence behind a screen.

What happens after the Proof / Proof Before Answer?

Once the court has heard all the evidence, the Sheriff will decide whether a non harassment order should be granted. The Sheriff should make his or her decision “as quickly as possible” but this can take around 3 months. If you have an interim interdict in place, that will stay in place until the Sheriff makes his/her decision.

If the Sheriff decides to grant a non harassment order, that will remain in place for a specified period of time. Usually, your solicitor will ask for a particular period but the Sheriff could decide that a different period is more appropriate.

What happens if those harassing me ignore the non harassment order?

If the non harassment order is breached, the person (or people) that breached it, are guilty of a criminal offence. They can be arrested without a warrant and if convicted can be fined or sent to prison (or both).

Can I get any compensation for the harassment?

As part of this court action (or by a separate court action if you decide to do this later), you can ask the court to grant you “damages”. You can get these if the court agrees that you were harassed. The person or people who harassed you would be ordered to pay a sum of money. The sum of money depends on how you were affected by the harassment you have suffered. If you have had to spend money or you have lost money as a direct result of the harassment you can ask the court to order your harassers to pay that money back to you. For example:

- **if you have had to move home because of the harassment you might have had to pay removal costs or set up costs for internet etc**
- **you might have also had to take some time off work because of the harassment and you might be able to get back any pay you have lost**
- **you can also ask for a sum of money to compensate you for any physiological injuries you have suffered if these are as a result of the harassment;**
- **you might also be able to apply for Criminal Injuries Compensation**
www.gov.uk/guidance/criminal-injuries-compensation-a-guide

For further information about the SWRC and
its services please visit our website at:
www.scottishwomensrightscentre.org.uk

HELPLINE:

08088 010 789

Tues: 6 – 9pm / Wed: 1.30 – 4.30pm

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