



When is someone 'associated' for the purposes of relief under the Family Law Act 1996?

ROBERT JAGO, MODULE CONVENOR FOR FAMILY LAW

TRANSCRIPT

When individuals seek protection from domestic abuse, they can pursue justice from the criminal law but also utilise a range of civil orders which are aimed at protecting the applicant from current and future harm. These civil orders have the advantage of requiring a lower standard of proof (given proof can be particularly difficult to acquire in such cases) and can be granted without notice. These orders are also more concerned about the needs of the applicant and they look to adjust and positively improve the applicant's experience in the future. The Law Commission in 1992 confirmed that the 'special nature' of family relationships warranted special forms of protection because it was argued 'When problems arise in close family relationships, the strength of emotions involved can cause unique reactions which may at times be irrational or obsessive.'

One such order is the non-molestation order under s42 Family Law Act 1996. These court orders restrain one party from molesting the other. Molestation is deliberately not defined under the legislation to ensure maximum protection for applicants who may find the experience they have endured doesn't fit into any established definition, whilst still amounting to a general understanding of the term. That said in *C v C (Non-Molestation Order: Jurisdiction)* [1998] Fam 70 it was stated that the term molestation 'implies some quite deliberate conduct which is aimed at a high degree of harassment of the other party, so as to justify the intervention of the court.'

Given that Part IV of the Family Law Act 1996 is deliberately concerned with domestic violence, it is a key requirement that the applicant for a non-molestation order must demonstrate that the applicant and the respondent are 'associated persons.' Historically, only cohabitants or spouses could seek injunctive relief without having to utilise other legal avenues for redress. However, the 1996 Act extended protection to a range of family relationships which necessarily involved some form of association. The list was subsequently extended by the Domestic Violence, Crime and Victims Act 2004 and now includes those who have been married or civil partners, those who are cohabiting or have cohabited, those who are in or have had an intimate relationship, those who live or have lived in the same household (other than those who do so due to being an employee, lodger, tenant, or boarder) or where they are relatives. Under s63(1) Family Law Act 1996 'relatives' has a very wide definition and as well as including fathers, stepmothers, nieces and cousins it was recently considered in the High Court whether the range of step relations [which are family relations established through a subsequent marriage of your parent] included a 'step nephew'.

In *M v D* [2021] EWHC 1351, Mr Justice MacDonald in the High Court was asked to consider the meaning of the term 'associated person'. The original application had been without notice and the appellant had argued that the respondent had been verbally abusive and had threatened the applicant both in person and via social media posts. The threats allegedly included rape, acid attacks and murder. Whilst such a course of conduct would likely be molestation under the 1996 Act, the relationship between the applicant and the respondent was of 'step aunt' and 'step

nephew' and therefore it was not clear they were 'associated persons' for the purposes of the application. The case report explains that the respondent to the application is the stepson of the appellant's sister by reason of her marriage to the respondent's father, now deceased. At first instance the District Judge found that the appellant and the respondent were not associated persons within the meaning of the 1996 Act. The appellant appealed the decision of the District Judge on two grounds. Firstly, that s63(1)(a) of the 1996 Act expressly includes certain types of 'step relatives' and therefore nephew should include 'step nephew' and secondly, in any event the term 'relative' in s62(3)(d) of the Act should be construed as including 'step-nephew' or 'nephew in law' where a purposive construction of the Family Law Act 1996 is required. Here reference was made to the 'ever expanding complexities of modern family dynamics.'

Mr Justice MacDonald dismissed the appeal and confirmed that 'step-nephew' does not fall within the terms of the 1996 Act. By including some types of 'step relatives' such as stepfather, stepmother, stepson, or stepdaughter in s63(1)(a) of the Act, which deals with lineal relationships, but then not including 'step nephew' when identifying uncle, aunt, nephew and niece in s63(1)(b) of the Act, which deals with collateral relationships, he concluded that Parliament had deliberately considered who was and was not to be covered by the legislation. When exploring the term 'relative' more generally Mr Justice MacDonald did undertake a purposive construction of the statute by looking at both Hansard and the Law Commission Report (Law Com No.207) on Family Law Domestic Violence and Occupation of the Family Home which was published in 1992 and provided the foundation for Part IV of the Family Law Act 1996. In doing so he concluded that Parliament had drawn a line with s63(1) of the Act and the Parliamentary materials referred to 'close' or 'immediate' relatives and if it had been within the contemplation of Parliament that 'step-nephews' would be included then they would have been included. Mr Justice MacDonald also notes that the appellant in the case could still seek redress from the Protection from Harassment Act 1997 given the alleged course of conduct undertaken by the respondent in the case.

Back in 2006 the late Helen Reece presented a broad critique of the extension of the list of 'associated persons' under the Domestic Violence, Crime and Victims Act 2004. Believing that there was insufficient data to justify the extension to those who found themselves outside of the scope of the term 'associated person' she also argued that the principled rationale, based around intimacy and equality, was not experienced by the category of 'associated persons' when taken as a whole. Helen Reece concluded that a narrow interpretation is preferred because 'if domestic violence occurs everywhere, then domestic violence occurs nowhere'. She might well concur with this recent decision.

Thank you and stay safe!