What is an Occupation Order?

An occupation order, or occupancy order, in the context of UK family law, is a legal order that determines who has the right to live in the family home and can exclude one party from the property. Occupation orders can be temporary or indefinite, depending on the circumstances and the court's decision. The family home is defined as the property where the couple or family lived together and can be rented or owned.

This order is often sought in situations of relationship breakdown, divorce, or disputes over living arrangements. It aims to provide a resolution when there is a conflict regarding who should occupy the family home. Note that applicants serving an occupancy order on an ex-partner must also serve Occupation Order paperwork (traditionally via a Form FL416) on the mortgage provider or landlord of the property, as they will have the legal right to representation in court due to their financial agreements being directly affected.

Before making any occupation order, the court must conduct a rigorous **"balance of harm"** test. The court must weigh the potential "significant harm" the applicant or children might suffer if the order is refused, against the harm the respondent will suffer if they are suddenly made homeless or excluded.
To fairly balance this test, judges almost always require a two-sided argument to evaluate both parties' housing needs, financial resources, physical health, and alternative accommodation options. This assessment cannot be comprehensively completed ex-parte based solely on the applicant's initial statement

Defending Against an Occupation Order

If you are facing an application for an occupancy order and wish to defend it, you must act quickly. Because these orders dictate where you can live, a failure to respond correctly can result in you being legally excluded from your own home.

1. **Determine the Type of Hearing**

Your immediate next steps depend heavily on how you found out about the order:

- "Without Notice" (Ex-Parte) Order: This is very unusual and reserved for extreme emergencies. If you were served an order without being told about a court date beforehand, a judge has made a temporary interim order in your absence. Look at the paperwork for a "Return Date"—this is the upcoming full hearing where you will get to give your side of the story.
- "On Notice" Application: If you have received an application copy (Form FL401) and a notice of a hearing date, but no order has been made yet, you have time to prepare your defence before the judge makes a decision.

2. **Comply with the Current Terms**

Even if the allegations against you are completely false, do not breach the order.

- Check if a **Power of Arrest** is attached. If it is, breaching any term is a criminal offence and allows the

police to arrest you on the spot.
- If you need to collect clothing or personal belongings, do not just show up. Have a legal representative or a neutral third party arrange this safely with the court or the applicant's solicitor.

3. **Draft Your Witness Statement**

To contest the application, you must draft your own formal witness statement carefully:

- Address the allegations, paragraph by paragraph: Go through the applicant's statement systematically. Number your responses to match theirs, stating whether you agree, disagree, or have a completely different version of events. Keep your tone objective and factual.
- Gather evidence: Collate text messages, emails, bank statements, or witnesses that back up your side of the story.
- Keep it brief; the judge is more interested in the future logistics of who lives where than a lengthy historical argument about past relationship breakdowns.
- Judges appreciate practical solutions. If you are willing to negotiate a timeline to move out voluntarily once you find a flat, state your reasonable counter-proposal here.
- End your statement with the mandatory 'Statement of Truth', signed and dated, "I believe that the facts stated in this witness statement are true. 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." Without this, the court will not accept it as evidence.

4. **Explore Alternatives (Undertakings)**

If you do not want to fight a long court battle but still want to protect your right to the property, your solicitor might suggest offering **an undertaking**. An undertaking is a formal promise to the court to behave in a certain way or to live elsewhere temporarily. It does not mean you admit to any guilt or bad behaviour, but it can resolve the matter quickly without a judge ruling against you.

5. **Get Legal Support Immediately**

Because your living situation is at stake, you should secure professional advice right away:

- Use the Law Society Find a Solicitor service to look up local family law specialists.
- Check if you qualify for Legal Aid on GOV.UK to help cover your legal fees, depending on your income.
- If you cannot afford a solicitor and do not qualify for legal aid, reach out to Support Through Court for free guidance on navigating the court process as a litigant in person.

6. **If you have been served an Occupation Order and a Non-Molestation Order**

If the applicant used an FL401 form to apply for both a Non-Molestation Order and an Occupation Order at the same time:

- You will still receive the FL435 form to reply to the Non-Molestation element of the case.
- You must use the FL435 to indicate your stance on the NMO (Agree, Do not object, or Oppose).

However, to challenge or respond to the Occupation Order itself, you cannot rely solely on the tick-boxes of the FL435; you will need to prepare a formal, distinct Witness Statement as described above.

If you are only facing an application for an Occupation Order (with no NMO attached), the FL435 form is not relevant to your proceedings at all.

7. **Long-Term Planning**

If an occupation order was granted and is still in force, and you want it altered, an FL403 form is the official court application to vary, extend or discharge (cancel) it. Either party can apply for this, and it is free for the first application. Any subsequent attempt will need to be paid for.

Consider the long-term implications and explore options for a more comprehensive resolution to living arrangements. This might involve addressing broader issues related to separation or divorce.

Remember that legal proceedings can be complex, and individual circumstances vary. Seeking professional legal advice tailored to your specific situation is crucial for understanding your rights, responsibilities, and the best course of action to defend against or negotiate an Occupancy Order.

N.B. All of the information provided above applies exclusively to UK law (specifically the legal system of England and Wales)

If you are dealing with a property or family dispute in Scotland, Northern Ireland, or any other country outside England and Wales, different rules, forms, and court processes will apply.