

## What is an Interdict?

Interdict is a legal remedy to stop “a wrong in the course of being done”, or an apprehended violation of someone’s rights. It is granted by a court on evidence either of the wrong, or of the reasonable grounds of apprehension that such violation is intended.

Mediators should take particular care in cases where one party has had an interdict granted against the other. Any agreement reached between the parties should not contain anything that could be interpreted as encouragement for one party to breach the terms of the interdict obtained against them

## Definitions

### What is “a wrong in the course of being done”?

If Mr A owns a piece of land and Mr B keeps walking over it and causing damage, Mr A might ask Mr B to stop. If Mr B refuses, Mr A could apply to his local Sheriff court for an interdict which orders Mr B not to walk over his property. A further example would be where the organisers of an annual music festival ignore repeated requests by neighbours not to do or allow to be done certain things, such as allow very loud music to be played after a certain time. Those neighbours could seek interdict to force the festival organisers to comply with their requests.

### What is “an apprehended violation of a party’s rights”?

A rose bush growing in Mr A’s garden is all on his side and he maintains and looks after this bush. Mr B informs Mr A that he does not like this bush, as it has thorns and his children play in his garden beside it. Mr A could seek interdict against Mr B on the basis that Mr B may tear up his bush. If Mr A can show a genuine belief that Mr B is likely to do this based on previous actions or apprehensions, and the court consider this justified, then interdict may be granted. A further example would be that Mr X hears that a newspaper is planning to write an article about him which he believes may be untrue and sensationalist. Mr X could apply for interdict to prevent the publication of the article.

Both these orders are known as “common law “ interdicts. There must be reasonable grounds for believing such harm will occur, either through previous actions or threats.

## Temporary Interdicts

- > A temporary interdict may be sought and will be granted if there appears to be a valid and immediate need. The temporary order will last for a year and a day in the absence of further court procedures.
- > Service or delivery of the court order on a person against whom an interdict has been granted is by court officials known as Sheriff Officers. They hand deliver the court order to the person against whom it has been granted.
- > If the award of temporary interdict is contested a court hearing will take place. Both parties are entitled to be represented. The court will consider two questions. Firstly, are there good reasons for the interdict remaining in force? Secondly, if there are, where does the maximum benefit lie?

For example, Mr B has threatened to rip Mr A’s rose bush up. Mr A has obtained interim interdict. Mr B seeks a court hearing to contest the award of interim interdict. Unless he could show that the bush was adversely affecting some basic right e.g. blocking light getting to his property, it is very likely that the order would remain in force. The test would be on where the balance of convenience lies pending a second court hearing based on written legal pleadings, evidence and more detailed arguments.

This second court hearing would only take place if either Mr A sought permanent interdict or Mr B lodged very detailed defences. It would be at this stage that the judge would need to fully consider the merits of both arguments, based on legal principles and evidence led. The judge would need to decide whether there were good reasons established for the interim interdict becoming permanent or being removed. A major factor would be what outcome would provide the maximum benefit to the parties.

The interdict procedure allows parties a further opportunity, under the safety of the interdict order, to resolve their differences by negotiation, if they so choose.

## Breach of Interdict

If an interdict order is breached the party affected can raise court proceedings for breach of interdict. If a breach is proved then a fine or imprisonment can result. This will be dependent on the circumstances of the breach. If Mr B proceeded to rip up Mr A's rose bush after interim interdict had been granted and served, that would be a serious breach. This is because Mr B would have deliberately chosen to break an order granted by a court, and it would therefore be seen as contempt.

A less serious breach, although technically a contempt of court, would be for Mr A and Mr B to have an argument where Mr B indicated that it was still his intention to pull up the bush, notwithstanding that there was an interdict in force. Mr B could be taken back to court but any penalty would be much less serious.

## Injunctions

In England and Wales an injunction order fulfils broadly the same function as an interdict.

**Legislation:** <https://tinyurl.com/4znm7fxe>

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