**Interim injunctions – tactical considerations**

This element explains tactical considerations in relation to interim injunctions.

**Tactics**

Sometimes a client’s need for an injunction is clear – for example, to stop a newspaper publishing a story. But often, whether or not to seek an injunction is a tactical choice - will the proposed respondent really dissipate the money or destroy relevant documents?

The likely success of the application is of course of crucial relevance to your client, but there are some other matters that you and your client should be thinking about prior to applying for an injunction.

**Laying your cards on the table**

Before it will grant an injunction, the court will want to see a lot of evidence (in the form of witness statements or affidavits). If you are acting for a claimant, you will have to prepare your claim form and particulars of claim either for the hearing or very soon afterwards.

The nature of disputes that give rise to applications for injunctions are that the client might have only walked ‘through your office door’ just a few hours before you actually make the application, so the potential for getting it wrong is worryingly high. Certainly, it is unlikely the case will be put as effectively as it would be if there was time for a proper investigation and reflection.

You could find that you have committed yourself to a version of events or assertions which are then easily attacked by the opponent.

On the other hand, if you get it right, the other side may realise that your evidence is strong and may be persuaded to think seriously about settlement at a very early stage.

**Cross-undertaking in damages**

The applicant will generally have to provide a cross-undertaking in damages (as referred to above). This could be highly onerous for the applicant, who has to take on a risk of being liable for damage caused by the injunction (which could be considerable). The applicant might also be required to provide a guarantee / payment into court in order to substantiate its undertaking. This might affect its business and/or cash flow.

Also, the applicant will have to provide details of its ability to pay out under the undertaking – some clients do not like to share details of their assets.

**Clean hands and costs**

**Clean hands**

As mentioned above, injunctions are equitable remedies and the applicant must accordingly come to the court with “clean hands”. The applicant may not be too happy if it has to show that its actions to date have been straightforward and honest!

**Costs**

Injunctions are expensive. Also, if you seek an injunction, it tends to mean that the costs of the litigation are very “front loaded” (which is already a problem under the CPR).

**Without notice obligations**

If the application is without notice, the applicant is under a duty to give full and frank disclosure. It is accordingly well-established that an applicant who applies for an interim remedy without notice to the respondent is under a duty to investigate the facts fully and to present fairly the evidence upon which he relies. The applicant must disclose fully to the court all matters relevant to the application (whether of fact or of law), regardless of whether they are supportive or adverse to it.

Does the applicant really want to tell the court about all of its weak points and potential inconsistencies? Does the applicant really want to tell the court about all the realistic defences that can be raised by the other side – and that maybe the other side has not even thought of? Failure to do so could lead to the search order / freezing injunction being discharged and/or to the court giving effect to the applicant’s undertaking in damages or costs penalties.

**Summary**

Important tactical considerations in relation to interim injunctions include:

- You will need to set out your client’s case at the outset, in some detail and under time pressure. The risk of making a mistake is therefore increased.

- Your client will need to give a cross-undertaking in damages – this often includes your client’s cashflow or other aspects of its finances.

- The costs of the litigation will become particularly front-loaded.

- If your client does not have ‘clean hands’, the relief may be refused.

- The obligation to give full and frank disclosure requires your client to set out all realistic defences that the opponent could raise – even those that the defendant might not have thought of.