**Freezing injunctions – introduction, basis and form**

This element introduces freezing injunctions and explains the basis on which they are obtained and their common form.

**Civil procedure rules**

The main CPR which support the content of this element are:

- CPR 23 and 23A PD (in relation to interim applications generally)

- CPR 25 (in relation to interim remedies including freezing injunctions, and note that CPR 25.12 to 25.14 inclusive relate specifically to freezing injunctions).

**What is a freezing injunction?**

**Key word or definition:** Freezing injunctions are a type of interim remedy, referred to in CPR 25.1(1)(f), which states that a freezing injunction is:

*“An order… (i) restraining a party from removing from the jurisdiction assets located there; or (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not”*

The purpose of a freezing injunction is to prevent the respondent’s assets being dissipated to frustrate the enforcement of any judgment the applicant may obtain. Usually the order will be restricted to assets not exceeding the value of the claim against the respondent (together with provision for costs). As mentioned below, third parties such as the respondent’s bank which holds relevant assets will also be impacted by this injunction.

The court has the power to grant both domestic freezing injunctions (applicable only to England and Wales, which is the focus of this element) and worldwide freezing injunctions.

**The nature of the relief**

- All assets mentioned in the order are frozen.

The order would generally say that the respondent may not remove any of their assets, up to a certain value. The applicant would specify any assets it knows about, such as the respondent’s house, car, money in a certain bank account, and so on. Also, the respondent is allowed to spend a reasonable amount each week.

- The respondent (or anyone else with notice of the order) will be in contempt of court if they breach its terms.

The applicant would serve a copy of the order on any third parties it knows about – for example, the bank where the respondent has a bank account. Such third parties effectively must police the order and prevent any breach of its terms. Otherwise, such third parties run the risk of being in contempt of court.

- The applicant is obliged to press ahead with the action.

As the respondent’s assets are frozen, it is important that the applicant presses on with the proceedings.

A standard freezing injunction also includes the respondent’s obligation to inform the applicant at once of all their assets in England and Wales and to confirm this by way of affidavit within a specified number of days of the order (see paragraphs 9 and 10 of the standard order).

In addition to the freezing injunction itself, certain **ancillary orders** might be made to ensure the efficacy of the freezing injunction. These include, for example:

• further disclosure orders to explain an obvious discrepancy between assets held at one time and assets held now; and

• orders requiring respondents to give authority to a third party (eg a bank) to disclose information to the applicant.

**Requirements for grant**

The overriding principle that the court will consider when deciding an application for a freezing injunction is that the court can grant a freezing injunction where it appears “just and convenient” to do so, but given it is a powerful and potentially draconian remedy, the court will not grant the remedy lightly. An applicant must generally show:

- a substantive cause of action justiciable in England and Wales;

- a good arguable case;

- the respondent has assets within the jurisdiction; and

- there is a real risk that the respondent may remove from the jurisdiction, dispose of, dissipate or hide his assets in any way that will hinder enforcement of any judgment the applicant may obtain.

These requirements are not set out in the CPR, rather they are established in case law.

If any of these pre-conditions is absent, the weight of judicial authority suggests that an application for the grant of a freezing injunction should be refused. If each of these preconditions appears to be present, an order will not, however, necessarily be justified - the court still has a discretion as to whether to grant the order, and the usual equitable maxims apply.

These requirements are expanded upon in the following pages.

**A substantive cause of action justiciable in England and Wales**

The applicant will normally have a substantive cause of action against the respondent, which can be brought in England and Wales, or will have already obtained a judgment that may be enforced through the processes of the court. The court may in limited circumstances grant a freezing injunction against a third party who will not be the defendant to subsequent litigation where the assets are held on a bare trust for the defendant (*T.S.B. Private Bank International SA* v *Chabra and another* [1992] 2 All ER 245 and Me*rcantile Group A.G. v Aiyela and others* [1994] 1 All ER 110).

S 25 Civil Jurisdiction and Judgments Act 1982 enables the High Court to grant interim relief in cases proceeding in courts other than the courts of England and Wales. In such circumstances, an order is sought where there is no “related claim” – there is no claim made over which the English court has jurisdiction. This is referred to in CPR 25.4(1)(a).

**A good arguable case**

The applicant must show that it has a “good arguable case” against the respondent which is a phrase used by Lord Denning in *Rasu Maritima SA v Perusahaan Pertambangan Minyak Dan Gas Bumi Negara (Pertamina)* ([1977] 3 All ER 324).

In *Ninemia Maritime Corp v Trave Schiffahrts GmbH & Co KG (the Niedersachsen)* [1983] 1 WLR 1412, Kerr LJ said that “a good arguable case” is one which is “more than barely capable of serious argument, and yet not necessarily one which the judge believes to have a better than 50% chance of success”.

This was previously thought to be a more burdensome test than for an interim prohibitory injunction but in *Dos Santos v Unitel* [2024] EWCA Civ 1109, the Court of Appeal confirmed that this is the same test as for interim injunctions, namely the “serious issue to be tried” test set out in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.

In *Broad Idea International Ltd v Convoy Collateral Ltd* [2021] UKPC 24, Lord Leggatt in the Privy Council stated (obiter) that in principle what matters is that the Applicant has a good arguable case for being granted substantive relief in the form of a judgment that will be enforced by the court. This requirement may therefore be evidenced by a judgment that has already been granted, or by establishing a good arguable case that judgment will be granted on an existing cause of action.

**The respondent has assets within the jurisdiction**

The applicant must show that the respondent has assets in the jurisdiction. This stems from the principle that equity will not act in vain. If an injunction will not be effective, it will not be granted.

Assets include money, shares, securities, cars, vessels, aircraft, jewellery, paintings etc.

**Real risk of removal, disposal, dissipation or hiding**

Factors the court will consider include the following:

- Is there any evidence that the respondent has been dishonest?

- Are there any incidents of debt default by the respondent?

- Is there evidence that the respondent has started to remove or dispose of assets?

- Where are the respondent’s assets located? Are English judgments enforceable there?

- Where is the respondent based? Is the respondent in a tax haven?

The obligation to make full and fair disclosure (explained in the element relating to freezing injunction procedure) will oblige the applicant to tell the court of any evidence which suggests there is no real risk. If in doubt as to the relevance of a piece of information on this (or any of the other requirements), it should be disclosed. In any case of possible relevance, the judge, not the applicant’s solicitors, must be the ultimate arbiter of relevance.

**Summary**

- A freezing injunction is an order (i) restraining a party from removing from the jurisdiction assets located there; or (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not

- Generally, an applicant must show:

a substantive cause of action justiciable in England and Wales;

a good arguable case;

the respondent has assets within the jurisdiction; and

there is a real risk that the respondent may remove from the jurisdiction, dispose of, dissipate or hide his assets in any way that will hinder enforcement of any judgment the applicant may obtain.

- Anyone with notice of the order who allows the respondent to breach its terms may be held in contempt of court.