**Freezing injunctions – procedure**

This element explains procedural aspects of obtaining a freezing injunction.

**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 relates specifically to freezing injunctions).

**Without notice procedure**

A freezing injunction is ordered against a respondent who is prepared to dissipate assets to frustrate any judgment the applicant may obtain. To be effective, the application is generally made without informing the respondent (ie without notice) and often before the claim form has even been served.

An application could still be made during the course of proceedings if, for instance, the applicant discovered the respondent’s plans to make a sudden move out of the country. Freezing injunctions can also be granted after trial to preserve assets until the judgment has been enforced.

You should familiarise yourself with the 'safeguards' that apply in the case of without notice applications, set out in the elements 'interim applications’ and ‘interim injunctions’ as these apply equally to freezing injunctions.

The next page sets out a short flowchart demonstrating the ‘usual’ procedure for applying for a freezing injunction. The details are then explained in the following pages.

**Summary of procedure**

**Preparation of documentation**

- [Draft / issued] Claim Form

- N244 Application Notice

- Affidavit in support

- Draft Order

- Court fee

- Skeleton argument

**‘Without notice’ hearing (applicant only)**

**Order served**

The order is served on relevant third parties, and on the respondent with:

- Claim Form

- Details of ‘return date’ for second hearing (with notice hearing)

- Copy of any affidavit in support of application

- Note of without notice hearing

- Skeleton argument from without notice hearing

**‘With notice’ hearing (applicant and respondent)**

Order…

- maintained?

- varied?

- discharged?

Damages?

**Before the hearing – documentation**

As well as the usual documentation needed for an interim application (application notice, evidence, draft order), the application should note the following:

- The application must be supported by affidavit evidence (ie a sworn statement of evidence) or affirmation (CPR 25.13) addressing the grounds for granting a freezing injunction.

- The draft order should be in the form of the model order for a freezing injunction (CPR 25.14(1)) subject to any modifications to account for the circumstances of any particular case. Any such modifications should be brought to the judge’s attention at the without notice hearing. Note the two alternative versions of paragraph 6 – the first for a domestic freezing injunction, the second for a worldwide injunction.

As well as investigating and amassing the evidence in support of the application, the applicant's solicitor and applicant must prepare to ensure the applicant makes full and frank disclosure at the without notice hearing.

**At the without notice hearing**

The applicant will need to be careful to comply with the duty to give full and frank disclosure (explained further later in this element).

The applicant's solicitors will also need to take a careful note of the hearing – as explained later, this will need to be served on the respondent with the freezing injunction.

The applicant must give an undertaking to pay damages to the respondent, typically in the following form (Schedule B, para. 1 of model order):

*“If the court later finds that this order has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make.”*

This undertaking will be recorded in the order. This undertaking in damages should normally be supported by a bank guarantee for a fixed amount, which the applicant undertakes to obtain within a certain period of time.

**Service of the freezing injunction**

The order will be served on the respondent (and any relevant third parties - for example, the respondent’s bank) without delay. The following will be served on the respondent:

- The freezing injunction.

- The application documents, including the affidavit evidence.

- The claim form if issued (otherwise the draft produced to the court).

- A note of the without notice hearing (this point is not the subject of an undertaking, but is an established practice).

- The guarantee in support of the undertaking in damages (once it has been obtained).

**The ‘with notice’ hearing (variation, discharge, or maintaining of the freezing injunction)**

If an application for a freezing injunction is successful, the order made will normally last for a very brief period in order to protect the applicant’s position until the matter can be brought back before the court on a with notice basis (see paragraphs 4 and 6 of the model order). Generally, a without notice order will not be made to last for more than seven days.

A respondent might apply to vary or discharge the order. A respondent might also apply for damages. This might be done at various points, but most commonly at the 'with notice' hearing fixed at the time the freezing injunction was originally granted.

**At the with notice hearing – the respondent**

The respondent might make an application for variation or discharge at the with notice hearing itself.

Grounds for **discharge** include:

- The order should not have been made (there was no basis for granting it);

- The applicant is guilty of non-disclosure. The court may discharge the freezing injunction even if, after a full enquiry, the view is taken that the injunction made was just and convenient and would probably have been made even if there had been full disclosure.

- Procedural irregularity; and/or

- The respondent has provided the security required in the order.

In addition to the application for variation or discharge, the respondent might also apply for **damages**. Such damages might arise as a consequence of the freezing injunction having been effected (ie any consequential losses) or as a result of some form of procedural irregularity arising from the way in which the order was effected by the applicant. The ‘undertaking in damages’ provided at the time of the without notice hearing provides a basis for an award of damages, and the associated bank guarantee might be used to satisfy any award.

In reply to any of the respondent’s applications, the applicant is itself likely to apply to the court for the freezing order to be maintained.

**Summary**

- A freezing injunction is generally sought using the without notice procedure.

- There will be a without notice hearing, and then (usually after execution) a with notice hearing.

- The applicant will be required to give an undertaking to pay damages to the respondent if the court later finds that the order / carrying it out has caused the respondent loss.

- This undertaking in damages should normally be supported by a bank guarantee.

- At the with notice hearing, the respondent may ask for the order to be discharged and may also seek damages.