

WHEN PROBLEMS ARISE


**RIGHTS & LIABILITIES OF INTERMEDIARIES:
RESPONDING TO COURT ORDERS**

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6 October 2015


Court Orders

- A court order is a decree by the courts with the force of law, that a specific or general action must be undertaken or refrained from.
- Knowingly breaching or directly or indirectly assisting in a breach of a court order is an offence.
- Section 37 of the Senior Courts Act 1981 gives the courts powers to grant an unconditional or conditional order on such terms as they see fit.



Parties

- Applicant = party requesting the court order.
- Respondent = party the order is made against.
- Intermediary = third party who is not referred to in the court order, but who is connected to or affected by its terms and must comply with them (e.g. the Respondent’s bank holding assets which have been frozen).



Breach of a Court Order

- Knowingly assisting in the disposal of, or dealing in, assets subject to a freezing order is considered a **contempt of court** and may result in:
 - a fine;
 - the seizure of assets; or
 - a **prison sentence** of up to 2 years.
- Individual officers or employees may be liable personally for contempt.
- a strict literal approach to determining breaches.
- Breaches can be made in Good Faith.



The Duty of Care for Intermediaries

- Your duties of care and confidentiality to the customer still exist.
- Where the two conflict, they are overridden by your new duty of care to the court to comply with the court order.
- No duty of care is owed by an intermediary to the applicant.



General Liabilities of Intermediaries

- Court Orders impose two key obligations on an intermediary notified of it:
 1. to comply with the terms of the order; and
 2. to not knowingly assist the respondent to breach the terms of the order.



General Rights of Intermediaries

- Intermediaries cannot breach a court order before they are made aware of it.
- Court orders need only be followed to the letter and no further.
- Costs & expenses for complying with the order can be recovered from the applicant.
- Intermediaries need not police any dealing with assets permitted by a court order.
- The Baltic Proviso.
- Right of Set-off.



Jurisdiction

- Court orders made outside a jurisdiction will only become binding on an intermediary once registered, recognised and enforced in the local courts.



Practical Steps When Presented With a Court Order

1. Make a contemporaneous note of the notification of a court order:
 - Received in person: note the time, location, who received it and from whom;
 - Received by telephone: note who made and received the call, its start and end times;
2. Pass details to the in-house legal team immediately if not received by them;
3. Obtain a copy of the court order if not received with the notification and check it is complete (e.g. no pages missing);
4. Check the parties, check the identity of the respondent in particular;
5. Check the nature of the assets;
6. Check whether it is domestic or worldwide; and
7. Notify all relevant departments and branches.



4 Common Types of Court Orders

Relevant to Intermediaries:

- **Freezing Injunctions** – preventing an individual from dealing or disposing of their assets.
- **Receivership Orders** – orders vesting a defendant's assets in a receiver, particularly relevant where there are concerns that the freezing injunction may be breached.
- **Search and Seizure Orders** – orders allowing a claimant's solicitors to enter a party's premises for the purposes of securing evidence or assets pertinent to a claim that may otherwise be destroyed.
- **Third Party Debt Orders** - orders requiring a named third party that owes money to a creditor, to instead pay that money directly to the applicant.



1.FREEZING INJUNCTIONS



What is a Freezing injunction?

- An interim order that prevents a party from disposing of or dealing with their assets.
- A draconian remedy – even described as a 'nuclear weapon' of the law (Bank Mellat v Nikipour (1985) FSR 87)
- All types of non perishable assets, such as bank accounts, shares, motor vehicles, ships, and real estate for example. The assets subject to the order listed in paragraph 6 of the freezing injunction.
- Can impact upon assets held worldwide, not only assets in England and Wales, through a worldwide freezing injunction. Paragraph 5 of the freezing injunction template sets out whether the freezing injunction covers assets worldwide or not.



Freezing injunctions and third parties:

- A party who has obtained a freezing injunction should notify all third parties of the existence of the freezing injunction.
- Banks will often fall within the category of a third party in possession of assets that may be subject to a freezing injunction.
- As such, the bank owes a **duty of care to the court** from the time it receives notice of the order granting a freezing injunction.



Responding to notification of a freezing injunction:

The legal implications for a bank:

1. Comply with the freezing injunction; and
2. Do not permit the party subject to the freezing injunction to breach the terms of the injunction.



How a bank may satisfy its duty of care to the court:

- A freezing injunction revokes the customer mandate to the extent of the order.
- Broadly, a bank should:
 1. Examine the terms of the order;
 2. Identify relevant assets; and
 3. Ensure the freezing injunction is not breached.



Example Order

FREEZING INJUNCTION
Before The Honourable Mr Justice [Name]

IN THE HIGH COURT OF JUSTICE
[Division]

Claim No. [Number]
Exhibit [Number]

Applicant [Name]
Respondent [Name]

Filed [Date]

Name, address and telephone of Respondent [Details]

PENAL NOTICE

IF YOU [Name] **IGNORE THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED OR FINED OR HAVE YOUR ASSETS SEIZED.**

ANY OTHER PERSONS AND BANKS OF THIS ORDER AND ANY OTHER PERSONS HELD TO BE HELD TO BE IN CONTEMPT OF COURT ON THE BASIS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.



Action Checklist Part 1:

Upon notification of a freezing injunction follow the practical steps discussed earlier:

1. Ensure a contemporaneous note is made of the notification of a court order;
2. Pass details to the in-house legal team immediately;
3. Obtain a copy of the court order and check it is complete;
4. Check and confirm the parties, especially the respondent
5. Check the nature of the assets;
6. Check whether it is domestic or worldwide; and
7. Notify all relevant departments and branches.



Action Checklist Part 2:

In addition, there are a few extra steps to take into consideration when presented with a freezing injunction:

1. Honour transactions entered into before the order is made;
2. Honour cheques backed by guarantee cards and irrevocable letters of credit, performance bonds and guarantees; and
3. Do not honour cheques otherwise. To explain why the bank is not honoring the customer's cheques, the words 'funds sufficient but injunction granted against the account' should be written on the returned cheque.



Dealing with frozen assets:

- A freezing order typically allows a bank to permit withdrawals for the purpose of meeting **reasonable legal costs** or **living expenses**, see paragraph 12 of the template order.
- The Safest option is to apply a **stop order** that blocks all transactions from the relevant account and only release funds when expressly ordered to do so by the courts or with the prior consent of the claimant.
- There is no obligation for the bank to enquire as to the final use of the funds provided that the withdrawal appears to be permitted by the terms of the order.
- There is no duty to disclose information about the relevant party's assets unless the court so orders.



2. RECEIVERSHIP ORDERS



Receivership Orders

- A receivership order may be granted in support of a freezing injunction.
- They are only granted in exceptional circumstances where it is considered that the freezing injunction does not provide the claimant with adequate protection.
- Effectively a receivership order serves to displace the defendant as the person in control of their assets.



Receivers' powers:

- The receivers take control of the assets for the purpose of preserving them.
- The assets are considered to 'vest' in the receivers, and they are held subject to the orders of the court.
- The defendant's freedom to buy, manage and sell their assets in the ordinary course of business is curtailed.
- The defendant can only deal with their assets to the extent permitted by the receivers or the court.



Dealing with an appointed receiver:

- Should you be approached by an individual purporting to be acting as a court ordered receiver of one of your clients:
 1. Request a copy of the receivership order;
 2. Confirm the identity of the receiver;
 3. Scrutinise the terms of the order to determine whether the bank controls any of the assets falling within the order; and
 4. Seek legal advice if there are any concerns as to the authenticity of the receiver or doubts as to the assets falling within the remit of the order.



3. SEARCH ORDERS AND 'BANKERS' BOOKS'



What is a search order?

- A search order is a form of mandatory interim injunction. The defendant is required to allow the claimant's representatives to:
 1. Enter his premises.
 2. Search for, copy, remove and detain documents, information or material.



Search orders and 'bankers' books'

- Under section 7 of the Bankers' Books Evidence Act 1879, a judge may order that a party be at liberty to apply to inspect and take copies of any entries in a bankers' book for any of the purposes of relevant proceedings.
- Items falling within the definition of 'bankers' books':
 1. Ledgers;
 2. Day books;
 3. Cash books;
 4. Account books; and
 5. All other books used in the ordinary business of the bank.
- Correspondence and records of conversations do not fall within the remit of the definition.
- Account information will only be ordered to be disclosed where they are relevant to litigation and are not privileged.




Responding to a search order:

- Carefully examine the terms of the order.
- Only provide access to the material permitted in the order, consider whether legal advice is necessary if there is any doubt as to what is covered by the order.
- Make a record of the material copied.




4. THIRD PARTY DEBT ORDERS




What is a third party debt order?

- Method of Enforcement, requiring previous judgment of debt to be given.
- Third party named in the order expressly.
- Money due from a third party to a judgment debtor is ordered to be paid directly to the judgment creditor.
- Requires a certain debt;
 - order cannot be made against contingent liabilities or future debts; but
 - includes bank accounts.



Hardship Payments

- Respondents can apply to the court for a hardship payment order where they are:
 - an individual; and
 - the original prevents him withdrawing money from his bank account and he is suffering hardship in meeting ordinary living expenses as a result.
- Hardship order allows bank to make payments to the respondent from the affected accounts.



Bank's Obligations 1

If a Third Party Debt Order is enforced against funds in a bank account, the bank must:

1. Identify all accounts held with it by the respondent;
2. Disclose within 7 days:
 - the number of the account; and
 - whether account is in credit.
 - if the account is in credit:
 - whether balance is sufficient to cover the amount in the order
 - balance at the date served with the order (if it less than amount in the order);
 - whether the bank asserts any right to the money in the account and details of the grounds of so.



Bank's Obligations 2

3. Inform within seven days of being served with the order that:

- respondent does **not** hold an account with the bank; or
- the bank is unable to comply with the order for any reason (e.g. because it has more than one account holder whose details match the information in the order and so cannot identify which account the order applies to).



Practical Subtleties

1. Account must be in credit (not in overdraft);
2. Subsequent monies paid into account may only be seized with a further order;
3. Orders will not be made against joint accounts unless against all account holders;
4. Banks are only required to disclose information and retain funds of accounts held solely in the respondent's name; and
5. Orders cannot reduce account funds to less than £1.



