

PRIVATE CLIENTS, SMES,  
DIRECTORS & SHAREHOLDERS

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# How to enforce a freezing order

Key procedures



# INTRODUCTION

**In this booklet, the person or company seeking the freezing order is referred to as the applicant and the person or company subject to the order is referred to as the respondent.**

Freezing orders generally place very onerous requirements upon a respondent. Having gone to the time and expense of obtaining a freezing order, it is vital for the applicant to ensure that the respondent fully complies with the order and does not seek to circumvent it or evade its terms.

By ensuring full compliance with the terms of the order, the applicant stands the best chance of making a full recovery if judgement is ultimately awarded in its favour in the substantive proceedings. There is no point obtaining a freezing order only to have the respondent fail to comply properly due to a lack of policing of its terms by the applicant leading to the requirement to take immediate steps to seek further court orders to remedy the breach by the respondent.

## ENFORCEMENT OPTIONS IN ENGLAND & WALES

If an applicant believes that a respondent has failed to comply with the terms of a freezing order, there are a number of options available to him to assist with the enforcement of the terms of the order.

### 1 Contempt of court application

The most draconian of all sanctions available to an applicant is to issue an application to have a respondent committed to prison, or fined, for what is called contempt of court.

The court treats these types of applications with particular care, due to the very serious consequences if a finding of contempt is made. However, they are available to the court in circumstances where a party has breached the terms of a freezing order, for example by failing to provide proper disclosure of documents or providing an untruthful or only partially true statement in an affidavit or other document served in compliance with the freezing order.

## PRE REQUISITES OF A COMMITTAL APPLICATION

- 1. For a committal application to succeed, the original freezing order must have the appropriately worded penal notice on the front of it, explicitly stating that any disobedience of the order by the respondent will be a contempt of court, punishable by either imprisonment, a fine or seizure of assets.**
- 2. The original freezing order must have been personally served, unless the court has since made alternative orders in relation to service.**

## THE PROCEDURES FOR MAKING A COMMITTAL APPLICATION

- 1. The applicant must set out in an application notice the full grounds upon which the application for committal is being made. In so doing, the applicant must set out each and every alleged act of contempt by the respondent and if known, the date of each and every act of contempt.**

- 2. The application notice also needs to be supported by a detailed affidavit setting out the above information and exhibiting where necessary, relevant documentation to the statement.**
- 3. The issued application, evidence and supporting documents need to be personally served on the respondent unless the court has provided alternative methods for service. In circumstances where the respondent is a company, it must also be evidenced that the original freezing order was served on a director or officer of the company and, if it was, the committal application notice and supporting documentation must also be served on that particular officer or director.**

## **COURT DISCRETION TO MAKE AN ORDER**

Orders for committal are entirely at the discretion of the court. It is often the case that a minor breach of an order will not always be treated as contempt and this is particularly true if compliance of a particular section of the order was impossible (for example, documents not being disclosable as they were in the possession of a third party).

Essentially, in order to commit a person to prison for breach of an order, it has to be shown that there was a deliberate or wilful breach of the order and this has to be established beyond reasonable doubt as it is in effect a criminal standard of proof which needs to be shown.

## **WHAT ACTIONS OR OMISSION MIGHT GIVE RISE TO A COMMITTAL APPLICATION?**

Applications of this nature often arise following the failure of a respondent to properly comply with the disclosure requirements of freezing order, especially in respect of a respondent's personal assets.

If a respondent is seeking to conceal the truth in relation to his assets and swears an affidavit which is only partially true or has a clear and obvious omission in it, this can provide legitimate grounds for an applicant to make an application for committal.

Often, on a practical level, following the initial granting of a freezing order, the applicant will continue making further enquiries with regard to the alleged wrongdoing which might also involve further analysis of the respondents assets. It is often during those further enquiries that an applicant can catch a respondent out by discovering further information which the respondent has failed to disclose in his disclosure affidavits. This commonly comes about after work by forensic accountants who will examine banking records which can often reveal details of account names and numbers which the respondent has failed to disclose.

A typical further instance which may give rise to a committal application is the disposal of assets by a respondent in breach of the freezing order. It is not uncommon for assets to be disposed of before the respondent has complied with his obligation to disclose his assets.

## **STEPS TAKEN BY A RESPONDENT TO "PURGE" HIS CONTEMPT**

Committal to prison is the ultimate sanction and, as such, the courts are generally reluctant to make such an order, unless the breach is serious.

Often the respondent is given an opportunity to “purge his/her contempt” by swearing a supplemental affidavit setting out the true position in relation to his assets and / or remedying any previous failure to comply with the terms of the order. However, even if the court is satisfied that the supplemental affidavit is now giving a truthful picture, it will generally punish the respondent by making him pay all of the applicants wasted legal costs in making the application and these can often be very significant indeed. The costs penalty is made because the committal application was only necessary in the first place due to the respondent’s non-compliance with the terms of the freezing order.

Even if the court is not minded to commit an individual to prison for contempt, it can impose a fine on the respondent and also order seizure of certain assets. If the court is minded to commit an individual to prison, the maximum period is 2 years, although it is highly likely that it will be for a far lower period than that.

## **BENEFITS OF COMMITTAL APPLICATIONS**

Committal may often be a very useful weapon in the applicant’s armoury. It can often put the respondent under extreme pressure and may even result in early settlement of the claim itself. It also sends out a strong message to a respondent that the applicant will not tolerate any non-compliance with the terms of the freezing order and will, if necessary, make other appropriate applications to the court in order to ensure that the respondent complies with the terms of the freezing order.

### **2 Writ of sequestration**

This is a very severe remedy indeed and is most commonly used in family cases to enforce a freezing order. It is rarely used to enforce money judgments. Effectively, sequestrators (akin to receivers) will take control of a respondent’s property until the individual has put right the contempt. Entitlement to any property remains that of the respondent, but it cannot be dealt with until such time as the contempt is remedied.

Similar service provisions (as regards documents) exist to those of ordinary contempt proceedings and the requirements evidentially are similar as well.

If the writ is executed, specific powers are given to high court enforcement officers to enable them to carry out the sequestration by, for example, taking possession of the respondent’s assets or collecting rent from properties. Enforcement is carried out by the high court enforcement officer who takes control of the property until the person in contempt has remedied the breach. Such rules can even be made where there are no assets in the jurisdiction.

### **3 Bench warrants**

The purpose of this is to secure a respondent’s attendance at court. Whilst rarely used, they can be helpful in certain circumstances, especially where a defendant has failed to comply with a passport order or disclosure order. If a bench warrant has been issued, a defendant may be arrested and held in custody until the hearing.

## 4 Other remedies

It is important that all relevant parties are fully aware of the existence of the freezing order and the potential consequences of assisting a breach.

If an applicant has concerns as regards the disposal of property or assets, they can ensure further compliance by service of the freezing order on third parties (including associates, solicitors or even buyers of goods). Upon notice of the freezing order, that party may be subject to the penal notice and will be likewise deterred from assisting any disposal of assets – for example in the case of a buyer buying a property from the respondent, if s/he receives notice of the freezing order before completion then they will not be protected as a result of an “arm’s length transaction”, as they are now aware that the purpose of the transaction is to deprive the applicant of potential recoveries in breach of an order of court.

Alternatively, the applicant could seek third party disclosure of information relevant to its investigation where the respondent has not fully cooperated.

In the case of property assets, it is often the case that upon obtaining a freezing order this will be registered at the Land Registry and thereafter they will receive notice of any attempt to dispose of or transfer the title.

### **ENFORCEMENT OUTSIDE ENGLAND & WALES**

#### **THE COURT’S ATTITUDE**

Courts are mindful of the risk of oppression on a respondent where a freezing order applies overseas as well as domestically. There is a danger of the respondent having to deal with a multitude of different applications in different jurisdictions.

As such, freezing orders can only be enforced overseas with the court’s permission and furthermore, are not binding on third parties outside the jurisdiction until the order has been registered, recognised and enforced in the local court.

In deciding whether to grant permission, the court will consider all relevant circumstances in the case and weigh up the benefit to the applicant as against the cost and inconvenience to the respondent of having to defend proceedings in different jurisdictions.

#### **WORLDWIDE FREEZING ORDERS**

Commonly, if an applicant is seeking a worldwide freezing order, the court will consider whether to grant permission to enforce the terms of the order at the initial hearing or on the return date rather than seeking to deal with the matter at a later date as part of a separate application.

However, if there is not sufficient time to consider the implications of the enforcement of a worldwide freezing order at the time the application is made, then the applicant can return to court at a later date to seek an order from the court with regard to the enforcement of a worldwide freezing order.

## ALTERNATIVES TO ENFORCING A FREEZING ORDER ABROAD

There are alternatives to making such an application and these include for example

- 1. Whether it is possible to commence primary proceedings in a different jurisdiction; or**
- 2. Whether to seek separate freezing orders in a number of jurisdictions rather than simply deal with it on the basis of having a single worldwide freezing order granted in the English courts.**

Whilst a coordinated approach with separate applications in different jurisdictions may add considerably to the initial expense of the proceedings, in the long run it may be a more viable and cheaper option than simply relying upon a worldwide freezing order granted in England and Wales and then seeking to enforce that order outside the jurisdiction (which, dependant on the territory, may be very expensive on its own).

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