

PRIVATE CLIENTS, SMES,  
DIRECTORS & SHAREHOLDERS

---

# The terms of a freezing order

14 key issues explained



# 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 freezing order is referred to as the respondent.**

Whether you are an applicant or a respondent, it is very important that you understand the terms of a freezing order and what it is they mean. Whilst the content of freezing orders vary to some extent, there are common terms throughout them and this booklet explains what those terms mean and the implications of them for either the applicant and/or the respondent. For the purposes of this booklet, we are assuming that the freezing order has been obtained without notice (i.e. the respondent was not aware that the applicant had applied for such an order) and is on a worldwide basis (i.e. one that extends to any assets which the respondent may have outside the jurisdiction of England and Wales).

## 1 Penal notice

Freezing orders will contain on the front page (often in bold capital letters) a “penal notice”. The wording will say something along the lines of:

**“if any of you [i.e. the named respondents] disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized.**

**Any other person who knows of this order and does anything which helps omit the respondent to breach the terms of this order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.”**

Understanding what a penal notice means is very important indeed. Simply put, if a respondent acts in breach of the terms of the freezing order, then the respondent can be found in contempt of court which can in turn result in a fine, assets being seized, payment of the applicant’s legal costs and ultimately, being sent to prison.

It is therefore vital that a respondent fully understands the nature and obligations contained within the freezing order to ensure that he does not unintentionally breach the terms of the freezing order.

The same also applies to other individuals and/or companies who are not named in the freezing order as a respondent, but who are either served with it or become aware of the terms of the freezing order (for example, banks or other financial institutions). as with a respondent, as set out above, if any non-party to the proceedings does anything to knowingly assist or permit the respondent to breach the terms of the freezing order, then a similar set of consequences will follow (fine, assets being seized and / or imprisonment).

The penalties imposed for failure to comply with a freezing order and for acting in contravention of a penal notice are the primary reasons why freezing orders are considered such a draconian form of court order. Equally, they are typically the reasons why the courts are very careful about whether to grant them or not in the first place because the sanctions for breaching them are so severe.

What constitutes contempt of court and how an application is made by an applicant for contempt of court against the respondent is dealt with in detail elsewhere in this series of booklets. However, in summary, if an applicant believes that a respondent has breached the terms of the order, the applicant is entitled to issue an application to court setting out the reasons why it believes the respondent is in breach of the terms of the freezing order and seek at a court hearing committal of that individual to prison as a result of the breach.

## 2 Further clarification for the benefit of the respondent(s)

The next paragraphs in the freezing order will then commonly deal with the areas set out in 1-6 below, primarily for the benefit of the respondent who until served with the freezing order stage is entirely unaware of the application made by the applicant for a freezing order. The order will:

1. **State precisely against whom the freezing order has been granted (e.g. name the respondent individual(s) or company / companies);**
2. **State the date that the order was made and the name of the judge who granted the order;**
3. **State that the judge granting the order has read the supporting affidavit evidence supplied by the applicant at the time of the application for the freezing order (details of which are commonly attached at schedule a to the order). Please note that in certain circumstances the court may be prepared to grant a freezing order where an affidavit has not been filed, but the applicant has given an assurance / undertaking that it will be served in the terms described to the court within a very short period thereafter;**
4. **That the court has accepted the undertakings given by the applicant, which are commonly set out in schedule B of the order;**
5. **That the order was granted “without notice” to the respondent;**
6. **Give details of the return date. The return date is explored more fully in other booklets in this series, but in summary this is a date at which all parties to the proceedings return to court. As freezing orders are normally sought without prior notice to the respondent, the return date provides the first opportunity for a respondent to appear at court, where normally he will agree to either a continuation of the freezing order, seek a variation of its terms of the freezing order or alternatively seek to have the freezing order discharged completely.**

## 3 The terms of the order explained

### DISPOSAL OR DEALING WITH ASSETS

The freezing order will then specify in more detail the terms and extent of the freezing order. Commonly, this is by reference to the respondent not being able to remove, dispose of, deal with or diminish the value of his assets located in England and Wales. If the freezing order is on a worldwide basis, reference will be made to not disposing of, dealing with or diminishing the value of those assets which are located elsewhere in the world.

## ASSETS DEFINED

The order will then generally clarify the definition of “assets” and will commonly state that the assets covered by the order include those which are either in the respondent’s name, whether they are solely or jointly owned. They will include for example, assets over which the respondent has the power, directly or indirectly, to dispose of or deal with as if they were his own. There is commonly further clarification that the assets include those which the respondent has the power over a third party holding or assets where that third party in reality acts in accordance with a respondent’s direct or indirect instructions.

Later on in the freezing order there will usually be a specific list of named assets which the applicant is aware of as at the time of attending court to obtain the freezing order. From a respondent’s point of view, that list is not a definitive list of all assets which cannot be dealt with. They are just indicative of the assets known to the applicant at the time the order was made. A respondent must be aware that the freezing order covers all of his assets which he owns or controls as set out above, even if those assets are not individually named in the order.

Commonly the applicant will list any properties known to be owned by the respondent, either in his sole name or jointly together with any bank accounts of which it is aware that the respondent owns or has control over.

## THE VALUE OF ASSETS COVERED BY THE FREEZING ORDER

A freezing order can either be limited to a specific sum (known as a “maximum sum order”) or alternatively be unlimited in value.

### 1. Maximum Sum Orders

- i. By way of example, the court may order that the respondent does not deal with or diminish or dispose of assets up to a maximum sum of £1 million pounds. What this means is that if a respondent has assets in excess of that value, he is free to deal with remaining assets so long as he always ensures that the total value of assets free of charges or securities (the unencumbered value) remains at £1 million within England and Wales (or abroad if it is a worldwide order).
- ii. When determining the appropriate monetary sum for a maximum sum order the court will look at the basis of the applicant’s underlying claim against the respondent and it may also include amounts for interest and costs relating to those proceedings.
- iii. It is not uncommon for a respondent to challenge the maximum sum limit at the return date if it considers it to be too high when dealing with the circumstances of the underlying claim. For example, if the respondent believes it has a valid set-off against the sums sought by the applicant, then that should be brought to the court’s attention and the maximum sum value can be revised downwards accordingly, if permitted by the court.

### 2. Unlimited sum orders

- i. These are more unusual than maximum sum orders, but the court does have the jurisdiction to grant freezing orders without a limit on the value of assets which the respondent cannot deal with until determination of the underlying claim.

## 4 Provision of information by the respondent as to assets

Provision of information by the respondent as to the nature, extent or existence of assets is a standard term of any freezing order. It requires the respondent, within a short time period (often as little as 2 days), to provide (in writing to the applicant's solicitors to the best of his ability) details of all assets in England and Wales (or worldwide) exceeding, say, £1,000 in value. The respondent must give the value, location and details of all such assets to the extent that he is able.

This is a very onerous obligation on the respondent but it must be adhered to. Failure to do so can lead to a finding of contempt of court for breach of the terms of the freezing order.

Of course, the respondent will be preparing his response to the provision of information requests whilst at the same time preparing for the return date, which can absorb significant time and resources for the respondent.

### PRIVILEGE AGAINST SELF-INCRIMINATION

The paragraph requesting provision of information of assets is always followed by a paragraph stating something along the lines of: "if the provision of such information is likely to incriminate a respondent, then the respondent may be entitled to refuse it".

Essentially a respondent can refuse to provide information in very specific circumstances if there is a danger that the information might incriminate him and lead to possible criminal proceedings being brought against him. The law surrounding privilege against self-incrimination is quite complex but further details of it can be found in our booklet entitled "Privilege against incrimination – explained".

### AFFIDAVIT EVIDENCE AS TO ASSETS

The freezing order commonly contains a further provision which requires that within a set time period (often 5 days) that the respondent must swear and serve on the applicant's solicitors an affidavit setting out in writing details of all of the assets exceeding a specified sum, as discussed above. Again, it is vitally important to adhere to the deadlines given and failure to do so is a common reason for applicants bringing contempt of court applications against respondents. The evidence of such assets is often required to be provided in a document, referred to as an "affidavit", which is a witness statement to the court sworn before a Solicitor or qualified notary.

## 5 Exceptions to the order

Commonly, within the freezing order, there then follows a section dealing with exceptions to the terms of the freezing order. These are common provisions in freezing orders and allow, for example, an individual respondent to be entitled to weekly spending money towards living expenses (commonly £500 per week) together with a reasonable sum for legal advice and representation.

However, the order often states that before spending any of that money, the respondent must inform the applicant's legal representatives of the source of the funds (i.e. where the money is coming from). This is particularly important where the applicant believes that the respondent has not disclosed all of his accounts and is using monies which should be subject to the freezing order.

If the respondent is a corporate entity, then the exceptions will often include a provision that the company is able to pay its employees and trade creditors in the ordinary course of business.

Some freezing orders also contain a clause stating that the respondent may agree with the applicant's legal representatives that the spending limit set out in the freezing order (e.g. £500 per week) be varied by consent but that any agreement must be in writing. This is commonly the case as many respondents require higher expenditure than £500 a week. The sum is often varied by consent subject to the respondent providing evidence of his income and outgoings to justify any increase.

In the event that you instruct solicitors to act on your behalf then, where required, you should ensure that your solicitor informs the applicant's solicitor of the source of the monies being paid on account of legal fees before any transfer is made. The applicant's solicitor may request confirmation from your solicitor as to the nature of their instructions and whether they are acting in relation to the underlying claim against you, or just your compliance with the freezing order.

## 6 Provision of security

The freezing order will then have a section which states that the freezing order will cease to have any effect if the respondent can provide security to the applicant for the maximum sum limit set out in the order. "Security" will refer to a mechanism by which the applicant's claim (including all legal costs, disbursements and interest) is safeguarded, usually by way of specific measures over an asset owned by the respondent. If the evidence of available unencumbered value in any such asset is sufficient to deal with the applicant's claim, then this can have the effect to free the respondent's remaining assets and the prescriptive terms applicable to them under the freezing order.

The provision of security can be dealt with by consent with the applicant and may, for example, relate to the granting of a charge over a property and / or payment of monies into a specified bank account, pending resolution of the underlying proceedings. Other examples of security include the giving of a bond or a guarantee. Whatever it is, it must be dealt with by consent and agreed with by the applicant's solicitors. Often, an applicant will agree to security as the freezing order in itself does not provide any form of security to an applicant. It is often a common misconception that it does but essentially all the freezing order does is seek to restrain a respondent from dealing with, diminishing or otherwise disposing of assets until judgment has been awarded and does not provide any form of security interest for the applicant as against any other creditors of the respondent (who may take their own enforcement action almost always irrespective of the freezing order). Security effectively gives the applicant a better title to part of the respondent's assets than would ordinarily exist as compared to other unsecured creditors. In such circumstances, if the asset was sold then the applicant would be repaid its claim (if judgment was obtained in the main proceedings) ahead of other creditors.

If security is provided, the freezing order falls away and the respondent is able to deal with his remaining assets in any way he sees fit. Obviously the underlying claim will need to be dealt with by way of litigation and for more information on this, please see other booklets in this series.

It should be added that if the applicant refuses to engage properly in discussions with the respondent regarding security, or if there are issues as to the true worth of the security on offer, a respondent can apply to court and ask that the judge determine whether the security offered is sufficient.

## 7 Ancillary orders

There then may be a section entitled “ancillary orders”. These are further orders which a court may grants at the time of granting the freezing order. Such orders are often a very powerful part of an applicant’s armoury against a respondent and can include the following requirements:

1. **Disclosure of specific documentation;**
2. **Provision of information about assets; and**
3. **That the respondent file and serve an affidavit of assets.**

For further information about ancillary orders, please see our other booklets in this series.

## 8 Costs

There is usually then a section of the order dealing with costs. This tends to be a straight forward paragraph stating that the costs of the application are reserved to the judge hearing the application on the return date. This essentially means that the quantum and liability for the costs incurred by the applicant has not yet been determined by the court and will be decided at the next hearing, or such other period as the court may specify.

If at the return date the court considers that 1) the freezing order was appropriate, 2) that the respondent has not provided any reason why it should be set aside, then it is likely that an order in relation to those costs will be made at that time and usually in favour of the applicant.

In the absence of an order to the contrary, the general rule is that those costs must be paid to the applicant within 14 days of the date of the order if they have been assessed or where a payment on account has been ordered. In the event that the costs are not paid by that date then interest (at a rate of 8% per annum) will apply. The applicant will also be able to take steps to secure and / or enforce the costs award against the respondent, which will only serve to increase the already considerable pressure on the respondent in relation to the underlying proceedings.

## 9 Variation or discharge order

The order will then usually make it clear to a respondent that he can apply to court at any time to vary or discharge the terms of the order. However, if this is the respondent’s intention, he must generally first inform the applicant’s solicitors of their intention to do this before making such an application.

## 10 Interpretation of this order

This section of the order is essentially explaining, in further detail to the respondent, what he must or must not do.

Commonly, it makes it clear that a respondent must not engage other individuals to undertake actions which he himself is prohibited from doing.

## 11 Assets – further definitions / prohibitions

There is then often a section specifying in more detail information regarding assets. Definition of possible assets can include:-

1. Any proprietary interest in any company or corporate body whether held by way of shares, loan notes, bearer shares or otherwise;
2. Any right, whether contractual or under a trust or otherwise, to receive or to be paid money or property, whether unconditional or contingent, present or future;
3. Any interest in any trust, whether held as trustee or as beneficiary, including any interest in a discretionary trust or any right or expectation to be considered for a payment or advance under any discretionary private trust;
4. Any right or power to deal with any property, whether through nominees, power of attorney, or by instructing another person who habitually obeys instructions;
5. Any property held by or in the name of a third party or company who habitually obeys the respondent's instructions in relation to dealings with such property;
6. Any property held in a discretionary trust which the trustees habitually deal with according to the instructions of the respondent;
7. Any bank account (whether in the name of the respondent or not) and in respect of which the respondent is an authorised signatory or in respect of which the respondent is a signatory on the mandate or in respect of which the signatory habitually obeys the instruction of a respondent or over which the respondent exercises de facto control;
8. Any interest in a pension fund or life insurance policy;
9. Any asset held by or in the name of or under the control of the respondent even if he claims that he is not beneficially entitled to such asset.

## 12 Asset details – information requirements

Similarly, there can then further detail with regard to interpreting what "details" of assets include. For example, the freezing order will generally require that the following types of information is provided:

1. In respect of bank accounts or similar accounts, the name or names in which the account is held; the name of the bank, building society or similar institution, the address of the relevant branch, the number of the account and the balance. This can include such details of any bank account over which the respondent has had control or over which he has been a signatory from a specified date;
2. In respect of real property, the address and details of any encumbrances, charges or similar;
3. In respect of shares, the number of shares held;



- 4. In respect of any interest held in any partnership or joint venture, the identity of the other partners and the nature of the business and property held by the partnership or joint venture;**
- 5. Details of the nature, amount and date of any charges or encumbrances on any assets and the name of the persons entitled to such charges and encumbrances;**
- 6. Details of the nature and amount of any liabilities or debts owed by the respondent or any claims which have been notified to the respondent above the value of the limit previously specified;**
- 7. Details of any domestic chattel worth more than the limits previously specified;**
- 8. Details of any pension fund or life insurance entitlement whether present or future; and;**
- 9. Details of all trusts including discretionary trusts in respect of which the respondent is a settlor, trustee or beneficiary or is entitled to be considered by the trustees for an advancement or in respect of which the trustees habitually obey his instructions. Such details can include: (1) the name of all trustees and beneficiaries or classes of beneficiaries; (2) the value and nature and location of all property subject to such trusts.**

Furthermore, freezing orders can often explain in more detail what is meant by “dealing with” assets and again, these can include the following provisions:-

- 1. Relinquishing or cancelling or varying any signing authority over any bank accounts over which he has signing authority or in respect of which he is a signatory on the mandate irrespective of whether there is any money in such accounts;**
- 2. Relinquishing or cancelling or varying any power of attorney, directorship, office as trustee or other arrangement pursuant to which he has control of any asset which is not held in his name;**
- 3. In the case of a discretionary trust in respect of which the respondent is a settlor or beneficiary or in respect of which the trustees are accustomed to act upon his wishes or directions:**
- 4. Requesting the trustees (whether directly or indirectly) to make any distribution (whether income or capital);**
- 5. Failing to withdraw any existing (but unexecuted) request, instruction or expression of wishes to the trustees to make any distribution under such trust;**
- 6. Selling, giving away, transferring or encumbering any assets.**

## 13 Interpretation of this order

There are then some further standard provisions in a freezing order as follows:-

- 1. Set-off by banks. This section essentially states that a freezing order does not prevent any bank from exercising any right of set-off it may have in respect of any facility which it gave to the respondent before it was notified of the order**
- 2. There will be a section dealing with how to communicate with the court and it should be made clear in the freezing order what the contact details are for the court, both in terms of the address and telephone number and the opening hours of the court.**

## 14 Schedules A & B

As indicated above, the freezing order will contain a number of schedules. Schedule a will usually provide full details (name of deponent and date etc.) of the affidavit(s) which have been relied upon by the court when making the freezing order.

Schedule B will contain details of undertakings given to the court by the applicant as part of the granting of the order. Those undertakings will commonly cover:-

- 1. An undertaking in damages by the applicant in the event that if it is later shown that the freezing order should not have been granted by the court and that the respondent has suffered loss, the applicant must compensate the respondent for any losses sustained.**
- 2. That the applicant will serve on the respondent together with the order as soon as practicable:-**
  - i. Copies of and affidavits and exhibits containing the evidence relied upon by the applicant and any other documents provided to the court on the making of the application;
  - ii. A full note of the hearing. This is usually prepared by the applicant's solicitor. Please note that the court records all hearings. As a result, it is possible for you to request a full transcript of the hearing from the an appropriate transcriber;
  - iii. The claim form; and
  - iv. An application notice for continuation of the order.
- 3. Anyone notified of this order will be given a copy of it by the applicant's representative.**

## Talk to our team

- ✓ Speak in confidence
- ✓ No obligation
- ✓ Expert advice from a friendly team



CALL 020 7841 0390



SEND US AN ENQUIRY



VISIT THE WEBSITE