

## PRACTICE DIRECTION

## INTERIM INJUNCTIONS

**This Practice Direction supplements CPR Part 25**

### **Jurisdiction**

- 1.1** High Court Judges and any other Judge duly authorised may grant ‘search orders’<sup>1</sup> and ‘freezing injunctions’<sup>2</sup>.
- 1.2** In a case in the High Court, Masters and district judges have the power to grant injunctions:
  - (1) by consent,
  - (2) in connection with charging orders and appointments of receivers,
  - (3) in aid of execution of judgments.
- 1.3** In any other case any judge who has jurisdiction to conduct the trial of the action has the power to grant an injunction in that action.
- 1.4** A Master or district judge has the power to vary or discharge an injunction granted by any Judge with the consent of all the parties.

### **Making an application**

- 2.1** The application notice must state:
  - (1) the order sought, and
  - (2) the date, time and place of the hearing.
- 2.2** The application notice and evidence in support must be served as soon as practicable after issue and in any event not less than 3 days before the court is due to hear the application<sup>3</sup>.
- 2.3** Where the court is to serve, sufficient copies of the application notice and evidence in support for the court and for each respondent should be filed for issue and service.
- 2.4** Whenever possible a draft of the order sought should be filed with the application notice and a disk containing the draft should also be available to the court in a format compatible with the word processing software used by the court. This will enable the court officer to arrange for any amendments to be incorporated and for the speedy preparation and sealing of the order.

### **Evidence**

- 3.1** Applications for search orders and freezing injunctions must be supported by affidavit evidence.
- 3.2** Applications for other interim injunctions must be supported by evidence set out in either:
  - (1) a witness statement, or
  - (2) a statement of case provided that it is verified by a statement of truth,<sup>4</sup> or
  - (3) the application provided that it is verified by a statement of truth,

<sup>1</sup> Rule 25.1(1)(h).

<sup>2</sup> Rule 25.1(1)(f).

<sup>3</sup> Rule 23.7(1) and (2) and see rule 23.7(4) (short service).

<sup>4</sup> See Part 22.

unless the court, an Act, a rule or a practice direction requires evidence by affidavit.

- 3.3** The evidence must set out the facts on which the applicant relies for the claim being made against the respondent, including all material facts of which the court should be made aware.
- 3.4** Where an application is made without notice to the respondent, the evidence must also set out why notice was not given.

(See Part 32 and the practice direction that supplements it for information about evidence.)

### **Urgent applications and applications without notice**

**4.1** These fall into two categories:

- (1) applications where a claim form has already been issued, and
- (2) applications where a claim form has not yet been issued, and, in both cases, where notice of the application has not been given to the respondent.

**4.2** These applications are normally dealt with at a court hearing but cases of extreme urgency may be dealt with by telephone.

**4.3** Applications dealt with at a court hearing after issue of a claim form:

- (1) the application notice, evidence in support and a draft order (as in 2.4 above) should be filed with the court two hours before the hearing wherever possible,
- (2) if an application is made before the application notice has been issued, a draft order (as in 2.4 above) should be provided at the hearing, and the application notice and evidence in support must be filed with the court on the same or next working day or as ordered by the court, and
- (3) except in cases where secrecy is essential, the applicant should take steps to notify the respondent informally of the application.

**4.4** Applications made before the issue of a claim form:

- (1) in addition to the provisions set out at 4.3 above, unless the court orders otherwise, either the applicant must undertake to the court to issue a claim form immediately or the court will give directions for the commencement of the claim<sup>1</sup>,
- (2) where possible the claim form should be served with the order for the injunction,
- (3) an order made before the issue of a claim form should state in the title after the names of the applicant and respondent 'the Claimant and Defendant in an Intended Action'.

**4.5** Applications made by telephone:

- (1) where it is not possible to arrange a hearing, application can be made between 10.00 a.m. and 5.00 p.m. weekdays by telephoning the Royal Courts of Justice on 020 7947 6000 and asking to be put in contact with a High Court Judge of the appropriate Division available to deal with an emergency application in a High Court matter. The appropriate district registry may also be contacted by telephone. In county court proceedings, the appropriate county court should be contacted,
- (2) where an application is made outside those hours the applicant should either –
  - (a) telephone the Royal Courts of Justice on 020 7947 6000 where he will be put in contact with the clerk to the appropriate duty judge in the High Court (or the appropriate area Circuit Judge where known), or
  - (b) the Urgent Court Business Officer of the appropriate Circuit who will contact the local duty judge,

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<sup>1</sup> Rule 25.2(3).

- (3) where the facility is available it is likely that the judge will require a draft order to be faxed to him,
- (4) the application notice and evidence in support must be filed with the court on the same or next working day or as ordered, together with two copies of the order for sealing,
- (5) injunctions will be heard by telephone only where the applicant is acting by counsel or solicitors.

### **Orders for injunctions**

- 5.1** Any order for an injunction, unless the court orders otherwise, must contain:
- (1) an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay.
  - (2) if made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable,
  - (3) if made without notice to any other party, a return date for a further hearing at which the other party can be present,
  - (4) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day, and
  - (5) if made before issue of a claim form –
    - (a) an undertaking to issue and pay the appropriate fee on the same or next working day, or
    - (b) directions for the commencement of the claim.
- 5.1A** When the court makes an order for an injunction, it should consider whether to require an undertaking by the applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any other person who may suffer loss as a consequence of the order.
- 5.2** An order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until trial or further order.
- 5.3** Any order for an injunction must set out clearly what the respondent must do or not do.

## **FREEZING INJUNCTIONS**

### **Orders to restrain disposal of assets worldwide and within England and Wales**

- 6.1** An example of a Freezing Injunction is annexed to this practice direction.
- 6.2** This example may be modified as appropriate in any particular case. In particular, the court may, if it considers it appropriate, require the applicant's solicitors, as well as the applicant, to give undertakings.

## **SEARCH ORDERS**

- 7.1** The following provisions apply to search orders in addition to those listed above.
- 7.2 The Supervising Solicitor**

The Supervising Solicitor must be experienced in the operation of search orders. A Supervising Solicitor may be contacted either through the Law Society or, for the London area, through the London Solicitors Litigation Association.

### **7.3 Evidence:**

- (1) the affidavit must state the name, firm and its address, and experience of the Supervising Solicitor, also the address of the premises and whether it is a private or business address, and
- (2) the affidavit must disclose very fully the reason the order is sought, including the probability that relevant material would disappear if the order were not made.

### **7.4 Service:**

- (1) the order must be served personally by the Supervising Solicitor, unless the court otherwise orders, and must be accompanied by the evidence in support and any documents capable of being copied,
- (2) confidential exhibits need not be served but they must be made available for inspection by the respondent in the presence of the applicant's solicitors while the order is carried out and afterwards be retained by the respondent's solicitors on their undertaking not to permit the respondent –
  - (a) to see them or copies of them except in their presence, and
  - (b) to make or take away any note or record of them,
- (3) the Supervising Solicitor may be accompanied only by the persons mentioned in the order,
- (4) the Supervising Solicitor must explain the terms and effect of the order to the respondent in everyday language and advise him –
  - (a) of his right to take legal advice and to apply to vary or discharge the order; and
  - (b) that he may be entitled to avail himself of –
    - (i) legal professional privilege; and
    - (ii) the privilege against self-incrimination.
- (5) where the Supervising Solicitor is a man and the respondent is likely to be an unaccompanied woman, at least one other person named in the order must be a woman and must accompany the Supervising Solicitor, and
- (6) the order may only be served between 9.30 a.m. and 5.30 p.m. Monday to Friday unless the court otherwise orders.

### **7.5 Search and custody of materials:**

- (1) no material shall be removed unless clearly covered by the terms of the order,
- (2) the premises must not be searched and no items shall be removed from them except in the presence of the respondent or a person who appears to be a responsible employee of the respondent,
- (3) where copies of documents are sought, the documents should be retained for no more than 2 days before return to the owner,
- (4) where material in dispute is removed pending trial, the applicant's solicitors should place it in the custody of the respondent's solicitors on their undertaking to retain it in safekeeping and to produce it to the court when required,
- (5) in appropriate cases the applicant should insure the material retained in the respondent's solicitors' custody,
- (6) the Supervising Solicitor must make a list of all material removed from the premises and supply a copy of the list to the respondent,
- (7) no material shall be removed from the premises until the respondent has had reasonable time to check the list,

- (8) if any of the listed items exists only in computer readable form, the respondent must immediately give the applicant's solicitors effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed out,
- (9) the applicant must take all reasonable steps to ensure that no damage is done to any computer or data,
- (10) the applicant and his representatives may not themselves search the respondent's computers unless they have sufficient expertise to do so without damaging the respondent's system,
- (11) the Supervising Solicitor shall provide a report on the carrying out of the order to the applicant's solicitors,
- (12) as soon as the report is received the applicant's solicitors shall –
  - (a) serve a copy of it on the respondent, and
  - (b) file a copy of it with the court, and
- (13) where the Supervising Solicitor is satisfied that full compliance with paragraph 7.5(7) and (8) above is impracticable, he may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

## **7.6 General**

The Supervising Solicitor must not be an employee or member of the applicant's firm of solicitors.

**7.7** If the court orders that the order need not be served by the Supervising Solicitor, the reason for so ordering must be set out in the order.

**7.8** The search order must not be carried out at the same time as a police search warrant.

**7.9** There is no privilege against self incrimination in:

- (1) Intellectual Property cases in respect of a 'related offence' or for the recovery of a 'related penalty' as defined in section 72 Supreme Court Act 1981;
- (2) proceedings for the recovery or administration of any property, for the execution of a trust or for an account of any property or dealings with property, in relation to –
  - (a) an offence under the Theft Act 1968 (see section 31 of the Theft Act 1968<sup>1</sup>); or
  - (b) an offence under the Fraud Act 2006 (see section 13 of the Fraud Act 2006<sup>2</sup>) or a related offence within the meaning given by section 13(4) of that Act – that is, conspiracy to defraud or any other offence involving any form of fraudulent conduct or purpose; or
- (3) proceedings in which a court is hearing an application for an order under Part IV or Part V of the Children Act 1989 (see section 98 Children Act 1989).

However, the privilege may still be claimed in relation to material or information required to be disclosed by an order, as regards potential criminal proceedings outside those statutory provisions.

**7.10** Applications in intellectual property cases should be made in the Chancery Division.

**7.11** An example of a Search Order is annexed to this Practice Direction. This example may be modified as appropriate in any particular case.

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<sup>1</sup> 1968 c. 60.

<sup>2</sup> 2006 c. 35.

## DELIVERY-UP ORDERS

- 8.1** The following provisions apply to orders, other than search orders, for delivery up or preservation of evidence or property where it is likely that such an order will be executed at the premises of the respondent or a third party.
- 8.2** In such cases the court shall consider whether to include in the order for the benefit or protection of the parties similar provisions to those specified above in relation to injunctions and search orders.

## INJUNCTIONS AGAINST THIRD PARTIES

- 9.1** The following provisions apply to orders which will affect a person other than the applicant or respondent, who:
- (1) did not attend the hearing at which the order was made; and
  - (2) is served with the order.
- 9.2** Where such a person served with the order requests –
- (1) a copy of any materials read by the judge, including material prepared after the hearing at the direction of the judge or in compliance with the order; or
  - (2) a note of the hearing,
- the applicant, or his legal representative, must comply promptly with the request, unless the court orders otherwise.

# Annex

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**FREEZING INJUNCTION**

**IN THE HIGH COURT OF JUSTICE  
[ ] DIVISION**

**Before The Honour able Mr Justice**

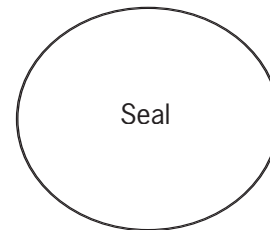
**[ ]**

**Claim No .**

**Dated**

**Applicant**

**Respondent**



Name , address and reference of Respondent

## **PENAL NOTICE**

**IF YOU [ ]<sup>1</sup> 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 OR PERMITS 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.**

<sup>1</sup> Insert name of Respondent .

# THIS ORDER

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1. This is a Freezing Injunction made against [ ] ('the Respondent') on [ ] by Mr Justice [ ] on the application of [ ] ('the Applicant'). The Judge read the Affidavits listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this Order.
2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order – see paragraph 13 below.
3. There will be a further hearing in respect of this order on [ ] ('the return date').
4. If there is more than one Respondent –
  - (a) unless otherwise stated, references in this order to 'the Respondent' mean both or all of them; and
  - (b) this order is effective against any Respondent on whom it is served or who is given notice of it.

## FREEZING INJUNCTION

*[For injunction limited to assets in England and Wales]*

5. Until the return date or further order of the court, the Respondent must not remove from England and Wales or in any way dispose of, deal with or diminish the value of any of his assets which are in England and Wales up to the value of £ .

*[For worldwide injunction]*

5. Until the return date or further order of the court, the Respondent must not –
  - (1) remove from England and Wales any of his assets which are in England and Wales up to the value of £ ; or
  - (2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales up to the same value.

*[For either form of injunction]*

6. Paragraph 5 applies to all the Respondent's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Respondent's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Respondent is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.

7. This prohibition includes the following assets in particular –

- (a) the property known as *[title/address]* or the net sale money after payment of any mortgages if it has been sold;
- (b) the property and assets of the Respondent's business [known as *[name]*] [carried on at *[address]*] or the sale money if any of them have been sold; and
- (c) any money standing to the credit of any bank account including the amount of any cheque drawn on such account which has not been cleared.

*[For injunction limited to assets in England and Wales]*

8. If the total value free of charges or other securities ('unencumbered value') of the Respondent's assets in England and Wales exceeds £ , the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of his assets still in England and Wales remains above £ .



*[For worldwide injunction]*

**8.**

- (1) If the total value free of charges or other securities ('unencumbered value') of the Respondent's assets in England and Wales exceeds £ , the Respondent may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above £ .
- (2) If the total unencumbered value of the Respondent's assets in England and Wales does not exceed £ , the Respondent must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Respondent has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets whether in or outside England and Wales remains above £ .

## PROVISION OF INFORMATION

**9.**

- (1) Unless paragraph (2) applies, the Respondent must [immediately] [within hours of service of this order] and to the best of his ability inform the Applicant's solicitors of all his assets [in England and Wales] [worldwide] [exceeding £ in value] whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets.
  - (2) If the provision of any of this information is likely to incriminate the Respondent, he may be entitled to refuse to provide it, but is recommended to take legal advice before refusing to provide the information. Wrongful refusal to provide the information is contempt of court and may render the Respondent liable to be imprisoned, fined or have his assets seized.
- 10.** Within [ ] working days after being served with this order, the Respondent must swear and serve on the Applicant's solicitors an affidavit setting out the above information.

## EXCEPTIONS TO THIS ORDER

**11.**

- (1) This order does not prohibit the Respondent from spending £ a week towards his ordinary living expenses and also £ [or a reasonable sum] on legal advice and representation. [But before spending any money the Respondent must tell the Applicant's legal representatives where the money is to come from.]
- (2) This order does not prohibit the Respondent from dealing with or disposing of any of his assets in the ordinary and proper course of business.]
- (3) The Respondent may agree with the Applicant's legal representatives that the above spending limits should be increased or that this order should be varied in any other respect, but any agreement must be in writing.
- (4) The order will cease to have effect if the Respondent –
  - (a) provides security by paying the sum of £ into court, to be held to the order of the court; or
  - (b) makes provision for security in that sum by another method agreed with the Applicant's legal representatives.

## COSTS

12. The costs of this application are reserved to the judge hearing the application on the return date.

## VARIATION OR DISCHARGE OF THIS ORDER

13. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

## INTERPRETATION OF THIS ORDER

14. A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
15. A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

## PARTIES OTHER THAN THE APPLICANT AND RESPONDENT

### 16. Effect of this order

It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized.

### 17. Set off by banks

This injunction 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 this order.

### 18. Withdrawals by the Respondent

No bank need enquire as to the application or proposed application of any money withdrawn by the Respondent if the withdrawal appears to be permitted by this order.

*[For worldwide injunction]*

### 19. Persons outside England and Wales

- (1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court.
- (2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court –
  - (a) the Respondent or his officer or agent appointed by power of attorney;
  - (b) any person who –
    - (i) is subject to the jurisdiction of this court;
    - (ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court; and
    - (iii) is able to prevent acts or omissions outside the jurisdiction of this court which constitute or assist in a breach of the terms of this order; and



- [(2) The Applicant will –
- (a) on or before *[date]* cause a written guarantee in the sum of £                      to be issued from a bank with a place of business within England or Wales, in respect of any order the court may make pursuant to paragraph (1) above; and
  - (b) immediately upon issue of the guarantee, cause a copy of it to be served on the Respondent.]
- (3) As soon as practicable the Applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].
- (4) The Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the Applicant's counsel/solicitors].
- (5) The Applicant will serve upon the Respondent [together with this order] [as soon as practicable] –
- (i) copies of the 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) the claim form; and
  - (iii) an application notice for continuation of the order.
- [(6) Anyone notified of this order will be given a copy of it by the Applicant's legal representatives.]
- (7) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order including the costs of finding out whether that person holds any of the Respondent's assets and if the court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the Applicant will comply with any order the court may make.
- (8) If this order ceases to have effect (for example, if the Respondent provides security or the Applicant does not provide a bank guarantee as provided for above) the Applicant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- [(9) The Applicant will not without the permission of the court use any information obtained as a result of this order for the purpose of any civil or criminal proceedings, either in England and Wales or in any other jurisdiction, other than this claim.]
- [(10) The Applicant will not without the permission of the court seek to enforce this order in any country outside England and Wales [or seek an order of a similar nature including orders conferring a charge or other security against the Respondent or the Respondent's assets].]

## NAME AND ADDRESS OF APPLICANT'S LEGAL REPRESENTATIVES

The Applicant's legal representatives are –

*[Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]*

**SEARCH ORDER**

**IN THE HIGH COURT OF JUSTICE**

**[ ] DIVISION**

**Before The Honour able Mr Justice**

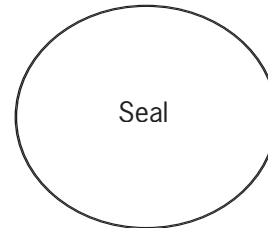
**[ ]**

**Claim No .**

**Dated**

**Applicant**

**Respondent**



Name , address and reference of Respondent

**PENAL NOTICE**

**IF YOU [ ]<sup>1</sup> DISOBEY THIS ORDER YOU MAY BE HELD T O 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 OR PERMITS 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.**

<sup>1</sup> Insert name of Re spondent .

# THIS ORDER

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1. This is a Search Order made against [ ] ('the Respondent') on [ ] by Mr Justice [ ] on the application of [ ] ('the Applicant'). The Judge read the Affidavits listed in Schedule F and accepted the undertakings set out in Schedules C, D and E at the end of this order.
2. This order was made at a hearing without notice to the Respondent. The Respondent has a right to apply to the court to vary or discharge the order – see paragraph 27 below.
3. There will be a further hearing in respect of this order on [ ] ('the return date').
4. If there is more than one Respondent –
  - (a) unless otherwise stated, references in this order to 'the Respondent' mean both or all of them; and
  - (b) this order is effective against any Respondent on whom it is served or who is given notice of it.
5. This order must be complied with by –
  - (a) the Respondent;
  - (b) any director, officer, partner or responsible employee of the Respondent; and
  - (c) if the Respondent is an individual, any other person having responsible control of the premises to be searched.

## THE SEARCH

6. The Respondent must permit the following persons<sup>1</sup> –
  - (a) [ ] ('the Supervising Solicitor');
  - (b) [ ], a solicitor in the firm of [ ], the Applicant's solicitors; and
  - (c) up to [ ] other persons<sup>2</sup> being [*their identity or capacity*] accompanying them, (together 'the search party'), to enter the premises mentioned in Schedule A to this order and any other premises of the Respondent disclosed under paragraph 18 below and any vehicles under the Respondent's control on or around the premises ('the premises') so that they can search for, inspect, photograph or photocopy, and deliver into the safekeeping of the Applicant's solicitors all the documents and articles which are listed in Schedule B to this order ('the listed items').
7. Having permitted the search party to enter the premises, the Respondent must allow the search party to remain on the premises until the search is complete. In the event that it becomes necessary for any of those persons to leave the premises before the search is complete, the Respondent must allow them to re-enter the premises immediately upon their seeking re-entry on the same or the following day in order to complete the search.

## RESTRICTIONS ON SEARCH

8. This order may not be carried out at the same time as a police search warrant.

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1 Where the premises are likely to be occupied by an unaccompanied woman and the Supervising Solicitor is a man, at least one of the persons accompanying him should be a woman.

2 None of these persons should be people who could gain personally or commercially from anything they might read or see on the premises, unless their presence is essential.

9. Before the Respondent allows anybody onto the premises to carry out this order, he is entitled to have the Supervising Solicitor explain to him what it means in everyday language.
10. The Respondent is entitled to seek legal advice and to ask the court to vary or discharge this order. Whilst doing so, he may ask the Supervising Solicitor to delay starting the search for up to 2 hours or such other longer period as the Supervising Solicitor may permit. However, the Respondent must –
  - (a) comply with the terms of paragraph 27 below;
  - (b) not disturb or remove any listed items; and
  - (c) permit the Supervising Solicitor to enter, but not start to search.
11.
  - (1) Before permitting entry to the premises by any person other than the Supervising Solicitor, the Respondent may, for a short time (not to exceed two hours, unless the Supervising Solicitor agrees to a longer period) –
    - (a) gather together any documents he believes may be incriminating or privileged; and
    - (b) hand them to the Supervising Solicitor for him to assess whether they are incriminating or privileged as claimed.
  - (2) If the Supervising Solicitor decides that the Respondent is entitled to withhold production of any of the documents on the ground that they are privileged or incriminating, he will exclude them from the search, record them in a list for inclusion in his report and return them to the Respondent.
  - (3) If the Supervising Solicitor believes that the Respondent may be entitled to withhold production of the whole or any part of a document on the ground that it or part of it may be privileged or incriminating, or if the Respondent claims to be entitled to withhold production on those grounds, the Supervising Solicitor will exclude it from the search and retain it in his possession pending further order of the court.
12. If the Respondent wishes to take legal advice and gather documents as permitted, he must first inform the Supervising Solicitor and keep him informed of the steps being taken.
13. No item may be removed from the premises until a list of the items to be removed has been prepared, and a copy of the list has been supplied to the Respondent, and he has been given a reasonable opportunity to check the list.
14. The premises must not be searched, and items must not be removed from them, except in the presence of the Respondent.
15. If the Supervising Solicitor is satisfied that full compliance with paragraphs 13 or 14 is not practicable, he may permit the search to proceed and items to be removed without fully complying with them.

## DELIVERY UP OF ARTICLES/DOCUMENTS

16. The Respondent must immediately hand over to the Applicant's solicitors any of the listed items, which are in his possession or under his control, save for any computer or hard disk integral to any computer. Any items the subject of a dispute as to whether they are listed items must immediately be handed over to the Supervising Solicitor for safe keeping pending resolution of the dispute or further order of the court.
17. The Respondent must immediately give the search party effective access to the computers on the premises, with all necessary passwords, to enable the computers to be searched. If they

contain any listed items the Respondent must cause the listed items to be displayed so that they can be read and copied<sup>1</sup>. The Respondent must provide the Applicant's Solicitors with copies of all listed items contained in the computers. All reasonable steps shall be taken by the Applicant and the Applicant's solicitors to ensure that no damage is done to any computer or data. The Applicant and his representatives may not themselves search the Respondent's computers unless they have sufficient expertise to do so without damaging the Respondent's system.

## PROVISION OF INFORMATION

- 18.** The Respondent must immediately inform the Applicant's Solicitors (in the presence of the Supervising Solicitor) so far as he is aware –
- (a) where all the listed items are;
  - (b) the name and address of everyone who has supplied him, or offered to supply him, with listed items;
  - (c) the name and address of everyone to whom he has supplied, or offered to supply, listed items; and
  - (d) full details of the dates and quantities of every such supply and offer.
- 19.** Within [            ] working days after being served with this order the Respondent must swear and serve an affidavit setting out the above information<sup>2</sup>.

## PROHIBITED ACTS

- 20.** Except for the purpose of obtaining legal advice, the Respondent must not directly or indirectly inform anyone of these proceedings or of the contents of this order, or warn anyone that proceedings have been or may be brought against him by the Applicant until 4.30 p.m. on the return date or further order of the court.
- 21.** Until 4.30 p.m. on the return date the Respondent must not destroy, tamper with, cancel or part with possession, power, custody or control of the listed items otherwise than in accordance with the terms of this order.
- 22.** [Insert any negative injunctions.]
- 23.** [Insert any further order]

## COSTS

- 24.** The costs of this application are reserved to the judge hearing the application on the return date.

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<sup>1</sup> If it is envisaged that the Respondent's computers are to be imaged (i.e. the hard drives are to be copied wholesale, thereby reproducing listed items and other items indiscriminately), special provision needs to be made and independent computer specialists need to be appointed, who should be required to give undertakings to the court.

<sup>2</sup> The period should ordinarily be longer than the period in paragraph (2) of Schedule D, if any of the information is likely to be included in listed items taken away of which the Respondent does not have copies.



## RESTRICTIONS ON SERVICE

- 25.** This order may only be served between [            ] a.m./p.m. and [            ] a.m./p.m. [and on a weekday]<sup>1</sup>.
- 26.** This order must be served by the Supervising Solicitor, and paragraph 6 of the order must be carried out in his presence and under his supervision.

## VARIATION AND DISCHARGE OF THIS ORDER

- 27.** Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's solicitors in advance.

## INTERPRETATION OF THIS ORDER

- 28.** Any requirement that something shall be done to or in the presence of the Respondent means –
- (a) if there is more than one Respondent, to or in the presence of any one of them; and
  - (b) if a Respondent is not an individual, to or in the presence of a director, officer, partner or responsible employee.
- 29.** A Respondent who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- 30.** A Respondent which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

## COMMUNICATIONS WITH THE COURT

All communications to the court about this order should be sent to –

*[Insert the address and telephone number of the appropriate Court Office]*

*If the order is made at the Royal Courts of Justice, communications should be addressed as follows*

–

*Where the order is made in the Chancery Division*

Room TM 505, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number.

The telephone number is 0207 947 6754.

*Where the order is made in the Queen's Bench Division*

Room WG08, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number.

The telephone number is 020 7947 6010.

*Where the order is made in the Commercial Court*

Room EB09, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 0207 947 6826.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

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<sup>1</sup> Normally, the order should be served in the morning (not before 9.30 a.m.) and on a weekday to enable the Respondent more readily to obtain legal advice.

## **SCHEDULE A**

THE PREMISES

## **SCHEDULE B**

THE LISTED ITEMS

## **SCHEDULE C**

### **UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) If the court later finds that this order or carrying it out 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. Further if the carrying out of this order has been in breach of the terms of this order or otherwise in a manner inconsistent with the Applicant's solicitors' duties as officers of the court, the Applicant will comply with any order for damages the court may make.
- [(2) As soon as practicable the Applicant will issue a claim form [in the form of the draft produced to the court] [claiming the appropriate relief].]
- (3) The Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the Applicant's counsel/solicitors].
- (4) The Applicant will not, without the permission of the court, use any information or documents obtained as a result of carrying out this order nor inform anyone else of these proceedings except for the purposes of these proceedings (including adding further Respondents) or commencing civil proceedings in relation to the same or related subject matter to these proceedings until after the return date.
- [(5) The Applicant will maintain pending further order the sum of £ [ ] in an account controlled by the Applicant's solicitors.]
- [(6) The Applicant will insure the items removed from the premises.]

## **SCHEDULE D**

### **UNDERTAKINGS GIVEN BY THE APPLICANT'S SOLICITORS**

- (1) The Applicant's solicitors will provide to the Supervising Solicitor for service on the Respondent –
  - (i) a service copy of this order;
  - (ii) the claim form (with defendant's response pack) or, if not issued, the draft produced to the court;
  - (iii) an application for hearing on the return date;
  - (iv) copies of the affidavits [*or draft affidavits*] and exhibits capable of being copied containing the evidence relied upon by the applicant;

- (v) a note of any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the judge; and
  - (vi) a copy of the skeleton argument produced to the court by the Applicant's [counsel/solicitors].
- (2) The Applicants' solicitors will answer at once to the best of their ability any question whether a particular item is a listed item.
  - (3) Subject as provided below the Applicant's solicitors will retain in their own safe keeping all items obtained as a result of this order until the court directs otherwise.
  - (4) The Applicant's solicitors will return the originals of all documents obtained as a result of this order (except original documents which belong to the Applicant) as soon as possible and in any event within [two] working days of their removal.

## **SCHEDULE E**

### **UNDERTAKINGS GIVEN BY THE SUPERVISING SOLICITOR**

- (1) The Supervising Solicitor will use his best endeavours to serve this order upon the Respondent and at the same time to serve upon the Respondent the other documents required to be served and referred to in paragraph (1) of Schedule D.
- (2) The Supervising Solicitor will offer to explain to the person served with the order its meaning and effect fairly and in everyday language, and to inform him of his right to take legal advice (including an explanation that the Respondent may be entitled to avail himself of the privilege against self-incrimination and legal professional privilege) and to apply to vary or discharge this order as mentioned in paragraph 27 above.
- (3) The Supervising Solicitor will retain in the safe keeping of his firm all items retained by him as a result of this order until the court directs otherwise.
- (4) Unless and until the court otherwise orders, or unless otherwise necessary to comply with any duty to the court pursuant to this order, the Supervising Solicitor shall not disclose to any person any information relating to those items, and shall keep the existence of such items confidential.
- (5) Within [48] hours of completion of the search the Supervising Solicitor will make and provide to the Applicant's solicitors, the Respondent or his solicitors and to the judge who made this order (for the purposes of the court file) a written report on the carrying out of the order.

## **SCHEDULE F**

### **AFFIDAVITS**

The Applicant relied on the following affidavits—

[name]	[number of affidavit]	[date sworn]	[filed on behalf of]
(1)			
(2)			

## NAME AND ADDRESS OF APPLICANT'S SOLICITORS

The Applicant's solicitors are—

[Name, address, reference, fax and telephone numbers both in and out of office hours.]