

INTERIM REMEDIES

This Practice Direction supplements FPR Part 20

Scope and jurisdiction

- 1.1** This Practice Direction does not apply to an order under section 48 (Powers to assist in discovery of children who may be in need of emergency protection), section 50 (Recovery of abducted children, etc.) of the Children Act 1989 or section 33(Power to order disclosure of child's whereabouts) or section 34 (Power to order recovery of child) of the Family Law Act 1986.
- 1.2** High Court Judges and any other judge duly authorised may grant 'search orders' and 'freezing injunctions' (see rules 20.2(1)(h) and 20.2(1)(f)).
- 1.3** In a case in the High Court, district judges have the power to grant injunctions –
 - (a) by consent;
 - (b) in connection with charging orders and appointments of receivers;
 - (c) in aid of execution of judgments.
- 1.4** In any other case any judge who has jurisdiction to conduct the hearing of the proceedings has the power to grant an injunction in those proceedings.
- 1.5** A 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 –
 - (a) the order sought; and
 - (b) 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 7 days before the court is due to hear the application unless the court directs otherwise.
- 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 an electronic version of the draft should also be available to the court in a format compatible with the word processing software used by the court and on such storage medium as shall be

agreed 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 –
 - (a)** a witness statement; or
 - (b)** the application notice provided that it is verified by a statement of truth, unless the court, an Act, a rule in the FPR or a practice direction requires evidence by affidavit.
- 3.3** The evidence must set out the facts on which the applicant relies for the application 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 22 and the practice direction that supplements it for information about evidence.)

Urgent applications and applications without notice

- 4.1** These fall into two categories –
 - (a)** applications where an application in proceedings has already been issued; and
 - (b)** applications where an application in proceedings 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** In relation to applications dealt with at a court hearing after issue of an application form –
 - (a)** the application notice, evidence in support and a draft order (as in paragraph 2.4) should be filed with the court two hours before the hearing wherever possible;
 - (b)** if an application is made before the application notice has been issued, a draft order (as in paragraph 2.4) 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
 - (c)** except in cases where it is essential that the respondent must not be aware of the application, the applicant should take steps to notify the respondent informally of the application.
- 4.4** In relation to applications made before the issue of an application –
 - (a)** in addition to the provisions set out at paragraph 4.3, unless the court orders otherwise, either the applicant must undertake to the court to issue an application notice immediately or the court will give directions for the commencement of the application (see rule 20.3(3));
 - (b)** where possible the application should be served with the order for the injunction;

- (c) an order made before the issue of an application should state in the title after the names of the applicant and respondent 'the Applicant and Respondent in Intended Proceedings'.

4.5 In relation to applications made outside normal working hours –

- (a) the applicant should either –
 - (i) telephone the Royal Courts of Justice on 020 7947 6000 to 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
 - (ii) telephone the Urgent Court Business Officer of the appropriate Circuit who will contact the local duty judge;
- (b) where the facility is available it is likely that the judge will require a draft order to be faxed to him;
- (c) 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;
- (d) 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 –

- (a) an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay;
- (b) if the order is 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;
- (c) if the order is made without notice to any other party, a return date for a further hearing at which the other party can be present;
- (d) if the order is made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day; and
- (e) if the order is made before issue of an application in proceedings –
 - (i) an undertaking to issue and pay the appropriate fee on the same or next working day; or
 - (ii) directions for the commencement of the application.

5.2 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.

5.3 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 final hearing or further order.

5.4 Any order for an injunction must set out clearly what the respondent must do or not do.

SEARCH ORDERS

Orders for the preservation of evidence and property

- 6.1** The following provisions apply to search orders in addition to those listed above.

The Supervising Solicitor

- 6.2** 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.

Evidence

6.3

- (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.
- (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.

Service

6.4

- (1) The order must be served personally by the Supervising Solicitor, unless the court directs otherwise, 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 the respondent –
 - (a) of the respondent's right to take legal advice, and to apply to vary or discharge the order; and
 - (b) that the respondent 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.
- (6) The order may only be served between 9.30 a.m. and 5.30 p.m. Monday to Friday unless the court directs otherwise.

Search and custody of materials

6.5

- (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 hearing, 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.
- (13) Where the Supervising Solicitor is satisfied that full compliance with paragraph 6.5(7) and (8) above is impracticable, that Solicitor may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

General

- 6.6** The Supervising Solicitor must not be an employee or member of the applicant's firm of solicitors.
- 6.7** 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.
- 6.8** The search order must not be carried out at the same time as a police search warrant.

- 6.9** There is no privilege against self incrimination in proceedings in which a court is hearing an application for an order under Part 4 or 5 of the Children Act 1989 (see section 98 of the Children Act 1989).

Delivery up orders

- 7.1** The following provision applies 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.
- 7.2** In such cases the court will 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

- 8.1** The following provision applies to orders which will affect a person other than the applicant or respondent, who –
- (a)** did not attend the hearing at which the order was made; and
 - (b)** is served with the order.
- 8.2** Where such a person served with the order requests –
- (a)** a copy of any materials read by the court, including material prepared after the hearing at the direction of the court or in compliance with the order; or
 - (b)** a note of the hearing,
- the applicant, or the applicant's legal representative, must comply promptly with the request, unless the court directs otherwise.