

Enforcing orders made in financial remedy proceedings

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Which parts are enforceable?

- *H v H (Financial Provision)* [1993] 2 FLR 35 - enforceability of recitals
- Enforcement of undertakings:
 - Undertaking for the payment of money may be enforced as if it were an order under Part II MCA 1973
 - Undertakings other than for payment of money are to be enforced as a contempt of court per FPR Part 37

Enforcement of arrears

Section 32 Matrimonial Causes Act 1973

- *(1) A person shall not be entitled to enforce through the High Court or the family court the payment of any arrears due under an order for maintenance pending suit, an interim order for maintenance or any financial provision order without the leave of that court if those arrears became due more than twelve months before proceedings to enforce the payment of them are begun.*
- *(2) The court hearing an application for the grant of leave under this section may refuse leave, or may grant leave subject to such restrictions and conditions (including conditions as to the allowing of time for payment or the making of payment by instalments) as that court thinks proper, or may remit the payment of the arrears or of any part thereof.*
- *(3) An application for the grant of leave under this section shall be made in such manner as may be prescribed by rules of court.*

Enforcement of arrears cont.

- **B v C [1995] 1 FLR 467**

“To a careful observer this may seem to be a matter of semantics but I am satisfied on reflection that the submission of Mr Le Grice is properly made, that the starting-point is – and I avoid the use of the word 'presumption' – that arrears over one year old are not enforced unless there are special circumstances.”

- **Lumsden v Lumsden (unreported)**

Order for sale

Section 24A Matrimonial Causes Act 1973

- *(1) "Where the court makes an order under section 22ZA or makes under section 23 or 24 of this Act a secured periodical payments order, an order for the payment of a lump sum or a property adjustment order, then, on making that order or at any time thereafter, the court may make a further order for the sale for the sale of such property as may be specified in the order, being property in which or in the proceeds of sale of which either or both of the parties to the marriage has or have a beneficial interest, either in possession or reversion."*
- *(2) "Any order made under subsection (1) above may contain such consequential or supplementary provisions as the court thinks fit and, without prejudice to the generality of the foregoing provision may include: (a) provision requiring the making of a payment out of the proceeds of sale to which the order relates, and (b) provision requiring any such property to be offered for sale to a person, or class of persons, specified in the order."*

Order for sale

- *“(6): Where a party to a marriage has a beneficial interest in any property, or in the proceeds of sale thereof, and some other person who is not a party to the marriage also has a beneficial interest in that property or in the proceeds of sale thereof, then, before deciding whether to make an order under this section in relation to that property, it shall be the duty of the court to give that other person an opportunity to make representations with respect to the order; and any representations made by that other person shall be included among the circumstances to which the court is required to have regard under section 25(1) below.”*

Order for possession

FPR 2010 r. 9.24

- *“Where the court makes an order mentioned in paragraph (1) [this includes an order under section 24A of the 1973 Act], it may order any party to deliver up to the purchase or any other person (a) possession of the land, including any interest in, or right over, land; (b) receipt of rents or profits relating to it; or (c) both.”*

BR v VT [2015] EWHC 2727 (Fam)

- *Confirms the test to be applied to an application for an order for possession is the test as per section 33 of the Family Law Act 1996 (same test as for an Occupation Order)*

Execution of documents

Section 39 Senior Courts Act 1981

- *“(1) Where the High Court or family court has given or made a judgment or order directing a person to execute any conveyance, contract or other document, or to indorse any negotiable instrument, then, if that person (a) neglects or refuses to comply with the judgment or order; or (b) cannot after reasonable inquiry be found, that court may, on such terms and conditions, if any, as may be just, order that the conveyancing, contract or other documents shall be executed, or that the negotiable instrument shall be indorsed, by such person as the court may nominate for that purpose.”*
- *“A conveyance, contract, document or instrument executed or indorsed in pursuance of an order under this section shall operate, and be for all purposes available, as if it had been executed or indorsed by the person originally directed to execute or indorse it.”*

Execution of documents

Welch v Welch [2017] EWFC B32

- *“(i) The party seeking the implementation sends the draft conveyancing documents to the other and invites their execution by signature. (ii) If the other party neglects or refuses to sign then the first party makes an on notice application to the court, providing a statement evidencing the failure and, subject to any representations by the other party, the court makes an order against the other party directing the execution by a set date, warning that if the other party doesn’t sign by the set date then the court, without reference back to the other party, will make a second order authorizing the execution by the court. (iii) If the other party’s failure to execute continues then a without notice application is made, supported by a statement evidencing the continued failure, and the court then makes a second order authorizing the court’s execution and duly executes the documents.’*

Procedure

Family Procedure Rules r33.3

(1) Except where a rule or practice direction otherwise requires, an application for an order to enforce an order for the payment of money must be made in a notice of application accompanied by a statement which must –

(a) state the amount due under the order, showing how that amount is arrived at; and

(b) be verified by a statement of truth.

(2) The notice of application may either –

(a) apply for an order specifying the method of enforcement; or

(b) apply for an order for such method of enforcement as the court may consider appropriate.

General enforcement application

Family Procedure Rules r33.3 (cont.)

(3) If an application is made under paragraph (2)(b), the court must issue an order which includes requirements that—

(a) the debtor must attend court at the time and place specified in the order to answer on oath such questions as the court may require;

(b) the debtor must complete a financial statement in the form served with that order; and

(c) the financial statement, together with any documents that the statement indicates should be provided, must be—

(i) filed with the court; and

(ii) served on the applicant, by the debtor not less than seven days before the date on which order requires the debtor to attend court.

(4) An order issued under paragraph (3) must include a penal notice, as defined in rule 37.2.

Specified method of enforcement

Family Procedure Rules r33.3

(2) The notice of application may either –

(a) apply for an order specifying the method of enforcement; or

(b) apply for an order for such method of enforcement as the court may consider appropriate.

Charging order

Charging Orders Act 1979

- *“1(1): Where, under a judgment or order of the High Court [or the family court] or [the county court], a person (the “debtor”) is required to pay a sum of money to another person (the “creditor”) then, for the purpose of enforcing that judgment or order, the appropriate court may make an order in accordance with the provisions of this Act imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order*
- *“2(2): (a) land, (b) securities of any of the following kinds— (i) government stock, (ii) stock of any body (other than a building society) incorporated within England and Wales, (iii) stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales, (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales, or (c) funds in court.*

Charging order

FPR 2010 Pt 40 & PD40A

- *“r. 40.4(1): An application for a charging order may be made without notice”*
- *“r. 40.5: An application for a charging order will initially be dealt with by the court without a hearing. (2) The court may make an interim charging order (a) imposing a charge over the debtor’s interest in the asset to which the application relates; and (b) fixing a hearing to consider whether to make a final charging order as provided by rule 40.8.*
- *“r.40.8: “(1) If any person objects to the court making a final charging order, that person must (a) file; and (b) serve on the creditor, written evidence stating the grounds of objection, not less than 7 days before the hearing.’*
- *PD40A: FE6 (land/property) and FE7 (securities/shares)*

Third party debt order

CPR 1998 Pt 72 & PD72 (FPR 2010 r. 33.24)

- *“r. 72.2(1) Upon the application of a judgment creditor, the court may make an order (a ‘final third party debt order’) requiring a third party to pay to the judgment creditor (a) the amount of any debt due or accruing due to the judgment debtor from the third party; or (b) so much of that debt as is sufficient to satisfy the judgment debt and the judgment creditor’s costs of the application.”*
- *“r. 72.2(2) The court will not make an order under paragraph 1 without first making an order (an ‘interim third party debt order’) as provided by rule 72.4(2).”*
- *“r. 72.3(1) An application for a third party debt order may be made without notice.’*

Third party debt order

- *“r. 72.4(1) An application for a third party debt order will initially be dealt with by the court without a hearing. (2) The court may make an interim third party debt order (a) fixing a hearing to consider whether to make a final third party debt order; and (b) directing that until that hearing the third party must not make any payment which reduces the amount he owes the judgment debtor to less than the amount specified in the order.”*
- *“r. 72.8(1) If the judgment debtor or the third party objects to the court making a final third party debt order, he must file and serve written evidence stating the grounds for his objections ... (4) ...must be filed and served on each other party as soon as possible, and in any event not less than 3 days before the hearing.’*
- *PD72: Form N349.*

Attachment of earnings order

Attachment of Earnings Act 1971

- *“1A: The family court may make an attachment of earnings order to secure payments under a High Court or family court maintenance order.”*
- *“s24(1): ‘earnings’ are any sums payable to a person (a) by way of wages or salary (including any fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary or payable under a contract of service); (b) by way of pension ... (c) by way of statutory sick pay.”*

Attachment of earnings order

- *“s24(2): The following shall not be treated as earnings: (a) sums payable by any public department of the Government of Northern Ireland or a territory outside the United Kingdom; (b) pay or allowances payable to the debtor as a member of Her Majesty’s forces other than pay or allowances payable by his employer to him as a special member of a reserve force (within the meaning of the Research Forces Act 1996; (ba) a tax credit within the meaning of the Tax Credits Act 2002); (c) pension, allowances or benefit payable under any enactment relating to social security; (d) pension or allowances payable in respect of disablement or disability; (e) except in relation to a maintenance order wages payable to a person as a seaman, other than wages payable to him as a seaman of a fishing boat; (f) guaranteed minimum pension within the meaning of the Pension Schemes Act 1993.”*

Attachment of earnings order

FPR 2010 Pt 39

- *r. 39.5: Form FE15 (to apply) & “(3) When the documents mentioned in paragraph (2) are filed with the court, the court must fix a day for the hearing of the application.”*
- *R. 39.6: Form FE17 (to respond)*
- *R. 39.7: Form N338 (for the employer to complete – statement of the debtor’s earnings)*
- *The court will fix (a) the ‘normal deduction rate’ (ie. the amount that is ordinarily to be deducted by the employer from the debtor’s income and paid into court) and (b) the ‘protected earnings rate’ (ie. the amount the debtor needs to maintain themselves, such that the deductions will not reduce the debtor's income below this amount.*

Warrant of control

CPR 1998 Pt 83 & 84; PD83 & PD84 (FPR 2010 r. 33.1)

- *Form N323*
- *“r.83.15(4)(a): A request for a warrant of control or delivery may be made without notice.”*

Appointment of a receiver

Section 37 Senior Courts Act 1981 (s38 & s107 County Courts Act 1984)

- *“(1) The High Court may by order (whether interlocutory or final) grant an injunction or appoint a receiver in all cases in which it appears to the court to be just and convenient to do so.”*

Maughan v Wilmot [2014] EWHC 1288 (Fam)

- *“Generally speaking, a party would only apply for a receiver to be appointed as a course of last resort for reasons that hardly need to be spelt out. Receivership, as a process, is inevitably expensive because the receiver is usually an accountant charging hourly rates of some size.”*

CPR 1998 Pt 69

Judgment summons

Debtors Act 1869

- *“s5: Subject to the provisions herein-after mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court.”*

Hadkinson orders

Assoun v Assoun (No. 1) [2017] 2 FLR 1137

“3. ...Such an order is draconian in its effect because it goes directly to a litigant's right of access to a court. It is not and should not be a commonplace. As developed in case law, it is a case management order of last resort in substantive proceedings (for example for a financial remedy order) where a litigant is in wilful contempt rather than a species of penalty or remedy in committal proceedings for contempt.”

Hadkinson orders (cont.)

De Gafforj v De Gafforj [2018] EWCA Civ 2070

“11. For present purposes, it is enough to note the exceptional nature of the order and to record the conditions that are necessary before it can be made. I would summarise these as follows:

- 1. The respondent is in contempt.*
- 2. The contempt is deliberate and continuing.*
- 3. As a result, there is an impediment to the course of justice.*
- 4. There is no other realistic and effective remedy.*
- 5. The order is proportionate to the problem and goes no further than necessary to remedy it.”*

Pension sharing orders

[Amin v Amin \[2017\] EWCA Civ 1114](#)

[AXA v BYB \[2023\] EWFC 251](#)

Interest and Costs

Section 23(6) Matrimonial Causes Act 1973

- *"Where the court (a) makes an order under this section for the payment of a lump of sum; and (b) direct (i) that payment of that sum or any part of it shall be deferred; or (ii) that that sum or any part of it shall be paid by instalments, the court may order that the amount deferred or the instalments shall carry interest at such rate as may be specified by the order from such date, not earlier than the date of the order, as may be so specified, until the date when payment of it is due."*

The County Courts (Interest on Judgment Debts) Order 1991

- *"S2(4): Where the relevant judgment makes financial provision for the spouse or a child, interest shall only be payable on an order for the payment of not less than £5,000 as a lump sum (whether or not the sum is payable by instalments)."*

Judgments Act 1839