

A Litigator's Guide to...

Injunctions



An injunction is a type of remedy that can be useful in a variety of situations, particularly when damages is not a suitable remedy.

In this guide, we will give you some information about when an injunction might be appropriate and the approach of the courts when considering an application.

Why Apply For An Injunction?

An injunction is designed as a protective measure to restrain certain behaviours, such as to prevent loss or damage of reputation or assets, or safeguard business or personal interests.

Example of where they might be used include to:

- Stop a current or ex-employee from breaching restrictive covenants including poaching clients or staff
- Prevent misuse of confidential information or trade secrets
- Address ongoing breaches of contract
- Stop any infringement of intellectual property rights
- Freeze assets

Commonly, injunctions are framed in the negative, so as to prevent someone from doing an unlawful act, but in some circumstances positive injunctions can be sought.

Where the matter is urgent, clients can apply for an interim injunction. It is rare in commercial scenarios to wait until trial to ask for an injunction because, by then, the damage has been done. The court can then grant an interim injunction to be in force for a specified period of time or pending a final remedy at the trial.

When Will A Court Award An Interim Injunction?

An injunction is an entirely discretionary remedy and a Judge has wide authority whether or not to grant relief in a specific case. It is, by its nature, a draconian remedy: a court is ordering a party not to do something without first holding a trial. Therefore, a Judge will not grant an injunction lightly.

The courts will examine the specific facts of the case and the grounds of the application. The benchmark is whether it is 'just and convenient' to grant the injunction and that assessment will include considering the following:

- Does the underlying case have sufficient merit? Interim applications will be prepared quickly and without the luxury of methodically building an evidential case. Judges appreciate that and will not in any event wish to conduct a mini-

trial, but will still expect there to be sufficient information to show the underlying case has some prospect of success

- Would damages be an inadequate remedy? This will need to be answered in the affirmative. If the situation could be remedied by payment of compensation, the court is unlikely to award an injunction
- How quickly has the innocent party acted? Delay can be fatal to a injunction application.
- Where does the balance of convenience lie? The court must be convinced that there is more likelihood of inconvenience or damage for the applicant without an injunction than there would be for a respondent if it was granted.

Practical Considerations

It is rarely straightforward for a client when deciding whether or not to seek an injunction, even if the unlawful action is stark and damaging. The client will naturally want assurances there is sufficient merit to an application, though the discretionary nature of the remedy means there will very often be a degree of uncertainty.

It is not a cheap process. A lot of work will need to be carried out and quickly to prepare an application with supporting evidence and to prepare for an application hearing.

An applicant will need to give a 'cross-undertaking in damages' meaning that, if a court later found the injunction was unwarranted, they would need to agree to pay the injunctioned party damages to compensate them for any loss.

Steps Before An Injunction

Unless absolute secrecy or urgency is required, in most cases the first course of action should be to send an urgent 'cease and desist' letter to the other party. In practice, this is often sufficient to address the problem and does, in the vast majority of cases, avoid the need for a full injunction application.

The letter will usually:

- Explain the basis for the legal claim
- Detail what you require from the other party to rectify the situation. Primarily this will be an agreement to cease the infringing act immediately. However, you may require other action, such as information regarding the scale of the breaches or delivery up of confidential information
- State that you will pursue an application for an injunction if the matter is not resolved
- Give the other side a clear and urgent deadline to respond

How We Can Help

In situations where there is an urgent and ongoing threat to a business, we can help clients consider all of their options and how best to resolve the situation.

We encourage our business partners to reach out to us. We are always happy to speak informally in the first instance and help where we can. Our fee structures are transparent, and we offer a high level of service from our experienced team. So, please get in touch if you would like our help.

Contact Details

Daniel Scarrott | **Senior Associate**
Loney Stewart Holland LLP
07726 677 250
dscarrott@loneystewartholland.co.uk

Alistair Stewart | **Partner**
Loney Stewart Holland LLP
07869 435226
astewart@loneystewartholland.co.uk