

CLAIMS AGAINST ABUSERS

Advantages:

- More satisfying
- Higher damages?
- Less liability issues
- Less limitation problems

Disadvantages:

- More stressful
- Less likely to settle
- Conflict of interests if more than one client
- Wealth / Enforcement

Identifying defendant's wealth

- Land
- Pension
- Debts to him
- Investments
- Savings
- Chattels

Sources of information:

- Client
- Media
- Land Registry but register will not show constructive or resulting trusts
- Estate agent
- Private investigator
- Police
- Defendant

Incentives to co-operate:

- Leaving defendant with something
- Parole – Parole Board's primary role is to protect public by risk assessing prisoners to decide whether or not they can safely be released into the community. Victim entitled to make written representations
- Confidentiality
- Finality

Preserving defendant's wealth

- Undertaking
- Surveillance
- Freezing injunction –
 - Only in High Court
 - Must show: (a) strong prima facie case, (b) assets & (c) real risk of dissipation
 - Gives no priority
 - Sanctions for breach
- Land Registry –
 - Notice – S.32 Land Registration Act 2002. Gives no priority unless the interest in land it protects is valid (it will not be as potential creditors have no interest in the estate). A unilateral notice may be entered without consent of the proprietor. Applicant is not required to satisfy registrar that claim is valid and application does not need to be supported by evidence. Registrar will check that interest claimed is of a type that may be protected. Proprietor not notified until after notice entered and can then apply to cancel notice and require justification.

- Restriction – S.40 LRA 2002. Prevents further dispositions being entered on the register. Unless can show sufficient interest in the estate, must have proprietor's consent. If have freezing order can apply for restriction.
- S. 77 LRA 2002 – right of action for breach of statutory duty against anyone who applies for a notice or restriction without reasonable cause. The right is in favour of any person who suffers damage as a consequence.
- Registered charge.
- See generally HM Land Registry Practice Guide 19.

Enforcement

- Tribunals, Courts and Enforcement Act 2007 – mostly not yet in force.
- Information from judgment debtor – CPR 71 – can apply without notice, can require debtor to attend and answer questions and produce documents. If debtor fails to attend/co-operate can apply to commit.
- Execution against goods – enforcement officer will seize sufficient goods at specified property to satisfy judgment. Cannot take tools or vehicles necessary for work or furniture etc necessary for basic domestic needs of debtor and family. Goods will be sold at public auction.
- Third party debt order – where debt is owed by eg bank.
- Attachment of earnings – order can only be made if debtor has failed to make required payments. Court will consider income and outgoings and fix payment rate.
- Charging order – this secures judgment debt, but does not produce funds.
- Order for possession and sale – requires fresh proceedings. If multiple owners, court will have regard to intentions behind the trust, welfare of occupying children and interests of creditors.
- Insolvency –
 - Trustee appointed
 - All debts payable
 - Preference / under value – Trustee in bankruptcy can apply to set aside transactions at an undervalue or preferences. Transaction must have been within 2 years of bankruptcy (5 years if insolvent at the time of transaction) unless can show intentions was to put asset out of reach of creditors.
- Costs protected defendant:
 - S.11 Access to Justice Act 1999 – any costs ordered against individual must not exceed what is a reasonable sum for individual to pay having regard to all circumstances including financial resources of all the parties to the proceedings and their conduct in connection with the dispute.
 - Unless they have competing interests, assisted party's partner's resources are treated as resources of assisted party.
 - First £100k of value of assisted party's home is ignored. But is it his home?

- Only applies to period during which defendant publicly funded.
- Costs against LSC – at first instance only if assisted party instituted proceedings against an individual who will suffer hardship if order is not made. On appeal, non-assisted party just needs to win and show just and equitable to be paid out of public funds.

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