

Enforcement of Financial Orders

If one spouse is being obstructive, what are your legal and practical options when trying to enforce an order for sale of the family home (or enforce generally)?

What lengths do you go to?

Martin Ward & Mandy Tanner

28 June 2018



Getting it right from the start...

- The importance of getting the draft order right in the first place
- Get the detail in the order e.g. identity of estate agent and conveyancing solicitor, marketing price etc
- Maintenance of the property pending sale
- Issues relating to leases/licence
- Prompt application for DA

But if you do need to enforce...

- Part 33 of the FPR 2010 which sets out the various forms of enforcement.
 - Application with statement
 - Specify the method of enforcement or such method as the court thinks appropriate
- Part 37 (enforcement by way of judgment summons), Part 39 (attachment of earnings), Part 40 (charging order/stop order), Part 69 to 72, 81 and 83 to 84 CPR
- Liberty to apply provision

Obstruction to a sale

- Altering who has conduct of the sale
- Possession orders
- Appointment of a receiver
- Mandatory injunction
- Seeking for the court to sign orders on behalf of a party
- Dealing with contents and home clearances

Breach of an undertaking

- A good idea to back an undertaking with an order for sale in the first instance
- If that wasn't done, there are two possible routes:
 - (a) Committal;
 - (b) s24A of the MCA 1973

Committal

- Perhaps a weapon of last resort and a not particularly helpful one at that!
- Part 18 procedure
- Evidence of each and every breach needs to be in the application form
- The other side cannot be compelled to respond
- Warrant for arrest

Securing release from matrimonial home rights

- Importance of applying promptly for DA
- Court order can terminate rights
- Form HR4

Implementing these options

- Strong evidence of obstruction needed
- Witness evidence but also evidence from a third party is very helpful i.e. the estate agent, the mortgage provider if there is something regarding best endeavours

What if the property is abroad?

- An order for sale of a property is an order in personam (against a person) rather than an order in rem (against an asset)
- Options
 - (a) Offsetting against assets in this jurisdiction – see *Amin v Amin* [2017] EWCA Civ 114
 - (b) Restrictions on properties abroad
 - (c) Penal methods against litigants who re-enter this jurisdiction
 - (d) Mirror orders (though expensive and so not often practical)

What lengths do you go to?

- Essential to be proportionate
- Tailor the application to the issue
- Ensure that multiple steps have been taken and can be evidenced prior to going to court
- Personal judgment in enforcement applications is key