

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL  
BY DEPUTY M.R. HIGGINS OF ST. HELIER  
ANSWER TO BE TABLED ON TUESDAY 10th SEPTEMBER 2019**

### Question

Will H.M. Attorney General advise members of the different types of injunction that can be imposed by Jersey Courts, including their scope and duration, and whether he is aware of any differences between those which can be made in Jersey and those in the United Kingdom; and will he also explain the role of the plaintiff's and defendant's advocates in the injunction process and whether or not their submissions are made public?

### Answer

#### Injunctions

An injunction is granted when the Court requires the respondent to the application to do or refrain from doing something. Non-compliance with a court ordered injunction is a contempt of court.

Injunctions can be made on an interim or final basis. It will depend on the circumstances of the relief sought. Where the injunction is interlocutory and it is ancillary to an action, the injunction will remain in force until the substantive matter is concluded at trial. Otherwise the injunction will remain in force for a period specified by the Court, which may be permanent (with liberty to apply to lift or vary the order).

The Question asks for advice on the "types of injunction" that can be imposed by Jersey courts. In essence there are injunctions which require the respondent to do something and those which require the respondent to refrain from doing something. The subject matter of injunctions varies widely. An injunction may be an interim order preventing someone from dealing with their property pending the resolution of other matters, such as a freezing injunction preventing someone from dissipating or removing from the jurisdiction assets because to do so would deny a Plaintiff the fruits of his or her claim if successful, or a caveat which a creditor may apply for to prevent a debtor from selling his or her immovable property. Injunctions can be of a personal nature eg preventing a person from visiting certain premises, using violence against another, taking a minor out of Jersey or being in the vicinity of a person or class of persons.

#### Court Jurisdiction

The Royal Court has discretion, under its inherent jurisdiction, to grant an application for an injunction if it appears just and equitable to do so: this discretion is at least as wide as that enjoyed by the English High Court.

It is no longer strictly necessary to have a substantive cause of action under Jersey law when seeking an injunction; there is jurisdiction to grant injunctions where substantive rights in questions are subject to litigation elsewhere but there are assets in Jersey. Indeed, given the international character of Jersey's finance industry, often the Court may be asked to grant freezing injunctions over assets held in Jersey in aid of proceedings overseas.

There is also a statutory jurisdiction to assist foreign jurisdictions regarding insolvent persons and the Court may "exercise, in relation to the matters to which the request relates, any jurisdiction which it or the requesting court could exercise in relation to these matters if they otherwise fell within its jurisdiction" (Article 49 of the Bankruptcy (Désastre) (Jersey) Law 1990). Therefore injunctions can be granted to aid the foreign insolvency pursuant to a request for assistance.

## Power of Arrest

The Powers of Arrest (Injunctions) (Jersey) Law 1998 (“**the 1998 Law**”) applies in limited circumstances i.e. where an injunction contains a provision:

- a) restraining a person from using violence against or molesting another;
- b) excluding a person from specified premises or from a specified area; or
- c) restraining a person from taking out of Jersey a person who has not attained the age of majority.

In such circumstances, the 1998 Law empowers the Court to attach a power of arrest to the injunction if it considers it necessary to do so for the protection of any person referred to in the injunction, and the Court shall specify the period for which the power has effect. If the Viscount or a police officer has reasonable cause to suspect that a respondent to an injunction has acted, or is acting, or is about to act in breach of the injunction then the person may be arrested without warrant. Where a power of arrest is not attached to an injunction to which the 1998 Law applies or has ceased to have effect, the Bailiff may, if satisfied by information on oath that a person named in the injunction is in breach of it, issue a warrant for the person’s arrest, which may be executed by the Viscount or any police officer. A person arrested under the 1998 Law shall be brought before the Court as soon as may be after the person’s arrest and shall not be released except by direction of the Court.

## Publicity

The question asks if the submissions of the lawyer “are made public?” Written legal submissions are generally not “made public”. Oral submissions, however, are generally made in open court and may then be reported to the public. As has already been said, applications for injunctions are often made without notice to the respondent and in Chambers, so at that stage the matter would not be heard in public. However, the matter may also be dealt with at the first instance at a hearing at which all persons are present, and even if dealt with in Chambers ex parte first would then be considered at such a hearing in any event. This hearing would be in public unless there were exceptional reasons justifying the matter being heard in private. It is only in exceptional circumstances that the Court places reporting restrictions preventing reporting what submissions were made and, even if restrictions prevented names and other identifying features from being reported, this would not generally prevent the arguments being reported.