

Snapshot: pre-action disclosure in Guernsey

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Unlike in England, pre-trial disclosure against a third party is generally not available in Guernsey. However, there are exceptions to this rule. The main exceptions are:

Personal injury/ fatal accidents

In claims for personal injury or in respect of a person's death, an application may be made to court to obtain an order for disclosure against any person who appears to be a likely party to the proceedings or has/ has had any documents in their control which are relevant to an issue in the cause of action.

Ancillary order to a freezing injunction

In the course of granting an order in a freezing injunction, the Guernsey court commonly makes ancillary orders that the defendant is to produce a verified statement disclosing all of its assets with supporting documents and to answer to specific questions posed.

This is done with the aim of preventing abuse. Without a disclosure order, the freezing injunction would be toothless as the funds could be moved internationally instantly and may be difficult to trace.

Anton Piller Orders

An Anton Piller Order gives the applicant powers to enter upon, inspect and seize property, including documentary materials which are relevant to a prospective claim.

These orders are rare, due to their infringement of the rights to privacy and property, amongst others. They are in practice granted only where there is robust incriminating evidence and in the context of intellectual property law infringements and cybercrime.

Norwich Pharmacal Orders

A disclosure order may also be made where court proceedings cannot commence because the

identity of a wrongdoer or sufficient particulars of a wrongdoing are unknown to the applicant.

An order of this nature will only be granted in circumstances where there is some evidence of wrongdoing, the need for urgency and clear grounds for the order, amongst other requirements.

Bankers Trust Orders

While Norwich Pharmacal orders aim to uncover evidence where a wrongdoing has occurred, Bankers Trust Orders are more specific as they seek to allow an applicant to trace his assets before they are dissipated by the defendant pending litigation involving those assets.

Bankers Trust Orders are not common since a high standard of proof is required, including the presence of fraud and the need for urgency.

Pre-action disclosure of documents and information is a powerful tool and the availability of it in Guernsey is greatly restricted. However, with the correct evidence and by following the appropriate procedures, an applicant may be successful in obtaining an order for pre-action disclosure in the exceptional categories mentioned above.

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