

PANNONE

SEARCH ORDERS

Immediate action

If you have been served with a search order, you will have usually up to two hours to obtain legal advice. If this period has not been offered to you, you must ask the supervising solicitor for it.

Once we have seen a copy of the search order, we will advise you in detail on its precise terms. In the meantime, the purpose of this note is to make you aware of the immediately important issues which are common to most search orders.

You are entitled to withhold documents or information if there is a risk that the document or information might incriminate you in any criminal proceedings. This is called privilege against self-incrimination and should have already been explained to you when you were given the search order. During the two hour period you should try to identify and gather together any documents or material which might be subject to this privilege.

What is a search order?

If you have been served with a search order (also referred to as a search and seize order) it means that the party who obtained the order (called the claimant) has probably persuaded the court that there is a dispute with you and a legitimate fear that evidence may be removed from your premises or destroyed by you. Or, it might be that you are thought to have documents or material relevant to a dispute between other parties.

A search order allows the claimant's representative to search your premises and take or copy evidence ie documents, computer records or other materials named in the search order.

The main purpose behind the court granting the order is to preserve the position between parties that are in dispute until their respective rights have been determined at trial.

You were not given any notice of the hearing at which the order was made. Court hearings in relation to search orders (when first made) are always in private and without notice. If notice was given, this would alert a respondent to the application and therefore, from the claimant's point of view, defeat the purpose of the search order sought.

Alternative orders

We assume in this note that you have been served with a search order, and not a similar order which may have different consequences.

An alternative order could be a "doorstep" order which only requires you to hand over material to the claimant's representative. It does not require you to allow access to your premises. The terms of the order should have been explained to you by the person serving it and it is vital that we establish whether you have received a different order. If it is a search order it should be described as this on the face of the document.

Effect of a search order

The precise effect of the order in your possession will be determined by its exact wording. We will advise you in detail in relation to its full terms as soon as possible.

Broadly, a search order requires you to allow the claimant's representative to enter your premises, search for, copy and remove evidence.

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The search

There are certain procedural requirements and duties owed by the claimant's solicitor(s) which apply to the carrying out of all search orders, as follows:

The search will take place by the claimant solicitor's team searching for, inspecting, taking photocopies of and removing the items and documents which are listed in the search order. This will usually include paper documents, computer records and tangible goods.

You will be required to allow a number of people onto your premises (all of whom should be named in the order):

- The claimant's solicitor and legal team who will conduct the search.
- A representative of the claimant may also be present. The claimant will not usually be present.
- The "supervising solicitor" and his or her team. The supervising solicitor should have served you with the order. The supervising solicitor is an independent solicitor (ie who is not acting for any party involved in the dispute) who is appointed to ensure that the search is carried out correctly and try to resolve any issues that arise during the search. The supervising solicitor will decide whether any documents are subject to privilege against self-incrimination and will therefore be excluded from the search.
- Computer forensic experts. If the order allows a search of your computer records, an expert should accompany the search team to deal with this aspect of the search. The claimant cannot search your computer records without this expertise so as to avoid any damage to your computer systems. If computer records are to be searched, you must allow access to your computers

and normally handover passwords so that the items listed in the order can be accessed and printed out.

The order will specify the exact premises that are to be searched. This will often include giving access to your vehicles and areas such as garages or lofts.

The supervising solicitor will make a list of all materials which are to be removed and give you a copy of this list. You will be able to check this list before the items are removed. The claimant's solicitors will usually take any material removed and is obliged to keep it safely. The claimant's solicitors should take out additional insurance where appropriate.

A search will usually only be permitted between 9:30am and 5:30pm.

If there are any women present at your premises (including yourself), at least one person in the search team needs to be female also.

If there are any locked drawers or cabinets, you must provide keys or let them be removed.

The search has to be undertaken respectfully. Keep a note of which rooms are being searched and if there is any damage make an immediate note and take photographs if possible.

The order will probably provide that if the claimant's solicitor and team have to leave the premises that they should be allowed entry again later that day (if before 5:30pm) or the following day.

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Damages

In order to obtain the search order, the claimant will have given an undertaking (or promise) to the court to compensate you (or a third party in some circumstances) if the terms of the order have caused you to suffer financially.

Failing to comply with the order

A search order does not permit the claimant's representative to force entry to your premises.

However, if you fail to comply with the order, you will be guilty of contempt of court. The penalty for contempt of court can be imprisonment or a significant fine.

Next steps

The documents that are removed should be copied by the claimant's solicitors and returned to you (or us) in 2 days.

Any documents or materials taken can only be used in relation to the claim made, unless the court orders otherwise.

The supervising solicitor will prepare a report for the court.

There will be a second hearing which you will be notified of and at which you will be able to challenge the search order and put forward your case. The claimant will also be heard again. At this hearing, the court will decide if the search order (as a whole or any part of it) should be allowed to continue.

Should you have any questions please contact your usual Pannone contact or: Louise Brace, Senior Associate, Dispute Resolution, tel 0161 909 1578 or email: louise.brace@pannone.co.uk.

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