

# PANNONE

## SEARCH ORDER TEAM

The Search Order team at Pannone has extensive experience in acting as supervising solicitor in search order cases. The team is regularly instructed by London, regional and boutique law firms. We offer expert advice and professional assistance on all aspects of search order procedure.

We are able to assemble a team at very short notice. We oversee the execution of single or multi-site searches across the country including business and domestic premises. Our wide ranging experience means that we are able to assist the Claimant's solicitors in their consideration of the critical, technical and practical search order requirements when applying to the court, without compromising our independence.

We have standard documentation ready to file at court on short notice, such as affidavits and CVs setting out our capabilities. Our vast experience means we are well placed to deal with the legal and practical issues which can develop during the course of a search. In addition, our team has experience of applying for and responding to search orders.

We are transparent about our pricing and our rates are extremely competitive. We provide detailed budgets upon appointment and we can agree fixed fees or blended rates in most cases. We have excellent relationships with forensic experts who are experienced in dealing with computer imaging pursuant to search orders.



**Paul Jonson**  
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Paul joined Pannone in 2004 as a partner in the Dispute Resolution Group following periods at Osborne Clarke and Pinsent Curtis (now Pinsent Masons). Paul's practice area includes advising a wide range of clients on claims involving fraud and dissipation of assets. Paul is regularly instructed by clients (both Claimant and Defendant)

in freezing order and search and seize applications and has acted as supervising solicitor in three search and seize orders in the last 18 months or so. Chambers UK Guide 2009 refers to Paul as 'thorough, persistent, knowledgeable and focussed'. Paul leads the Pannone Search Order team and has presented three recent seminars on search orders to a range of people. In 2010 Paul acted for a Defendant who was served with a search order. In September 2010 Paul was appointed Head of the Dispute Resolution Group and has recently been appointed as a Deputy District Judge and will sit during 2011.



**David Brown**  
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David is a partner in the Dispute Resolution Group. He joined Pannone in 2004 from national firm Hammonds. David regularly acts for clients bringing and defending injunction proceedings and has experience of assisting the supervision of a search order on business and residential premises. In 2010 David Brown was appointed by the court to act as the supervising solicitor in respect of a delivery up order which was served on commercial premises in Birmingham. This search raised difficult issues involving the privilege against self incrimination.



**Melanie McGuirk**  
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Melanie is a partner in the IP & Media team, and specialises in the resolution of contentious intellectual property disputes. Melanie's first appointment as a supervising solicitor was in 2007, in respect of a search order which required overseeing searches at both the Defendants'

commercial and residential premises in a claim involving the theft of confidential information. Melanie recently acted as the supervising solicitor in respect of a "doorstep" delivery up order, which required her to serve and supervise the order at two separate residential premises in one day. Melanie has also acted as the assistant to the supervising solicitor in four further cases, one of which lasted in excess of 3 weeks and where the supervising solicitors' team carried out the search, and most latterly in 2010 in a search which involved difficult questions relating to the privilege against self incrimination and when this is waived by the defendant.



**James Thackray**  
Partner

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James is a partner in  
the Dispute Resolution

Group at Pannone having joined Pannone from Herbert Smith in 2005. James has assisted on several search orders and has been the named supervising solicitor on four different orders. This experience has included a one day search of a business (who were alleged to have commercially sensitive information), a three week search of the commercial premises of a business (who were alleged to have carried out a substantial fraud), a one day search of business premises (the Defendants were facing insolvency proceedings) and a one day search of domestic premises. James has recently presented a seminar on search orders. During 2010 James acted in two separate cases for Respondents who were served with search orders. In May 2011 James was the named supervising solicitor on a search order which was served on Respondents in domestic premises.

## Aspect Capital Ltd v Christensen [2010] EWHC 744 (Ch)

A company, suspecting a former employee of removing confidential information, employed a forensic computer expert who reported that large quantities of confidential data and information had been sent from the employee's computer to personal email accounts. The Company thus obtained a search order allowing its search party to access various documents that might have been in the employee's possession.

During the search the employee:

- Dishonestly denied taking any of the Company's confidential information;
- Deliberately attempted to interfere with the contents of his computer and put it beyond reach by triggering an encryption program which he thereafter dishonestly claimed he did not know how to release;
- Deliberately concealed the existence of a hard drive and thumb drive;
- Initially failed to reveal the password for an email account, from which he had then deliberately procured his friend to delete emails, before he revealed the password; and
- Swore a perjured affidavit in purported compliance with the search order having deliberately overwritten two thumb drives, thus destroying further evidence.

The court found the employee to be in contempt of court. In sentencing the court considered that the employee's contempts had serious consequences for the company and were deliberate, his lies on affidavit were also deliberate and designed to cover up wrongdoing, meaning the degree of culpability was high and he still did not appreciate the seriousness of the breaches. On the other hand, some of the employee's contempts were temporary, he had been co-operating to some extent, his admission had been at a relatively early stage, he had apologised to the company and court and he had been of previous good character. Nevertheless, the court was compelled to sentence the employee to three months imprisonment which would be suspended for 18 months. The case highlights the duty on parties to assist with a search order and the potentially draconian consequences of a failure to do so.

## Linsen International Ltd and another v Humpuss Sea Transport Pte Ltd and another [2010] EWHC 303 (Comm).

The Defendants sought to set aside a worldwide freezing order for \$89,569,290.79 on the grounds that either there had been a failure to make full and frank disclosure of all material facts and circumstances (by the Claimants failing to refer to the existence and content of without prejudice discussions which took place two days before the application), or alternatively, there was no real risk of the dissipation of assets. Alternatively, it sought to lower the amount of the freezing order.

Clarke J, having examined the authorities, confirmed that he was not prepared to depart from the basic rule that the existence or content of without prejudice communications should not be disclosed unless there is a good reason for doing so, which would include the risk that the court may be misled. In the circumstances, Clarke J did not feel the existence or content of the without prejudice discussions materially altered the facts of the case so that it fell within the obligation of full and frank disclosure. Clarke J referred to the fact that no agreement had been reached, no offer made capable of acceptance nor security offered to justify departing from the basic rule of public policy that without prejudice discussions should be withheld from the court.

Clarke J also held that the worldwide freezing order would continue as there remained a real risk of the dissipation of

assets. Whilst acknowledging that the existence and merit of a defence can have some bearing on the court's approach, Clarke J concentrated on the issue of whether in fact there was a real risk of dissipation. Clarke J agreed that there remained a real risk based on (1) the historical performance of the Defendants failing to fulfil their obligations under the contracts and (2) evidence that the Defendant companies were transferring assets and/or restructuring companies with a view to evading a claim and putting assets out of reach of the Claimant. This included evidence from a former CEO of one of the Defendant companies that the Defendants were diverting income from proper recipients, transferring assets and had encouraged him to transfer assets to evade the claim.

Clarke J reduced the amount of the freezing order to \$75,000,000. Clarke J accepted that it was not appropriate to ignore the fact that during the without prejudice negotiations the Claimants had expressed a willingness to accept lesser amounts but that the purpose of the freezing order was to reflect the highest figure the claimant expected to recover on a good arguable case, together with costs.

The case reiterates the importance of considering the nature and effect of all communications and correspondence, including without prejudice communications, as part of the applicant's obligation to ensure a full and frank disclosure of all material facts and circumstances. It also confirms the court will look at whether in fact there is a real risk of the dissipation of assets rather than whether this is more or less likely to occur.