

Notes on Interveners in Financial Remedy Proceedings

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These notes are not intended to constitute as legal advice in respect of every case, the facts of each matter will need to be carefully considered.

It is good practice to consider relevant third-party interests from the outset of a case and take full instructions as to potential interests.

Procedure

a. Family Procedure Rules 2010

i. 9.26B:

Under what circumstances?

- if it is desirable to add the new party so that the court can resolve all matters in dispute in the proceedings, or
- there is an issue involving the third party and an existing party that is connected to the matters in dispute in the proceedings and it is desirable to add the third party so that the court can resolve the issue.

Cases in which it may be desirable to join a third party to the proceedings include where:

- there are complex issues arising from trust assets and it may be appropriate to join trustee(s) to the proceedings
- it has been asserted that a third party (often a family member) has an interest in property or assets, whether by that person or by one of the existing parties to the proceedings
- a party to the proceedings asserts that the other party has an interest in an asset in the name of a third party
- there are complex business assets and a third party, or one of the existing parties to the proceedings, asserts that the third party has an interest in the said assets

iii. 9.26B (4)

The power of the court to direct that a party be added or removed may be exercised:

- at any point in proceedings
- on the court's own initiative
- on the application of an existing party, or
- on the application of a person or body who wishes to become a party

iv. Applying for order to join/remove?

How is it done?

- Part 18 procedure
- Form D11
- Supported by evidence
- Notice of at least seven days

v. Who is responsible for joining a third party?

Fisher Meredith v JH and PH (financial remedy: appeal: wasted costs) [2012] EWHC 408 (Fam), [2012] 2 FLR 536 – focused on two types of case

- a. where a party asserts that the other party has an interest in an asset that is in the name of a third party, or
- b. where a party asserts that property to which they are legally entitled is in fact beneficially owned by a third party

Mostyn J said that in the first scenario it is for the party so asserting to seek to join the third party. In the second scenario, the onus is on the party asserting that the property is beneficially owned by a third party or for that third party to apply for joinder.

b. *TL v ML and Others (Ancillary Relief: Claim Against Assets of Extended Family)* [2005] EWHC 2860 (Fam)

- the third party should be joined to the proceedings at the earliest opportunity
- directions should be given for the issue to be fully pleaded by points of claim and points of defence
- separate witness statements should be directed in relation to the dispute, and
- the dispute should be directed to be heard separately as a preliminary issue, before the financial dispute resolution appointment

However, this was slightly tempered by Munby J, as he then was, in *A v A* [2007] EWHC 99 (Fam) who stated that the appropriate directions to be given will depend on the circumstances of the case.

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