

This guidance is tailored specifically for official receivers. It is discretionary and not designed for use by third parties. This version was the most up to date guidance available to official receivers as at 10 March 2020.

19. Co-operation, non co-operation and enforcement of duty to co-operate

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Introduction

19.1 The general problem of non co-operation

Non co-operation by company officers, partners and bankrupts can be a problem for official receivers. Examples of non co-operation may include failure or refusal to attend for interview, failure or refusal to deliver up records or assets and failure or refusal to provide information and documents such as accounts, a Preliminary Information Questionnaire or other documents required by the official receiver.

19.2 Initial steps to secure co-operation

The official receiver should take all reasonable steps to secure the co-operation of the company officer, partner or bankrupt. Initially, the official receiver should send a formal written warning to the person concerned advising them of the legal position as regards co-operation with the official receiver and take such further action as necessary to warn the non-cooperative party of their responsibilities and the consequences of non co-operation.

Where after such a warning there is continued non co-operation, the official receiver must consider what formal action is necessary. The various methods of enforcing co-operation are detailed in later in this chapter.

19.3 Recording information on the case file

Details of the non co-operation must be recorded as part of the case assessment, with details of action already taken and proposed further action to be taken to enforce co-operation, being noted on case file in the appropriate place.

Where non co-operation takes place or continues after the completion of the initial case assessment, this should be recorded on the Compliance tab notes together with details of any enforcement action taken.

19.4 Non surrender of company officers, partners or bankrupts

There may be occasions when a company officer, partner or the bankrupt fail to attend for interview when directed to do so, or when it has been agreed that they should attend. In such cases the official receiver must in general take action to ensure the attendance and co-operation of officers, partners or bankrupts, while allowing for the possibility of error or unavoidable absence.

The official receiver must:

- attempt immediately to contact the officer, partner or bankrupt and arrange a further appointment
- if the officer, partner or bankrupt cannot be contacted, or a second appointment is missed, send a formal written warning to the person(s) concerned advising them of the legal position as regards co-operation with the official receiver. If needs be, a third attempt must be made to arrange an appointment
- take such further action, as appropriate, including an inspection or hand delivery of an appointment letter, to contact the officer, partner or bankrupt to warn them of their responsibilities and the consequences of their failure to attend. Any contact made under such circumstances can be demonstrated to the court at public examination to show that the respondent is aware of the proceedings

Such action may include public examination (see chapter 20), application for a court order, the issue of a warrant or suspension of the bankrupt's discharge (see chapter 47).

19.5 Illness

Where illness is given as a reason to postpone or cancel interviews on more than one occasion, a medical certificate should be requested. If the postponement/cancellation can be justified in the short term, other methods of obtaining the information should be considered, such as a home visit, telephone interview or use of questionnaires sent via the post or email.

19.6 When enforcement procedures are appropriate

The official receiver should ensure that any enforcement action taken is justified by the substance of the matters at issue, for example in respect of assets unaccounted for. Action taken should be proportionate to the seriousness of the consequences of the non co-operation.

The intention in any enforcement procedures should be to obtain a positive, rather than simply a "tidy" conclusion to a case. A basic principle of the enforcement procedures which involve an application to the court is that any such application will be taken to a logical conclusion, potentially including committal proceedings for contempt where an order of the court is ignored.

19.7 Action taken by official receiver must be reasonable

If enforcement action is taken by the official receiver, they should remember that the obligation to co-operate with them is subject to two qualifications:

- that the requirement which has not been complied with was reasonably required by the official receiver, and
- that the person concerned had no reasonable excuse for failing to comply

The official receiver must therefore ensure that their request for action by, or information from, the person concerned was reasonable in all the circumstances. They should also seek a reason for the non co-operation and, if a reason is given, consider its validity before deciding how to proceed^{1,2}.

1. Section 235(2)

2. Section 291

Persons required to co-operate in liquidation

19.8 Duty of co-operation in a liquidation

Where a winding-up order has been made, each of the persons mentioned below has a statutory duty to give to the official receiver such information as they may reasonably require concerning the company and its promotion, formation, business, dealings, affairs or property and to attend any meetings as the official receiver may reasonably require¹;

- past and present officers of the company
- those who have taken part in the formation of the company at any time within one year before the date on which the company entered liquidation

- those who are in the employment of the company, or have been in its employment (including employment under a contract for services) within that year, and are in the official receiver's opinion capable of giving information which they require
- those who are, or have within that year been, officers of, or in the employment (including employment under a contract for services) of another company which is, or within that year was, an officer of the company in question, and
- any person who has acted as liquidator, administrator or administrative receiver of the company

An officer of a company may also be required to submit a statement of affairs, and/or other accounts².

1. Section 235(3)

2. Section 131

19.9 Consequences of a failure to co-operate-companies

A failure to co-operate by a company officer constitutes a criminal offence for which they may be prosecuted but does not immediately place them in contempt of court. Such conduct may also be taken into account in disqualification proceedings.

If a person fails to comply with an obligation imposed by the official receiver under the Act without reasonable excuse, they are liable to a fine and, for continued contravention, a daily default fine¹.

If a person, without reasonable excuse, fails to submit a statement of affairs, they are liable to a fine, and, for continued contravention, a daily default fine.²

Only in exceptional circumstances would a company officer be prosecuted solely upon the grounds of their failure to comply with their duties under the Act³ (see paragraph

19.86). The official receiver will normally seek other means of enforcement as described elsewhere in this chapter, and consider a prosecution only after such other action has proved unsuccessful.

Failure to co-operate with the official receiver is also a matter which may be included in a disqualification report, but again it is only in exceptional cases that a report should be submitted if this is the sole matter of unfitness.

1. Section 235(5)

2. Section 131(7)

3. Schedule 10

19.10 Enforcement action - company officers

In company cases the official receiver should be aware that the Court may only consider an application for the public examination where the official receiver intends to question that officer before the court. If the official receiver simply wishes to enforce co-operation, and does not intend to question them before the court, then subject to the paragraph below they should apply to the court for an order specifying the action to be done or the information to be provided (see paragraph 19.35) ¹.

Company officers may be deterred from non co-operation by the knowledge that the court will either summon them to appear before it for examination or order them to comply. In some cases a letter drawing the officer's attention in detail to the possible consequences of their failure to co-operate may be sufficient to encourage co-operation.

1. (Re Wallace Smith Trust Co Ltd [1992] BCC 707)

19.11 Other persons required to co-operate - liquidation

It is usual for the official receiver to approach third parties such as accountants or solicitors to obtain information about the company in liquidation. Generally such information will be provided although there may often be delays in its production.

If there are unreasonable delays in the provision of information the official receiver may apply to the court for the private examination of the party concerned.¹ A letter should first be sent drawing the person's attention to their obligations under the Act and the procedures and possible consequences of a private examination. If the court considers that the examination was made necessary because information was unjustifiably withheld by the respondent, they can be ordered to pay the costs of the examination². Often the prospect of a private examination is enough to encourage the production of the information requested.²

1. Section 236

2. Rule 12.22(1)

19.12 Delivery of property and books to liquidator

The official receiver, as liquidator¹, may require a person forthwith to pay, deliver, convey, surrender or transfer to the official receiver property, books, papers or records in their possession or control, to which the company appears entitled.²

Any person on whom such a requirement is imposed by the liquidator shall, without avoidable delay, comply with it.³

Where a lien or charge is claimed see chapter 12. Liens are also dealt with in chapter 16 as is the treatment of accountants' working files. Where legal professional privilege (LPP) is claimed see chapter 22, which also provides guidance on disclosure.

1. Section 234(2)

2. Rule 7.78(1)

3. Rule 7.78(2)

19.13 Duty to co-operate in provisional liquidations

The relevant provisions of the Act ^{1 2 3} [Sections 234, 235 and 236] as referred to above also apply where a provisional liquidator is appointed.

During a provisional liquidation, the official receiver may require the submission of a statement of affairs⁴.

The functions and the powers of a provisional liquidator may be defined and limited by the court appointing them⁵.

1. Section 234

2. Section 235

3. Section 236

4. Section 131(1)

5. Section 135(4)(5)

Duty of co-operation -partnerships

19.14 Background and legislation

The Insolvent Partnerships Order 1994 (IPO94) applies the Insolvency Act 1986 to the winding up of partnerships subject to various modifications. These modifications depend on the mode of winding up of the partnership. See chapter 52 for more information.

Where a partnership is wound up as an unregistered company, the partners have a duty to co-operate under the provisions of the Act [section 235]. The consequences of a failure to comply are described above in the section on liquidations. Where bankruptcy orders are also made against the partners the relevant bankruptcy provisions of the Act also apply [sections 291]. The consequences of a failure to comply with these provisions are described in more detail below in the section on bankruptcy.

19.15 Consequences of a failure to co-operate - partnerships

Where the partnership was wound up as an unregistered company, the partners will be subject to the same consequences as the directors of a company as described in paragraph 19.7.

Where bankruptcy orders were also made against the partners or if the individual partners are made bankrupt and the partnership is not wound up as an unregistered company, the partners will be subject to the same consequences as other bankrupts as described in paragraph 19.19.

Where a partnership has been wound up as an unregistered company, the partners may be subject to disqualification proceedings. Failure to co-operate with the official receiver is a matter which may be included in any disqualification report prepared¹.

1. The Insolvent Partnerships Order 1994 Schedule 8

Duty of co-operation in bankruptcy

19.16 Duties to official receiver

A bankrupt has a duty to co-operate with the official receiver as follows;

The bankrupt shall give the official receiver such inventory of their estate and such other information, and shall attend on the official receiver at such times, as the official receiver may reasonably require¹;

- for a purpose of protection of the bankrupt's estate and investigation of their affairs, or
- in connection with the making of a bankruptcy restrictions order

1. Section 291(4)(a) & (b)

19.17 Duties to trustee

A bankrupt has a duty to cooperate with the trustee as follows;

The bankrupt shall¹

- give to the trustee such information as to their affairs
- shall attend on the trustee at such times, and
- do all such other things as the trustee may reasonably require for the purposes of carrying out their functions

The bankrupt is required to give notice to the trustee, if any property is acquired by or devolves upon them, or of any increase in their income, during the period of their bankruptcy².

The bankrupt is also required to deliver up to the trustee possession of any property, books, papers or other records of which they have possession or control and of which the trustee is required to take possession³.

It has been held that where the bankrupt applies unreasonable conditions to the supply of information (such as agreeing to cooperate only at particular times of the day, or by certain methods of communication), or does not take reasonable steps to overcome problems in the provision of information, this is not cooperation for the purposes of the relevant provisions⁴.

1. Section 333(1)

2. Section 333(2)

3. Section 312(1)

4. Keely v Bell [2016] EWHC 308 (Ch)

19.18 Requirement for statement of affairs and accounts

Where a bankruptcy order has been made otherwise than on a bankruptcy application, the official receiver may at any time before the discharge of the bankrupt require the bankrupt to submit to the official receiver a statement of affairs¹.

The bankrupt must, at the request of the official receiver, deliver to the official receiver accounts relating to the bankrupt's affairs of such nature, as at such date and for such period as the official receiver may specify.²

A bankrupt who carries on a business must, when required by the trustee, deliver to the trustee information about the business, showing the total of goods bought and sold and services supplied and the profit or loss arising from the business; and fuller details including accounts of the business³.

The Guide to Bankruptcy details the bankrupt's duties which are also reproduced in form NTB2 which are both sent to the bankrupt with the letter setting their first appointment.

1. Section 288,

2. Rules 10.60 to 10.61

3. Rule 10.125(5)

19.19 Consequences of a failure to co-operate - bankruptcy

A bankrupt who, without reasonable excuse, fails to comply with their legal responsibilities does not commit a criminal offence but is immediately placed in contempt of court for which they may be punished accordingly. It will, however, be only in exceptional circumstances that an application will be made for a warrant for the arrest of a bankrupt solely upon the grounds of their failure to comply with their duties. The official receiver will normally seek other means of enforcement for example public examination and consider an application for a warrant for arrest only after other action has proved unsuccessful.

19.20 Enforcement in bankruptcy cases - the bankrupt

In bankruptcy cases, the holding of a public examination (see chapter 20) may prove the most effective course for enforcing any duty of co-operation. This course should always be considered as a means of enforcing attendance upon the official receiver and/or to obtain the submission of a statement of affairs or the delivery of property or records. An uncooperative bankrupt may be deterred from non co-operation by the knowledge that they will otherwise be required to submit to an examination in court. Alternative action may include seeking court orders, seeking to suspend the bankrupt's discharge.

19.21 Other persons required to co-operate - bankruptcy

It is usual for the official receiver to approach third parties such as accountants or solicitors to obtain information about the bankrupt. Generally this information will be provided although there are often delays in its production.

If there are unreasonable delays in the provision of information the official receiver may apply to the court for the private examination¹ of the party concerned. A letter should be sent first drawing the person's attention to the provisions of the Act [section 366] and the procedures at a private examination, including the possibility of the court making an order for the respondent to pay the costs of the examination. Often, the prospect of a private examination will be enough to encourage the party concerned to provide the information².

Where a lien or charge is claimed reference should be made to chapter 12. Liens are also dealt with in chapter 10 as is the treatment of accountants' working files.

1. Section 366

2. Rule 12.22(1)

19.22 Claim of legal professional privilege

Reference should be made to chapter 22. The official receiver should also ensure that consideration is given to the impact of the decision in *Shlosberg* [2016] EWCA Civ 1138 in terms of how privileged information may be used – though this does not affect the duty to provide the information.

19.23 Obligation to surrender control to trustee

Any banker or agent of the bankrupt or any other person who holds any property of, or for, the bankrupt, shall pay or deliver to the trustee all property in their possession or under their control which forms part of the bankrupt's estate and which they are not by law entitled to retain as against the bankrupt or trustee¹.

If a person without reasonable excuse fails to comply with any obligation imposed under these provisions, they are guilty of a contempt of court and liable to be punished accordingly².

1. Section 312(3)

2. Section 312(4)

19.24 Duty of co-operation - interim receivership

Where an interim receiver has been appointed, the debtor shall give them such inventory of their property and other information, and shall attend such meetings as

the interim receiver may reasonably require for the purpose of carrying out their functions¹.

An interim receiver may also make application to the court for a private examination².

1. Section 286(5)

2. Sections 366 and 368

19.25 Duty of co-operation - deceased insolvents

The Administration of the Insolvent Estates of Deceased Persons Order 1986 extends and modifies the provisions of the Insolvency Act 1986 to the administration in bankruptcy of insolvency estates of deceased persons. Where an insolvency administration order has been made against a deceased insolvent the personal representative (for the definition of a personal representative see chapter 56) has similar duties with regard to co-operating with the official receiver as would a bankrupt. The personal representative should notify the official receiver of any assets which may be claimed by the trustee, provide the official receiver with an inventory of the estate, attend such meetings and provide information as the official receiver may reasonably require^{1,2}.

1. Administration of the Insolvent Estates of Deceased Persons Order 1986 schedule 1, part II para 17

2. Section 291

19.26 Consequences of a failure to co-operate - deceased insolvents

If the personal representative does not comply with their obligations to co-operate with the official receiver, they are guilty of a contempt of court and liable to be punished accordingly^{1,2}.

The official receiver or trustee may apply for the private examination of the personal representative. Other parties may also be privately examined³.

1. Administration of the Insolvent Estates of Deceased Persons Order 1986 schedule 1, part II paras 17 & 30

2. Section 291

3. Section 366

Contempt of court

19.27 Background and description

The term "contempt of court" is of ancient origin having been used in England certainly since the thirteenth century and probably earlier. At common law, contempt is an act or omission calculated to interfere with the due administration of justice.

A person guilty of contempt is described as a contemnor.

19.28 Types of contempt

Contempt may be civil or criminal. The criminal standard of proof i.e. beyond reasonable doubt, applies to both¹. A typical civil contempt might be conduct involving a breach, or assisting a breach, of a court order. Criminal contempt includes assaulting a judge or anyone else in court.

Failure to co-operate in the course of a public examination despite attendance at it may also constitute contempt². Refusal to acknowledge the validity of a bankruptcy order is not considered grounds to overcome being held in contempt³.

1. Dean v Dean [1987] 1 FLR 517 CA

2. Official Receiver v Cummings-John [2000] BPIR 320

3. Re The Official Receiver V Brown [2017] EWHC 2728 CH

19.29 Penalties for contempt

The court's power to punish for contempt of court may be exercised by an order for committal to prison or by other means including a fine¹.

Superior courts, e.g. the High Court can imprison for a fixed period of up to two years. The county and magistrates' courts can imprison for up to one month.

1. Contempt of Court Act 1981

19.30 Application for committal

A formal application for committal for contempt should be made in writing and supported by an affidavit which clearly sets out the extent to which an earlier order of the court has not been complied with.

The application must state exactly what the alleged contemnor has done or omitted to do which constitutes a contempt of court with sufficient detail to enable them to meet the charge. The necessary information must be given in the notice itself. If

lengthy particulars are required it is permissible to include them in a schedule or addendum to the notice, provided that they form part of the notice itself. It is not permissible to refer in the notice to a witness statement or other separate document for particulars which ought to be in the notice¹.

In addition, notice of an application to commit to prison for contempt must simultaneously be served personally on the respondent (see [Annex B](#)). All applications for committal for contempt should be made direct to a judge and will be heard in open court, unless the court orders otherwise² (see also chapter 10).

Generally speaking, legal representation should be sought in relation to an application for committal and a request for representation can be sent to the Senior Official Receiver's office for consideration.

1. Chiltern District Council v. Keane [1985] 1 W.L.R. 619, & Harmsworth v. Harmsworth [1987] 1 W.L.R. 1676

2. Practice Direction Insolvency Proceedings [2014] BCC 502 Paragraph 3.3 & Civil Procedure Rules 1998 Part 81

19.31 Contempt of court occurring at court

Where a contempt occurs at court (sometimes called in the face of the court), the judge involved will generally deal with it. The High Court has jurisdiction to make an order of committal for contempt in the face of the court by its own motion, as does a judge of the county court. A district judge only has the power to make a committal order where it is specifically provided for under an enactment.^{1,2,3}

1. Civil Procedure Rules 1998 Part 81, Rule 81.15

2. CPR98 sch 1 RSC order 52 and practice direction RSC 52, CPR 98 sch 2 CCR order 29

3. Simmonds (as trustee in bankruptcy of AJ Pearce) v Pearce (an bankrupt) [2017] WLR(D) 803

19.32 Purging the contempt

When a person is in contempt of court, they may cease to be so by apologising to the court, or “purging the contempt”, respectively.

Public and private examinations

19.33 Use of public and private examinations

Both public and private examinations can be used as a method of enforcing co-operation. The practices and procedures relating to public and private examinations are covered fully in chapters 20 and 21.

19.34 Deciding upon public or private examinations

The official receiver can either apply for a public or private examination of an officer of a company in liquidation or a bankrupt. Public examination has advantages for the official receiver over private examination. The court has discretion whether or not to order a private examination, whereas it has no discretion but to make an order for the public examination on the application of the official receiver.

If the official receiver is making an application for a private examination in their capacity as liquidator or trustee, they may be made personally liable for the costs of the examination¹.

1. Rule 12.22(5)

Enforcement and court orders

19.35 General assistance from the courts

The official receiver can apply to court for directions¹ relating to any matter arising from insolvency proceedings. Where a person fails, without reasonable excuse, to co-operate with the official receiver or to comply with what is legally required of them, the official receiver may apply to the court for directions or for such order as may be necessary to enforce the co-operation or compliance. Failure to comply with an order of the court is contempt of court and could result in imprisonment. An application for directions can be made verbally at the hearing of a public or private examination. Alternatively an application may be made to the court.

1. Rule 13.3

19.36 Orders to enforce compliance in a liquidation

The court may, on application by the official receiver or liquidator, make such orders as it thinks necessary for the enforcement of obligations falling on any person ^{1,2}.

If the official receiver wishes to enforce the co-operation of a company officer (or any other person having a duty to cooperate), but does not intend to question them before the court or under its supervision, they should not apply for the public examination of the person but should instead apply to the court for an order requiring that the action be done or information provided [rule 12.52]^{3,4}.

The official receiver can request that such an order have a penal clause inserted. If a company officer fails to comply with the order, the official receiver can make an application to court that the director be committed for contempt.

The court can order that all costs of and incidental to an application for an order enforcing cooperation shall be borne by the person against whom the order is made.

1. Section 143(2)

2. Section 235

3. Rule 12.52

4. Re Wallace Smith Trust Co Ltd [1992] BCC 707

19.37 Bankruptcy under general control of court

An undischarged bankrupt or a bankrupt whose estate is still being administered has an obligation to do whatever the court directs them to do for the purposes of their bankruptcy or the administration of the estate. The official receiver or trustee can apply at any time for a direction under this section.¹

1. Section 363(2) & (3)

19.38 When application may be made

An application for a court order may be made at any time to enforce;

- the provision of information to, and attendance upon, the official receiver¹
- the submission of a statement of affairs and related information²; and
- the delivery of any property, books, papers or records to which the company or bankrupt appears to be entitled³

Similar orders can be obtained against a trustee of a bankrupt's estate or a liquidator of a company who fails in their duty to provide access to any of their relevant records to the official receiver. The official receiver should, however, always refer the matter to Insolvency Practitioner Regulation Section before seeking any such order⁴.

In a winding up, the court's powers to enforce delivery of company property can be exercised by the official receiver as liquidator or provisional liquidator on their own

authority, but they should always apply to the court for an appropriate order unless urgency or some other circumstance make action under their own authority essential⁵.

1. Section 235(2) and Rule 12.52(1)(c), Sections 291(4) and 363(3)

2. Section 131(1) and Rule 12.52(1)(a), Sections 288(1) and 363(3)

3. Sections 234(2), 237(1) and 367(1)

4. Section 143(2) and Rule 12.52(1)(b), Section 305(3) and Rule 10.93

5. Section 234 and Rule 7.78

19.39 Written applications

An application for a court order should be made using Form GENAPP available on ISCS. This form might be suitably amended for all types of application¹.

1. Rule 12.52

19.40 Notice of application

The court can hear the application without notice being served on any other party. If the court wishes to hear the application with notice, the application should be served on the respondent at least 14 days before the date of the hearing.

The Rules provide that the provisions of the Civil Procedure Rules 1998 (CPR) Part 6 and the accompanying practice directions, apply as regards any matter relating to the service of court documents in insolvency proceedings. CPR rules 6.3(1) and 6.20(1) provide for the various methods of service which may be used for service of applications and other court documents. These include personal service, service by first class post or document exchange (DX) and service by fax or other electronic means. See chapter 10 for further information on the various methods of service available to the official receiver and how they should be effected.

Unless the court otherwise directs, the hearing of an application must be in open court^{1, 2}.

1. Rules 12.7 to 12.12

2. Rules schedule 4

19.41 Form of order

The form of order which will be made by the court in response to an application will be similar to that given in Annex A. The order includes a penal notice which states that the respondent may be held in contempt of court if they do not obey the order.

The official receiver should ensure that the penal notice endorsed on the order is applicable to all the requirements of the order, so as to prevent the respondent avoiding committal by complying with only part of the order. It should be clear that any breach of the order may result in the person's committal. A penal notice should also be endorsed on an order adjourning a public or private examination if committal for contempt of court is to be pursued upon failure to comply with any requirement imposed in the adjournment order. In such cases the adjournment order should also be served personally as specified below.

19.42 Service of order

None of the Act, the Rules or the CPR requires court orders to be served personally. Where, however, an individual fails to comply with an order of the court, a warrant for committal can only be issued if the order in question was served upon the individual personally, despite the fact that they may have been present in court when the order was made.

Where an order is obtained the official receiver must make arrangements for personal service of the order, either by a member of their own staff or by a process server. The order must be served in accordance with the Insolvency Rules 2016, Part 6 of the Civil Procedure Rules 1998 and all accompanying practice directions. See chapter 10 for further information on personal service¹.

1. Schedule 4 Para 1 and Civil Procedure Rules 1998 Parts 6, 40 & 81.

19.43 Date of service of order

The Civil Procedure Rules 1998 provide a table¹ showing deemed dates of service by first class post, by delivering a document to or leaving it at the place of service, through a document exchange, by fax or by other electronic method and by personal service.

There is no restriction upon when a document may be served. It may be served at any time of the day or night, on a Sunday, on Christmas Day or on any other Bank Holiday. When the document is served after 4.30 pm or on a non-business day it is to be treated as served on the next business day. "Business day" means any day except Saturday, Sunday or a bank holiday; and "bank holiday" includes Christmas Day and Good Friday. Where the official receiver serves a court document a 'certificate of service' must be completed and filed at court within 21 days of service having occurred. The most current court service form N215 should be used for the certificate of service. A template 'CERTSERV' is available on ISCIS.

For further information relating to service generally, see chapter 10.

1. Civil Procedure Rules 1998 Rule 6.26

19.44 Service by an alternative method

Where an order cannot be served personally (e.g. because the person evades service), the official receiver can seek an order for service by an alternative method or at an alternative place, in accordance with rule 6.15 of the Civil Procedure Rules 1998. Where the court makes an order permitting alternative service, it will specify the method of service and the date of deemed service¹.

1. Schedule 4 Para 1

19.45 Compliance with order

A respondent to an order for attendance should be free to attend upon the official receiver at any time they choose within the limits of the order. If they attend within the limits of the order but without an appointment, every effort should be made to examine them at that time; even a short examination will be better than none. If a further appointment is necessary this should be confirmed by a letter.

19.46 Failure to comply with court order

A person who fails to comply with a court order may be in contempt of court. If that person attends court on any subsequent occasion, e.g. for an adjourned public examination, and the court is satisfied there is no reasonable excuse for the failure to comply, the matter can be referred immediately to a judge sitting in open court to consider committing them to prison for contempt. It should be noted that any application to commit for contempt of court may only be dealt with by a judge and not by a registrar/district judge and must, unless otherwise ordered, be heard in open court. Alternatively, the official receiver may formally apply to the court for the committal to prison of that person¹.

1. Practice Direction Insolvency Proceedings [2018] BCC 502 Part 3

19.47 Action after non-compliance

The period specified in the court order is intended to be not only the time within which the respondent must co-operate but also the period within which the official receiver cannot begin proceedings for committal. Counsel has expressed the view that the effect of the order is to give the official receiver the right, but not the obligation, to apply for a committal order immediately after the relevant period expires. Nevertheless, further action should normally be taken immediately failure to comply is apparent.

19.48 Costs of application where the respondent is a bankrupt

There are no provisions that would enable the official receiver to recover the costs incurred in making an application for a court order to enforce compliance where the respondent is a bankrupt. The costs in such cases should be debited to the estate concerned.

19.49 Costs of application where respondent is not a bankrupt

Where the respondent is not the bankrupt the official receiver should request the court to order that the costs of and incidental to the application be paid by the respondent¹, including where the respondent is the trustee or liquidator of the insolvent estate (other than the official receiver)². The official receiver should then attempt to recover these costs, including swearing fees and the fees and expenses of any process server employed, from the respondent. The official receiver should not seek anything in the nature of punitive costs from the examinee. Any failure by a company officer to pay the costs should be taken into account if the official receiver submits a disqualification report and/or a prosecution report and failure by an insolvency practitioner to pay the costs should be notified to Insolvency Practitioners Section.

1. Rule 12.52(3)

2. Rule 10.93 (2)

Power of arrest and enforcement of warrants

19.50 Power of arrest

Where possible the powers of arrest provided by sections 134, 236, 364 and 366 should be employed in preference to the provisions of sections 288, 290, 291, 312, 333 or 363, which deal with the consequences of contempt of court and which are intended to be used on a contingency basis. This is because applications for arrest warrants under sections 134, 236, 364 and 366 may be heard by a district judge or registrar after the private or public examination, whilst application under the general powers relating to contempt of court require a lengthier procedure involving an

application to court, personal service on the alleged contemnor, and a hearing before a judge.

The provisions relating to the enforcement of orders of the court and warrants for the arrest of a person or for the seizure of property, or search of premises are contained in the rules¹.

1. Part 12 Chapter 9

19.51 Warrant for non-attendance at public examination

Where a company officer (or person other person with a similar duty to cooperate), partner or bankrupt fails to attend for their public examination this is a contempt of court, but also gives rise to a separate power to issue an arrest warrant¹ at that hearing providing the proper procedures detailed in chapter 20 as regards service and certification of service have been strictly complied with. A registrar or district judge may issue such a warrant immediately on the examinee's failure to attend, without referring the matter to a judge, and the official receiver should draw the court's attention to its power to issue a warrant.

No formal application or report by the official receiver may be necessary. If the court requires any additional information this may be provided verbally by the official receiver on their undertaking to file in court a report setting out such information as soon as possible. Where it is anticipated that the examinee is unlikely to attend and that the court may issue a warrant at the hearing, a draft warrant² should be taken to court (in the High Court this will be dealt with by the registrar, in order that it may be passed forthwith to the relevant officer of the court for execution).

1. Section 134(2)(a) or 364(2)(e)

2. ISCIS Form PEWA

19.52 Seizure of property or records

The court can also order the seizure of any property or records in the possession of the examinee and the official receiver should in appropriate cases consider requesting the court to make such an order¹ where they urgently require the property or records. In such cases the court should be asked to order that the property or records concerned be delivered to the official receiver or otherwise dealt with in accordance with the official receiver's wishes.

If the court does not exercise its discretion to issue a warrant immediately, a formal written application with a supporting report has to be made. The application may be made without notice and heard by a registrar or district judge. Unless the court

otherwise directs, the hearing of an application must be in open court². The official receiver may provide a report setting out the circumstances in which the application is made rather than a witness statement³.

1. Section 134(2)(b) or 364(1)(b) & Rule 12.12

2. Rule 12.2

3. Rule 12.29(2)

19.53 Content of a warrant for non-attendance at public examination

Warrants issued under section 134(2) or section 364 (including those issued for non-attendance at a public examination) are issued under general powers of arrest and They will not make reference to a specific maximum period of imprisonment as required in cases of contempt of court (see earlier guidance).

Warrants issued under rule 12.54 allow for delivery of the arrested person directly to the court. Form PEWA is available on ISCIS document production and can be adapted as appropriate.

19.54 Warrant for non-attendance at private examination

Warrants issued under section 236 or section 366 (inquiry into the dealings etc. of the company or bankrupt) are similarly dealt with, and are both on Form PEWA with no reference to a maximum period of imprisonment¹.

1. Rule 12.55

19.55 Warrant for contempt of court

An application¹ to court for an arrest warrant for contempt of court, which will normally be for non-compliance with an earlier order of the court, should be supported by a witness statement setting out fully the facts of the matter². In addition, formal notice of the application to commit, in the current required format, must be given simultaneously to the person concerned. The notice should be served personally on the individual concerned, although where this is not possible (e.g. due to deliberate avoidance) an order for service by an alternative method can be sought under the Civil Procedure Rules 1998 rule 6.15³. Where the warrant is issued for contempt of court, the provisions of the Contempt of Court Act 1981 apply, and the maximum period of imprisonment, which may be up to two years, must be specified on the warrant. Applications for warrants should where possible be made under the

general powers of arrest provisions rather than those for contempt of court. Any application to commit for contempt of court may only be dealt with by a judge, and not by a registrar/district judge, and must be heard in open court³.

1. ISCIS Form GENAPP,

2. Rule 1.35

3. Schedule 4 Para 1

19.56 Execution of warrant

When a warrant has been issued it should in the first instance be left with the relevant officer of the court for execution, but in case of difficulty or urgency, the warrant may be placed by the court in the hands of the Police within the jurisdiction of the court for execution. County court warrants will not be executed by the Metropolitan Police. The latter will, however, make all necessary inquiries leading up to the arrest of the person concerned. The actual arrest must be made by a local constable or court officer. Where the person subject to the warrant is known to be within the jurisdiction of some other county court, the warrant may be transferred to that court for execution¹.

1. Rule 12.53

19.57 Description of person/assets subject to warrant

Upon the issue of a warrant by the court, the High Court tipstaff or in a county court the district judge or a bailiff, should contact the official receiver to obtain particulars of the person or property subject to the warrant, although local practice may vary. If the official receiver is not contacted promptly they should take steps to ensure that the tipstaff or bailiff has the necessary information to enable the warrant to be executed.

The information¹ given to the arresting officer concerning the subject of a warrant should, where possible, include the full name and the last known address (or addresses) of the person, their age, height and any distinctive physical features. If the official receiver has the national insurance number of the individual, this should also be provided. The official receiver must ensure that information provided in this respect is accurate, so as to avoid any possibility of wrongful arrest or seizure of property which is not subject to the court order. Accordingly, they should not rely entirely on information provided by third parties. Where there are no assets in the estate the official receiver may incur a debit balance to meet the reasonable and necessary expenses of executing the warrant.

19.58 Surrender to proceedings

Where a person against whom a warrant has been issued surrenders to the official receiver without the warrant being executed, the official receiver must ensure that application is made immediately for the warrant to be suspended or discharged. This may include a staff member accompanying the person to court to make the application, or could require the official receiver to file a report at the court or by the delivery of a letter to court. Without exception, the official receiver should not leave the matter to be dealt with by the person subject to the warrant, and should take whatever steps necessary to ensure that the warrant is suspended or discharged. The person may be interviewed before they leave for the court, but the official receiver must ensure that the person leaves with sufficient time to attend the court and have their application to suspend/discharge the warrant dealt with on that same day.

19.59 Discharge of a warrant

Rule 12.51 provides that an arrest warrant issued by the High Court may be discharged in any county court having insolvency jurisdiction where the arrested person has been brought before the county court and given a satisfactory undertaking to the court to comply with the obligations that apply to that person under the Act or the Rules.

19.60 Duration of warrant

An arrest warrant does not expire and a person may be arrested on a warrant which was issued over a year previously. A warrant which has been executed or suspended cannot be reactivated. Should such need arise formal application must be made for the issue of another warrant although restoration of a public or private examination is the more likely procedure.

Action after execution of the warrant

19.61 Person to be delivered directly to court by arresting officer

Although generally the question of warrants issued for non-attendance at a public examination is not considered incompatible with the provisions of the Human Rights Act 1998, some courts have expressed concern regarding 'open ended' warrants where the subject could be detained in prison for an indefinite period. To avoid these difficulties the warrants on form PEWA prepared by the official receiver should ask that the subject be delivered immediately to the court rather than to a prison once they have been arrested.

Rule 12.54 addresses the concerns of the courts in relation to human rights and the rule provides for delivery of the arrested person directly to the court. Once the director/bankrupt is delivered to the court, the public examination will be re-instated and the director/bankrupt will either give undertakings to the court to co-operate and provide information or will surrender to the public examination and give the information under oath. The individual will then be released and the warrant discharged. If the individual refuses to give the required undertaking or answer questions on oath, the District Judge has the power to make an immediate referral to a Judge for committal for contempt.

19.62 Committal to prison possible if appropriate

The guidance above does not prevent the official receiver from ever applying for a warrant requiring committal to prison if deemed appropriate. In such cases, the official receiver must immediately ensure the court is notified of the arrest and apply for orders appointing a time and place to proceed with the examination, (with leave to dispense with notice and for the production from prison of the person concerned at the very earliest opportunity). When a person has been arrested and delivered to prison, the terms of the arrest warrant have been fulfilled. If the court cannot arrange for the restored public examination to be heard within 48 hours, the person should be produced to the court in private for consideration of their being released against suitable undertakings. The court may require that the arrested person be interviewed before being released from prison. In such circumstances, because of the time required to arrange and conduct an interview in prison it may be necessary for the arrested person to remain in custody for more than 48 hours.

19.63 Interview in prison

If it is necessary to interview an examinee who is in prison, the official receiver should contact the prison to make arrangements, which should then be confirmed by letter addressed to the prison governor. The letter should be delivered by hand if the interview is to take place urgently. If a member of the official receiver's staff attends rather than the official receiver themselves (as will usually be the case) a written

authority from the official receiver to their member of staff to carry out the interview should be produced to prison staff (see also chapter 17).

19.64 Application for release from prison-discharge of warrant

If a person who has been arrested applies for release from custody it will be necessary to consider whether the application should be opposed or whether the court should at least be asked to require a bond to be given to ensure their future attendance.

Where appropriate, the official receiver should consider applying to restore any public or private examination to an early fixed date. Once the examinee appears for public or private examination the warrant must be discharged, (whether or not the examination is fully effective or closed) because the purpose of the warrant i.e. the arrest of the respondent has been fulfilled. If the examination has to be adjourned because of the individual's failure to give undertakings to the satisfaction of the court, the official receiver should, in court, make clear to the examinee the implications of their conduct. A new arrest warrant may be issued and consequently the court record will show that the possible consequence of continued default had been fully drawn to the individual's attention. The official receiver should then seek the directions¹ of the court on the matter.

1. Rule 13.3

19.65 Production of a person already in prison

In the case of a person who is in custody other than as a result of a warrant issued in the insolvency proceedings, an application for the production of that person at any public or private examination must be made by letter addressed to Prison Service, Population Management Section, 6th Floor, Cleland House, Page Street, London SW1P 4LN (telephone 020 7217 6657/6582) setting out the facts and grounds for the application and the time, date and place at which the person is to be produced.

Any order of the court for public or private examination to be served on the person concerned must be sent to the prison governor with a covering letter requesting that they arrange service. As much notice as possible of the hearing should be given. The expense of bringing the examinee to the court must be charged against the estate. Care should be exercised in bringing reluctant prisoners before the court since the costs may be prohibitive and the outcome unsatisfactory. Non co-operation by a bankrupt prisoner can be dealt with by an application to suspend their discharge. A prisoner with a category "A" security rating will not be produced as such prisoners are considered a maximum security risk. Instead the official receiver

should request the prison governor to mark the inmate's file that notification should be given to the official receiver if it is intended to release that prisoner or if their security rating is downgraded to "B".

19.66 Warrant for Seizure of property

The official receiver may apply to the court for a warrant to seize any property comprised in the bankrupt's estate, or any books, papers or records relating to the bankrupt's estate or affairs which are, in the possession or under the control of the bankrupt or any other person who is required to deliver the property, books, papers or records to the official receiver¹.

Any person executing a warrant under this section may break open any premises where the bankrupt, or material to be seized under the warrant, is or is believed to be and may also break open any receptacle of the bankrupt which contains or is believed to contain anything that may be seized².

A warrant issued by the court shall be addressed to any officers of the High Court or county court as the warrant specifies or to any constable. Warrants issued under section 365(1) are addressed to the tipstaff and their assistants in the High Court and in the county court to the district judge and the bailiffs³.

1. Section 365(1)

2. Rule 12.53(1)

3. Rule 12.53(2)

19.67 Warrant for search of premises

The court may also issue a warrant for the search of premises not belonging to the bankrupt if it is satisfied that any property comprised in the bankrupt's estate or any books papers or records relating to the bankrupt's estate are concealed in those premises¹.

The search may be carried out by a police officer or a prescribed officer of the court. In the High Court the prescribed officers are the tipstaff and their assistants of the court. In the county court the prescribed officers are the district judge and the bailiffs².

A warrant issued under section 365(3) shall authorise any person executing it to seize any property of the bankrupt found as a result of the execution of the warrant³.

Any property seized under a warrant issued under section 365(2) or (3) shall be –

a) lodged with, or otherwise dealt with as instructed by, whoever is specified in the warrant as authorised to receive it, or

b) kept by the officer seizing it pending the receipt of written orders from the court as to its disposal, as may be directed by the warrant⁴

1. Section 365(3)
2. Section 365(3) and Rule 12.53(2)
3. Rules 7.25(1) and 12.56(2)
4. Form WARS

19.68 Application for seizure or search warrant

Where it is necessary for the official receiver to make formal written application for a warrant to search for and/or recover property belonging to a bankrupt, the application, is made without notice and must be supported by a report from the official receiver or deputy/assistant official receiver dealing with the case. To enable the court to fully consider the matter, the application should, if possible, clearly specify all property, books, papers, records and premises which are subject to the application and the supporting witness statement should set out fully the circumstances in which the application is made. Any warrant issued by the court should direct the person executing it on how to deal with any property seized (see above) and the official receiver should request the court to order that the property be delivered to them or otherwise dealt with in accordance with their instructions¹.

Reference should also be made to chapter 10.

1. Rule 12.56

Leaving the jurisdiction

19.69 Leaving the jurisdiction to avoid cooperation

Generally, where a company officer, partner or bankrupt wishes to leave the jurisdiction, there is no legal requirement for them to seek leave of the court to do so.

Where it is known, or there are reasonable grounds to believe, that such a person intends to leave the jurisdiction with a view to avoiding a public or private examination, and/or, in the case of a bankrupt, preventing or delaying the realisation of assets or the general administration of the case, the official receiver can apply to

the court for an order that the person concerned should surrender their passport or for a warrant of arrest and seizure of any books, papers, or records in the possession of that person¹.

Where a hearing has been fixed in the High Court and is pending, e.g. a public or private examination, the High Court has the power under the Senior Courts Act 1981 section 37(1) to restrain the examinee from leaving the its jurisdiction. In such circumstances, or where an examinee having been abroad has returned to the jurisdiction, the official receiver should consider making an application without notice to the court for such a restraining order².

Additionally, the court may issue an injunction to prevent a bankrupt from leaving the jurisdiction³.

1. Section 134(2) or 236(4)(5) or 364(2) or 366(3)

2. *Re a Company* no.003318 of 1987 (1987) 3 BCC 564

3. *Morris v Murjani* [1996] 2 All ER 384

19.70 Absconding contributory

In very rare circumstances the official receiver as liquidator of a company may have to make a call for an amount due from a contributory whom it is believed may be seeking to avoid payment by absconding or concealing property. In those circumstances application can be made for the arrest of the contributory¹.

This can also apply where a winding-up order is made against a partnership, but no bankruptcy orders have been made against the partners. In these circumstances a contribution to the partnership's deficiency may be sought from the partners, who are deemed to be contributories. Unless the contrary intention appears, a member of a partnership against whom a bankruptcy order has been made by virtue of IPO94 article 8 shall not be treated as a contributory².

1. Section 158

2. IPO94 sch 4, IPO94 art 8, IPO94 art 7 and Section 226

Re-direction of mail

19.71 Re-direction of bankrupt's mail

Where appropriate, and particularly in cases of total failure to surrender to the proceedings, the official receiver or trustee may consider applying to the court for an

order re-directing post addressed to the bankrupt at their last known residential and/or business address(es) and any other address at which they are known (but not merely suspected) to be receiving post.

It is difficult to obtain orders under section 371 due to the implications of the Human Rights Act 1998 schedule 1 article 8. Re-directing a bankrupt's mail constitutes a contravention of HRA98 schedule 1 article 8 (respect for private and family life, home and correspondence). This contravention may be justified under article 8(2) as it is in accordance with the law and with the legitimate aim of protecting the rights of creditors, depending on the individual circumstances of the case.

However, interference with confidential correspondence between the bankrupt and their legal advisors is not justified under article 8(2), as it is not a proportionate measure to adopt¹. See also paragraph 19.81.

Consequently it is advisable that before such an application is made there are genuine grounds for believing that assets would be discovered or realised as a result of a redirection of post and that the provision is used in exceptional cases and not as a routine measure.

1. Foxley v United Kingdom [2000] BPIR 1009

19.72 Nature and form of application

The application for a re-direction order must be made without notice to the bankrupt or any other person, unless the court directs otherwise¹ and can be made to the High Court or the County Court². It is usual for the application to be made without notice as it is arguable that giving notice might lead to the bankrupt taking steps to reorganise their affairs during the time it takes for the order to be obtained which will operate to the detriment of the official receiver and the bankruptcy estate. The official receiver should make any application for a re-direction order without notice to the bankrupt or any other person unless the court directs otherwise.

The court has held that applications to court for a re-direction order ought to be supported by details of the bankrupt's non co-operation³. Any application for a re-direction order should include a report prepared by the official receiver in accordance with rule 10.166(3). The report enables the official receiver to explain in some detail to the court why the re-direction order is being sought. The form can be expanded to contain any further information that may assist the court in making an order.

1. Rule 10.166

2. Section 373

3. Singh v Official Receiver [1997] BPIR 530

19.73 Court can apply conditions to order

The court may impose such conditions as it sees fit on the operation of the order. For example, the court may direct that the mail should be re-directed to and opened by a specified third party (such as a solicitor), and also direct how the costs of this will be paid.

19.74 Bankrupt's ability to view the official receiver's report

If the bankrupt later seeks a review or rescission of the re-direction order made by the court, the report can be disclosed to them and will provide the bankrupt with an opportunity to see the case made against them in seeking the order.

19.75 Service of the order

A copy of the court re-direction order and notice should be sent to the postal operator for the postcode area concerned.

The re-direction order by the court must specify the persons on whom it is to be served. A copy of the re-direction order need not be served on the bankrupt unless the court directs otherwise.

19.76 Period of order

A re-direction order will allow the bankrupt's post to be re-directed for a period not exceeding three months. A decision must be made in sufficient time before an order is due to expire as to whether or not application should be made for any further order. The official receiver must not open or retain any mail re-directed in error by the postal operator after the expiry of the order¹.

1. Section 371(2)

19.77 Action where insolvency practitioner subsequently appointed

Where an insolvency practitioner is subsequently appointed, details of the re-direction order must be noted in the report to the trustee contained in the record book. As the order will provide for re-direction to the official receiver, it is better that the bankrupt's mail should continue to be so re-directed until the order expires. If practical difficulties are encountered, an application can be made for the order to be varied so that the post may be re-directed to the trustee.

Mail received under the re-direction order following the appointment of a trustee should only be forwarded to the trustee where it relates to the possible realisation of assets. Items addressed to someone other than the bankrupt, or which might be covered by legal professional privilege, or that is of a personal nature to the bankrupt should not be forwarded to the trustee. The trustee should be asked to inform the official receiver if a further order is obtained so that the official receiver can ensure any letter they send to the bankrupt may be endorsed as above. If the official receiver obtains a re-direction order after the trustee's appointment, they should notify the trustee in writing of the order.

19.78 Only post of bankrupt to be re-directed

Care must be taken to ensure that addresses can be positively linked to the bankrupt and are not confused with a third party with the same or a similar name. Where a number of family members with similar names reside at the same address, great care should be taken to provide as much detail as possible to the postal operator to ensure that the correct mail is re-directed. In cases where there are two individuals with very similar names consideration should instead be given to pursuing other courses of action to enforce co-operation.

19.79 Action after re-direction order obtained

Only mail that directly relates to the bankrupt's financial position or estate should be scanned and retained.

Post that is addressed to someone other than the bankrupt, or post which might be covered by legal professional privilege (for example letters with a solicitor's details on the envelope), or post that is of a personal nature to the bankrupt (for example letters from a hospital) should not be opened. If such correspondence is opened in error, it must not be scanned. All correspondence which meets the above criteria should immediately be passed to the bankrupt, or forwarded to the correct addressee.

19.80 Inform Royal Mail urgently if errors made in redirection

The official receiver must notify the postal operator immediately in the event of any errors made in the redirection process, in particular the post of a third party being redirected. Any post incorrectly delivered to the official receiver must be sent immediately to the correct addressee with an endorsement that the letter should be delivered as addressed or, alternatively, sent to the postal operator with a reminder as to the terms of the court order. Under no circumstances should post addressed to anyone other than the bankrupt be opened or photocopied by the official receiver.

Where the official receiver continually receives mail intended for a third party, despite informing the postal operator, the official receiver should consider requesting the postal operator to cease the re-direction.

19.81 Confidential correspondence with legal advisors

It has been held by the European Court of Human Rights that a re-direction order under the insolvency legislation does not in itself breach the human rights legislation provided its terms are strictly observed and it is not used in a disproportionate manner [Foxley v United Kingdom [2000] BPIR 1009]. Interference with confidential correspondence between the bankrupt and their legal advisors cannot be justified as it is not a proportionate measure to adopt. If a letter is clearly from a solicitor or the Legal Aid Agency, it should not be opened and should be promptly forwarded to the bankrupt. Where post is opened which is subsequently found to contain privileged correspondence with a legal advisor, it should be resealed and immediately passed to the bankrupt without being scanned by the official receiver.

19.82 Personal correspondence

Where it is clear that an item is of a personal nature it should be forwarded to the bankrupt without delay and without being copied. A bankrupt should not be required to attend the office in order to collect their mail, although they can do so if they wish.

19.83 Post from official receiver to be marked so as to avoid redirection

Where the official receiver writes to a bankrupt after a redirection order has taken effect, all letters sent by the official receiver to the bankrupt must be endorsed "To be delivered as addressed if possible. Not to be re-directed by the postal operator", to avoid mail simply being returned to the office under the redirection notice.

19.84 Costs of re-direction order

Mail re-directed under an order of the court is not exempt from charges made under Postal Regulations. The case administration fee does not include the cost of obtaining the re-direction order which must be separately charged against the estate.

19.85 Re-direction in a liquidation

It should be noted that the post of a company in liquidation is re-directed as a matter of course and that no application to court is required, though care should be taken to ensure only post concerning the company in liquidation is opened, following the principles outlined above in relation to bankruptcy cases.

Prosecution and disqualification and non-cooperation

19.86 Prosecution for failure to co-operate under s235

As discussed in Parts 4 and 5 enforcement of a duty to co-operate may generally best be achieved by holding a public or private examination or by obtaining a specific order of the court for compliance with a particular duty.

A company officer or partner where the partnership has been wound up as an unregistered company (but not a bankrupt) may be prosecuted under section 235(5) for failing to comply, without reasonable excuse, with any obligation imposed by section 235. A prosecution will normally be undertaken only in conjunction with proceedings for other offences. In exceptional circumstances, where there has been a serious or persistent breach of duty by some responsible person or other procedures are impracticable the prosecution of a company officer under section 235(5) may be considered appropriate. Where this is so the official receiver will need to note the position as to "reasonable requirement" and "reasonable excuse" and consider the technical requirements of section 235.

19.87 Prosecution for failure to submit a statement of affairs

A company officer, (but not, as noted above, a bankrupt) may be prosecuted for failure, without reasonable excuse, to submit a required statement of affairs, the penalty for which is a fine, and for continued contravention, a daily default fine¹. Where exceptionally the official receiver believes that a prosecution would be desirable they should consider submitting a report. Such a failure may also be considered for disqualification purposes.

1. Section 131(7)

19.88 Disqualification

Where the official receiver considers that the conduct of an uncooperative director or partner (where the partnership has been wound up as an unlimited company) amounts to evidence of unfitness¹, this should be taken into account when they report on the conduct of the director/partner

A report where the only matter of misconduct is non co-operation should only be considered in exceptional cases.

Where non co-operation is alleged as the sole matter of unfitness in a disqualification report there must be significant and demonstrable detriment to the estate resulting from the non co-operation e.g. significant assets that cannot be realised. It is not enough that the official receiver's duties have been made more difficult to discharge by the lack of co-operation from the director/partner. The official receiver must also have taken all the measures available to them to enforce co-operation and to obtain the information required from other sources before relying on non co-operation as a sole allegation.

1. Company Directors Disqualification Act 1986 section 6 & schedule 1 paragraph 10(g) & Insolvent Partnerships Order 1994 article 16 & schedule 8

Bankruptcy restriction orders and non-cooperation

19.89 Bankruptcy restrictions orders generally

Bankruptcy restrictions orders (BROs) are a means of protecting the public from dishonest, reckless or culpable bankrupts. A BRO effectively extends the imposition of bankruptcy¹ on individuals for the period specified in the order of between 2 - 15 years.

The court will grant a BRO if it thinks it is appropriate to do so having regard to the conduct of the bankrupt (whether before or after the making of the BRO). Schedule 4A lists the kinds of behaviour on the part of the bankrupt that the court will take into account. This list is not exhaustive and the official receiver can consider the inclusion of any further conduct of the bankrupt that they consider should be taken into consideration by the court in deciding whether a BRO should be made.

1. Section 281A

19.90 Non co-operation as a ground for a BRO

Schedule 4A paragraph 2(2)(m) of the Enterprise Act 2002 specifically states that the failure of a bankrupt to co-operate with the official receiver or trustee is a matter which the court will take into consideration when deciding whether a BRO is appropriate. This allegation should only be included in a BRO report by the official receiver where there has been deliberate non co-operation, and not where the official receiver has not been able to contact the bankrupt or the bankrupt has not been traced.

In deciding whether to include this area of misconduct in a BRO application it is not enough that the official receiver has been inconvenienced by the bankrupt's non co-operation but there must also have been some loss to creditors as a consequence of their failure to co-operate.

Detailed guidance on this can be found in the EIG.

19.91 Official Receiver must use all powers to enforce co-operation before considering BRO for non-cooperation

The official receiver must use all their powers as detailed in this chapter to enforce co-operation before a BRO report is considered alleging non co-operation.