

Court of the Seneschal

EX PARTE APPLICATIONS FOR INJUNCTIVE RELIEF

1. Purpose of this Practice Note

This Practice Note is issued to remind parties that applications for injunctive relief made without notice are exceptional and engage the Court's coercive powers in the absence of the affected party. Such applications will be approached with caution.

The Court emphasises that an applicant who seeks to proceed *ex parte* assumes a strict and elevated duty of candour. The purpose of that duty is not merely procedural fairness, but to ensure that the Court is placed in possession of the full factual and legal context necessary to exercise its discretion properly.

2. When an Ex Parte Application May Be Appropriate

An application without notice should only be made where there is a pressing and serious risk to lawful rights or interests and where giving notice would itself defeat or materially prejudice the purpose of the application.

Urgency alone is insufficient. Delay, tactical inconvenience, or concern that the respondent may oppose the application do not justify proceeding without notice.

3. The Duty of Full and Frank Disclosure

3.1 Nature of the Duty

An applicant in an *ex parte* application is under a very high duty of candour. This duty rests upon:

- the applicant personally; and
- any advocate or legal adviser presenting the application.

The duty requires the applicant to place before the Court all facts and matters which are material, or potentially material, to the exercise of the Court's discretion.

Materiality is for the Court to determine, not the applicant.

This principle has been articulated authoritatively in *Thompson v Thompson*, and is consistently applied across the Channel Islands and comparable jurisdictions.

3.2 Adverse or Disadvantageous Material

Applicants are expressly reminded that the duty of disclosure:

- includes matters which may appear to weaken or undermine the application;
- extends to anticipated arguments or defences that the respondent might reasonably raise;
- requires disclosure of relevant correspondence, prior dealings, delay, acquiescence, or alternative remedies.

Information which appears adverse may nevertheless:

- provide essential context;
- justify a narrower or time-limited order;
- inform the Court's approach to undertakings, service, or return dates.

The Court cannot fairly calibrate interim relief if it is deprived of that context.

3.3 Scope of Enquiry Required

The duty of disclosure extends beyond matters actually known to the applicant. It includes:

- facts which would or should be known if reasonable enquiries were made;
- relevant law or procedure, including that of other jurisdictions, where potentially material.

Applicants must err on the side of inclusion rather than exclusion.

4. Consequences of Non-Disclosure or Misrepresentation

A failure to comply with the duty of full and frank disclosure is a serious matter.

Where the duty is breached:

- any injunction granted is liable to be discharged, often irrespective of the merits of the underlying claim;
- the Court may deprive the applicant of any advantage gained;
- undertakings given to the Court may be enforced against the applicant;
- further adverse consequences may follow, depending on the seriousness of the breach.

These principles are well established, including in *Brink's Mat Ltd v Elcombe*, which continues to be treated as persuasive authority in this jurisdiction.

5. Return Dates and the Right to be Heard

Where ex parte relief is granted:

- the respondent must be afforded a good and early opportunity to challenge the order;
- a fixed inter partes return date should ordinarily be set;
- liberty to apply alone will not normally be sufficient.

The Court will be slow to grant or continue ex parte relief where procedural safeguards for early review are absent.

6. Hearings in Chambers

Ex parte applications are ordinarily suitable for determination in chambers, reflecting their interlocutory and urgent nature.

However, applicants should understand that a chambers hearing does not diminish:

- the duty of disclosure;
- the need for proportionality;
- the Court's scrutiny of the application.

The more extensive or determinative the relief sought, the greater the obligation on the applicant to justify both the procedure and the scope of the order.

7. Final Observation

Applicants are reminded that an ex parte injunction is not a strategic tool but a remedial exception. The Court's confidence in the application depends entirely on the completeness, balance, and honesty of the material presented.

An applicant who places all relevant information before the Court — including material which may appear adverse — assists the Court, and may thereby obtain relief that is fair, effective, and sustainable.