

## COURT APPOINTED RECEIVERS



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Using Court Appointed Receivers is a hugely flexible and powerful tool available in the collection of any debt, but until recently not often used in the Family courts.

In a normal debt collection scenario, the claimant will not have huge clarity over the wider financial position of the debtor. However, in divorce proceedings, the former spouse will have completed a Form E, detailing their assets and liabilities. This means that the Receivers' order of appointment can list out exactly those assets over which they are appointed and gives us explicit power to sell, transfer or mortgage those assets to enable payment.

The threat of selling an asset close to the husband's heart may be a wake-up call that this is a serious situation, which isn't going away and prompts them to find the money to make the payment required.

## CASE STUDY ONE

**Under a Financial Remedy Order, the Husband (“H”) was ordered to pay 11 lump sum payments, to total £1,115M and transfer his interest in the family home and three other properties to his Wife (“W”) and in return, W was to transfer her shares in the holding company to H.**

H had failed to meet these payments as they fell due, as well as additional periodical Child Maintenance payments, and therefore full payment was due, which including interest totalled to £1.155M.

H did not have the disposable funds to pay the full lump sum. We were therefore appointed over H’s assets which included shares in a number of associated and group companies and assets, both in the UK and overseas.

Being appointed Receiver over the shareholding in a limited company in the UK means that a broad range of legal rights provided by the Companies Act, the company’s Articles of Association and shareholders’ agreement are passed to the Receiver. This would usually include the right to receive a dividend and the power to remove and appoint directors. This last option can seriously focus the mind as there is always a concern, however ill founded, that the involvement of the Receiver in the running of a company can seriously damage its long-term survival due to key staff and customers being unnerved.

At our first meeting with H he advised of an offer he had previously put forward to W. However, this had previously been rejected and therefore we set out what our options were should no agreement be made stressing, as a worst case scenario, that we would enforce the shareholder’s rights and become involved in the management of the business.

We discussed with both parties the sticking points that were making the deal unacceptable and how it might be altered to forge a successful outcome.

As an interested but independent third party we then negotiated between H and W and a solution was reached whereby one of the group companies (“the Purchaser”) would purchase W’s shares at market value.

Milsted Langdon’s Tax team reviewed the agreement to ensure that all tax requirements were met and a Share Sale and Purchase Agreement (“SPA”) was drafted which set out the terms of an initial sum and then deferred payments to W from future profits to cover the Court ordered lump sum due. As a safeguard, in case the Purchaser defaulted on the payments, a Personal Guarantee from H was included in the SPA on which W could then rely.

In the meantime, the companies undertook an exercise in rationalising their fixed assets and selling off non-core assets, such as a yacht. This, together with funds raised through refinancing, enabled H to make an initial payment, strengthening W’s confidence that H was looking to deal with matters.

Despite a three-month delay in completion of the SPA, which in turn allowed for the signing of the appropriate documents to transfer the properties, the deal allowed for a significant upfront payment and as the deal took longer than either party had intended, H was encouraged to make further advance payments. A total of £550,000 was paid to us to hold pending the signing of the agreement.

The SPA, which included a significant initial payment, allowed for ongoing staged payments to W by the companies controlled by H for a period of six years with strict default provisions to protect W in the event of default without the need for further Court applications or hearing.

Once the SPA was signed, we released the funds to W and as our involvement as Receivers were no longer required and we sought our release from the Court.

## CASE STUDY TWO

### Under a Financial Remedy Order Husband (“H”) was ordered to pay three payments of £116,000.

Having failed to make the first payment we were appointed to sell any of H’s assets, which included shares in his businesses and property both in the UK and overseas.

We requested access to the business accounting packages so we could establish whether the companies had sufficient funds to declare dividends. On determining that the companies had sufficient funds, this was discussed with H who was concerned about reducing working capital. However, as the business had retained profits of £500,000, and available cash of £230,000, we requested a board meeting to discuss releasing these funds. As anticipated, this was met with resistance from the Board and without its cooperation, we commenced to remove H as director.

The affairs of the companies were further complicated when we were advised that a tax scheme had been enacted which extinguished H’s director’s loan account of £160,000. The outcome of the scheme resulted in a credit balance of £34,000 on the loan account from which H drew £20,000 to pay to W.

In the meantime, we had been looking to sell a property in France owned jointly by H and W and had sought a current market value. The property was being marketed at an inflated value; hence no offers having been received. H queried our authority to take control of this property, and to avoid any further disruption from H, we requested the Court clarify matters. In the meantime, W notified the Court that, should it be required, she intended to make a further application to appoint a Receiver over the property which would be recognised by the French courts.

We were then advised that H had applied to Court for a stay on the proceedings. Then began numerous court applications and appeals by H which had the effect of hindering our administration, increasing costs and extending the period of the Receivership. Although the Court had affirmed our authority to deal with H’s businesses and the French property, a Review hearing was scheduled where it was established that H’s application to discharge the Receiverships was refused.

Further applications to appeal and stay proceedings by H were refused.

By that time the debt due to W was £202,000 and H paid her, outside of the Receivership, a total of £181,000 and £10,000 to us.

We were then advised that H and W had reached a settlement which they intended to put to Court. The settlement was drafted by H’s solicitors and would cap our fee at a rate below that was agreed by the court. As such the order was rejected by the court and it was ordered that we should be party of the Consent Order. We hit a further stalemate as H’s solicitors refused to engage in negotiations and we were advised not to interfere with a consent order.

It was ultimately ordered by the Court that H had 28 days to agree our fees but with only an offer to pay the VAT, we sought a further heading to finalise matters.

## CASE STUDY THREE

**The court ordered H to pay W £400,000, failing which he was to complete the work, estimated to cost £80,000, on his new build residential property to satisfy the building regulations after which the property would be sold to release the funds as required.**

Having failed to do so we were appointed Receivers over all of H's assets including the property and his shares in two limited companies.

Having undertaken a visit to the property we met with the local council building inspector and builder and instructed an RICS valuer to undertake a survey of the property to provide a schedule of works. We sought funding pending an estimate of costs to complete the works for strategy purposes.

In the meantime, we requested the financial figures of the companies and reviewed the Court's directions for applicable charges over the property to calculate an equity figure.

Having met with H, he was adamant that he could not raise the funds from a third party and would likely need to make himself bankrupt and liquidate the companies in any event.

We also discussed with Milsted Langdon's Tax team the implications if we sold the property in its current state or if we were to take control of the property which would lead to tax being payable on any gain.

As one of H's businesses had a significant charge on the property the majority of any sale proceeds would be payable to it. A parent company could then be paid a dividend but although H was the majority shareholder, any dividend to him would incur tax at 45%.

To further complicate matters there were no warranties on the work already undertaken on the property as H had carried it out himself. It would be difficult to find a builder willing to complete a partially completed property, and even if we were able to do so, making a sale of the property would be difficult as lenders would be unwilling to lend against it without warranties. We would therefore be limited to cash buyers, unless we waited 10 years from completion of the works to sell the property.

We then had to weigh up the options of whether to sell the property in its current state or risk taking out funding to complete the business and then market the business so ran the calculations to establish the likely outcomes for W.

If we were able to complete and sell the property, excluding the receivers' costs, we may have been able to achieve net proceeds of £129,000, although we would have incurred significant costs, with uncertain timings, to reach that position.

If we were to sell the property in its unfinished state, then c £120,000 could be realisable through distributions up through the group, after the company had been repaid its loan.

Having identified these figures it was established that completing the property would have no benefit to W and raising the £400,000 from the property was unachievable. H had no other assets.

While completing these reviews H put forward an offer of £90,000 which was rejected by W. Pleased that H was looking to settle matters, we negotiated further increases in his offer and ultimately negotiated a settlement of £170,000.

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