

Particularities of Enforcement

执法特殊性

ALASTAIR WILSON QC

阿拉斯泰尔·威尔逊（英国王室法律顾问）

Outline of English Civil Procedure

英国民事诉讼程序概览

- Normal procedure/常规程序
 - Originating documents, to define the issues/原始文件，明确争议焦点
 - Disclosure/披露
 - CMC/案件管理会议 (Case Management Conference)
 - Expert reports and experiments/专家报告与实验
 - Witness statements/证人证言
 - Trial/审理
 - Judgment and remedies/判决与救济
- Also available:/其它可用程序：
 - Urgent and very urgent procedures/紧急程序和特急程序
 - “Anton Piller” and “Mereva” orders“
安东·皮勒” (Anton Piller) 搜查令和 “马瑞瓦 (Mereva)” 资产冻结令

The disclosure process in more detail/披露程序详述

Relies to a significant extent on trust/基于很大程度上的信任

- Both parties must make a “reasonable search” of their files and computers for relevant documents, if they rely on them or they are unhelpful to their case.

如果这些文件要做为案件的依据或者对案件有帮助，双方当事人必须针对这些相关文件在他们的档案和电脑中进行“合理检索”。

- They provide a report of what they have done, and list the documents.

双方对其所做的工作提供一个报告并列出文件清单。

- They are inspected and copied by the other side/文件由另一方审查并复制

- A continuing obligation/一项持续的义务

- If there is reason to suppose that there is something being held back, or which hasn't been properly searched for, the Court may make Order compelling production.

如果有理由推定某些事项被隐瞒或者没有被适当地检索，法院可以下达法令强制出示。

- If the documents may be confidential, the usual procedure is to set up a “confidentiality club”/如果这些文件是保密文件，一般程序是设立一个“保密社团”。

- This disclosure usually forms the backbone of the case as it continues./这一披露通常在案件进程中构成案件的基础。

Urgent remedies in more detail/紧急救济详述

The “Mareva” Order / “马瑞瓦 (Mareva)”资产冻结令

- Available where there is reason to suppose that the other side will dissipate its assets in order to avoid paying damages/如果有理由推定另一方当事人会消耗财产以规避损害赔偿金的赔付，可以获此禁令。
- Usually the likelihood of this is inferred from the nature of the case: often used in cases of major international fraud/其可能性常根据案件的性质推定：常用于重大国际诈骗案。
- No notice given in advance to the Defendant./事先不通知被告。
- The Court Orders the Defendant to disclose all its assets in England or abroad, and all its bank accounts/法院裁定被告披露其在英格兰或者境外的全部财产以及银行帐户。
- The Order freezes all the bank accounts (and in England the banks would be in contempt of Court if they did not comply)/裁定冻结全部银行帐户（在英格兰，如果银行不服从法院裁定，可能构成藐视法庭罪）。
- Provision is usually made for normal business and personal expenditure/通常会对日常的商务和个人开支做出规定。
- The matter must be brought back before the Court for further consideration very quickly/该事项必须反馈至法院，以快速进行进一步的考量。
- May be set aside for misrepresentation: there is a very strict duty on Applicants to disclose all potentially relevant matters/可能因为虚假陈述而被撤销：申请人负有披露所有可能相关事项的极为苛刻的义务。

Urgent remedies in more detail/紧急救济详述

The “Anton Piller” Order / “安东·皮勒”（Anton Piller）” 搜查令

- Available where there is reason to suppose that the other side will not comply with the disclosure obligation/如果有理由推定另一方当事人不会遵守披露义务，可以获此裁定。
- (Sometimes it can be useful against dishonest Claimants!) /（有时候对付不诚实的申请人可能很有用！）
- Usually the likelihood of papers not being produced is inferred from the nature of the case: e.g. dishonest taking of confidential information/通常未出示文件的可能性是根据案件性质来推定的：比如，不诚实地获取保密信息。
- The Court Orders the other side to permit a search team to enter the premises and search for the relevant material/法院裁定另一方当事人许可一个检索小组进入其场所检索相关材料。
- The search team must now contain an independent referee/现在，检索小组中必须包含一个独立的仲裁员。
- Relevant material is carefully stored/小心保管相关材料。
- The matter must be brought back before the Court for further consideration very quickly/该事项必须反馈至法院以快速进行进一步的考量。
- May be set aside for misrepresentation: there is a very strict duty on Applicants to disclose all potentially relevant matters/可能因为虚假陈述而被撤销：申请人负有披露所有可能相关事项的极为苛刻的义务。

Expert Evidence/专家证据

- Facilities do exist for judges to sit with experts to help them understand the technology and make sure they don't make mistakes in their judgments. Very rarely done, however./这些设置的存在使法官与专家一起听审案件，以帮助法官们了解技术，确保在其判决中不出现错误。但实行的极少。
- Usually each side instructs its own expert witness, who prepares a report on the case./通常每一方当事人都使用其自己的专家证人，并且这些专家准备案件报告。
- Often an agreed “technical guide” will be prepared/通常会准备一个共同认可的“技术准则”。
- Judges are expected to have the experience and intelligence to understand what they are told by expert witnesses/假定法官具备理解专家证人所述证词的经验 and 智慧。
- In the English trial process, the best evidence usually turns out to be what is extracted by cross-examination of the other side's expert./在英国的审理程序中，通常由另一方专家交叉询问所提炼出的内容才是最佳的证据。

Particularities of Enforcement

执法特殊性

ALASTAIR WILSON QC
阿拉斯泰尔·威尔逊 (QC)