

## PRACTICE DIRECTION

## COMMITTAL APPLICATIONS

**This Practice Direction is supplemental to RSC Order 52 (Schedule 1 to the CPR) and CCR Order 29 (Schedule 2 to the CPR)**

## GENERAL

- 1.1** Part I of this practice direction applies to any application for an order for committal of a person to prison for contempt of court (a ‘committal application’). Part II makes additional provision where the committal application relates to a contempt in the face of the court.
- 1.2** Where the alleged contempt of court consists of or is based upon disobedience to an order made in a county court or breach of an undertaking given to a county court or consists of an act done in the course of proceedings in a county court, or where in any other way the alleged contempt is a contempt which the county court has power to punish, the committal application may be made in the county court in question.
- 1.3** In every other case (other than one within Part II of this practice direction), a committal application must be made in the High Court.
- 1.4** In all cases the Convention rights of those involved should particularly be borne in mind. It should be noted that the burden of proof, having regard to the possibility that a person may be sent to prison, is that the allegation be proved beyond reasonable doubt.

(Section 1 of the Human Rights Act defines ‘the Convention rights’)

## PART I

## COMMENCEMENT OF COMMITTAL PROCEEDINGS

- 2.1** A committal application must, subject to paragraph 2.2, be commenced by the issue of a Part 8 claim form (see paragraph 2.5).
- 2.2**
  - (1)** If the committal application is made in existing proceedings it must be commenced by the filing of an application notice in those proceedings.
  - (2)** An application to commit for breach of an undertaking or order must be commenced by the filing of an application notice in the proceedings in which the undertaking was given or the order was made.
  - (3)** The application notice must state that the application is made in the proceedings in question and its title and reference number must correspond with the title and reference number of those proceedings.
- 2.3** If the committal application is one which cannot be made without permission, the claim form or application notice, as the case may be, may not be issued or filed until the requisite permission has been granted.

- 2.4** If the permission of the court is needed in order to make a committal application –
- (1) the permission must be applied for by filing an application notice (see CPR rule 23.2(4));
  - (2) the application notice need not be served on the respondent;
  - (3) the date on which and the name of the judge by whom the requisite permission was granted must be stated on the claim form or application notice by which the committal application is commenced;
  - (4) the permission may only be granted by a judge who, under paragraph 11, would have power to hear the committal application if permission were granted; and
  - (5) CPR rules 23.9 and 23.10 do not apply.
- 2.5** If the committal application is commenced by the issue of a claim form, CPR Part 8 shall, subject to the provisions of this practice direction, apply as though references to ‘claimant’ were references to the person making the committal application and references to ‘defendant’ were references to the person against whom the committal application is made (in this practice direction referred to as ‘the respondent’) but:
- (1) the claim form together with copies of all written evidence in support must, unless the court otherwise directs, be served personally on the respondent;
  - (2) the claim form must set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each alleged act;
  - (3) an amendment to the claim form can be made with the permission of the court but not otherwise;
  - (4) CPR rule 8.4 does not apply; and
  - (5) the claim form must contain a prominent notice stating the possible consequences of the court making a committal order and of the respondent not attending the hearing. A form of notice, which may be used, is annexed to this practice direction.
- 2.6** If a committal application is commenced by the filing of an application notice, CPR Part 23 shall, subject to the provisions of this practice direction, apply, but:
- (1) the application notice together with copies of all written evidence in support must, unless the court otherwise directs, be served personally on the respondent;
  - (2) the application notice must set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each of the alleged acts;
  - (3) an amendment to the application notice can be made with the permission of the court but not otherwise;
  - (4) the court may not dispose of the committal application without a hearing; and
  - (5) the application notice must contain a prominent notice stating the possible consequences of the court making a committal order and of the respondent not attending the hearing. A form of notice, which may be used, is annexed to this practice direction.

## WRITTEN EVIDENCE

- 3.1** Written evidence in support of or in opposition to a committal application must be given by affidavit.
- 3.2** Written evidence served in support of or in opposition to a committal application must, unless the court otherwise directs, be filed.
- 3.3** A respondent may give oral evidence at the hearing, whether or not he has filed or served any written evidence. If he does so, he may be cross-examined.

- 3.4** A respondent may, with the permission of the court, call a witness to give oral evidence at the hearing whether or not the witness has sworn an affidavit.

## CASE MANAGEMENT AND DATE OF HEARING

- 4.1** The applicant for the committal order must, when lodging the claim form or application notice with the court for issuing or filing, as the case may be, obtain from the court a date for the hearing of the committal application.
- 4.2** Unless the court otherwise directs, the hearing date of a committal application shall be not less than 14 days after service of the claim form or of the application notice, as the case may be, on the respondent. The hearing date must be specified in the claim form or application notice or in a Notice of Hearing or Application attached to and served with the claim form or application notice.
- 4.3** The court may, however, at any time give case management directions, including directions for the service of written evidence by the respondent and written evidence in reply by the applicant, or may hold a directions hearing.
- 4.4** The court may on the hearing date –
- (1) give case management directions with a view to a hearing of the committal application on a future date; or
  - (2) if the committal application is ready to be heard, proceed forthwith to hear it.
- 4.5** In dealing with any committal application, the court will have regard to the need for the respondent to have details of the alleged acts of contempt and the opportunity to respond to the committal application.
- 4.6** The court should also have regard to the need for the respondent to be –
- (1) allowed a reasonable time for responding to the committal application including, if necessary, preparing a defence;
  - (2) made aware of the availability of assistance from the Community Legal Service and how to contact the Service;
  - (3) given the opportunity, if unrepresented, to obtain legal advice; and
  - (4) if unable to understand English, allowed to make arrangements, seeking the assistance of the court if necessary, for an interpreter to attend the hearing.

## STRIKING OUT

- 5.** The court may, on application by the respondent or on its own initiative, strike out a committal application if it appears to the court:
- (1) that the committal application and the evidence served in support of it disclose no reasonable ground for alleging that the respondent is guilty of a contempt of court;
  - (2) that the committal application is an abuse of the court's process or, if made in existing proceedings, is otherwise likely to obstruct the just disposal of those proceedings; or
  - (3) that there has been a failure to comply with a rule, practice direction or court order.
- (CPR Part 3 contains general powers for the management by the court)

## MISCELLANEOUS

6. CPR Rules 35.7 (Court's power to direct that evidence is to be given by a single joint expert), 35.8 (Instructions to single joint expert) and 35.9 (Power of court to direct a party to provide information) do not apply to committal applications.
7. An order under CPR rule 18.1 (Order for a party to give additional information) may not be made against a respondent to a committal application.
8. A committal application may not be discontinued without the permission of the court.
9. A committal application should normally be heard in public (see CPR rule 39.2), but if it is heard in private and the court finds the respondent guilty of contempt of court, the judge shall, when next sitting in public, state –
  - (1) the name of the respondent;
  - (2) in general terms the nature of the contempt or contempts found proved; and
  - (3) the penalty (if any) imposed.
10. The court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect.
11. Except where under an enactment a Master or district judge has power to make a committal order<sup>1</sup>, a committal order can only be made:
  - (1) in High Court proceedings, by a High Court Judge or a person authorised to act as such<sup>2</sup>; or
  - (2) in county court proceedings by a Circuit Judge or a person authorised to act or capable by virtue of his office of acting as such<sup>3</sup>.

## PART II

12. Where the committal application relates to a contempt in the face of the court the following matters should be given particular attention. Normally, it will be appropriate to defer consideration of the behaviour to allow the respondent time to reflect on what has occurred. The time needed for the following procedures should allow such a period of reflection.
13. A Part 8 claim form and an application notice are not required for Part II, but other provisions of this practice direction should be applied, as necessary, or adapted to the circumstances. In addition the judge should:
  - (1) tell the respondent of the possible penalty he faces;
  - (2) inform the respondent in detail, and preferably in writing, of the actions and behaviour of the respondent which have given rise to the committal application;
  - (3) if he considers that an apology would remove the need for the committal application, tell the respondent;
  - (4) have regard to the need for the respondent to be –
    - (a) allowed a reasonable time for responding to the committal application, including, if necessary, preparing a defence;
    - (b) made aware of the availability of assistance from the Community Legal Service and how to contact the Service;
    - (c) given the opportunity, if unrepresented, to obtain legal advice;

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<sup>1</sup> e.g. ss.14 and 118, County Courts Act 1984.

<sup>2</sup> see s.9(1), Senior Courts Act 1981.

<sup>3</sup> see s.5(3), County Courts Act 1984.

- (d) if unable to understand English, allowed to make arrangements, seeking the court's assistance if necessary, for an interpreter to attend the hearing; and
- (e) brought back before the court for the committal application to be heard within a reasonable time.
- (5)** allow the respondent an opportunity to –
  - (a) apologise to the court;
  - (b) explain his actions and behaviour; and
  - (c) if the contempt is proved, to address the court on the penalty to be imposed on him;
- (6)** if there is a risk of the appearance of bias, ask another judge to hear the committal application; and
- (7)** where appropriate, nominate a suitable person to give the respondent the information.

(It is likely to be appropriate to nominate a person where the effective communication of information by the judge to the respondent was not possible when the incident occurred.)

- 14.** Where the committal application is to be heard by another judge, a written statement by the judge before whom the actions and behaviour of the respondent which have given rise to the committal application took place may be submitted as evidence of those actions and behaviour.

# ANNEX

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## IMPORTANT NOTICE

The Court has power to send you to prison and to fine you if it finds that any of the allegations made against you are true and amount to a contempt of court.

**You must attend court** on the date shown on the front of this form. It is in your own interest to do so. You should bring with you any witnesses and documents which you think will help you put your side of the case.

If you consider the allegations are not true you must tell the court why. If it is established that they are true, you must tell the court of any good reason why they do not amount to a contempt of court, or, if they do, why you should not be punished

If you need advice you should show this document at once to your solicitor or go to a Citizens' Advice Bureau.