

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 This practice direction applies to any application for an order for committal of a person to prison for contempt of court (a “committal application”).
- 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 contempt of a county court, the committal application may be made in the county court in question.
- 1.3 In every other case, a committal application must be made in the High Court.

COMMENCEMENT OF COMMITTAL PROCEEDINGS

- 2.1 A committal application must, subject to paragraph 2.2, be commenced by the issue of a claim form. The Part 8 claim form must be used (see paragraph 2.5).
- 2.2
 - (1) If the committal application is made in existing proceedings it may be commenced by the filing of an application notice in those proceedings.
 - (2) An application to commit for breach of an undertaking or order may 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 should identify, separately and numerically, each alleged act of contempt,
- (3) an amendment to the claim form can be made with the permission of the court but not otherwise, and
- (4) CPR rule 8.4 does not apply.

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 should identify, separately and numerically, each alleged act of contempt,
- (3) an amendment to the application notice can be made with the permission of the court but not otherwise, and
- (4) the court may not dispose of the committal application without a hearing.

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, notwithstanding that he has not filed or served any written evidence, may give oral evidence at the hearing if he expresses a wish to do so. 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 notwithstanding that the witness has not 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 clear 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 convene and 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.

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.

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 state in public:
 - (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. Any procedural defect in the commencement or conduct by the applicant of a committal application may be waived by the court 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 order¹, 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,²
 - (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 such³.

¹ e.g. ss.14 and 118, County Courts Act 1984.

² see s.9(1), Supreme Court Act 1981.

³ see s.5(3), County Courts Act 1984.