

PRACTICE DIRECTION 21A – CONTEMPT OF COURT

This practice direction supplements Part 21 of the Court of Protection Rules 2017

Section 2 of Part 21 – Committal for breach of a judgment, order or undertaking to do or abstain from doing an act

Requirement for a penal notice on judgments and orders – form of penal notice (Rule 21.9)

1. A judgment or order which restrains a party from doing an act or requires an act to be done must, if disobedience is to be dealt with by proceedings for contempt of court, have a penal notice endorsed on it as follows (or in words to substantially the same effect)—

“If you the within-named [] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or your assets may be seized.”

Requirement for a penal notice on judgments and orders – undertakings (Rule 21.9)

2.1. Subject to rule 21.9(2) (which covers the case where the undertaking is contained in an order or judgment), the form of an undertaking to do or abstain from doing any act must be endorsed with a notice setting out the consequences of disobedience as follows (or in words to substantially the same effect)—

“You may be held to be in contempt of court and imprisoned or fined, or your assets may be seized, if you break the promises you have given to the court.”

2.2. The court may decline to—

(a) accept an undertaking; or

(b) deal with disobedience in respect of an undertaking by contempt of court proceedings.

unless the party giving the undertaking has made a signed statement to the effect that the party understands the terms of the undertaking and the consequences of failure to comply with it, as follows (or in words to substantially the same effect)—

“I understand the undertaking that I have given and that if I break any of my promises to the court I may be sent to prison, or fined, or my assets may be seized, for contempt of court.”

2.3. The statement need not be made before the court in person. It may be endorsed on the court copy of the undertaking or may be filed in a separate document such as a letter.

Section 3 of Part 21 – Contempt in the face of the court

Committal for contempt in the face of the court (Rule 21.12)

3.1. Where the committal proceedings relate to a contempt in the face of the court the matters referred to in paragraph 3.3 should be given particular attention. Normally it will be appropriate to defer consideration of the respondent’s actions and 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.

3.2. The use of the Part 10 procedure is not required for contempt in the face of the court, but other provisions of this practice direction should be applied, as necessary, or adapted to the circumstances.

3.3. The judge should—

- (a) tell the respondent of the possible penalty that the respondent faces;
- (b) 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;
- (c) if the judge considers that an apology would remove the need for the committal application, tell the respondent;
- (d) have regard to the need for the respondent to be—
 - (i) allowed a reasonable time for responding to the committal application, including, if necessary, preparing a defence;
 - (ii) made aware of the possible availability of criminal legal aid and how to contact the Legal Aid Agency;
 - (iii) given the opportunity, if unrepresented, to obtain legal advice;
 - (iv) if unable to understand English, allowed to make arrangements, seeking the court's assistance if necessary, for an interpreter to attend the hearing; and
 - (v) brought back before the court for the committal application to be heard within a reasonable time;
- (e) allow the respondent an opportunity to—
 - (i) apologise to the court;
 - (ii) explain the respondent's actions and behaviour; and
 - (iii) if the contempt is proved, to address the court on the penalty to be imposed on the respondent; and
- (f) 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.)

3.4. If there is a risk of the appearance of bias, the judge should ask another judge to hear the committal application.

3.5. 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 admitted as evidence of those actions and behaviour.

Section 5 of Part 21 – Committal for making a false statement of truth

Committal application in relation to a false statement of truth (Rule 21.17)

4.1. Rule 21.17(1)(b) provides that a committal application may be made by the Attorney General. However the Attorney General prefers a request that comes from the court to one made direct by a party to the proceedings in which the alleged contempt occurred without prior consideration by the court. A request to the Attorney General is not a way of appealing against, or reviewing, the decision of the judge.

4.2. Where the permission of the court is sought under rule 21.17(1)(a), the affidavit evidence in support of the application must—

- (a) identify the statement said to be false;
- (b) explain—
 - (i) why it is false; and
 - (ii) why the maker knew the statement to be false at the time it was made; and
- (c) explain why contempt proceedings would be appropriate in the light of the overriding objective in Part 1 of the Rules.

4.3. The court may—

- (a) exercise any of its powers under the Rules (including the power to give directions under rule 21.15(6));
- (b) initiate steps to consider if there is a contempt of court and, where there is, to punish it; or
- (c) as provided by rule 21.17(3), direct that the matter be referred to the Attorney General with a request to consider whether to bring proceedings for contempt of court.

4.4. A request to the Attorney General to consider whether to bring proceedings for contempt of court must be made in writing and sent to the Attorney General's Office at 5-8 The Sanctuary, London SW1P 3JS.

4.5. A request to the Attorney General must be accompanied by a copy of any order directing that the matter be referred to the Attorney General and must—

- (a) identify the statement said to be false;
- (b) explain—
 - (i) why it is false; and
 - (ii) why the maker knew the statement to be false at the time it was made; and
- (c) explain why contempt proceedings would be appropriate in the light of the overriding objective in Part 1 of the Rules.

4.6. Once the applicant receives the result of the request to the Attorney General, the applicant must send a copy of it to the court that will deal with the committal application, and the court will give such directions as it sees fit.

4.7. The rules do not change the law of contempt or introduce new categories of contempt. A person applying to commence such proceedings should consider whether the incident complained of does amount to contempt of court and whether such proceedings would further the overriding objective in Part 1 of the Rules.

Section 6 of Part 21 – Writ of sequestration to enforce a judgment, order or undertaking

Requirement for a penal notice on judgments and orders (Rule 21.24)

5. Paragraphs 1 and 2.1 to 2.3 apply to judgments or orders to be enforced by a writ of sequestration (subject in the case of undertakings to rule 21.24(2), which covers the case where the undertaking is contained in an order or judgment).

Levying execution on certain days

6. Unless the court orders otherwise, a writ of sequestration to enforce a judgment, order or undertaking must not be executed on a Sunday, Good Friday or Christmas Day.

Section 7 of Part 21 – General rules about committal applications, orders for committal and writs of sequestration

Human rights

7. In all cases the Convention rights of those involved should particularly be borne in mind. It should be noted that the standard of proof, having regard to the possibility that a person may be sent to prison, is that allegation be proved beyond reasonable doubt.

(Section 1 of the Human Rights Act 1998 defines “the Convention rights”.)

Applications for committal after permission granted or where permission not needed

8.1. An application for an order of committal must be commenced by filing a COP9 application notice in accordance with Part 21.

8.2. The applicant must file the original and one copy of the application notice, together with the original and one copy of the affidavit that is required by rule 21.10.

8.3. The affidavit must contain—

- (a) the name and description of the person making the application;
- (b) the name, address and description of the person sought to be committed;
- (c) the grounds on which committal is sought;
- (d) a description of each alleged act of contempt, identifying:
 - (i) each act separately and numerically, and
 - (ii) if known, the date of each act; and
- (e) any additional information required by paragraphs 8.4 and 8.5.

8.4. Where the allegation of contempt relates to prior proceedings before the court, the affidavit must also state:

- (a) the case number of those prior proceedings;
- (b) the date of the proceedings; and
- (c) the name of P.

8.5. The affidavit must also set out in full any order, judgment or undertaking which it is alleged has been disobeyed or broken by the person sought to be committed. This will apply where the allegation of contempt is made on the grounds that—

- (a) a person is required by a judgment or order to do an act, and has refused or neglected to do it within the time fixed by the judgment or order or any subsequent order;
- (b) a person has disobeyed a judgment or order requiring that person to abstain from doing an act; or
- (c) a person has breached the terms of an undertaking which that person gave to the court.

(Practice Direction A accompanying Part 14 sets out further details in relation to affidavits.)

Evidence

9.1. Written evidence in support of or in opposition to a committal application must be given by affidavit.

9.2. Written evidence served in support of or in opposition to a committal application must, unless the court directs otherwise, be filed.

9.3. The following rules do not apply to committal applications—

- (a) rule 15.12 (Court's power to direct that evidence is to be given by a single joint expert); and
- (b) rule 15.13 (Instructions to single joint expert).

Hearing of application (Rule 21.28)

10.1. When filing the application notice, the applicant must obtain from the court a date for the hearing of the committal application.

10.2. Unless the court otherwise directs, the hearing date of a committal application must not be less than 14 days after service of the application notice on the respondent. The hearing date must be specified in the application notice or in a Notice of Hearing attached to and served with the application notice.

10.3. The court may at any time give case management directions (including directions for the service of evidence by the person sought to be committed and evidence in reply by the applicant) or may hold a directions hearing.

10.4. The court may on the hearing date—

(a) give case management directions with a view to a hearing of the committal application on a future date; or

(b) if the committal application is ready to be heard, proceed forthwith to hear it.

10.5. Where the person sought to be committed gives oral evidence at the hearing (in accordance with rule 21.28(2)), he or she may be cross-examined.

10.6. 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.

10.7. The court will also 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 possible availability of criminal legal aid and how to contact the Legal Aid Agency;

(c) given the opportunity, if unrepresented, to obtain legal advice; and

(d) 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, procedural defects and discontinuance

11.1. On application by the respondent or on its own initiative, the court may strike out a committal application if it appears to the court—

(a) that the 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;

(b) that the 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

(c) that there has been a failure to comply with a rule, practice direction or court order.

11.2. 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.

11.3. A committal application may not be discontinued without the permission of the court.