

Civil Injunctions and Committals

Civil work which must be done (as per the Guidance from the Deputy Head of Civil Justice) includes ;

1. Production of persons in custody following power of arrest detentions
2. Committals (in relation to a Defendant in custody or on bail)

Whilst there may be changes in general behaviour following the Government restrictions, anti-social behaviour (as defined under the 2014 Act) will not stop. Indeed certain forms such as “aggressive” begging may increase as ordinary methods of obtaining money through passive begging are curtailed.

Obtaining an injunction

1. An applicant may seek an injunction on an ex-parte basis or through an application to be listed at an inter-partes (attended) hearing. Either should be treated as urgent business (as may affect the health, safety and welfare of individuals). An ex-parte hearing should be conducted by telephone.
2. The order setting up an attended hearing should offer a telephone hearing to the parties (BT Meet Me) with an attended hearing by default. Some Defendants may wish to attend by telephone but some Defendants may have too chaotic a lifestyle to attend remotely and a fall-back position must be offered of an attended hearing.

Such attended hearings must take place at ;

- (a) Bristol CJC (no need to use the Bristol MC at this stage as no prospect of custody)
- (b) Cheltenham MC
- (c) Taunton MC

A suggested for of wording is

“The hearing of the application for an injunction will take place at 11.00 at [insert venue].

The hearing is suitable to proceed by telephone to avoid unnecessary travel. By 4.00pm oneach party must confirm whether they are willing to attend by telephone and if so to provide a telephone number to the court by e-mail at ... or by telephoning (please note hours of business for the Court are.....)

If either party is unable to take part by telephone the hearing will proceed with the parties attending in person.

Unless the parties are notified in advance that the hearing is by telephone they are to assume that the hearing will proceed with the parties to be present.

If the parties are to attend a hearing at a court there is no reason why the Judge cannot attend the hearing using a video link from another court centre. This is may be important for hearings at Cheltenham Magistrates Court which is a 20 minute drive from Gloucester Civil and Family Court Centre.

3. If ex parte order is made an urgent return date must be set (preferably within seven days) and the same rule as in paragraph 2 above apply

Committals

4. If the Respondent breaches it may either be
 - (a) A breach in respect of which the Applicant makes an application for committal
 - (b) A breach of a provision to which a power of arrest attaches

Applications

5. If the matter proceeds by way of application (paragraph 4(a) above) *an attended hearing must be listed* ; this cannot be by telephone as the risk of custody now arises and the public should still have the ability to access to the hearing (despite current travel restrictions). The Practice Direction¹ states

Open Justice

Open justice is a fundamental principle. The general rule is that hearings are carried out in, and judgments and orders are made in, public. This rule applies to all hearings, whether on application or otherwise, for committal for contempt irrespective of the court in which they are heard or of the proceedings in which they arise.

Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice. Derogations shall, where justified, be no more than strictly necessary to achieve their purpose.

Committal Hearings – in Public

(1) All committal hearings, whether on application or otherwise and whether for contempt in the face of the court or any other form of contempt, shall be listed and heard in public.

¹ Issued by the Lord Chief Justice on 26 March 2015

Given that the hearing of the application would be on notice, derogation from this clear rule will need to be justified given the circumstances of the individual case. The PD continues

Committal Hearings – in Private

8. Where the court, either on application or otherwise, is considering derogating from the general rule and holding a committal hearing in private, or imposing any other such derogation from the principle of open justice: it shall in all cases before the hearing takes place, notify the national print and broadcast media, via the Press Association’s CopyDirect service, of the fact of the committal hearing (whether it is brought on application or otherwise) when and where it is listed for hearing, and the nature of the proposed derogation; and at the outset of the committal hearing the court shall hear submissions from the parties and/or the media on the question whether to impose the proposed derogation.

.....

10. Where the court decides to exercise its discretion to derogate from the general rule, and particularly where it decides to hold a committal hearing in private, it shall, before it continues to do so, sit in public in order to give a reasoned public judgment setting out why it is doing so.

6. Some first hearings of committal applications will not be effective as the Defendant has not obtained representation ; *however some will be*. As the risk of custody arises it is necessary for the hearing to be at a Court centre with suitable cell facilities. Taunton MC does not have such facilities so an attended hearing where there is a risk of custody must take place at ;

- (a) Bristol MC
- (b) Cheltenham MC

Geo Amey must be put on advance notice of any case in which there is a risk of custody.

Any application for committal must be placed before a Judge who will consider appropriate listing directions and the need for notice to Geo Amey and also whether it is possible/appropriate for a Judge to attend remotely via video link from another court² .

Hearings following arrest

7. If the Respondent has been arrested/detained by the Police and he/she has to be “brought before a Judge” within 24 hours of arrest (excluding Sundays and Good Friday).

² it is unlikely to be suitable for the Judge to attend by video link if evidence is to be heard

8. Usually, *but not always*, the Defendant will not have legal representation at this stage.
9. Before the current crisis HMCTS and the Police were working towards Respondents being placed before a Judge by remote access through video link ; *but still with the Judge sitting in an open court*. Otherwise a representative would not be able to attend and the hearing would not be open to the public (see paragraph 5 above).
10. However there has always been the difficulty posed by the need to deal with an arrest out of hours. The PD Clarification document stated

In certain circumstances section 43 of the 2009 Act and section 9 of 2014 Act may require breach of an injunction to be dealt with by a judge outside the court's normal opening hours, i.e., in the evening, at a weekend or on a bank holiday.

Where an 'out of hours' court is open and available, such matters should be listed and heard at that court 'out of hours'. Paragraph 6(3) of the Committal PD applies to such listings.

Where no 'out of hours' court is open and available, the judge should consider whether the matter can properly be dealt with, at a location other than an open court, through exercise of the power to remand on bail or in custody, provided under section 43(5) and schedule 5 of the 2009 or section 9(5) and schedule 1 of the 2014 Act. Use of the remand power does not engage the notification requirements of paragraphs 5, 6, 13 or 15 of the Committal PD. Those requirements will be met when the matter comes back before the court as specified below.

Where breach of an injunction is dealt with by way of remand on bail, the committal hearing should be listed, in accordance with the provisions of the Committal PD, at the first convenient date when the court is sitting.

Where breach of an injunction is dealt with by way of remand in custody, the committal hearing should be listed for hearing, within any applicable statutory time limit and in accordance with the provisions of the Committal PD, in the nearest appropriate court to the place of custody on the first convenient date when the court is sitting

11. Despite the current circumstances Bristol, Taunton and Cheltenham Magistrates Courts will remain open on a Saturday Morning. So an "out of hours" court will be available.
12. Given the clear need to ensure open justice (public access) and the difficulties with arranging a remote hearing with a solicitor at short notice (should the Defendant be represented) *unless it is impracticable given current restrictions /guidance* the arrested Respondent should appear by skype or video link at the relevant Magistrates Court i.e. an open court. The Judge may be able to attend remotely using skype.
13. When the hearing is being arranged the Police should be asked to ensure that any witness statements supplied to the Respondent in relation to the alleged breach have witness contact numbers and addresses redacted.

14. The Judges must consider how to effect/order service of the order following any hearing where Defendant is attending remotely, particularly where a remand order is made (these would of course normally be served upon the Defendant in court by a court officer).

15. Any further hearings post arrest then depend upon whether the Defendant is bailed or retained in custody. The hearings are then committal hearings and paragraphs 5-6 above apply.

HHJ Cotter QC
6.4.20