



Introduction

The Civil Justice Council (CJC) is a statutory advisory body established under the Civil Procedure Act 1997. Our functions include keeping the civil justice system under review and considering how to make the civil justice system more accessible, fair, and efficient. The CJC's membership encompasses a breadth of stakeholders, including the judiciary, civil servants, legal professionals, and others with an interest in the civil justice system. Some CJC members may respond separately to this consultation, as representatives of interest-specific bodies.

Contempt of court is a unique area of public law that results in neither civil nor criminal liability. Notwithstanding, its impact on civil justice is direct. In providing powers to sanction behaviour inhibiting the administration of justice, it protects the fairness and efficiency of civil proceedings. It is also inseparable from the experience of civil justice system users, given its role in managing the conduct of litigation.

The CJC's response is contained to general comments on how the consultation proposals impact the accessibility, fairness, and efficiency of the civil justice system. It has focused specifically on technology, and legal aid. It has been drafted with consideration to both the experience of civil justice users and the importance of protecting the administration of justice. We have not answered technical questions relating the substance and operation of the law. We feel such matters would be better addressed by different organisations with more subject-specific expertise. Where possible, our response indicates a view on specific consultation questions.

General Remarks

Contempt of court is a complex form of liability, spanning a breadth of statutory and common law sources. The CJC agrees that its failure to develop systematically has produced a confusing and disordered regime ([Paragraph 1.3](#)). Any reforms that would clarify and improve the coherency of contempt of court are welcomed.

The consultation recommends a reformed framework for liability to 'clarify and codify elements required to prove contempt'. Three new distinct categories of liability are proposed, replacing the existing civil/criminal distinction ([Question 1](#)). A statutory provision outlining a non-exhaustive list of examples constituting the new category of 'general contempt' would accompany this ([Question 16](#)). The substance of law contained within the new categories of liability is considered in detail ([Questions 2-40](#)). The CJC is supportive of introducing simplified categories of liability and abolishing the 'criminal/civil' distinction. Should the proposed new categories of liability be implemented, a non-exhaustive list of examples included in the statute would greatly aid comprehension. These measures would facilitate better public understanding of the law, providing a clearer framework for courts and the public to operate within. The CJC has no specific comment on questions relating to the substance of the law. Other bodies with subject-specific expertise may be better placed to respond to such areas.

The consultation identifies issues of inconsistent and unclear procedures across courts, and a lack of detail within procedure rules. [Question 65](#) proposes a 'uniform, general procedure in contempt proceedings', to be developed by existing rules committees ([Question 66](#)). Any such procedure would be subject to some variation to accommodate the needs of particular courts ([Paragraph 8.92](#)). The

features of the existing regime are unsatisfactory, affecting both the ability of courts and litigants to navigate existing regulations. The CJC is supportive of harmonisation and agrees that existing rules committees would be best placed to consider the technical details of contempt procedure.

The current regime for determining whether a body is protected by the law of contempt is also unclear. The consultation proposes retaining the existing statutory definition,¹ subject to the addition of a non-exhaustive list of bodies considered ‘courts’ for the purposes of contempt (Consultation Question 42). The CJC agrees that this would provide welcome certainty, in particular to users of the civil justice system.

Technology

The piecemeal development of contempt liability has created a regime that fails to account for recent technological advances. Technology is increasingly impacting the administration of justice, both in relation to how proceedings are engaged with, and reported on. The consultation proposes a review of section 41 of the Criminal Justice Act relating to photography within court and subsequent liability for contempt (Question 10). Whilst further review of this topic is welcome, the CJC believes that greater consideration need be given to the use of digital technology more widely.

Evaluating the role of technology is of particular importance given its increasing integration into the civil justice system. The consultation acknowledges the importance of contempt accommodating new ways of interfering with the administration (see: the proposed general contempt test at Paragraph 3.137). The CJC would welcome more detailed consideration of the impacts of technological developments. Technology has enabled varied methods of engagement. Proceedings that are accessible digitally are an important component of open and transparent justice. The result of digital access is, however, varied. Some digital participation results in new forms of engagement that are helpful to aims of accessibility and transparency. Others, which have included witnesses joining proceedings from atypical environments, are ‘plainly inappropriate’.² With proceedings now more accessible via technology, the law should be clear on the expected conduct of those participating in the justice process. We believe that this is an area that has been given insufficient attention in the consultation. For example, a call for evidence on ‘The Impact of Social Media on the Administration of Justice’ was issued by the Attorney-General's Office in 2017, with the aim of gathering statistical and empirical evidence of the impact of the use of social media. An update on this area would be recommended to understand whether the public are aware of contempt legislation and the risks, in order to inform how the law develops.

Legal Aid

It is an anomaly that funding for civil contempt of court is accessed through criminal legal aid. Criminal practitioners are often unfamiliar with contempt of court law practice and procedure and as a result, it is often challenging to identify practitioners willing to act. This is an issue that has previously been highlighted by the CJC in relation to Anti-Social Behaviour Injunction Orders.³

A key area of concern is the issue of ‘advice deserts’. Our report on Anti-Social Behaviour Injunctions found that despite legal aid being technically available to defendants subject to ASBI proceedings,

¹ Contempt of Court Act 1981, section 19: “‘court’ includes any tribunal or body exercising the judicial power of the State, and “legal proceedings” shall be construed accordingly’

² See *Raja & Anor v ATM Law & Ors* [2024] EWHC 2782 (Ch)

³ Civil Justice Council, ‘Anti-Social Behaviour and the Civil Courts’ (July 2020) < <https://www.judiciary.uk/wp-content/uploads/2022/07/ASBI-final-accessible.pdf>>.

there were areas of the country where access to solicitors willing to accept instruction for injunction applications or committals were extremely limited. Evidence gathered by the Legal Aid Practitioners Group suggests that this same problem exists with legal aid for contempt work. Furthermore, due to its designation as criminal legal aid, solicitors are not entitled to recover fees at *inter partes* rates, as they would have been if the matter were funded by civil legal aid.⁴

The consultation proposes applying means testing for legal aid in all contempt proceedings (Question 95). A requirement for solicitors to undertake means testing with a client at first instance is likely to worsen the issue of 'advice deserts'. The legal aid situation ultimately remains one of substantial unmet need. Effective representation for contempt proceedings requires a high degree of expertise. There is, however, insufficient funding to facilitate this. The CJC would welcome further consideration of this area.

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⁴ See: *MBR Acres* [2024] EWHC 1869 (SCCO).