

# **CIVIL CONTEMPT**

## **Hints and Pitfalls**

*A talk by*

**Richard Walford**

*to*

**The Fraud Lawyers Association**

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# Procedure - CPR Part 81

Part 81 covers:

- contempt of court; and
- the penal, contempt and disciplinary provisions of the County Courts Act 1984 (see CPR 81.34 and 35).

Part 81 does not change the underlying law, only the procedure.

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## Part 81 – Separate sections:

- Committal for breach of a judgment, order or undertaking
- Contempt in the face of the court
- Committal for making a false statement of truth or disclosure statement
- Committal for breach of a solicitor’s undertaking
- Committal for interference with the due administration of justice
- Statutory Certifications by any court, tribunal etc to the High Court; and applications to the High Court under section 336 of the Charities Act 2011

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## **Breach of a mandatory or prohibitory order or undertaking**

- Enforcement may be by an order for committal. [CPR 81.4 (1)]
- Undertakings to the Court are treated as orders. [CPR 81.4 (4)]
- The committal order may be made against a Director or other officer of a company. [CPR 81.4 (3)]

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# **WHAT YOU NEED TO SHOW**

- Onus of proving the contempt falls on the Applicant
- Criminal standard – beyond reasonable doubt

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## **WHAT YOU NEED TO SHOW**

- (1) that the alleged contemnor knew of the terms of the order;
- (2) that he acted (or failed to act) in a manner which involved a breach of the order; and
- (3) that he knew of the facts which made his conduct a breach:

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## WHAT YOU NEED TO SHOW:

- Not necessary to show that the Defendant believed that what he was doing was a breach

The Defendant’s “*belief that it was not a breach may have rested on the slenderest of foundations or on convenient advice which was plainly wrong.*”

Per Christopher Clarke J in  
*Masri –v- Consolidated Contractors*  
[2011] EWHC 1024 (Comm)

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# **Is reasonable excuse a defence?**

The Masri Defendants sought to argue that they had a reasonable excuse for what they failed to do because there were orders of the Lebanese Court which imposed constraints on them.

**The Court said no**

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# Can the Court draw Inferences?

The court can draw inferences if “compelling.”

In *ABC v DEF*, the Defendant:

- had not objected to the Latvian lawyer’s conduct which, on the Defendant’s own case was unauthorised and fraudulent as against him.
- failed to give a satisfactory explanation as to why he had not acted as a person not in contempt would have acted

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## Preconditions

Has the order been served on the person you wish to commit for contempt?

- Normally, must be personal service [CPR 81.6]
- the Court can dispense with service [CPR 81.8]
- Or apply for alternative method service

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# Preconditions

Was the Order endorsed with a penal notice?

- must be on the front of the Order
- Must be in proper form – see PD 81

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# Preconditions

Was the Order sufficiently clear in its terms?

- *Precisely what it means;*
- *Precisely what it forbids;*
- *No contempt if order is ambiguous;*
- *No contempt if order does not specify time for compliance.*

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## Preconditions

If a mandatory Order, was the time for compliance specified?

- If not, go back for a variation

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## Preconditions

### Can you specify your complaints?

*“ ...an alleged contemnor should be told, with sufficient particularity to enable him to defend himself, what exactly he is said to have done or omitted to do which constitutes contempt of court. The cases make clear that compliance with this rule will be strictly insisted upon since the liberty of the subject is at stake ... ”*

*A-G for Tuvalu v Phlatic Distribution  
[1990] 1 WLR 926*

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## **Making the application - CPR 81.10**

- Application Notice under Part 23
- 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
- Must include, if known, the date of each of the alleged acts;
- Affidavits must contain all the evidence relied upon.

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## Serving the application - CPR 81.10 (4)

- *The application notice and the evidence must be served personally.*
- *The court may—*
  - (a) dispense with service if it considers it just to do so; or*
  - (b) make an order in respect of service by an alternative method or at an alternative place.*

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## **What if something goes wrong?**

- All procedural requirements must be met.
- Court is not impressed by set aside applications relying on technical defects;
- Paragraph 16.2 of PD 81: the court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice to the respondent

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# Can you discontinue?

- The public interest means discontinuance only with permission

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# Committal for contempt in the face of the Court

- Rare
- A summary jurisdiction exercisable typically when Court proceedings are disrupted.

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## **So what guidance is available?**

The first decision to be made is whether to invoke the summary procedure or whether to refer the matter to the Attorney General for him to decide what action to take.

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## **So what guidance is available?**

- The summary procedure is a draconian step which should never be embarked upon lightly;
- it is not limited to cases where it is necessary to preserve the integrity of a trial which is in progress or about to begin

## **So what guidance is available?**

- If summary procedure, the process must be as fair as possible for the alleged contemnor;
- Arrange legal representation.
- The contemnor must be given the opportunity to contain his anger, consider the situation, apologise to the court and assure it of his good behaviour in future.

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# Committal for making a false Statement of Truth or Disclosure Statement

- Section 6 of CPR 81
- Filter: requires permission of the court dealing with the proceedings in which the false statement or disclosure statement was made; or by the Attorney General.
- In County Court, High Court Judge permission required.

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## **Committal for breach of a solicitor's undertaking - CPR 81.11**

- Requires a permission application
- Part 23 Application Notice.
- Once permission is granted, the Applicant has just 14 days to make his committal application or the permission lapses.
- Court usually orders compliance with undertaking

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# Committal for interference with the due administration of justice

- Rare
- Permission requirement
- Application for permission must be made *inter partes* by a Part 8 Claim Form

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# Penalty

The range of available penalties includes:

- Imprisonment for up to 2 years;
- A fine or
- (In some cases) Sequestration of assets;

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## Penalty

- *Any substantial breach of a freezing order is a serious matter, which normally merits a prison sentence.*
- *A substantial fine may be sufficient if the contemnor has been purged and the relevant assets recovered.*
- *Where there is a continuing failure to disclose, a long sentence, possibly even the maximum of two years, may encourage future co-operation by the contemnor.*

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# Penalty

- Primary purpose is coercive, not punitive.
- The objective is to encourage the contemnor to purge his contempt.

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# Richard Walford

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