

## CAUTION! Committal proceedings

Audrey Archer

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### Contempt triggers

1. **Breach order / undertakings. Often injunctive orders. PENAL NOTICE** must be present on the face of the order in order to make application for committal.
2. **Contempt in the face of the court.**
3. **False statements** : Statement of truth must have been made. Permission needed.
4. **Interference with administration of justice** : ie. falsifying documents. Permission may be needed [R37.5.a]

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### Morris v Crown Office [1970] 2 QB 114

“ LORD DENNING : ‘The phrase ‘contempt in the face of the court’ has a quaint old fashioned ring about it; but the importance of it is this: of all the places where law and order must be maintained, it is here in these courts. The course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of our society. **To maintain law and order, the judges have, and must have, power at once to deal with those who offend against it. It is a great power - a power instantly to imprison a person without trial - but it is a necessary power.** – Lord Denning

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*Newman v Modern Bookbinders*

[2000] 2 All ER 814

- Tell the offender why he has been detained and warn him of the potential penalty.
- Put the allegation(s) down in writing.
- Give the offender time to reflect and to apologise. Depending on the degree of seriousness of the incident, there may be circumstances where you will consider a genuine apology to be sufficient. Remember that sensible judge-craft includes not taking exception to every misdemeanour.

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*Newman v Modern Bookbinders*

[2000] 2 All ER 814

- Afford the offender the opportunity of legal representation.
- Afford him an opportunity to organise an interpreter if desired: Make sure the offender fully understands the allegations.
- Hear mitigation before passing sentence.
- When giving judgment remember that the criminal burden and standard of proof apply (see CPR PD81 para. 9): set out the facts; set out each allegation of breach; make your finding separately on each reciting that the finding is to the criminal standard.

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## PD37 – cases where no application is made

37.6

(1) .....

(3) If the court proceeds of its own initiative, it shall issue a summons to the defendant which includes the matters set out in rule 37.4(2)(a)-(s) (in so far as applicable) and requires the defendant to attend court for directions to be given.

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FP 2: application form for committal  
Part B

I (We) wish to rely on: (tick one box)

☐ [BOX] the attached (witness statement)(affidavit)

☐ [BOX] evidence in Part C in support of this application

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PRACTITIONER

Application: to who and is permission needed?  
The Family Court (Composition and Distribution of Business)  
Rules 2014

(5) Any power of the family court to make an order for committal in respect of a breach of a judgment, order or undertaking to do or abstain from doing an act **may only be made by a judge of the same level as, or of a higher level than, the judge who make the judgment or order, or who accepted the undertaking, as the case may be.**

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PRACTITIONER

Application: to who and is permission needed?  
To the Court who made the order / undertakings

NOTE : PART 19 applications

(3) A contempt application in relation to alleged interference with the due **administration of justice, otherwise than in existing High Court or family court proceedings,** is made by an application to the **High Court under Part 19.**

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## Permission

**Rule 37.3.5**

Permission is **ONLY** required IF:

Application made in relation to interference with the due administration of justice **UNLESS** app relates to existing proceedings (in High Court or family court) OR

Application is in relation to alleging that the other party **KNOWINGLY made a false statement** in a document containing a statement of truth.

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## PD 22(A)

Affidavit also means an affirmation unless the context requires otherwise

**3.3 The affidavit/statement should –**

.....each page should be endorsed with the case number and should bear the following initials –

(i) in the case of an affidavit, of the maker and of the person before whom it is sworn;....

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## PD 22(A)

4.1 Subject to paragraph 4.2 and rules 14.2 and 29.1, the affidavit/statement **must**, if practicable, be in the maker's own words, it should be expressed in the first person, and the maker should –

(a) commence –

(i) in an affidavit, 'I (full name) of (residential address) state on **oath** ..';

(ii) in a statement, by giving his or her full name and residential address;.....

(c) give his or her occupation or (if none) description; and.....

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## PD 22(A)

6.2 The jurat of an affidavit is a statement set out at the end of the document which authenticates the affidavit. It **MUST** –

- (a) be signed by all deponents;
- (b) be completed and signed by the person before whom the affidavit was sworn whose name and qualification must be printed beneath his signature;.....

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## PD 22(A)

6.3 An affidavit must be sworn before a person **independent of the parties or their representatives**.

Affirmations: All provisions apply save for:

- the deponent should commence 'I (full name) of (residential address) do solemnly and sincerely affirm'; and**
- (b) in the jurat the word 'sworn' is replaced by the word 'affirmed'.**

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*CH v CT* [2018] EWHC 1310 (Fam)

The High Court allowed a mother's appeal against a suspended committal order made following her failure to comply with a child arrangements order. Her **success was based on 2 things** :

1. no application to commit M had been made; the only application made and served had been for an enforcement order.
2. The Child Arrangements order was incapable of being enforced by committal as it was not endorsed with **an effective penal notice**.

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*Re L (A Child); Re Oddin* [2016] EWCA Civ 173

**Court said :** *‘He was denied the safeguards which anyone facing committal proceedings was entitled to....It had also never been proved that the Appellant had been served with the original order. A further defect was that the penal notice was not prominently displayed on the front of the order....’*

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*Court of Appeal in Brown v The London Borough of Haringey* [2015] EWCA Civ 483

The court expressed the firm opinion that all members of the profession, Judges, the LAA and the court service should be aware of the right to have legal aid granted in committal applications and to whom such applications should be made.

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### Sanchez checklist

The checklist includes, amongst other things, the following considerations:

- Whether the respondent has been served with the relevant documents including the notice of hearing
- Whether the respondent has had sufficient notice to enable them to prepare for the hearing
- Whether any reason has been advanced for the respondent's non-appearance
- Whether an adjournment would be likely to secure the attendance of the respondent or facilitate their representation
- The extent of the disadvantage to the respondent in not being able to present their account of events
- Whether undue prejudice would be caused to the applicant by any delay
- The terms of the overriding objective

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*Moutreuil v Andreewitch**(Contempt: No. 2) [2020] EWHC 1301 (Fam)*

A useful summary of the law relating to self incrimination and the burden and standard of proof was provided very recently by Cobb J:

12. Self-incrimination: At the outset of R's evidence he must be reminded that he was not bound to answer questions which may tend to incriminate him, and the advocates should be vigilant to ensure that R was reminded of this right prior to answering any specific question to which might lead to him incriminating himself.

14. Burden and standard of proof: It is not a requirement to demonstrate that R intended to and/or believed that the conduct in question constituted a breach of the order. Rather, it is simply sufficient for A to prove beyond reasonable doubt that R deliberately intended to commit the act/omission in question.

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## Covid cases

[Frejek v Frejek](#) (7 May 2020)

[Yuzu Hair and Beauty Ltd and another v Selvathiraviam](#) (13 May 2020)

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## Sentencing options

- No order
- Adjourn sentence on terms
- Fine
- Suspended prison sentence (again having first crossed the threshold for prison) and/or fine
- Immediately effective prison sentence and/or fine

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Important points on prison sentences:  
two stage process

- (a) Sufficiently serious to justify a prison sentence?
- (b) Suspend or not?
- Separate sentence for each breach (consecutive or concurrent)

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Sentencing examples

*Cherwayko v Cherwayko* (NO 3) 2016

Husband's actions "utterly frustrated" the purpose of the undertaking being provided

He received a total of 21 months imprisonment.

[Berger v Bell \[2020\] EWCA Civ 544](#)

R committed to prison for breaches of injunctive orders.  
Appealed. Court dismissed the appeal stating that **he would have continued to defy the order if allowed his liberty.**

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Sentencing examples

[Bhayana v Bhayana \[2019\] EWHC 3587 \(Fam\)](#)

The mother had willfully failed to comply with three orders and was found in contempt. The sentence of six months' imprisonment was **suspended** for 28 days to give her a final opportunity to comply with the orders.

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### Deferral of sentence

[Reilly v Shamrez \[2019\] EWHC 3112 \(Fam\)](#)

**Holman J adjourned the question of sanction and sentence to a date not less than six weeks after the hearing**, with no sentence to be served if the father did return the child. Judgment, 30/11/2019

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### Speaker

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