

Practice Direction

26 March 2015

Committal for Contempt of Court - Open Court

Preamble

1 This Practice Direction applies to all proceedings for committal for contempt of court, including contempt in the face of the court, whether arising under any statutory or inherent jurisdiction and, particularly, supplements the provisions relating to contempt of court in the Civil Procedure Rules 1998, the Family Procedure Rules 2010, the Court of Protection Rules 2007, and the Criminal Procedure Rules 2014 and any related Practice Directions supplementing those various provisions. It applies in all courts in England and Wales, including the Court of Protection, and supersedes the *Practice Guidance: Committal for Contempt* [2013] 1 WLR 1326, dated 3 May 2013; *Practice Guidance (Committal Proceedings: Open Court) (No 2)* [2013] 1 WLR 1753, dated 4 June 2013; and *President's Circular: Committals (The Family Court Practice 2014 at p 2976)*, dated 2 August 2013.

2 Any reference in this Practice Direction to a judgment includes reference to written reasons provided in accordance with rule 27.2 of the Family Procedure Rules 2010.

Open Justice

3 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.

4 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

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(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.

(2) They shall, except where paragraph 5(3) applies, be listed in the public court list as follows:

FOR HEARING IN OPEN COURT

Application by (*full name of applicant*) for

the Committal to prison of

(*full name of the person alleged to be in contempt*)

(3) In those cases where the person alleged to be in contempt is subject to arrest for an alleged breach of an order, including a location or collection order or an order made under the Family Law Act 1996, the hearing shall be listed in the public court list as follows:

FOR HEARING IN OPEN COURT [*add, where there has been a remand in custody: in*

accordance with the order of (name of judge) dated (*date*)]
Proceedings for the Committal to prison of
(*full name of the person alleged to be in contempt*)
who was arrested on (*date*) in accordance with and for alleged breach of a
[location/collection/Family Law Act 1996/other] order made by (*name of judge*) on
(*date*).

6 Where it is not possible to publish the details required by paragraph 5(3) in the public court list in the usual way the day before the hearing ie, in such circumstances where the alleged contemnor is produced at court by the Tipstaff or a constable on the morning of the hearing, having been arrested over night, the following steps should be taken:

- (1) Where, as in the Royal Courts of Justice, the public court list is prepared and accessible in electronic form, it should be updated with the appropriate entry as soon as the court becomes aware that the matter is coming before it;
- (2) Notice of the hearing should at the same time be placed outside the door of the court in which the matter is being, or is to be heard, and at whatever central location in the building the various court lists are displayed;
- (3) Notice should be given to the national print and broadcast media, via the Press Association's CopyDirect service, of the fact that the hearing is taking or is shortly due to take place.

If an alleged contemnor is produced at court, having been arrested overnight, the person shall immediately be produced before a judge who shall sit in public.

7 Where the committal hearing is brought by way of application notice, the court may authorise any person who is not a party to proceedings to obtain a copy of the application notice, upon request and subject to payment of any appropriate fee. Authorisation shall be granted in all but exceptional circumstances. Where authorisation is refused, the reasons for that refusal shall be set out in writing by the judge and supplied to the person who made the request.

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:

- (1) 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
- (2) 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.

9 In considering the question whether there are exceptional circumstances justifying a derogation from the general rule, and whether that derogation is no more than strictly necessary the fact that the committal hearing is made in the Court of Protection or in any proceedings relating to a child does not of itself justify the matter being heard in private. Moreover the fact that the hearing may involve the disclosure of material which ought not to be published does not of itself justify hearing the application in private if such publication can be restrained by an appropriate order.

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.

11 Where, having decided to exercise its discretion to hold a committal hearing in private, the court further decides that the substantive committal application is to be adjourned to a future date, the adjourned hearing shall be listed in the public court list as follows:

FOR HEARING IN PRIVATE

In accordance with the order of (*name of judge*) dated (*date*)

[On the application of (*full name of applicant*)]

Proceedings for the Committal to prison of

(*full name of the person alleged to be in contempt*)

12 Orders directing a committal hearing be heard in private or of other such derogations from the principle of open justice shall not be granted by consent of the parties: see *JIH v News Group Newspapers* [2011] EWCA Civ 42, [2011] WLR 1645 at [21].

Judgments

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- (1) In all cases, irrespective of whether the court has conducted the hearing in public or in private, and the court finds that a person has committed a contempt of court, the court shall at the conclusion of that hearing sit in public and state:
 - (i) the name of that person;
 - (ii) in general terms the nature of the contempt of court in respect of which the committal order, which for this purpose includes a suspended committal order, is being made;
 - (iii) the punishment being imposed; and
 - (iv) provide the details required by (i) to (iii) to the national media, via the CopyDirect service, and to the Judicial Office, at judicialwebupdates@judiciary.gsi.gov.uk, for publication on the website of the Judiciary of England and Wales.
- (2) There are no exceptions to these requirements. There are never any circumstances in which any one may be committed to custody or made subject to a suspended committal order without these matters being stated by the court sitting in public.

14 In addition to the requirements at paragraph 13, the court shall, in respect of all committal decisions, also either produce a written judgment setting out its reasons or ensure that any oral judgment is transcribed, such transcription to be ordered the same day as the judgment is given and prepared on an expedited basis. It shall do so irrespective of its practice prior to this Practice Direction coming into force and irrespective of whether or not anyone has requested this.

15 Copies of the written judgment or transcript of judgment shall then be provided to the parties and the national media via the CopyDirect service. Copies shall also be supplied to BAILII and to the Judicial Office at judicialwebupdates@judiciary.gsi.gov.uk for publication on their websites as soon as reasonably practicable.

16 Advocates and the judge (except judges and justices of the peace in the Magistrates' courts) shall be robed for all committal hearings.

This Direction is made by the Lord Chief Justice, following consultation with the Master of the Rolls, President of the Queen's Bench Division, President of the Family Division and of the Court of Protection, and Chancellor of the High Court. It is issued in accordance with the procedure laid down in Part 1 of Schedule 2 to the Constitutional Reform Act 2005.

Lord Thomas LCJ