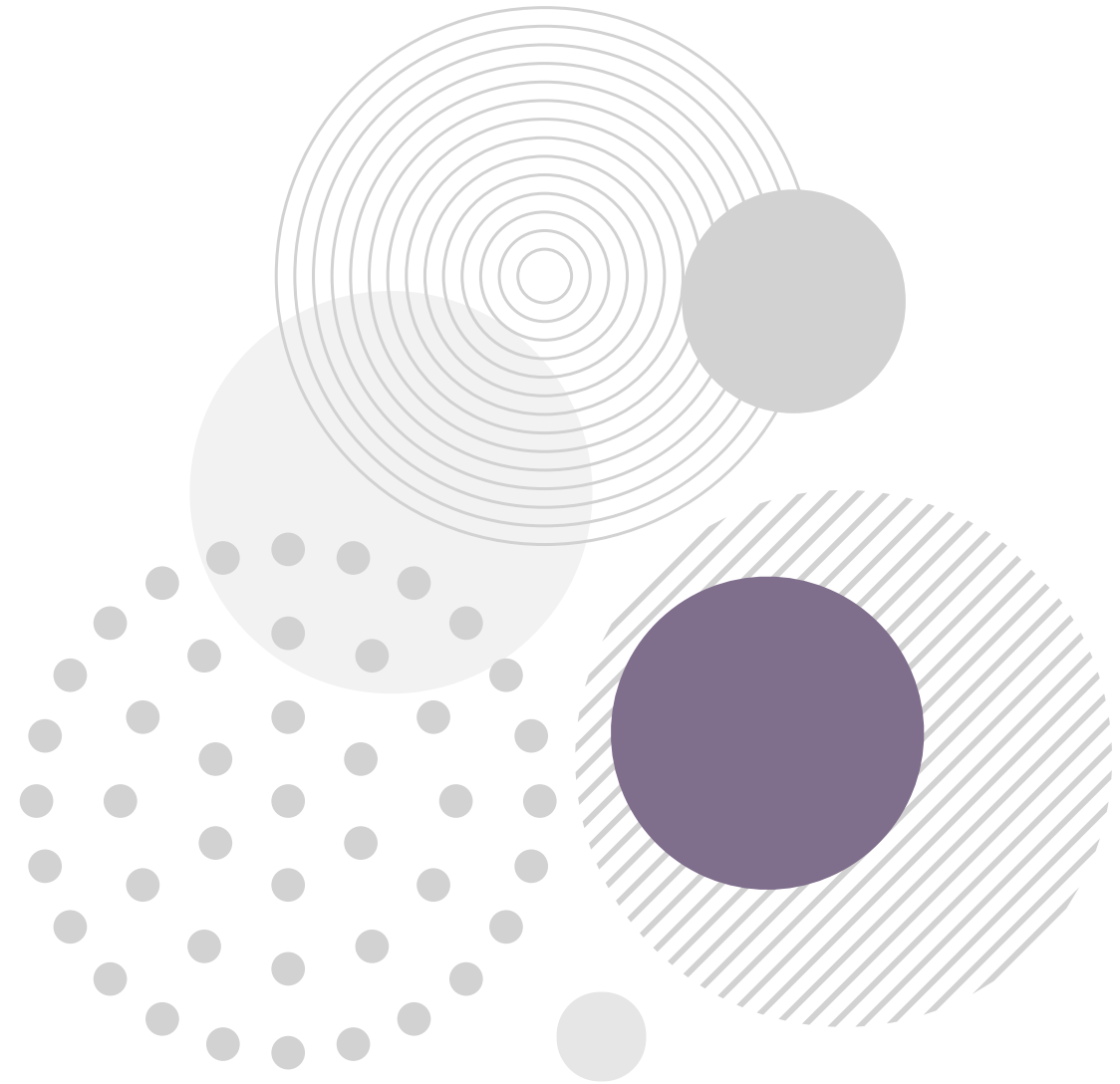

CONTEMPT OF COURT AND COMMITTAL PROCEEDINGS

Family Procedure Rules and legal principles

Helen Moizer

No18 Chambers

N^o18



CONTEMPT?

- **Contempt** of court is the established name for wrongful conduct which consists of interference with the course of justice.
- Application to **commit** someone to prison, or impose a penalty or sanction on them for breach of a common law injunction.

Contempt of court can take many different forms:

1. Contempt in the face of court
2. Making a false statement of truth
3. Non-compliance with a court order or undertaking
4. Interference with the due administration of justice



IN FAMILY PROCEEDINGS: PART 37 FPR

- Applications and proceedings in relation to contempt of court in family proceedings are governed by Pt 37 FPR and the supporting PD 37A.
 - Part 37 of the Family Procedure Rules (substituted by SI 2020/758) sets out the procedure to be followed in proceedings for contempt of court (FPR 37.1(1)), but does not alter the scope and extent of the jurisdiction of courts determining contempt proceedings, whether inherent, statutory or at common law (FPR 37.1(2)), and has effect subject to and to the extent that it is consistent with the substantive law of contempt of court (FPR 37.1(3)).
 - Pt 37 applies to family proceedings where the order sought to be enforced by committal was made under the provisions of the FPR 2010. It does not apply to other civil proceedings, which are governed by the CPR 1998 (Part 81).
-

BREACH OF ORDER OR UNDERTAKING

- Non-molestation order under Part IV of the FLA 1996
 - Occupation order
 - An order under section 8 of the Children Act 1989 (ChA 1989) to which a penal notice has been attached
 - An order under the Protection from Harassment Act 1997
 - Interlocutory and procedural orders which have been endorsed with a penal notice, eg orders to file financial disclosure on an application for a financial remedy order, orders to attend for cross-examination
 - Undertaking
-

CONTEMPT APPLICATION

Order 5.1: Contempt Application (FC600)

Contempt application

Rules 37.3 and 37.4 of the Family Procedure Rules 2010

Name of court

Case no./Serial no.

Claimant's name (including ref.)

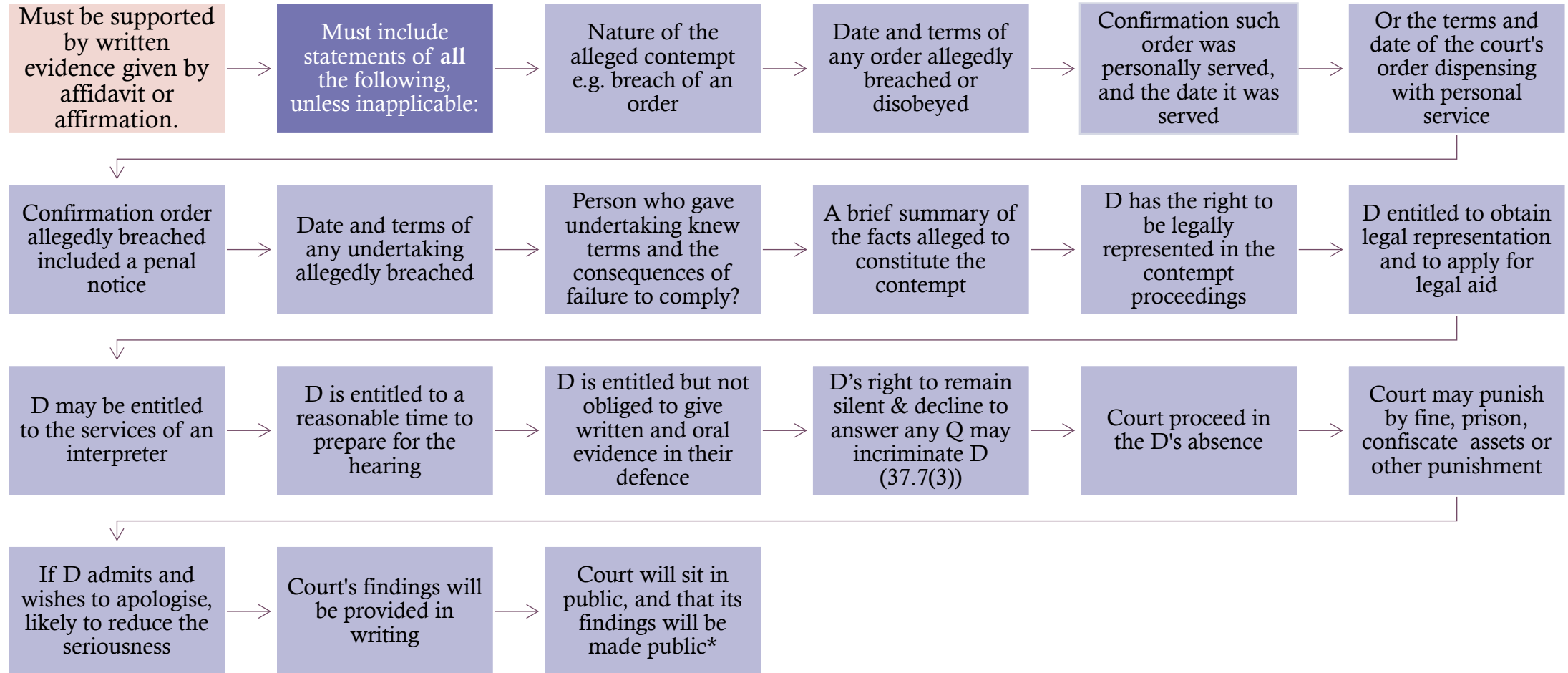
Defendant's name (including ref.)

Date
Day Month Year

- A contempt application made in **existing** High Court or family court proceedings is made by an application under Part 18 in those proceedings, whether or not the application is made against a party to those proceedings (FPR 37.3(1)).
- If the application is made in the High Court, it must be determined by a High Court judge of the Division in which the case is proceeding.
- If it is made in the family court, it must be determined by a judge of the family court (FPR 37.3(2)).

FC600

CONTEMPT APPLICATION: FPR 37.4



* <https://www.judiciary.uk/judgments/>

STRIKING OUT AND PROCEDURAL DEFECTS

- On application by the defendant or on its own initiative, the court may strike out a contempt application if it appears to the court:
 - that the application and the evidence served in support of it disclose no reasonable ground for alleging that the defendant is guilty of a contempt of court
 - that the application is an abuse of the court's process or, if made in existing proceedings, is otherwise likely to obstruct the just disposal of those proceedings; or
 - that there has been a failure to comply with a rule, practice direction or court order.
 - The court may waive any procedural defect in the commencement or conduct of a contempt application if satisfied that no injustice has been caused to the defendant by the defect.
-

THE HEARING

- Advocates and the judge must be **robed** in all contempt hearings whether or not the court sits in public.
- Allegation be proved beyond reasonable doubt.
- The court can proceed in the defendant's absence if they do not attend.
- If the court finds the defendant in contempt of court, it may impose:
 - a period of imprisonment (an order of committal)—whether immediate or suspended
 - a fine
 - confiscation of assets, or
 - other punishment permitted under the law
- Any sentence of imprisonment for contempt is for a fixed term, which must not on any one occasion exceed two years in the case of committal by the High Court or the County Court (and therefore the Family Court). The maximum sentence in the magistrates' court is one month. Neither the High Court nor the County Court may impose consecutive sentences which cumulatively exceed two years.

LEGAL PRINCIPLES

- Hale v Tanner [2000] 2 FLR 879
- Guidance on sentencing for contempt of court
- Re G (Contempt: Committal)
[2003] 2 FLR 58
- Lovett v Wigan Borough Council [2022] EWCA Civ 1631

Harm	Culpability		
	A	B	C
Category 1	<i>Starting point:</i> 6 months <i>Category range:</i> 8 weeks to 18 months	<i>Starting point:</i> 3 months <i>Category range:</i> Adjourned consideration to 6 months	<i>Starting point:</i> 1 month <i>Category range:</i> Adjourned consideration to 3 months
Category 2	<i>Starting point:</i> 3 months <i>Category range:</i> Adjourned consideration to 6 months	<i>Starting point:</i> 1 month <i>Category range:</i> Adjourned consideration to 3 months	<i>Starting point:</i> Adjourned consideration <i>Category range:</i> Adjourned consideration to 1 month
Category 3	<i>Starting point:</i> 1 month <i>Category range:</i> Adjourned consideration to 3 months	<i>Starting point:</i> Adjourned consideration <i>Category range:</i> Adjourned consideration to 1 month	<i>Starting point:</i> Adjourned consideration <i>Category range:</i> No order/fine to two weeks

LIMITS

- DJ: dealing with **contempt in face of court** (individual for wilfully insulting a judge of the Family Court, or any witness, or any officer of the court during his or her sitting or attendance in court, or in going to or returning from the court, or wilfully interrupting the proceedings of the Family Court or otherwise misbehaving in court) is limited to a period of committal not exceeding one **month***.
- In any case where a judge of the Family Court, except a judge of High Court judge level, has the power to impose a fine when dealing with a person for contempt of court in the Family Court, **the fine must not exceed level 5** on the standard scale.**
- In *Wilkinson v Lord Chancellor's Department*, a case involving private law children proceedings, the Court of Appeal held that it is not unlawful for the High Court to order the **detention** of a person pending summary determination of an alleged contempt in the face of the court, provided that the delay is no longer than is necessary to make arrangements for a summary trial in which the rights of the contemnor can be properly protected.
- **Permission** to make a contempt application is required where the application is made in relation to:
 - interference with the due administration of justice, except in relation to existing High Court or family court proceedings;
 - an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement.

*Family Court (Contempt of Court) (Powers) Regulations 2014, SI 2014/833, reg 3.

** Family Court (Contempt of Court) (Powers) Regulations 2014, SI 2014/833, reg 5

CHECKLIST — NON-COMPLIANCE WITH A COURT ORDER OR UNDERTAKING



Before making an application for contempt alleging non-compliance with an order or undertaking consider the following:

- are the terms of the order or undertaking clear and unambiguous in respect of what is and what is not to be done?
- does the order clearly identify the person whom it is intended to be bound?
- in the case of a mandatory order does the order specify the time for compliance?
- has the time for compliance with the order passed?
- is the order or undertaking endorsed with a penal notice on the face of the order/undertaking?
- where an undertaking has been accepted does the order record an acknowledgement by the giver of the undertaking that they understood its terms and the consequences of failure to comply with the promises they have made?
- has the order been personally served on the respondent or has the court dispensed with personal service and/or provided for service by other means?
- where service by means other than personal service was effected is evidence available of how and when and where appropriate by whom the order was served?



THANK YOU FOR
LISTENING

Any questions?
