



**Law
Commission**
Reforming the law

Law Commission of England and Wales

Contempt of Court Project: An Update

Dr Lawrence McNamara

**Presentation to Commercial Fraud Lawyers Association
27 March 2025**

What is the Law Commission?

- An independent body created by statute in 1965 with a statutory obligation to keep the law of England and Wales under review and make recommendations where reform is needed.

How our projects work – typical stages

- Pre-consultation
- Consultation paper
- Consultation (provisional proposals, open questions)
- Analysis & policy development
- Reporting (recommendations)
- Implementation



**Law
Commission**
Reforming the law

Overarching difficulty and our aim

The problem:

The law is disorganised, sometimes incoherent and inconsistent, and is an unsystematic amalgam of statute and common law. There are practical problems in its operation.

Our aim:

Ensure that the law is fair, effective, consistent, coherent.

The consultation paper - twelve chapters

- 1 & 2: Introduction and the contempt framework
- 3, 4 & 5: Liability for contempt
- 6: Protection and powers (esp inferior courts & tribunals)
- 7. The role of the Attorney General
- 8. Procedure
- 9. Representation (including legal aid)
- 10. Sanctions
- 11. Appeals
- 12. Economic and equality impacts

Consultation to reporting

March 2025

Supplementary consultation

Autumn 2025

Reporting – part 1 (liability, some aspects of the Attorney General's role)

2026

Reporting – part 2 (all other matters)

Provisional proposals: liability

Contempt framework

Dispose of distinction between civil and criminal contempt

Liability: three forms of contempt

1. General contempt
 - General contempt by publication
 - General contempt by conduct other than publication
2. **Contempt by breach of orders or undertakings**
3. Contempt by publication while proceedings are active

Weaponisation of contempt proceedings

We heard in pre-consultation

- Contempt applications for breach of order are often used by parties as a “litigation tactic” in the commercial context
- Little incentive to comply with an order until the final moments before a contempt application (or finding) is made

Provisional proposals and consultation questions

- **Interim remedies** should be available to the court in order to ensure compliance with court orders or undertakings without the court having to make a finding of contempt (CQ 24)
- **Permission** to make a contempt application should be required in all courts where the application relates to breach of an order (CQ 81)



Provisional proposal: permission

- Permission to make a contempt application should be required in all courts where the application relates to breach of an order

Open question: permission

- We invite consultees' views on whether permission should be required for applications relating to all other types of contempt

What have we heard?

Provisional proposals: interim remedies

- Interim remedies should be available to the court in order to ensure compliance with court orders or undertakings without the court having to make a finding of contempt.
 - Serves a coercive (rather than punitive) purpose
 - No requirement for the court to make a finding of contempt
 - Available where the court is satisfied on the balance of probabilities that the elements of contempt by breach of order or undertaking have been established
 - Examples: Payment into court (deposit or periodic payment); Sequestration of the defendant's assets; impounding a passport or documents

What have we heard?



**Law
Commission**
Reforming the law

Project web page

<https://lawcom.gov.uk/project/contempt-of-court/>

Email

contempt-of-court@lawcommission.gov.uk