



Committal for contempt

Gavin Foggo and Molly Ahmed examine the use of committal proceedings for contempt and their return to the spotlight

“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,” said Lord Denning MR in *Morris v The Master of the Crown Office* [1970] 1 All ER 1079.

Although the court’s power to make committal orders for contempt is well-established, it is a power which, contrary to Lord Denning’s exhortations, has been relatively little exercised. Solicitors have seen committal for contempt as a remedy only to be used in the most extreme of circumstances, and have advised their clients accordingly. Recent high-profile judgments, however, have brought the use of committal orders in civil proceedings back into the spotlight.

Civil contempt is in essence the performance of an act which is a clear breach of a court order or injunction where the contemnor knows about the order or injunction and intends to commit the act that leads to the breach. It is not necessary to show intention to breach. Remedies for contempt include committal, sequestration or the imposition of a fine. Here we focus on committal.

One of the most notorious recent recipients of a committal order is Mukhtar Ablyazov in the proceedings brought against him by JSC BTA Bank. After, amongst other breaches, failing to comply with orders requiring the disclosure of assets, lying during cross-examination, and dealing with assets in breach of a worldwide freezing order, Teare J sentenced Mr Ablyazov to 22 months in prison for contempt on 16 February 2012. In addition, he was debarred from defending BTA’s claim, although by then Mr Ablyazov had gone on the run and was sentenced in absentia. Teare J’s order was upheld by the Court of Appeal ([2012] EWCA Civ 1411).

More recently, in *Compania Sud Americana de Vapores SA v Hin-Pro International Logistics Limited* [2013] EWHC 987 (Comm), Andrew Smith J made a committal order in

March 2013 against Miss Sui Wei, the sole director of the Defendant company (“Hin-Pro”), because Hin-Pro had commenced proceedings against the claimant in China, in direct contravention of an anti-suit injunction awarded by the English Court (Burton J). Miss Wei was held to have knowingly assisted or permitted that breach. Like Mr Ablyazov, Miss Sui was sentenced (to three months in prison) in her absence.

A sequestration order was also made against Hin-Pro.

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The judgment is useful for practitioners because it reinforces key practice points. The application for committal for contempt must appropriately specify the allegations of contempt; the wording of the application notice must be in accordance with the Practice Direction to Part 81, specifically paragraph 13.2(4); and the order in respect of which the application is being made must contain a clear and specific penal notice. In this case, Burton J’s order had been reinforced by several further warnings. The requirement for personal service can be dispensed with, provided that the court is satisfied that the person has had notice in accordance with CPR 81.8.

Andrew Smith J also considered whether he should proceed with making the committal order in the absence of Hin-Pro and Miss Wei, particularly since Burton J’s order had not been made directly against Miss Wei and because the making of a committal order would deprive her of her liberty. He concluded he could because of the “clarity of the information that they

have repeatedly been given”; their access to legal advice, and their deliberate decision not to attend the hearing. The conclusion solicitors should draw from this case is that it is possible to obtain committal orders, provided the application is made carefully, comprehensively and with a thorough pre-application paper trail of correspondence with the other side.

The procedure for making a committal application is set out in CPR 81. As demonstrated in the *Hin-Pro International Logistics* case, it is vital to set out each and every fact relevant to the application. The safest approach would be to include all facts relevant to the sentence and to the respondent’s contumacy, even though the case-law on this is unclear. CPR 81.5 to 81.7 provide that a judgment or order may not be enforced by means of a committal order unless it has been served on the person required to do or not to do the act in question. However, in certain circumstances the court has the power to dispense with personal service, pursuant to CPR 81.8. After the application is issued and served, case management directions will be given for disclosure and for the respondent to file and serve evidence in advance of a committal hearing, although if he does so, he must submit to cross-examination. Contempt must be proved to the criminal standard of beyond reasonable doubt, which means that applicants must be aware that there is a very strong chance that they will rarely succeed on their first application for committal for contempt, and there is an automatic right of appeal against committal orders (CPR 52.3). Contrary to the *Ablyazov* and *Hin-Pro* cases, pursuing committal applications normally takes a great deal of persistence.

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