

Part 81: Ten new rules for committal

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Disclaimer

- The purpose of these slides, and the recorded webinar of 10.12.20 which referred to them, is to provide a helpful summary and should not be considered an alternative to fully informed legal advice

Introduction

- Part 81 CPR was substituted with ten simplified procedural rules on contempt of court on 1 October 2020
- In this webinar, Desmond Kilcoyne and Peter Jolley discuss the changes and the new 'one stop' procedure for all contempt of court proceedings in the civil courts

The Reforms

- Civil Procedure (Amendment No. 3) Rules 2020
- CPR Part 81 rewritten
- PD81 is revoked (i.e. gone altogether!)
- PD4 is updated to remove disused court forms and insert references for the new ones

The Need for Reform

- President of the QBD for e.g. remarked that the old Part 81 was “found wanting”
- Often criticised for being complex and repetitive
- Civil Procedure Rules Committee started looking into change last year and consulted this year leading to a complete replacement

The Headlines

- A single procedure for all contempt applications (r. 81.3)
- Radically simpler with ten rules
- What is needed is in the rules, so the PD has gone
- Applicants now claimants and respondents are defendants
- No transitional provisions – proceedings commenced prior to 01.10.2020 continue under the new rules

The Headlines (2)

- Saving provision operates for writs of sequestration (i.e. a writ appointing an enforcement officer to e.g. enter D's property)
- Parts of old Part 81 continue to apply in these cases, so do check
- Old law relevant - r.81.1(3): *This Part has effect subject to and to the extent that it is consistent with the substantive law of contempt of court* – but relevance of cases on old rules doubtful

Ten New Rules in Outline

- 81.1 Scope
- 81.2 Interpretation
- 81.3 How to make a contempt application
- 81.4 Requirements of a contempt application
- 81.5 Service of a contempt application

Ten New Rules in Outline (2)

- 81.6 Cases where no application is made
- 81.7 Directions for hearing of contempt proceedings
- 81.8 Hearings and judgments in contempt proceedings
- 81.9 Powers of the court in contempt proceedings
- 81.10 Applications to discharge committal orders

r.81.3: Making a contempt application

Is permission needed?

- interference with the due administration of justice, except in relation to existing High Court or County 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.

r.81.3: Where permission needed

- Include permission application with contempt application
- In HC, permission determined by single judge of Division in which case proceeding and application determined by single judge or Divisional Court
- In CC, or where no existing proceedings, or criminal proceedings or in Civil Division of CoA, permission determined by single judge of Administrative Court and application by a Divisional Court

r.81.3: Where permission not needed

- Application must be in existing HC or CC proceedings
- And no interference with administration of justice outside of existing proceedings / no allegation of false statement of truth
- In the HC, heard by a HC judge
- In the CC, heard by a CJ

New Procedure, New Forms

- **N600 Contempt Application**
- N601 Summons under r.81.6(3)
- N602 Warrant to Secure Attendance at Court under r.81.7(2)
- N603 Order under r.81.9 (powers of court where D in contempt)
- N604 Warrant of Committal under r.81.9

New Procedure, New Forms

- N600 application includes provision for making a permission application
- But is not to be used where Part 8 proceedings are required:

A contempt application in relation to alleged interference with the due administration of justice, otherwise than in existing High Court or county court proceedings, is made by an application to the High Court under Part 8

New Procedure, New Forms

Postcode

Extract from N600

The written evidence of the claimant in support of this application, in the form of an affidavit or affirmation, is attached to this application

If permission is required to make this application, the application for permission (headed 'Application for permission') must be included in this application

New Procedure, New Forms

Contempt application

(other than an application under Part 8) CPR 81.3 and 81.4

Extract from N600

Name of court

r.81.4: Requirements

- Formalisation of the case law requirements on information to be included in a contempt application
- Affidavit or affirmation still needed unless directed otherwise
- Long list under r.81.4(2) which are contained on the N600
- Includes r.81.4(2)(n): D has the right to remain silent and to decline to answer any question the answer to which may incriminate him/her

r.81.6: Court's own procedure

- If the court considers that a contempt of court (including a contempt in the face of the court) may have been committed, the court on its own initiative shall consider whether to proceed against the defendant in contempt proceedings
- Summons issued and served personally (or on solicitors where there is no objection within 7 days)
- Any party expected to give proportionate and reasonable assistance

r.81.7(2): Bench Warrants

- Court's power to issue a bench warrant to secure a defendant's attendance has been codified

r.81.8: Hearings and Judgments

- A much-simplified approach to publicity
- Replaces the *Practice Direction (Committal For Contempt: Open Court) [2015] 1 W.L.R. 2195* and the *Practice Guidance: Committal For Contempt Of Court—Open Court, 24 June 2015, unrep* (CPR 81.8)
- Court must continue to notify the media via the Press Association before hearing all or part of the hearing in private
- Judgment (findings and punishment) always in public

Recent Cases

- Limited as yet given very recent changes
- Oliver v Shaikh [2020] EWHC 2658 (QB): approach to sanctions
- Zurich v Barnicoat & Anor [2020] EWHC 3127 (QB): applying the criminal standard

Oliver v Shaikh [2020] EWHC 2658 (QB)

- First time new rules mentioned?
- New rules do not change principles relating to sentencing
- Decision on sanction entirely for court: not for a party to seek particular penalty, only to make submissions on circumstances and consequences
- Object of sanction to punish breach and secure future compliance

Reminder of Sanctions for Breach

- No order
- Imposition of an unlimited fine
- Imprisonment of up to two years – but only where contemnor's conduct is so serious that no other penalty is appropriate

Zurich v Barnicoat & Anor [2020] EWHC 3127 (QB)

- Three weeks since judgment
- PI claimants found fundamentally dishonest after claiming they were injured by falling down a manhole
- D insurer brought contempt proceedings
- Did the accident happen at all, or did it happen but not in the manner described?

Zurich v Barnicoat (cont'd)

- Court satisfied that Cs did not suffer any form of significant injury
- Court went through a long list of inconsistencies which the DJ considered when dismissing the claim
- However, court not satisfied beyond reasonable doubt that there was no accident at all
- Zurich had no first-hand evidence to support such a finding

Thank you for joining us

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