

# Contempt of Court – A Necessary Tool in the Administration of Justice

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BY SHANT MANOK-SANOIAN

In recent years, there have been an increasing number of cases before the Royal Court where findings of contempt have been made against individuals or entities. This article examines the law and scope of the Royal Court's jurisdiction in relation to civil contempt.

## Enforcement of Judgments

Civil contempt is essentially concerned with the enforcement of judgments or orders of the court and provides the means by which a party can seek to enforce a court order made in its favour. A civil contempt can be committed in many ways. The usual form is where a party disobeys an order of the court by either failing to do a specified act or abstaining from doing a specified act within a specified time.

A party who wishes to seek a finding of contempt against another party must issue a Representation to the Royal Court supported by an affidavit, which sets out the factual background to the matter and the reasons for the application. The Representation and supporting affidavit are subsequently served on the alleged contemnor and a date is then fixed for the contempt hearing.

Before the court can make a finding of contempt against any person or entity, it has to determine two questions:

Is the defendant in contempt of court?

If so, how should the contempt be punished?

In order to determine the first question, the court has to consider the relevant standard of proof. In **Caversham Trustees Limited v. Patel** [2007] JRC 215, the court confirmed that the standard of proof in relation to civil contempt is that which applies in criminal matters, namely proof beyond all reasonable doubt. The court applies an essentially objective test in order to determine whether or not a defendant is in contempt and the question of intention on the part of the alleged contemnor is largely irrelevant.

## Punish the Contemnor

If satisfied that a contempt has been committed, the court then goes on to consider how the contemnor should be punished. There are no statutory limits under Jersey law as to the penalties that may be imposed for civil contempt and the court usually exercises a wide discretion when deciding the relevant punishment. It will take into account the seriousness of the breach and whether there have been any

repeated breaches in the past. The mitigating factors which the court will consider include the contemnor's previous good character and whether there is contrition or genuine remorse on the part of the contemnor.

### **Fined Rather than Imprisoned**

As will be seen from the cases below, those found to have been in contempt are usually fined rather than imprisoned although it should be noted that a very serious and aggravated contempt can attract an immediate custodial sentence. Where appropriate, the court can also make adverse costs orders against the contemnor which may in itself amount to a substantial sanction.

In **Mayo Associates & Others v. Anagram (Bermuda) Ltd** (Unreported, 18 Jan 1995), the defendant failed to comply with the strict terms of a freezing injunction and admitted his contempt at the hearing. The court indicated that breaching a freezing injunction, especially when its terms were clear and unambiguous, was a serious contempt. The defendant was ordered to pay a fine of £1,000 or serve ten days' imprisonment in default.

In **Izodia plc v. Lynch Talbot and Others** [2003] JRC 094, the plaintiff sought a finding of contempt against four defendants in respect of their failure to comply with certain disclosure orders previously made by the court. The four defendants did not fully admit their contempt, however the court found that all four of them had failed to comply with the previous disclosure orders and were therefore in contempt of court.

The court indicated that this was a case which involved serious accusations concerning large sums of money and that the previous disclosure orders were necessary in order to assist the plaintiff in tracing its funds. The court imposed a fine of £10,000 on each of the defendants even though one of the defendants

did not attend and was not represented at the contempt hearing.

In **Apricus Investments Ltd & Others v. CIS Emerging Growth Limited** [2004] JRC 031, the defendant company failed to provide full disclosure of all its assets to the plaintiffs as required under the terms of a freezing injunction. A further disclosure order was obtained against the defendant which was also not fully complied with. The defendant did not appear and was not represented at the contempt hearing. The court nevertheless found the defendant to be in contempt and indicated that a very substantial fine would normally have been called for. However, the court imposed a limited fine of £1,000 on the defendant (at the suggestion of Counsel for the plaintiffs) primarily due to the fact that any amount imposed by way of a fine would go to reduce the amount available to creditors of the defendant company. The court also awarded costs against the defendant on the indemnity basis.

### **Full Apology**

Finally, in **Caversham Trustees Limited v. Patel** [2007] JRC 215, the defendant acted in breach of a consent order and made a full apology and admission during the course of cross-examination at the hearing. The court took into account various mitigating factors and held that a fine and punitive costs order, rather than imprisonment, would be the most appropriate sanction in order to mark the displeasure of the court. The defendant was fined £30,000 and the court made a punitive costs order against him worth approximately £278,000.

It can be seen from the above cases that the Royal Court adopts a pragmatic yet firm approach when dealing with cases of civil contempt. The civil remedy of contempt not only remains a useful weapon for litigants to use but also a drastic and necessary tool to ensure that the administration of justice is effective in Jersey, as it provides the Royal Court with a means of enforcing its own orders and judgments.

Shant Manok-Sanoian  
English Solicitor  
[smanok-sanoian@applebyglobal.com](mailto:smanok-sanoian@applebyglobal.com)

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