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Law Commission Contempt of Court: Report on Liability (Part One)

The Law Commission have finally published the first part of their long-awaited report on contempt of court. Part 1 deals with the issue of liability for contempt. Part 2 will consider and make recommendations on issues including which courts, tribunals and other bodies should have contempt protection and powers; procedure; legal aid and costs; sanctions and appeals. This report is due for publication in 2026.

The Law Commission proposes a new framework for contempt liability, discarding the historic distinction between civil and criminal contempt. The new liability framework comprises four forms of liability: (1) contempt by breach of court order or undertaking; (2) contempt by publication when proceedings are active; (3) contempt by disrupting proceedings; and (4) general contempt. Each form has different conduct and fault elements.

This update will focus on the general form of contempt, which captures any contempt that does not fall within forms 1-3 above. The Law Commission recommends that general contempt will be established where:

- the defendant's conduct interfered with the administration of justice in a non-trivial way, or created a substantial risk of a non-trivial interference with the administration of justice (**the conduct element**); and
- the defendant intended to interfere with the administration of justice in a non-trivial way (**the fault element**).

Importantly, the Law Commission recommends that general contempt should apply before proceedings have commenced, including when proceedings are imminent and before proceedings are imminent. This will ensure that when false statements are made as part of the pre-action protocol process in anticipation of proceedings that they are captured by the new contempt law.

It is pleasing to see the Law Commission drawing upon FOIL's consultation submissions in the following extracts from the report discussing false statements and disclosures to the court:

1.51 Consultation responses from the Forum of Insurance Lawyers (FOIL), the General Council of the Bar of England and Wales (the Bar Council) and the Personal Injuries Bar Association (PIBA) all suggested, either in terms or in effect, that the wording in a non-exhaustive list should at least include statements made in anticipation of proceedings. The comments from FOIL capture the underlying concern well. They expressly endorsed what was said in South Wales Fire and Rescue Service v Smith, which we also cite in the consultation paper:

Our system of adversarial justice depends upon openness, upon transparency and above all upon honesty. The system is seriously damaged by lying claims. ... The courts have on numerous occasions sought to emphasise how serious it is for someone to make a false claim, either in relation to liability or in relation to claims for compensation as a result of liability...

1.53 There was a particular concern raised about claimants who mislead expert witnesses. FOIL argued that statements made to experts or expert witnesses (such as "misrepresenting or exaggerating the true extent or impact of an injury") should be caught, though they acknowledged that evidential difficulties might arise where there is disagreement over what was said given that there would be no transcription...

1.54 In our view, a non-exhaustive list should include "providing false statements or disclosures to a court or in anticipation of proceedings". This is consistent with the wording in the Civil Procedure Rules. We do not think any more specificity is needed. It should lie with the courts to determine in any given circumstances whether the conduct threshold has been met. (pages 304-305)

We must now wait for the Part 2 report and to see if the Government will commit to enacting the Law Commission's recommendations.

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