

Ignorance isn't bliss

Nicola Finnerty & Gemma Tombs

warn why ignoring a court order could land you in serious trouble



IN BRIEF

- The ramifications for those found to be in civil contempt (as presided over by the High Court), and, in particular, the court's power to enforce such a finding against a contemnor who resides overseas, are more far reaching than many (civil) lawyers realise.

Wilful non compliance with a court order, or an undertaking given to the court, is a civil contempt of court.

An application for committal for contempt will normally be instigated by the opposing party although the High Court retains the power to instigate committal if it wishes. The nature of the civil proceedings in the course of which the alleged contempt has been committed will determine whether or not it is necessary to seek permission from the High Court before formally serving the application on the alleged contemnor. Unless the High Court directs otherwise, the hearing of the committal application will not take place less than 14 days after service on the alleged contemnor. The application will normally be held in public. There are some limited circumstances where the High Court may agree to hear the application in private but even then an individual found in contempt will not be able to avoid publicity as the name of the contemnor, the nature of the contempt, and the penalty imposed will still be published.

The penalties

Contempt of court must be proved to the criminal standard of beyond all reasonable doubt and, if found to be in contempt, an individual may be committed to prison for a maximum of two years' and an unlimited fine.

A last minute reprieve may, however, be offered to those who unexpectedly find themselves facing a period of time in prison as the High Court has the power to temporarily suspend the committal to prison if it considers the contemnor will finally comply with the original order or undertaking.

Enforcement

While civil contempt is not a criminal offence, it is a mistake to assume that a contemnor is not at risk of the same enforcement powers as a convicted criminal would be. The High Court has the inherent power to issue warrants for the arrest of an individual in contempt proceedings both before the hearing and once an order for committal has been made. A warrant of arrest issued by the High Court will be circulated on the police database and the fact of this warrant may be linked to the individual if he has to provide any form of identification to the authorities. For an individual travelling in and out of the UK frequently, the risk of the warrant being flagged up upon entry is extremely high.

A warrant for arrest following a ruling of contempt of court will remain in force for two years. An individual might therefore conclude that it is safe to remain outside the UK until the warrant has expired. Such a move would, however, fail to take into account the power of the UK authorities to seek extradition back to the UK. It will come as a surprise to many that civil contempt can fall under the category of an "extradition offence" pursuant to the Extradition Act 2003. The only restriction on the power of the UK authorities to apply for a European Arrest Warrant (EAW) is that the individual in question must have been committed to prison for contempt for at least four months.

European arrest warrant

Should the UK authorities choose to embark on the extradition route, an EAW may be issued by a UK court and from there it will be passed to

the Serious Organised Crime Agency for transmission to other European countries. If the UK authorities know where the contemnor is, the EAW can be sent directly to the authorities in that country. If the whereabouts of the individual are unknown, the EAW can be distributed to all member states via the International Criminal Police Organisation (Interpol). The Interpol notice is called a "red notice" and will leave the individual at risk of arrest by any member state. It should also be borne in mind that this risk is not peculiar to Europe as an individual may be stopped in any non-European country if the red notice is picked up on and the UK may still initiate an extradition request.

So, those individuals based overseas who might consider that it is better to risk a finding of contempt in absence rather than comply with an order which is onerous or may have severe financial consequences in the belief that they are beyond the reach of the High Court's jurisdiction, need to think again.

The recent case of *JSC BTA Bank v Solodchenko & Others* [2011] EWHC 2163 (Ch), [2011] All ER (D) 68 (Aug) is an illustration of how seriously the High Court treats civil contempt. In Solodchenko's case, the High Court heard the application for his committal in absence (as he was thought to be out of the jurisdiction) and, having found him in contempt for failure to comply with an international freezing order, committed him to prison for 18 months. It will be interesting to follow the steps the High Court and the UK authorities will now take to ensure the order for committal is complied with.

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