

**Law Commission**

**Consultation Paper No 209**

## **CONTEMPT OF COURT**

**Appendix D: Survey results**



# APPENDIX D

## SURVEY RESULTS

### MAGISTRATES' COURTS SURVEY RESULTS

- D.1 Below are the results of a survey of District Judges (magistrates' courts) on their experiences of alleged incidents of contempt of court in the face of the court. The results give a snapshot of how the law on contempt of court works in practice and give some indication of issues arising. The survey was designed to elicit information about the nature of these proceedings and to identify any areas of the current law which are not working well.<sup>1</sup>
- D.2 We were also seeking to elicit information on difficulties encountered as a result of pre-trial publicity.
- D.3 The survey was sent to all 145 District Judges across England and Wales, and 52 complete responses were collected. Although the response rate (36%) is below the norm for academic studies in behavioural sciences,<sup>2</sup> we consider it useful given the purpose of the study was to gain insight into some of the problems with the current law of contempt of court, not to make generalisations about contempt of court allegations throughout the country. Given that the data from this survey may not be representative of the entire population of District Judges in the UK, it should be interpreted with caution. We acknowledge that the views of District Judges who did not respond may differ. However, it could be the case that non-responders had less or no experience of contempt and thus were less inclined to respond. We would like to thank the Chief Magistrate Howard Riddle for his assistance.

### Summary of Key points

- D.4 **Thirty-one (60%) respondents had dealt with instances of alleged contempt** in the face of the court during the last 12 months. The **defendant was the alleged contemnor in 55 (70%) instances** reported, and the allegations overwhelmingly involved **obscenities, abuse, shouting or otherwise disruptive behaviour**, with **72 (79%) cases** featuring allegations of this nature.
- D.5 Forty-four (85%) respondents indicated that pre-trial publicity did not cause any additional problems.
- "How many times, if any, have you had cause to deal with alleged contempts in the face of the court in the last 12 months?"**
- D.6 **Thirty-one (60%) respondents had had to deal with at least one alleged contempt** in the face of the court in the last 12 months, whilst six (12%) of those had dealt with five or more instances in the last 12 months. The method used to collect data on this topic does not allow us to quantify a definitive number of

<sup>1</sup> There was some variability in responses to the questions in the survey. This may be due to respondents differing in their interpretation of the question.

<sup>2</sup> Y Baruch, "Response Rate in Academic Studies – A Comparative Analysis" (1999) 52 *Human Relations* 421, 434.

contempts.<sup>3</sup> However, we know from responses detailed in the table below that a minimum of 82 contempts were reported.

Number of contempts	Percentage	Number of responses
0	40%	21
1	17%	9
2	19%	10
3	12%	6
4	0%	0
5	2%	1
>5	10%	5
<b>TOTAL</b>	<b>100%</b>	<b>52</b>

**“Who was the alleged contemnor?”**

- D.7 The **defendant had been the alleged contemnor** in the majority of cases, with **55 (71%)** reported. Nineteen (24%) alleged contempts involved members of the public.

Alleged contemnor	Percentage	Number of responses
Defendant	71%	55
Witness	1%	1
Member of Public	24%	19
Other <sup>4</sup>	4%	3
<b>TOTAL</b>	<b>100%</b>	<b>78</b>

**“Describe briefly what the allegations involved.”**

- D.8 The overwhelming majority of cases had involved obscenities, abuse, shouting or otherwise disruptive behaviour, with 72 cases featuring allegations of this nature.<sup>5</sup> The total number of allegations in the table below may be higher than the number

<sup>3</sup> We do not know specifically how many contempts the 5 respondents who answered “>5” have experienced.

<sup>4</sup> Of those that answered “other”, two stated that the contemnor had been involved in a family case, and the third could no longer recall who the contemnor was.

<sup>5</sup> Of the cases that are recorded in the table as “other”, two involved making rude or threatening gestures at witnesses. The remaining cases were: one instance of refusal to surrender to the dock; one of wearing a T-shirt with an offensive logo; and one of attempting to escape. Of the remaining two cases, one involved sarcasm directed at the court and in relation to the other, the respondent could no longer recall what the allegations involved.

of reported cases of alleged contempt, as some cases had involved multiple allegations.<sup>6</sup>

Type of allegation	Number
Obscenities/abuse	51
Shouting or otherwise disruptive behaviour	21
Physical violence	4
Eating in court	2
Filming/recording proceedings	2
Mobile phone use	3
Other	7
<b>TOTAL</b>	<b>90</b>

**“How did you deal with the alleged contempt?”**

- D.9 The number of answers to this question exceeds the total number of alleged contempts, as more than one course of action could be taken in relation to each alleged contempt. Where a respondent selected “other” as an answer to this question, they were invited to provide further information by way of a follow up question. There is a further table breaking down the “other” category below.

Response	Number
Immediate hearing	10
Remanded in custody	20
Hearing after adjournment	12
Allowed the alleged contemnor legal advice	30
Ordered a police investigation	1
Referred the case to another judge	3
Not applicable	0
Other	36
<b>TOTAL</b>	<b>112</b>

<sup>6</sup> Data has only been presented in percentage format where it adds clarity for the reader

<b>Breakdown of “other” responses</b>	<b>Number</b>
Apology	7
Removed from/left court	12
Warning	3
Police investigation	2
Court rose	4
Contempt ignored	4
Cannot recall	1
Miscellaneous <sup>7</sup>	3
<b>TOTAL</b>	<b>36</b>

D.10 The “removed from/left court” category includes those who had left court of their own volition, those who had been ordered to leave or had been removed, and those who had left court before they could be detained.

D.11 Where cases had been adjourned following the alleged contempt, the period of adjournment had ranged from a few minutes to four hours. The number of responses in relation to the length of adjournment exceeds the number of responses that indicated that a case was dealt with by way of a hearing after the adjournment. This is likely to be due to the fact that in some cases there had been a short adjournment but no further hearing (for instance, after the adjournment the alleged contemnor apologised and there was no further action taken).

<b>Period of adjournment</b>	<b>Number</b>
Less than 1 hour	4
1 hour or more, but less than 2 hours	7
2 – 4 hours	5
Other/unknown	3
<b>TOTAL</b>	<b>19</b>

D.12 There were 27 responses providing feedback on the length of time an alleged contemnor was remanded in custody. This exceeds the number of responses that indicated that the alleged contempt had been dealt with by way of remanding the alleged contemnor in custody. This discrepancy can perhaps be explained by the

<sup>7</sup> The three cases classified as “miscellaneous” include one case that was dealt with by the confiscation of the sandwiches in question; another in which the contemnor was asked to turn a T-shirt displaying an offensive slogan inside out; and a remaining case (where the contemnor initially apologised but then was abusive again) in which the contemnor was held in custody until Monday on another issue and so the contempt was not dealt with further.

fact that some alleged contemnors had already been remanded in custody so whilst the conduct was not strictly dealt with by remanding in custody, the alleged contemnor had nevertheless been sent back to the cells for a period.

<b>Time alleged contemnor spent in custody</b>	<b>Number</b>
Less than 1 hour	3
1 hour or more, but less than 2 hours	9
2-4 hours	12
1 day	2
2 days	1
Other/unknown	8
<b>TOTAL</b>	<b>35</b>

**“What was the outcome?”**

D.13 Respondents who answered “other” to this question were invited to provide further information by way of a follow up question. The results of this question are incorporated into the table below and constitute the last seven rows in the table.

D.14

<b>Outcome</b>	<b>Number</b>
Contempt proved	17
Contempt not proved	0
No further action	25
<b>Other:</b>	
Apology	18
Contempt admitted	5
Left court/unable to detain	2
Criminal investigation	2
Ignored the contempt	3
Unknown	1
Miscellaneous	6
<b>TOTAL</b>	<b>79</b>

**“What sentence was imposed?”**

D.15 In relation to contempts that were proved (17), respondents were asked to indicate what sentence had been imposed. Of those cases where a sentence had been imposed, 12 had resulted in imprisonment.

Sentence imposed	Number
7 days imprisonment	3
14 days imprisonment	4
21 days imprisonment	1
28 days imprisonment	3
30 days imprisonment	1
Fine <sup>8</sup>	2
Excluded from court room	1
Miscellaneous <sup>9</sup>	2
TOTAL	17

**“Do issues of pre-trial publicity (particularly local publicity) generate additional problems?”**

- D.16 Eight (15%) respondents indicated that pre-trial publicity caused problems, whilst 44 (85%) respondents indicated that it did not.
- D.17 Respondents were then asked to provide examples/further information on these cases, including how frequently they arise and how time consuming they are to resolve. Below are the responses:<sup>10</sup>

Much local and media interest. Full court. Some members of the public produced sandwiches and started to eat them! Some indicated disapproval from the well of the court. Not time consuming to resolve - strong ground rules laid down and adhered to. "Offenders" excluded if warnings not heeded. Not a regular occurrence in the magistrates'.
Careful handling and preparation taking up only say 30 mins usually resolves. Issues arise about once every 2 months.
Higher profile cases which generate media coverage result in full public gallery often from different factions. Security need to be present which takes them from their other duties leaving others more vulnerable. Firm court management from the outset often pre-empts difficulties but otherwise will delay the court. I cannot say how often it happens any more accurately than it is not unusual in this court centre.
Press applications to name in each case, even before guilt proved. [Time taken to resolve] is approx 15 mins.
Infrequent but can be disruptive ... It creates a need to use court resources

<sup>8</sup> There were two instances where a fine was imposed: one was for £1100 and the other for an undisclosed amount.

<sup>9</sup> “Miscellaneous” includes one instance where the punishment was the confiscation of a mobile phone.

<sup>10</sup> All material which could have identified the individuals in the cases in question has been removed.



and facilities effectively to avoid real disruption to the court process.
Press approaching youth and parent in waiting area and trying to get info from court staff and enter court offices. No actual issue in hearing itself. Occurs randomly about 1 or 2x pa, no actual time taken in court except e.g. to make s 39 CYPA 1933 orders for no publicity for underage witnesses to conclusion of proceedings.
There are occasional issues regarding pre-trial publicity but they generally can be resolved fairly swiftly and without difficulty provided the law is followed; problems arise when orders are made without proper consideration of the law and/or are not reduced into writing and served on parties.
Defendants members of gun/drugs gang.
An extremely crowded court and armed police in the well of the court with additional security. Pre-planning avoided any problems on the actual day of the hearing.

**“Do you have any further comments in relation to contempt of court that we might consider useful in our reform?”**

- D.18 To summarise, there was a general sense that District Judges were unhappy with the current Practice Direction. Amongst other things, respondents suggested it was unworkable and incoherent. Respondents also reported feeling powerless in the magistrates’ court and felt there was a lack of appropriate resources available, including police officers. The use of mobile phones was considered to be an increasing problem in the magistrates’ court. Respondents called for clear guidance for judges on dealing with contempt in the face of the court.
- D.19 Below are the responses given to this question:

The Practice Direction is incoherent. It leaves several questions unanswered. Whose responsibility is it to prosecute - the court's or the CPS's?
Increasingly I find that I am sitting in a court without the capacity to hold anyone in the cells or without any available officers to detain offenders for contempt.
This happens frequently and is dealt with as set out as no other course is possible.
That under present guidance a court is unable to deal with a contempt in the face of the court if the person denies he/she is in contempt - judges are not apparently allowed to use the evidence of their own eyes and ears.
Where the contempt is in the face of the Court the magistrates or Judge should be able to deal with it and not be required to adjourn a contested case to another court. The current procedure is unwieldy and impractical. Officers with appropriate powers must be immediately available to arrest. In many Courts no police officers are available and there is an issue as to whether the jailors or court security staff have the powers to detain. As a consequence occasional serious cases of contempt are unpunished as no one is available to detain. If this situation is allowed to persist, cases of disorder in Court are likely to become more frequent.
General disorder and use of mobile phones to make calls, text or record proceedings is a frequent problem in the magistrates’ court due to the volume of people we deal with. Also the public or defendants tend to behave at the Crown Court where wigs and gowns are worn as they treat the court with more

respect then.
Some is unavoidable but invariably case specific and I'm not sure general guidance can assist further.
It's a nonsense following a contempt in the face of the court to then pass to another judge to try the case.
Least said, soonest mended; whenever possible, best to deploy selective deafness.
The practice direction is unworkable in practice.
There should be clear guidelines on contempt that is personally aimed at the Judge and contempt generally and allowing a tribunal to deal with the latter and only send to another tribunal in the former case.
In the magistrates' court it is unhelpful to require a contested contempt to go before another tribunal. It causes delay and disruption as the legal advisor and often prosecutor have to give evidence. If the contempt is clear and witnessed by the Bench/Judge they should be able to deal with it.
Often there is nothing we can do apart from try to preserve some dignity. We have no officers or even ushers to call on.
It is almost impossible to deal with contempt as it arises. Is an abusive member of the public really going to go into the dock when invited? There are no police officers in court to assist. The staff at the court door could not get to the courtroom promptly. We are at risk every day from disgruntled defendants and onlookers. It is fortunate that issues do not get out of control. We are, to all practical purposes, powerless in the magistrates' court.
Mobile phones are increasingly becoming a problem in public gallery, not just ringing but people actually engaging in conversations in court!
The procedure and sentencing in the magistrates' court is obscure. Private security services are unwilling or unable to deal with contemnors. The Police are unsure of their powers. Strong guidance is necessary for the lay and District bench.
1. Yes some guidelines about advocates refusing to stop when court intervenes or interrupting when the judge/bench chair is speaking. 2. Ability to deal with serious contempts in the face of the court at a later date instead of just on the day it occurs.
The Consolidated Criminal Practice Direction requiring trials before another tribunal where contempt was denied presented real difficulties where for example only one court was sitting late in the day. The amendments made by the Criminal Procedure Rules achieve a far more sensible balance and do not require cumbersome procedures in a court of summary jurisdiction.

## CROWN COURT SURVEY RESULTS

- D.20 Below are the results of a survey of Crown Court judges on their experiences of alleged contempt in the face of the court. The results give a snapshot of how the law on contempt in the face of the court works in practice and give some indication of the issues arising in such cases. The survey was designed to elicit information about the nature of proceedings for contempt in the face of the court and to identify any areas of the current law which are not working well.
- D.21 We were also seeking to gather information on abuse of process applications founded on the effect of pre-trial prejudicial publicity.
- D.22 The survey was sent to 100 judges who sit in Crown Courts across England and Wales who attended a compulsory training day at the Judicial College. 43 complete responses were collected. Although the response rate (43%) might be considered low, it is within the norm suggested for academic studies in the behavioural sciences.<sup>11</sup> Furthermore, the purpose of the survey was to gain insight into an area that we currently know little about, not to make generalisations about incidents of contempt in the face of the court throughout the country. Whilst we acknowledge that those judges who chose not to respond may hold different views, it is possible that given the infrequency with which contempt occurs, particularly in the Crown Court, non-respondents may have had limited or no experience of contempt in practice. However, in light of the low response rate the data should be interpreted with caution. We would like to thank His Honour John Philips and the Judicial College for their assistance.

### Summary of Key points

- D.23 Seven (16%) respondents to this survey had dealt with alleged contempts in the face of the court during the last 12 months and the majority of those who had, only had dealt with **one instance of alleged contempt**. Respondents to the survey reported **eight instances of alleged contempt in total**, and in five of those the **alleged contemnor was a member of the public**. The alleged contempts involved either **shouting, abuse and obscenities**, the **filming or recording** of proceedings or other **disruptive behaviour**.<sup>12</sup> In six of these cases, less than an hour of court time had been spent dealing with the alleged contempts.
- D.24 The majority of respondents (42, or 98%) reported that they **had not had cause to deal with an application for stay of proceedings** as an abuse of process based on an argument that pre-trial publicity rendered the trial unfair during the last 12 months. One respondent (2%) indicated that they had dealt with such an application, but that it was refused.

<sup>11</sup> Y Baruch, "Response Rate in Academic Studies – A Comparative Analysis" (1999) 52 *Human Relations* 421, 434.

<sup>12</sup> Such as refusing to attend proceedings, or deliberately disrupting proceedings in some way.

**“How many times, if any, have you had cause to deal with alleged contempts in the face of the court in the last 12 months?”**

- D.25 **The majority of respondents (36, or 84%) had not had to deal with alleged contempt** in the face of the court in the last 12 months. Only one (2%) respondent had dealt with more than one instance of this type of contempt in the past 12 months.

<b>Number of cases of contempt</b>	<b>Percentage</b>	<b>Number</b>
0	84%	36
1	14%	6
2	2%	1
>3	0%	0
<b>TOTAL</b>	<b>100%</b>	<b>43</b>

**“Who was the alleged contemnor?”**

- D.26 In five out of the eight cases of alleged contempt reported the alleged contemnor had been a member of the public.

<b>Alleged contemnor</b>	<b>Number</b>
Defendant	1
Witness	0
Member of Public	5
Juror	1
Advocate	0
Cannot recall	0
Other <sup>13</sup>	1
<b>TOTAL</b>	<b>8</b>

<sup>13</sup> The respondent who answered “other” stated that the contemnors were the appellant and his wife.

**“What did the allegations involve?”**

- D.27 Those surveyed were asked to pick the one option that best described the behaviour involved. **Four of the eight responses** to this question had identified the behaviour as **“other disruptive behaviour”** but did not specify, with the remaining responses split equally between “shouting, abuse or obscenities” and “filming/recording proceedings”.

Type of allegation	Number
Shouting, abuse or obscenities	2
Mobile phone use	0
Violence and/or threatening behaviour	0
Filming/recording proceedings	2
Other disruptive behaviour	4
Cannot recall	0
Other	0
<b>TOTAL</b>	<b>8</b>

**“How did you deal with the contempt?”**

- D.28 The most common methods of dealing with the alleged contempt were by a **hearing after adjournment**, allowing the alleged contemnor **legal advice**, **referring the case to another judge** and the **alleged contemnor apologising**. The number of responses to this question exceeds the number of reported alleged contempts as respondents were asked to tick all applicable options.

<b>Response to contempt</b>	<b>Number</b>
Immediate hearing	1
Remanded in custody	0
Hearing after adjournment	2
Allowed the contemnor legal advice	2
Ordered a police investigation	0
Referred the case to another judge	2
Cannot recall	1
Contemnor apologised	2
Contemnor warned/told to stop	0
Court rose	0
Ignored it	0
Contemnor left voluntarily	0
Contemnor removed from court/ordered to leave	1
Contemnor left and could not be apprehended	0
Individual juror was discharged	1
Entire jury was discharged	0
Other	0
<b>TOTAL</b>	<b>12</b>

**“How long was the alleged contemnor remanded in custody for?”**

- D.29 Three of the eight cases had been adjourned following the alleged contempt. One case was adjourned for less than an hour and the remaining two respondents answered “other” but did not elaborate.

<b>Time for which alleged contemnor was remanded in custody</b>	<b>Number</b>
None	1
Less than an hour	5
1 – 2 hours	1
All day	1
<b>TOTAL</b>	<b>8</b>

- D.30 The alleged contemnor had been remanded in custody in **two of the eight cases**. In case one, the alleged contemnor was remanded in custody on the same day. In the remaining case, the alleged contemnor had already been in custody prior to the alleged contempt.

**“What sentence was imposed for the contempt?”**

- D.31 Respondents were asked to indicate what sentence, if any, had been imposed for the contempt. Of those six cases where a sentence had been imposed, **three had resulted in a custodial sentence and three had attracted no penalty**.

**“How much court time was spent dealing with this alleged contempt?”**

- D.32 In six of the eight cases of alleged contempt the court had taken **an hour or less** of court time.

**“In the last 12 months have you had cause to deal with an application for stay of proceedings as an abuse of process based on an argument that pre-trial publicity rendered the trial unfair?”**

- D.33 The majority of respondents **42 (98%)** had not had cause to deal with an application of this type in the last 12 months. Only one (2%) respondent had.
- D.34 The respondent who answered “yes” to the above question also then provided answers to a series of follow up questions which revealed that the charges in the case in question were rape and indecent assault. The application for a stay had been refused and the trial had continued. The total court time spent dealing with this matter had been one hour. The respondent had also indicated that this case had not been typical of these applications more generally because the complainant had sold the story of a previous complaint to a women’s magazine.

**“Do you have any further comments in relation to contempt of court that we might consider useful in our reform?”**

- D.35 Below are the responses given to this question:

Undercover operations by newspapers should not be reported pre trial. I have experienced this in the past. It is pure prejudice.
My answers to the prior questions should take into account that I am a part-time member of the judiciary. I sat six weeks during the past twelve months.
No. Such events are rare and rarer still for a Recorder.
Judges powers need codification.
It is best handled by common sense and not getting too concerned about the "dignity of the Court".
Possibly power for Judge to order detention if something short of reasonable grounds to suspect an arrestable offence had been committed. There appeared to be an attempt to deliver drugs to two defendants via a third defendant who was on bail. There was information but nothing concrete to allow police investigation.
Members of the public are generally not aware that contempt of court is a wide concept and goes beyond verbal outbursts ... This should be made clearer to witnesses and to jurors.
Make it simple!

1. Clarity as to the boundaries (physical) of the power to detain once an alleged "face of court" contemnor has left the building. 2. Suggest that the power to release, pending the holding of a later enquiry, be one which can have conditions attached (there would need to be default power in the event of breach - custody).