Law Commission
Reforming the law

Contempt of Court Report (Part 1) on Liability

Summary of report

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Who we are 	The Law Commission of England and Wales is an independent body established by statute to make recommendations to Government to reform the law in England and Wales.
What are we doing? 	The Law Commission is conducting a review of the law of contempt of court and considering the need for reform with a view to improving its fairness, effectiveness, consistency, and coherence. In July 2024 we published a consultation paper with provisional proposals for reform. We published a short supplementary consultation paper in March 2025. We received over 150 responses to our consultations. We are publishing our final report and recommendations in two parts.
What is this document? 	This document is a summary of part 1 of our report, published in November 2025. It explains what the project is about and highlights our key recommendations for law reform in relation to liability for contempt of court and the role of the Attorney General in contempt proceedings. It does not summarise all the reforms to the law that we recommend in part 1. The full part 1 report contains further information about each topic, a detailed glossary that explains key terms relating to the law of contempt, and all our recommendations.
Where is the full report? 	Part 1 of the full report, along with other documents, can be found at **https://lawcom.gov.uk/project/contempt-of-court/**.
What happens next? 	We will publish part 2 of our report in 2026. Government will consider our recommendations and decide whether to change the law.

Our review of contempt of court

Contempt of court

Contempt of court laws protect the public interest in the administration of justice. Where conduct interferes with the administration of justice, or creates a risk of interference, then it may constitute contempt of court.

The scope of the law is wide. Contempt may be committed in a courtroom or its precincts by, for example, disrupting proceedings, taking photographs in court, recording or live-streaming proceedings, assaulting court staff, or refusing to answer questions when giving evidence as a witness. Contempt may also be committed in other ways, including by failing to comply with a court order, or by publishing material that may risk prejudicing a criminal trial by, for example, revealing information that the jury does not know about.

The rights and public interests engaged by the law are important. The public interest in the administration of justice is not the only interest at stake. The fair trial rights of defendants are critical considerations (including defendants in contempt proceedings and defendants in criminal cases that may be affected by prejudicial publications). Rights to freedom of expression and freedom of association are constant features of contempt matters.

The consequences of a contempt finding are serious. It is not a criminal offence, but a person who is found in contempt may be fined, imprisoned for up to two years, or have their assets confiscated. There is a paucity of data on contempt findings and the sanctions imposed, but it is likely that more than 100 people each year receive an immediate or suspended prison sentence (formally described as committal to prison). Sanctions may be imposed by civil or criminal courts.

A comprehensive review

Contempt of court law has been beset by some significant problems. There is a lack of coherence, consistency and clarity in the law and procedure as it operates across all civil courts (including family courts and the Court of Protection), all criminal courts, and in some tribunals. There is overlap and uncertainty in its relationship to some criminal offences. The dominance of online communications in modern media – including the rise of social media – has changed the publication and information landscape.

Against that background, in 2022 the Government asked us to conduct a comprehensive review of contempt. Our review has examined the need for reform with a view to improving the fairness, effectiveness, consistency, and coherence of the law and procedure relating to contempt of court.

Consultation

In July 2024 we published a consultation paper that set out provisional proposals for reform of the framework for contempt liability, the scope of contempt protection and contempt powers across courts and tribunals, the role of the Attorney General (AG), procedure, legal aid, costs, sanctions and appeals.

During our consultation we met with members of the judiciary, lawyers, academics, media lawyers and journalists, Government officials, civil society organisations, and members of the public. In total, we met with roughly 450 people across more than 40 consultation events, meetings and roundtables. We received over 150 written responses.

Contempt questions following the murders in Southport

After we had published our consultation paper, there was a renewed focus on liability for contempt following the murders of Elsie Dot Stancombe (aged seven), Alice da Silva Aguiar (aged nine) and Bebe King (aged six) in Southport on 29 July 2024.

In the days and weeks following the attacks, significant and widespread public disorder unfolded across the UK. Thousands of police officers were deployed, and violence resulted in injury to many hundreds of people, including innocent members of the public and three hundred officers, and led to hundreds of prosecutions.

Relevantly for our review, it has been suggested that the disorder was an indirect result of contempt of court laws: in constraining what information public authorities could disclose in relation to the defendant (such as his ethnicity and immigration status), contempt law helped to create an information vacuum into which misinformation, disinformation and counter-narratives could spread unchecked. The debates raised issues about what information could be published after a suspect had been arrested and criminal proceedings had become active under the Contempt of Court Act 1981 (CCA 1981).

We discuss the recommendations that are relevant to these issues below.

Report and recommendations

We are publishing our report in two parts.

- Part 1 sets out a new framework for liability for contempt and considers the role of the AG in contempt proceedings. This summary highlights the key recommendations we make in part 1.
- Part 2 will address the remaining matters. It will be published in 2026.

Our recommendations for a new liability framework

We recommend a new framework for contempt liability. However, our recommendations are not designed to alter fundamentally the foundations of contempt liability (and nor do they). Rather, the purpose of the framework is twofold. First, it is to clarify and codify the elements required to prove contempt. Secondly, it is to ensure that an appropriate balance is struck between the different rights and interests that are affected by the need for the effective and efficient administration of justice, including the protection of fair trial rights, the ability of courts to control proceedings for the benefit of all, and rights to freedom of expression. What those various rights and protections require of contempt will be different depending on the context and nature of the conduct.

Discarding civil and criminal contempt

Traditionally, every contempt of court has fallen into one of two categories: civil contempt or criminal contempt. However, the distinction between civil and criminal contempt is not clear or coherent. It has led to confusion and serves little practical purpose. There was strong support for our provisional proposal that this distinction should play no role in a reformed contempt framework.

We recommend that a reformed framework for liability for contempt of court should discard the traditional distinction between civil and criminal contempt.

The new liability framework: four forms of contempt

Many different types of conduct may interfere with the administration of justice or create the risk of an interference. Whether a person's conduct will constitute contempt of court will depend on the degree of actual or risked interference that resulted from their conduct and the circumstances in which it occurred, and on the degree of fault. Fault is determined with reference to the person's state of mind at the time they engaged in the conduct. Sometimes a person might be able to rely on a defence to explain or justify what they have done and so will not be liable for contempt.

Our starting point is that a person should not be liable for contempt unless:

1. they interfered with the administration of justice in a non-trivial way, or their conduct created a substantial risk of such an interference, and
2. when they acted they intended to interfere with the administration of justice.

Proof of intention to interfere with the administration of justice – "specific intent", as it is called – is important as the sanctions for contempt include imprisonment, and imprisonment can be imposed by a criminal or non-criminal court.

These thresholds of non-trivial interference and specific intent underpin the test for what we call "general contempt".

In three circumstances there will be good reasons to depart from those thresholds. Our other three forms of contempt reflect each of these circumstances.

We recommend there should be four forms of contempt liability:

- General contempt
- Contempt by breach of court order or undertaking
- Contempt by publication when proceedings are active
- Contempt by disrupting proceedings

We first explain the three specific forms of contempt and then explain general contempt.

The standard of proof

In each of our forms of contempt the elements must be proved beyond reasonable doubt, which is also the position under the current law.

Contempt by breach of a court order or undertaking

Where a court order or undertaking has been breached then a lower fault threshold and a different conduct element are justified. This is because the defendant has been alerted to their obligation to do or not do the conduct by the order, or by having given a voluntary undertaking, and, for justice to be administered effectively, there is a need to ensure that orders and undertakings are adhered to.

We recommend contempt by breach of court order or undertaking will be established where a person breached an order or undertaking. Prior to the breach, the order must have been served and publicised in accordance with the directions and rules of the court. The court must have issued a contempt warning to the individual, except in cases involving sealed orders where the failure to give a contempt warning will not preclude a finding of contempt, provided that doing so would not result in injustice.

We recommend three defences to this form of contempt. A person will not be liable for breach if they can prove on the balance of probabilities that:

1. the conduct constituting the breach was accidental;
2. the person did not realise that they were breaching the order because they had made an innocent mistake of fact (which does not include mistakes as to the terms of the order or undertaking); or
3. the person lacked knowledge of the order (though, for this to apply, it must also be shown that the order was communicated orally when the person was not present in court, or that the order had effect against the whole world).

Our recommendations largely retain and codify the current law with respect to what must be proved to establish contempt when a person has breached a court order. However, under our recommendations the approach to contempt resulting from a breach of an order will no longer depend on the type of order that was made. For example, under the existing law, breaches of orders in private legal disputes may amount to civil contempt, whereas breaching some orders, such as reporting restrictions, may amount to criminal contempt. As our recommended framework discards the distinction between criminal and civil contempt, contempt by breach of order will be relevant to any court order.

Undertakings are different from court orders, most notably because they are made voluntarily. They are formal, legally binding commitments given to the court by a person agreeing to do something or to refrain from doing something. A person may be found in contempt for breaching an undertaking under similar conditions as those for breaching a court order, except that the method by which the undertaking was given (ie either orally in person or served) does not need to be established. Additionally, the defence of lack of knowledge where there has been a breach of undertaking can only be made in relation to a lack of knowledge about the contempt warning, and not the undertaking itself.

Contempt by publication when proceedings are active

Where a person publishes material that risks prejudicing active proceedings, a lower fault threshold and a higher conduct threshold are justified. A lower fault threshold is justified because prejudicial publicity puts the defendant's right to a fair trial at risk and the trial is proximate, provided that the lower threshold is accompanied by a higher conduct element of actual or risked serious impediment or prejudice, and provided that proceedings are consented to or brought by the AG.

The lower fault threshold protects fair trial rights (especially those of a defendant in a criminal case). It also serves to safeguard the fairness of proceedings in any matter that is the subject of publicity. At the same time, the higher conduct threshold and role of the AG protect freedom of expression to ensure the discussion of matters of public interest is not disproportionately restricted.

We recommend contempt by publication when proceedings are active will be established where:

- the defendant published material which creates a substantial risk that the course of justice in active proceedings will be seriously impeded or prejudiced; and
- the defendant was aware of a risk that proceedings were active.

We recommend a defence will be available where the publication was in the public interest and the risk of impediment or prejudice to the proceedings was "merely incidental to the discussion".

Our recommendations retain much of the existing law under the CCA 1981, but would reform the law in three important ways:

- First, the period during which criminal and extradition proceedings are considered active would change. **We recommend that criminal proceedings should be considered active from the point at which a suspect is charged** until the point of verdict or guilty plea, and that extradition proceedings should be considered active from the point at which the suspect first appears in a court in England and Wales in respect of a request/arrest for extradition either to or from the UK.
- Secondly, in requiring proof of fault, our recommendations differ from the existing "strict liability" approach. However, the existing law is not in effect one of strict liability because defences (including innocent publication) are available. As a result, the most significant difference is that, under our recommendations, the defendant would no longer bear a reverse burden of proof. Instead, the applicant would be required to prove beyond reasonable doubt that the defendant was aware of a risk that proceedings were active.
- Finally, the existing public interest defence in section 5 of the CCA 1981 would be clarified to specify that whether a publication is "merely incidental" depends on how closely the subject matter of the publication relates to the specific legal proceedings. We do not recommend a broader form of public interest defence, whether on the grounds of public interest explicitly or on the narrower grounds of public safety or national security.

What can be said after a suspect is arrested?

Our recommendations on contempt by publication when proceedings are active are particularly relevant to the contempt issues that arose following the murders in Southport.

Our recommendation that the point at which proceedings become active move from the arrest to charge will be relevant, especially where charge does not quickly follow an arrest, but it should be noted that general contempt (explained below) will still apply prior to charge. Once proceedings are active, our recommendation to retain the current threshold will be relevant. That is, the current test would be unchanged: liability would be established where a publication creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

The legal test for contempt must set a clear threshold rather than rely on categorical exclusions or presumptions. Its application will necessarily be context-specific and fact-sensitive.

Guidance that identifies categories of information as generally safe to publish serves an important operational function. It provides clarity and consistency for police forces and media organisations, enabling them to make informed decisions quickly. However, such guidance must be understood as indicative rather than determinative, given the legal requirement to assess risk in context.

We agree with consultees that the publication of certain details – such as the name, age, nationality, and ethnicity of a suspect – is generally unlikely to create a substantial risk that the course of justice will be seriously impeded or prejudiced. This approach is reflected in recent interim guidance from the College of Policing and the National Police Chiefs' Council, which recommends releasing such information in "high profile or sensitive investigations or operations" where there is, for example, "a policing purpose" or a "related risk or impact on public safety".[1]

While such guidance is operationally useful, the legal test for contempt must be context-dependent and cannot be reduced to fixed categories. Attempting to define certain types of information as always safe to publish would risk creating false certainty that a substantial risk of serious impediment or prejudice would not arise.

For example, although a suspect's immigration status may not usually meet the conduct threshold, it could potentially do so where the arrest concerns immigration offences and the immigration status is central to the case. In such instances, publication could prejudice the proceedings. Similarly, a suspect's religion may, or may not, meet the threshold depending upon the factual context.

1 NPCC and CofP, *Interim guidance relating to ethnicity and/or nationality of suspects* (11 August 2025) p 1. That interim guidance has been incorporated into draft guidance published by the CofP on 5 November 2025, on which the CofP is currently consulting: CofP, *Media and communications: Authorised professional practice (APP) – consultation* (November 2025); CofP, *'Media and communications – have your say'* (5 November 2025).

Contempt by disrupting proceedings

Where a person disrupts court proceedings, a lower fault threshold is justified due to the inherent interference such conduct causes to the administration of justice. Accordingly, we recommend another category of contempt: contempt by disrupting proceedings. Although disruption is another category most often managed by judges without recourse to formal measures, the courts must have the necessary tools to control proceedings to ensure the effective and efficient administration of justice. The law of contempt is one of those tools, sitting alongside other powers, such as the power to exclude someone from the courtroom or temporarily detain them.

We recommend that contempt by disrupting proceedings will be established where the person engaged in abusive, threatening, or disorderly behaviour that resulted in the disruption of proceedings. This conduct must be witnessed (eg, seen or heard) by the judge or a court official. Finally, the person must have intended to perform the act and have been aware that legal proceedings were taking place when they performed it.

Our recommendations retain significant aspects of the current law. For example, the County Court and magistrates' courts have statutory powers to deal with disruption as contempt without proof of specific intent, and the Court of Appeal held in *R v Jordan* that proof of specific intent will not be required where there is a disruptive contempt.[2] Our recommendations create a uniform test for all courts.

General contempt

General contempt is the final form of liability in our framework. This form of liability captures any contempt that does not fall within contempt by breach of order or undertaking, or within contempt by publication when proceedings are active, or within contempt by disrupting proceedings. This means that general contempt provides the basis on which a wide range of behaviour may be dealt with as contempt.

We recommend 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).

We conclude that recklessness is not an appropriate standard of fault for general contempt.

In relation to the conduct element, the type of conduct that may qualify as general contempt is necessarily broad in order to capture the diverse array of behaviour that could interfere with the administration of justice. Further defining the type of conduct that may amount to general contempt could be unhelpful given the need to capture a wide range of conduct. We also wish to allow for potential technological developments that may enable new types of conduct that interfere with the administration of justice.

2 County Courts Act 1984, s 118(1)(b); CCA 1981 s 12(1)(b); *R v Jordan* [2024] EWCA Crim 229.

We recommend that general contempt should apply before proceedings have commenced, including when proceedings are imminent and also before proceedings are imminent.

This ensures that where false statements are made before proceedings have formally commenced – for instance, where statements are made as part of pre-action protocols in anticipation of proceedings – then contempt laws will apply. We have considered whether there is a risk that investigative journalism will be affected by this recommendation. We have concluded that the risk is low and the requirement to prove intention to interfere with the administration of justice is a suitable safeguard.

Coherence and modernisation

We recommend changes to some statutory provisions so that the law of contempt is coherent and to avoid overlaps with the criminal law. These include recommendations to repeal specific provisions relating to the powers of the County Court and magistrates' courts to deal with insults and disruption as contempt; these should instead be dealt with as forms of contempt under our recommended liability framework.

We recommend changes that modernise the law. These include recommendations that the Government consider reviewing some criminal offences to ensure that photography, video recording, and transmission or live-streaming of audio or video of proceedings are captured, and that there is consistency in application of contempt to in-court and remote proceedings.[3]

We recommend that the procedure rule committees consider the development of an authorisation process to enable the responsible and secure audio recording of proceedings by accredited journalists.

3 Specifically, we recommend the government consider reviewing section 41 of the Criminal Justice Act 1925 and section 85B of the Courts Act 2003.

The four forms of contempt

Contempt by disrupting proceedings

Conduct: the person engaged in abusive, threatening, or disorderly behaviour that resulted in the disruption of proceedings

Circumstance: the conduct was witnessed (eg, seen or heard) by the judge or a court official.

Fault: the person intended to perform the act and, at the time, was aware that legal proceedings were taking place.

General contempt

Conduct: the person 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.

Fault: the person intended to interfere with the administration of justice in a non-trivial way.

Contempt by breach of court orders or undertakings

Conduct: the person breached an order or undertaking.

Circumstances:

- the order was served and publicised in accordance with the law; and
- the court issued a contempt warning to the person (unless the order was sealed, in which case the court hearing the contempt application will have discretion to dispense with this requirement provided that doing so would not result in injustice).

Defences:

Accident: the conduct constituting the breach was accidental; or

Mistake of fact: the person did not realise they were breaching the order because they had made an innocent mistake of fact (not including mistakes as to the terms of the order); or

Lack of knowledge: the person lacked knowledge of the order (only applicable to orders communicated orally when the person was not present in court, or to orders having effect against the whole world).

Contempt by publication when proceedings are active

Conduct: the person published (made available) a publication which created a substantial risk that the course of justice in the proceedings would be seriously impeded or prejudiced.

Circumstance: the publication occurred when proceedings were active.

Fault: the person was aware of a risk that the proceedings were active.

Defence:

A person would not be liable if the publication forms part of a good faith discussion of public affairs or matters of general public interest, provided any risk of impeding or prejudicing specific legal proceedings is merely incidental. Whether a risk is "merely incidental" depends on how closely the publication's subject matter relates to those proceedings.

The relationship between the four forms of contempt

Proceedings for contempt may be commenced on the basis that a defendant has committed contempt of court on any one or more of the above four bases.

We expect an applicant would ordinarily allege that only one form of contempt has been committed, but there may be circumstances where an applicant would seek to argue alternative grounds. For example, an applicant may argue that contempt by breach of order has been committed and that the defendant is also or alternatively liable on the ground they have committed general contempt. Similarly, a defendant who has published prejudicial material when proceedings are active could potentially meet the threshold for either or both contempt by publication when proceedings are active and general contempt. However, it would be very unusual for contempt by disrupting proceedings to be an alternative ground as proceedings for this form of contempt this would usually be initiated on the court's own motion.

The reasons for arguing alternative or additional grounds may vary, but it could be that proof of intention to interfere with the administration of justice (required for general contempt) would result in more serious sanctions. This does not mean there is a "hierarchy" of the forms of contempt. The question in every instance will simply be whether the elements of that form of contempt can be satisfied.

Our recommendations do not mean that disruption can only be addressed under contempt by disrupting proceedings. A court may find that the elements of general contempt have been satisfied when there is a disruption, and proof of intention may be relevant to sanctions.

Where a form of contempt has been proved then there will be a finding of contempt of court (rather than, for instance, a finding of contempt of court by breach of order).

A defendant could not be found liable for contempt more than once for the same conduct as that would breach the rule against double jeopardy.

Section 12 of the Administration of Justice Act 1960

Section 12 of the Administration of Justice Act 1960 imposes contempt liability for publishing information relating to certain proceedings heard in private – for example, cases involving children, mental health, or national security.

Section 12 does not protect a person from being liable for other types of contempt. For example, if publishing information relating to a court sitting in private creates a substantial risk that the course of justice will be seriously impeded or prejudiced, it could still be contempt under the CCA 1981. When contempt does arise under section 12, it is treated as a distinct form of contempt.

Section 12 operates without judicial scrutiny and proportionality assessments. It may impose liability even where the publisher is unaware of the restriction, creating inconsistent and potentially unjust outcomes.

To promote fairness and coherence within the contempt framework – and based on the evidence submitted by the family courts and relevant consultees – **we recommend** the repeal of section 12(1)(a), (b), and (e), which would affect proceedings in private involving children and mental health matters. Any reporting restrictions should be imposed through clear, court-issued orders that align with human rights standards.

We further recommend that the government consider repealing section 12(1)(d) (concerning information related to a secret process, discovery, or invention). While the evidence we received does not support a definitive recommendation for repeal, it does indicate that this provision is not actively used in such proceedings.

We do not recommend repealing section 12(1)(c) (information relating to national security). We have been told that section 12 continues to play a vital role in upholding the robust security protocols that enable comprehensive oversight of relevant evidence and help maintain public confidence in the judicial process.

The role of the Attorney General

The AG is a government minister and the principal legal adviser to the government. The AG has traditionally been viewed as the guardian of the public interest in the administration of justice and has a constitutional function in that regard. The "contempt function" includes bringing proceedings for contempt of court where it is in the public interest to do so, whatever the nature of the contempt. Under the CCA 1981, proceedings for strict liability publication contempt can only be brought by or with the consent of the AG. The AG's consent is not required to bring other contempt proceedings.

We consider whether the AG should retain the contempt function in light of concerns that the political character of the role of the AG may result in actual or apparent bias in decisions about whether to bring proceedings or to decline to bring proceedings, or to grant or refuse consent to a person who wishes to bring proceedings for strict liability publication contempt under the CCA 1981.

We recommend that the AG should retain the contempt function. The AG is well suited to determining whether it is in the public interest to bring proceedings and there are no clear appropriate alternative bodies or individuals which could exercise the contempt function.

We conclude that concerns about the conflicts of interest on the part of the AG may best be addressed by making their decisions open to review by the courts. The law of judicial review allows courts to review decisions made by government or public bodies. Although the grounds of review and available remedies are limited, the possibility of judicial review ensures accountability in decision-making. Under the current law, it appears that contempt decisions made by the AG cannot be judicially reviewed.

We recommend that all contempt decisions made by the AG should be subject to judicial review.

Currently, the consent of the AG is required for proceedings for strict liability contempt by publication.

We recommend that this requirement should be retained and proceedings for contempt by publication when proceedings are active may only be brought by or with the consent of the AG (unless the court acts on its own motion).

The requirement for consent by the AG is a valuable protection for freedom of expression. It limits the number of contempt applications that may be pursued against the media or other publishers. However, there should be no consent requirement for proceedings for general contempt, contempt by breach of order or undertaking, or contempt by disrupting proceedings.