

CONTEMPT OF COURT: INFORMATION SHARING AND DATA PROTECTION

The Law Commission's contempt of court project

The Law Commission of England and Wales has published a consultation paper that sets out provisional proposals for reform of the law of contempt of court. The proposed reforms aim to clarify the law of contempt and improve its consistency, coherence, and effectiveness.

The [consultation paper](#) covers a wide range of issues and sets out provisional proposals for reform. The [summary](#) provides an overview of all of the topics covered in the consultation paper.

This document draws together parts of the consultation paper which may be of most relevance to those with an interest or expertise in the law surrounding data protection, information sharing, and investigatory powers.

With respect to each of the issues identified in this document as most relevant, we provide:

- Extracts from the consultation paper and summary consultation paper summarising the issues.
- Paragraph references and consultation question numbers, for ease of reference.

Most relevant parts of the consultation paper

Police powers to share data with the Attorney General's Office

The Attorney General (AG) plays a constitutional role in bringing contempt proceedings in the public interest. The AG requires certain information before they can do so. Some information is essential, such as the identity and address of the defendant as well as proof of the alleged conduct (for example, a screenshot of a social media post which declares that a defendant in active criminal proceedings is guilty). Other information may simply be helpful in determining whether it would be in the public interest to bring proceedings. This may include whether the defendant has been found in contempt previously or has any criminal convictions.

The Attorney General's Office (AGO) plays an important role in obtaining information to assist the AG. However, it can sometimes be difficult for the AGO to obtain information. For example, online publications may be made anonymously, so it is not always easy for the AGO to determine against whom the AG should consider whether to bring proceedings. Without access to information on past criminal convictions or contempts, the AG may not be able to determine whether it would be in the interests of justice to bring proceedings.

The consultation paper considers the legal framework governing the sharing and obtaining of personal data, in particular, the powers of the police to share with the AGO information that they already hold. Under the legal framework, the police may share essential information, but not information that is merely helpful. It also provides a power for the police to obtain information on behalf of the AGO, but only under very limited circumstances. We conclude

that the AGO should be able to obtain the information the AG needs to bring contempt proceedings and so, although the law is satisfactory, it needs to be clarified in statute.

Relevant paragraphs: 7.132-7.154

Consultation Questions: 57, 58 and 59

Investigatory powers of the Attorney General's Office: obtaining information from social media platforms

The consultation paper also considers the powers of the AGO to obtain communications data from social media platforms. To commence proceedings, the AGO may need to obtain information about a defendant's social media use. For example, the AGO will need to know the identity of a person who has, under a pseudonym, posted something which appears to constitute contempt. Unless it has received this information in a referral from the CPS, or unless it has been obtained and lawfully shared by police, then the AGO is presently unable to obtain that information. In particular, the AGO has no power to compel a social media platform to provide the information, and no power to seek a court order compelling a platform to provide the information. It does not have power to make a request of a platform to provide the information under the Investigatory Powers Act 2016 (which provides the legislative regime under which public authorities may seek communications data). Social media platforms may also hold further information that would assist the AG, such as posts that have since been deleted. On occasion these may be necessary in order that the AG can prove the case against the defendant.

The consultation paper considers whether the law should provide an avenue by which the AGO will be able to obtain such information, and asks consultees whether it is necessary and proportionate for the AGO to have powers to obtain information from social media platforms.

Relevant paragraphs: 7.155-7.179

Consultation Questions: 60, 61 and 62

Recording, sharing and publishing data on contempt findings and sanctions

Contempt findings and sanctions are not recorded systematically in the justice system. It is not clear how many people have been found in contempt of court, what sanctions have been imposed (and when no sanction has been imposed), in what courts, and in what circumstances. This represents a significant data gap. There are many reasons why it would be valuable to have such data, including to enhance consistency and fairness in sanctions and to ensure transparency surrounding the number of committals for contempt and length of sentences. If the Attorney General were to have access to such data, it could assist them in deciding whether to institute proceedings against a potential defendant. Such data could also assist the courts in deciding what sanction should be imposed on a contemnor.

We ask whether data should be recorded when contempt proceedings are instituted, and provisionally propose that there should be annual publication of data in relation to committals

for contempt. We welcome evidence from consultees in relation to both the potential costs and potential benefits of recording and publishing data.

Relevant paragraphs: 10.238-10.248

Consultation Questions: 124 and 125

Contempt on criminal records databases and criminal records certificates

There is some confusion as to when contempt is entered into the central criminal records database (the Police National Computer (PNC)) and appears on a criminal record certificate, (as generated by the Disclosure and Barring Service (DBS)). Sometimes contempt is recorded on the PNC and does appear on a DBS certificate, where, for example, contempt accompanies a recordable criminal offence. However, the consultation paper explains that the practice of recording contempt is not consistent or well understood, with the result that it sometimes, but not always, appears on a certificate.

Contempt is not a criminal offence and does not result in a conviction. We conclude on the basis of the existing legislation that contempt should not be entered into the PNC and should not appear on a criminal record. We provisionally propose that the position should be made clear and that a finding of contempt and any associated sanction should never be entered into the Police National Computer, and should never appear on a criminal record.

Relevant paragraphs: 10.215-10.237

Consultation Questions: 122 and 123

How to respond to the consultation

We welcome responses to the questions posed in our consultation paper. The easiest way to do this is to access the consultation questions using our [online form](#). You can navigate to the most relevant sections to answer the consultation questions. You do not need to answer all questions to submit a response. Alternatively, you can email us your answers at contempt-of-court@lawcommission.gov.uk.