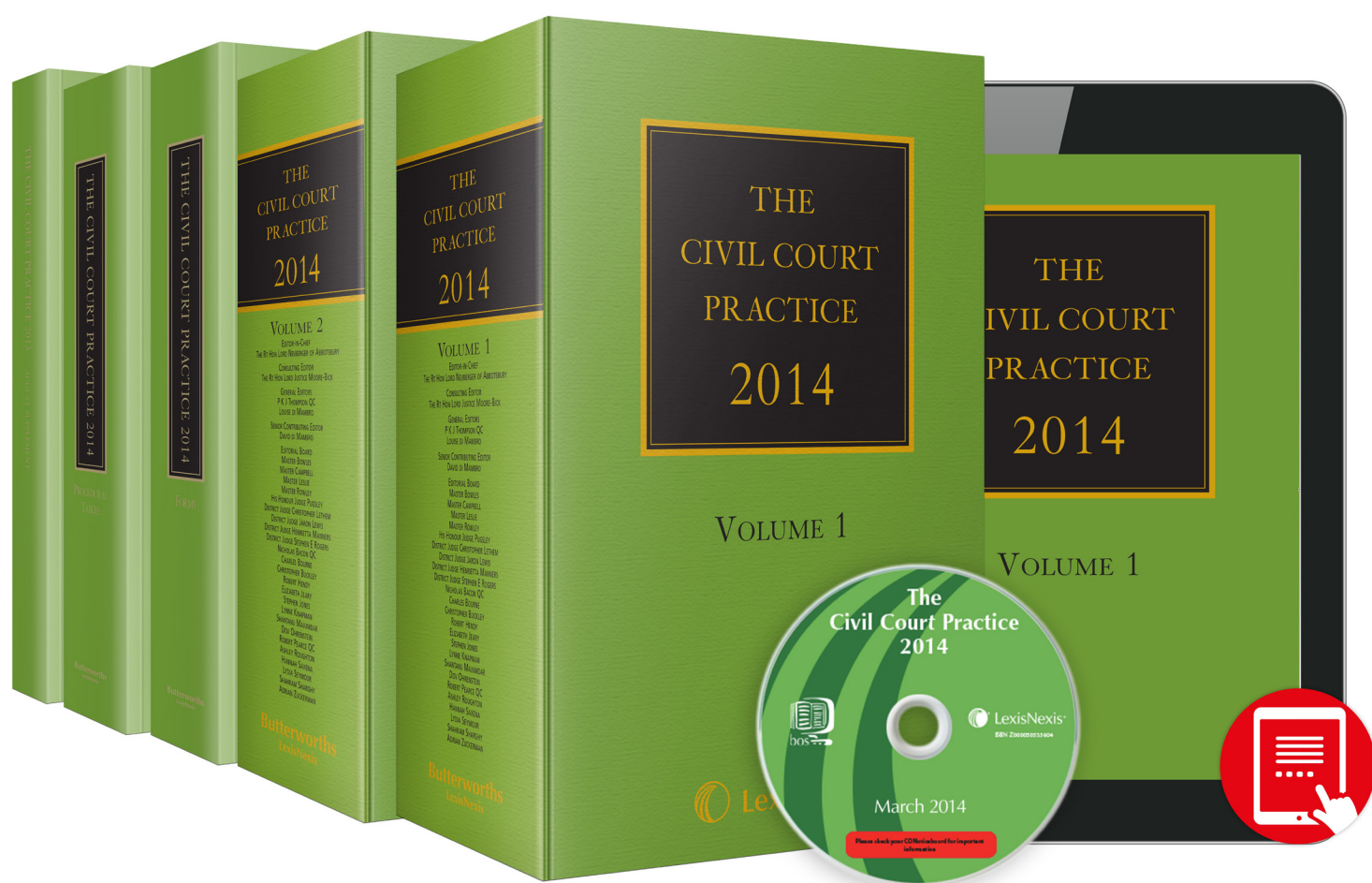


The Civil Court Practice Contempt of Court

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Contempt of Court

Civil and criminal contempt

Contempts have traditionally been classified as civil or criminal, although the importance of the distinction has lessened as the procedures for dealing with the two classes have converged: see eg *Daltel Europe Ltd v Makki* [2006] EWCA Civ 94, [2006] 1 WLR 2704.

In general terms:

- (a) civil contempts consist in disobedience to judgments and court orders; and
- (b) criminal contempts consist in conduct impeding or interfering with the administration of justice, or creating a risk of such impediment or interference.

Contempt in connection with civil proceedings is punishable by committal, sequestration or a fine. The procedure in relation to any application for committal or sequestration is, in the civil courts, regulated by CPR Part 81. Part 81 embraces acts or omissions of the following descriptions:

- (a) disobedience to a court order;
- (b) breach of an undertaking to the court;
- (c) making a false statement of truth (CPR 32.14);
- (d) making a false disclosure statement (CPR 31.23);
- (e) conduct which either obstructs or is calculated to obstruct or prejudice the administration of justice (for example, exerting pressure on a witness not to give evidence or even exerting pressure upon the judge); or
- (f) contempt in the face of the court (for example, disrupting proceedings) (both at common law and under the Contempt of Court Act 1981).

See CPR 81 [1] onwards.

The common law jurisdiction to punish the publication of court proceedings as contempt has been redefined by the sections of the Administration of Justice Act 1960 and the Contempt of Court Act 1981, reproduced below. See also the application of articles 6, 8 and 10 pursuant to the Human Rights Act 1998 at III HUM [18]: it is clear that committal proceedings are to be categorised as criminal proceedings for the purposes of art 6, whether the contempt involved is classified as civil or as criminal: *Daltel Europe Ltd v Makki* [2006] EWCA Civ 94, [2006] 1 WLR 2704, (2006) Times, 8 March; *Barnes v Seabrook* [2010] EWHC 1849 (Admin) at para 42.

Both criminal and civil contempts must be proved beyond reasonable doubt (see, eg, *A-G v Leveller Magazine Ltd* [1979] AC 440, [1979] 1 All ER 745, HL (criminal contempt); *A-G v Express Newspapers* [2004] EWHC 2859 (Admin), (2005) EMLR 13, DC (criminal contempt - breach of strict liability rule); *Dean v Dean* [1987] FCR 96, [1987] 1 FLR 517, CA (civil contempt).

Jurisdiction of civil courts

High Court

The High Court, as a court of record, has an inherent power to punish for contempt, whether criminal or civil. It has jurisdiction to make an order of committal of its own motion.

By CPR 81.18(1) a committal application in relation to a false statement of truth (CPR 32.14) or disclosure statement (CPR 31.23) in connection with proceedings in the High Court, a Divisional Court or the Court of Appeal, may be made only:

- (a) with the permission of the court dealing with the proceedings in which the false statement or disclosure statement was made; or
- (b) by the Attorney General.

Swearing a false affidavit is properly categorised as a criminal contempt rather than a civil contempt, and the High Court retains an inherent jurisdiction to punish criminal contempt by the summary process of committal in civil proceedings: *Hydropool Hot Tubs Ltd v Roberjot* [2011] EWHC 121 (Ch), para 62, [2011] All ER (D) 106 (Feb).

County courts

County courts, on the other hand, have purely statutory powers derived from the County Courts Act 1984.

The county court does not have power to punish for contempt in relation to a false statement of truth (CPR 32.14) or a false disclosure statement (CPR 31.23): in simple terms: the Act does not give it such a power.

A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in a county court may be made only:

- (a) with the permission of a single judge of the Queen's Bench Division; or
- (b) by the Attorney General: CPR 81.18(3) (see para CPR 81.18).

A county court has power under s 38 of the County Courts Act 1984 to punish for civil contempt but has no statutory power to deal with criminal contempts (*R v Lefroy* (1893) LR 8 QB 134; *Bush v Green* [1985] 3 All ER 721, [1985] 1 WLR 1143, CA; *Manchester City Council v McCann* [1999] QB 1214, CA), except those covered specifically by the Act of 1984.

A county court has jurisdiction to make an order of committal of its own motion by virtue of s 38 of the County Courts Act 1984: *Re M (a minor) (contempt of court: committal of court's own motion)* [1999] Fam 263, [1999] 2 All ER 56, CA.

The jurisdiction of the county court to punish criminal contempts is limited to the circumstances specified in the County Courts Act 1984. These are:

- (a) assaulting an officer of the court while in the execution of his duty (s 14; see para II CCA [6] and *King v Read and Slack* [1999] 1 FLR 425, CA);
- (b) rescuing goods seized in execution under process of a county court (s 92; see II CCA [90]);
- (c) non attendance on judgment summons (s 110; see para II CCA [105]);
- (d) wilfully insulting a judge, juror or witness going to, attending or returning from a sitting, or wilfully interrupting the proceedings or otherwise misbehaving in court (s 118; see para II CCA [115]).

Appeals

Rights of appeal are governed by s 13 of the Administration of Justice Act 1960 (see para III COT [9]) and CPR 52.

There are particular and complex provisions relating to appeals in respect of the grant or refusal of an order for committal: CPR 52.3 [5].

Precedents

For a precedent for an application for an order of committal see BCCP H[602].

For the substantive law see 9(1) Halsbury's Laws (4th edn reissue) title CONTEMPT OF COURT, para 401.

Administration of Justice Act 1960

(c 65)

s 12	Publication of information relating to proceedings in private
s 13	Appeal in cases of contempt of court

12. Publication of information relating to proceedings in private

(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, ...

Restrictions on publication

Section 12 sets out four statutory exceptions (at s 12(1)(a) to (d)) to the general principle that, save in exceptional circumstances, court proceedings should be conducted in public, and regulates the breach of orders made by way of exception to the general principle (s 12(1)(e) and s 12(2)). Outside the specific situations covered by s 12(1)(a) to (d), a court may sit in camera or impose restrictions on the publication of information relating to court proceedings but this is an exceptional course, which will be adopted only where the court is persuaded that justice could not otherwise be done in the proceedings, either because the case could not be effectively tried or because the parties entitled to justice would be reasonably deterred from seeking it at the hands of the court: *Scott v Scott* [1913] AC 417, HL (VISCOUNT HALDANE LC at 437–439) and EARL LOREBURN at

446); *A-G v Levensell Magazine Ltd* [1979] AC 440, HL. The general rule and its qualifications now appear in CPR 39.2 and CPR PD 39, paras 1.1–1.15.

A presumption that, in cases under the Children Act 1989, the court will sit in private and will not give judgment publicly, while retaining a discretion to sit in public in appropriate cases, does not breach Arts 6 or 10 of the European Convention on Human Rights: *B v United Kingdom*, *P v United Kingdom* (Application Nos 36337/97, 35974/97) [2001] 2 FLR 261, [2001] Fam Law 506, ECtHR; *Clibbery v Allan* [2002] EWCA Civ 45, [2002] Fam 261, [2002] 1 All ER 865. The balancing exercise required in relation to Arts 8 and 10 of the European Convention on Human Rights may lead a court hearing a case under the Children Act 1989 to relax the usual restrictions and to sit in open court or give judgment in public: *Re Webster (a Child)* [2006] EWHC 2733, [2007] EMLR 7, or to discharge an injunction preventing publication of information relating to court proceedings: *Clayton v Clayton* [2006] EWCA Civ 878, [2006] Fam 83. The court will be particularly vigilant where the parties have agreed between themselves that there should be a prohibition on publication of information relating to the proceedings: see, eg *R v Legal Aid Board*, ex p *Kaim Todner* [1999] QB 966 at 977, [1998] 3 All ER 541 at 549, CA.

For rules of court in relation to hearings in private, see CPR 39.2 and CPR 81.28(5).

For the position in relation to the publication of judgments in family courts and the Court of Protection see III COT [8.2A].

Effect of s 12

The effect of s 12 is to make it, at least prima facie, a contempt of court to publish information relating to proceedings before a court sitting in private in the specific cases set out at sub-ss (1)(a) to (d) (see *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370 at 416H, HL), or where the court has expressly prohibited the publication of information relating to the proceedings or of a specified description (sub-s (1)(e)).

The communication by a children and family reporter appointed in proceedings brought under the Children Act 1989 to the relevant statutory authority of concerns about inappropriate sexual behaviour by a parent does not constitute “publication” within the meaning of s 12: *Re M (a child) (disclosure: children and family reporter)* [2002] EWCA Civ 1199, [2003] Fam 26, [2002] 4 All ER 401.

For publication to constitute a contempt of court under s 12(1)(a), the publisher must know that the information published related to court proceedings, and that those proceedings were in private: *Re F (a minor) (publication of information)* [1977] Fam 58 at 74, [1977] 1 All ER 114, CA. Where the publisher has the requisite knowledge, the advice of experienced counsel that publication will not amount to a contempt is not a defence: *X v Dempster* [1999] 3 FCR 757, [1999] 1 FLR 894. Further, the court may give permission for publication of information relating even to proceedings which fall within s 12(1)(a) to (d): *Re R (MJ) (a minor)* [1975] Fam 89, [1975] 2 All ER 749.

The publication of a text or summary of the whole or part of an order made by a court sitting in private is not a contempt unless the proceedings fall within s 12(1)(a) to (d) or the court has expressly prohibited such publication: s 12(2); *AF Noonan (Architectural Practice) Ltd v Bournemouth & Boscombe Athletic Community Football Club Ltd* [2007] EWCA Civ 848, [2007] 1 WLR 2614. For the power to postpone the reporting of proceedings, see s 4(2) of the Contempt of Court Act 1981 at para III COT [13]. For a summary of the effect of s 12, see *Re B* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, [2004] Lloyd's Rep Med 303, para 82, per MUNBY J.

For the position in relation to the publication of judgments in family courts and the Court of Protection see III COT [8.2A].

Status of judgments given in chambers

Except in the specific cases identified in s 12(1)(a) to (d), a judgment, even when given in chambers, is normally to be regarded as a public document: *Hodgson v Imperial Tobacco Ltd* [1998] 1 WLR 1056, at 1070, CA; *Forbes v Smith* [1998] 1 All ER 973, at 975j (JACOB J). However, where secrecy is sought and granted, a judgment will normally be regarded as given in camera: see, eg, *Forbes v Smith* [1998] 1 All ER 973 at 976a–b, Ch D. Even where there is no restriction as to publication, lawyers are expected to exercise self restraint as to what is said in relation to any order, judgment or account of proceedings in chambers: *Hodgson v Imperial Tobacco Ltd* [1998] 1 WLR 1056, at 1071, CA.

For additional notes on hearings in private please refer to the notes at CPR 39.2 [1] onwards.

For the position in relation to the publication of judgments in family courts and the Court of Protection see III COT [8.2A].

Matters which may nevertheless be published

Section 12(1) prohibits publication of information regarding the substance of matters which the court has closed its doors to consider, and accordingly does not prohibit the publication of the fact that the court will sit, is sitting or sat at a certain date, time or place behind closed doors to consider those matters, or indeed the fact that a named patient in hospital has applied to a mental health review tribunal or that the tribunal has decided to release the patient from detention: *Pickering v Liverpool Daily Post and Echo Newspapers plc* [1991] 2 AC 370 at 423A and G–H, HL.

Similarly, an account of events unfolding outside the room in which the hearing is conducted, including the comings and goings of the parties and of witnesses, is not "information relating to proceedings before any court", and its publication is not prohibited by s 12(1)(a) to (d): *Re G (minors) (celebrities: publicity)* [1999] 3 FCR 181, [1999] 1 FLR 409, CA.

What is protected from publication are details of the actual proceedings of the court; these include statements of evidence, and reports and accounts of interviews prepared for use in court: *Re F (a minor) (publication of information)* [1977] Fam 58, 99 and 105; and the submissions of the advocates: *Re G (a child) (contempt: committal)* [2003] EWCA Civ 489, [2003] 1 WLR 2051, para 27. Section 12(1)(a) prohibits only the publication of information relating to the proceedings there referred to: *Re F (a minor) (publication of information)* [1977] Fam 58 at 74, [1977] 1 All ER 114, CA; *R v Central Television plc* [1994] Fam 192, [1994] 3 All ER 641, CA.

The common law may restrict publication of information of a much wider scope in relation to a child: see, eg, *R v Central Television plc* [1994] Fam 192, [1994] 3 All ER 641, CA; *Re Z (a minor) (identification: restrictions on publication)* [1997] Fam 1, [1995] 4 All ER 961, CA. If the court wishes to prohibit the publication of such information, it must make an appropriate order, in respect of which the criteria governing situations which fall outside s 12(1)(a) to (d) are applicable (see para III COT [8.1]). For an example of such an order, see *Re G (minors) (celebrities: publicity)* [1999] 3 FCR 181, [1999] 1 FLR 409, CA. However, neither s 12(1)(a), nor s 97(2) of the Children Act 1989, as amended, prevents the media from interviewing a ward of court about matters not within the scope of s 12(1)(a), or from publishing or broadcasting such an interview: *Kelly v BBC* [2001] Fam 59, [2001] 1 All ER 323. Similarly, s 12 does not prohibit publication of documents held by social workers which have neither been filed with the court nor used in court proceedings: *Re W (minors) (social worker: disclosure)* [1998] 2 All ER 801, [1999] 1 WLR 205, CA; and in the absence of an order, such as under s 39(1) of the Children and Young Persons Act 1933, it is not a breach of s 12(1)(a) to publish the name and address of, or to indicate the identity of, a child, nor to publish the fact that proceedings are taking place: *Cleveland County Council v W* [1989] FCR 625, sub nom *Re W (wards) (publication of information)* [1989] 1 FLR 246; *Re G (a child) (contempt: committal)* [2003] EWCA Civ 489, [2003] 1 WLR 2051, para 27 (discussion of whether publication of details of case and circumstances surrounding it on "Families Need Fathers" website constituted contempt of court); nor is it a breach of s 12(1)(a) to publish the names of parties or witnesses: see *Re B* [2004] EWHC 411 (Fam), [2004] 2 FLR 142, [2004] Lloyd's Rep Med 303, para 82, per MUNBY J.

Every court, when making what it believes to be a final order in proceedings under the Children Act 1989, should consider whether or not there is an outstanding welfare issue which needs to be addressed by a continuing order for anonymity; if no outstanding welfare issue arises, it is likely that the penal consequences of s 97 of the 1989 Act will cease to have effect, and the parties will be able to put into the public domain any matter relating to themselves and their children which they wish to publish, provided that the publication does not offend against s 12: *Clayton v Clayton* [2006] EWCA Civ 878, [2006] Fam 83, para 77.

Communication of information concerning children and publication of information relating to family proceedings

For the position in proceedings concerning children and incapacitated or vulnerable adults see the guidance at <http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/transparency-in-the-family-courts-jan2014.pdf> and the amendments to rules of court etc which will follow.

This Guidance (together with similar Guidance issued at the same time for the Court of Protection) is intended to bring about an immediate and significant change in practice in relation to the publication of judgments in family courts and the Court of Protection.

'Transparency in the Family Courts' Publication of Judgments

Practice Guidance issued on 16 January 2014 by Sir James Munby, President of the Family Division

The purpose of this Guidance

1. This Guidance (together with similar Guidance issued at the same time for the Court of Protection) is intended to bring about an immediate and significant change in practice in relation to the publication of judgments in family courts and the Court of Protection.

...

14. This Guidance takes effect from 3 February 2014.

13. Appeal in cases of contempt of court

(1) Subject to the provisions of this section, an appeal shall lie under this section from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt); and in relation to any such order or decision the provisions of this section shall have effect in substitution for any other enactment relating to appeals in civil or criminal proceedings...

Right of appeal

Section 13 provides a general right of appeal in any case involving the jurisdiction to punish for contempt of court, which must now be read in conjunction with the Access to Justice Act 1999, the Access to Justice Act

1999 (Destination of Appeals) Order 2000 (SI 2000/1071) and CPR 52: *Barnet London Borough Council v Hurst* [2002] EWCA Civ 1009, [2002] 4 All ER 457, [2003] 1 WLR 722.

The language of s 13 is sufficiently wide to relate to orders or decisions made in the course of proceedings which may result in a conviction of and sentence for contempt, including a refusal to grant bail: *R v Serumaga* [2005] EWCA Crim 370, [2005] 1 WLR 3366, [2005] 2 All ER 160.

The appropriate procedure for a challenge to a refusal by the Crown Court to grant bail is an appeal to the Court of Appeal (Criminal Division) under s 13(1) rather than an application for judicial review: *R v Serumaga* [2005] EWCA Crim 370, [2005] 1 WLR 3366.

Although the Court of Appeal has jurisdiction under s 13 to hear an appeal from a decision of a district judge, the appropriate course is to appeal to the circuit judge, unless the criteria set out in CPR 52.14 are satisfied: *Barnet London Borough Council v Hurst* [2002] EWCA Civ 1009, [2002] 4 All ER 457, [2003] 1 WLR 722. Any appeal against committal should be heard as quickly as possible: *Mesham v Clarke* [1989] FCR 782, [1989] 1 FLR 370, CA.

The reference to the Court of Appeal in s 13(2)(c) encompasses both divisions of the Court of Appeal: *OB v Director of the Serious Fraud Office* [2012] EWCA Crim 901, [2012] 3 All ER 1017, [2012] 1 WLR 3188.

There are particular and complex provisions relating to appeals in respect of the grant or refusal of an order for committal: CPR 52.3 [5].

Permission to appeal

A person who has been committed to prison does not require permission to appeal (even where the committal order was suspended: *Wilkinson v S* [2003] EWCA Civ 95, [2003] 2 All ER 184, [2003] 1 WLR 1254, and even where the appeal is not strictly against a 'committal order' within the meaning of CPR 52.3(1)(a)(i) but is an appeal against a refusal of a judge to order the applicant's early discharge from prison: *CJ v Flintshire Borough Council* [2010] EWCA Civ 393, [2010] 2 FLR 1224, [2010] 3 FCR 40, [2010] Fam Law 697, para 4), except in the case of a second appeal from a committal order originally made by a district judge; permission is required in all other cases including appeals by an applicant for a committal order: CPR 52.3(1)(a)(i); *Barnet London Borough Council v Hurst* [2002] EWCA Civ 1009, [2002] 4 All ER 457, [2003] 1 WLR 722; *Kynaston v Carroll* [2004] EWCA Civ 1434; *Poole Borough Council v Hambridge* [2007] EWCA Civ 990 (*Wood v Collins* [2006] EWCA Civ 743, [2006] All ER (D) 165 (May) not followed).

A company cannot be committed to prison and requires permission to appeal against an order finding it to be in contempt: such a finding is not a 'committal order' within the meaning of CPR 52.3(1)(a): *Masri v Consolidated Contractors International Company SAL* [2011] EWCA Civ 898, (2011) Times, 30 November.

Permission is required for all second appeals, and may only be granted by the Court of Appeal: CPR 52.13: *Barnet London Borough Council v Hurst* [2002] EWCA Civ 1009, [2002] 4 All ER 457, [2003] 1 WLR 722.

There are particular and complex provisions relating to appeals in respect of the grant or refusal of an order for committal: CPR 52.3 [5].

For appeals to the Supreme Court please refer to para II SCR [A1.1].

Bail pending appeal

The Court of Appeal may release an appellant on bail pending an appeal to the Court of Appeal or Supreme Court under s 13: CPR Sch 1 RSC Ord 109, r 4. There does not appear to be any provision for the grant of bail pending an appeal to the High Court, although CPR Sch 1 RSC Ord 79 applies in relation to the grant of bail in 'criminal proceedings', which arguably includes criminal contempt of court.

The appropriate procedure for a challenge to a refusal by the Crown Court to grant bail is an appeal to the Court of Appeal under s 13(1) rather than an application for judicial review: *R v Serumaga* [2005] EWCA Crim 370, [2005] 1 WLR 3366.

Court's powers on appeal

The appeal court has power to reverse or vary the order or decision of the court below, and make such other order as may be just: s 13(3).

Section 13(3) probably includes within it a power to award costs against one of the parties to the proceedings: *R v Moore* [2003] EWCA Crim 1574, [2003] 1 WLR 2170, para 17. Section 13(3) does not, however, confer a power to order payment of costs out of central funds: *R v Moore* [2003] EWCA Crim 1574, [2003] 1 WLR 2170, para 24 (successful appeal against conviction for contempt of court in the Crown Court).

The appeal court may remit a matter to the court below for a rehearing: *R v Kenny (Charlie)* [2011] EWCA Crim 1232; for an example, see *Manchester City Council v McCann* [1999] QB 1214, CA.

Section 13(2) does not prevent a court to which an appeal has been made from increasing the sentence imposed by the court below: *Wilson v Webster* [1998] 2 FCR 575, [1998] 1 FLR 1097, CA, applied in *Neil v Ryan* [1999] 1 FCR 241, [1998] 2 FLR 1068, CA.

For guidance on the approach to be adopted by the appeal court in committal cases, see *Nicholls v Nicholls* [1997] 1 WLR 314, CA, at 326-327.

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