

Is permission necessary to appeal a contempt order? (Deutsche Bank v Sebastian Holdings Inc and another)

This analysis was first published on Lexis®PSL on 06 March 2023 and can be found [here](#) (subscription required).

Dispute Resolution analysis: As is often convenient, particularly in complex cases, allegations of contempt are dealt with in two stages: i) whether the alleged contempt has been committed; and ii) determining the appropriate sanction if the contempt is proved. The question arises whether a finding of contempt at the first stage can be appealed without permission, or whether that depends upon what decision about sanction is made at the second stage. If the two stages are separated in time, a further question arises whether time is running for an appeal against the first order in the meanwhile. In answer to the first question, the Court of Appeal held that a finding of contempt at the first stage can be appealed without permission if there follows a committal to prison sentence. If there is a time separation until the committal sentence, then there ought to be an order that provides for time for an appeal against the first order to be held until the court has determined the sanction. Written by Natalie Todd, partner at Cooke Young & Keidan LLP.

Deutsche Bank AG v Sebastian Holdings Inc and another [\[2023\] EWCA Civ 191](#)

What are the practical implications of this case?

What is an individual defendant to do they have been found in contempt, but have not yet been sentenced? *Masri v Consolidated Contractors International Co SAL* [\[2011\] EWCA Civ 898](#) and *Nambiar v Solitair* [\[2022\] EWCA 1135](#) demonstrate that unless and until an order of committal is made, any appeal needs permission. So, if the defendant seeks to appeal against the finding of contempt before sentence, permission will be needed. But if the defendant defers an appeal until after sentence and is then committed to prison, they will be entitled to challenge the committal on the ground that the finding of contempt was wrongly made. Of course, the defendant may not be committed to prison after all, but may be dealt with in some other way, for example by a fine. In such a case they will need permission to appeal, but should be entitled to seek permission to appeal against the imposition of the fine on the ground that the finding of contempt ought not to have been made. In that way, any problem that time has run for an appeal against the first order making the finding of contempt should be avoided. In case any such problem remains, this can be overcome by making an order, as the judge did in this case, that the time for appealing the finding of contempt will not run until after the court has determined what sanction to impose. In the view of Lord Justice Males, that might be the safest practical solution, although it has an element of 'belt and braces'.

What was the background?

In June 2022 Alexander Vik ('AV'), the former director of Sebastian Holdings Inc, was found guilty of contempt of court and an order made against them (the 'Contempt Order'). In July 2022, AV was committed to prison for 20 months, that period being suspended until six months from the final determination of any appeal (the 'Committal Order').

AV appealed, contending that the findings of contempt were wrongly made and that the sentence imposed was too severe. There was no question that AV had a right of appeal from the Committal Order, pursuant to [section 13](#) of the Administration of Justice Act 1960 ([AJA 1960](#)), but the question arose as to whether they needed permission to appeal from the Contempt Order. The parties had been proceeding on the basis that AV had a right of appeal from both orders, and as the question whether permission is needed arose only at a late stage when both parties were fully prepared for the

appeal, it was convenient to hear the appeal without ruling on this question. This Court of Appeal judgment at paras [29] to [43] and [127] to [132] provides guidance as to whether permission is needed.

AJA 196, s 13(1) as amended by the [Access to Justice Act 1999](#) provides that an appeal shall lie 'from any order or decision of a court in the exercise of jurisdiction to punish for contempt of court (including criminal contempt)'. [Section 54](#) of the Access to Justice Act 1999 and rules of court made thereunder changed the law so that, in most cases, permission is now required for an appeal to the Court of Appeal. However, [CPR 52.3\(1\)\(a\)](#) preserves the right to appeal without permission from a committal order and other orders which result in the deprivation of liberty.

What did the court decide?

Where the issue of contempt is dealt with in two stages and an order making a finding of contempt is later followed by committal to prison (including a suspended sentence), the defendant has a right of appeal against the order for committal and no permission is required. The grounds of appeal in such a case are not limited to a contention that the sentence was too severe, but may include a contention that the finding of contempt was wrongly made. Either ground, if made out, means that the defendant should not have been committed.

The position is different in the case of a corporate defendant which cannot be committed to prison, as in *Masri v Consolidated Contractors International Co SAL*. Such a defendant needs permission to appeal and there is no need to defer an application for permission until the sentence has been determined. The position may also be complicated if a defendant is guilty of an abuse of process, as in *Nambiar v Solitair*, although it was important in that case that the abuse consisted of a failure to disclose the previous unsuccessful application for permission to appeal against the finding of contempt.

AV did not need permission to challenge the findings of contempt set out in the Contempt Order, although they had to do so by way of an appeal against the Committal Order on the ground that the findings of contempt were wrongly made. On that basis, the Court of Appeal did not need to consider whether it would have been prepared to grant permission if that had been necessary.

Case details

- Court: Court of Appeal, Civil Division
- Judge: Lord Justice Males, Lord Justice Andrews and Lord Justice Nugee
- Date of judgment: 24 February 2023

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