**THE CONTEMPT “CODE”**

As with the decision about whether to commence a criminal prosecution under the Code for Crown Prosecutors, the normal procedure for deciding whether to instigate committal proceedings against a defendant is to consider first whether the evidential test is met and, if it is, to consider whether it is in the public interest to commence proceedings. In reaching a view on these matters the questions set out below are likely to be of assistance.

Whether there is sufficient evidence to prove contempt to the criminal standard.

* 1. Can the evidence be used in court? I.e., is there any question over the admissibility of certain evidence?
  2. Is the evidence reliable? I.e., are there any reasons to question the reliability of the evidence, including its accuracy or integrity?
  3. Is the evidence credible?
  4. Is there any other material that might affect the sufficiency of evidence?

The evidence will be “sufficient” where it is more likely than not that the Court hearing the matter, directing itself appropriately in law, will decide that the defendant is in contempt of court.

Whether it is in the public interest to institute contempt proceedings.

The question of public interest should normally only be considered once it has been determined that the evidence is sufficient. However, there may be circumstances where it is appropriate to consider the public interest first, as where it is considered that, even if there is sufficient evidence, proceedings would not be in the public interest.

Proceedings will not be brought unless the Law Officer is satisfied that the public interest factors tending against committal proceedings are outweighed by those tending in favour. In considering the public interest the Law Officer may be assisted by considering the questions below, which are not exhaustive, and may not be relevant in every case. The weight to be attached to each of the questions, and the factors identified, will also vary according to the facts and merits of each case. It is possible that one public interest factor alone may outweigh a number of other factors which tend in the opposite direction.

1. How serious is the conduct (i.e., what was, or could have been, the impact on the administration of justice?)
2. What was the harm caused: was it actual or potential? How have the courts previously described the effect (or possible effect) of the particular conduct on the administration of justice, if at all?
3. Was there endangerment or harassment to participants, or disruption to the proceedings?
4. How ‘visible’ was the contempt (e.g. for publication contempt, (i) the nature of the publisher, (ii) the likely audience, (iii) how likely was it to poison the minds of potential jurors or affect the availability of evidence and (iv) the remoteness of the trial, if any)?
5. What is the culpability of the alleged contemnor?
6. What was their level of involvement and knowledge?
7. Was the conduct premeditated or planned?
8. What was their motivation?
9. Have they repeated their conduct or threatened to?
10. Have they been accused of similar previous conduct or previously been warned?
11. What is the likelihood of repetition?
12. What is their age and maturity?
13. Has the alleged contemnor apologised for their conduct?
14. Is there another public authority with the power to deal with the conduct?
15. If so, has the conduct already been dealt with?
16. If the authority has not dealt with the conduct, what is the reason for them not doing so, and does the case nonetheless require some action from the perspective of protecting the administration of justice?
17. If the conduct is also a criminal offence, what is the status of any police investigation and might parallel contempt proceedings prejudice that investigation?
18. Are contempt proceedings a proportionate response?
19. Consideration should be given to whether the bringing of proceedings in front of a court and in public also has intrinsic merit – sometimes the court will take the view that a finding of contempt does not require the imposition of any sanction over and above the “public humiliation” perceived as attaching to a public judgment identifying the contemnor’s reprehensible behaviour.
20. What is the likely resource commitment by the AGO and the wider justice system, especially where to issue proceedings could be regarded as excessive when weighed against any likely penalty? Law officers should not decide the public interest on the basis of this factor alone. It is essential that regard is also given to the other identified public interest factors, but resource commitment might, exceptionally, be a relevant factor when making an overall assessment of whether proceedings would be in the public interest