

"Jailhouse Shock - Contempt of court for bad egg directors"

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The Court of Appeal recently affirmed that company directors are liable for contempt of court if their company breaches a court order without it being necessary for them to have 'aided and abetted' the breach.

English law distinguishes between criminal and civil contempt of court. Civil contempt has a less stringent mental requirement (*mens rea*) than criminal contempt. In October 2020, an amendment to the English Civil Procedure Rules ("CPR") removed an express reference to the Court's power to hold company directors in civil contempt. This gave rise to uncertainty: could directors now only be liable for criminal contempt of court if they deliberately 'aided or abetted' the breach of an order of the court?

Two recent cases have grappled with this. First, in *Olympic Council of Asia v Novans Jets LLP & [2023] EWHC 276* Foxton J found that the CPR had not changed the law, in a decision that illustrates some of the difficulties and hurdles to overcome when seeking to hold company directors, or those controlling companies as *de facto* directors, liable for contempt. In *ADM International Sarl v Grain House International SA [2024] EWCA Civ 33*, the Court of Appeal then conclusively held that liability of company directors for civil contempt is and remains a substantive principle of English law that can be traced back to the 1670s, and it applies regardless of any procedural refinements to the CPR. In this article, we look at those two decisions and at other aspects of how the English Courts enforce compliance by companies with orders and injunctions, by holding those controlling such corporations personally liable.

Interfere with the administration of justice at your peril – the liability of third parties

Companies have separate legal personality but can only act through their directors and officers. English law has taken the policy decision to hold to account those directors and officers of companies that flout court orders. This ensures that the court's disciplinary powers are preserved. The justification for this is that directors and officers have accepted personal responsibility for the actions of the company that they control and represent, as a consequence of their appointment. Before looking at the principles that apply to company directors specifically, it is useful to recall the position of third parties who interfere with orders of the English Courts. All third parties can be held liable for contempt of court, and this extends to anyone regardless of their relationship with or interest in the defendant who is the subject of the court order (including directors, officers, or shareholders).

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