Association of **Lawyers for Children**

Promoting justice for children and young people

Consultation response:
Law on Contempt of Court and consider reform to improve its effectiveness, consistency and coherence

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Response of the Association of Lawyers for Children

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The Association of Lawyers for Children (hereafter "ALC") is a national association of lawyers working in the field of children law. It has over 1,300 members, mainly solicitors and family law barristers who represent children, parents and other adult parties, or local authorities. Other legal practitioners and academics are also members. Its Executive Committee members are drawn from a wide range of experienced practitioners from both sides of the legal profession practising in different areas of the country. Several leading members are specialists with over 20 years' experience in children law, including local government legal services. Many have written books and articles and lectured about aspects of children law and hold judicial office. The ALC exists to promote access to and equality of justice for children and young people within the legal system in England and Wales in the following ways:

i. lobbying in favour of establishing properly funded legal mechanisms to enable all children and young people to have access to justice.
ii. lobbying against the diminution of such mechanisms.
iii. campaigning and advocating on against any form of discrimination which may affect children within the family justice system
iv. providing high quality legal training, focusing on the needs of lawyers and non-lawyers concerned with cases relating to the rights, welfare, health and development of children.
v. providing a forum for the exchange of information and views on the development of the law in relation to children and young people.
vi. being a reference point for members of the profession, governmental organisations and pressure groups interested in children law and practice; and
vii. funding or co-funding research where we perceive gaps in knowledge or evidence relating to changes in policy and practice in children proceedings.

The ALC is a stakeholder in respect of all government consultations pertaining to law and practice in the field of children law and welcomes this opportunity to provide its views in respect of this consultation.

Preliminary points:

The ALC identifies that the Law Commission's focus both in its analysis and in its proposals may have been on how best to reform and codify the law of contempt in a way which addresses practical issues which primarily arise in the context of criminal proceedings. The practical issues that engage the law on contempt of court in family proceedings are quite different to those encountered in criminal (and general civil) proceedings, and the ALC is concerned – for reasons set out below – that some of the Commission's proposals do not fully engage with those practical issues or the impact that some of the proposed reform and codification may have on the functioning of the family justice system. Where the ALC's answers below indicate support of particular proposals made by the Commission, that agreement is subject to the ALC's overarching concern that any reform must recognise and meet the needs of the family justice system and the children whose welfare it seeks to promote.

Chapter 3 – General contempt

The ALC's general response (of particular relevance to questions 1, 3,4,5, 6, 8, 9, 11, and 12) to this chapter is as follows:

The proposal to discard the traditional distinction between civil and criminal contempt suggests a shift toward a unified framework for contempt of court, focusing on the nature and impact of the conduct rather than its classification. This reform would aim to simplify the law, making it more coherent and accessible by consolidating both civil and criminal contempt under a single framework of liability.

Key Considerations:

1. **Clarity and Consistency**: The distinction between civil and criminal contempt has often been complex and confusing, particularly for non-legal participants in court proceedings. Removing this distinction could make contempt law more understandable and more straightforward to apply.
2. **Focus on Conduct and Impact**: By concentrating on whether the conduct constitutes an interference (or risk thereof) with the administration of justice, the reformed framework could better address the harm caused without the need for classification as either civil or criminal.
3. **Procedural Implications**: Eliminating the distinction may streamline procedural aspects, reducing the need for separate processes and evidentiary standards that currently depend on whether contempt is classified as civil or criminal.
4. **Flexibility in Remedies and Sanctions**: A single framework could allow courts more flexibility in determining appropriate sanctions or remedies based on the conduct and its effect on justice, rather than on its classification as civil or criminal.

<u>Concerns in respect of impact that the commission's proposals may have on the existing scheme of confidentiality of information in the family court.</u>

1. The commission's proposal to reform contempt of court laws raises potential concerns about the impact on the confidentiality of information within family courts. Family court proceedings

often involve sensitive personal information, and confidentiality is a cornerstone of ensuring the privacy and protection of individuals involved, especially children.

2. Information relating to proceedings in respect of the welfare of children ('children law proceedings') is, generally speaking and with defined exceptions, understood by those working in the family justice system to be confidential. Section 97 Children Act 1989 specifically prohibits identification of a child as being subject to proceedings during the currency of those proceedings. Section 12 of the Administration of Justice Act 1960 ('AJA') provides a wider embargo on publication of information relating to children law proceedings, effectively prohibiting publication of most information absent permission of the court/unless exceptions within the Family Procedure Rules 2010 apply. Importantly, that prohibition continues past the conclusion of the proceedings.

3. There are compelling, widely accepted reasons for maintaining confidentiality of information relating to children law proceedings and to ensure that where information relating to children law proceedings is published, it is published in a way which maintains the child's anonymity. In setting out proposals intended to achieve greater openness in the Family Court, MacFarlane P said as follows in his 2021 document Confidence and Confidentiality: Transparency in the Family Courts: '*Against the impetus towards greater openness, there is a similarly strong and important force in favour of maintaining a cloak of confidentiality around the identity and personal information of the children and adult parties whose cases come before the court. The voice of children and young people on this issue is strong and clear; they do not wish to have their personal information and the detail of their lives made public. Much of the evidence in cases relating to children is intensely private and sometimes deeply distressing.'*

4. By way of illustration, current application of s12 AJA indefinitely prevents the following without permission of court (not an exhaustive list):

    - Publication of information relating to proceedings/court documents (such as statements, social work and Cafcass reports, expert evidence) onto publicly accessible social media sites.
    - Publication of information relating to proceedings/court documents by mainstream media (apart from anonymised information within the scope of the ongoing Transparency Pilot).
    - Disclosure of information relating to proceedings/court documents to the police (aside from police officers acting in child protection capacity).
    - Disclosure of information relating to proceedings/court documents into criminal proceedings (which may go on to be heard in public).
    - Disclosure of information relating to proceedings/court documents to professional regulators.
    - Disclosure of information relating to proceedings/court documents from one set of children proceedings into another set of children proceedings which may involve different parties.
    - Disclosure of information relating to proceedings/court documents into civil proceedings (which may go on to be heard in public)

5. In practice, s12 AJA is implemented through/reflected by the following (not an exhaustive list):

    - Advice given by family lawyers to lay clients that information relating to proceedings remains confidential post-proceedings – effectively warning people from

sharing/publishing it in a way which is currently understood to be contrary to the law of contempt.

- Inclusion of warnings on standard orders in proceedings under the Children Act 1989 reading as follows: *'... during the proceedings or after they have concluded no person shall publish information related to the proceedings including accounts of what has gone on in front of the judge, documents filed in the proceedings, transcripts or notes of evidence and submissions, and transcripts and notes of judgments (including extracts, quotations, or summaries of such documents). Any person who does so may be in contempt of court.*'
- Cafcass refusing to provide information from proceedings to police forces/the CPS to support investigations/prosecutions absent court orders permitting such disclosure.
- Police forces and regulators needing to apply to the Family Court if they seek disclosure of information relating to proceedings.
- The Family court needing to consider applications for disclosure of papers from one set of concluded children law proceedings into another set of 'live' children law proceedings (providing a safeguard for the parties in the first set, some of which may be different).

6. s12 AJA does not specifically define what publication would constitute contempt of court or create a new code of law of contempt relating to publication of information relating to children law proceedings[1]. The practical impact of s12 AJA is dependent on the existing law on contempt of court[2].

7. This being the case, the ALC understands that any steps that are taken to change or codify the underlying law on contempt of court could determine the practical effect of s12 AJA and, in turn, the extent to which s12 AJA prohibits disclosure of information relating to proceedings in respect of the welfare of children.

8. The Commission's paper does not directly address s12 AJA 1960, acknowledge the practical importance of this provision to the family justice system, or address the impact that changes to/codification of the law of contempt may have on the effect of s12 AJA or on the extent of confidentiality afforded to information relating to children law proceedings.

9. The ALC is concerned that the proposals under consultation could have a substantial impact on the effect of s12 AJA as it relates to confidentiality of information relating to children law proceedings. This continues beyond the life of the proceedings and is not confined to the childhood of the subject. It protects what went on before ethe court and it is a central plank in the protection of children beyond proceedings. Breach of this section is contempt of court whether it occurs during the proceedings or afterwards.

10. Publication of information relating to concluded proceedings would be caught by the Commission's proposed class of contempt titled 'general contempt committed by publication'. The Commission proposes that post-proceedings publication of information relating to

[1] *AJA 1960 s12(4): Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section*

[2] Scarman LJ in *In re F. (ORSE. A.) (A MINOR) (PUBLICATION OF INFORMATION)* [1977] Fam. 58 – at 98, 99 – *'I think it likely that the subsection [s12(4) AJA 1960] was enacted to ensure that no one would in future be found guilty of contempt who would not also under the pre-existing law have been found guilty'* and 100 – *'I think section 12 must be interpreted in the light of pre-existing law. It is not a code of new law, but a clarification of the old.'*

proceedings could only constitute contempt if it gave rise to a risk of non-trivial interference with the administration of justice in respect of future proceedings[3]. The 'fault' element of this class of contempt would be satisfied only by an intention to cause such an interference/risk of interference[4]. With this we disagree. There must be an exception for proceeding captured under section 12 we suggest.

11. The ALC is concerned that codification/development of the law of contempt as proposed by the Commission would substantially limit the effect of s12 AJA, moving it away from how it is currently understood to operate and (contrary to the intentions of the Commission in codifying the law on contempt) cause uncertainty and complexity within the family justice system.

12. By way of example, with particular regard to application of the proposed 'fault' element, post proceedings:

    - A parent might publish all statements/reports from Children Act proceedings on social media, intending to expose what they considered to be bad behaviour by a subject child's other parent. This would not appear to amount to intention to interfere with future proceedings, so would not appear to constitute a contempt.
    - A person could disclose full papers to the police for the purpose of supporting a criminal complaint – the police could go on to use those papers in criminal proceedings heard in public without recourse to the other parties to the proceedings or to the Family Court. That person's intention would be to progress a criminal complaint, and so their disclosure would not appear to constitute a contempt.
    - A person could disclose full papers to a professional body in an attempt to have that professional body investigate a party to proceedings intending for them to lose their ability to practice as a professional. That person's intention would be to progress their professional body complaint, and so their disclosure would not appear to constitute a contempt.
    - A person could rely on papers from the family proceedings in a civil claim heard in public without recourse to other parties or to the family court, intending that those papers would support their claim. That person's intention would be to progress their civil case and so their disclosure would not appear to constitute a contempt. – no contempt.

13. In each of the above examples it would also be challenging to argue that such disclosure posed a risk of interference with the administration of justice in respect of future proceedings (this not being a requirement on claimants in contempt proceedings brought through reference to s12 AJA 1960 at present). The actions can cause immeasurable harm to the subject children. Some children who may be trying to move on with their lives post proceedings others may live in locations foster placements in areas unknown to their parents and which may then be capable of identification through recognition and posts on social media. The parents that we deal with in the Family court can be dangerous to children and the child may have only supervised contact or no contact with them, the protection of section 12 go far beyond the administration justice there is a both child welfare and child protection facets that must not be eroded by this reform.

14. The ALC would be deeply concerned about the impact on children who are subject of children law proceedings if codification or change to the law on contempt led to any weakening of the existing scheme of general indefinite confidentiality in respect of information relating to those

[3] Paras 3.58 and 3.63
[4] Para 3.75

proceedings. Any change to that existing scheme of confidentiality should, in the ALC's view, be carefully considered and be subject to the broadest policy discussion, which is (by the Commission's own terms of reference) outside of the scope of the current consultation.

Concerns in respect of impact that the commission's proposals may have on the family justice system's current ability to protect wards of court:

15. The commission's proposals on contempt of court may impact the family justice system's ability to protect wards of court. Wards of court—typically children placed under the protection and supervision of the court—require stringent confidentiality and protective measures to safeguard their well-being. At present, where a child is a ward of court, it is a criminal contempt of court for a person to take important or major steps/decisions in respect of that child without the prior consent of the court. Neither the Commission's proposals in respect of contempt by breach of court orders or general contempt appear to replicate or encompass this existing branch of the law of contempt. This may be an unintentional oversight given that the current applicability of contempt law to protection of wards is not referred to in the consultation document.

16. The ALC would be very concerned if the law on contempt were to be codified or changed in a way which removed or diluted the family justice system's ability to protect children who are made wards of court, the prospect of contempt proceedings being an important deterrent in wardship cases where a parent's cooperation is needed to secure the ward's welfare.
If the ALC can assist in further specialised consultation we are happy to do so.

Chapter 5 – Contempt by publication where proceedings are active [taken out of turn because of the relevance of the above response to Chapter 3]

The ALC's general response (of particular relevance to questions 29 and 31) to this chapter is as follows:

17. The ALC raises significant concerns regarding the potential dilution of existing protections against the publication of information related to children's law proceedings during active cases. Drawing on the issues previously discussed about general contempt and publication after the conclusion of proceedings, the ALC fears that the proposed codification or reform of contempt law could undermine the essential confidentiality safeguards currently in place for ongoing family cases. These protections are crucial for safeguarding the privacy and welfare of vulnerable children, shielding them from public exposure and potential harm throughout sensitive legal proceedings. The ALC strongly advocates that any reform efforts must prioritise and uphold these protections to ensure that the best interests of children remain at the forefront.

18. Section 97 of the Children Act 1989 prohibits the publication of information likely to identify the child as being the subject of proceedings under in the Family Court and High Court Family Division and creates an offence, this ends at the close of the proceedings*: Clayton v Clayton [2006] Fam 83*; [2006] 3 WLR 599 . Section 12 of the Administration of Justice also applies

but exists beyond the proceedings. Contempt proceedings in the Family court often relate to breaches of these provisions. Neither require the consent of the Secretary of State to initiate proceedings (save in very limited circumstances) which allows for agile, often swift, action to be taken where material about the children and their proceedings is published. The administration of justice is often a secondary consideration for the use of Contempt proceedings to securing the wellbeing of the child or vulnerable adult protected by the order. Bringing a matter to court at extremely short notice is crucial in that context. It strikes us that not enough consideration has been given to the unique circumstances of the Family Court cases where the use of contempt proceedings has dual effect. A swift procedure to secure compliance with an order where a child is being harmed by publication is essential.

19. The proposed requirement in contempt proceedings related to publication during active cases, which mandates that an applicant demonstrate a "substantial risk" of serious impediment or prejudice to the course of justice. This standard appears inadequately aligned with the practical realities of improper publication in family law cases. In many instances, unauthorized disclosures may not significantly hinder ongoing proceedings, yet they can still inflict substantial harm on the child involved. The ALC contends that if the law were to be codified as suggested, the framework for contempt by publication in active family proceedings would likely prove ineffective in addressing the serious implications of improper disclosures. Section 97 and section 12 have their genesis in the protection of the identity of the vulnerable, children and mentally incapacitated adults in proceedings. We have a meaningful number of cases in which parents in proceedings use social media to harass and distress the other parent or to campaign against the local authority intervention in the lives of their children. The agility of using section 97 and section 12 contempt procedures which do not require any AG authorisation is essential to bring about a abatement of the behaviour. Likewise, although addressed elsewhere the sue of contempt procedure in cases where a child has been abducted and a parent is in breach of a return order. It appears that the proposals do not sufficiently address the use of contempt law in children's cases. The implementation of a holistic new contempt regime should not place impediments in the way of the use of contempt proceedings to secure swift redress for breaches of section 97 and section 12 which can cause enormous emotional harm and sometimes impair the safety of women and children in refuges or who have been relocated. Further specialist consultation may be required. We are content to consult more specifically but the issues are too wide ranging for exposition in response to this consultation. Unfortunately it does not appear to us that the specialist needs of children's cases where contempt law, at times, plays a part in their safety in urgent situations has been absorbed or reflected in the proposals.

20. The ALC has no further comments regarding the remaining questions in this chapter. The Law Commission's proposals concerning contempt by publication in active proceedings are primarily focused on contexts outside of proceedings in the Family Court and High Court Family Division. Consequently, the ALC assumes these proposals are tailored to non-family law cases and may not fully address the unique issues of confidentiality and child protection inherent in children's law proceedings.

Chapter 4 – Contempt by breach of court orders or undertakings

The ALC's specific responses to the questions put are as follows:

21. ***Question 18****: We provisionally propose that establishing the circumstance element for contempt by breach of a court order or undertaking should require proof that there is: (1) an order of the court, whether expressed as a summons or otherwise, that applies to the defendant, or (2) an undertaking given by the defendant, provided the order or undertaking is accompanied by a penal notice or its equivalent. Do consultees agree?*

22. This proposal is agreed by the ALC. It balances the clarity in enforcing court orders with the requirement to protect individuals' rights by ensuring they are fully aware of the consequences of non-compliance. This is consistent with the current requirements in family proceedings. The proposed criteria offers a balanced and clear approach for establishing the circumstances under which contempt by breach of a court order or undertaking can be determined, with strong safeguards to ensure fairness and legal certainty.

23. **Question 19:** *We provisionally propose that to establish the conduct element for contempt by breach of a court order or undertaking should require proof that the defendant failed to comply with the order or undertaking, regardless of whether significant consequences followed from the failure to comply. Do consultees agree?*

24. Yes. The ALC agrees with this proposal. The proposal rightly emphasises the importance of compliance with court orders and undertakings. Requiring proof of non-compliance, without the need to demonstrate significant consequences, provides a clearer and more straightforward standard. This eliminates subjective assessments about the seriousness or impact of a breach, leading to more consistent enforcement of court orders. The proposal creates a strong deterrent effect, making it clear that any failure to adhere to a court's order or undertaking could lead to contempt. This serves as a clear warning to all parties that compliance is mandatory, not optional, reinforcing the seriousness of following court directives.

25. Whilst the ALC supports the focus on non-compliance alone, the courts should retain discretion to tailor sanctions based on the context and nature of the breach. This would ensure that minor or technical breaches are not met with disproportionately severe penalties, thereby maintaining fairness.

26. To address the risk of penalising trivial or unintended breaches, clear guidance could be established for the judiciary, allowing them to differentiate between significant and minor breaches when imposing sanctions, even if non-compliance is enough to establish contempt.

27. **Question 20, 21 and 22:** *We provisionally propose that to establish the fault element for contempt by breach of a court order or undertaking should require proof that the defendant knows that they are bound by the relevant court order. AND; We provisionally propose that to establish the fault element for contempt by breach of a court order or undertaking should not require proof that the defendant knows the precise terms of that order. AND; We provisionally propose that to establish the fault element for contempt by breach of a court order or undertaking should require proof that the defendant had knowledge of the facts that made the conduct a breach. Do consultees agree?*

28. The ALC agrees this proposal. Together they form a coherent standard for assessing fault in cases if contempt of breach of an order or undertaking.

29. The proposal effectively balances the necessary protections and the enforcement of court orders, particularly regarding publication by media organisations. However, in the context of family proceedings, the focus should shift to address a more pressing concern: publication by family members. This often involves the dissemination of sensitive documents to non-parties or the unauthorised publication of information on social media. These actions pose a significant risk to the welfare and privacy of children involved in family cases.

30. We strongly support the previous recommendation for creating a centralised database of reporting restrictions, which would assist in monitoring and enforcing limitations on media organisations. However, in family law, the greatest threat often comes not from traditional media but from those closest to the case—family members. The reform of the contempt laws should recognise and mitigate this unique risk by implementing specific provisions aimed at curbing unauthorised disclosures by individuals directly involved in family proceedings.

31. This focus on family member disclosures is essential to adequately protect children's privacy and well-being, as they are the most vulnerable participants in these proceedings. The law must therefore consider modern digital contexts, where sensitive information can easily be shared and rapidly disseminated through social media, creating a lasting impact on the children involved.

32. To effectively safeguard children's interests, the reformed contempt laws should account for this key risk, ensuring that any breach by family members—whether intentional or through reckless publication—is addressed with the same seriousness as breaches by media outlets.

33. **Question 23:** *We provisionally propose that interim remedies should be available to the court in order to ensure compliance with court orders or undertakings without the court having to make a finding of contempt. Do consultees agree?*

34. Yes. The ALC would support interim remedies if they can be effective in encouraging compliance. The current contempt regime can be slow and costly but, most crucially, involves delay given the need to find court

35. time to determine the committal application. This approach is particularly relevant in the context of family proceedings, where there is often an urgent need to effect compliance, such as in securing the return of children to the jurisdiction.

36. In family proceedings, the court already has several tools available that operate outside the traditional contempt regime, such as passport orders to prevent a child from being taken out of the jurisdiction. These existing tools show that interim measures can be effective without the formality and delay associated with contempt proceedings. The introduction of additional interim remedies would expand the court's ability to respond swiftly to non-compliance in a targeted manner.

37. Traditional contempt sanctions, such as imprisonment or debarment from participation in proceedings, are often not suitable in the context of family law. In children's cases, the primary objective is to secure compliance in a way that serves the child's best interests, punishment of non-compliance is at times secondary to that objective. Debarring a party from participating in proceedings is generally unrealistic, as their involvement is often crucial to resolving family disputes and ensuring the child's welfare.

38. In family proceedings, costs are generally not awarded, which limits the usefulness of financial penalties as a deterrent. Interim remedies provide an alternative means of enforcement that focuses on compliance rather than punitive financial measures, aligning with the family court's overarching goal of protecting children's interests.

39. Interim remedies should be carefully targeted to address the specific non-compliance issue at hand, avoiding overly broad measures. They should also be proportionate, taking into account the nature of the breach and its potential impact on the child's welfare. We consider interim remedies should be flexible enough to be tailored to the unique circumstances of each family case. The court should have discretion to use measures that are most likely to secure compliance quickly and effectively, without the need for formal contempt proceedings. There should be clear guidance on when and how interim remedies can be applied, ensuring consistency across cases. This guidance should emphasise that the purpose of these measures is to secure compliance and promote the best interests of children, rather than to serve as punitive sanctions.

40. Interim remedies should be subject to regular review to ensure they remain necessary and effective. Courts should have the ability to adjust or lift interim measures as circumstances change and compliance is achieved.

41. **Question 24, 25, 26 and 27:** *We provisionally propose that such interim remedies should be available where a court is satisfied that each of the elements of contempt by breach of order or undertaking has been made out. AND We provisionally propose that the standard of proof to obtain an interim remedy should be the civil standard (that is, on the balance of probabilities). AND We provisionally propose that interim remedies should only be available where any detrimental effect of non-compliance can be remedied by subsequent compliance. AND We provisionally propose that the court should have power to order the [listed], fixed-term interim remedies. Do consultees agree?*

    The ALC generally agrees with these proposals. Securing interim compliance very often serves the interests of the children and the vulnerable individuals who are the protected person in an order. We welcome these proposals and the focus upon compliance. As set out above the nature of the remedies identified are not sufficiently focused on the needs of children law cases where financial penalties or debarring engagement in proceedings are of limited practical import.

42. **Question 28:** *Should other interim remedies be available?*

43. Yes. The ALC agrees that other interim remedies should be available particularly in the context of family proceedings where traditional measures – such as payment of monies, sequestration

of assets, or the surrender of a travel document – may not be effective due to the financial limitations of the parties involved. In many family cases, especially those involving children, the parties may lack the financial resources to comply with monetary-based interim remedies. Requiring payments into court or sequestering assets can be ineffective or overly burdensome for parties who are impecunious. This limits the court's ability to enforce compliance if financial penalties are the primary option.

44. Additionally, financial remedies may not directly address the underlying non-compliance in family matters, particularly if the primary goal is to ensure the well-being of children rather than imposing financial hardship.

45. Alternative remedies, such as unpaid work requirements, could serve as a practical and non-monetary way to encourage compliance. While unpaid work is a fixed commitment (and the hours cannot be undone if contempt is not ultimately proven), it could act as a strong incentive for parties to comply promptly to avoid this consequence.

46. Unpaid work emphasises a corrective and rehabilitative approach, focusing on accountability without directly impacting an individual's financial situation. This aligns with the family court's overarching aim to achieve compliance in a way that serves the best interests of the children involved. The prospect of an unpaid work requirement may act as a powerful motivator for parties to comply with court orders early, avoiding the imposition of this time-consuming measure. This could lead to quicker resolution of non-compliance issues, reducing the potential harm to children involved in the proceedings.

47. Such measures provide a clear and tangible consequence for non-compliance, even when financial penalties are not feasible or effective, maintaining the court's authority and encouraging adherence. Non-monetary remedies, like unpaid work, can be tailored to an individual's circumstances, making them more suitable in family cases. They allow the court to impose sanctions that do not exacerbate existing financial difficulties, particularly in cases where a party's inability to pay is a significant factor. These remedies can be adjusted to reflect the seriousness of the non-compliance, offering flexibility in the court's response while still maintaining proportionality.

48. One of the main challenges of fixed remedies like unpaid work is that they cannot be reversed if contempt is not ultimately established. To address this, clear guidelines should be established to ensure that alternative interim measures are only used when there is a strong and credible basis for suspecting contempt.

49. Courts might also consider applying unpaid work hours provisionally, with the understanding that if contempt is not proven, subsequent court orders could acknowledge this in some form, potentially reducing or offsetting the impact of any unjust interim measures.

50. Courts should ensure consistency in the application of alternative remedies, with clear criteria for when and how they can be imposed. This would help prevent discrepancies between cases and ensure that parties understand the potential consequences of non-compliance. A fair process must be established to determine when such non-monetary remedies are appropriate, balancing the need to encourage compliance with fairness to the parties involved.

51. Alternative remedies should be subject to periodic review, particularly in cases where unpaid work or other non-monetary measures have been ordered. Regular oversight would help ensure that the remedy remains relevant and proportionate to the level of non-compliance and can be adjusted as necessary.

52. In summary the ALC considers that while traditional financial remedies may have limited effectiveness in family proceedings due to the parties' financial constraints, alternative measures such as unpaid work could offer a practical solution to encourage compliance. These non-monetary remedies focus on corrective action and accountability without imposing additional financial hardship, aligning with the family court's primary objective of safeguarding children's welfare. However, careful consideration must be given to the implementation of these remedies, ensuring they are fair, proportionate, and capable of fostering early compliance.

Chapter 6 – Contempt protection and powers

The ALC's specific responses to the questions put are as follows (omitting questions that the ALC has no position on):

53. **Questions 44, 45 and 49:** *We provisionally propose that the test for whether a devolved Welsh tribunal is a "court" for the purposes of contempt should be whether it is exercising the judicial power of the state. AND We provisionally propose that, if the test for whether a devolved Welsh tribunal is protected by the law of contempt is whether it is exercising the judicial power of the state, then all chambers of a First-tier Tribunal for Wales (if created) should be included in a non-exhaustive list of the bodies that have contempt protection. AND We provisionally propose that all protected devolved tribunals in Wales should have the same powers as protected tribunals in England and protected reserved tribunals.*

54. Yes. As a general proposition, we support consistency as between England and Wales in the approach to contempt.

55. **Question 48:** *We provisionally propose that all protected inferior courts, tribunals and other bodies should have the following powers: (1) the power to the deal with general contempt by conduct other than publication and contempt by breach of order, but not to deal with general contempt by publication or contempt by publication when proceedings are active; and (2) the power to refer any type of contempt to the High Court, or, in the case of the First-tier Tribunal and the Employment Tribunals (England and Wales), to the Upper Tribunal and the Employment Appeal Tribunal respectively. Do consultees agree?*

56. No, The ALC does not fully agree with the proposal because it imposes unnecessary limitations on the powers of protected inferior courts, particularly when dealing with contempt by publication during active proceedings.

57. Protected inferior courts, such as the Family Court and other tribunals, have judges who are fully qualified to handle complex legal matters, including various forms of contempt. Limiting their ability to deal with contempt by publication during active proceedings underestimates their

expertise and capability. Judges in these courts are accustomed to managing sensitive cases, making them well-suited to handle contempt issues without requiring automatic referrals to higher courts.

58. Restricting the jurisdiction of protected inferior courts to only non-publication contempt cases could lead to inefficiencies, as cases would need to be referred to higher courts for resolution. This process could cause unnecessary delays and increase costs for all parties involved. Allowing inferior courts to manage a broader range of contempt cases would make the administration of justice more efficient.

59. In family courts, where the focus is often on the best interests of children and resolving matters promptly, transferring contempt cases to the High Court could disrupt proceedings. Family court judges, including Circuit Judges, have the necessary skills and contextual understanding to address contempt issues effectively without referral.

60. Inferior courts, particularly specialised ones like family courts, are well-placed to make swift decisions on contempt matters. By allowing them to handle a broader scope of contempt cases, the process remains more streamlined and consistent, ensuring that cases are resolved in a timely manner.

61. While inferior courts should have broader powers, the option to refer particularly complex, sensitive, or high-profile contempt cases to the High Court is valuable. This option ensures that when a case requires the resources or expertise of a higher court, there is a clear path for referral without unnecessary limitations on the powers of inferior courts. There should be clear and consistent guidelines for when a referral is appropriate, based on factors like case complexity, potential public impact, or if the matter involves novel points of law.

The ALC recommends the following:

- **Broaden the Powers of Inferior Courts**: Allow protected inferior courts to deal with general contempt by publication and contempt by publication when proceedings are active, unless there are specific reasons why a particular case requires referral to a higher court. This approach would respect the expertise of inferior court judges while maintaining flexibility for referrals when needed. In the family court, unlike the County Court and Court of Protection, Magistrates sit to hear cases. We recognise that there may be good arguments to limit the contempt jurisdiction to the District judge level or above.
- **Establish Guidelines for Referrals to Higher Courts**: Create clear criteria for when a contempt case should be referred to the High Court, Upper Tribunal, or Employment Appeal Tribunal, focusing on factors like the complexity of the case, its legal significance, or its broader public interest implications. This would provide a structured and predictable approach without limiting the powers of inferior court

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Chapter 7 – The Attorney General's role

The ALC does not have any response to the questions put within this section.

Chapter 8 – Procedure

The ALC's specific responses to the questions put are as follows (omitting questions that the ALC has no position on):

62. **Question 65:** *We provisionally propose that there should be a uniform, general procedure in contempt proceedings in all courts, tribunals and other bodies, with that procedure allowing for variations that are needed to address potential contempts in different settings. Do consultees agree?*

63. Yes. The ALC supports simplification of contempt procedures. A coherent and consistent procedure should be adopted. This is particularly important in family proceedings where increasingly litigants are in person and processes need to accessible.

64. A single, consistent framework for contempt proceedings would simplify the process across different courts and tribunals, making it easier for judges, legal professionals, and parties involved to understand and follow the rules. This coherence is essential for ensuring fairness and avoiding discrepancies in how contempt cases are handled in various legal settings.

65. Uniformity would make contempt procedures more transparent and accessible, especially for litigants in person, who are increasingly common in family law. Clear and consistent rules reduce the risk of confusion, ensuring that individuals without legal representation can better understand their rights and obligations within contempt proceedings.

66. In family proceedings, where many parties may not have legal representation, a uniform procedure would provide a straightforward and accessible path for understanding contempt proceedings. This is crucial in a context where emotional stakes are high, and clarity in the legal process can significantly impact outcomes.

67. A consistent procedure would offer predictability in how contempt is addressed, ensuring that vulnerable parties, such as children and families, are treated fairly. This uniformity would allow for more effective planning and preparation, reducing the stress and uncertainty that can accompany family court proceedings.

68. While a general procedure should be consistent across jurisdictions, it's essential to allow for variations that address the unique needs of different legal contexts. For example, family law may require specific protocols that accommodate the involvement of children or the sensitivity of private family matters, while commercial tribunals might need different procedural adaptations.

69. Flexibility in the procedure ensures that specialized courts and tribunals can manage contempt cases in a manner suited to their particular challenges. This balance between consistency and flexibility will maintain fairness while recognizing the diverse nature of legal disputes.

70. **Question 66:** *We provisionally propose that the various procedure rule committees should consider collaborating to develop a uniform, general procedure (for example, by establishing a joint working group of rule committees or a new contempt procedure rule committee).*

71. The ALC supports this proposal. Collaborating between rule committees to create a uniform, general procedure for contempt proceedings is a valuable step toward consistency and fairness across the jurisdiction. Drawing on the collective expertise of different areas of law ensures that the procedure will be well-rounded and capable of addressing the specific needs of various legal contexts. A joint working group or a dedicated contempt procedure rule committee would facilitate this collaboration, ensuring that the final procedure is both comprehensive and adaptable, benefiting the entire legal system.

72. **Question 67 and 68:** *We provisionally propose that, where practicable, a court, tribunal or other body should be required first to conduct an initial enquiry into the allegation in all cases where: (1) the court, tribunal or other body observes, or someone reports to it, a potential contempt; and (2) the court, tribunal or other body is contemplating instituting contempt proceedings. AND We provisionally propose that the procedure on initial enquiry should require the following [listed]. Do consultees agree?*

73. The ALC supports this proposal. This approach strikes a fair balance between protecting the rights of the defendant and addressing practical realities.

74. Conducting an initial enquiry before formally instituting contempt proceedings ensures that the defendant is treated fairly from the outset. It allows the court to establish whether there is sufficient evidence to proceed, reducing the risk of unjust of premature contempt charges. The initial enquiry provides a preliminary stage where the defendant can clarify or contest the circumstances surrounding potential contempt. It provides a structured process for dealing with situations such as where a defendant has been removed from court.

75. The ALC recommends the procedure for conducting an initial enquiry should be clearly defined, with guidelines on the scope, evidence required and criteria for deciding whether to proceed with formal contempt charges. The procedure should include provisions that allow the defendant to participate meaningfully even if they are removed from court. This could involve adjourning the enquiry or using alternative means, such as video links, to facilitate the defendant's involvement. Having said that, in cases where the defendant's conduct poses an immediate risk to the proceedings or court order, the procedure should allow for swift and decisive action. The initial enquiry should be flexible enough to manage urgent situations while ensuring that the defendant's rights are respected.

76. **Question 69:** *We provisionally propose that, after conducting an initial enquiry into the contempt allegation, the court, tribunal or other body should have the option to [listed]. Do consultees agree?*

77. The ALC agree with the proposal that, following an initial enquiry into a contempt allegation, the court, tribunal, or other body should have the flexibility to choose from a range of options. This flexibility is particularly relevant in the context of family proceedings, such as care cases, where the dynamics and stakes may vary significantly.

78. Allowing the court to select from various options after an initial enquiry provides the necessary flexibility to respond to the specifics of each case. Depending on the circumstances, different actions may be more suitable, ranging from informal resolutions to formal contempt proceedings. This flexibility ensures that the response is proportionate to the seriousness of the alleged contempt. Family law cases, especially in care proceedings, often involve sensitive and complex dynamics. Giving the court options after an initial enquiry allows for a tailored approach that can accommodate the nuances of family relationships, particularly when the welfare of children is involved.

79. It is common for the family court to invite a party involved in the proceedings, such as the local authority, to take responsibility for filing a contempt application. This approach can be efficient, as it reduces the administrative burden on the court and allows the party with the most direct involvement or interest in the matter to pursue the application. In care proceedings, for instance, the local authority may be best positioned to initiate a committal application if a parent has breached an order. When a party is invited to take responsibility for the application, it reinforces accountability among the participants in the case. It underscores that those directly affected by the non-compliance have a role in enforcing the court's orders, which can strengthen the overall integrity of the judicial process.

80. The proposal allows courts to make proportionate decisions based on the specifics of each contempt allegation. For example, a court may decide to issue a warning, invite a party to apply for contempt, or initiate formal proceedings itself, depending on the severity of the alleged conduct.

81. **Question 70:** *We invite consultees' views on whether all protected inferior courts, tribunals and other bodies should have a power to order the immediate temporary detention of a defendant in contempt proceedings.*

82. The ALC agrees to this. However, it is essential to acknowledge the practical limitations, especially within the Family Court context.

83. One of the significant challenges within the Family Court is the lack of infrastructure to facilitate immediate detention. Many family court centres do not have holding cells or dedicated security staff, which can make the practical implementation of temporary detention orders challenging. This limitation needs to be considered when granting this power, as it may not be feasible in all locations. Even if the power to order detention is granted, the logistics of securing and transporting a defendant could pose difficulties. In family court settings, where emotions can run high and cases often involve vulnerable parties, the process of detention must be managed carefully to ensure safety for all involved.

84. To address the lack of detention facilities in family courts, courts could collaborate with local law enforcement agencies to arrange for temporary holding if detention is deemed necessary. This could involve pre-agreed protocols with police services for situations requiring immediate detention. Where possible, increasing the presence of trained court security personnel at family court centres could help manage cases where temporary detention is needed. These personnel

could be responsible for safely handling the defendant until further arrangements are made, such as a transfer to a facility equipped to handle temporary detention.

85. There should be clear guidelines outlining when and how immediate temporary detention should be ordered, particularly in contexts like the Family Court, where detention infrastructure is limited. This would help ensure that detention is used only in cases where it is strictly necessary and proportionate. In settings where immediate detention is not practical, courts could consider alternative measures, such as increased monitoring, restricted movement orders, or temporary bans from certain locations, as ways to maintain authority and ensure compliance without needing to rely on physical detention.

86. **Questions 71-73:** *We provisionally propose that all courts, tribunals and other bodies that are empowered to order the immediate temporary detention of a defendant in contempt proceedings should have available to them a specific procedure for doing so. AND We provisionally propose that a defendant who is detained temporarily by a court, tribunal or other body should be entitled to have someone told of their detention. AND We provisionally propose that where a court, tribunal or other body orders the immediate temporary detention of a defendant in contempt proceedings it should be required to review the case no later than the end of the same day.*

87. Yes. In respect of 73 - broadly, yes. However, there should be provision for exceptions to this rule. If a person is temporarily detained at 4pm, a review before the end of the court day may not be practicable.

88. **Question 74:** *We provisionally propose that the relevant procedure rule committee should consider whether the procedure rules should require the court, tribunal or other body to consider whether to institute proceedings itself or to refer the matter to [list]. AND We provisionally propose that the relevant procedure rule committee should consider whether the procedure rules should set out the relevant factors for the court, tribunal or other body to take into account when considering whether to institute proceedings itself or to refer the matter to the Attorney General, police, High Court, Upper Tribunal or Employment Appeal Tribunal. Relevant factors may include the complexity of the matter, the seriousness of the conduct, the availability and type of evidence, the expertise of the court, tribunal or other body, and the appropriateness of its sentencing powers for contempt.*

89. Yes. However, we note that the Family Court, while an inferior court, generally is well equipped to deal with complex contempt matters. Resources should be applied proportionately and delay avoided wherever possible. Contempt applications remaining with the local court is likely to be in the interest of court users, who may struggle with delay or travel requirements.

90. **Questions 75 and 76:** *We provisionally propose that, where a court, tribunal or other body institutes contempt proceedings, in all cases the hearing should be set for a time and date that allows the defendant a reasonable opportunity to obtain legal advice and prepare their defence. AND We provisionally propose that, where a court, tribunal or other body institutes contempt proceedings, it should not be required to hear the proceedings on the same day. Do consultees agree?*

91. Yes. In our experience, contempt applications within family proceedings generally strike an appropriate balance between avoiding delay and ensuring that a defendant is afforded a reasonable opportunity to obtain advice. In respect of timing of hearings, a court should not be required to hear contempt proceedings on the same day they are instituted but should be able to in appropriate circumstances.

92. **Question 77:** *We provisionally propose that the following information should be provided to a defendant in a contempt application (where proceedings are initiated by application) or in a written statement issued by a court, tribunal or other body (where proceedings are initiated by a court, tribunal or other body): [list]. Do consultees agree.*

93. Yes we do. Particularisation of the nature of the breach and its reference back to the order is essential for the alleged contemptor to know what is alleged.

94. **Question 79:** *We seek consultees' views on whether, when written statements of witnesses are used as evidence, witness statements should be admissible (and the requirement for such evidence to be given on affidavit abandoned where it exists).*

95. The ALC recommend that witness statements are admissible. They are sufficient for the court's requirements and meet the gravity of the issues being considered by the court. The requirement for affidavits is disproportionate. Article 6 of course applies to civil proceedings. Witness statements are admissible in family proceedings even when the court is considering 'draconian' measures such as adoption.

96. **Question 80:** *We provisionally propose that contempt proceedings should be subject to the same rules of evidence that apply in criminal proceedings such that: (1) hearsay evidence would be admissible only in the circumstances permitted [list continues]. Do consultees agree?*

97. The ALC does not support this proposal. Family Proceedings are not subject to the same rules of hearsay as it is a sui generis investigative jurisdiction. The imposition of this rule does not allow for the difficulties around intimate partner violence and child abuse which often only finds corroboration in records or telephone data or other at times hearsay evidence that allows for the judge to establish what has happened. The weight to be given to hearsay evidence in this context is a matter for the court. It is important that hearsay evidence can be relied upon in contempt applications arising from family proceedings. The provisions of the |Civil Evidence Act as they relate to hearsay are appropriately applied to family proceedings where there is an issue of contempt. These provisions comply with the requirements of article 6 and address the balance of obtaining evidence which is reliable for example in circumstances where individuals are traumatised and the events took place in a family home. Fairness of the trial is to be considered in the round the judges are best placed to maintain the correct balance. Where that hearsay evidence is disputed and cannot be challenged by oral evidence/cross examination, it will be a matter for the court to determine the weight to be given to that hearsay evidence. There may be many cases where a witness is unavailable or unwilling to give oral evidence. It may be unfair and disproportionate, for example, to require a victim of domestic violence to give oral evidence against the perpetrator in order for the court to determine a separate contempt allegation. The defendant may challenge that evidence through their own evidence and submissions. This approach is applied regularly in family proceedings where the court is

considering draconian outcomes. This strikes an appropriate balance between the rights of the defendant and the public interest in the administration of justice.

98. The ALC agrees with the second element of the proposal - that the court may refuse to admit evidence if in all the circumstances it would have an adverse effect on the fairness of the proceedings. This is a basic proposition.

99. **Question 81:** *We provisionally propose that (in addition to the existing permission requirements under the Civil Procedure Rules, Family Procedure Rules, and Court of Protection Rules 2017) permission to make a contempt application should be required in all courts, tribunals and other bodies where the application relates to breach of an order. Do consultees agree?*

100. The ALC acknowledges the issues that have arisen in other jurisdictions and the concern that contempt applications have been used as a litigation tactic. This is not known to be a feature of litigation concerning children. We are concerned to avoid adding unnecessary complexity or hurdles to the contempt procedure. Delay is a particular issue in family proceedings. Many litigants have limited resources. Accordingly, any permission requirements should be streamlined.

101. **Question 82:** *We invite consultees' views on whether the burden of bringing a contempt application for breach of an order should lie always with the party seeking to enforce the order.*

102. The ALC does not support this proposal. While generally the responsibility should lie with the party seeking to enforce the order, there will be instances where this is not practicable. Within children proceedings, an applicant may be impecunious or fearful (either of repercussions from the defendant or of criticism by professionals). In private law proceedings, many applicants are litigants in person and lacking the knowledge or resources to bring an application. It must remain open to the court to bring applications of its own motion. We acknowledge that, in practice, the court is unlikely to do so in most cases.

103. Local authorities which safeguard children often monitor orders gained in the course of care proceedings and bring contempt proceedings to protect the child regardless of whether the other parent or parties to the order wish to co-operate. This is particularly important if the parents are imperilling the placement of a child publishing information about the child in contravention of an order. For orders which do not involve a public body the constitution of a body for enforcement of orders being set up may be more appropriate.

104. **Question 83:** *We invite consultees' views on whether there should be a new enforcement body that is empowered to make a contempt application for breach of an order.*

105. There is a superficial attraction in the development of an enforcement body. However, we are mindful that adequate funding for such a body will be necessary. If it is not forthcoming it would undermine an essential sound idea. Care will need to be taken to consider how the body receives information and powers may need to be given to ensure that parents in family court cases cannot weaponise complaints to the body to initiate contempt proceedings against another parent. Children proceedings are private and often intensely private for the parties who may be reluctant to involve an external agency. An external enforcement body will need to

have agility so as not to result in delay and a more cumbersome procedure. Particularly so in cases involving children or the protection of vulnerable adult. In practice, the aggrieved party may need to become involved in pursuing or providing evidence in any application even if the application were initiated by the external agency. Such parties are often traumatised and vulnerable person in need of the court's protection the training and skills base of the workers in the organisation would need to be trauma informed.

106. **Question 85:** *We provisionally propose that in all contempt proceedings the procedure for hearing a contempt allegation should have the following features: [list]. Do consultees agree?*

107. Yes. This procedure is broadly consistent with our experience of good practice in family cases.

108. **Question 86:** *We provisionally propose that, where the allegation is contested by the defendant, the court, tribunal or other body that conducts the hearing should not comprise the same members who observed the conduct in question. In these circumstances, the matter should be heard by another member of the court, tribunal or other body in accordance with a prescribed procedure.*

109. Generally, yes. However, the court should retain a discretion as to who hears the matter. Cases will turn on their facts. There may be circumstances where it is most appropriate for the same judge to hear the contempt application given their particular knowledge of the case.

110. **Questions 87 and 88:** *We provisionally propose that judgments should be published where a court, tribunal or other body makes an order of committal for contempt of court, whether immediate or suspended. AND We provisionally propose that judgments in which a court, tribunal or other body makes an order of committal for contempt of court should be sent to the National Archives for publication on the Find Case Law service. Where that service does not accept judgments from the sentencing court, tribunal or other body then judgments should be published on the website of the judiciary of England and Wales.*

111. Yes. However, there must be safeguards to avoid jigsaw identification of children in private proceedings. There is likely to need to be training for judges in terms of the contents of the judgments. Further, it will be essential that there is liaison between the judge hearing the contempt and the judge determining the family proceedings to ensure that any published family judgment is suitably redacted.

112. **Question 89:** *We provisionally propose that the committee responsible for devising procedure rules that apply in the devolved tribunals in Wales should consider developing a uniform, general procedure for contempt proceedings.*

113. Yes. We are broadly supportive of consistency of procedure as between England and Wales.

Chapter 9 – Representation

The ALC's specific responses to the questions put are as follows (omitting questions that the ALC has no position on):

114. **Question 92, 93 and 94:** *We provisionally conclude that for the purposes of legal aid for the defendant, both permission proceedings and committal proceedings are considered to be criminal proceedings. AND We provisionally propose that eligibility for legal aid for an application to discharge a committal order should be expressly stated, whether in statute or in policy. AND We provisionally conclude that applications to discharge committal orders are criminal proceedings for the purposes of legal aid. Do consultees agree?*

115. Yes

116. **Question 95:** *We provisionally propose that means testing for legal aid should apply in all contempt proceedings. If means testing for legal aid were to apply in all contempt proceedings, are there any categories of cases that should be carved out as exceptions where means testing should not apply?*

117. The ALC suggests for non-means tested legal aid to be available for all children under the age of eighteen (18) who are the subject of contempt proceedings and those who are the victims of domestic violence or abuse in all forms (emotional, physical, sexual, financial and gender based). It is also suggested that if alleged contempt arises from ongoing proceedings in which the defendant received non-means tested legal aid (for instance care proceedings), the defendant should receive non-means tested legal aid for the contempt proceedings as well.

118. **Question 98 and 99:** *Where a court is determining costs in contempt proceedings that were commenced on application in a civil court, should there be a requirement that the court consider the defendant's financial resources? If so, how?*

119. Yes. It is suggested for a working group to be set up to consider the issue of costs and whether a defendant's financial resources should be considered in contempt proceedings which commenced on application in civil court.

Chapter 10 – Sanctions

The ALC's specific responses to the questions put are as follows (omitting questions that the ALC has no position on):

120. **Question 100:** *We provisionally propose that the two-year maximum sentence for contempt of court should remain.*

121. Yes

122. **Question 102:** *We seek consultees' views on whether committal should remain an option where contempt is committed by publication when proceedings are active?*

123. It should – though see our concerns about the proposals as to the workings of that branch of contempt above.

124. **Question 104:** *We provisionally propose that when a committal order (or a community sentence should that option be available) is being contemplated as a contempt sanction, the court should be required to order a pre-sentence report unless the court considers it to be unnecessary in the circumstances. Do consultees agree?*

125. Yes, subject to it being possible to resource this proposal and it not causing disproportionate delay.

126. **Question 105:** *We provisionally propose that where a committal order is being contemplated as a contempt sanction and the contemnor is or appears to be suffering from a mental disorder, before that order is made: (1) the court should be required to obtain and consider a medical report unless, in the circumstances of the case, it considers that it is unnecessary to obtain a medical report; and (2) the court should be required to consider any information before it which relates to the contemnor's mental condition (whether given in a medical report, a pre-sentence report or otherwise), and the likely effect of committal on that condition and on any treatment which may be available for it. Do consultees agree?*

127. Yes, subject to it being possible to resource this proposal and providing that it does not cause disproportionate delay. The ALC observes that there can often be substantial delays in obtaining reports of the sort proposed for use in family proceedings.

128. **Question 106**: *We provisionally propose that courts should have the power to remand a contemnor in custody after a finding of contempt but before sentencing only where an order of immediate committal is highly likely. Do consultees agree?*

129. Yes, though courts may benefit from guidance as to when this power should be used.

130. **Question 109:** *We provisionally propose that, in deciding whether to discharge on application by the contemnor, courts should consider the following factors: [listed]. Do consultees agree?*

131. Yes

132. **Question 111 and 112:** *We provisionally propose that there should remain no maximum limit on the fines open to superior courts in contempt cases. AND We provisionally propose that the superior courts should have the power to suspend a fine in contempt cases. Do consultees agree?*

133. Yes

134. **Question 114:** *We provisionally propose that community sentences should be available as a sanction for contempt of court. Do consultees agree?*

135. Yes

136. **Question 115:** *With respect to children and young people, are there aspects of the law regarding sanctions for contempt that are satisfactory or unsatisfactory? Where the law is unsatisfactory, what changes should be made? We would welcome evidence of the way that the law has operated with respect to children and young people*

137. The ALC is not aware of any examples of contempt proceedings against children being heard in the family court/family division of the High Court, and therefore cannot assist on this question.

138. **Question 118:** *We provisionally propose that with the exception of the county court, all protected inferior courts, tribunals and other bodies should have the following powers in relation to contempt: (1) the power to order committal for up to one month (immediate or suspended); and (2) the power to impose a fine of up to £2,500. Do consultees agree? Do consultees consider that any protected inferior courts, tribunals and other bodies should be treated differently? If so, why?*

139. The ALC considers that the family court should be treated as a superior court for the purpose of imposing sanctions for contempt. The Family Court, while an inferior court, generally is well equipped to deal with complex contempt matters –as well equipped as is the county court, which it is proposed should be treated as a superior court for the purposes of imposing sanctions for contempt. Resources should be applied proportionately, and delay avoided wherever possible. Contempt applications remaining with the local court is likely to be in the interest of court users, who may struggle with delay or travel requirements.

140. **Question 121:** *We provisionally propose that a working group nominated by the senior judiciary should be established to prepare guidelines for sentencing for contempt. Do consultees agree?*

141. Yes.

142. **Question 122 and 123:** *We provisionally propose that a finding of contempt and any associated sanction should never be entered into the Police National Computer. AND We provisionally propose that a finding of contempt and any associated sanction should never appear on a criminal record certificate. Do consultees agree?*

143. While the ALC would not expect a finding of contempt of court to appear on a standard PNC report, we do not in principle consider that the existence of such a finding should never be included on a check commissioned from the Disclosure and Barring Service. The existing of a finding of contempt may be of relevance to safeguarding processes within the family justice system, which draws information from the DBS. The DBS receives non-conviction related safeguarding information from (for instance) professional regulators which is often included in checks commissioned by the family justice system. The ALC suggests that a court which has made a finding of contempt could be required to consider whether information relating to that finding should be referred to the DBS.

Chapter 11 and 12 – Appeals and Impacts

The ALC has no response to the questions raised in chapters 11 or 12.

END