CONTEMPT PROCEEDINGS IN THE COURT OF PROTECTION: TOWARDS GREATER TRANSPARENCY

A workshop report

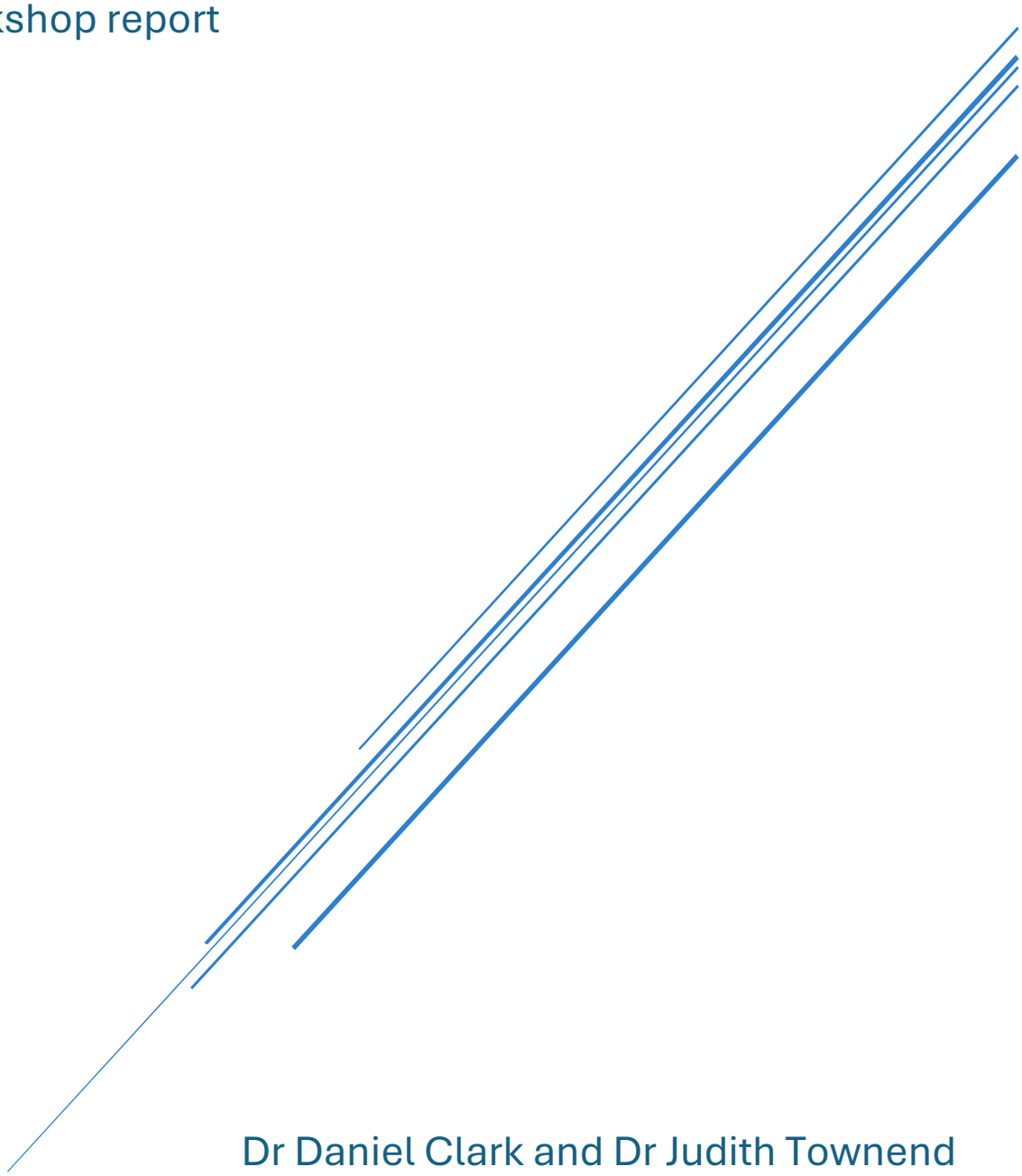

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Table of Contents

Disclosures 2

Executive summary 3

Introduction 4

A note on terminology 4

Contempt of court generally 5

Transparency 7

Perception 7

Avoidance 7

Approach to reporting 8

1. *Transparency: What is it good for?* 9
2. *The Transparency Order* 13
3. *Undertakings and supporting litigants* 16
4. *Litigants in person* 17
5. *Avoiding committal orders: Vulnerable litigants* 18
6. *Avoiding committal orders: Contact restrictions* 19
7. *Legal aid* 21
8. *Use of AI* 23

Appendix A: Glossary 25

Appendix B: Options for action 27

Appendix C: Participants 29

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Disclosures

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Executive summary

Committal applications for contempt of court in the Court of Protection are a cause of serious concern. Despite guidance on how they should be conducted transparently, there is some evidence that this is not consistently complied with. Furthermore, Court of Protection judges have expressed a desire to avoid making an order for committal to prison, but this is not always achievable.

In response to these concerns, we held a one-day research and policy workshop to address three questions. How can committal applications in the Court of Protection be made more transparent? How are they perceived? How can they be avoided?

Stakeholders from legal practice, and research and policy roles, met on Thursday 10 September 2026 at the Institute of Advanced of Legal Studies in London to share their observations and experiences, and discuss these questions.

Responding to initial research findings indicating gaps in Contempt of Court committal transparency by the Judiciary and justice system, participants discussed in depth:

- Sporadic approaches to publication of information
- The absence of reliable statistics on contempt proceedings
- Family members' negative experiences of Transparency Orders and Penal Notices
- Complexity of language and proceedings leading to difficulties for litigants in person
- A lack of funding and guidance to support vulnerable and/or self-represented parties in the Court of Protection
- Absence of guidance for judges on penalties and sentencing in this context

Various responses arose from the discussion at the workshop for the Judiciary and the Ministry of Justice/HM Courts and Tribunals Service (HMCTS) to consider. These included suggestions that there should be:

- Publication of more judgments where either no sentence or a non-custodial sentence is imposed.
- Greater consideration with regard to the use of penal notices, particularly in relation to Transparency Orders and contact restrictions.
- More training for judges on the impact of vulnerability on a litigant's behaviour.
- The creation of Practice Directions that address undertakings, and appropriate AI use.
- Greater support for litigants, including a commitment to plain-English explanatory notes of Practice Directions, undertakings, and orders restricting contact.

Introduction

On Thursday 10 September 2026, the authors of this report[1] convened a by invitation workshop on the topic of contempt applications in the Court of Protection (CoP). Some participants had first-hand experience of the CoP (either professionally or personally); others did not but did have experience or knowledge of contempt of court.

Prompted by concerns about the nature and transparency of committal applications expressed in various quarters, and informed by a literature review of all published judgments relating to contempt proceedings in the Court of Protection,[2] the workshop was designed to encourage discussion and reflection on three key questions:

1. How can we ensure contempt applications in the CoP are transparent?

2. How are contempt applications in the CoP perceived?

3. How can contempt applications in the CoP be avoided?

In this report, which documents our discussions,[3] we have suggested a number of options for action, which we have collated at Appendix B. While these have grounding in the discussion at the workshop, they were not necessarily agreed by all participants and should only be interpreted as the views of the authors.

This brief introduction is an adaptation of a briefing document sent to all participants ahead of the workshop. However, as will become clear, the conversation stretched beyond this as participants reflected on various pressure points where a person may be liable to be found in contempt.

A note on terminology

We have produced a non-exhaustive glossary at Appendix A of this report. It is, however, important to flag two pieces of terminology that we use.

[1] Dr Daniel Clark and Dr Judith Townend.

[2] The use of 'judgments' reflects the fact that judges of all tiers can hear such applications. As such, not all judgments dealing with a contempt application have precedent value.

[3] The workshop was not recorded but notes of the discussion were made by the convenors and Maria Maier, who acted as rapporteur. Those notes have assisted the creation of this report.

First, we have chosen to refer to 'contempt proceedings/applications' rather than 'committal proceedings/applications'. When recruiting workshop participants, all documents and emails referred to 'committal proceedings'. This was in keeping with the way many CoP judges describe such proceedings, both generally[4] and even where the parties agree that the custody threshold is not met.[5] However, the CoP rules refer to *contempt* applications.[6] Furthermore, at the start of the workshop a participant noted that referring to '*committal* applications' somewhat prejudges the outcome and leaves unacknowledged the non-custodial penalties available to a judge. After some reflection, we have decided to also refer to contempt proceedings/applications throughout this report.

Second, we have chosen to describe as 'defendant' a person or persons who is the subject of contempt proceedings. While it is not uncommon to see this category of persons also referred to as 'contemnors', this only describes somebody who has been found to be in contempt of court. 'Defendant' is more neutral, and quite properly does not assume whether the person (actual or hypothetical) has committed a contempt of court. We did not feel that 'respondent' would be appropriate because it does not adequately reflect the serious position in which the individual finds themselves. In any event, contempt proceedings may have more than one respondent, and a simple reference to 'respondent' may confuse matters.

Both pieces of terminology are in line with the Law Commission's usage in their report on contempt of court.[7]

Contempt of court generally

Historically, contempt of court has taken criminal or civil forms.[8] In the first part of its review of contempt of court in 2025, the Law Commission found that the distinction

[4] For example, in *Office of the Public Guardian v Imre Stalter (Rev 1)* [2018] EWCOP 27, Williams J began his judgment by remarking that, 'this is my judgment in the application by the Public guardian for the committal of Imre Stalter' (para 1, emphasis added). Mr Stalter received no penalty for his contempt.

[5] For example, in *Norfolk County Council v Caroline Grady* [2025] EWOCP 15 (T3), Arbuthnot J referred to the Council's applications as 'committal applications' (see para 1). At para 41, Arbuthnot J states that 'the local authority was of the view that the breaches did not reach the custody threshold'.

[6] https://www.legislation.gov.uk/uksi/2017/1035/part/21.

[7] LC (2025) Contempt of Court: Report (Part 1) on Liability. Access from: https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/11/2025-11-14-Contempt-of-Court-Report-Part-1-on-Liability-2CMD.pdf.

[8] https://www.judiciary.uk/guidance-and-resources/contempt-of-court/.

between criminal and civil contempt was not 'clear or coherent'.[9] In its view, this historic binary 'has led to confusion and serves little practical purpose':

> *A contempt is not categorised as civil or criminal depending on whether it arises in civil or criminal courts, or civil or criminal proceedings; a civil contempt may be committed in a criminal court and a criminal contempt may be committed in a civil court. The distinction is instead directed to the nature of the conduct – but the categories are ill-defined*.[10]

The Commission concluded 'that a reformed framework for liability for contempt of court should discard the traditional distinction between civil and criminal contempt'.[11]

Further, the Law Commission argues that contempt of court is not a criminal offence as such.[12] The question of whether it should be is a separate one. The Commission considered the Crown Prosecution Service's proposal for a criminal offence of intentional interference with the administration of justice – to encompass general contempt, breaches of court order in certain circumstances, and intentional contempt by publication of prejudicial material - and ultimately it was 'not persuaded that an intentional interference with the administration of justice should be a criminal offence.'[13]

Even if contempt is not categorised or treated as a criminal offence, it may be punished with a custodial sentence. At the time of writing, being found in contempt may result in a maximum prison sentence of two years, a fine, or the seizure of assets. Of course, judges also have the discretion to not impose a penalty. While there has been some jurisprudential debate as to the scope of powers relating to contempt in the CoP, there is no doubt that the CoP: a) has the power to endorse an order with a penal notice, and b) may initiate contempt proceedings of its own motion (and/or consider breach of orders to be contempt in circumstances where there is no penal notice).

Sanctions and sentencing will be addressed in Part Two of the Law Commission's report.[14]

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[9] p5 in LC (2025) Contempt of Court Report (Part 1) on Liability: Summary of report. Access from: https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/11/Contempt-of-Court-P1-Summary-Nov-25.pdf.

[10] p 17, para 2.16, in LC (2025) Contempt of Court: Report (Part 1) on Liability. Access from: https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2025/11/2025-11-14-Contempt-of-Court-Report-Part-1-on-Liability-2CMD.pdf.

[11] Ibid. p22, para 2.38.

[12] Ibid. p17 https://lawcom.gov.uk/publication/contempt-of-court-report-part-1-on-liability-report/

[13] Ibid. p28, para 2.62.

[14] Ibid. p7, fn18.

Transparency

The general rule is that a CoP 'hearing is to be held in private' (rule 4.1(1))[15] but a Transparency Order (TO) may be issued such that the public can attend. This TO will almost always prohibit the identification of the protected party (P), and their family. This general rule 'does not apply for a hearing to a committal order' (rule 4.1(4)), and so a new TO will be issued when contempt proceedings are commenced. Judges maintain a discretion to order that the defendant not be identified (CoP rule 21.8(5))[16] but that discretion falls away if an order for committal is made (CoP rule 21.8(12A)). Even if the defendant is identified, they can only be identified in connection to the substantive proceedings where the TO in those proceedings is varied. Where a defendant is identified, there are questions to be asked about whether their ongoing identification in judgments that are available long after the conclusion of proceedings is genuinely in the public interest. This intersects with more general concerns about the possibility of offender rehabilitation in circumstances where previous identification poses a significant barrier.

Perception

In *MASM v MMAM & Ors,*[17] Mr Justice Hayden commented, 'it would not be an appropriate response to this judgment for the profession to over burden future orders too readily with Penal Notices' (para 53). The irony is that almost all CoP proceedings have at least one order – the Transparency Order – endorsed by a penal notice. This gives rise to the result that family members of a protected party have embedded into their experience of the CoP a distinctly punitive element (though it is beyond dispute that, for some families, the penal notice is a welcome protection).

Avoidance

It is clear from the review of judgments that CoP judges are keen to avoid making committal orders wherever possible.[18] At the same time, judges have long recognised the benefit of committal orders as a way of marking the court's authority and expressing its disapproval. In some cases, judges appear to feel that they are left with no alternative,

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[15] https://www.legislation.gov.uk/uksi/2017/1035/part/4/crossheading/private-hearings_rule-4.1

[16] https://www.legislation.gov.uk/uksi/2017/1035/rule/21.8

[17] [2015] EWCOP 3.

[18] For example, in *Re M* [2016] EWCOP 42, Newton J commented 'that I am left with no alternative but to pass a sentence of imprisonment, however much I have made it perfectly clear that I do not wish to do so' [27]. Most recently, in *Derbyshire County Council v James Grundy* [2025] EWCOP 2 (T1), DJ Davies described the 'sad reality' of a sentence of imprisonment being the only appropriate penalty.

but it is important to remember that there is only no alternative once the proceedings have been brought. One question that arises is how to avoid such applications.

However, the review of judgments revealed that it is not uncommon for the original injunction to have been designed to prevent or constrain abusive behaviour. In such circumstances, the tension is between a desire to avoid contempt proceedings; and the desire to prevent and sanction such behaviour.

Approach to reporting

At the outset of the workshop, we agreed to observe a modified Chatham House rule. This meant that while individuals could report what was said at the workshop, that reporting must not attribute comments or discussion points to individual participants. The one exception is Amanda Hill, who expressly gave permission for the details of the talk she gave to be attributable to her as it would not be easily anonymised.

1. Transparency: What is it good for?

As noted in the introduction, the general rule is that a CoP hearing is to be in private unless a Transparency Order is issued which permits public access. In April 2026, the Court of Appeal (Civil Division) handed down judgment in *Re Gardner (Deceased) (Disclosure of Position Statements*).[19] The court held that, as CoP hearings begin in private, the consideration of whether the public can access court documents (specifically position statements) requires a different starting point (i.e. not the standard open justice case law) than those that start in public. While disclosure of position statements was not a focus of the discussion in this workshop, one presenter made the argument that the analysis in *Re Gardner* cannot apply to contempt proceedings because they do not start in private. However, as one attendee noted in their feedback on a draft of this report, contempt proceedings often carry the same case number as the underlying proceedings. This leaves a question mark over when the proceedings become public, not least in circumstances where the court seems to have drawn a sharp dividing line between the substantive proceedings and contempt proceedings.

There is an expectation across jurisdictions that, save for in specific circumstances, all contempt applications will be heard in public. In most jurisdictions, the defendant must be named in the court list. In the CoP, however, the court rules give discretion for the judge to withhold the name of the defendant from the court list. In theory, the judge may prohibit the publication of the name of the defendant throughout the proceedings. However, this discretion falls away if an order for committal (immediate or suspended) is made. In those circumstances, the judge must identify the defendant in a judgment delivered in public and published to the Judiciary website.

What is the purpose of this transparency? One presenter proposed that transparency in contempt proceedings is an important procedural safeguard. Where there have been failings in transparency, the court ought to take action. Notwithstanding the fact that the Court of Appeal dismissed this argument in *Gill v Kaur*,[20] participants agreed that transparency must be more than merely notional: it is an integral part of the fairness and justness of contempt proceedings. In a statement we will return to, a participant said that 'transparency and the ability to complain is how we get accountability in the justice system'.

"Transparency and the ability to complain is how we get accountability in the justice system".

There was also some discussion about the discrepancy between the procedural requirement to identify defendants who receive a sentence of imprisonment but not to

[19] [2026] EWCA Civ 640.

[20] [2026] EWCA Civ 833.

name the applicants. One participant expressed some disquiet about this, explaining their view that this imported an additional punitive element into contempt proceedings: that of name and shame. However, other participants pointed out that, where contempt proceedings are punishing behaviour that has already resulted in injustice for the applicant, to impose a requirement that the applicant is named may perpetuate more injustice; for example, they may receive abusive messages from a defendant's supporters. Furthermore, a participant rightly pointed out that naming the applicant in private law family proceedings would pose a risk that (where relevant) a child may be identifiable and also take away the protections offered by the privacy regime in that court. There is a similar risk in the CoP, though applications brought by non-public bodies are rare.[21]

That is not to say that applicants should never be identified even when defendants are not. One presenter discussed the recent case of *Donovan Sappleton v R1 & Anor*. In that case, Mrs Justice Lieven (as she then was) described an application brought by Mr Sappleton as 'a very clear example of the weaponisation of contempt proceedings to extend the coercive use of litigation and harassment in a way that the court should be astute to prevent'.[22] In a second judgment, Lieven J made Mr Sappleton subject to an Extended Civil Restraint Order (ECRO) and concluded he ought to be named in a published judgment. This was because 'he chose to bring these proceedings, and there is an important public interest both generally in open justice, and specifically where wholly unmeritorious applications are made in individuals not being able to avoid responsibility through anonymisation'.[23] On the whole, participants agreed that this was an appropriate circumstance in which to identify an applicant but anonymise a defendant.

Notwithstanding the clear rules, there is a sporadic approach to judgment publication. One participant knew of one case in which a judge handed down a suspended prison sentence but failed to publish a judgment.[24] Furthermore, the CoP annual statistics do not capture how many committal orders are made. One participant suggested this may be because such orders are rare. Poor statistical data coupled with uneven approaches to judgment publication result in an incomplete picture of how many people are committed to prison by the CoP.

There is a broader issue beneath all of this. One participant remarked that, in their experience, fines are common in CoP contempt proceedings, but committal orders are

[21] Excluding applications brought on behalf of P by the Official Solicitor, there are two published judgments concerning applications brought by a non-public body. See [2016] EWCOP 38 and [2021] EWCOP 45.
[22] [31] [2026] EWHC 1782 (Fam).
[23] [25] [2026] EWHC 1783 (Fam).
[24] This remains true at the time this report was published.

vanishingly rare. As already explained, there is only a requirement to publish judgments in circumstances where an order to commit is issued. It appears to be the case, therefore, that a lot of CoP's contempt work is never brought to the public's attention.

This results in two problems. First, there is scant information on how individual judges resolve to impose a penalty other than imprisonment, meaning that other judges have less guidance in these circumstances. Second, there is less information on how a sentence of imprisonment is avoided. These problems are further exacerbated by the fact, pointed out by one participant, that there are no sentencing guidelines for judges dealing with contempt applications. There was a general feeling that this may result in haphazard and inconsistent approaches to penalty imposition.

This inconsistent approach, at least in part, appears to rest on the behaviour of defendants. As one participant put it, some defendants can have erratic, aggressive, and/or dysregulated behaviour. This makes it more difficult for judges to see their point of view. Another participant gave the example of two separate cases in which the defendant had committed a near-identical form of contempt. One person was presented in a way that would make them amenable to a judge; the other person came across as aggressive. Only the second person received a penalty for their contempt.

The discussion in this area focussed on what can be done. One participant suggested a form of sentencing guidelines were produced. A problem with this approach, however, is that this may import a criminal air to the proceedings. They may also not be suitable for recognising the different contexts in which contempt arises. Second, there is an array of different types of contempt, across jurisdictions, and settling on an agreed cross-jurisdictional approach may create more problems than it solves.

Another participant suggested that more judgments ought to be published where either no sentence, or a non-custodial sentence, is imposed. This would eventually create a clear contempt case law, which lawyers and judges can appeal to when weighing sentence. As one participant put it, judgments such as these would provide an opportunity in their practice to demonstrate to a judge that, in a near identical situation, a lesser sanction was imposed. It may also go some way to balancing against the judiciary's perception of individual defendants. In other words, greater judgment publication could have the effect of avoiding committal orders. No one made the case that the defendant should be named in those judgments.

Option 1

More judgments ought to be published where either no sentence is imposed or a non-custodial sentence is imposed. These need not identify the defendant.

Option 2

A form of sentencing guidelines, which would include a custody threshold, could be produced.

2. The Transparency Order

Where proceedings are heard in private, and therefore no Transparency Order (TO) is issued, those who communicate any information about proceedings may still be found in contempt of court because that communication will be prohibited by section 12 of the *Administration of Justice Act* 1960. Nowadays, the majority of CoP cases are heard in public, subject to a TO. This is an injunction that, as standard, prohibits the publication of any information that identifies, or is likely to identify, the protected party (P), and their family, or where they live. It is always endorsed by a prominent penal notice. The TO binds those who are the subject matter of an injunction meaning that, unamended, the TO will prohibit the family member of a protected party from identifying themselves as such. The result is that all family members and friends caught up in CoP proceedings have imported into that experience a distinctly carceral element.

Amanda Hill, who was a litigant in person (LiP) in a case concerning her mother, gave a presentation to the group of the effect of this penal notice. She described feeling 'gagged' and 'weighed down' by the existence of a TO, which was in effect long after proceedings had concluded. She experienced a defensive attitude when applying to vary the TO so she could identify herself as a family member of a protected party; a process that took many months to complete. Hill also shared her view that it seems these documents are 'forgotten', produced as standard without consideration to their impact.

This was a perception widely shared by those present. It was somewhat unclear who exactly was responsible for the production of TOs but there was consensus that, once put before a judge, they simply receive the court's seal with little interrogation of the contents. This also means that a high volume of TOs are being issued 'until further order of the court' – in other words, an open-ended injunction. It means that individuals bound by such orders will need to apply to court after the death of P to seek its discharge and, in theory at least, may find themselves subject to contempt proceedings even in circumstances where P has died. This is difficult to reconcile with the Supreme Court's judgment in *Abbasi,*[25] and Mr Justice Poole's application of that judgment in *Re Carl Gardner, Deceased (Duration of Transparency Order)*.[26] Indeed, Hill shared with participants that the judge who considered her application to vary initially kept the duration as being 'until further order' but, upon a separate further application, varied the TO 'to the death of P'.

[25] [2025] UKSC 15.

[26] [2025] EWCOP 34 (T3). This judgment was not subject to an appeal.

Option 3
At the conclusion of proceedings, judges should ensure the Transparency Order does not have a duration 'until further order' and, if it does, amend it in a way appropriate to the circumstances of the case.

It was also noted just how labyrinthine the TO is. While the injunction typically prevents a person from, amongst other things, declaring themselves a relative of P, there are some exemptions. The TO refers to paragraphs 33-37 of Practice Direction 4A: itself a document that is difficult to understand for those who are not legally trained. This raises two issues. First, how can someone who is not legally trained be expected to understand the limits of what they can (and cannot) communicate? Second, is there an elemental injustice in circumstances where someone could be found in contempt of court for breaching an order that they cannot fully understand? These issues are more acute where a person acts as a litigant in person and is without the benefit of legal advice.

Some participants were surprised to hear that the TO is always endorsed by a penal notice. Interestingly, nobody could see any merit in the proposition that penal notices are always attached to TOs. One participant made the point that 'it undermines the purpose if they [penal notices] are routinely attached'. Another participant expressed the view that CoP TOs are far more restrictive than in other jurisdictions.[27] For example, section 12 of the *Administration of Justice Act* 1960 imports restrictions that are far more adaptable than CoP TOs. However, another participant pointed out that the terms of the 1960 Act make it difficult for people to make complaints about their experience during the court process. This is a problem because, as that participant put it, 'transparency and the ability to complain is how we get accountability in the justice system'.

While Practice Direction 4A does make allowances for information about proceedings to be communicated in the pursuit of complaints, it has the effect that family members bound by them cannot talk to each other about their experiences. As such, there is no scope for any type of peer support group to be established: a particular problem in a jurisdiction with a high number of litigants in person who, without legal assistance, will have nobody to talk to. This makes a TO both a significant and sustained interference with

[27] It is worth noting a difference between TOs in the CoP and TOs in the Family Court. In the CoP, TOs are a mechanism by which the court sits in public. They bind everybody, including members of the public, journalists, and those who are the subject matter of the injunction (e.g. P's family). In the Family Court, TOs are the mechanism by which journalists and legal bloggers may attend and report on a case held in private. They are served on reporters and parties. Family members may speak to reporters but otherwise, s12 of the *Administration of Justice Act* 1960 continues to apply.

the ECHR Article 10 rights of individuals, and creates an atmosphere where injustice could be perpetuated by a lack of ability for individuals to speak out.

This being said, it was acknowledged there may be good reasons for a TO be endorsed by a penal notice or indeed be quite restrictive. They may be the best tool available to safeguard P's privacy. Furthermore, it bears worth repeating that a TO is the tool by which the public can attend CoP hearings, even if the majority of CoP hearings take place without the public present. As such, one participant suggested, to widespread assent, that there may be scope for TOs to be varied in scale: some may be more restrictive and others less so. In endorsing this view, another participant proposed that all TOs could start as very restrictive, with the judge – in the course of their case management duties – having constant regard for the proportionality of those restrictions, and the scope for (in essence) downgrading them.

Option 4a
The penal notice is removed from the standard Transparency Order.

Option 4b
In the event the above suggestion is not adopted, guidance should be issued as to how judges can take a graded approach to Transparency Orders rather than having a 'one size fits all' template.

3. Undertakings and supporting litigants

In a presentation about her experience as a family member of a protected party in the Court of Protection, Amanda Hill shared that she was asked to give an undertaking to not breach the Transparency Order as she lives out of the jurisdiction. There was no formal recording of this undertaking having been given. Additionally, a High Court judge had (in a separate case Hill observed) told a litigant in person that undertakings are 'just promises to the court' which some participants felt was downplaying their status. As one participant put it, 'I think it is completely shocking for a judge to allow someone to make an undertaking without fully directing them as to the seriousness of the 'promise''. Another noted that while undertakings are common in the CoP, the explanation of them is not. It was common ground that this should be the responsibility of the judge in circumstances where an individual represents themselves.

There is a two-pronged issue here. The first that individuals are being expected to make an undertaking without fully understanding the implications. The second, which naturally flows from the first, is that judges and lawyers are undermining the serious nature of an undertaking and what it means to breach one. As one participant pointed out, the word 'undertaking' has a far different meaning in everyday language than it does in legal language. All participants agreed that this disconnect needs to be addressed head-on, and endorsed the view of one CoP lawyer that a Practice Direction should be created that sets out the correct procedure and approach for when and how to ask a person to make an undertaking. Having due regard to a Practice Direction, rather than the exercise being directed purely by experience and instinct, will remind judges in particular both of the serious nature of an undertaking and that litigants in person may not by default appreciate the implications of what they are agreeing to.

Option 5
A Practice Direction that addresses how undertakings ought to be drafted and implemented as a matter of urgency.

4. Litigants in person

As we will explore in more depth in the section on legal aid, there is a high number of litigants in person who appear in the CoP. As became clear in the discussion about the Transparency Order (section 2) and undertakings (section 3), LiPs are not receiving adequate support to understand the various expectations on them. This can have disastrous effects where non-compliance with an order or undertaking may result in a sentence of imprisonment, not least because a LiP may not understand that the breach amounts to a contempt of court. It was agreed that some of the lack of this understanding must be put down to the labyrinthine procedures operating in the CoP, which are a matter of reflex for those involved in it but are totally alien to the majority of people caught up in its work. Indeed, one lawyer shared that, in recognition of this problem, the firm for which they work provides their clients with an explanatory 'plain English' document.

There was some discussion about whether an easy-read manual could be created for LiPs. This could explain the role of the courts, the role of the LiP, what different types of court order are, and other matters. While everyone seemed to agree that this was in principle a good idea, one lawyer pointed out that there are risks here. First, such a handbook would take so long to be produced that, by the time the first version was published, new issues would have arisen meaning that the first version would become almost immediately outdated. Second, it was not clear who would take responsibility for producing such a document. While at least one law firm has been able to do this, it will be of little assistance to LiPs who, by the very nature of such a position, would not have access to documents produced by a law firm *for its clients*.

5. Avoiding committal orders: Vulnerable litigants

While serial non-compliance with a court order will be unlikely to go unpunished,[28] it is of the utmost importance that judges are given the tools to understand the reason for such non-compliance. It is at the discretion of the judge whether to make an order for committal. However, it is also at the discretion of the applicant whether to issue an application in the first place. Thus, the first step is for the applicant to consider whether such an application is appropriate and just, taking into account all of the relevant circumstances, including the impact of the breaches on P and the vulnerability of the defendant. Where an application is issued, the judge must exercise their discretion in weighing up these issues.

However, as discussed in section 1, perception by judges of defendants appears to have a more than minimal impact on the outcome. A potential partial remedy would be for judges to have more focussed training on the vulnerabilities of individuals who may appear before them, and the subsequent impact this may have on their behaviour. This training may complement the Equal Treatment Bench Book.[29] In one presentation, a lawyer had discussed the way in which life experiences, such as trauma, socio-economic background, and disability will affect a litigant's behaviour. The presenter called these 'clusters of vulnerability'. It is against this background that defendants find themselves to be in contempt of court, and it is a background that must be taken into account.

Option 6
Training on vulnerability and its effects should be devised and rolled out to judges.

[28] For example, see paragraph 37 of Lioubov Macpherson v Sunderland City Council [2025] EWCA Civ 1159.
[29] https://www.judiciary.uk/about-the-judiciary/diversity/equal-treatment-bench-book/

6. Avoiding committal orders: Contact restrictions

The review of judgments found that a breach of orders restricting contact was the most common trigger for contempt proceedings being issued. When discussing how to avoid contempt applications, it seems logical to consider how to manage the underlying issues: namely, the contact restrictions themselves. To that end, participants heard a presentation on this topic. The presenter identified a chain, with contempt proceedings at the very end. There are many 'pressure points' before that, and the contempt proceedings are only triggered by a breach. However, the presenter pointed out that the breach is rarely a calculated defiance of the court. Sometimes it occurs simply because the person does not realise what they have done places them in contempt.

The presenter also made the point that, the broader the prohibition on contact, the greater chance there is to be a breach. Where an order is actually required, the order must be time-limited and actually capable of compliance. For example, the order should prohibit specific and observable behaviour; not simply 'any contact whatsoever'. The order should also be understandable to a family member who is in distress, and receiving an order for the first time. Practitioners should ask: will that person be able to read this, understand it, and know *exactly* what they cannot do?

Option 7
Every contact restriction order endorsed by a penal notice should be accompanied by an explanatory note written in plain-English such that it is understandable to a non-legally trained individual.

In response to this presentation, one participant remarked that 'penal notices [are] being abused'. This means the impact of penal notices are being diluted. Of course, not all contact restrictions need a penal notice. An agreed care plan or recital in the order could carry a lot of weight with family members because it is something they have agreed to. Where an order is necessary, a penal notice may not be. Where a penal notice is necessary, care should be taken in drafting to ensure that it is targeted to interact with only the limb of the order that directly relates to P's safety.

"Penal notices [are] being abused".

No participant felt that contact restrictions should be seen as beyond the appropriate exercise of the court's power. Indeed, it was common ground that, while CoP judges may wish to avoid imprisonment, there may be circumstances in which this is undesirable. For example, some orders restricting contact are put in place to prevent or manage

abusive behaviour. If that behaviour continues despite the order, there is a risk the behaviour will go unpunished. These must be distinguished from cases where orders restricting contact are put in place to manage conflict rather than risk. The former category will be more likely to require a penal notice than the latter.

Option 8
Practitioners should consider whether an order restricting contact needs to be endorsed by a penal notice or whether there are alternatives available. If not, care should be taken that the use of the penal notice is focussed.

7. Legal aid

Defendants in contempt proceedings are entitled to non-means tested legal aid. As one lawyer pointed out, however, if legal aid is only available at the point that these proceedings are instituted, and not before, 'by that point the horse is bolted'. In other words, legal aid is only available when a person's liberty is formally at risk. However, there are multiple steps along the way where the path to contempt proceedings has already started. In circumstances where someone is represented in contempt proceedings, their representative may be able to prevent them being imprisoned but this does not avoid the possibility of a fine.

One participant suggested, albeit recognising the likely obstacles to such an approach, that legal aid should be available when somebody is served with an order endorsed by a penal notice. This would enable the person affected to receive legal advice about the impact of the penal notice and how they may seek to remove it or vary the terms of the order to which it is attached. There are two problems with this suggestion. The first is that this would be a very costly exercise, not least in circumstances where the majority of CoP proceedings have at least one order (the Transparency Order) endorsed by a penal notice (see section 2 above). The second is that it is established law that the breach of any order issued by a court may be considered contempt of court, notwithstanding whether the order was endorsed by a penal notice.

Pro bono support, as opposed to legal aid, was discussed as a possible alternative. However, as one lawyer powerfully put it, 'it should not be on the profession to fill in the gaps left by lack of public funding'. Indeed, one participant pointed out that 'when I work on legal aid it may as well be pro bono', because the fee falls well below their usual rate and is subject to review by the legal aid panel. Where a barrister is able to act via direct access,[30] a person will only have the benefit of legal representation at a hearing and may not even have the funds to instruct a barrister for every hearing. Thus, barristers come in and out, and 'cases can end up in more turmoil [...] the client may have done things that aren't best for the case as there is no solicitor to advise'. As such, the direct access scheme does not wholly resolve the problems faced by those without funding.

"It should not be on the profession to fill in the gaps left by lack of public funding".

Taken in the round, the discussion revealed a discomforting but familiar story: an underfunded legal system made up of actors who want to do the best by their clients but

[30] In the English legal system, the traditional route to representation is that a client instructs a solicitor, who then instructs a barrister to act on the client's behalf. Outside of hearings, the solicitor will manage the case. Under the direct access scheme, no solicitor is instructed. In effect, the client is their own solicitor.

are frustrated from doing so, resulting in individuals left without legal assistance or representation at a stressful point in their lives. In the CoP, where many orders are endorsed by penal notices, the need for legal assistance comes starker still. As we will come on to discuss, and to put it rather bluntly, AI is not helpful enough and may make things worse. Many others have discussed the problems with a lack of legal aid and, while it may be trite, we simply endorse the calls to reform and expand the legal aid system. It is not for us to decide how that is funded; we simply note that the current situation as to (a lack of) legal aid is creating injustice.

8. Use of AI

The use of Generative Artificial Intelligence (GenAI) emerged frequently as a topic of discussion during the workshop. It is indisputable that AI is creating an increasing amount of work for the courts system; it is not a problem confined to the CoP. One problem is that AI produces documents that contain factual legal errors, and also far in excess of what is acceptable. In jurisdictions (such as the CoP) that see a lot of LiPs, without the benefit of legal advice or representation, the problem is exacerbated. One participant proposed that having a limit of the number of pages for position statements of both litigants in person and counsel can contain would go some way to addressing this problem. Page limits may even improve the quality of submissions. While such discussion was, strictly speaking, outside of the scope of this workshop, we recognise the importance of addressing AI use, and make one (limited) suggestion in this regard.[31]

Option 9
A new Practice Direction, accompanied by easy-read explanatory note, should set out limits on the length and form of position statements. In particularly complex cases, parties should have liberty to apply to extend this limit.

Of particular relevance to the theme of the workshop, participants were concerned that the disclosure of sensitive information into public chatbots may constitute what one participant described as 'a serious breach of a Transparency Order'. This is because information provided to an AI tool is used to train that tool, and thus that information is placed into the public domain. In circumstances where court documents are inserted into these tools, that may constitute placing court documents into the public domain.[32] This would place the person at risk of contempt proceedings being instigated against them.

[31] In response to a request for feedback on a draft of this report, one attendee pointed out that the Family Court has published a guide for LiPs on the size of bundles. They suggest the Ministry of Justice could engage in some joined up thinking on guidance for limits on position statements. For the Family Court guidance, see: https://www.judiciary.uk/guidance-and-resources/preparing-court-bundles-for-family-proceedings-guide-for-litigants-in-person/

[32] For a detailed discussion of the legal issues in this area, see Cisneros (2026) *ChatGPT and Transparency Orders*. Access from: https://transparencyproject.org.uk/chatgpt-and-transparency-orders/

However, some participants identified a disconnect – or an inequality of arms - between litigants in person being told they cannot use AI while judges[33] and lawyers can do so via their in-house tools. It is worth noting that lawyers do not have a *carte blanche* to use AI.[34] The difference arises in the type of tool used. Judges and (some) lawyers have access to closed systems, meaning that information placed into them is not placed in the public domain. Nevertheless, participants were concerned about the *perception* of this difference, which gives rise to a feeling of elemental unfairness particularly in circumstances where a litigant in person has been *unable* to find legal representation (see section 7, on Legal Aid, above).

One participant suggested that court forms should be amended to include a box asking whether a LiP has used AI. This should be accompanied by a note explaining that undisclosed use of AI may be considered a contempt of court. This was a popular idea with the group. An explanatory note would also need to also be issued, which would explain acceptable and unacceptable use of AI.

Option 10
Court forms could be amended to include a section that specifically enquires whether a person has used AI. If so, there should be space for the person to explain how AI has been used. This should be accompanied by an explanatory note that sets out the circumstances in which it is both acceptable and unacceptable to use AI.

One problem that arises is what to do when somebody uses AI and does not disclose its use, or that AI use results in legally incorrect statements. This is separate from AI use that breaches a TO. One lawyer suggested that the response to any application that has been clearly written by AI, or where there are reasons to suspect its use, should be immediately struck out (though without precluding the possibility of re-filing the application in a more appropriate format). While we do not make a formal recommendation in this regard, the CoP rules committee may wish to consider whether, and to what extent, this should be imported into the CoP.

[33] Since the workshop, a position statement on judicial use of AI has been published. It is light on detail: https://www.judiciary.uk/guidance-and-resources/position-statement-on-the-judicial-use-of-artificial-intelligence-ai/

[34] See *R (Ayinde) v London Borough of Haringey* [2025] EWHC 1383 (Admin).

Appendix A: Glossary

Contact restrictions – Literally, restrictions on the contact between a protected party and some other person or classes of person. The Court of Protection has the power to impose contact restrictions.

Contempt of court – An offence committed as a result of disobeying a court order, attempting to interfere with the administration of justice, or bad behaviour within the court ("contempt in the face of the court").

Contemnor – A person found to be in contempt of court. Throughout this report, we use the noun 'defendant'.

Contempt proceedings – Proceedings issued, either on application or by the court's own motion, where there is reason to believe that a person has committed a contempt of court. These are sometimes referred to as committal proceedings.

Court of Protection (CoP) – A court of record in England and Wales that has jurisdiction to consider the capacity, and if relevant best interests, of persons with an impairment in, or disturbance of, the functioning of the mind of brain.

Generative Artificial Intelligence (GenAI) – A type of AI model that generates data, such as text.

Litigant in person – A party to litigation who represents themselves.

Penal notice – A notice affixed to a court order that disobeying it may be a contempt of court, which could result in imprisonment, a fine, or seizure of assets.

Practice Direction (PD) – An official document that sets out the proper interpretation of the court rules.

Protected Party (P) – The person at the centre of Court of Protection proceedings. This is the person who is said to lack capacity to make a certain decision.

Transparency Order (TO) – A type of reporting restriction that is issued in the Court of Protection. As standard, it prohibits the publication or communication of any information that identifies, or is likely to identify, the protected party, their family, or where any of those people live, or their contact details.

Undertaking – A legal promise to do, or refrain from doing, a certain action or set of actions. It is in place of a court order. A breach of an undertaking may be a contempt of court.

Appendix B: Options for action

Option 1
More judgments ought to be published where either no sentence is imposed or a non-custodial sentence is imposed. These need not identify the defendant.

Option 2
A form of sentencing guidelines, which would include a custody threshold, could be produced.

Option 3
At the conclusion of proceedings, judges should ensure the Transparency Order does not have a duration 'until further order' and, if it does, amend it in a way appropriate to the circumstances of the case.

Option 4a
The penal notice is removed from the standard Transparency Order.

Option 4b
In the event the above suggestion is not adopted, guidance should be issued as to how judges can take a graded approach to Transparency Orders rather than having a 'one size fits all' template.

Option 5
A Practice Direction that addresses how undertakings ought to be drafted and implemented as a matter of urgency.

Option 6
Training on vulnerability and its effects should be devised and rolled out to judges.

Option 7
Every contact restriction order endorsed by a penal notice should be accompanied by an explanatory note written in plain-English such that it is understandable to a non-legally trained individual.

Option 8
Practitioners should consider whether an order restricting contact needs to be endorsed by a penal notice or whether there are alternatives available. If not, care should be taken that the use of the penal notice is focussed.

Option 9

A new Practice Direction, accompanied by easy-read explanatory note, should set out limits on the length and form of position statements. In particularly complex cases, parties should have liberty to apply to extend this limit.

Option 10

Court forms could be amended to include a section that specifically enquires whether a person has used AI. If so, there should be space for the person to explain how AI has been used. This should be accompanied by an explanatory note that sets out the circumstances in which it is both acceptable and unacceptable to use AI.

Appendix C: Participants

This list is organised in alphabetical order.

Jordan Briggs, Doughty Street Chambers

Dr Daniel Clark, University of Sussex

Dr Julie Doughty, Transparency Project

Joan Goulbourn, Ministry of Justice

Sam Green, KBG Chambers

Amanda Hill, Cardiff University; litigant in person in CoP proceedings

Marc Livingston, Janes Solicitors

Maria Maier, Bar course student

Dr Lawrence McNamara, Law Commission

Dr Judith Townend, University of Sussex

Sydney White, Bar course student

Hanna Whitehead, Ramsdens Solicitors

A barrister with experience in contempt of court practice, who has asked to remain anonymous, also attended.