

Local Practice Note – from the Manchester Designated Family Judge

Drafting orders and case summaries

Orders

The context

1. On 17 June 2019 the President of the Family Division in his *Guidance: Forms of Orders in Children Case* the President of the Family Division identified problems with the length and standard of orders prepared in family cases. He proposed the first order should contain key information but that subsequent orders should be in short form, omitting lengthy narrative material and reciting only who attended and their representation; the issues determined at the hearing; any agreement or concession made during the hearing; and the issues that remained outstanding.
2. In his subsequent *Memorandum: Drafting Orders* issued on 10 November 2021 the President reiterated the ongoing difficulties with drafting orders and the unnecessary, unwieldy practice of including unnecessary recitals and made it clear the practice must stop. He directed orders should be agreed, drafted and lodged before the parties leave the building or, only where impracticable, within two days of the hearing.
3. On 17 May 2023 a new suite of orders was released by Mr Justice Peel, Judge in Charge of [Standard Orders](#) (re-issued on 1 June 2023 and 24 October 2023) with House Rules (attached to this Practice Note).
4. The House Rules accompanying the new suite of orders include the following¹:
 - a. All orders made in the Family Court and High Court (Family Division) **shall** be in the standard forms as contained in Volumes 1 and 2.
 - b. When drafting orders the standard order templates should be used adapted as appropriate.
 - c. Recitals in children cases shall appear at the **end** of the order and must only record necessary information, drafted in as **short and neutral** a manner as possible.
 - d. Any purported views of the court which did not form part of the court's decision should not be recited.
 - e. The recordings of a party's position before, during or after the hearing should cease.
 - f. Where a 3rd party disclosure order or other order directed to a person not party to proceedings the order should be drawn as a **separate** order. Where a separate order/s are directed the fact that a separate order has been made should be included in the body of the main order.

5. The President's Public Law Working Group Best Practice Guidance also recommends orders are filed within 24 hours of the hearing, if not at court.

The problem

6. Locally, there has been little adherence to the President's Guidance: orders continue to be very long, with unwieldy recitals regarding the parties' positions, what has been argued before the court and the judge's comments/observations. Orders can take hours to prepare and generate controversy and argument about what should be recorded. They are rarely lodged before the parties leave court (as envisaged by the President) and regularly lodged weeks, sometimes months, after the hearing. Judges' clerks often have to chase orders.
7. The format of orders varies considerably. The quality of drafting is also variable. They are often grammatically incorrect and different fonts and sizes used throughout the order. There is little evidence that Peel J's suite of orders issued in May 2023 are being used.
8. With the advent of the portal, further difficulties arise. Until the latest order is uploaded the next hearing date is not generated preventing documents being uploaded. Orders which are not approved are returned to the author for amendment, causing further delay or the task falls to the judge. Once approved, the order is automatically sealed.

The aim

9. The aim of this Local Practice note is to achieve greater consistency, higher quality and shorter orders, in accordance with the President's Guidance.
10. The use of the Peel LJ's existing suite of orders and a move away from superfluous lengthy recitals should result in orders being prepared quicker and more consistently.
11. The practice of extensive recitals and recording the parties' positions before or during the hearing must cease.
12. The court's observations or judgment are superfluous unless specifically required by the court. The order speaks for itself.

Local Practice

13. From the 6th November 2023 Peel J's suite of orders should be used in every case.

14. Additionally, after each date in the order the week it falls within the timetable shall be included in brackets (e.g. The local authority shall by 4 pm on [date] (week 16) file and serve a statement from the midwife).

Timing

15. If not lodged before the parties leave court, the order must be lodged with the court within 2 working days of the hearing.

Case Summaries

The Context

16. The President's Public Law Working Group Best Practice Guidance issued in March 2021 introduced a new Case Summary template (Annex H1-3). Currently it is being used by only 2 or 3 local authorities.

17. The Working Group also made a number of other recommendations including

- a. Use of Information Sheet for emergency/urgent applications;²
- b. Advocates' Meeting Minute Urgent/Short Notice Hearing
- c. Advocates' Meeting Minute CMH/FCMH
- d. Advocates' Meeting Minute IRH.
- e. Respondent's position statements.

18. None of the other recommendations have been adopted locally (to date) and it is recognised whilst useful, will generate further work for already stretched professionals.

The Problem

19. The original version of the new template did not contain relevant information (including the identity of the local authority or the Children's Guardian). Whilst adaptations have been made by those authorities currently using them, they remain unwieldy in length and the anecdotal evidence is they are not considered to be as helpful as the previous template.

20. Case summaries are sometimes unnecessarily detailed and rehearse the entire background to each hearing in each iteration. Conversely, they often lack any useful information or identify the issues for any given hearing. They routinely fail to include the position of the parties as Advocate's meetings have not taken place before the Case Summaries are uploaded.

The aim

21. To achieve greater consistency and create a useful document for the parties and court.

22. To avoid the necessity to require Minutes of Advocates' meetings to be filed and Respondents' position statements.

The local template

23. Following consultation with a small group of local practitioners the consensus was there remains a preference for the earlier version of the Case Summary, adapted for local practice.

24. The attached template is an amalgam of the old and new style Case Summaries.

25. It has been prepared in Times New Roman font, 12 point in line with Peel J's suite of orders.

26. If completely properly, following the Advocates' meeting, it will avoid the need for further adoption of the President's Public Law Working Group Best Practice Guidance, locally.

Concluding comments

27. This local guidance has been prepared following consultation with a representative group of local practitioners³ and has the approval of the Family Presider Mr Justice MacDonald for local use. It should be read in conjunction with the Local Practice Note: Getting Back to the Public Law Outline on the Northern Circuit.

28. Both the adapted Case Summary and Peel J's suite of orders should now be used by *all* practitioners from 6 November 2023. Failure to adhere to this local guidance is likely to result in orders being returned for amendment.

HHJ Singleton KC

Designated Family Judge

Manchester Civil Justice Centre

31 October 2023

FAMILY ORDERS

HOUSE RULES

May 2023

Introduction

1. All orders made by the Family Court and the High Court (Family Division) shall be in the standard forms as contained in Volumes 1 and 2.
2. Accordingly, when drafting orders, whether by consent or following a hearing, the standard order templates should be used, adapted as appropriate to the facts of the case.

Content of order (including recitals)

3. Recitals in a financial order shall appear at the beginning of the order. Recitals in a children order shall appear at the end of the order. Recitals must only record necessary information, drafted in as short and neutral a manner as possible. They should not record what happened in the hearing and should be limited to essential background matters which are not part of the body of the order. Any purported views of the court which did not form part of the court's decision should not be recited. The recording of a

party's position before, during, or after the hearing as a recital should cease unless the standard order template requires such information.

4. The order shall not recite the documents which the court read, or the witnesses who were heard, save in a case where an order is made without notice, in which case the details shall be recorded in a recital.
5. Where an order is made without notice the reason for withholding any notice must be recorded in a recital. Where an order is made on short notice the reason for withholding full notice must be recorded in a recital.
6. Where a third party disclosure order or other order directed to a person who is not a party to the proceedings is made, that order should be drawn as a separate order rather than be contained in the main order from the proceedings. Each separate order should be directed to only one third party or person, and where there are a number of third parties or persons to which orders are directed, there should be a drawn a series of separate orders.
7. Where a separate order is made, the fact of the separate order having been made should be included in the body of the main order from the hearing, which should identify what the separate order was for and the date by which any information / evidence arising from that order is to be disclosed.

Format of order

8. The body of orders should always be prepared in Times New Roman font, 12 point, with single spacing.
9. An order shall be consecutively numbered from 1 irrespective of whether the paragraph in question concerns a definition, recital, agreement, undertaking or order. Where possible, and in any event as provided in the standard order templates, recitals in children cases should appear in a schedule to the order. The numbering of paragraphs in any schedule shall recommence as paragraph 1.
10. Subparagraphs, to two levels only, are permitted and shall be numbered (a), (b) etc, then (i), (ii) etc (with or without brackets).

11. So far as possible, the order should contain orders and directions in a chronological order, save that the directions in respect of the next hearings should appear at the start of the order.
12. An order shall state in its heading the statute(s), or European Regulation(s), or Protocol under which the powers in question are exercised. It shall not state that the inherent powers of the court are being exercised.
13. Parties:
 - a. The parties shall be specified at the beginning of the order.
 - b. The applicant for the relief in question shall be referred to in the order as the “applicant” and the respondent shall be referred to as the “respondent”. The parties shall not be referred to by their titles in the main suit (i.e. petitioner and respondent) save in respect of orders made in the main suit.
 - c. Children shall be referred to by their first forename and surname.
 - d. Each child shall be numbered as a separate respondent.
 - e. The children’s guardian shall be referred to as “the guardian”.
14. If a party acts by a litigation friend, or a child by a children’s guardian, this must be stated in the paragraph of the order detailing the parties to the proceedings.
15. Where a party was represented by an advocate, that advocate shall be named on the face of the order. Formality of naming should be preserved, with the advocate being identified as “Mr / Mrs / Miss / Ms etc. [surname]” or by their first name and surname. If the advocate is counsel, the order should so state.
16. Where a standard order template requires contact details to be inserted into the paragraph detailing the parties to the proceedings, those contact details shall be of the party if a litigant in person, or of the solicitors on the court record if the party is represented. Contact details for counsel should not be used.

Language

17. Clear English (or Welsh in Wales) should be used at all times. Archaic legal language (“the party of the first part”, “hereinabove”, “heretofore” etc.) should be avoided.

18. If definitions are required, they shall appear in the recitals. Abbreviations may be used.
19. In the body of the order, parties should be referred to by their status (e.g. “applicant” and “respondent”) rather than by their role in the proceedings (e.g. the mother, the father etc.).
20. Although not grammatically pure the plural pronoun “their” should be used in a singular sense instead of “his or hers”.
21. An obligation to do an act as provided for in an order shall be taken to include causing the act to take place. Thus the phrase “or cause to be paid”, does not need to be included in an order.
22. An obligation to do an act within a specified period shall state the actual date and time by which the act must be done.
23. Where a direction or order is for a party to do something, it must be directed to the party and not to their solicitor.
24. Dates shall be specified without ordinal possessives and must use the full name of the month and the year in full form (e.g. 17 May 2013 and not 17th May 2013 or 17/5/13 or May 17th, 2013 or “this 17th day of May 2013”). Times must be stated using the 24-hour format (e.g. 17:00 or 12:00, not 5pm or noon).
25. Distances should be specified metrically up to 1,000 metres. Beyond that distance either system, imperial or metric, may be used.
26. Monetary sums shall be denoted numerically, save that for sums expressed in millions the abbreviation “m” may be used. Other variants e.g. “M” or “millions” should not be used. Currencies shall be expressed by the usual symbols. Thus, for example, £, €, US\$ and A\$ should be used, not GBP, EUR, USD and AUD.