

Chancery Division – production of orders for Master and Judges

Introduction

1. This note replaces the note issued by Chief Master Marsh in September 2014.
2. It brings the production of orders for Chancery High Court judges into line with the changes made by that note.
3. From 2nd January 2015 there will be changes to the way in which most orders made by Chancery High Court Judges and Masters are produced and served.
4. In conjunction with the creation of electronic files from 1st October 2014 and the implementation of electronic filing due in the latter part of 2015, instead of the court playing the principal role in the production and service of orders, with many orders being drafted by Associates, the parties will be required to provide the court with the order in a form which may be approved and sealed without amendment. A nominated party will be required to serve the order once it has been sealed.
5. Draft orders should usually be lodged in MS Word format which enables minor changes to be made without either the court retyping the order or it being returned to the legal representative for amendment.
6. There will also be a change of practice concerning the service of orders.

Draft orders

7. All draft orders provided to the court must be in the form set out in Appendix 1, subject only to such amendments as circumstances require.
8. The draft order must include:
 - (a) the title and number of the proceedings;
 - (b) the name of the Judge or Master: Mr/Mrs Justice [name]/Master [name];
 - (c) the date of the order;
 - (d) if the order is made at a hearing, the names of the advocates and/or those given permission to address the court;
 - (e) the service note as set out in the paragraphs below headed “back sheets/service note”.

Service of orders

9. At present most orders are sealed by the court and sent to the parties and any relevant third parties by the court. In future, the default position will be that orders

are to be served by the parties, with the order specifying which party is to receive the order for service from the court. A litigant in person will not be nominated as the serving party.

10. The court will send the serving party one sealed copy of the order. It is the responsibility of the serving party to ensure that the text of the order and the court seal are legible in copies served on the other parties.

Back sheets/service note

11. Back sheets are not needed and must not be provided.
12. The information which is currently contained in the back sheet prepared by the Associates recording the names and addresses of the parties to whom the order has been sent should be recorded immediately below the last paragraph of the order in the format shown in the following example:

“Service of the order

The court has provided a sealed copy of this order to the serving party:
ABC Solicitors LLP at [address] [reference]”

13. Where an order is drawn and served by the court the service note will be in a similar format replacing “The court has provided a sealed copy of this order to the serving party” with “the court has sent sealed copies of this order to:” followed by the identity of the parties to whom the order has been sent.

Consent orders (including Tomlin orders)

14. A consent order lodged by solicitors will only be accepted by the court and referred to the Judge or Master for approval if:
 - (a) the word “draft” or “minute” does not appear in the order and the title and preamble are in the correct format;
 - (b) the signed order, together with a “clean” copy of the order in MS Word format excluding the signature provisions, is submitted by email to ChanceryJudgesListing@hmcts.gsi.gov.uk for Judges’ orders or; Chancery.mastersappointments@hmcts.gsi.gov.uk for Masters’ orders;
 - (c) the email contains an undertaking that the court fee will be paid within 2 working days;
 - (d) the order specifies the party who will receive the order for service from the court;
 - (e) the order includes a service note (see the paragraphs on back sheets/service note) in the correct format.
15. If these requirements are not complied with, the consent order will not be accepted and it will be returned. An order lodged correctly will be referred to the Judge or Master for approval but will not be sealed until the court fee has been paid.
16. If a consent order requires amendment because the terms of the order are not approved by the court, the order will normally be returned for re-drafting. If the

changes are minor the Judge or Master may choose to make the necessary amendments and approve the order.

17. In cases of real urgency, a party may request a Judge or Master to approve a consent order at an Application without Notice hearing provided that the consent order and two clean copies are provided and the court fee has been paid.
18. In the case of Tomlin orders with a confidential schedule, the schedule should not be lodged with the court. The order must identify clearly the agreement which forms the schedule and where it is held.
19. The lodging of consent orders by email will not apply to litigants in person.

Other orders considered without a hearing (box work)

20. Where the court is asked to make an order, other than a consent order, based upon a draft submitted by a party, the court will usually ask for a copy of the order to be lodged by email in MS Word format with the **relevant Judge's clerk or Masters' Appointments Team**. The order will be approved, sealed and sent out by the court to the nominated party for service.
21. Where there is no draft order, or the draft is inadequate, the Judge or Master may give a direction for a draft to be lodged or instruct an Associate to produce the order based upon the instructions provided by the Judge or Master. The order will be sealed and sent out by the court to all the parties if it has been prepared by the court (usually an Associate) unless the court orders otherwise.

Orders made at hearings (including appeal hearings)

22. The responsibility for producing an accurate draft order reflecting the terms of orders made by the court will rest with either (a) the applicant or (b) the party nominated by the Judge or Master. If there remains doubt about who bears responsibility for producing a draft order (for example in the case of multiple applications or where no direction is given by the court), it is to be produced by the Claimant unless the Claimant is a litigant in person *in which case it will be the represented party who will have responsibility*.
23. The terms of the order must be noted by the legal representatives present and in the case of doubt about the terms of the order they must be clarified with the court at the hearing.
24. The order should be sent by email as a MS Word document to the relevant Judge's Clerk or to the Masters' Appointments Team within 2 working days of the hearing and copied to the other party(s).¹ The draft produced should represent in neutral terms what was understood to have been the intention of the Judge or Master. If there are significant differences of view about the correct terms of the order,

¹ So far as Judges' orders are concerned, it will be expected that the parties will act swiftly to finalise the order within 2 days. However, if (exceptionally) there is a genuine problem that the parties think can be resolved with a little extra time without troubling the Judge, they should communicate with the Judge's clerk to seek a short extension.

alternative versions should be recorded on the draft and the Judge or Master will determine the points in issue.

25. The order submitted to the court for approval must state which party is to serve the order and must include a service note with the correct information as set out in paragraph 12. No back sheet should be provided.
26. The Judge or Master will settle the terms of the order and give instructions for it to be sealed. It will be then sent by the court to the serving party.
27. Where all parties are unrepresented, the Judge or Master will record the terms of the order and an Associate will draw up the order and send a sealed copy to each of the parties. This also applies to without notice applications where the court refuses to make the order.

Sealing orders

28. Unless an order is referred to an Associate, the order will normally be sealed by the Judge's clerk or the Masters' clerk.

Orders drawn up by Associates

29. The following are circumstances in which draft orders submitted by parties will be referred to an Associate for sealing:
 - (a) orders made in the Applications Court;
 - (b) committal orders;
 - (c) all Bankruptcy and Companies Court orders made by a High Court Judge
30. Associates will also be responsible for drawing, sealing and sending out the following orders:
 - (a) where both parties are unrepresented;
 - (b) unsuccessful without notice applications;
 - (c) where the Judge or Master directs an Associate to do so;

Collection trays

31. Some law firms have an arrangement to collect orders from a designated collection tray. That arrangement will remain unchanged. The reference above to the court sending an order to the serving party should be taken to mean, where appropriate, that the sealed order may be left in a collection tray. It is the responsibility of the law firm concerned to ensure that the order is collected and served promptly.

Issued with the authority of the Chancellor of the High Court

APPENDIX 1

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

Claim No:123456

Mr/Mrs Justice [name] *or* Master [name]

[day, month, year]

B E T W E E N:

ABCDEFG

Claimant

-and-

(1) HIJKLMNOP
(2) QRSTUV

Defendants

ORDER

UPON the application of [party] by notice dated²

AND UPON HEARING [names of the advocates and/or those given permission to address the court] for the Claimant and the first Defendant and the second Defendant in person

IT IS ORDERED that:

1.
2.

² To be adapted as appropriate. Where, for example, an application has been made by a Part 8 claim form, the recital should read:

“UPON the application of [party] by Part 8 Claim Form dated”

An order made following the trial of a Part 7 claim should recite:

“UPON THE TRIAL of this claim”.

3. This order shall be served by the Claimant on the Defendants

Service of the order

The court has provided a sealed copy of this order to the serving party:

ABC Solicitors LLP at [address] [reference]