

# PRACTICE DIRECTION – JUDGMENTS AND ORDERS

## THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 40

### DRAWING UP AND FILING OF JUDGMENTS AND ORDERS

- 1.1 Rule 40.2 sets out the standard requirements for judgments and orders and rule 40.3 deals with how judgments and orders should be drawn up.
- 1.2 A party who has been ordered or given permission to draw up an order must file it for sealing within 7 days of being ordered or permitted to do so<sup>1</sup>. If he fails to do so, any other party may draw it up and file it<sup>2</sup>.
- 1.3 If the court directs that a judgment or order which is being drawn up by a party must be checked by the court before it is sealed, the party responsible must file the draft within 7 days of the date the order was made with a request that the draft be checked before it is sealed.
- 1.4 If the court directs the parties to file an agreed statement of terms of an order which the court is to draw up<sup>3</sup>, the parties must do so no later than 7 days from the date the order was made, unless the court directs otherwise.
- 1.5 If the court requires the terms of an order which is being drawn up by the court to be agreed by the parties the court may direct;
  - (1) a copy of the draft order to be sent to all parties for their agreement to be endorsed on it and returned to the court before the order is sealed, or
  - (2) a copy of the draft order together with notice of an appointment to attend before the court to agree the terms of the order.

### PREPARATION OF DEEDS OR DOCUMENTS UNDER AN ORDER

- 2.1 Where a judgment or order directs any deed or document to be prepared, executed or signed, the order will state:
  - (1) the person who is to prepare the deed or document, and
  - (2) if the deed or document is to be approved, the person who is to approve it.
- 2.2 If the parties are unable to agree the form of the deed or document, any party may apply in accordance with Part 23 for the form of the deed or document to be settled.
- 2.3 In such case the judge may:

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1 rule 40.3(3)(a)

2 rule 40.3(3)(b)

3 rule 40.3(2)(b)

- (1) settle the deed or document himself, or
- (2) refer it to
  - (a) a master, or
  - (b) a district judge, or
  - (c) a conveyancing counsel of the Supreme Court to settle.

(See also the Sale of Land practice direction supplementing RSC Order 31 scheduled to the CPR at Part 50)

## CONSENT ORDERS

- 3.1 Rule 40.6(3) sets out the types of consent judgments and orders which may be entered and sealed by a court officer. The court officer may do so in those cases provided that:
  - (1) none of the parties is a litigant in person, and
  - (2) the approval of the court is not required by the Rules, a practice direction or any enactment<sup>4</sup>.
- 3.2 If a consent order filed for sealing appears to be unclear or incorrect the court officer may refer it to a judge for consideration<sup>5</sup>.
- 3.3 Where a consent judgment or order does not come within the provisions of rule 40.6(2):
  - (1) an application notice requesting a judgment or order in the agreed terms should be filed with the draft judgment or order to be entered or sealed, and
  - (2) the draft judgment or order must be drawn so that the judge's name and judicial title can be inserted.
- 3.4 A consent judgment or order must:
  - (1) be drawn up in the terms agreed,
  - (2) bear on it the words "By Consent", and
  - (3) be signed by
    - (a) solicitors or counsel acting for each of the parties to the order, or
    - (b) where a party is a litigant in person, the litigant<sup>6</sup>.
- 3.5 Where the parties draw up a consent order in the form of a stay of proceedings on agreed terms, disposing of the proceedings<sup>7</sup>, and where the terms are recorded in a schedule to the order, any direction for:

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<sup>4</sup> Rule 40.6(2)

<sup>5</sup> Rule 3.2

<sup>6</sup> Rule 40.6(7)

<sup>7</sup> Rule 40.6(3)(b)(ii)

- (1) payment of money out of court, or
- (2) payment and assessment of costs

should be contained in the body of the order and not in the schedule.

## **CORRECTION OF ERRORS IN JUDGMENTS AND ORDERS**

- 4.1 Where a judgment or order contains an accidental slip or omission a party may apply for it to be corrected<sup>8</sup>.
- 4.2 The application notice (which may be an informal document such as a letter) should describe the error and set out the correction required. An application may be dealt with without a hearing:
  - (1) where the applicant so requests,
  - (2) with the consent of the parties, or
  - (3) where the court does not consider that a hearing would be appropriate.
- 4.3 The judge may deal with the application without notice if the slip or omission is obvious or may direct notice of the application to be given to the other party or parties.
- 4.4 If the application is opposed it should, if practicable, be listed for hearing before the judge who gave the judgment or made the order.
- 4.5 The court has an inherent power to vary its own orders to make the meaning and intention of the court clear.

## **ADJUSTMENT OF FINAL JUDGMENT FIGURE IN RESPECT OF COMPENSATION RECOVERY PAYMENTS**

- 5.1 In a final judgment<sup>9</sup> where some or all of the damages awarded:
  - (2) fall under the heads of damage set out in column 1 of Schedule 2 to the Social Security (Recovery of Benefits) Act 1997 in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule and
  - (3) where the defendant has paid to the Secretary of State the recoverable benefits in accordance with the certificate of recoverable benefits,

there should be stated in a preamble to the judgment or order the amount awarded under each head of damage and the amount by which it has been reduced in accordance with section 8 and Schedule 2 to the Social Security (Recovery of Benefits) Act 1997.
- 5.2 The judgment or order should then provide for entry of judgment and payment of the balance.

<sup>8</sup> Rule 40.10

<sup>9</sup> in this paragraph final "judgment" includes any order to pay a sum of money, a final award of damages and an assessment of damages.

## ADJUSTMENT OF FINAL JUDGMENT FIGURE IN RESPECT OF AN INTERIM PAYMENT

- 6.1 In a final judgment<sup>10</sup> where an interim payment has previously been made which is less than the total amount awarded by the judge, the judgment or order should set out in a preamble:
  - (1) the total amount awarded by the judge, and
  - (2) the amount and date of the interim payment(s).
- 6.2 The total amount awarded by the judge should then be reduced by the total amount of any interim payments, and the judgment or order should then provide for entry of judgment and payment of the balance.
- 6.3 In a final judgment where an interim payment has previously been made which is more than the total amount awarded by the judge, the judgment or order should set out in a preamble;
  - (1) the total amount awarded by the judge, and
  - (2) the amount and date of the interim payment(s).
- 6.4 An order should then be made for repayment, reimbursement, variation or discharge under rule 25.8(2) and for interest on an overpayment under rule 25.8(5).

## STATEMENT AS TO SERVICE OF A CLAIM FORM

- 7.1 Where a party to proceedings which have gone to trial requires a statement to be included in the judgment as to where, and by what means the claim form issued in those proceedings was served, application should be made to the trial judge when judgment is given.
- 7.2 If the judge so orders, the statement will be included in a preamble to the judgment as entered.

## ORDERS REQUIRING AN ACT TO BE DONE

- 8.1 An order which requires an act to be done (other than a judgment or order for the payment of an amount of money) must specify the time within which the act should be done.
- 8.2 The consequences of failure to do an act within the time specified may be set out in the order. In this case the wording of the following examples suitably adapted must be used:
  - (1) Unless the [claimant][defendant] serves his list of documents by 4.00pm on Friday, January 22, 1999 his [claim][defence] will be struck out and judgment entered for the [defendant][claimant]., or

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<sup>10</sup> as in Note 9 above.

- (2) Unless the [claimant][defendant] serves his list of documents within 14 days of service of this order his [claim][defence] will be struck out and judgment entered for the [defendant][claimant].

Example (1) should be used wherever possible.

## NON-COMPLIANCE WITH A JUDGMENT OR ORDER

- 9.1 An order which restrains a party from doing an act or requires an act to be done should, if disobedience is to be dealt with by an application to bring contempt of court proceedings, have the penal notice endorsed on it as follows:
- “If you the within-named [ ] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or [in the case of a company or corporation] your assets may be seized.”
- 9.2 The provisions of paragraph 8.1 above also apply to an order which contains an undertaking by a party to do or not do an act, subject to paragraph 8.3 below.
- 9.3 The court has the power to decline to:
- (1) accept an undertaking, and
  - (2) deal with disobedience in respect of an undertaking by contempt of court proceedings,
- unless the party giving the undertaking has made a signed statement to the effect that he understands the terms of his undertaking and the consequences of failure to comply with it.
- 9.4 The statement may be endorsed on the [court copy of the] order containing the undertaking or may be filed in a separate document such as a letter.

## FOREIGN CURRENCY

10. Where judgment is ordered to be entered in a foreign currency, the order should be in the following form:
- “It is ordered that the defendant pay the claimant (*state the sum in the foreign currency*) or the Sterling equivalent at the time of payment.”

## COSTS

- 11.1 Attention is drawn to the costs practice direction and, in particular, to the court's power to make a summary assessment of costs.
- 11.2 Attention is also drawn to costs rule 43.5(5) which provides that if an order makes no mention of costs, none are payable in respect of the proceedings to which it relates.

## JUDGMENTS PAID BY INSTALMENTS

12. Where a judgment is to be paid by instalments, the judgment should set out:
  - (1) the total amount of the judgment,
  - (2) the amount of each instalment,
  - (3) the number of instalments and the date on which each is to be paid, and
  - (4) to whom the instalments should be paid.

## ORDER TO MAKE AN ORDER OF THE HOUSE OF LORDS AN ORDER OF THE HIGH COURT

- 13.1 Application may be made in accordance with Part 23 for an order to make an order of the House of Lords an order of the High Court. The application should be made to the procedural judge of the Division, District Registry or court in which the proceedings are taking place and may be made without notice unless the court directs otherwise.
- 13.2 The application must be supported by the following evidence:
  - (1) details of the order which was the subject of the appeal to the House of Lords,
  - (2) details of the order of the House of Lords, with a copy annexed, and
  - (3) a copy annexed of the certificate of the Clerk of Parliaments of the assessment of the costs of the appeal to the House of Lords in the sum of £.....
- 13.3 The order to make an order of the House of Lords an order of the High Court should be in Queens Bench practice form No 68.

## EXAMPLES OF FORMS OF TRIAL JUDGMENT

- 14.1 The following general forms may be used;
  - (1) judgment after trial before judge without jury - form no 45,
  - (2) judgment after trial before judge with jury - form no 46,
  - (3) judgment after trial before a Master or district judge - form no 47,
  - (4) judgment after trial before a judge of the Technology and Construction court - form no 45 but with any necessary modifications.
- 14.2 A trial judgment should, in addition to the matters set out in paragraphs 5, 6 and 7 above, have the following matters set out in a preamble:
  - (1) the questions put to a jury and their answers to those questions,
  - (2) the findings of a jury and whether unanimous or by a majority,

- (3) any order made during the course of the trial concerning the use of evidence,
- (4) any matters that were agreed between the parties prior to or during the course of the trial in respect of
  - (a) liability,
  - (b) contribution,
  - (c) the amount of the damages or part of the damages, and
- (5) the findings of the judge in respect of each head of damage in a personal injury case.

14.3 Form no 49 should be used for a trial judgment against an Estate.

The forms referred to in this practice direction are set out in the practice direction which supplements Part 4 (Forms).

## **FOR INFORMATION ABOUT**

- (1) Orders for provisional damages: see Part 41 and the practice direction which supplements it.
- (2) Orders in respect of children and patients: see Part 22 and the practice direction which supplements it.
- (3) Orders containing directions for payment of money out of court: see Parts 36 and 37 and the practice directions which supplement them.
- (4) Structured settlement orders: see the separate practice direction supplementing Part 40.

