

Better drafting

Lord Woolf proposes a rule that pleadings be in plain language, and he recommends judge-led litigation. Although his scheme remains only a proposal, courts are already using their discretion to implement some points. Is it not time, then, for all judges to follow the Chancery Division initiative and make plain orders?

The order on the next page, made by a county court district judge earlier this year, is typical of the current style. In the notes below, Mark Adler criticises the layout and wording, and on the following page he suggests a plainer version.

1. This heading is used only to tell the court's clerical staff which form to use. It is probably unnecessary, and is in any case duplicated (in tiny print) at the bottom.
2. This strange layout (inserting the solicitors' details here, with those of the other solicitors elsewhere; the box; and the words "Plaintiff's Solicitor" outside the box) can only be justified by its convenience for use with window envelopes. I have kept it, slightly modified, in my rewrite. But "plaintiff's solicitor" is only a guide to the staff filling in the form, so I have reduced its prominence. Finally, "solicitor" is a common noun, and the initial capital is vainglorious.
3. Is the traditional "In the" helpful?
4. This typeface is too small to be effective.
5. Ideally, the names of the parties would be at least as prominent as the name of the court. This may not be practicable where they are typed in, but the two defendants could at least be separated onto different lines.
6. Which defendant.? And it is the solicitor's reference, not that of the defendant himself.
7. Only lawyers talk of being "before" a judge. More to the point: the judge made the order.
8. It could be taken for granted that the judge was sitting.
9. The address of the court is given elsewhere, and need not be repeated here. Even if that hearing had been held elsewhere, the address would not be pertinent to the order.
10. "Upon" = "on". But "after" would be more appropriate. Is it not time to abandon this formula?
11. Neither "Plaintiff" nor "First Defendant" warrant capital letters.
12. The repetition of "upon hearing" is unnecessary.
13. "Judge Oldpen ordered" is shorter and clearer than "Before Judge Oldpen ... Upon hearing X and Y ... It is ordered (by whom?) that"
Now that multi-font word processors have generally replaced typewriters we can use larger and bolder type (and preferably a sans serif style) to emphasise headings, instead of telex-style capital letters the same size and style as the text.
14. "Do" is artificial and unnecessary.
15. "Do provide the further and better Particulars numbered 3 to 6 inclusive" = "answer questions 3 to 6".
16. The document is identified by the date written on it rather than by the date on which it was served (especially as it may be have been served a day or two later).
17. This phrase has wandered too far from the phrase to which it should be linked.
18. It is always best to give the date, not only for ease of reference but to avoid the argument that time only runs from service of the order.
19. "There be" is weak. Who is being ordered?
20. What sort of exchange would not be mutual?
21. This would need explanation to the client or a litigant in person.

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General form of judgment or order¹

Plaintiff's Solicitor²

Seau, Liss, Itor & Co 56 Kingfisher Court Guildford Surrey GU1 6AA

In the³ BINGLEY County Court	
Case No. <small>Always quote this⁴</small>	BOS723823
Plaintiff	Brian Cottrell
Defendant	1. John Richard Thomas Burgess 2. Cohorts & Co ⁵
Plaintiff's ref.	KT
Defendant's ref.	LD/Burgess.Rep ⁶

Before⁷ District Judge Oldpen sitting⁸ at 13 - 14 West Street, Bingley, Kent AB1 2CD⁹.

Upon¹⁰ hearing the Solicitor for the Plaintiff¹¹ and upon hearing¹² the First Defendant's Solicitor

IT IS ORDERED THAT¹³

1. The First Defendant do¹⁴ provide the further and better Particulars numbered 3 to 6 inclusive¹⁵ sought by the Plaintiff in the Plaintiff's request served on¹⁶ 20 August 1996 within 14 days¹⁷ of today¹⁸.
2. There be¹⁹ mutual exchange²⁰ of witness statements of fact²¹ on or before²² 28 February 1997 and in default no witness whose statement has not been so exchanged²³ shall²⁴ give evidence at the Trial²⁵ save²⁶ with leave of²⁷ the Court.
3. The First Defendant do serve on the Plaintiff and the Second Defendant a copy of any expert evidence upon²⁸ which the First Defendant²⁹ intends to rely on or before 28 February 1997³⁰.³¹The Plaintiff and Second Defendant do have leave to³² serve³³ any expert evidence upon which they intend to rely within 42 days thereafter³⁴ and in default no expert whose report has not been served in accordance with this Order shall give evidence save with leave of the Court.³⁵
4. This matter³⁶ be transferred³⁷ and henceforth dealt with³⁸ in the Chancery List.
5. There be liberty to apply³⁹.
6. The matter be listed for further directions including a direction on setting down⁴⁰ on **Thursday 24 April 1997 at 10.00am** with a time estimate of 15 minutes at 13 - 14 West Street, Bingley, Kent AB1 2CD⁴¹.
7. The First Defendant do pay the Plaintiff's costs of the Application⁴² of 14 October 1996⁴³ to be taxed if not agreed.

Date⁴⁴ Order Made: 14 January 1997
Order Drawn⁴⁵: 17 January 1997

Defendant's Solicitor

Long, Tooth & Co 73 Arnison Road Esher Surrey KT 10 2JK
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Seau, Liss, Itor & Co	
56 Kingfisher Court Guildford Surrey GU1 6AA	
Ref: KT	Plaintiff's solicitors

Bingley County Court	
13 West Street, Bingley, Kent AB1 2CD Tel: 01234 567890	
[Office open Mondays to Fridays from 10am to 4pm]	
Case Number	BOS723823 <i>Always quote this</i>
Plaintiff	Brian Cottrell
Defendants	1. John Burgess 2. Cohorts & Co

Order

made by District Judge Oldpen on 14th January 1997
after hearing solicitors for both the plaintiff and the first defendant

1. This case is transferred to the Chancery list.
2. The first defendant must by 28th January answer questions 3 to 6 in the plaintiff's 20th August 1996 request.
3. The parties must exchange their non-expert witness statements by 28th February.
4. The first defendant must by 28th February serve on the plaintiff and the second defendant the report of any expert witness on which he intends to rely.
5. The plaintiff and second defendant must by 11th April serve on the first defendant and on each other the report of any expert witness on which they intend to rely.
6. No witness may be called without the court's permission unless their statement or report has been served in accordance with this order.
7. ~~Any party may apply to the court for further directions.~~
8. This application is adjourned to a 15-minute hearing on **Thursday 24 April 1997 at 10am.**
9. The first defendant must pay the plaintiff's costs of the 14th October 1996 hearing, to be taxed if not agreed.

Long, Tooth & Co	
73 Arnison Road Esher Surrey KT 10 2JK	
Ref: LD	First defendant's solicitors

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22. The OED gives "on or before" as the relevant definition of "by", so will not "by" do?
23. "No witness whose statement has not been so exchanged" makes "in default" superfluous. The double negative adds to the clumsiness.
24. "May" is neater. Apart from the usual criticism of "shall", it makes poor sense to command "no witness".
25. When else but at the trial? And "trial" does not deserve a capital letter.
26. "Save with" = "without".
27. "The leave of the Court" = "the court's leave (or "permission")". (Bryan Garner has pointed out that the word "of" often signals verbosity.)
28. "Upon" = "on".
29. "He" would do, to avoid repetition.
30. The deadline for the action should be moved away from "rely" and nearer to "serve", which is the verb to which it relates.
31. I would give this its own paragraph, for consistency. All the other paragraphs are restricted to a single order.
32. "Do have leave to" = "may".
33. In the previous sentence the court specified the parties on whom the evidence must be served; here it does not.
34. It is not clear whether the 42 days begin when the first defendant's evidence is served or on the last day on which it might have been served.
35. The inclusion of this long formula as part of the second sentence excludes the first sentence from its ambit. So despite the repetition (after its appearance in the previous paragraph) it does not cover all the witness statements.
36. "Matter" is vague word, like "thing" and "unit". "Case" is what it is.
37. It should be "transferred *to*".
38. "And henceforth dealt with" is both archaic and superfluous.
39. The lawyers know this anyway, and the lay parties don't know what it means. In any case, the next paragraph makes it unnecessary.
40. Does the judge not just mean "this application is adjourned to"?
41. It hardly seems necessary to repeat the court's address here if (as was the case) all hearings are in the same building. If it had to be included, the time-estimate phrase should be in parenthesis.
42. "Application" deserves a capital letter even less than "trial" did.
43. A comma is missing.
44. "Date" is no more necessary here than it is immediately below (where it was omitted).
45. Is the date of drawing significant? The important dates are those of making and serving.
46. This important information is too inconspicuous.

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