



Barristers' Chambers

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## Ideals in a less than ideal system

### **Introduction:**

The Central Family Court has now issued a directive that family professionals will be expected to draw up non financial orders, if the case is concluded by 1pm, by 4.30 pm that day and, if concluded later that day, then by the start of business the next working day.

### **Order Drafting:**

As reported by the Law Gazette:

'The policy, signed by His Honour Judge Robin Tolson QC, the court's designated family judge, states that the background 'is an environment of significantly increasing caseloads and reduced staff resources, with consequent delays in drawing up of orders by the court'.

It applies to non-financial remedy cases where at least one party is represented. Court orders must be approved by judges, drawn up and handed to the parties on the day of the hearing. The judge can permit a delay but this 'will be the exception and not the rule'.

Orders must be tight in length. Legal representatives will be expected to attend court with a laptop so they can draft an order. Once agreed by all parties, the draft should be emailed to the clerk 'while parties remain at court'.

After the judge approves the order, the clerk will draw it up, print and hand it to the parties on the same day as the hearing or email the order if email addresses have been provided.

If the case finishes by 1pm, the order must be lodged by 4.30pm. If the case finishes in the afternoon, the order must be lodged by 10am the next day. Cases may be listed for mention if an order is not received on time. The judge or legal adviser will draft the order on the day of the hearing for cases involving litigants in person.

The policy says: 'Judges, magistrates, legal advisers and staff at [Central Family Court] remain highly appreciative of the work done by legal professionals in the drafting of orders and are sensitive to the time which this takes up.'

It is already clear from the comments posted soon afterwards and anonymously by family practitioners on the Law Gazette's site that this latest initiative is in danger of being the straw that breaks the camel's back. The comments posted complain at the lack of appreciation revealed by such a directive of the part already undertaken by the profession



in applying by its daily efforts in practice numerous sticking plasters to an obviously underfunded and undermanned Court system.

**FPR 2010:**

**Part 29** of the **FPR 2010** provides primarily for Court orders to be drawn up by the Court unless the Court directs otherwise or the parties agree to undertake that responsibility. In practice, the Bar and solicitors have undertaken this responsibility when involved in the individual case. However, the direction issued now purports to effect a fundamental change to the **FPR 2010**, which provides for up to a 7 day period where a party is responsible for the drafting of the court order concerned. The issued direction reduces the period to the same day or by 10am the next working day.

**Commentary:**

It is unfortunate to say the least that at a time when the Bar is seeking to highlight the impact of the previously unspoken mental health stresses upon practitioners generally, this appears to be an example of a directive failing entirely to appreciate the extent to which the plainly underfunded Court system depends not only upon the hard pressed court staff but equally upon the continuing goodwill of the over burdened practitioner. It is not assisted by the apparent platitudes of gratitude unconvincingly expressed as to the contributions already made by the profession in the same issued directive.

References to the Court professional being required to attend at Court with a computer to draw and then email the Court order to the Court before close of the Court's business again reveal a lack of full appreciation of life in practice for the family professional. Many solicitor employers do not yet provide laptops for such use to their staff and, indeed, the Court system generally does not yet provide fee paid part time judges with computer equipment, expecting them instead to provide their own, which is itself an area of continuing security, professional and insurance concern so far ignored.

There is undoubtedly a need for the 7 day rule relating to the drafting of the Court order to be rigorously applied and adhered to by the profession and where this time period for reasons not apparent at the time of the acceptance of that obligation have emerged that the Court is immediately informed to ensure a suitable extension is given. However, a next day provision as now directed in the Central Family Court, subject to exception, without any apparent prior consultation, is unlikely to be workable or to encourage the practitioner's continuing assistance in other needed areas of the Court's administration.

Orders capable of being drawn at Court are already likely to be subject to such drafting. Practitioners have no appetite to delaying such drafting where it can be effectively dispatched whilst all parties are at Court. The demands of other cases, the timing of the determination that day of the case concerned and the need often to explain the outcome to the parties in detail and the very nature of the precision wording of the type of order required may all militate against its immediate draft. With respect, the ambition that all litigants should be able to leave the Court building the same day with the typed Court order is an ideal in a far from ideally funded system.

Most family practitioners are dedicated individuals – as family law is high in stress and one of the lowest remunerated areas of legal practice – they have to be. The amount of material generated in any family case and the skill set required to handle often highly emotional clients and highly charged



issues is considerable. However, without the contribution of family practitioners nationwide even more children would be at risk and there would be many more individuals unable to return to meaningful relationships or employment after marital or cohabitation breakdown. Whilst no family professional seeks any particular recognition in this regard, they are entitled to expect their prior engagement in any sensible discussion with the judiciary, the court staff and other court users as to the most efficient running of the at present imperfect court system we have.

**Ashley Murray November 2018**