

Guidance Notes on Completing Form FP161 – Appellant’s Notice (Appeals to the Family Division of the High Court)

Please note form **FP161** is only to be used for appeals to the Family Division of the High Court ('the High Court'). Appeals from decisions or orders of the following judges will be heard in the High Court.

If the appeal is from the family court:

- Circuit Judges or Recorders except where:
 - The appeal is from a decision or order made in proceedings under Parts 4 or 5 of, or paragraph 19 of Schedule 2 to the Children Act 1989; or
 - The appeal is from a decision or order made in proceedings under the Adoption and Children Act 2002; or
 - The appeal is from a decision or order made in relation to contempt of court, or
 - The appeal is a second appeal to the family court;
- District Judge or (Deputy District Judge) of the Principal Registry of the Family Division (financial remedy appeals only)

If the appeal is from the High Court

- District Judge or (Deputy District Judge) of the Principal Registry of the Family Division
- District Judge or (Deputy District Judge) of the District Registry of the High Court
- Costs Judge (or deputy)

Appeals in all other family cases (including the exceptions mentioned above) should continue to be made to the Court of Appeal or the Family Court using form **N161 – Appellant’s notice (All appeals except small claims track appeals)**. If your appeal is to the Court of Appeal, **N161D – Guidance Notes on Completing the Appellant’s Note** (all family proceedings appeals in the Court of Appeal (Civil Division) and family court) will help you in completing the form

A free leaflet '**EX340 – I want to appeal**' giving information about making an appeal in or to the High Court is available from:

- Any family court;
- hmctsformfinder.justice.gov.uk;
- Family Division Appeals Office at the Royal Courts of Justice, Strand, London, WC2A 2LL

The leaflet will also explain the meaning of some of the terms and expressions used in this guidance.

Information is available about making an appeal to the High Court from the Family Division Appeals Office, Floor 1M, Queen’s Building, Royal Courts of Justice, Strand, London, WC2A 2LL.

- Court staff can help you complete the appellant’s notice and tell you about procedure but they cannot give you legal advice, for example whether you should appeal, whether your appeal will be successful or what you should write on the form.
- If you need legal advice about bringing your appeal, you should contact a solicitor or Citizens Advice immediately.
- If you are legally represented, your solicitor should complete this form on your behalf.

IMPORTANT – time limits for issuing (filing) your appeal.

You only have a limited time in which to file your appellant's notice at the High Court. **You must act quickly.**

The leaflet '**EX340 – I want to appeal**' and '**FP201 - Routes of Appeal**' will help you decide which court is the appropriate appeal court in your case.

You must file your appellant's notice:

- Within the time limit set by the judge whose decision or order you are appealing against; OR
- Where that judge has set no time limit but the appeal is against a case management decision within **7 days** after the date of the decision you wish to appeal against was made; OR
- In all other cases where that judge has set no time limit, within **21 days** after the date of the decision you wish to appeal against was made. (Rule 30.4 FPR)

General notes on completing the appellant's notice

Set out below are notes to help you fill in the form. You should read the notes to each section carefully before you begin to complete the particular section.

Use a separate sheet if you need more space for your answers, marking clearly which section the information refers to. Write the case number clearly on it and attach it securely to the notice.

If you do not have all the documents or information you need for the appeal, you **must not** allow this to delay sending or taking the form to the High Court within the correct time. Complete the form as fully as possible and provide what documents you have. The notes to Sections 11 and 12 will explain more about what you have to do in these circumstances.

There is a fee payable on lodging your appeal. The Forms **EX50 – ‘Court Fees for the High Court, county court and family court’** and **FP200 - ‘Family Proceedings Fees’** provides guidance of the costs involved and ways in which you can pay. You must pay the relevant fee when you file any document or start any process, unless otherwise stated. A copy of this document is available from:

- Any family court or hearing centre
- hmctsformfinder.justice.gov.uk

If you don't pay, your case will be delayed ('stayed') or dismissed ('struck out')

If you have little or no savings, are on certain benefits or have a low income, you might be able to get help with your court fee (also known as fee remission). For further information, or to apply for help with fees, you can visit gov.uk/get-help-with-court-fees. If you do not have access to the internet, you will be able to get a paper form (**EX160 – Apply for help with fees**) from court staff at any family court office. If you do not have access to the internet and have submitted a paper application of the **EX160** for help with fees, this **MUST** be submitted with your appellant's notice (**FP161**) as a failure to do so could lead to your application being delayed ('stayed') or dismissed ('struck' out').

If you have been granted a fee remission, you need to insert this unique reference number on the form.

SECTION 1: Details of the case you are appealing against

Give the case number you wish to appeal against. You can find this information in the order or decision you are appealing against.

SECTION 2: Details of the appeal

Most of the information you will need to complete this section will be found on the order or decision you are appealing against.

Give the name of the court whose order you are appealing against.

Give the name of the Judge whose decision you wish to appeal and indicate, by ticking the relevant box, the status of the judge.

You must also tick the appropriate box to indicate the nature of the decision you wish to appeal.

Case management decisions include orders relating to:

- the timetable for trial;
- the filing and exchange of information (of witnesses and experts);
- disclosure of documents (papers the court said you must make available to the other parties);
- or adding or removing a party to the proceedings.

A grant or refusal of an interim order might include an injunction, freezing order, an order for the detention or custody or preservation of relevant property or a financial order.

SECTION 3: Details of the parties in the appeal

Give your (appellant's) full name, and the address to which you would like all documents relating to the appeal to be sent. Include contact information, e.g. telephone number and email address.

You will also need to include the above details for the respondent (s) to enable the court to send correspondence and other details to the respondent (s). If there are more than three respondents, list their names, addresses and email address on a separate sheet of paper and tick the 'details of additional parties' box to indicate that you have done so and state clearly the number of additional details provided so court staff are aware of how many additional parties exist. Write the case number clearly on the paper and attach it securely to your notice.

SECTION 4: Legal representation

State whether you are legally represented and if so, give your solicitor's name and contact details.

Indicate whether or not your case is being publicly funded.

State whether each of the respondents are legally represented and, if so, provide the name and contact details of their solicitors.

SECTION 5: Permission to appeal (Rule 30.3 FPR)

Where an appeal is to the Family Division of the High Court, you will need permission to appeal, unless the circumstances below apply.

You should note that permission will only be given where the court considers that your appeal has a real prospect of success or there is some other compelling reason for the appeal to be heard. Where your appeal is against a case management decision, the court will also consider:

- whether the issue is significant enough to justify the costs of an appeal;
- the overall effect on the case management timetable; e.g. whether the loss of the trial date is more significant than the procedural point you wish to appeal;
- the impact on the welfare of the child and the timetable for the child; and
- whether it would be more convenient to deal with your point at the trial.

You **do not** need permission to appeal if the order you are appealing against is one of the following:

- a committal order;
- a secure accommodation order under Section 25 of the Children Act 1989 or Section 119 of the Social Services and Well-Being (Wales) Act 2014.

You must request permission in this notice if:

- you did not ask for permission to appeal at the hearing at which the decision you are appealing against was made; or
- you asked for permission, but it was refused, and you wish the High Court to reconsider your request.

The High Court when giving permission to appeal may, exceptionally, direct that your appeal be referred to the Court of Appeal if it considers that it raises an important point of principle or practice or there is some other important reason for the Court of Appeal to hear it. Where the court gives this direction, it will be shown on an Order giving reasons for allowing or refusing permission to appeal (including referral to the Court of Appeal) which the court will send you.

If you need more time than is allowed for filing your appellant's notice, you must make an application for an extension of time in the notice itself. (See notes to Section 10).

If you wish to make an application to re-open a final determination of any appeal, the High Court will not grant your application unless:

- it is necessary to do so to avoid real injustice;
- the circumstances are exceptional and make it appropriate to re-open the appeal; and
- there is no alternative effective remedy (Rule 30.14 FPR).

SECTION 6: Other information required for the appeal

You are required to state the order you wish to appeal. If you are appealing only part of an order, you must write out that part (or parts) of the order in the box provided.

SECTIONS 7 and 8: Grounds of appeal and arguments in support

An appeal must be based on relevant grounds (reasons for appealing). The High Court will only allow an appeal against a decision of the lower court that was either:

- wrong; or
- unjust because of a serious procedural or other irregularity in the proceedings (Rule 30.12 FPR).

The High Court will be unlikely to overturn a decision where no real difference would be made to the outcome of the case, or the appeal would involve re-examining the factual investigation undertaken by the lower court.

Set out briefly, and **on a separate sheet** your reasons why you think the judge's decision was wrong or unjust (referred to as your 'grounds of appeal'). If possible, list your reasons in short separately numbered paragraphs and indicate that you have done this by ticking the relevant box. Your appeal notice must clearly set out your grounds of appeal (Rule 30.6 FPR).

Remember that you must not include any grounds for appealing which rely on new evidence; that is evidence that has become available since the original order was made. You may not produce new evidence in your appeal without first obtaining the permission of the High Court. (See the notes to Sections 10 and 11).

Please indicate by ticking the relevant box that you have also attached a document setting out your arguments in support of your grounds of appeal (referred to as your 'skeleton argument') to this notice or that it will follow within 14 days of filing your appellant's notice. If you do not have a legal representative you do not have to do a separate skeleton argument but may do so if you wish.

Your skeleton argument should contain a numbered list of points that you intend to argue at the appeal hearing. Each point should be stated in no more than a few sentences. Refer at each point to any documents you are filing with your appellant's notice which supports that argument. (See Section 12 on documents).

If you have not attached your arguments to your notice, **do not** delay in sending your application. (See notes to Section 12).

SECTION 9: What you are asking the appeal court to do?

Indicate by ticking the relevant box whether you are asking the High Court to set aside or vary the order you are appealing or whether you would like it to order a re-hearing.

SECTION 10: Other applications

You only need to complete this section if you are asking for orders in addition to those requested in Section 9.

If you want the court to stop the order you are appealing being brought into force until after the appeal has been decided, you must tick the box indicating that you want to apply for a 'stay of execution' and set out your reasons in Section 11.

If you want the court to stop further steps being taken in the case until after the appeal has been decided, you must tick the box indicating you want to apply for a 'stay of proceedings' and set out your reasons in Section 11.

If you want to apply for an extension of time for filing your appellant's notice, you must tick the box indicating that you want to apply for an extension of time. You should state in Section 11 the reason for the delay and the steps taken up to the time of filing the notice. See page 2 for information on time limits.

You may wish to make additional applications to the High Court in connection with your appeal. Any other applications made be made in this notice or in a separate application notice (form FP244 – Application Notice). This form can be obtained from the court or our website (hmctsformfinder.justice.gov.uk). You may have to pay

additional fees if it is filed at a later date than your appellant's notice. Completed forms should be submitted to the Family Division Appeals Office.

SECTION 11: Evidence in support

Include here any information you have to support your application(s) under Section 10.

If you are asking the court's permission to produce new evidence in your appeal or asking for permission to produce oral evidence at the appeal hearing, you will need to give reasons why the new evidence was not before the original court and, where oral evidence is requested, the reasons why you think it is necessary. You, or your solicitor if you are legally represented, should sign the statement of truth at the bottom of this section to support any evidence you provide.

It is important you check the information contained in the notice is correct before signing. It is a contempt of court to sign a false statement of truth without honest belief in its truth for which you can be fined, have your assets seized or be sentenced to a term of imprisonment.

SECTION 12: Supporting documents

If appealing to the High Court, do not delay in filing your appellant's notice at the Family Division Appeals Office. If you have not been able to obtain any of the documents listed in this checklist, complete the notice as best you can and ensure the notice is filed on time. Tick the appropriate boxes to show what documents you are filing with the appeal notice. List any documents that you intend to use but which you do not have available in the box over the page. Set out the reasons why you have been unable to obtain any of the information or documents and give the date when you expect them to be available. Whenever possible, the following documents should be filed with your appellant's notice in the High Court:

- a sealed or stamped copy of the appellant's notice including the grounds of appeal
- a sealed or stamped copy of the order being appealed
- a transcript or note of judgment (guidance about transcripts can be found in the leaflet **FP202 – 'How to appeal to the Family Division of the High Court'**)
- copies of any documents specifically referred to in the judgment
- a copy of the skeleton argument in support of the appeal or application for permission to appeal
- a copy of any witness statement in support of any application including in the appellant's notice
- a copy of the legal aid or CLSF certificate (if legally represented).

Do not file any other documents unless directed to do so by the court. Any other documents submitted will not be read by the judge.

SECTION 13: Signing the appellant's notice

The Appellant's Notice **MUST** be signed by the appellant or by the appellant's solicitor if legally represented. Unsigned forms will be returned by the court which could lead to the appeal being dismissed if it is out of time.

What happens next?

Filing your completed notice and documents

You can either email your completed form with the attachments to appeals.familydivision@hmcts.gsi.gov.uk or print the form and either post or take copies of the form and all the documents to the appeal court office with the appropriate fee. The address is:

Family Division Appeals Office
Floor 1M
Queen's Building
Royal Courts of Justice
Strand
London
WC2A 2LL

DX44450 Strand

Phone: 020 7947 7192

Court staff can advise you of the fee. The court will seal the notices (stamp the notice with the court seal).

Service of your appellant's notice

You are required to serve a sealed (stamped by the court) copy of your appellant's notice on each respondent to your appeal within 7 days and file a certificate of service at the court as soon as practicable afterwards.

Failure to do so may lead to your case being delayed ('stayed') or dismissed ('struck out').

Preparing and filing your bundle of documents

You will need to file a bundle of documents for the use of the Judge hearing the appeal. Your bundle of documents should be filed on each of the respondents within 7 days of receiving permission to appeal. Your bundle of documents should only contain the list of documents specified in section 12. The court will make further directions about the filing of bundles in the course of your appeal.

Failure to comply with any direction of the court may lead to your appeal being delayed ('stayed') or dismissed ('struck out').

If you serve your skeleton argument separately from your appellant's notice, you must do so within 14 days of filing your appellant's notice with the court. You must send your skeleton argument to the court as well as to each of the respondents within this time period.

Failure to do so may also lead to your case being delayed ('stayed') or dismissed ('struck out').