

# **Guidance notes on completing form N161 – Appellant’s notice (all appeals except small claims track appeals or appeals to the Family Division of the High Court)**

Please note form **N161** is to be used for fast track and multi-track cases and statutory appeals from tribunals and other outside bodies only. Appeals in small claims track cases should use form **N164 – Appellant’s notice (small claims track only)**. Appeals to the Family Division of the High Court should use form **FP161 – Appellant’s notice (Appeals to the Family Division of the High Court)**.

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

- any County Court hearing centre,
- <http://hmctsformfinder.justice.gov.uk>; or
- the Clerk of the lists General Office/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 Court of Appeal, from the Civil Appeals Office Registry, Room E308, Royal Courts of Justice, Strand, London WC2A 2LL, or on the court's website (<http://hmctsformfinder.justice.gov.uk>).

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

## **Important – time limits for issuing (filing) your appeal.**

You have only a limited time in which to file your appellant's notice at the appeal court, so you must act quickly.

The leaflet **EX340 – I want to appeal** will tell you which is the appropriate appeal court in your case.

You must file your appellant's notice:-

- within the time limit set by the judge whose order you are appealing against; or

- where that judge set no time limit, **within 21 days** after the date of the decision you wish to appeal against was made.

## Time limits which apply in the Court of Appeal in specific types of appeal

There are several different time limits which apply in the Court of Appeal, the shortest of which is 7 days. **Form 207** gives details of the time limits for filing an appellant's notice in the Court of Appeal. You can get a copy of the form from <http://www.justice.gov.uk/courts/rcj-rolls-building/court-of-appeal/civil-division>

If you need more time than is allowed for filing your appellant's notice, you must apply for an extension of time in the notice itself. (See notes to Section 10 on page 11).

## General notes on completing the 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 that particular section.

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

If you do not have all the documents or information you need for your appeal, you must not allow this to delay sending or taking the form to the appeal court within the correct time.

Complete the form as fully as possible and provide what documents you have. The notes to Section 12 will explain more about what documents you need to file with the appellant's notice (see pages 12-13).

## **Section 1: Details of the claim or case you are appealing against**

Give the claim or case number you wish to appeal against. You are required to provide the full name of all parties and to indicate whether they were the claimant, applicant or petitioner, defendant or respondent by ticking the appropriate box. You can find this and other information in the order or decision you are appealing against.

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, including telephone and email address if you have one.

You will also need to include the above details for the respondent to enable the court to send correspondence and other details to the respondent. A respondent is a person who was a party to the proceedings in the lower court and who is affected by the appeal you are making. If there is more than one respondent, list their names, addresses and contact details

on a separate sheet of paper and tick the 'details of additional parties' box to indicate that you have done so. Write the claim number on it and attach it securely to your notice.

## **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 or tribunal 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.

Give the date of the decision you seek to appeal. This is usually the date at the bottom of the order or decision being appealed.

## **Section 3: Legal representation**

Confirm whether you are legally represented and if so, give your legal representative's name and contact details.

Indicate whether or not you are in receipt of legal aid.

Confirm whether the respondent is legally represented and, if so, provide the name and contact details of their legal representative.

## Section 4: Permission to appeal

Unless the court or tribunal from which you are appealing has granted permission to appeal, you will need to apply for permission to appeal at the appeal court (unless one of the exceptions on the next page applies). If you are appealing from the Upper Tribunal to the Court of Appeal you **must** first apply to the Upper Tribunal for permission to appeal to the Court of Appeal.

If you wish to make a **second appeal**, you can only do so if the Court of Appeal in London gives you permission. You must make your application for permission to appeal to that court. Permission for a second appeal will only be given exceptionally.

You should note that permission will only be given where the court considers that your appeal has a real prospect of success. 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; and
- whether it would be more convenient to deal with your point at the trial.

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

- a committal order;
- an order refusing the grant of habeas corpus;
- a secure accommodation order under Section 25 of the Children Act 1989 or
- under section 119 of the Social Services and Well-being (Wales) Act 2014.

The 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 form **N460 Reasons for allowing or refusing permission to appeal (including referral to the Court of Appeal (Civil Division)) and information concerning routes of appeal** or **N460HC Reasons for allowing or refusing permission to appeal and information concerning routes of appeal** which the court will send you.

## **Section 5: Other information required for the appeal**

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

## **Sections 6 and 7: Grounds of appeal and arguments in support**

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

- wrong; or
- unjust because of a serious procedural or other irregularity in the lower court proceedings.

The appeal 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. If possible, list your reasons in short separately numbered paragraphs and indicate you have done this by ticking the relevant box.

Remember that you **must not** include any grounds for appealing which rely on new evidence, that is evidence that has become available since the order was made. You may not produce new evidence in your appeal without first obtaining the permission of the appeal court. You can apply for permission to rely on fresh evidence in the appellant's notice (see the notes to Section 10 on page 11). You will need to give reasons, however, why the new evidence was not before the original court.

The separate skeleton argument should be filed and served on the respondent(s) with your completed notice if you are appealing to the Court of Appeal.

If you are appealing to the County or High Court, the separate skeleton argument, if required, should be filed and served on the respondent(s) with your completed notice or, if you are unable to complete your skeleton argument in time, no later than 14 days after filing your notice. Please indicate by ticking the relevant box whether you are attaching the skeleton argument to the appellant's notice or whether you intend to send it separately within 14 days of filing the appellant's notice with the court.

Skeleton arguments should contain a numbered list of points that you intend to argue at the 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).

## **Other useful information**

Try to consider what other information the appeal court might find useful. For example, the court may find it helpful to have a list of people who feature in the case, an explanation of technical terms used in the papers, or a list of events in date order (a chronology). If you are providing any of these, they should be on a separate piece of paper attached to your notice marked with the case or claim number and names of the parties.

## **Section 8: Aarhus Convention Claims (applications made under the Town and Country Planning Act 1990 or Planning (Listed Buildings and Conservation Areas) Act 1990**

The Aarhus Convention grants the public rights regarding access to information, public participation and access to justice, in government decision-making processes on matters concerning local, national and transboundary environment. It focuses on interactions between public and public authorities. Please indicate whether you are seeking the costs protection in CPR 45.

## **Section 9: What you are asking the appeal court to do?**

Indicate by ticking the relevant box whether you are asking the appeal court to set aside or vary the order you are appealing or whether you would like it to order a new trial.

## **Section 10: Other applications**

You only need to complete this section if you are asking for orders in addition to those requested in Sections 4 and 8.

Any application for an extension of time for appealing must be made in the appeal notice itself at Section 10, Part B. You should state the reason for the delay and the steps taken up to the time of filing the notice in Section 11. See page 2 for information on time limits.

You may wish to make additional applications to the appeal court in connection with your appeal. Any other applications may be made either in the appellant's notice, or in a separate application notice (**Form N244 – Application notice**). This form can be obtained from the court or downloaded from <http://hmctsformfinder.justice.gov.uk>. You may have to pay additional fees if it is filed at a later date than your appellant's notice.

## **Section 11: Evidence in support**

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

You should sign the statement of truth at the bottom of this section to support any evidence you provide.

## **Section 12: Supporting documents**

**Do not delay filing your appellant's notice at the appeal court.** If you have not been able to obtain any of the documents listed below within the time allowed, complete the notice as best you can and ensure the notice is filed on time. Tick the appropriate boxes to show the documents you are filing with the appeal notice. List any documents in the box over the page that you intend to use but are not yet available. 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 County Court or High Court:

- three copies of the appellant's notice for the appeal court and three copies of the grounds for appeal;
- one additional copy of the appellant's notice and grounds of appeal for each of the respondents;
- one copy of the sealed (stamped by the court) order being appealed;
- a copy of any order giving or refusing permission to appeal; together with a copy of the judge's reasons for allowing or refusing permission to appeal; and
- a copy of the Civil Legal Aid Certificate (if legally represented).

## In the Court of Appeal:

- one copy of the appellant's notice and one copy of the grounds of appeal on a separate sheet;
- one copy of the sealed (stamped by the court) order or tribunal determination being appealed;
- a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice in the appeal against that order;
- in a claim for judicial review or statutory appeal a copy of the original decision which was the subject of the application to the lower court;
- one copy of the skeleton argument in support of the appeal or application for permission to appeal;
- a copy of the approved transcript of judgment; and
- a copy of the Civil Legal Aid Certificate (if legally represented).

# **What happens next?**

## **Filing your completed notice and documents**

Send or take the appellant's notice and copies of all the supporting documents to the appeal court office with the appropriate fee. The court can tell you how much this is. The court will seal the notices (stamp the notice with the court seal).

## **Service of your appellant's notice**

Service requirements differ depending on whether you are filing your appellant's notice in the county court, High Court or Court of Appeal.

### **In the County Court and High Court**

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

### **In the Court of Appeal**

You are required to serve a sealed (stamped by the court) copy of your appellant's notice on each respondent as soon as practicable but no later than seven days after it was filed in the court. You will be asked to confirm that you have served the respondent(s) on a form provided by the court.

# **Preparing and filing your bundle of documents**

## **In the County Court and the High Court**

If you are filing your appellant's notice in the County Court or High Court your appeal bundle should be filed as soon as practicable but in any event within 35 days of the filing of the appellant's notice.

Your appeal bundle must include:

- a copy of your appellant's notice;
- a copy of any respondent's notice;
- a copy of any skeleton arguments filed by either yourself or the respondent;
- a copy of the order under appeal;
- a copy of any order made by the lower court granting or refusing permission to appeal, together with the judge's reasons;
- a copy of the approved transcript of judgment or other record of reasons (if appropriate);

Your appeal bundle may also contain copies of any of the following documents, but only if they are relevant to the appeal:

- statements of case;
- application notices;
- other orders made in the case;

- a chronology of relevant events;
- witness statements in support of any application made in your appellant's notice;
- other witness statements;
- any other documents which you consider would assist the court.

## In the Court of Appeal

If you are filing your appellant's notice in the Court of Appeal and you are applying for permission to appeal, a bundle must be filed within 14 days of filing the appellant's notice. The court will provide a core bundle index listing all the documents which must be included in the permission bundle. If you do not need permission to appeal or permission was granted by the lower court, you will be notified by letter from the court office of the due date for filing your appeal bundle and the documents which it must contain. See **Form 204** 'How to prepare an appeal bundle in the Court of Appeal'. You can get a copy from <http://www.justice.gov.uk/courts/rcj-rolls-building/court-of-appeal/civil-division>

## Service of your bundle of documents

Service requirements differ depending on whether you have filed your appellant's notice in the County Court, High Court or Court of Appeal.

## **In the County Court and High Court**

- If you have already obtained permission to appeal or do not need permission, the bundle must be served on the respondent(s) at the same time as it is filed with the court; or
- If you have asked for permission to appeal in your appellant's notice and permission has been granted the bundle must be served as soon as possible after notification and in any event within 14 days of the grant of permission to appeal; or
- Where the appeal court directs that the appeal will be heard immediately after the application for permission to appeal if permission is granted, the bundle must be served as soon as practicable after and in any event within 14 days of receiving notification of the hearing date.

## **In the Court of Appeal**

- If you are seeking permission to appeal, a copy of the index for the core bundle and a copy of the index for any supplementary bundle for permission to appeal must be served on every respondent at the same time as the bundles are lodged with the court (within 14 days of filing the appellant's notice).
- If permission to appeal has been granted by the lower court or by the Court of Appeal, the court office will provide guidance by letter about the preparation and service of the appeal bundle.