

# PRACTICE DIRECTION FOR THE COURT OF APPEAL (CIVIL DIVISION)

## **1. INTRODUCTION**

### **1.1. Jurisdiction of the Court of Appeal**

- 1.1.1. The Court of Appeal is a superior court of record. It exercises all the jurisdiction conferred on it by the Supreme Court Act 1981. In any appeal to the Civil Division of the Court of Appeal, and in relation to the amendment, execution and enforcement of any judgment or order made on such appeal, it has the same authority and jurisdiction as the court or tribunal from which the appeal is brought. When rules of court permit, any incidental jurisdiction in any proceedings pending before the Civil Division of the Court of Appeal, not involving the determination of an appeal, may be exercised, with or without a hearing, by a single judge of that Court, or by the master.

### **1.2. Consolidated Practice Directions**

- 1.2.1. This is a consolidation, with some amendments, of all the principal Practice Directions which apply to proceedings in the Court of Appeal (see the list at Annex A). It covers the process of instituting proceedings, documentation including skeleton arguments, the requirement for permission to appeal, judgments, case management and Alternative Dispute Resolution. It also deals with particular aspects of the current practice of the Court of Appeal, for example, the making of references to the European Court of Justice under Article 177 of the EC Treaty. It should be noted that permission to appeal is now required in the vast majority of cases. This consolidated Practice Direction applies equally to appeals to the Court in family cases. Further or amended directions may be issued once the new Civil Procedure Rules, governing the work of the Court of Appeal, have been made.

### **1.3. The Civil Appeals Office**

- 1.3.1. The administrative work of the Civil Appeals Office is conducted under the direction of the Head of the Civil Appeals Office. When acting in a judicial capacity he is known as master. In this Practice Direction the term master is used with that specific meaning. Provision is also made for the appointment of deputy masters.

### **1.4. Litigants in person**

- 1.4.1. All of this Practice Direction may be of relevance to litigants in person but the key points of which they need to be aware will be found at section 8.

## 2. PERMISSION TO APPEAL

### 2.1. When is permission required?

- 2.1.1. Most appeals require the permission of the court below (the court which made the decision which is challenged) or of the Court of Appeal to bring an appeal.
- 2.1.2. Since 1 January 1999, permission has been required for all appeals except appeals against:
  - (a) committal orders;
  - (b) refusals to grant *habeas corpus*; and
  - (c) secure accommodation orders made pursuant to section 25 of the Children Act 1989.
 (see RSC Order 59 r.1B(1)(a)-(c))
- 2.1.3. The experience of the Court of Appeal is that many appeals and applications for permission to appeal are made which are quite hopeless. They demonstrate basic misconceptions as to the purpose of the civil appeal system and the different roles played by appellate Courts and courts below. The court below has a crucial role in determining applications for permission to appeal. This guidance indicates how applicants, and courts, should approach the matter.

### 2.2. From which court should permission to appeal be sought?

- 2.2.1. The court which has just reached a decision is often in the best position to judge whether there should be an appeal. It should not leave the decision to the Court of Appeal. Courts below can help to minimise the delay and expense which an appeal involves. Where the parties are present for delivery of the judgment, it should be routine for the judge below to ask whether either party wants permission to appeal and to deal with the matter then and there. However, if the court below is in doubt whether an appeal would have a realistic prospect of success or involves a point of general principle, the safe course is to refuse permission to appeal. It is always open to the Court of Appeal to grant it.
- 2.2.2. The advantages which flow from permission being considered by the court of first instance are lost if the application cannot be listed before the judge who made the decision which is the subject of the application. Where it is not possible for the application for permission to be listed before the same judge, or where undue delay would be caused by so listing it, the Court of Appeal will be sympathetic to applicants who claim that it was impracticable for them to make their application to the court below and will not require such an application to be made.

## 2.3. Oral or paper hearings

- 2.3.1. Many applications to the Court of Appeal for permission to appeal are considered in the first instance by a single Lord Justice on paper, but in some cases the Court directs that the application should proceed straight to an oral hearing. Usually, only applications for permission where the applicant is legally represented are dealt with on paper. However, some applications from litigants in person may be deemed suitable to be dealt with in the same way. Following a notification that the Lord Justice is minded to refuse permission to appeal and in the absence of a request for an oral hearing being received within 14 days, the application will be determined in open court without further reference to the applicant.
- 2.3.2. Whether the application is dealt with on paper or at a hearing the applicant should not burden the Court with documents which are not relevant to the application. The letter from the Civil Appeals Office acknowledging entry of the application in the records of the Court sets out the Court's requirements concerning application bundles.

## 2.4. Applications for permission listed for oral hearing

- 2.4.1. If the single Lord Justice, on consideration of the papers, grants permission or directs an oral hearing of the application, directions may be given on paper as to (1) the maximum time to be allowed to each party for oral argument on the appeal or the oral hearing of the application for permission, as the case may be; (2) the filing and service of skeleton arguments; and (3) other directions for the progress of the case.
- 2.4.2. Where an application for permission to appeal is listed for oral hearing, whether initially or after a decision on paper, the following directions will apply.
- 2.4.3. In all cases where the application is listed for an oral hearing at which the Court has directed that other parties are to have the opportunity to attend, the applicant's solicitors (or the applicant, if acting in person) must, on receipt of notification from the Civil Appeals Office that such a hearing has been directed, immediately supply the respondent's solicitors (or the respondent, if in person) with a copy of the application bundle (including a copy of the transcript or note of judgment) in exactly the same form as the bundles filed for the use of the Court of Appeal. For the purposes only of providing the copy of the application bundle to the respondent's side photocopies of transcripts of judgment and, where relevant, evidence, may be used. The costs of provision of that bundle shall be borne by the applicant initially, but will form part of the costs of the application.

## 2.5. Time allowed for oral hearings

- 2.5.1. In the absence of specific directions, the Court of Appeal will expect oral argument in support of applications for permission to appeal, or renewed applications for permission to apply for judicial review, to be confined to a maximum of 20 minutes.

## **2.6. Skeleton arguments for applications for permission to appeal**

- 2.6.1. In order to assist the Court of Appeal to deal efficiently with applications for permission to appeal, all represented applicants for permission must provide a skeleton argument and applicants in person are strongly encouraged to do so. Three copies of the skeleton argument must accompany the bundle of documents which the applicant's solicitors lodge with the Civil Appeals Office for the application. (These copies should be filed with, but not bound in, the bundle.) Where dates are of significance in relation to the proposed appeal, a chronology should be filed and served with the applicant's skeleton argument.
- 2.6.2. If the application is listed for oral hearing at which the Court has directed that other parties are to have the opportunity to attend, the respondent's skeleton argument must be filed and served within 14 days of receipt of the applicant's bundle. Where an application for permission to appeal is listed for hearing, with the appeal to follow if permission is granted, the timetable for skeleton arguments will be the same as in the case of an appeal, and the amount of time allowed for oral argument will depend on the time estimate for the appeal.

## **2.7. Renewed applications for permission to apply for judicial review**

- 2.7.1. The applicant's advocate (and where any respondent will be represented at the Court of Appeal hearing, that party's advocate) must file four copies of their skeleton arguments with the Civil Appeals Office with the application bundles.
- 2.7.2. This applies only to renewed applications for permission to apply for judicial review. Where permission to apply has been granted and the substantive application for judicial review has been dealt with in the High Court, any application to the Court of Appeal for permission to appeal against that decision will be governed by the general provisions for such applications.

## **2.8. The general test for permission**

- 2.8.1. There is no limit on the number of appeals the Court of Appeal is prepared to hear. It is therefore not relevant to consider whether the Court of Appeal might prefer to select for itself which appeals it would like to hear. The general rule applied by the Court of Appeal, and thus the relevant basis for first instance courts deciding whether to grant permission, is that permission will be given unless an appeal would have no real prospect of success. A fanciful prospect is insufficient. Permission may also be given in exceptional circumstances even though the case has no real prospect of success if there is an issue which, in the public interest, should be examined by the Court of Appeal. Examples are where a case raises questions of great public interest or questions of general policy, or where authority binding on the Court of Appeal may call for reconsideration. The approach will differ depending on the category and subject matter of the decision and the reason for seeking permission to appeal, as will be indicated below. However, if the issue to be raised on the appeal is of general importance that will be a factor in favour of granting permission. On the other hand, if the issues are not generally

important and the costs of an appeal will far exceed what is at stake, that will be a factor which weighs against the grant of permission to appeal.

## **2.9. A point of law**

- 2.9.1. Permission should not be granted unless the judge considers that there is a realistic prospect of the Court of Appeal coming to a different conclusion on a point of law which will materially affect the outcome of the case. An appeal on the grounds that there is no evidence to support a finding is an appeal on a point of law, but it is insufficient to show that there was little evidence.

## **2.10. A question of fact**

- 2.10.1. The Court of Appeal will rarely interfere with a decision based on the judge's evaluation of oral evidence as to the primary facts or if an appeal would involve examining the fine detail of the judge's factual investigation. Permission is more likely to be appropriate where what is being challenged is the inference which the judge has drawn from the primary facts, or where the judge has not received any particular benefit from having actually seen the witnesses, and it is properly arguable that materially different inferences should be drawn from the evidence. In such a case the judge, if he grants permission, should expressly indicate that this is the basis on which permission is given.
- 2.10.2. If a case is one which has involved considering many witnesses and/or documents, it will be especially important that the trial court considers whether to grant permission and, where it refuses permission, gives its reasons for doing so. This is because in a case of this sort the Court of Appeal is less able to assess whether an appeal is appropriate.

## **2.11. Questions of discretion**

- 2.11.1. The Court of Appeal does not interfere with the exercise of discretion by a judge unless satisfied the judge was wrong. The burden on an appellant is a heavy one (many family cases do not qualify for permission for this reason). It will be rare, therefore, for a trial judge to give permission on a pure question of discretion. He may do so if the case raises a point of general principle on which the opinion of a higher court is required.

## **2.12. Appeals from interlocutory orders**

- 2.12.1. An interlocutory order is an order which does not entirely determine the proceedings. Where the application is for permission to appeal from an interlocutory order, additional considerations arise:
  - (a) the point may not be of sufficient significance to justify the costs of an appeal;
  - (b) the procedural consequences of an appeal (e.g. loss of the trial date) may outweigh the significance of the interlocutory issue;

(c) it may be more convenient to determine the point at or after the trial.

- 2.12.2. In all cases under (a) permission to appeal should be refused. In the case of (b) and (c) it will be necessary to consider whether to refuse permission or adjourn the application until after trial so as to preserve the appellant's right to appeal.

### 2.13. Limited and conditional permission

- 2.13.1. Permission may be limited to one or more points. It may also be conditional, e.g. on some special order for costs. If a court grants permission on one or more issues only, it should expressly refuse permission on other issues. The reason for this is that the other issues can then only be raised with the permission of the Court of Appeal.
- 2.13.2. If an appellant wishes to raise additional issues for which there is no permission to appeal, written notice of this must be given to all other parties and the Court of Appeal within 28 days of permission being granted, or 28 days prior to the hearing, if this is earlier. Unless there are special reasons for making an application earlier, to avoid additional expense the application to raise an additional issue should be dealt with at the outset of the appeal and all parties should normally be prepared to argue the additional issues at that hearing. If, however, a respondent considers the additional issues will have a significant effect on the preparation necessary for, or the length of, the hearing, he may inform the appellant within 14 days of receiving the notice that he requires an application to be made prior to the hearing. An application should then be made in writing within 14 days accompanied, if necessary, by short written submissions, which should be served on the respondent. The respondent may deliver short written submissions within a further 14 days. The court will, where practicable, give its decision as to whether the additional issues can be argued prior to the hearing of the appeal.

### 2.14. Reasons

- 2.14.1. When permission is refused by the court below, the Court gives short reasons which are primarily intended to inform the applicant why permission is refused. Where permission is granted, reasons may be given which are intended to identify for the benefit of the parties and the Court hearing the appeal why it was thought right to give permission. There may be only one issue that the judge or judges giving permission considered it was necessary to draw to the attention of the parties and the Court hearing the appeal. It is a misconception to assume that, because only one aspect of the proposed appeal was mentioned in any reasons which were given, permission was granted under a misapprehension that there were not other issues to be determined on any appeal unless the reasons make this clear.
- 2.14.2. When the Lord Justice is minded to refuse permission to appeal, his or her reasons for doing so will be sent to the applicant's solicitors (or the applicant, if in person). A letter will accompany the Lord Justice's comments informing

the applicant of the right to seek an oral hearing. (An example of the letter that will be sent is at **Annex B** to this Practice Direction.) The Lord Justice will direct whether the oral hearing should be before one or two Lords Justices.

## 2.15. The Form

- 2.15.1. At **Annex C** to this Practice Direction is a generic example of the form which the judge should complete when he grants or refuses permission to appeal, giving his reasons. The reasons for the decision need only be brief, e.g. difficult point of law or pure question of fact. All parties will, on request, be given a copy of the form. It is the applicant's responsibility to annex the form to his notice of application where he has been refused permission, or to his notice of appeal where he has been granted permission.

## 2.16. Directions

- 2.16.1. When an application for permission to appeal is referred to the single Lord Justice on the papers alone and the Lord Justice decides to grant permission, the Lord Justice may give directions for the subsequent progress of the appeal.

## 2.17. Legally-aided applicants

- 2.17.1. In any case where the applicant is legally aided and the single Lord Justice is minded to refuse permission to appeal on paper, the applicant's solicitor must send to the relevant legal aid office a copy of the single Lord Justice's comments (together with any reasons he/she gave for refusing permission) as soon as it has been received from the Civil Appeals Office. The court will require confirmation that this has been done in any case where an application for permission to appeal is renewed before the full court on legal aid.

## 2.18. Applications to set aside grant of permission to appeal to the Court of Appeal

- 2.18.1. There is a heavy onus on a respondent who seeks to set aside permission. Before making such an application, the respondent must bear in mind that the fact that the appeal has no real prospect of success does not necessarily mean that permission should not have been given. The applicant will be required to establish that there was no good reason for giving permission, which may not be the same thing. In addition, it should be borne in mind, prior to making such an application, that this court is likely to be very unsympathetic to it being made if it will in effect involve the parties in exactly the same expense as determining the appeal itself, and will not necessarily save the time of the Court but risk the Court having to have two hearings when only one would be necessary had there been no application to set aside.



## 2.19. More than one level of appeal

- 2.19.1. Where there has already been one unsuccessful appeal to a court (not a tribunal) against the decision being challenged, for example from a District Judge to a Circuit Judge or from a Master to a High Court Judge, and the application is for permission for a further appeal to the Court of Appeal, a more restrictive approach to the test for permission to appeal should be adopted. Permission should be granted only if the case raises a point of principle or practice or the case is one which for some other compelling reason should be considered by the Court of Appeal.

## 3. SKELETON ARGUMENTS

### 3.1. Introduction

- 3.1.1. Skeleton arguments are, as their name implies, a very abbreviated note of the argument and in no way usurp any part of the function of oral argument in court. They are an *aide-memoire* for convenience of reference before and during the hearing.

### 3.2. When are they required?

- 3.2.1. Skeleton arguments are compulsory in the case of all appeals (and full-court applications) to the Civil Division of the Court of Appeal, and in the case of all applications for permission to appeal (heard by a single judge), except (i) in cases which are heard as a matter of great urgency and (ii) any individual case where the court otherwise directs. Litigants in person are strongly encouraged to provide skeleton arguments.

### 3.3. The necessity for skeleton arguments

- 3.3.1. Before the appeal is called on, the judges will normally have read the notice of appeal, any respondent's notice and the judgment appealed from. The purpose of this pre-reading is not to form any view of the merits of the appeal, but to familiarise themselves with the issues and scope of the dispute and thereby avoid the necessity for a lengthy, or often any, opening of the appeal.
- 3.3.2. This process is assisted by the provision of skeleton arguments, which are much more informative than a notice of appeal or a respondent's notice, being fuller. During the hearing of the appeal itself, skeleton arguments enable much time to be saved because they reduce or obviate the need for the judges to take a longhand note, sometimes at dictation speed, of the submissions and authorities and other documents referred to. Furthermore, in some circumstances a skeleton argument can do double duty not only as a note for the judges but also as a note from which counsel can argue the appeal. It cannot be over-emphasised that skeleton arguments are not formal documents. They are simply a tool to be used in the interests of greater efficiency.



### 3.4. Form and content

- 3.4.1. To facilitate filing of skeleton arguments in the Civil Appeals Office, advocates must ensure:
  - (a) that their names are typed at the end of their skeleton arguments; and
  - (b) that the correct Court of Appeal reference number is shown on the front page. Where a skeleton argument covers two or more appeals, or applications, which are due to be heard together the reference numbers for all of them must be given.
- 3.4.2. The skeleton arguments should contain a numbered list of the points which the advocate proposes to argue, stated in no more than one or two sentences, the object being to identify each point, not to argue it or to elaborate on it. Each listed point should be followed by full references to the material to which the advocate will refer in support of it, i.e. the relevant pages or passages in authorities, bundles of documents, witness statements, transcripts and the judgment under appeal. It should also contain anything which the advocate would expect to be taken down by the court during the hearing, such as propositions of law, chronologies of events, lists of *dramatis personae* and, where necessary, glossaries of terms. If more convenient, these can of course be annexed to the skeleton argument rather than being included in it. Both the court and the opposing advocate can then work on the material without writing it down, thus saving considerable time and labour.

### 3.5. Length

- 3.5.1. The purpose of a skeleton argument is to identify and summarise the points, not to argue them fully on paper. A skeleton argument should therefore be as succinct as possible. In the case of a normal length appeal against a final order (i.e. an appeal in the range of one to two days), skeleton arguments should not normally exceed 10 pages in the case of an appeal on law and 15 pages in the case of an appeal on fact.
- 3.5.2. In the case of points of law, the skeleton argument should state the point and cite the principal authority or authorities in support, with references to the particular page(s) where the principle concerned is enunciated. In the case of questions of fact, it should state briefly the basis on which it is contended that the Court of Appeal can interfere with the finding of fact concerned, with cross-references to the passages in the transcript or notes of evidence which bear on the point.

### 3.6. Chronologies

- 3.6.1. The court wishes to emphasise the importance of advocates for the appellant preparing a written chronology of events relevant to the appeal. If practicable the chronology should be agreed with the respondent(s). This should be a separate document in order that it can readily be consulted in conjunction with other papers. The appellant's advocate's skeleton argument must be

accompanied by the written chronology of events relevant to the appeal cross-referenced to the core bundle or appeal bundle.

### **3.7. Respondent's skeleton argument**

- 3.7.1. In the case of respondents who wish only to contend that the judgment of the court below is correct for the reasons given, the respondent's advocate can send in a letter to that effect in place of a skeleton argument. Where, however, the respondent is going to rely on any authority or refer to any evidence which is not dealt with in the judgment of the court below, a respondent's skeleton argument must be filed. The respondent's advocate must always file a skeleton argument in any case where there is a respondent's notice.

### **3.8. Skeleton arguments and litigants in person**

- 3.8.1. In the interests of avoiding placing undue burdens on them litigants in person are not obliged to file skeleton arguments in support of their appeals and applications, but are strongly encouraged to do so. Where the litigant in person does decide to put in a skeleton argument he/she must;
- (a) file four copies of it with the Civil Appeals Office within the time limit which would apply if an advocate were acting; and
  - (b) provide the respondent's advocate with a copy of it no later than the date on which the copies are filed with the Civil Appeals Office.

### **3.9. Timetable for skeleton arguments**

- 3.9.1. If any advocate does not have instructions or all necessary papers sufficiently far in advance to be able to complete and file the skeleton argument on time, he/she should write to the master immediately.

### **3.10. Applications for extensions of time to file skeleton arguments**

- 3.10.1. Applications for extensions of time must be made by the advocate personally (not by his or her clerk, or instructing solicitor). Such applications should be made by letter or fax setting out the reasons why the prescribed timetable could not be complied with and what further time is required. Such letters should be filed with, or posted to, the Case Section Support and Documents Room (Room E307, Royal Courts of Justice, Strand, London WC2A 2LL); the fax number is 0171-936 6810. That office will then pass the letter or fax to the master or the relevant Lord Justice.

### **3.11. Skeleton arguments and time limits**

- 3.11.1. The court expects the time limits to be strictly adhered to and extensions of time will only be granted if it is satisfied that there are good reasons for doing so.

### **3.12. Skeleton arguments and the Short Warned List**

- 3.12.1. In the case of appeals and applications assigned to the Short Warned List, applications for extensions of time for filing skeleton arguments will normally be dealt with by the master and the letter or fax should therefore be addressed to him. Requests for cases to be removed from the Short Warned List and given a fixture will not automatically relieve advocates from the obligation to file skeleton arguments. In most instances, before deciding whether the case should be taken out of the Short Warned List, the master or supervising Lord Justice will need to see the skeleton arguments in order to assist him to determine whether the case is one which satisfies the test for being given a fixture or second fixture. Where skeleton arguments are required for that purpose, the Civil Appeals Listing Office will inform the advocates concerned.

### **3.13. Skeleton arguments for appeals and full court applications**

- 3.13.1. Where permission to appeal is granted by the Court of Appeal, the appellant (and any respondent who has filed a skeleton argument in response to the permission application) may use the same skeleton arguments for the purposes of the appeal (subject to making any minor amendments which they consider necessary, such as changes to page references), or they may prepare fresh skeleton arguments for the purposes of the appeal.
- 3.13.2. The appellant's solicitors must include with the appeal bundle, or the bundle for any full court application, four copies of their skeleton argument. (These copies should be filed with, but not bound in, the bundle.) The appellant's solicitors must also include a copy of that skeleton argument with the set of bundles served on the respondent. Appellants are reminded of the obligation to serve a set of bundles on the respondent at the same time as the appeal bundles are filed with the Civil Appeals Office.
- 3.13.3. The respondent's solicitors must file with the Civil Appeals Office four copies of their skeleton argument within 21 days of the date on which the appellant's bundle was served on them or, if earlier, not later than 14 days before the appeal hearing. No supplemental or revised skeleton arguments may be filed without the permission of the Court. Permission will only be granted if there are good reasons for doing so.

### **3.14. Application or appeals in linked or similar cases**

- 3.14.1. Where advocates are aware that an application or appeal in which they are instructed is linked with another case, or raises issues similar to or connected with, those raised in other applications and appeals, they should inform the master, by letter, as soon as practicable.

## 4. CASE MANAGEMENT

### 4.1. Supervising Lords Justices

- 4.1.1. A group of supervising Lords Justices maintain oversight of groups of appeals. This involves them in specific case management as well as keeping abreast of developments in their areas of litigation. They will welcome general information from the professional bodies and specialist associations about difficulties or initiatives of which the Court of Appeal should be aware. The membership of the team will change from time to time. The names of the current supervising Lords Justices and their areas of responsibility are set out in **Annex D**.

### 4.2. Case management

- 4.2.1. When it appears to the court that it would for any reason be advantageous to do so, the Court will invite the parties' advocates and any party acting in person to attend a directions hearing held in advance of the main hearing. Such directions hearings may be conducted by the full Court, a single Lord Justice or the master.
- 4.2.2. Supervising Lords Justices will give directions concerning the progress and future conduct of appeals on their own initiative wherever they think fit, and most requests from parties for expedition or for other directions to be given will be referred to the relevant supervising Lord Justice.
- 4.2.3. So far as possible, directions will be given on paper, in the interests of saving costs. In those cases where a hearing is necessary, it will be conducted before the supervising Lord Justice in private (unless otherwise directed) and therefore both solicitors and counsel will have a right of audience. It will rarely be necessary for more than one counsel, or, where counsel has not been briefed, for more than one solicitor to attend on behalf of any particular party.
- 4.2.4. Directions hearings will not be allowed to develop into satellite litigation. They are intended to be a speedy and informal means of arriving at practical solutions to unresolved problems relating to the preparation for and future conduct of the appeal. Attempts at "point scoring" will not be tolerated. The supervising Lord Justice will have read in advance the judgment under appeal, the notice of appeal and any respondent's notice, together with any correspondence or other documents which raise or define the issues to be decided at the directions hearing. Advocates should therefore proceed straightaway to make their points about those issues briefly and without any opening or preamble. The costs of such directions hearings will be in the discretion of the Court in the usual way. Although a shorthand note of the hearing will be taken, a detailed or lengthy judgment will not normally be given.
- 4.2.5. To ensure that all requests for directions are centrally monitored and correctly allocated, all requests for directions or rulings (whether relating to listing or any other matters) should be made to the Civil Appeals Listing Office. Those seeking directions or rulings must not approach the supervising Lord Justice either directly, or via his or her clerk.

- 4.2.6. If directions are requested or needed close to the hearing date, the matter will normally be referred to the presiding Lord Justice of the court in which the appeal is due to be heard. He or she will then make the necessary directions as a single Lord Justice or refer the matter to the full court.
- 4.2.7. The management of the list will continue to be dealt with by the listing officer under the oversight of the master. Subject to any direction given in any individual case by the full Court or by a Lord Justice, the master and deputy masters will continue to exercise their powers to give directions.
- 4.2.8. The Court may at any time give directions whether in individual cases or through information leaflets in relation to the documents to be produced. It may also give directions as to the manner in which documents are to be presented and as to other matters incidental to the conduct of the appeal, as appear best adapted to secure the just, expeditious and economical disposal of the appeal.
- 4.2.9. Directions regarding documentation may be given without a hearing. The master may at any time issue a notice requiring the parties to an appeal or application to attend before him. Any party given notice of an appeal or application may apply at any time for an appointment before the master.

## **5. RECEIVING AND PROCESSING APPEALS AND APPLICATIONS**

### **5.1. The principal features of the system**

- 5.1.1. In the case of notices of appeal and applications which are filed by personal attendance at the Civil Appeals Office Registry, the staff on the counter will not carry out any check on whether permission to appeal is required or whether there is any other jurisdictional bar to the appeal or application being accepted. The counter staff will carry out a preliminary check on the following:
  - (a) whether the relevant time limits have been complied with;
  - (b) whether a copy of the order being appealed has been filed;
  - (c) in the case of applications (other than in time applications for permission to appeal), whether the statement of truth in the application notice has been signed and whether a witness statement or an affidavit in support of the application is included with the papers; and
  - (d) whether the correct court fee has been paid.
- 5.1.2. If the person dealing with the matter at the counter considers that the appeal is out of time, or that any of the other requirements listed above have not been complied with, he/she will inform the solicitor, or solicitor's clerk, of this and will not take the papers in. If the solicitor who has the conduct of the case considers that all relevant time limits and other formalities have been complied with, that solicitor (not the clerk) should telephone the Civil Appeals Office or send a letter or fax, and the matter will be referred to the master.

- 5.1.3. If the member of the staff at the counter considers that the time limits and other formalities have been complied with, he/she will accept the papers; but they will then be referred to an office lawyer and, if necessary, the master. If it is considered that, for any reason, the appeal or application has not been validly instituted or is one which the Court has no jurisdiction to entertain, the appellant's/applicant's solicitor (or the appellant/applicant if in person) will be informed of this, normally by letter or telephone. Any query concerning the office lawyer's decision will be referred to the master.
- 5.1.4. It follows from the arrangements set out above that the fact that the staff in the Civil Appeals Office have accepted the notice of appeal or application concerned must not be taken to be an indication, still less a guarantee, that the appeal or application is validly instituted or is one which the court has jurisdiction to entertain.
- 5.1.5. Appeals and applications filed by post will be similarly dealt with. The staff in the registry will carry out the preliminary check on time limits and formalities, and then the papers will be referred for legal scrutiny.
- 5.1.6. If, after the preliminary check, the appeal or application is considered to be in order, it will be set down (i.e. entered in the records of the Court of Appeal) and given a reference number. The appellant's/applicant's solicitors (or the appellant/applicant if in person) will then be informed by a letter from the Civil Appeals Office that the appeal/application has been set down; that letter will give the appeal/application reference number (which should be quoted when writing or telephoning) and will specify what further steps must be complied with by the appellant's/applicant's side and within what timetable. When an appeal is set down the appellant must inform the respondent of the reference number and the timetable.
- 5.1.7. It is important to emphasise that these procedures for vetting appeals and applications are intended to assist the court in the management of its case load and to ensure, so far as possible, that invalid appeals or applications are not accepted. They do not, however, relieve any party (whether represented or acting in person) of the obligation to comply with the requirements of all of the relevant rules and directions and that party's solicitor, or the party himself/herself, as the case may be, will remain solely responsible for all consequences, including the costs, of any failure to comply with any relevant requirement.
- 5.1.8. It is unwise for solicitors, or litigants in person, to leave it until the last day, or even close to the last day, of the period concerned before posting or bringing the requisite documents to the Civil Appeals Office.

## 5.2. Notice of appeal

- 5.2.1. Except for appeals and decisions of the Social Security Commissioners on questions of law and appeals from certain tribunals (see RSC Order 59 rule 21 and Order 61), there is a single time limit for serving the notice of appeal of four weeks from the date on which the judgment or order of the court below

was sealed or otherwise perfected, unless this limit is abridged or extended by order of the court below, the master, a Lord Justice or the Court of Appeal (see RSC Order 59 r. 4(1)). Such applications are ordinarily heard by the master.

### 5.3. Contents of Notice of Appeal

- 5.3.1. A notice of appeal which complies fully with RSC Order 59 rule 3 will both define and confine the area of controversy on the hearing of the appeal, thus saving both time and expense to the parties.
- 5.3.2. The notice of appeal must contain a certificate stating which track the case is currently allocated to in the Court below.
- 5.3.3. There is no form of notice of appeal fixed by statute or the rules. If a notice of appeal does not contain the following suggested statement or certificate, it will not for that reason alone be invalid. However the following suggestions are recommended in order to save the parties time, trouble and expense.
  - (a) On setting down an appeal to the Court of Appeal one copy of the notice of appeal should be endorsed with a certificate of the solicitors for the appellant (or the appellant himself if in person) stating the date or dates on which notice of appeal was served on the party or parties named as respondents and on the county court or tribunal as appropriate. The officer receiving the notice of appeal should satisfy himself that it was served in due time on the respondents and on the appropriate court or tribunal where required and must refuse to set the appeal down if it appears that the notice was served out of time. The copy of the notice of appeal containing the certificate as to service shall be in the custody of the officer in attendance on the Court of Appeal when the appeal comes on to be heard.
  - (b) Notices of appeal should contain, after the signature by the solicitor for the appellant, a statement as follows:
 

“No notice as to the date on which this appeal will be in the list for hearing will be given: it is the duty of solicitors to keep themselves informed as to the state of the lists. A respondent intending to appear in person should inform the Civil Appeals Office Registry, Royal Courts of Justice, WC2A 2LL, of that fact and give his address; if he does so he will be notified to the address given of the date when the appeal is expected to be heard.”

The form of the notice of appeal will be found at Annex E.

### 5.4. The list of appeals

- 5.4.1. RSC Order 59 rule 3(4) requires the notice of appeal to specify the list of appeals in which the appellant proposes that the appeal shall be set down. There are final and interlocutory lists as described in Annex F.



## 5.5. Setting down the appeal

- 5.5.1. Order 59 Rule 5 requires the appellant to 'set down' the appeal within seven days after the later of (i) the date on which service of the notice of appeal was effected, or (ii) the date on which the judgment or order of the court below was sealed or otherwise perfected. The time limit is important and will be strictly enforced. 'Setting down' means filing the notice of appeal with the court, accompanied by the documents specified in RSC O.59 r.5(1). Any application to extend time for setting down must be made to the master.

## 5.6. Respondent's Notice

- 5.6.1. RSC O.59 r.6 makes provision for the service of a respondents' notice within 21 days after the service of the notice of appeal and its subsequent filing. The content of any such notice is as important as that of the notice of appeal and for the same reason, it defines and confines the scope of the argument on the appeal, enables the members of the Court to inform themselves in advance of the hearing of what the appeal is about and so saves both time and expense. Again the time limit is important and will be strictly enforced, any application for an extension of time must be made to the master unless the appeal is before the Court itself at the time when the application is made.

## 5.7. Amendment of notice of appeal and respondent's notice

- 5.7.1. It can happen that, on reflection, it is thought desirable to amend such notices. Rule 7 allows this to be done without leave at any time before the appeal first appears in the documents list. An application for permission to amend should be made to the master on notice to all other parties, unless the appeal is already before the Court for some other purpose.

## 5.8. Appearance of appeal or application in the documents list

- 5.8.1. Once an appeal or application appears in the document list, the appellant has fourteen days in which to file the various documents specified at paragraph 7.2. and 7.3. A notice of appeal and respondent's notice may be amended as of right before the case enters the documents list, but thereafter only with permission.

## 5.9. Constitution of Courts

- 5.9.1. Section 54(4) of the Supreme Court Act 1981 and the Court of Appeal (Civil Division) Order 1982, SI 1982/543, have authorised the constitution of Courts consisting of two judges instead of three in certain specified circumstances, mainly appeals from interlocutory decisions, which includes most family and divorce matters, and appeals from the county courts. It will sometimes happen that, whilst an appeal is of such a nature that there is jurisdiction for a two-judge Court to hear it, issues of complexity or general importance arise such that a three-judge Court is desirable. Should this appear to the master to be the case, he will list the appeal for hearing by a three-judge Court. In addition

the parties that this is the case may apply to the master for a special listing before a three judge Court, but should not adopt this course unless there are compelling reasons for so doing.

### **5.10. Documents needed for filing an application**

- 5.10.1. Upon filing an application, the following documents are to be filed in duplicate in addition to the relevant court fee:
  - (a) the application notice;
  - (b) the order under appeal;
  - (c) in the case of an application for permission to appeal, the order of the court below refusing such permission and any written reasons given;
  - (d) any witness statement or affidavit in support of the application. In the case of an application for permission to appeal, the statement of truth must be signed or a witness statement or affidavit be filed only if the application is made after the expiry of the time limit or if a stay of execution or other remedy is requested;
  - (e) In the case of an application for permission to appeal, the draft notice of appeal or document stating the grounds of the proposed appeal.
- 5.10.2 The application notice must contain a certificate stating which track the case is currently allocated to in the Court below.
- 5.10.3 The forms of notice of application are at Annex G.

### **5.11. Internal appeals and referrals**

- 5.11.1. The master has power to refer matters to a single judge and the single judge power to refer matters to the Court of Appeal. The judicial decision of the master may be appealed to a single Lord Justice and the determination of the single Lord Justice may be appealed to the full Court of Appeal. However, in respect of a determination by the master, there is no right of appeal to the Court of Appeal without the leave of that Court if the master's determination has been reviewed by the single Lord Justice.

### **5.12. Time estimates**

- 5.12.1. In all cases where there are solicitors acting for the appellant they must file with the Civil Appeals Office within 14 days after an appeal has been entered in the records of the Court, an estimate of the length of the appeal hearing (exclusive of judgment). That time estimate must be on the form sent to the solicitors with the letter from the Civil Appeals Office acknowledging that the appeal has been entered in the records of the Court. The procedure is as follows:
  - (a) form must be duly completed and signed by the appellant's advocate.

- (b) Within that 14 day time limit the original of that completed form must be sent or delivered to the Civil Appeals Office and a photocopy must be sent to the respondent's advocate, either directly or through the respondent's solicitors.
  - (c) The respondent's advocate must consider the appellant's estimate as soon as it has been received and notify the Civil Appeals Office within 14 days (by filing the photocopy of the form with the respondent's section of it completed and signed) if his/her own estimate differs from that of the appellant's advocate. In the absence of such notification the respondent's advocate will be deemed to have accepted the estimate from the appellant's side.
- 5.12.2. Where the court directs that an application for permission to appeal shall be listed for hearing with the appeal to follow if permission is granted and the court has not specified what length of time is to be allowed for oral argument, the appellant's advocate must provide a certified time estimate of the length of the hearing on the assumption that permission will be granted and the court will hear argument on the appeal. The procedure is the same as in paragraph 5.12.1., except that (1) the time-limit will be 14 days after the date of the direction that the application be listed with appeal to follow, and (2) the estimate need not be on any special form.
- 5.12.3. A copy of the certified estimate must be placed and kept with each advocate's papers. Each time the advocate for any party is asked to give any advice or to deal with anything in connection with the appeal he/she must check whether the estimate is still correct. The fact that a time estimate has been filed in the case does not prevent the Court from allocating its own time estimate.

### 5.13. Revised estimates

- 5.13.1. If, for any other reason, the original estimate requires revision, the Civil Appeals Office should be informed immediately in writing by the advocate concerned.

### 5.14. Appeal bundles

- 5.14.1. On filing the appeal bundles with the Civil Appeals Office, the appellant's solicitors must supply the respondent's solicitors (or the respondent, if in person) with a set of the appeal bundles in exactly the same form as the bundles filed for the use of the Court of Appeal. The costs of provision of bundles for the respondent shall be borne by the appellant initially, but will form part of the costs of the appeal.
- 5.14.2. Appellants will not, however, be required to furnish respondents with transcripts of judgment and evidence. The appellant's solicitors (or the appellant, if in person) must notify the respondent's solicitors (or the respondent, if in person) of what transcripts have been provided for the court so that they can order transcripts for their own use and also make representations if they consider that further transcripts will be required.

Respondents must order and pay for transcripts for the use of their solicitors and advocates (see Section 7 *Documentation*).

## 6. LISTING AND HEAR-BY DATES

### 6.1. Introduction

- 6.1.1. Listing is carried out for the whole of the Court of Appeal rather than for individual courts. In order to ensure, so far as possible, that cases are heard in their proper place in the list, each appeal is given a target date (known as its “hear-by date”). Because some types of appeal are inherently more urgent than others (for instance, family cases) different hear-by dates are set for different species of appeals; a list of the current hear-by dates is annexed to this practice direction at **Annex H**. The aim is that appeals should be listed so that they are heard neither significantly earlier, nor significantly later, than their respective hear-by dates. In the interests of flexibility the listing officer has a discretion to fix the hearing date within a reasonable band on either side of the hear-by date. That system will not always apply to appeals assigned to the Short Warned List; such cases may be put into the list considerably earlier than their hear-by dates and may not be called on for hearing until some time thereafter.
- 6.1.2. In relation to applications for permission to appeal or renewed applications for permission to apply for judicial review it will not be possible, save in exceptional circumstances, to list such cases to suit advocates availability.
- 6.1.3. Appeals will only be expedited so as to be heard well in advance of their hear-by dates, or deferred significantly thereafter, if there is a judicial direction to that effect. Requests for expedition should be made to the master, initially by letter: see paragraph 6.6. below. Informal requests for listing significantly before the hear-by date may be made to the Listing Officer.

### 6.2. Fixtures

- 6.2.1. A “fixture” means a hearing date fixed in advance: it means that the hearing is fixed to begin on a specified date or on the next following sitting day at the option of the court. Appeals (other than (a) those assigned to the Short Warned List, (b) those given second fixtures; and (c) cases where special listing directions have been given) will be given fixtures. If it does not prove to be possible for the court concerned to take the appeal on the specified date or on the following sitting day, and the Listing Office is unable to transfer the appeal to another court, the hearing date will have to be rearranged.

### 6.3. Second fixtures

- 6.3.1. Some appeals are designated by the court as “second fixtures.” A second fixture is a hearing date arranged in advance on the express basis that the list is fully booked for the period in question and therefore the case will be heard

only if a suitable gap occurs in the list. Any second fixture for which space does not become available will be given a first fixture on the earliest convenient date.

## **6.4. The Short Warned List**

- 6.4.1. Cases assigned to the Short Warned List are put “on call” from a specified date and will then be called on for hearing as and when gaps occur in the Court of Appeal list. Short Warned List cases are not called in chronological order of setting down or assignment to that list; which case will be called on will depend upon the length of the gap, the subject-matter of the case and the constitution of the court. Because the number of last-minute settlements in the Court of Appeal varies enormously, it is not possible to predict when any particular Short Warned List case will be called on for hearing.

## **6.5. Short Warned List (procedure)**

- 6.5.1. The system applicable to cases assigned to the Short Warned List is as follows.
- (a) The parties’ solicitors are notified by letter from the Civil Appeals Office that the case has been assigned to the Short Warned List.
  - (b) It is the duty of the solicitors to all parties (whether appellants, or respondents) on receipt of that letter from the Civil Appeals Office to inform their advocates forthwith of the fact that the case has been assigned to the Short Warned List.
  - (c) The Listing Office will notify counsel’s clerks by telephone of the date from which the case will be “on call” and it will remain in the Short Warned List liable to be called on either on half a day’s notice or (if the master has so directed, on 48 hours’ notice). The listing officers will put Short Warned List cases “on call” in such numbers and from such dates as the state of the list requires.
  - (d) It is the duty of solicitors to inform their lay clients when a case has been assigned to the Short Warned List and what the consequences of that will be. It is important that this is done so that the clients are not taken by surprise if, as is quite likely, they have to be represented at the Court of Appeal hearing by a different advocate. The supervising Lord Justice or the master will consider applications to remove appeals from the Short Warned List and give them a fixture or second fixture provided that the application is made at the correct time and on valid grounds. Any such application must be made as soon as the solicitors have been notified that the appeal has been assigned to that list (i.e. immediately on receipt of the letter referred to in paragraph (a) above). It is far too late to do so when, or after, the case has been put “on call.”
- 6.5.2. It is not a valid ground for taking a case out of the Short Warned List that the parties’ advocates of first choice may not be available to represent them at the appeal hearing. A case assigned to the Short Warned List will only be taken

out of that list and given a fixture or second fixture if it is, viewed objectively, one which cannot be properly presented save by a particular advocate.

- 6.5.3. It follows that if any party's advocate of first choice is, for whatever reason, not available to appear on the date for which a Short Warned List case is called on, then a substitute advocate must be instructed immediately. Time should not be spent asking that the case should not be called on for that particular date because the advocate is unavailable.
- 6.5.4. Between 75 per cent and 80 per cent, of cases are given fixtures. The master is charged with the duty of selecting the minority of cases which, in his view, can reasonably be expected to be mastered by an advocate other than the one originally instructed on half a day's notice or, in the case of those so designated, on 48 hours' notice. These are then assigned to the Short Warned List and the assignment notified to the parties.
- 6.5.5. The supervising Lord Justice or the master will always consider applications to remove appeals from the Short Warned List on the grounds that they are not of the appropriate character. However, such applications must be made as soon as the parties are notified that the appeal has been assigned to that list. It is far too late to do so when, or after, notification is given that such an appeal is on call.
- 6.5.6. Once an appeal is "called on for hearing" it becomes the immediate personal professional duty of the advocate instructed in the appeal to take all practicable measures with a view to ensuring that his lay client is represented at the hearing by the advocate who is fully instructed and able to argue the appeal.
- 6.5.7. The court has power under section 51 of the Supreme Court Act 1981, as substituted by section 4 of the Courts and Legal Services Act 1990, to order the advocate who has failed in his duty to pay any "wasted costs." Further or alternatively the court has power to refer counsel's conduct either personally or vicariously by his clerk, to the Bar Council for consideration of whether disciplinary proceedings should be taken.

## 6.6. Expedition

- 6.6.1. In the interests of saving costs the supervising Lord Justice or master decide as many requests for expedition as possible on paper without a hearing. Requests for expedition should initially be made to the master by letter (or, if time is short, by fax) setting out succinctly and in short compass the grounds on which expedition is sought, and, if it is granted, how soon the appeal needs to be heard. At the same time a copy of that letter (or fax) must be sent to the other party's solicitors so that they know at the earliest possible stage that an expedited hearing is being sought, and why.
- 6.6.2. Subject to the qualification referred to below, the letter to the master requesting expedition should be accompanied by a transcript or note of the judgment being appealed, draft grounds of appeal, and a realistic advocate's time estimate of the anticipated length of the appeal. Where, however, a very

early hearing is needed (i.e. a hearing within days), the letter requesting expedition should be sent to the master (with copy to the other side) without waiting for the transcript or note of judgment and the draft grounds of appeal, so that the court has the maximum possible notice that such a high degree of expedition is sought.

- 6.6.3. Because of the immense pressures on its lists the Court of Appeal is no longer able to expedite as many cases as in the past. Attention is drawn to the current practice of the court as summarised in *Unilever Plc. v. Chefaro Proprietaries Ltd. (Practice Note)* [1995] 1 WLR 243 and paragraph 6.7.

## 6.7. Orders for expedited hearing of an appeal

- 6.7.1. There is a time-lag between the date an appeal is set down and the date it is heard. The court has in general been sparing in its grant of applications for expedition, and has imposed a high threshold which a party must cross before its application for an expedited hearing will be granted. Where that threshold is crossed and an expedited hearing is ordered, the court will in fixing the date for that hearing give weight not to the wishes of the parties to that appeal but to the interests of other parties adversely affected by the order. It will do its utmost, for example, to avoid cancelling a fixture that has already been cancelled on a previous occasion. The greater the expedition ordered, the less regard can usually be had to the parties' preferences concerning dates.
- 6.7.2. Expedition will not normally be granted unless the party seeking it is willing, if necessary, to change advocate. In an appropriate case the respondent may also have to change advocate; this possible adverse consequence will cause the court to lean against the making of an order save in a clear case. In granting an application for expedition, the court may seek to mitigate the disruption caused to other parties by giving procedural directions not currently given in the ordinary run of cases with a view to ensuring that the appeal is heard in the minimum time necessary to achieve a just result.
- 6.7.3. The following guidance must be flexibly applied according to the facts of the particular application for expedition. However, some appeals are so urgent that justice can only be done if the appeal is heard immediately or within days. This category includes:
- (a) appeals against committal orders, particularly if the adverse finding is challenged or the sentence is short;
  - (b) cases in which children are likely to suffer extraordinary prejudice (that is prejudice beyond that almost inevitably consequent on involvement in proceedings) if a decision is delayed;
  - (c) cases under the 1980 Hague Convention on the Civil Aspects of Child Abduction (Cmnd.8281);
  - (d) asylum appeals concerning return to third countries, where the right to return may be jeopardised by delay;



- (e) cases in which the execution of a possession order is imminent and which appear to have some merit;
  - (f) cases in which a decision is about to be taken or implemented which will be irrevocable or confer rights on third parties;
  - (g) cases in which the publication of allegedly unlawful material is imminent;
  - (h) appeals against judicial decisions made in the course of continuing proceedings.
- 6.7.4. In all these cases, not least (e), the court will expect the parties involved to approach it as soon as they learn of the order which it is sought to challenge. When the approach is left until the eleventh hour, or the necessary materials are not provided, it may well prove impracticable to arrange a hearing.
- 6.7.5. The court recognises the need to try to arrange expedited hearings where it appears that, without such expedition,
- (a) a party may lose its livelihood, business or home or suffer irreparable loss or extraordinary hardship;
  - (b) the appeal will become futile;
  - (c) the resolution of numerous cases turning on the outcome of a case under appeal, will be unreasonably delayed, or the orderly management of class or multi-party litigation in a lower court will be disrupted;
  - (d) widespread divergences of practice are likely to continue, with the prospect of multiple appeals until the correct practice is laid down;
  - (e) there would be serious detriment to good public administration or to the interests of members of the public not concerned in the instant appeal.
- 6.7.6. When these criteria are not satisfied, the court will not ordinarily grant an expedited hearing of appeals on preliminary issues, or substantial interlocutory appeals (even where this means the loss of a trial date), or appeals concerning the construction of a standard document.

## **7. DOCUMENTATION**

### **7.1. Directions of the Court of Appeal concerning bundles of documents for the purposes of appeals and full court applications.**

- 7.1.1. It is the duty of those acting for appellants to ensure that the bundles of documents filed for the use of the court comply with the relevant rules and directions. It is also their duty to file the bundles within the time limit prescribed by R.S.C. Ord. 59, rule 9(1). Neglect of these duties may lead to the appeal or application being dismissed. For that reason, attention is drawn, in particular, to the following requirements.

## **7.2. Documents for applications**

- 7.2.1. In general, the following are required:
- (a) The document used to institute the application to the Court of Appeal.
  - (b) The notice of appeal or draft notice of appeal.
  - (c) The Order of the court below being appealed.
  - (d) Any order of the court below which refused permission to appeal and the form giving reasons.
  - (e) Any affidavit or witness statement lodged with the Civil Appeals Office in support of the application.
  - (f) Transcripts or notes of judgment (explained in more detail under appeals heading) save that in the case of applications for permission to appeal, in the absence of a transcript, the note of judgment does not need to be approved by the judge.
  - (g) Claim form, statements of case.
  - (h) Any application notice (or case management documentation) relevant to the subject of the appeal.
  - (i) If the order or judgment arose from an appeal from or setting aside of another judge's order (e.g. from District Judge to Circuit judge), the first order, the reasons given and the application notice used to appeal from that order.
  - (j) Relevant affidavits, witness statements, summaries, experts' reports and exhibits.
  - (k) Such other documents as the Court may direct.

## **7.3. Documents for appeals**

- 7.3.1. In general, the following are required:
- (a) The notice of appeal.
  - (b) Any respondent's notice.
  - (c) Any supplementary notice served under rule 7.
  - (d) The judgment or order of the court/tribunal below.
  - (e) The document by which the proceedings in the court below were begun (for civil courts, usually a claim form).
  - (f) Any application notice which led to the order which is the subject of the appeal.
  - (g) The statements of case (pleadings) if any, and in Admiralty cases, the preliminary acts, if any.

- (h) The approved transcript of the judge's reasons for giving the judgment or making the order of the court/tribunal below. If that is not available, the advocates' note of the judge's reasons approved, wherever possible, by the judge.
- (i) The parts of the transcript of evidence given in the court below which are relevant to any question at issue on the appeal. In the absence of an approved transcript, the relevant parts of the judge's note of the evidence.
- (j) If the order or judgment arose from an appeal from or setting aside of another judge's order (e.g. from District Judge to Circuit judge), the first order, the reasons given and the application notice used to appeal from that order.
- (k) The relevant affidavits, witness statements summaries, experts' reports, exhibits or parts of exhibits, as were in evidence in the court below.
- (l) Any order, whether of the Court of Appeal or court below, granting permission to appeal and, in the case of the court below, the form giving reasons.
- (m) Where permission to appeal was granted by the Court of Appeal at an oral hearing, the transcript of that decision.

## **7.4. Applications and Appeals**

- 7.4.1. Appellants/applicants are notified of the number of judges (including in Admiralty cases, assessors) due to hear their case. The appellant/applicant must provide sufficient copies and bundles for each judge.

## **7.5. Transcripts**

- 7.5.1. All transcripts lodged (whether of evidence or of the judgment) must be official copies provided by the shorthandwriters or transcribers. Appellants are not permitted to file photocopies which they have had taken.
- 7.5.2. Where proceedings in any court have been officially recorded in shorthand, by stenographic machine, or on tape, official transcripts of the judgment, and, where relevant, the evidence, must be filed with the Court of Appeal, and, unless the court otherwise directs, notes of judgment or evidence will not be accepted. Normally the court will only accept notes in place of transcripts where the case requires such an urgent hearing that there is not time to obtain them.
- 7.5.3. Where, however, either in any division of the High Court or in a county court, the judge handed down his/her judgment, photocopies of the text of that handed-down judgment (signed by the judge) can be lodged for the purposes of an appeal to the Court of Appeal in place of official transcripts of the judgment.

## 7.6. Transcripts of Court of Appeal judgments

- 7.6.1. Court of Appeal (Civil Division) transcripts are held in the Supreme Court Library. Parties requiring copies of them can obtain them from the shorthand writers or transcribers on payment of the usual charges. Advocates who propose to refer to such transcripts should satisfy themselves that arrangements are being made for copies to be available to the Court and to other advocates concerned.

## 7.7. Notes of judgment

- 7.7.1. In cases where the judge's judgment was not officially recorded and was not handed-down, the advocate or the solicitor who appeared for the appellant in the court below must prepare a note of the judge's judgment, agree it (if possible) with the advocate or solicitor who appeared for the respondent, and submit it to the judge for approval. If the parties' advocates (or solicitors) are not able to reach agreement about the note speedily, they should submit their rival notes of judgment to the judge, stating that they are unable to agree a note. In the case of an application for permission to appeal the applicant's advocate's note of judgment does not have to be approved by either the respondent's advocate or judge.
- 7.7.2. Where the note of judgment has not been received back from the judge by the time the bundles are ready to be filed, copies of the unapproved note of judgment should be filed with the bundles; the approved note of judgment should then be substituted as soon as it is to hand. In those cases where the appellant is appealing in person, advocates or solicitors for the respondent must make available their notes of judgment without charge, whether or not the appellant has made any note of the reasoned judgment.

## 7.8. County court notes of evidence

- 7.8.1. In county court cases, where the evidence was not officially recorded, a typed copy of the judge's notes of evidence must be obtained from the county court concerned and a photocopy of those notes must be included in each bundle. Directives have been sent to county courts asking them to arrange for the notes of evidence to be transcribed as soon as the notice of appeal has been served on the county court (unless the evidence was tape recorded). The notes should then be ready for despatch to the appellant's solicitors (or the appellant, if in person) as soon as they formally request them and make provision for the copying charges.

## 7.9. Transcripts at public expense

- 7.9.1. An appellant or respondent acting in person will not be required to pay for a transcript where a certificate is given under this paragraph. Otherwise, the appellant or respondent will pay for any transcript required for the Court of Appeal in the first instance. The Court may in certain circumstances certify that it is proper for the cost of a transcript to be borne by public funds. These circumstances are where it is satisfied that an appellant (or respondent) is in

such poor financial circumstances that the cost of a transcript would be an excessive burden on him, and, in the case of a transcript of evidence, also that there is reasonable ground for the appeal.

- 7.9.2. Where the Court is of opinion that it is necessary to see a transcript of proceedings and judgment (with or without a transcript of the evidence) relating to an appellant whose financial circumstances are as described above, it may certify that transcripts or all or any part of the proceedings and judgment may properly be supplied for the use of the Court at the expense of public funds. The Court for these purposes includes both the judge (of whatever level) whose decision is under appeal, and the Court of Appeal, a single judge of the Court of Appeal or the master. An appellant for these purposes includes a person who is seeking permission to appeal to the Court of Appeal.

## **7.10. Core bundles**

- 7.10.1. In cases where the appellant seeks to place before the court bundles of documents comprising more than 100 pages, (exclusive of the judgment appealed against) the appellant's solicitors must prepare and file with the court the requisite number of copies of a core bundle containing the documents central to the appeal.
- 7.10.2. In all cases where the appellant or applicant is represented only core bundles are to be filed without any trial or other bundles. Core bundles must contain only those documents which the Lords Justices will need to pre-read or to which it will be necessary to refer at the hearing, either in support of, or in opposition to, the appeal or application. As soon as the appeal or application has been filed, the appellant's or applicant's solicitors must give careful consideration (with the advice of their advocate where appropriate) to the necessary content of the core bundles. If they are in any doubt concerning the documents which the other side will need, they must consult the respondent's solicitors at an early stage.

## **7.11. Time for filing Core Bundles**

- 7.11.1. No later than the date stated in the letter from the Civil Appeals Office acknowledging entry of the case in the court's records, the appellant's solicitors must file with the Civil Appeals Office Case Section Support and Documents Room the number of sets of core bundles specified in that letter. No other bundles are to be filed.
- 7.11.2. One set of the full trial bundles should be brought to the Court of Appeal hearing, but not filed in advance.

## **7.12. Contents of Core Bundles**

- 7.12.1. Each core bundle must always include the notice of appeal, the order appealed against, any other relevant orders made in the court below, the respondent's

notice (if any) and the note of judgment and notes of evidence (if relevant). If it is a case where there are transcripts of the judgment/evidence, then those should not be bound in the core bundle, but kept separate, see below. In addition, the core bundle should include such of the documents put in evidence in the court below as are central to the appeal.

### **7.13. Core Bundles and litigants in person**

- 7.13.1. For information helpful to litigants in person see paragraph 8.2.

### **7.14. Pagination**

- 7.14.1. Bundles must be paginated. At present, many bundles are numbered merely by document. This is incorrect. Each page must be numbered individually and consecutively, starting with page 1 at the top of the bundle and working continuously through to the end.

### **7.15. Index**

- 7.15.1. There must be an index at the front of the bundle listing the documents and giving the page references for each. In the case of documents such as letters, invoices, bank statements etc., they can be shown in the index by a general description; it is not necessary to list every letter, invoice etc. separately. But if a letter or other such document is particularly important to the case, then it should be listed separately in the index so that attention is drawn to it. In particular in the case of appeals and applications in judicial review proceedings, the letter or other document which constitutes the decision sought to be reviewed must be separately itemised in the index (whether or not it forms part of the exhibit to an affidavit). Where each set of bundles consists of more than one file or bundle, an index covering all of them should be placed at the beginning of Bundle A; there should not be separate indexes for each physical bundle comprised in the set.

### **7.16. Binding of bundles**

- 7.16.1. All the documents (with the exception of transcripts) must be bound together in some form (e.g. lever-arch files, ring-binders, plastic binders, or laced through holes in the top left-hand corner).

### **7.17. Legibility**

- 7.17.1. All documents must be legible. In particular, care must be taken to ensure that the edges of pages are not cut off by the photocopying machine or rendered illegible by the binding. If it proves impossible to produce adequate copies of individual documents, or if manuscript documents are illegible, typewritten copies of the relevant pages should also be interleaved at the appropriate place in the bundle.

## **7.18. Applications for permission to adduce further evidence**

- 7.18.1 Where (as is often the case) the court has directed that an application for permission to adduce further evidence is to be listed for hearing at the same time as the appeal, separate bundles must nevertheless be filed in respect of that application so that the further evidence can readily be distinguished from the evidence which was before the court below.

## **7.19. Time limits for filing documents**

- 7.19.1. Time limits must be complied with and will be strictly enforced except where there are good grounds for granting an extension.

## **7.20. Responsibility of the solicitor on the record**

- 7.20.1. The solicitor in charge of the case must personally satisfy himself/herself, and is responsible as an officer of the court for ensuring that the documentation is in order before it is delivered to the court. London agents too have a responsibility; they should be prepared to answer any questions which may arise as to the sufficiency of the documentation.

## **7.21. Affidavits**

See Practice Direction to CPR Part 32.

# **8. LITIGANTS IN PERSON (LITIGANTS WITHOUT LAWYERS)**

## **8.1. Applications for permission to appeal and appeals by litigants in person**

- 8.1.1. So that the Court of Appeal can check whether it has jurisdiction to hear an application for permission to appeal, or a full appeal, litigants in person should take or send to the Civil Appeal Office:
- (a) a copy of the order or decision by the court against which he or she seeks to appeal; and
  - (b) details of his or her name, address and telephone number.
- 8.1.2. If the application or appeal is one where the Court of Appeal has jurisdiction, the Civil Appeals Office will provide the litigant with notes for guidance on how to proceed.
- 8.1.3. If the application or appeal is not one where the Court of Appeal has jurisdiction, the Civil Appeals Office will write to the litigant to explain the reasons why.
- 8.1.4. It is emphasised that the administrative and legal staff in the Civil Appeals Office will need time to deal with these matters. Litigants are therefore advised to make sure that they communicate with the Civil Appeals Office as soon as



possible after the order or decision by the court against which they wish to appeal has been given, and well before the expiry of the time limit for serving notice of appeal. The provision of this information at short notice can be made only in urgent circumstances. A case will not be regarded as urgent merely because a party has left it too close to the expiry of the time limit before taking the necessary steps to make the application or file an appeal. A case will be treated as urgent only if a direction to the effect is made by the Court.

## 8.2. Appeal and application bundles

- 8.2.1. Information about how to prepare for applications or appeals by preparing sets or a set (bundles) of documents for the use of the Court of Appeal can be found in two leaflets, one for applications and one for appeals. The Civil Appeals Office will send a copy of the relevant leaflet to the litigant with the letter confirming the matter has entered the records of the Court of Appeal.
- 8.2.2. It is then the responsibility of the litigant to comply with the requirements set out in the leaflet. In particular, litigants should refer to the checklist in the leaflet, which highlights the key requirements. When the litigant is sure that his or her bundles of documents comply with the requirements in the leaflet, he or she should sign the checklist and return it to the Civil Appeals Office with the bundles.
- 8.2.3. In certain circumstances, the Court may require fewer documents than are required for formal bundles for an application. Except in cases which are so urgent that there is no time to do so, the Civil Appeals Office will write to litigants to tell them whether limited documentation or full bundles are required.
- 8.2.4. Paragraphs 7.5. and 7.9. gives details about obtaining transcripts of judgment for incorporation in the bundles. Litigants who require help with the preparation of their bundles can obtain this from the Citizens' Advice Bureau in the Royal Courts of Justice. In appropriate cases (for example, where for whatever reason the litigant is unable to prepare his or her own bundles) the Citizens' Advice Bureau may arrange for the bundles to be prepared for the litigant free of charge.

## 8.3. Skeleton arguments

- 8.3.1. Skeleton arguments are short written statements of the arguments in support of an application or appeal. Litigants in person are not obliged to send to the court skeleton arguments in support of their applications and appeals, but are strongly encouraged to do so. If they do, they should try to comply with the directions given in the section entitled 'skeleton arguments' (section 3). Many litigants in person find that setting out the arguments which they wish to raise in court in advance can be of great assistance when, at a hearing, the Court asks the them to explain what their case is about.
- 8.3.2. A litigant who wishes to prepare a skeleton argument can obtain advice on how to do this from the Citizens' Advice Bureau in the Royal Courts of Justice.

In appropriate cases the Citizens' Advice Bureau will prepare the skeleton argument for the litigant free of charge.

## **9. RESERVED JUDGMENTS OF THE COURT OF APPEAL**

### **9.1. Availability of handed down judgments in advance of the hearing**

- 9.1.1. Unless the court otherwise orders - for example, if a judgment contains price-sensitive information - copies of the written judgment will now be made available in these cases to the parties' legal advisers at about 4 pm on the second working day before judgment is due to be pronounced on condition that the contents are not communicated to the parties themselves until one hour before the listed time for pronouncement of judgment. Delivery to legal advisers is made primarily to enable them to consider the judgment and decide what consequential orders they should seek. The condition is imposed to prevent the outcome of the case being publicly reported before judgment is given, since the judgment is confidential until then. Some judges may decide to allow the parties' legal advisers to communicate the contents of the judgment to their clients two hours before the listed time, in order that they may be able to submit minutes of the proposed order, agreed by their clients, to the judge before the judge comes into court, and it will be open to judges to permit more information about the result of a case to be communicated on a confidential basis to the client at an earlier stage if good reason is shown for making such a direction.
- 9.1.2. If, for any reason, a party's legal advisers have special grounds for seeking a relaxation of the usual condition restricting disclosure to the party itself, a request for relaxation of the condition may be made informally through the judge's clerk (or through the associate, if the judge has no clerk). A copy of the written judgment will be made available to any party who is not legally represented at the same time as to legal advisers. It must be treated as confidential until judgment is given.
- 9.1.3. Every page of every judgment which is made available in this way will be marked "Unapproved judgment: No permission is granted to copy or use in court". These words will carry the authority of the judge, and will mean what they say.
- 9.1.4. The time at which copies of the judgment are being made available to the parties' legal advisers has been brought forward in order to enable them to submit any written suggestions to the judge about typing errors, wrong references and other minor corrections of that kind in good time, so that, if the judge thinks fit, the judgment can be corrected before it is handed down formally in court. The parties' legal advisers are therefore being requested to submit a written list of corrections of this kind to the judge's clerk (or to the associate, if the judge has no clerk) by 12 noon on the day before judgment is handed down. If it is not possible to comply with this deadline, any later corrections approved by the judge will be included in the final text which the official shorthand writer (or the judge's clerk, in courts which lack an official

shorthand writer) will incorporate into the approved official text of the judgment as soon as practicable. In divisions of the court which have two or more judges, the list should be submitted in each case to the judge who is to deliver the judgment in question. Lawyers are not being asked to carry out proof-reading for the judiciary, but a significant cause of the present delays is the fact that minor corrections of this type are being mentioned to the judge for the first time in court, when there is no time to make any necessary corrections to the text.

## **9.2. Availability of approved versions of handed down judgments**

- 9.2.1. This course will make it very much easier for the judge to make any necessary corrections and to hand down the judgment formally as the approved judgment of the court without any need for the delay involved in requiring the court shorthand writer, in courts which have an official shorthand writer, to resubmit the judgment to the judge for approval. It will always be open to the judge to direct the shorthand writer at the time of the hearing in court to include in the text of the judgment any last minute corrections which are mentioned for the first time in court, or which it has proved impracticable to incorporate in the judgments handed down. In such an event the judge will make it clear whether the shorthand writer can publish the judgment, as corrected, as the approved judgment of the court without any further reference to the judge, or whether it should be resubmitted to the judge for approval. It will be open to judges, if they wish, to decline to approve their judgments at the time they are delivered, in which case the existing practice of submitting the judgment for their approval will continue.

## **9.3. Handing down judgment in court: availability of uncorrected copies**

- 9.3.1. When the court hands down its written judgment, it will pronounce judgment in open court. Copies of the written judgment will then be made available to accredited representatives of the media, and to accredited law reporters who are willing to comply with the restrictions on copying, who identify themselves as such. In cases of particular interest to the media, it is helpful if requests for copies can be intimated to the judge's clerk, or the presiding Lord Justice's clerk, in advance of judgment, so that the likely demand for copies can be accurately estimated. Because there will usually be insufficient time for the judge's clerk to prepare the necessary number of copies of the corrected judgment in advance, in most cases these uncorrected copies will similarly bear the warning "Unapproved Judgment: No permission is granted to copy or use in court." The purpose of these arrangements is to place no barrier in the way of accredited representatives of the media who wish to report the judgments of the court immediately in the usual way, or to accredited law reporters who wish to prepare a summary or digest of the judgment or to read it for the purpose of deciding whether to obtain an approved version for reporting purposes. Its purpose is to put a stop to the dissemination of unapproved, uncorrected, judgments for other purposes, while seeking to ensure that everyone who is interested in the judgment (other than the

immediate parties) may be able to buy a copy of the approved judgment in most cases much more quickly than is possible at present.

- 9.3.2. If any member of the public (other than a party to the case) or any law reporter who is not willing to comply with the restrictions on copying, wishes to read the written judgment of the court on the occasion when it is handed down, a copy will be made available for him or her to read and note in court on request made to the associate or to the clerk to the judge or the presiding Lord Justice. The copy must not be removed from the court and must be handed back after reading. The object is to ensure that such a person is in no worse a position than if the judgment had been read aloud in full.

## **9.4. Availability of approved judgments**

- 9.4.1. In courts without an official shorthandwriter, the approved judgment should contain on its frontispiece the rubric “Judgment: Approved by the court for handing down (subject to editorial corrections)”, and every page of a judgment which is handed down in this form will be marked in a similar manner. There will be no embargo on copying a judgment handed down in this form, so long as its status is made clear, and at present no charge will be made for permission to copy it. In future, all judgments delivered at the Royal Courts of Justice will be published in a common format. For cases decided in the two divisions of the Court of Appeal and in the Crown Office List, copies of the approved judgment can be ordered from the official shorthand writers, on payment of the appropriate fee. In the other courts in the Royal Courts of Justice, copies of the approved judgment can be ordered from the Mechanical Recording Department, on payment of the fee prescribed for copy documents. Disks containing the judgment will also be available from the official shorthandwriters, and the Mechanical Recording Department, where relevant, on payment of an appropriate charge. It is hoped that in most cases copies of the approved judgment will be available from these sources on the same day as the judgment is handed down: they should no longer be sought from judges’ clerks.

## **9.5. Restrictions on disclosure or reporting**

- 9.5.1. Anyone who is supplied with a copy of the handed-down judgment, or who reads it in court, will be bound by any direction which the court may have given in a child case under section 39 of the Children and Young Persons Act 1933, or any other form of restriction on disclosure, or reporting, of information in the judgment.

## **9.6. Availability of approved versions of ex tempore judgments**

- 9.6.1. Delays have also been experienced in the publication of approved versions of judgments which were not reserved, whether they are produced by the official shorthand writers or by contractors transcribing the tapes which have been mechanically recorded.

- 9.6.2. Sometimes the delay is caused in courts without an official shorthand writer because a transcript is bespoken by one of the parties a long time after the judgment was delivered. If a transcribed copy of such a judgment is to be required, in connection with an appeal, for example, it should be ordered as soon as practicable after judgment was delivered.
- 9.6.3. Delays are also sometimes caused in these cases because judgments are delivered to a judge for approval without supplying the judge with copies of the material quoted in the judgment. In future no judge should be invited to approve any such transcript unless the transcriber has been provided by the party ordering the transcript with copies of all the material from which the judge has quoted. If the transcript is ordered by a person who is not a party to the case (such as a law reporter), that person should make arrangements with one of the parties to ensure that the transcriber (and the judge) will have access to all the material quoted in the judgment.
- 9.6.4. From time to time delays are also caused because judges have been slow in returning approved transcripts to the transcribers. Judges should endeavour to return approved transcripts to the transcribers within two weeks of their being delivered to them for approval. If anyone encounters serious delay on this account, the relevant Head of Division should be informed.
- 9.6.5. Where a reserved written judgment has not been reported, reference must still be made in court to the approved official transcript (if this is available) and not to the approved transcript which is handed down, since this may have been subject to late revision after the text was prepared for handing down.

## **9.7. Advocates' fees and notes of judgments**

- 9.7.1. Advocates' brief (or, where appropriate, refresher) fee includes
  - (a) remuneration for taking a note of the judgment of the court;
  - (b) having the note transcribed accurately;
  - (c) submitting the note to the judge for approval where appropriate;
  - (d) revising it if so requested by the judge, and
  - (e) providing any copies required for the Court of Appeal, instructing solicitors and lay client.
- 9.7.2. Accordingly, save in exceptional circumstances, there can be no justification for charging any additional fee for such work.
- 9.7.3. When required to attend on a later day to take a judgment not delivered at the end of the hearing, the advocate will, subject to the rules of the court, ordinarily be entitled to a further fee for such attendance. This note does not affect that entitlement.

## 10. MISCELLANEOUS DIRECTIONS

### 10.1. Citation of authority

- 10.1.1. When authority is cited, whether in written or oral submissions, the following practice should in general be followed.
- 10.1.2. If a case is reported in the official Law Reports published by the Incorporated Council of Law Reporting for England and Wales that report should be cited. These are the most authoritative reports; they contain a summary of argument; and they are the most readily available. If a case is not (or not yet) reported in the official Law Reports but is reported in the Weekly Law Reports or the All England Law Reports that report should be cited. If a case is not reported in any of these series of reports, a report in any of the specialist series of reports may be cited. Such reports may not be readily available: photostat copies of the leading authorities or the relevant parts of such authorities should be annexed to written submissions; and it is helpful if photostat copies of the frequently used series are made available in court. It is recognised that occasions arise when one report is fuller than another, or when there are discrepancies between reports. On such occasions, the practice outlined above need not be followed. It is always helpful if alternative references are given.
- 10.1.3. Where a reserved written judgment has not been reported, reference should be made to the official transcript (if this is available) and not the handed-down text of the judgment. If the judgment under appeal has been reported before the hearing and counsel wish to argue from the published report rather than from the official transcript, the court should be provided with photocopies of the report for the use of the judges in order that they may be able to annotate it as the argument proceeds.
- 10.1.4. Advocates are reminded that lists of authorities, including text which they wish to refer should be delivered to the Head Usher's office not later than 5.30 p.m. on the working day before the day when the hearing of the application or appeal is due to commence. Advocates should also seek confirmation that an adequate number of copies are available for the use of the court and, if this is not the case, should themselves provide an appropriate number of photocopies.
- 10.1.5. Where, as is often the case, one or other party chooses to provide photocopies of the principal authorities (including textbook extracts and academic articles) relied on, the benefit to the court is greatly enhanced if (i) a list of those authorities, and the photocopies, are lodged with the skeleton argument so that they can be used by the members of the court when preparing for the hearing; (ii) counsel liaise with each other so as to ensure, so far as possible, that the authorities provided are not duplicated. The photocopies need only include, for each law report, the headnote and the pages containing the particular passages relied on and, for each textbook and article, the title pages and the pages containing the particular passages relied on.

- 10.1.6. Permission to cite unreported cases will not usually be granted unless advocates are able to assure the court that the transcript in question contains a relevant statement of legal principle not found in reported authority and that the authority is not cited because of the phraseology used or as an illustration of the application of an established legal principle.

## 10.2. Hansard Extracts

- 10.2.1. *Application*-This Direction concerns both final and interlocutory hearings in which any party intends to refer to the reports of parliamentary proceedings as reported in the official reports of parliamentary proceedings as reported in the official reports of either House of Parliament, *Hansard*. No other report of parliamentary proceedings is to be cited.
- 10.2.2. *Documents to be served*- Any party intending to refer to any extract from *Hansard* in support of any such argument as was permitted by the decisions in *Pepper v Hart* [1993] AC 593; [1992] 3 W.L.R. 1032, and *Pickstone v Freemans plc* [1989] A.C. 66; [1988] CMLR 221, HL, or otherwise, must unless the judge otherwise directs, serve upon all other parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon such report.
- 10.2.3. *Time for Service*- Unless the judge otherwise directs, service upon other parties to the proceedings and the court of the extract and summary of arguments referred to above is to be effected not less than five clear working days before the first day of the hearing. That applies whether or not there is a fixed date. Solicitors must keep themselves informed as to the state of the lists where no fixed date had been given.
- 10.2.4. *Methods of service*- A service on the court is to be effected by sending to the Court of Appeal, Civil Division, three copies to the Civil Appeals Office, Case Support Section, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL.
- 10.2.5. *Failure to serve*- If any party fails to comply with this Practice Direction the court might make such order, relating to costs and otherwise, as is in all the circumstances appropriate.

### 10.3.1. Judicial Review, renewal of application for permission to apply.

- 10.3.2. A refusal in a non-criminal cause or matter by a Divisional Court of the Queen's Bench Division or by a single judge for permission to apply for judicial review is renewable to the Court of Appeal within 7 days of the decision.
- 10.3.3. If, following a refusal by the Divisional Court or a single judge, the Court of Appeal grants permission to apply for judicial review, the substantive application should be made to the Divisional Court unless the Court of Appeal otherwise orders. The Court of Appeal will not normally so order unless the court below is bound by authority or for some other reason an appeal to the Court of Appeal is inevitable.



- 10.3.4. Where the Court of Appeal grants a renewed application for permission to apply for judicial review, except where the Court of Appeal reserves the application to itself, the application should be set down in the Crown Office list to be heard by a single judge, unless a judge nominated to try cases in that list directs that the application is to be heard by a Divisional Court of the Queen's Bench Division.

## **10.4. Dismissal of appeals/applications by consent**

- 10.4.1. Where an appellant is of full legal capacity and does not desire to prosecute an appeal, he may present a request signed by his solicitor stating that he is of full legal capacity and asking to have the appeal dismissed, in which case (subject to the request being initialled by a judge of the court or by the master) the appeal will be dismissed and struck out of the list, and an order will, if necessary, be drawn up directing payment of the costs by the appellant, such costs to be assessed in case the parties differ. Where the parties are of full legal capacity and a settlement has been reached disposing of the appeal, they may present a request signed by the solicitors for all parties to the appeal, stating that they are of full legal capacity, including the terms of settlement and asking that the appeal be dismissed by consent, in which case (subject to the request being initialled by a judge of the court or by the master) the appeal will be dismissed and struck out of the list and an order will, if necessary, be drawn up.
- 10.4.2. If the appellant desires to have the appeal dismissed without costs, his request must be accompanied by a consent signed by the respondents' solicitors stating that the respondents are of full legal capacity and consent to the dismissal of the appeal without costs, in which case (subject to the request being initialled by a judge of the court or by the master) the appeal will be dismissed and struck out of the list.
- 10.4.3. Where any party has no solicitor on the record, any such request or consent must be signed by him personally. All other applications as to the dismissal of an appeal and all applications for an order by consent reversing or varying the order under appeal will be placed in the list and dealt with in court.
- 10.4.4. Forms of request appear at Annex I.

## **10.5. Allowing appeals or applications by consent**

- 10.5.1. In cases where parties who are of full legal capacity seek an order to allow the appeal by consent, a copy of the proposed consent order signed by the parties' solicitors (and stating that the parties are of full legal capacity), together with a document setting out the relevant history of the proceedings and the matters relied on as justifying the proposed order, should be sent to the master who will refer them to a Lord Justice for consideration. He or she will either make the order or direct that it should be referred to two Lords Justices for hearing in open court.

## 10.6. Structured Settlements and consent orders involving a party under a disability

- 10.6.1. The following guidance applies in respect of settlements which require the court's approval.
- 10.6.2. The types of case concerned are: (1) consent orders relating to appeals and applications where one of the parties is an a child or a patient; and (2) structured settlements which are agreed upon at the Court of Appeal stage.

## 10.7. Procedure

- 10.7.1. The following procedure should be adopted;
  - (a) In cases where a consent order needs approval because one of the parties is a child a copy of the proposed order signed by the parties' solicitors should be sent to the master, together with an opinion from the advocate acting on behalf of the child. If on consideration of the documents the court considers that the consent order should be approved, the matter will be listed, but without any party being represented, and the order will be made in open court (See *Hadfield v Knowles* [1996] 1 WLR 1003).
  - (b) Where a party is a patient and the case is not covered by RSC, Ord 59, r 23, the same procedure will be adopted, but the documents filed should also include any relevant reports prepared for the Court of Protection and a document evidencing formal approval by that court where required.
  - (c) The same procedure should be followed in the case of a structured settlement which has been negotiated in a case which is under appeal and the documents filed should include those which would be required in the case of a structured settlement dealt with at first instance.
- 10.7.2. If, in any of those categories of case, the court requires further documents before deciding whether to approve the order or settlement, the master or a member of his staff will notify the solicitors of what is required. In future the court will only list any such case for mention at a hearing to be attended by the parties' advocates if the court considers that there are problems about the proposed order or settlement which cannot be satisfactorily resolved in any other way or that, for some other special reason, such a hearing is necessary or desirable.

## 10.8. Sittings of Court of Appeal in vacation

- 10.8.1. The Court of Appeal will sit in vacation on such days as the Master of the Rolls may direct and may hear such appeals or applications as the court may direct. Details of the number of courts sitting in August and September will be published each year, normally before Easter.

## 10.9. Solicitor's rights of audience

- 10.9.1. In addition to the cases in which solicitors already have rights of audience in the Supreme Court, and without prejudice to the discretion of a judge to allow a solicitor to represent his client in open court in an emergency, a solicitor may appear in the Supreme Court in formal or unopposed proceedings, that is to say those proceedings where (a) by reason of agreement between the parties there is unlikely to be any argument and (b) the court will not be called on to exercise a discretion.
- 10.9.2. A solicitor may also represent his client in the Supreme Court when judgment is delivered in open court following a hearing in private at which that solicitor conducted the case for his client.

## 10.10. Admiralty Appeals: Assessors

- 10.10.1. The relevant practice direction has not been consolidated and will be found at [1965] 1 WLR 853.

## 10.11. Use of unofficial tape recorders in court

- 10.11.1. Section 9 of the Contempt of Court Act 1981 contains provisions governing the unofficial use of tape recorders in court. The relevant practice direction has not been consolidated but will be found at [1981] 1 WLR 1526.

## 11. ALTERNATIVE DISPUTE RESOLUTION (ADR)

- 11.1.1. A *pro bono* scheme commenced in 1997. The scheme has to take into account the fact that cases which have already been tried at first instance raise different issues, so far as ADR is concerned, to cases which have yet to be tried.
- 11.1.2. The scheme has recently been refined. Now in appropriate cases, as soon as an appeal set down with the Civil Appeals Office, a letter of invitation to consider ADR, signed by the Master of the Rolls, is sent to the parties' solicitors. The letter encloses an explanatory leaflet and a response form. A member of staff is available to answer queries, provide general information and help with specific cases.
- 11.1.3. The supervising Lords Justices responsible for particular categories of work are vigilant in their case management for those cases that appear suitable for referral to ADR. Recently a very substantial commercial appeal was compromised as result of a referral by the supervising Lord Justice. Equally, presiding Lords Justices are able to propose a referral to ADR at the determination of appeals which otherwise will lead to a re-hearing or the issue of further proceedings.
- 11.1.4. Legal aid covers the costs of ADR for an assisted party.

- 11.1.5. Further information is available from the Civil Appeals Office, Royal Courts of Justice, Strand, London, WC2A 2LL (tel. 0171 936 6486)].

## 12. SUPPLY OF DOCUMENTS FROM CIVIL APPEALS OFFICE FILES

- 12.1.1 The Civil Procedure Rules CPR rule 5.4 makes general provision for the supply of documents from court records. This note sets out the practice of the Court of Appeal (Civil Division). Requests must usually be made in writing.
- 12.1.2. The person making the request should,
- (a) cite the Court of Appeal reference number;
  - (b) explain what efforts have been made to obtain the document from another party to the appeal and state what reasons have been given by that other party for refusing to supply a copy;
  - (c) enclose the prescribed fee.
- 12.1.3. The master may, in the first instance, determine a request without a hearing. He may also, instead of giving permission or supplying the document, give directions regarding the supply of the document by another person. He may also refer the application to a Lord Justice or the court.
- 12.1.4. Requests to see skeleton arguments may alternatively be made orally to the associate in at the time of the hearing in open court.
- 12.1.5. Below, guidance is set out in tabular form:

INFORMATION	CAN THE INFORMATION BE RELEASED?
Listing of case	Yes, but only after 1500 hrs the day before the hearing when the information is made public. Otherwise leave of the court is required. The Court list comprises the name and number of the case. Apply to the Listing Office
From which court the appeal came	Yes. Apply to the case section
Notice of Appeal	At the discretion of the court. In general the Court will grant requests to see notices of appeal which have been served on the respondent, and respondent's notices after they have been served on the appellant. Notices of appeal relating to cases involving children will not normally be disclosed nor other notices of appeal which assert confidentiality or the existence of a reporting restriction.

INFORMATION	CAN THE INFORMATION BE RELEASED?
Skeleton arguments	Yes, available in court from Court clerk. Representatives of the media or members of the public can read the skeleton arguments in the courtroom, but may not take copies away. Skeleton arguments cannot be read without the permission of the Court in any cases involving minor children or any other cases where the Court has imposed a reporting restriction.
Files, bundles and computer records	Documents on the Court file (other than skeleton arguments, see above) cannot be shown to anyone without the leave of the Court.
Court orders given or made in open court	Yes. Refer to Associates.
Judgment	Yes. Refer to official Shorthandwriters or Supreme Court Library.

## 13. HEARINGS IN PRIVATE

### 13.1. Hearings in private

- 13.1.1. Exceptional circumstances will have to be shown before the court will be prepared to hear an application or appeal in private. Where the advocate forms the view that it is necessary, in the interests of justice, that a preliminary application or an appeal should be heard in private, he or she should approach the master indicating his or her view. The reasons should be put into writing, signed by the advocate and handed to the master. In so doing, it should be understood that the advocate is expressing his personal professional view and is not making a submission on behalf of his client. This will enable the court to make a preliminary decision as to whether the application should initially be made in private or in open court. This procedure will avoid the problem which arises where the very reasons which justify a hearing in private must themselves be put forward in private if they are to be put forward at all.

## 14. REFERENCES TO THE EUROPEAN COURT OF JUSTICE

### 14.1. References to the European Court of Justice by the Court of Appeal and the High Court under Article 177 of the EC Treaty.

- 14.1.1. Before making a reference to the European Court of Justice under Article 77 of the EC Treaty the Court of Appeal should pay close attention to (a) the terms of that Article, (b) Order 114 of the Rules of the Supreme Court and (c) Practice Form 109 (at para. 1A-114 of Volume 2 of the Supreme Court Practice 1999). Close attention should also be paid to the Guidance of the European Court of Justice on References by National Courts for Preliminary Rulings: this is set out in paragraph 14.2. below.
- 14.1.2. It is the responsibility of the Court of Appeal, not the parties, to settle the terms of the reference. This should identify as clearly, succinctly and simply as the nature of the case permits the question to which the British court seeks an answer. It is very desirable that language should be used which lends itself readily to translation.
- 14.1.3. The referring court should, in a single document scheduled to the order:
  - (a) identify the parties and summarise the nature and history of the proceedings;
  - (b) summarise the salient facts, indicating whether these are proved or admitted or assumed;
  - (c) make reference to the rules of national law (substantive and procedural) relevant to the dispute;
  - (d) summarise the contentions of the parties so far as relevant;
  - (e) explain why a ruling of the European Court is sought, identifying the EC provisions whose effect is in issue;
  - (f) formulate, without avoidable complexity, the question(s) to which an answer is requested.
- 14.1.4. Where the document is in the form of a judgment, as will often be convenient, passages which are not relevant to the reference should be omitted from the text scheduled to the order. Incorporation of appendices, annexes or enclosures as part of the document should be avoided, unless the relevant passages lend themselves readily to translation and are clearly identified.
- 14.1.5. The referring court should ensure that the order of reference, when finalised, is promptly passed to the Senior Master of the Queen's Bench Division so that it may be transmitted to Luxembourg without avoidable delay. The title of the referring court should be Court of Appeal (Civil Division) (England & Wales).

## 14.2. Guidance of the European Court of Justice on References by National Courts for Preliminary Rulings

- 14.2.1. The development of the Community legal order is largely the result of co-operation between the Court of Justice of the European Communities and national courts and tribunals through the preliminary procedure under Article 177 E.C. and the corresponding provisions of the ECSC and Euratom treaties. In order to make this co-operation more effective, and so enable the Court of Justice better to meet the requirements of national courts by providing helpful answers to preliminary questions, this Note for Guidance is addressed to all interested parties, in particular to all national courts and tribunals. It must be emphasised that the Note is for guidance only and has no binding or interpretative effect in relation to the provisions governing the preliminary ruling procedure. It merely contains practical information which, in the light of experience in applying preliminary ruling procedure, may help to prevent the kind of difficulties which the Court has sometimes encountered.
- 14.2.2. Any court or tribunal of a Member State may ask the Court of Justice to interpret a rule of Community law, whether contained in the Treaties or in acts of secondary law, if it considers that this is necessary for it to give judgment in a case pending before it.
- 14.2.3. Courts or tribunals against whose decisions there is no judicial remedy under national law must refer questions of interpretation arising before them to the Court of Justice, unless the Court has already ruled on the point or unless the correct application of the rule of Community law is obvious.
- 14.2.4. The Court of Justice has jurisdiction to rule on the validity of acts of the Community institutions. National courts or tribunals may reject a plea challenging the validity of such an act. But where a national court (even one whose decision is still subject to appeal) intends to question the validity of a Community act, it must refer that question to the Court of Justice.
- 14.2.5. Where, however, a national court or tribunal has serious doubts about the validity of a Community act on which a national measure is based, it may, in exceptional cases, temporarily suspend application of the latter measure or grant other interim relief with respect to it. It must then refer the question of validity to the Court of Justice, stating the reasons for which it considers that the Community act is not valid.
- 14.2.6. Questions referred for a preliminary ruling must be limited to the interpretation or validity of a provision of Community law, since the Court of Justice does not have jurisdiction to interpret national law or assess its validity. It is for the referring court or tribunal to apply the relevant rule of Community law in the specific case pending before it.
- 14.2.7. The order of the national court or tribunal referring a question to the Court of Justice for a preliminary ruling may be in any form allowed by national procedural law. Reference of a question or questions to the Court of Justice



generally involves stay of the national proceedings until the Court has given its ruling, but the decision to stay proceedings is one which it is for the national court alone to take in accordance with its own national law.

- 14.2.8. The order of reference containing the question or questions referred to the Court will have to be translated by the Court's translators into the other official languages of the Community. Questions concerning the interpretation or validity of Community law are frequently of general interest and the Member States and Community institutions are entitled to submit observations. It is therefore desirable that the reference should be drafted as clearly and precisely as possible.
- 14.2.9. The order for reference should contain a statement of reasons which is succinct but sufficiently complete to give the Court, and those to whom it must be notified (the Member States, the Commission and in certain cases the Council and the European Parliament), a clear understanding of the factual and legal context of the main proceedings.
- 14.2.10. In particular, it should include:
  - a statement of the facts which are essential to a full understanding of the legal significance of the main proceedings;
  - an exposition of the national law which may be applicable;
  - a statement of the reasons which have prompted the national court to refer the question or questions to the Court of Justice; and
  - where appropriate, a summary of the arguments of the parties.
- 14.2.11. The aim should be to put the Court of Justice in a position to give the national court an answer which will be of assistance to it.
- 14.2.12. The order for reference should also be accompanied by copies of any documents needed for a proper understanding of the case, especially the text of the applicable national provisions. However, as the case-file or documents annexed to the order for reference are not always translated in full into the other official languages of the Community, the national court should ensure that the order for reference itself includes all the relevant information.
- 14.2.13. A national court or tribunal may refer a question to the Court of Justice as soon as it finds that a ruling on the point or points of interpretation or validity is necessary to enable it to give judgment. It must be stressed, however, that it is not for the Court of Justice to decide issues of fact or to resolve disputes as to the interpretation or application of rules of national law. It is therefore desirable that a decision to refer should not be taken until the national proceedings have reached a stage where the national court is able to define, if only as a working hypothesis, the factual and legal context of the question; on any view, the administration of justice is likely to be best served if the reference is not made until both sides have been heard.

- 14.2.14. The order for reference and the relevant documents should be sent by the national court directly to the Court of Justice, by registered post, addressed to:

The Registry  
Court of Justice of the European Communities  
Bell L2925, Luxembourg  
(352) 43031

- 14.2.15. The Court Registry will remain in contact with the national court until judgment is given, and will send copies of the various documents (written observations, Report for the Hearing, Opinion of the Advocate General). The Court will also send its judgment to the national court. The Court would appreciate being informed about the application of its judgment in the national proceedings and being sent a copy of the national court's final decision.
- 14.2.16. Proceedings for a preliminary ruling before the Court of Justice are free of charge. The Court does not rule on costs.

# Annexes

## Annex A

### INDIVIDUAL PRACTICE DIRECTIONS FOR COURT OF APPEAL (CIVIL DIVISION)

(in chronological order)

1. (1926) W.N. 308 statutory orders private or local Acts should be supplied to the Court
2. Practice Direction (1938) WN 89
3. Practice Direction (CA: Dismissal of Appeal) (1983) 1 WLR 85
4. Practice Direction; Contents of Notice of Appeal [1953] 2 All ER 1510, [1953] 1 WLR 1503, 30/11/53
6. Practice Note; Application for Judicial Review substantive hearings [1956] 1 WLR 430
7. Transcripts of Court of Appeal Judgments [1978] 1 WLR 600 24/2/78
8. Use of unofficial tape recorders in court [1981] 3 All ER 848 19/11/81
9. Practice Note [1982] 3 All ER 376 CA practice and procedure
10. (Practice Direction: Judicial Review: Appeals) Lane LCJ, Donaldson MR [1982] 1 WLR 1375, 2/11/82
11. Practice Direction: Judicial Review: Appeals[1990] 1 All ER 128
12. Practice Note; Hearing of Anton Piller appeals in camera [1982] 3 All ER 924 5/11/82
13. Practice Note: Skeleton arguments [1983] 2 All ER 34 12/4/83
14. Practice Note: Affidavits, exhibits and documents [1983] 3 All ER 33 21/7/83
15. Practice Note: Estimate of length of hearing [1983] 3 All ER 544 28/10/83
16. Practice Direction (Court of Appeal: Applications to a single Judge) [1985] 1 WLR 739
17. Practice Note: Skeleton arguments [1985] 3 All ER 384 17/10/85
18. Practice Direction: Solicitor's rights of Audience[1986]2 All ER 226 9/5/86
19. Practice Note: Appeal where judgment under appeal has been reported[1987]1 All ER 928 13/3/87

20. September sittings in CA (CA sittings in the Long Vacation) (1987) 1 All ER 1067
21. Mode of Address of Lady Justice Butler-Sloss, *Palmer v Palmer*, Times, June 15, 1988
22. Practice Note: Short Warned List [1989] 1 All ER 891 1/3/89
23. Practice Direction (QBD Service of Documents) [1985]
24. (Practice Statement: Fee note for Judgment) (1989) The Times, May 12
25. Practice Direction: Receiving and processing appeals and applications [1990] 3 All ER 981 24/10/90
26. PD (Appeals: Short Warned Lists; counsel's duty where appointments clash) (No.2) [1992] 1 WLR 485
27. Counsel's fee notes of judgments PN [1994] 1 All ER 96, 13/12/93
28. Reserved judgments ON [1995] 3 All ER 247 22/6/95
29. PD (Citation of Authority) June 23, 1995 (1995) 1 WLR 1096
30. July 26, 1995 Bingham MR [1995] 1 WLR 1188. Practice Statement (CA: procedural changes) WB 59/9/36
31. Bingham MR on CA Procedure (Previous consolidation)
32. Citation of authorities PN [1996] 3 All ER 382
33. Practice Note sub nom *Hadfield v Knowles* [1996] 1 WLR 1003 (structured settlements and consent orders involving party under disability) 16/5/96
34. May 12, 1997 [1997] 1 WLR 1013 CA: Amended Procedure WB 59/9/66
35. Orders for expedited hearings, *Unilever v Chefaro Proprietaries* [1995] 1 WLR 243
36. Practice Registrar (unreported PN) 5/97
37. November 5, 1997 [1997] 1 WLR 1535 (CA procedure changes) (Skeleton Arguments and procedural changes) WB 59/9/35
38. November 7, 1997 modifies PD on skeletons
39. (Practice Note) [1997] 1 WLR 1538 on grounds for leave to Appp1084 WB 59/14/19
40. Practice Statement (Supreme Court; judgments) 22/4/98, [1998] 1 WLR 825 Bingham LCJ
41. Practice Statement (Supreme Court: judgments) (No.2) 2/12/98 Times 2 December 1998

42. Hear-by dates; revised table of dates 10/11/98
43. 11/98 Lord Woolf MR's PD on leave to appeal to CA.
44. Guidance on applications to the European Court of Justice under Article 177 EC 1/99.

## Annex B

Dear \_\_\_\_\_,

Re:

The application for permission to appeal in this case has been assigned to a Lord Justice (a judge of the Court of Appeal), who has considered the papers filed in support of the application. On the basis of the information provided, the Lord Justice is minded to refuse the application for the reasons attached to this letter.

You have the right to seek an oral hearing of the application. The advocate or party appearing at an oral hearing would need to be prepared to deal with the reasons attached to this letter and to answer any further questions that may be asked about the application. The assigned Lord Justice has directed that any oral hearing shall be before a single Lord Justice / two Lords Justices.

Wherever possible the assigned Lord Justice will conduct the oral hearing, either sitting alone or with another Lord Justice as the case may be. The oral hearing will be conducted in public in open court, unless the Court directs otherwise.

If you wish to have an oral hearing, you must notify this Office in writing within 14 days of receiving this letter. In cases where a hearing before two Lords Justices has been directed a second set of the application bundle(s) must be lodged with that notification. If the Office has not received such notification within the 14 day time limit, the application will be dealt with on the basis of the information already submitted and without any further participation by you. It will be dealt with in open court, and you will be sent an order giving the Court's decision.

Where an applicant is legally aided, and the single Lord Justice is minded to refuse the application on the papers, the applicant's solicitor must send to the relevant Legal Aid Office a copy of this letter and its attachment as soon as they have been received. The Court will require confirmation that this has been done in any case where an application for permission to appeal proceeds to an oral hearing before the Court on legal aid.

Unrepresented litigants are advised that help with their application may be available from the Citizens' Advice Bureau at the Royal Courts of Justice.

Yours faithfully,

Listing Office

Enc.

## Annex C

### IN THE COURT APPLICATION FOR PERMISSION TO APPEAL TO THE COURT OF APPEAL (CIVIL DIVISION)

Title of proceedings

Claim

CA Ref

Heard/tried before (insert name of Judge) :

Court no.

Nature of hearing:

Date of hearing/judgment

Results of hearing (attach copy of order) :

Claimant/Defendant's application for permission to appeal\*

Allowed/  
Refused\*

Reasons for decision (*to be completed by the Judge*):

Judge's signature:

Note to the Applicant:

When completed, this form should be filed in the Civil Appeals Office on a renewed application for permission to appeal or when setting down an appeal.

\* Delete as appropriate



## Annex D

### Current supervising Lords Justices

Butler-Sloss LJ and Thorpe LJ	Family appeals
Morritt LJ and Chadwick LJ	Appeals from the Chancery Division
Pill LJ	Appeals from the Lands Tribunal and cases involving issues relating to planning, highways, footpaths or the Countryside Act 1968
Aldous LJ	Patent appeals
Schiemann LJ	Public law appeals (including appeals from the Immigration Appeal Tribunal) and cases involving European Community law
Brooke LJ and Mantell LJ	Appeals from the county courts (other than family cases)
May LJ	Appeals from the Queen's Bench Division and appeals relating to civil procedure rules
Clarke LJ	Appeals from the Commercial court
Mummery LJ	Appeals from tribunals (other than the Immigration Appeal Tribunal and the Lands Tribunal)

## Annex E Notice of Appeal

IN THE COURT OF APPEAL

Lower Court reference (Claim No.)

ON APPEAL FROM THE

[HIGH COURT OF JUSTICE

(CHANCERY or QUEEN'S BENCH or FAMILY) DIVISION

[DIVISIONAL COURT]][or]

\_\_\_\_\_ COUNTY COURT

BETWEEN:

\_\_\_\_\_ Claimant  
(Plaintiff)/Petitioner

and

\_\_\_\_\_ Defendant / Respondent

TAKE NOTICE that the \_\_\_\_\_ will apply to the Court of Appeal to appeal from the judgment/order of the Honourable Mr/Mrs Justice / His/Her Honour Judge \_\_\_\_\_ made on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_. By that order the Judge ordered that

The [Claimant](Plaintiff)[Defendant] proposes to ask the Court of Appeal **FOR AN ORDER** that the judgment/order be set aside [and that judgment be entered in the above-mentioned claim for the

or alternatively that a new trial may be ordered] **AND FOR AN ORDER** that the be ordered(adjudged) to pay to the \_\_\_\_\_ his/her costs of this appeal and the costs of the proceedings in the court below

AND FURTHER TAKE NOTICE that the grounds of this appeal are that

1 \_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_

AND FURTHER TAKE NOTICE that the above named \_\_\_\_\_ proposes that this appeal be assigned to the [(Chancery or Queen's Bench or Family) Division or County Courts] Final/Interlocutory List

I CERTIFY THAT THIS CLAIM IS CURRENTLY ALLOCATED TO THE SMALL CLAIMS/FAST/MULTI-TRACK IN THE \_\_\_\_\_ COURT.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19

(SIGNED) \_\_\_\_\_

(Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Telephone No.) \_\_\_\_\_

(Reference No.) \_\_\_\_\_

TO the above named

and to Messrs \_\_\_\_\_ his/her Solicitors

(Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Solicitor's Reference) \_\_\_\_\_

[and to the District Judge of the \_\_\_\_\_ County Court]

No notice as to the date on which this appeal will be in the list for hearing will be given: it is the duty of solicitors to keep themselves informed as to the state of the lists. A Respondent intending to appear in person should inform the Civil Appeals Office, Room E330, Royal Courts of Justice, Strand, London WC2A 2LL, of that fact and give his address; if he does so he will be notified to the address given of the date when the appeal is expected to be heard.

I certify that a true copy of this notice was served  
on the \_\_\_\_\_

\_\_\_\_\_ 's

solicitors on the \_\_\_\_\_ day of \_\_\_\_\_

19\_\_\_\_ [and that a true copy of this notice was

served on(upon) the District Judge of the \_\_\_\_\_

\_\_\_\_\_ County

Court on the \_\_\_\_\_ day of

19 \_\_\_\_\_ ]

(Signed)

## IN THE COURT OF APPEAL

ON APPEAL FROM THE

[HIGH COURT OF JUSTICE

(CHANCERY or QUEEN'S BENCH or FAMILY)

DIVISION

[DIVISIONAL COURT]] [or]

\_\_\_\_\_ COUNTY COURT

Claimant  
(Plaintiff)/Petitioner

v.

Defendant/Respondent

## Notice of Appeal

(Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Telephone No.) \_\_\_\_\_

## Annex F

### List of Court Lists

#### County Courts:

Final List; Interlocutory List;

Final List (Admiralty); Interlocutory List (Admiralty);

Final List (Family); Interlocutory List (Family)

#### Chancery Division:

Final List; Interlocutory List;

Final List (Bankruptcy); Interlocutory List (Bankruptcy);

Final List (Patents); Interlocutory List (Patents);

Final List (Revenue); Interlocutory List (Revenue)

#### Employment Appeal Tribunal:

Final List; Interlocutory List

#### Family Division:

Final List; Interlocutory List

#### Queen's Bench Division:

Final List; Interlocutory List;

Final List (Admiralty); Interlocutory List (Admiralty);

Final List (Commercial); Interlocutory List (Commercial);

Final List (Crown Office and Divisional Court);

Interlocutory List (Crown Office and Divisional Court)

#### Appeal Tribunals:

Final List (Lands Tribunal); Interlocutory List (Lands Tribunal);

Final List (Other tribunals); Interlocutory List (other tribunals);

Final List (Social Security Commissioners);

Interlocutory List, (Social Security Commissioners)]

Final List (Immigration Appeal Tribunal)

## Annex G (1) Application Notice

IN THE COURT OF APPEAL

Lower Court reference (Claim No.)

ON APPEAL FROM THE  
[HIGH COURT OF JUSTICE  
(CHANCERY or QUEEN'S BENCH or FAMILY) DIVISION  
[DIVISIONAL COURT]][or]

\_\_\_\_\_ COUNTY COURT

B E T W E E N :

\_\_\_\_\_ Claimant

(Plaintiff)/Petitioner

and

\_\_\_\_\_ Defendant / Respondent

### Section A

[Complete this section in all cases]

TAKE NOTICE that the Claimant (Plaintiff)/Defendant (in person) will apply to the Court of Appeal for an order that \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AND FOR AN ORDER that (*set out costs order applied for*) \_\_\_\_\_

\_\_\_\_\_

AND FURTHER TAKE NOTICE that the application will be heard at the Royal Courts of Justice, Strand, London WC2A 2LL on a date and at a time to be notified by the Civil Appeals Office\*

\_\_\_\_\_

## Section B

I(We) wish to rely on the following evidence in support of this application (*here set out the reasons why the application should be granted*) \_\_\_\_\_

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## STATEMENT OF TRUTH

\*(I believe)(The applicant believes) that the facts stated above are true

*\* delete as appropriate*

Signed \_\_\_\_\_ Position or  
office held \_\_\_\_\_

(Applicant)(‘s Solicitor)(‘s litigation friend)

Date \_\_\_\_\_ (if signing on behalf of firm or company)

## Section C

[*Complete this section in all cases*]

I CERTIFY THAT THIS CLAIM IS CURRENTLY ALLOCATED TO THE SMALL CLAIMS/  
FAST/MULTI-TRACK IN THE \_\_\_\_\_ COURT.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19

(SIGNED) \_\_\_\_\_

(Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Telephone No.) \_\_\_\_\_

(Reference No.) \_\_\_\_\_



TO: Messrs \_\_\_\_\_

Solicitors for the Claimant (Plaintiff) / Defendant / Petitioner / Respondent  
whose address for service is :

(Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Solicitor's Reference) \_\_\_\_\_

## Annex G (2)

### Application Notice for Permission to Appeal

(AND A STAY OF EXECUTION)

IN THE COURT OF APPEAL

Lower Court reference (Claim No.)

ON APPEAL FROM THE  
[HIGH COURT OF JUSTICE  
(CHANCERY or QUEEN'S BENCH or FAMILY) DIVISION  
[DIVISIONAL COURT]] [or]

\_\_\_\_\_ COUNTY COURT

B E T W E E N :

\_\_\_\_\_ Claimant  
(Plaintiff)/Petitioner

and

\_\_\_\_\_ Defendant / Respondent

#### Section A

*[Complete this section in all cases]*

\_\_\_\_\_ TAKE NOTICE that the Claimant (Plaintiff) / Defendant / Petitioner / Respondent (in person) will apply to the Court of Appeal for an order that he/she be granted permission to appeal from the order of \_\_\_\_\_

dated \_\_\_\_\_ 19\_\_ (and that, if permission is granted, execution of the said order should be stayed pending the hearing of the Claimant's (Plaintiff's) / Defendant's / Petitioner's / Respondent's appeal).

AND FURTHER TAKE NOTICE that the grounds of the proposed appeal are as set out in the draft Notice of Appeal attached

#### Section B

*[To be completed only in cases where the application for permission to appeal is being made after the time for appealing has expired or where a stay of execution is applied for]*

I(We) wish to rely on the following evidence in support of this application *(here set out the reasons why the application was not made before the expiry of the time for appealing and/or why a stay of execution should be granted)*

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## STATEMENT OF TRUTH

\*(I believe)(The applicant believes) that the facts stated above are true

\* *delete as appropriate*

Signed \_\_\_\_\_ Position or  
Office held \_\_\_\_\_  
(Applicant)(’s Solicitor)(’s litigation friend) (if signing on behalf of firm or company)  
Date \_\_\_\_\_

## Section C

[Complete this section in all cases]

I CERTIFY THAT THIS CLAIM IS CURRENTLY ALLOCATED TO THE SMALL CLAIMS/  
FAST/MULTI-TRACK IN THE \_\_\_\_\_ COURT.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19

(SIGNED) \_\_\_\_\_

(Address) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(Telephone No.) \_\_\_\_\_

(Reference No.) \_\_\_\_\_

TO: Messrs \_\_\_\_\_

Solicitors for the Claimant (Plaintiff) / Defendant / Petitioner / Respondent  
whose address for service is :

(Address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Solicitor's Reference) \_\_\_\_\_

(Solicitor's Reference) \_\_\_\_\_

## Annex H

### *Hear-by Dates*

The current Hear-by Dates are set out in the table below. They apply to all cases entered in the Court's records on or after 1 December 1998.

	TYPE OF CASE	HEAR-BY DATE
<u>Family</u>	Child cases	3 months
	Financial and other	6 months
<u>Crown Office Cases and Immigration appeals</u>	Immigration Appeals and Crown Office Interlocutory	3 months
	Other Crown Office final orders	9 months
<u>High Court</u>	Order 14	3 months
	Other interlocutory orders*	5 months
	Bankruptcy and Directors' Disqualification cases	5 months
	Limitation as a preliminary issue in personal injury cases	5 months
	All other preliminary issues	8 months
	Personal injury final orders	12 months
	Other final orders	15 months
<u>County Court</u>	Interlocutory orders	4 months
	Possession	4 months
	All preliminary issues	4 months
	Personal injury final orders	8 months
	Other final orders	12 months
<u>Tribunals</u> (other than immigration appeals)		12 months

\* Includes appeals confined to RSC Order 14A. For appeals referring to Order 14A and another issue, the Hear-by Date will be determined by the other issue.

It should be noted that expedition continues to be available in accordance with *Unilever v Chefaro Ltd (Practice Note) (CA)* [1995] 1 WLR 246. In addition, from 16 November 1998 very serious or distressing personal injury cases will be treated as being in the category of urgent appeals set out in that *Practice Note*.

## Annex I (1)

## REQUEST FOR DISMISSAL OF AN APPEAL

PLEASE NOTE: SECTION A IS TO BE COMPLETED WHERE THERE IS NO RESPONDENT'S NOTICE AND THE APPEAL IS BEING DISMISSED WITH COSTS; IN THAT CASE, ONLY THE APPELLANT'S SOLICITOR (OR THE APPELLANT, IF ACTING IN PERSON) NEED SIGN.

IN ALL OTHER CASES SECTION B MUST BE COMPLETED AND IT MUST BE SIGNED BY THE SOLICITORS FOR ALL PARTIES (AND BY ANY PARTY ACTING IN PERSON).

## IN THE COURT OF APPEAL

Appeal No

ON APPEAL FROM

BETWEEN:

Claimant  
(Plaintiff)/Appellant  
Petitioner/Respondent

and

Defendant/Appellant  
Respondent/Respondent

## Section A

WE, the solicitors\* for the above-named Appellant, who is of full legal capacity, REQUEST the dismissal of the appeal in the above matter with costs.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

(Signed) \_\_\_\_\_  
 \*(Solicitor for Appellant)

## Section B

WE, the solicitors\* for the above-named Respondent and Appellant, who are of full legal capacity, REQUEST the dismissal of the appeal *[and respondent's notice]* † in the above matter with no order as to costs *[or specify other costs order required]*.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

(Signed) \_\_\_\_\_  
 \*(Solicitor for Appellant)

(Signed) \_\_\_\_\_  
\* (Solicitor for Respondent)

*\* If any party is acting in person, please modify the wording as appropriate.*

† Delete where not applicable.

## Annex I (2)

## GENERAL FORM OF REQUEST FOR DISMISSAL OF AN APPLICATION

PLEASE NOTE: SECTION A IS TO BE COMPLETED WHERE THE APPLICATION IS BEING DISMISSED WITH COSTS; IN THAT CASE, ONLY THE APPLICANT'S SOLICITOR (OR THE APPLICANT, IF ACTING IN PERSON) NEED SIGN.

IN ALL OTHER CASES SECTION B MUST BE COMPLETED AND IT MUST BE SIGNED BY THE SOLICITORS FOR ALL PARTIES (AND BY ANY PARTY ACTING IN PERSON).

IN THE COURT OF APPEAL

Application No

ON APPEAL FROM

BETWEEN:

Claimant  
(Plaintiff)/Appellant  
Petitioner/Respondent

and

Defendant/Applicant  
Respondent/Respondent

## Section A

WE, the solicitors\* for the above-named Applicant, who is of full legal capacity, REQUEST the dismissal of the application in the above matter with costs.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

(Signed) \_\_\_\_\_  
 \*(Solicitor for Applicant)

## Section B

WE, the solicitors\* for the above-named Respondent and Applicant, who are of full legal capacity, REQUEST the dismissal the application in the above matter with no order as to costs *[or specify other costs order required]*.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

(Signed) \_\_\_\_\_  
\*(Solicitor for Applicant)

(Signed) \_\_\_\_\_  
\* (Solicitor for Respondent)

*\* If any party is acting in person, please modify the wording as appropriate.*



## Annex I (3)

## REQUEST FOR A DISMISSAL OF AN APPLICATION WHICH HAS NOT BEEN SERVED ON ANY OTHER PARTY

THIS FORM IS FOR USE ONLY FOR AN APPLICATION  
WHICH HAS NOT BEEN SERVED ON ANY OTHER PARTY

IN THE COURT OF APPEAL

Application No

ON APPEAL FROM

BETWEEN:

Claimant  
(Plaintiff)/Applicant  
Petitioner/Respondent

and

Defendant/Applicant

WE, the solicitors\* for the above-named Applicant, who is of full legal capacity,

(1) CERTIFY that the application in the above matter has not been served on any other party and

(2) REQUEST the dismissal of the said application with no order for costs.

DATED this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_

(Signed) \_\_\_\_\_  
 \*(Solicitor for Applicant)

*\* If any party is acting in person, please modify the wording as appropriate.*