

# APPEALS

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## I GENERAL RULES ABOUT APPEALS

### 52.1 Scope and interpretation

- (1) The rules in this Part apply to appeals to –
  - (a) the civil division of the Court of Appeal;
  - (b) the High Court; and
  - (c) a county court.
- (2) This Part does not apply to an appeal in detailed assessment proceedings against a decision of an authorised court officer.

(Rules 47.20 to 47.23 deal with appeals against a decision of an authorised court officer in detailed assessment proceedings)

- (3) In this Part –

- (a) 'appeal' includes an appeal by way of case stated;
  - (b) 'appeal court' means the court to which an appeal is made;
  - (c) 'lower court' means the court, tribunal or other person or body from whose decision an appeal is brought;
  - (d) 'appellant' means a person who brings or seeks to bring an appeal;
  - (e) 'respondent' means –
    - (i) a person other than the appellant who was a party to the proceedings in the lower court and who is affected by the appeal; and
    - (ii) a person who is permitted by the appeal court to be a party to the appeal; and
  - (f) 'appeal notice' means an appellant's or respondent's notice.
- (4) This Part is subject to any rule, enactment or practice direction which sets out special provisions with regard to any particular category of appeal.

## 52.2 Parties to comply with the practice direction

All parties to an appeal must comply with the relevant practice direction.

## 52.3 Permission

- (1) An appellant or respondent requires permission to appeal –
- (a) where the appeal is from a decision of a judge in a county court or the High Court, except where the appeal is against –
    - (i) a committal order;
    - (ii) a refusal to grant habeas corpus; or
    - (iii) a secure accommodation order made under section 25 of the Children Act 1989<sup>1</sup>; or
  - (b) as provided by the relevant practice direction.

(Other enactments may provide that permission is required for particular appeals)

- (2) An application for permission to appeal may be made –
- (a) to the lower court at the hearing at which the decision to be appealed was made; or
  - (b) to the appeal court in an appeal notice.

(Rule 52.4 sets out the time limits for filing an appellant's notice at the appeal court. Rule 52.5 sets out the time limits for filing a respondent's notice at the appeal court. Any application for permission to appeal to the appeal court must be made in the appeal notice (see rules 52.4(1) and 52.5(3))

(Rule 52.13(1) provides that permission is required from the Court of Appeal for all appeals to that court from a decision of a county court or the High Court which was itself made on appeal)

- (3) Where the lower court refuses an application for permission to appeal, a further application for permission to appeal may be made to the appeal court.
- (4) Subject to paragraph (4A), where the appeal court, without a hearing, refuses permission to appeal, the person seeking permission may request the decision to be reconsidered at a hearing.
- (4A) Where the Court of Appeal refuses permission to appeal without a hearing, it may, if it considers that the application is totally without merit, make an order that the person seeking

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<sup>1</sup> 1989 c.41.

permission may not request the decision to be reconsidered at a hearing. The court may not make such an order in family proceedings.

(‘Family proceedings’ is defined by section 32 of the Matrimonial and Family Proceedings Act 1984)

- (4B)** Rule 3.3(5) will not apply to an order that the person seeking permission may not request the decision to be reconsidered at a hearing made under paragraph (4A).
- (5)** A request under paragraph (4) must be filed within 7 days after service of the notice that permission has been refused.
- (6)** Permission to appeal may be given only where –
  - (a) the court considers that the appeal would have a real prospect of success; or
  - (b) there is some other compelling reason why the appeal should be heard.
- (7)** An order giving permission may –
  - (a) limit the issues to be heard; and
  - (b) be made subject to conditions.

(Rule 3.1(3) also provides that the court may make an order subject to conditions)

(Rule 25.15 provides for the court to order security for costs of an appeal)

#### **52.4 Appellant’s notice**

- (1)** Where the appellant seeks permission from the appeal court it must be requested in the appellant’s notice.
- (2)** The appellant must file the appellant’s notice at the appeal court within –
  - (a) such period as may be directed by the lower court (which may be longer or shorter than the period referred to in sub-paragraph (b)); or
  - (b) where the court makes no such direction, 21 days after the date of the decision of the lower court that the appellant wishes to appeal.
- (3)** Unless the appeal court orders otherwise, an appellant’s notice must be served on each respondent –
  - (a) as soon as practicable; and
  - (b) in any event not later than 7 days, after it is filed.

#### **52.5 Respondent’s notice**

- (1)** A respondent may file and serve a respondent’s notice.
- (2)** A respondent who –
  - (a) is seeking permission to appeal from the appeal court; or
  - (b) wishes to ask the appeal court to uphold the order of the lower court for reasons different from or additional to those given by the lower court, must file a respondent’s notice.
- (3)** Where the respondent seeks permission from the appeal court it must be requested in the respondent’s notice.
- (4)** A respondent’s notice must be filed within –

- (a) such period as may be directed by the lower court; or
  - (b) where the court makes no such direction, 14 days after the date in paragraph (5).
- (5)** The date referred to in paragraph (4) is –
- (a) the date the respondent is served with the appellant’s notice where –
    - (i) permission to appeal was given by the lower court; or
    - (ii) permission to appeal is not required;
  - (b) the date the respondent is served with notification that the appeal court has given the appellant permission to appeal; or
  - (c) the date the respondent is served with notification that the application for permission to appeal and the appeal itself are to be heard together.
- (6)** Unless the appeal court orders otherwise a respondent’s notice must be served on the appellant and any other respondent –
- (a) as soon as practicable; and
  - (b) in any event not later than 7 days, after it is filed.

## **52.6 Variation of time**

- (1)** An application to vary the time limit for filing an appeal notice must be made to the appeal court.
- (2)** The parties may not agree to extend any date or time limit set by –
  - (a) these Rules;
  - (b) the relevant practice direction; or
  - (c) an order of the appeal court or the lower court.

(Rule 3.1(2)(a) provides that the court may extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired))

(Rule 3.1(2)(b) provides that the court may adjourn or bring forward a hearing)

## **52.7 Stay<sup>(GL)</sup>**

Unless –

- (a) the appeal court or the lower court orders otherwise; or
- (b) the appeal is from the Asylum and Immigration Tribunal,  
an appeal shall not operate as a stay of any order or decision of the lower court.

## **52.8 Amendment of appeal notice**

An appeal notice may not be amended without the permission of the appeal court.

## **52.9 Striking out<sup>(GL)</sup> appeal notices and setting aside or imposing conditions on permission to appeal**

- (1)** The appeal court may –
  - (a) strike out the whole or part of an appeal notice;
  - (b) set aside (GL) permission to appeal in whole or in part;
  - (c) impose or vary conditions upon which an appeal may be brought.

- (2) The court will only exercise its powers under paragraph (1) where there is a compelling reason for doing so.
- (3) Where a party was present at the hearing at which permission was given he may not subsequently apply for an order that the court exercise its powers under sub-paragraphs (1)(b) or (1)(c).

#### **52.10 Appeal court's powers**

- (1) In relation to an appeal the appeal court has all the powers of the lower court.

(Rule 52.1(4) provides that this Part is subject to any enactment that sets out special provisions with regard to any particular category of appeal – where such an enactment gives a statutory power to a tribunal, person or other body it may be the case that the appeal court may not exercise that power on an appeal)
- (2) The appeal court has power to –
  - (a) affirm, set aside or vary any order or judgment made or given by the lower court;
  - (b) refer any claim or issue for determination by the lower court;
  - (c) order a new trial or hearing;
  - (d) make orders for the payment of interest;
  - (e) make a costs order.
- (3) In an appeal from a claim tried with a jury the Court of Appeal may, instead of ordering a new trial –
  - (a) make an order for damages<sup>(GL)</sup>; or
  - (b) vary an award of damages made by the jury.
- (4) The appeal court may exercise its powers in relation to the whole or part of an order of the lower court.

(Part 3 contains general rules about the court's case management powers)
- (5) If the appeal court –
  - (a) refuses an application for permission to appeal;
  - (b) strikes out an appellant's notice; or
  - (c) dismisses an appeal,and it considers that the application, the appellant's notice or the appeal is totally without merit, the provisions of paragraph (6) must be complied with.
- (6) Where paragraph (5) applies –
  - (a) the court's order must record the fact that it considers the application, the appellant's notice or the appeal to be totally without merit; and
  - (b) the court must at the same time consider whether it is appropriate to make a civil restraint order.

#### **52.11 Hearing of appeals**

- (1) Every appeal will be limited to a review of the decision of the lower court unless –
  - (a) a practice direction makes different provision for a particular category of appeal; or
  - (b) the court considers that in the circumstances of an individual appeal it would be in the interests of justice to hold a re-hearing.
- (2) Unless it orders otherwise, the appeal court will not receive –

- (a) oral evidence; or
  - (b) evidence which was not before the lower court.
- (3) The appeal court will allow an appeal where the decision of the lower court was –
- (a) wrong; or
  - (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.
- (4) The appeal court may draw any inference of fact which it considers justified on the evidence.
- (5) At the hearing of the appeal a party may not rely on a matter not contained in his appeal notice unless the appeal court gives permission.

#### **52.12 Non-disclosure of Part 36 offers and payments**

- (1) The fact that a Part 36 offer or payment into court has been made must not be disclosed to any judge of the appeal court who is to hear or determine –
  - (a) an application for permission to appeal; or
  - (b) an appeal,
 until all questions (other than costs) have been determined.
- (2) Paragraph (1) does not apply if the Part 36 offer or payment into court is relevant to the substance of the appeal.
- (3) Paragraph (1) does not prevent disclosure in any application in the appeal proceedings if disclosure of the fact that a Part 36 offer or payment into court has been made is properly relevant to the matter to be decided.

(Rule 36.3 has the effect that a Part 36 offer made in proceedings at first instance will not have consequences in any appeal proceedings. Therefore, a fresh Part 36 offer needs to be made in appeal proceedings. However, rule 52.12 applies to a Part 36 offer whether made in the original proceedings or in the appeal.)

## **II SPECIAL PROVISIONS APPLYING TO THE COURT OF APPEAL**

#### **52.13 Second appeals to the court**

- (1) Permission is required from the Court of Appeal for any appeal to that court from a decision of a county court or the High Court which was itself made on appeal.
- (2) The Court of Appeal will not give permission unless it considers that –
  - (a) the appeal would raise an important point of principle or practice; or
  - (b) there is some other compelling reason for the Court of Appeal to hear it.

#### **52.14 Assignment of appeals to the Court of Appeal**

- (1) Where the court from or to which an appeal is made or from which permission to appeal is sought ('the relevant court') considers that –
  - (a) an appeal which is to be heard by a county court or the High Court would raise an important point of principle or practice; or
  - (b) there is some other compelling reason for the Court of Appeal to hear it,
 the relevant court may order the appeal to be transferred to the Court of Appeal.

(The Master of the Rolls has the power to direct that an appeal which would be heard by a county court or the High Court should be heard instead by the Court of Appeal – see section 57 of the Access to Justice Act 1999)<sup>1</sup>

- (2) The Master of the Rolls or the Court of Appeal may remit an appeal to the court in which the original appeal was or would have been brought.

### **52.15 Judicial review appeals**

- (1) Where permission to apply for judicial review has been refused at a hearing in the High Court, the person seeking that permission may apply to the Court of Appeal for permission to appeal.
- (2) An application in accordance with paragraph (1) must be made within 7 days of the decision of the High Court to refuse to give permission to apply for judicial review.
- (3) On an application under paragraph (1), the Court of Appeal may, instead of giving permission to appeal, give permission to apply for judicial review.
- (4) Where the Court of Appeal gives permission to apply for judicial review in accordance with paragraph (3), the case will proceed in the High Court unless the Court of Appeal orders otherwise.

### **52.16 Who may exercise the powers of the Court of Appeal**

- (1) A court officer assigned to the Civil Appeals Office who is –
  - (a) a barrister; or
  - (b) a solicitormay exercise the jurisdiction of the Court of Appeal with regard to the matters set out in paragraph (2) with the consent of the Master of the Rolls.
- (2) The matters referred to in paragraph (1) are –
  - (a) any matter incidental to any proceedings in the Court of Appeal;
  - (b) any other matter where there is no substantial dispute between the parties; and
  - (c) the dismissal of an appeal or application where a party has failed to comply with any order, rule or practice direction.
- (3) A court officer may not decide an application for –
  - (a) permission to appeal;
  - (b) bail pending an appeal;
  - (c) an injunction<sup>(GL)</sup>;
  - (d) a stay<sup>(GL)</sup> of any proceedings, other than a temporary stay of any order or decision of the lower court over a period when the Court of Appeal is not sitting or cannot conveniently be convened.
- (4) Decisions of a court officer may be made without a hearing.
- (5) A party may request any decision of a court officer to be reviewed by the Court of Appeal.
- (6) At the request of a party, a hearing will be held to reconsider a decision of –
  - (a) a single judge; or
  - (b) a court officer, made without a hearing.

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<sup>1</sup> 1999 c.22.

- (6A) A request under paragraph (5) or (6) must be filed within 7 days after the party is served with notice of the decision.
- (7) A single judge may refer any matter for a decision by a court consisting of two or more judges.
- (Section 54(6) of the Supreme Court Act 1981<sup>1</sup> provides that there is no appeal from the decision of a single judge on an application for permission to appeal)
- (Section 58(2) of the Supreme Court Act 1981<sup>2</sup> provides that there is no appeal to the House of Lords from decisions of the Court of Appeal that –
- (a) are taken by a single judge or any officer or member of staff of that court in proceedings incidental to any cause or matter pending before the civil division of that court; and
  - (b) do not involve the determination of an appeal or of an application for permission to appeal, and which may be called into question by rules of court. Rules 52.16(5) and (6) provide the procedure for the calling into question of such decisions)

### III PROVISIONS ABOUT REOPENING APPEALS

#### 52.17 Reopening of final appeals

- (1) The Court of Appeal or the High Court will not reopen a final determination of any appeal unless –
  - (a) it is necessary to do so in order to avoid real injustice;
  - (b) the circumstances are exceptional and make it appropriate to reopen the appeal; and
  - (c) there is no alternative effective remedy.
- (2) In paragraphs (1), (3), (4) and (6), “appeal” includes an application for permission to appeal.
- (3) This rule does not apply to appeals to a county court.
- (4) Permission is needed to make an application under this rule to reopen a final determination of an appeal even in cases where under rule 52.3(1) permission was not needed for the original appeal.
- (5) There is no right to an oral hearing of an application for permission unless, exceptionally, the judge so directs.
- (6) The judge will not grant permission without directing the application to be served on the other party to the original appeal and giving him an opportunity to make representations.
- (7) There is no right of appeal or review from the decision of the judge on the application for permission, which is final.
- (8) The procedure for making an application for permission is set out in the practice direction.

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<sup>1</sup> 1981 c.54; section 54 was amended by section 59 of the Access to Justice Act 1999 (c.22).

<sup>2</sup> 1981 c.54; section 58 was amended by section 60 of the Access to Justice Act 1999 (c.22).