

Guidance notes for completing the respondent's notice

A free leaflet *I want to appeal* giving information about making an appeal in or to the High Court or county court is available from any county court or the Clerk of the Lists General Office/ Appeals Office at the Royal Courts of Justice, Strand, London WC2A 2LL. The leaflet will also explain some of the terms and expressions used in these notes of guidance.

Information is available about making an appeal to the Court of Appeal, from the Civil Appeals Office Registry, Room E307, Royal Courts of Justice, Strand, WC2A 2LL

- ◆ Court staff can help you complete the respondent's notice and tell you about the procedure. But they cannot give legal advice, for example, about the likely success of the appellant's appeal, whether you should reply to it or whether you should yourself appeal.
- ◆ If you need legal advice about this appeal, you should contact a solicitor or a law or advice centre.
- ◆ If you are legally represented, your solicitor should complete this form on your behalf.

When to file a respondent's notice

You need to file a notice if you wish:

- ◆ to appeal against the order (appealing includes asking for the order to be varied); or
- ◆ to ask the appeal court to uphold the order for different or additional reasons. (This is not treated as an appeal by the appeal court.)

If you wish the appeal court to uphold the lower court's order and reasons, and have arguments to support this you wish to make, you have two options.

You can:

- ◆ either complete a respondent's notice (you will not need to complete sections 4,5,6 or 8);
- ◆ or, set out your arguments in a skeleton argument. The notes to section 7 of the Respondent's Notice will explain more about this.

Important - time limits for filing your notice

You have only a limited time in which file a respondent's notice.

You must file your respondent's notice with the appeal court:-

- ◆ within the time limit set by the judge whose order or decision is being appealed; **or**
- ◆ where that judge set no time limit, within **14 days** after the date of service of:
 - the appellant's notice where permission to appeal was given by the lower court or permission to appeal is not required; **or**
 - the notification that the appeal court has given the appellant permission to appeal; **or**
 - the notification that the application for permission to appeal and the appeal itself are to be heard together

You must file your notice with the court at which the appellant's appeal is proceeding.

General notes on completing the notice

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

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

If you do not have all the information to complete your respondent's notice (or any documents that you need to file with it), you must **not** allow this to delay sending or taking it to the appeal court within the correct time. Complete the form as fully as possible and provide what documents you have. The notes to Section 9 will explain more about what you have to do in these circumstances.

Enter the appeal court's reference number in the top right hand corner of the respondent's notice. This number will appear on the top left hand side of the appellant's notice.

Section 1

Details of claim or case

Give the name of the court or tribunal whose order is being appealed, the number of the case or claim, and the title of the claim or case, eg. 'John Smith v Eric James'. You can take these details from the order being appealed.

Indicate, by ticking the appropriate box, which party you were in those proceedings.

Section 2

Respondent's details

Give your full name and an address to which all documents relating to the appeal can be sent. Include contact information, e.g. telephone and any other reference numbers.

If there is more than one respondent, list their names, addresses and contact details on a separate sheet of paper. Write the claim or case number on it and attach it securely to your notice.

Tick the box to let the court know if separate details are attached.

Section 3

Time estimate for appeal hearing

You do not need to complete this section if your appeal is being made to the Court of Appeal in London.

Please give an estimate of how long you believe it will take you to present your case to the court at the appeal hearing. The court needs this information to assess how much of a judge's time to allow.

Section 4

Details of the order you are seeking to appeal

If you are appealing only part of an order or tribunal decision, you must write out that part (or those parts) of the order in the box provided.

You should give the full title and name of the judge, e.g. ‘His Honour Judge Jones’ or ‘District Judge Smith’, and the date of the order or decision being appealed.

Section 5

Permission to file a respondent’s notice

You will usually need permission to file a respondent’s notice to appeal the decision of a judge of the High Court or a county court (appealing includes asking for the judge’s order to be varied).

Permission will only be given where the court considers that your appeal (or application to vary) has a real prospect of success. Where your appeal is against a case management decision, the court will also consider:-

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

If you are appealing the decision of a tribunal, you should check with that tribunal whether you need to ask for permission to appeal and, if so, whether you need to ask for that permission from the tribunal or from the appeal court.

You need only request permission to appeal in this notice if

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

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

- ◆ a committal order;
- ◆ an order refusing the grant of habeus corpus;
- ◆ a secure accommodation order under Section 25 of the Children Act 1989;
- ◆ to ask the appeal court to uphold the decision of the lower court, even though it is for different or additional reasons

If you need more time than that allowed for filing your respondent's notice, you must make an application in the notice itself. (*See the notes to Section 9*).

Section 6

Grounds for appealing, or for upholding the order

If you are appealing against the lower court's order, your appeal (appealing includes asking for the order to varied) must be based on relevant 'grounds' (reasons). An appeal court will only allow an appeal against a decision that was either:

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

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

Asking the court to uphold a decision is not an appeal but you must give reasons if asking for it to be upheld on different or additional grounds.

Set your reasons out briefly. If possible, list your reasons in short separately numbered paragraphs.

Remember that you must not include any grounds which rely on new evidence, that is, evidence that has become available since the order was made. You may not produce new evidence without first obtaining the permission of the appeal court. (*See the notes to Section 9*).

Section 7

Arguments in support of grounds

Your arguments (together referred to as a ‘skeleton argument’) may be set out in this section or in a separate document attached to this notice. They should, where appropriate, answer the arguments set out in the appellant’s skeleton argument.

Any separate skeleton argument has to be filed and served on the appellant with your completed notice no later than 14 days after you receive the appellant’s skeleton argument.

Skeleton arguments should contain a numbered list of points that you intend to argue at the hearing. Each point should be stated in no more than a few sentences. Refer at each point to any document you are filing with your respondent’s notice which supports that argument. (*See Section 10 on documents*)

Form N163 can be used to set out your skeleton argument. This form can be obtained from any court office or from the Clerk of the Lists General Office/ Appeals Office, The Royal Courts of Justice, Strand, London WC2A 2LL.

Other useful information

Try to consider what other information the appeal court might find useful. For example, the court would find it helpful to have a list of people who feature in the case, an explanation of technical terms used in the papers or a list of events in date order (a chronology). If you are providing any of these, they should be on a separate piece of paper attached to your notice marked with the case or claim number and the names of the parties. You do not need to duplicate any of the documents which the appellant has already provided.

Section 8

What decision are you asking the court to make

Set out details of the order(s) (or the variation to the original order(s)) that you want the appeal court to make.

Section 9

Other applications

If you wish to apply for an extension of time to file a fully completed respondent's notice with any supporting documents, this must be made in the notice itself. You should state the reason for the delay and the steps taken up to the time of filing the notice.

You may wish to make additional applications to the appeal court in connection with your appeal or application to vary or uphold the order. Any other applications may be made either in the notice, or in a separate application notice (Form N244). This form can be obtained from the

court. You may have to pay additional fees if it is filed at a later date than your respondent's notice.

The types of application you might want to make will include:

- ◆ amending (make changes to) your respondent's notice after it has been filed at court. But note that you can amend your skeleton argument (even if it is set out in part 7 of your notice) without making an application;
- ◆ asking the appeal court to issue a stay on executing the order or suspend any action in the case pending the outcome of the appeal. (You do not need to do this if you have already obtained a stay from the lower court or the appeal is from the Immigration Appeal Tribunal.);
- ◆ producing new evidence in the appeal or asking for permission to produce oral evidence at the appeal hearing. You will need to give reasons why the new evidence was not before the original court and, where oral evidence is requested, the reasons why you think it is necessary;
- ◆ asking for security for costs, ie that the appellants be ordered to pay a sum of money into court sufficient to cover any costs the appellants may be ordered to pay in the appeal.

Supporting documents

You may have additional documents to those filed by the appellant to support your appeal or your request to vary or uphold the order. These should be in a bundle and filed with your respondent's notice.

Do not delay filing your respondent's notice at the appeal court. If you have not been able to obtain any of the documents that you wish to file with your notice, complete the notice as best you can and ensure that it is filed on time.

Your bundle should include any of the following (unless they are already included in the bundle filed by the appellant):-

- ◆ your respondent's notice and any skeleton argument (if separate);
- ◆ any witness statements or affidavits in support of any application included in Sections 5 or 9 of your notice or in a separate Part 23 application notice;
- ◆ any other affidavit or witness statement filed in support of your arguments; and
- ◆ any other documents directed by the court to be filed in the appeal.

You should remember that if you file any of the documents at a later date, you must check whether or not the information you are providing alters any of the details already given in your respondent's notice. If it does, you will need to apply to the court for permission to amend the notice. The court can tell you how to do this.

What happens next?

Filing your completed notice

Copy the completed notice (and any separate skeleton argument or bundles of documents) so that you have one copy for yourself, two copies for the court and one copy for each respondent. Send or take the notice and any supporting documents or bundles to the court office with the appropriate fee. The court can tell you how much this is.

Serving your respondent's notice

The appellant must be served with a sealed copy of this notice any separate skeleton arguments or bundle of documents as soon as practicable but no later than 7 days after it is filed at court. The court will serve all the documents filed on the appellant and any other respondents unless you tell the court that you wish to serve it yourself. Any separate skeleton argument (see the notes to Section 7 above) must be served with the respondent's notice where possible or within 21 days of receiving the appellant's skeleton argument.

If you have made an application for additional time to provide all information you need for appeal, the respondent will have the right to attend the hearing of your application.