Guidance notes on completing form N161 – Appellant's notice (all appeals except small claims track appeals)

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

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

- any county court,
- hmctsformfinder.justice.gov.uk; or
- the Clerk of the lists General Office/ Appeals Office at the Royal Courts of Justice, Strand, London WC2A 2LL.

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

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

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

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Important - time limits for issuing (filing) your appeal.

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

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

You must file your appellant's notice:-

- within the time limit set by the judge whose order you are appealing against; or
- where that judge set no time limit, within **21 days** after the date of the decision you wish to appeal against was made.

General notes on completing the notice

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

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

If you do not have all the documents or information you need for your appeal, you must **not** allow this to delay sending or taking the form to the appeal court within the correct time. Complete the form as fully as possible and provide what documents you have. The notes to Section 10 will explain more about what you have to do in these circumstances.

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

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

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

You will also need to include the above details for the respondent to enable the court to send correspondence and other details to the respondent. If there is more than one respondent, list their names, addresses and contact details on a separate sheet of paper and tick the 'details of additional parties' box to indicate that you have done so. Write the claim number on it and attach it securely to your notice.

Section 2: Details of the appeal

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

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

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

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If the order being appealed was made in the High Court or a county court, and did not relate to a family matter, it will usually have been allocated to the fast track or multi-track for the purpose of preparation of evidence and trial. If it was allocated to a track, you should tick the appropriate box to show which. (The notice of allocation or other order should give this information.)

You should also tick the appropriate box if the order you are appealing against was a case management decision to indicate the nature of the decision you wish to appeal. Case management decisions include orders relating to:

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

A grant or refusal of interim relief might include an injunction, freezing order, an order for the detention or custody or preservation of relevant property, or a financial order. You should tick the previous appeal decision box if this is a second appeal and you wish to appeal against the outcome of the first appeal hearing.

Section 3: Legal representation

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

Indicate whether or not your case is being funded.

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

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Section 4: Permission to appeal

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

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

You should note that permission will only be given where the court considers that your appeal has a real prospect of success. Where your appeal is against a case management decision, the court will also consider:

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

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

- a committal order;
- an order refusing the grant of habeas corpus;
- a secure accommodation order under Section 25 of the Children Act 1989.

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You need only request permission in this notice if:

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

The court when giving permission to appeal may, **exceptionally,** direct that your appeal be referred to the Court of Appeal if it considers that it raises an important point of principle or practice or there is some other important reason for the Court of Appeal to hear it. Where the court gives this direction, it will be shown on form **N460 Reasons for allowing or refusing permission to appeal (including referral to the Court of Appeal)** which the court will send you.

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

Section 5: Other information required for the appeal

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

You should also indicate whether your appeal includes any Human Rights Act issues and whether you are asking the appeal court to issue a stay on enforcing the order which you are appealing. (You do not need to do this if you have already obtained a stay from the lower court or your appeal is from the Immigration Appeal Tribunal). If you are asking for a stay, extension of time or other order you will also need to complete the relevant part of Section 9.

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Section 6 and 7: Grounds for appeal and arguments in support

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

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

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

Set out briefly and **on a separate sheet** your reasons why you think the judge's decision was wrong or unjust. If possible, list your reasons in short separately numbered paragraphs and indicate you have done this by ticking the relevant box.

Remember that you **must not** include any grounds for appealing which rely on new evidence, that is evidence that has become available since the order was made. You may not produce new evidence in your appeal without first obtaining the permission of the appeal court. (See the notes to Section 4)

Please indicate by ticking the relevant box whether you are attaching your arguments (referred to as a skeleton argument) to this notice or whether you intend to send them separately within 14 days of filing this appellant's notice with the court.

The separate skeleton argument should be filed and served on the respondent either with your completed notice or, if you are unable to complete your skeleton argument in time, no later then 14 days after filing your notice.

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Skeleton arguments should contain a numbered list of points that you intend to argue at the hearing. Each point should be stated in no more than a few sentences. Refer at each point to any documents you are filing with your appellant's notice which supports that argument (see Section 11 on documents).

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

Section 8: What you are asking the appeal court to do?

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

Section 9: Other applications

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

Any application for an extension of time for appealing must be made in the appeal 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. Any other applications may be made either in the notice, or in a separate application notice (Form N244 – Application notice). This form can be obtained from

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the court or our website. You may have to pay additional fees if it is filed at a later date than your appellant's notice.

Section 10: Evidence in support

Include here any information you have to support your application under Section 9.

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

Section 11: Supporting documents

Do not delay filing your appellant's notice at the appeal court. If you have not been able to obtain any of the documents listed below within the time allowed, complete the notice as best you can and ensure the notice is filed on time. Tick the appropriate boxes to show the documents you are filing with the appeal notice. List any documents that you intend to use but which you do not have available in the box over the page. Set out the reasons why you have been unable to obtain any of the information or documents and give the date when you expect them to be available.

Whenever possible, the following documents should be filed with your appellant's notice:-

- two additional copies of your appellant's notice for the appeal court;
- one copy of your appellant's notice for each of the respondents;

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- one copy of your skeleton argument for each copy of the appellant's notice that is filed;
- a sealed (stamped by the court) copy of the order being appealed;
- a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- any witness statements or affidavits in support of any application included in the appellant's notice;
- a copy of the order allocating the case to a track (if any); and
- a copy of the legal aid or CLSF certificate (if legally represented).

Your bundle of documents in support which should include copies of:

- a sealed copy (stamped by the court) of your appellant's notice;
- a sealed copy (stamped by the court) of the order being appealed;
- a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- any affidavit or witness statement filed in support of any application included in the appellant's notice;
- a copy of the skeleton argument;

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- a transcript or note of judgment, and in cases where permission to appeal was given by the lower court or is not required those parts of any transcript of evidence which are directly relevant to any question at issue on the appeal;
- the claim form and statements of case (where relevant to the subject of the appeal);
- any application notice (or case management documentation) relevant to the subject of the appeal;
- in cases where the decision appealed was itself made on appeal (eg. from district judge to circuit judge), the first order, the reasons given and the appellant's notice used to appeal from that order;
- in the case of judicial review or a statutory appeal, the original decision which was the subject of the application to the lower court;
- in cases where the appeal is from a Tribunal, a copy of the Tribunal's reasons for the decision, a copy of the decision reviewed by the Tribunal and the reasons for the original decision and any document filed with the Tribunal setting out the grounds of appeal from that decision;
- any other documents which are necessary to enable the appeal court to reach a decision; and
- such other documents as the court may direct.

A transcript or note of judgment may be either an approved transcript of the judgment where the hearing was recorded or a copy of the written judgment (endorsed with the judge's signature) or a note of the judgment. If you were not legally represented in the lower court but the respondent was, the respondent's advocate should make their note of the judgment available to you free of charge.

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You should remember that if you file any of the documents at a later date, you must check whether or not the information contained in the later documents alters any of the details already given in your appellant'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 and documents

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

The court will serve your appellant's notice, your skeleton argument and any other documents on the respondent, unless you tell the court that you wish to serve them yourself.

Please note that the above paragraph does not apply to the Court of Appeal and the Civil Appeals Office will not serve documents where service is required by the Civil Procedure Rules (See CPR 52 PD para 15.1(2)). For further guidance see the Civil Appeals website www.justice.gov.uk/guidance/courts-and-tribunals/courts/court-of-appeal/civil-division/index.htm

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The respondent must be served with -

- **a sealed copy of your appellant's notice** as soon as practicable but no later than 7 days after it is filed at the court;
- **any separate skeleton argument** at the same time as the notice. If you have been unable to complete your skeleton argument in time, it must be served no later than 14 days after filing your notice at the court;
- **your bundle of documents**
- if you have already obtained permission to appeal or do not need permission, the bundle must be served at the same time as your notice; **or**
- if you have asked for permission to appeal in your notice and permission has been granted without a hearing, the bundle must be served within 7 days of receiving notice that permission has been given; **or**
- if you have asked for permission to appeal in your notice which is to be considered at a hearing, the bundle must be served within 7 days of receiving notice of that hearing.

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