

Guidance notes on completing form N161 – Appellant’s notice (all family proceedings appeals in the Court of Appeal (Civil Division) and the family court)

Please note form **N161** is to be used for specified types of family appeals in the Court of Appeal (Civil Division) and the family court.

For appeals relating to the Family Division of the High Court, form **FP161**(appellant’s notice) should be used with the accompanying guidance notes on completing the form (**FP161A**).

Family proceedings appeals will be heard in the Court of Appeal (Civil Division) if the appeal relates to:

- Decisions or orders of a Circuit Judge of Recorder in the family court under Parts 4 or 5 of, or paragraph 19 (1) of Schedule 2 to, the Children Act 1989; or
- Decisions or orders of a Circuit Judge of Recorder in the family court in proceedings under the Adoption and Children Act 2002
- Decisions or orders of a Circuit Judge of Recorder in the family court in relation to contempt of court in connection with either of the type of proceedings above
- Decisions or orders of a Circuit Judge of Recorder made on appeal to the family court
- A decision or order of a Judge of the High Court

Family proceedings appeals will be heard in the family court if the appeal relates to:

- a decision made by one or more lay justices
- a decision made by a district judge
- a decision made by a costs judge

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

- any family court,
- hmctsformfinder.justice.gov.uk; or
- the Family Division Appeals Office, Floor 1M, Queen's Building, 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.

Additional guidance is available about making an appeal to the Court of Appeal (Civil Division), 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, whether your appeal will be successful or what you should write on the form.
- If you need legal advice about bringing your appeal, you should contact a solicitor or a Citizens Advice immediately.
- If you are legally represented, your solicitor should complete this form on your behalf.

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

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

The leaflets '**EX340 – I want to appeal**' and '**FP201 – Routes of Appeal**' will help you decide which court is the appropriate appeal court in your case.

You must file your appellant's notice:-

- Within the time limit set by the judge whose decision or order you are appealing against; OR
- Where that judge has set no time limit but the appeal is against a case management decision or an interim care order under Section 38 (1) Children Act 1989, within 7 days after the date of the decision you wish to appeal against was made; OR
- In all other cases where that judge has 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 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 and 11 will explain more about what you have to do in these circumstances.

Section 1: Details of the case you are appealing against

Give the 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 applicant or petitioner, 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 number, email address 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 case 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 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.

You should also tick the appropriate box 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(or removing) a party to a case.

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

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

Indicate whether or not your case is being publicly funded.

State whether the respondent(s) is/are legally represented and, if so, provide the name and contact details of their solicitor.

Section 4: Permission to appeal

You will usually need permission to appeal the decision of a judge of the High Court, a Circuit Judge or Recorder.

If you wish to make a **second appeal** against the same order, you can only do so if the Court of Appeal 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 or there is some other compelling reason for the appeal to be heard. 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;
- the impact on the welfare of the child and the timetable for the child; 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 in relation to a minor;
- a secure accommodation order under Section 25 of the Children Act 1989 or Section 119 of the Social Services and Well-Being (Wales) Act 2014.

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.

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 decision, you must write out that part (or parts) of the order in the box provided.

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

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

- wrong; or
- unjust because of a serious procedural or other irregularity in the 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 9)

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 each of the respondent(s) with your completed notice if you are appealing to the Court of Appeal.

Your skeleton argument 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. See page 2 for information on time limits.

You may wish to make additional applications to the appeal court in connection with your appeal, for example to introduce new evidence in 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 the court or from hmctsformfinder.justice.gsi.gov.uk. 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.

It is important you check the information contained in the notice is correct before signing. It is a contempt of court to sign a false statement of truth without honest belief in its truth for which you can be fined, have your assets seized or be sentenced to a term of imprisonment.

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.

In the Court of Appeal:

- three copies of the appellant's notice and three copies of the grounds of appeal;
- one additional copy of the appellant's notice and one copy of the grounds of appeal for each of the respondents;
- one copy of the grounds of appeal on a separate sheet attached to each of the appellant's notices filed;
- one copy of the sealed (stamped by the court) order or tribunal determination being appealed;

- a copy of any order giving or refusing permission to appeal together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- one copy of any witness statement or affidavit in support of any application included in the appellant's notice;
- where the decision of the lower court was itself made on appeal, a copy of the first order, the reasons given by the judge who made it and the appellant's notice of the appeal against that order;
- one copy of the skeleton argument in support of the appeal or application for permission to appeal;
- a copy of the approved transcript of judgment; and
- a copy of the legal aid or CLSF certificate (if legally represented)

What happens next?

Filing your completed notice and documents

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

If you have little or no savings, are on certain benefits or have a low income, you might be able to get help with your court fee (also known as fee remission). For further information, or to apply for help with fees, you can visit gov.uk/get-help-with-court-fees. If you do not have access to the internet, you will be able to get a paper form (**EX160 – Apply for help with fees**) from court staff at any family court office. If you do not have access to the internet and are completing a paper application of the **EX160**, you **MUST** send this to the court at the same time as your appellant's notice (**N161**).

Failure to do so may lead to a delay in dealing with your appeal which may lead to your appeal being delayed ('stayed') or dismissed ('struck out').

Service of your appellant's notice

You are required to serve a sealed (stamped by the court) copy of your appellant's notice on each respondent as soon as practicable but no later than seven days after it is filed by the court. You will be asked to confirm that you have served the respondent(s) on a form provided by the court. If you have not included your skeleton argument in your appellant's notice you must also serve this no later than 14 days after serving your appellant's notice on each respondent.

Preparing and filing your bundle of documents

You will need to prepare and file a bundle of documents for use by the court in hearing your appeal. This will also need to be served on each respondent in due course.

Once you have filed your appellant's notice in the Court of Appeal, you will be notified by letter from the court office of the due date for filing your bundle. If you have filed your appellant's notice in the family court, that court will make directions for when you must file your bundle with the court.

Your bundle of documents in support should include:

- a copy of your appellant's notice;
- a copy of any respondent's notice;
- a copy of any skeleton arguments filed by either yourself or the respondent;
- a copy of the order under appeal;

- a copy of any order made by the lower court granting or refusing permission to appeal, together with the judge's reasons;
- a copy of the approved transcript of judgment or other record of reasons;
- in cases where the decision appealed was itself made on appeal, a copy of the first order, the reasons given and the appellant's notice used to appeal from that order (Court of Appeal);
- such other documents as the court may direct.

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

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

Service of your bundle of documents

• In the Court of Appeal

Further guidance as service of the bundle in the Court of Appeal will be provided to you by way of letter from the Civil Appeals Office after the issue of your appellant's notice.

- **In the Family Court**

The court will give directions for the service of the bundle of documents on each of the respondent(s) in the appeal. You must comply with the directions made by the court. **Failure to do so may lead to a delay in dealing with your appeal which may lead to your appeal being delayed ('stayed') or dismissed ('struck out').**

Please send completed notices for the Court of Appeal (Civil Division) to:

Civil Appeals Office Registry, Room E307, Royal Courts of Justice, Strand, WC2A 2LL

For appeals to the Family Court, before sending your completed appellant's notice, please check details of your nearest family court at <https://courtribunalfinder.service.gov.uk>