

Guidance notes on completing the FP162 - Respondent's notice

A free leaflet EX340 – 'I want to appeal' giving information about making an appeal in or to the Family Division of the High Court ('the High Court') is available from any court or the Family Division Appeals Office at the Queen's Building, Floor 1M, 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.

Other guidance and information is available about making an appeal to the High Court from the Family Division Appeals Office.

- 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, whether you should yourself appeal, or what you should write on the form if you decide to reply.
- If you need legal advice about this appeal, you should contact a solicitor, Citizens Advice 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 want to defend (argue against) the appellant's appeal without relying on different or additional reasons to those given by the judge, you do not have to file a respondent's notice. You should however file a skeleton argument setting out your arguments for why you do not agree with the appeal.

IMPORTANT – time limits for filing your notice (Rule 30.5 FPR)

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

You must file your respondent's notice with the High Court:-

- within the time limit set by the judge whose order or decision is being appealed; or
- where that judge set no time limit, but the appeal relates to a case management decision, **within 7 days** beginning with 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
- where that judge set no time limit, and the appeal is against a decision other than a case management decision, **within 14 days** beginning with 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 which will be the Family Division of the High Court.

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, 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 Sections 8 and 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 right hand side of the appellant's notice.

There is a fee payable when lodging your respondent's notice with the court. The Forms **EX50 – 'Court Fees for the High Court, county court and family court'** and FP200 - 'Family Proceedings Fees' provides guidance of the costs involved and ways in which you can pay. You must pay the relevant fee when you file any document or start any process, unless otherwise stated. A copy of this document is available from:

- Any family court or hearing centre
- hmctsformfinder.justice.gov.uk

If you don't pay, your case will be delayed ('stayed') or dismissed ('struck out')

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 have been granted a fee remission, you need to insert this unique reference number on the form.

SECTION 1

Details of case

Give the name of the court whose order is being appealed, the number of the case, and the title of the 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 the name of your legal representative if you have one. If you do not have a legal representative you should provide an address to which all documents relating to the appeal can be sent. Include contact information, e.g. telephone and any other reference numbers and an email address. If you have a legal representative, provide the details of your legal representative, so papers relating to the appeal can be sent directly to your solicitor.

If there are any additional parties not identified by the appellant in the appellant's notice, list their names, addresses and contact details on a separate sheet of paper. Write the case number on it and attach it securely to your notice.

Tick the box to let the court know if separate details are attached and indicate clearly in the box how many additional parties details are provided so court staff are aware of how many parties' details are provided.

SECTION 3

Details of the order you are seeking to appeal

If you are appealing only part of an order or 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 4

Permission to file a respondent's notice

You will usually need permission to file a respondent's notice to appeal the decision of a Circuit Judge, Recorder or District Judge of the High 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 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(ren) and the timetable for the child(ren); and
- whether it would be more convenient to deal with your point at the trial.

You must 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
- a secure accommodation order under Section 25 of the Children Act 1989 or Section 119 Social Services and Well-being (Wales) Act 2014
- 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 8*).

SECTION 5

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 out briefly your reasons why you think the judge's decision was wrong or unjust (referred to as your 'grounds of appeal'). 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 High Court. (*See the notes to Section 8*).

SECTION 6

Arguments in support of grounds of appeal

Please indicate by ticking the relevant box that you have also attached a document setting out your arguments in support of your grounds of appeal (referred to as your 'skeleton argument') to this notice or that it will be filed later in the proceedings. If you do not have a legal representative, you do not have to do a separate skeleton argument but may do so if you wish.

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

Your skeleton argument should contain a numbered list of points that you intend to argue at the appeal 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 respondent's notice which supports that argument. (See *Section 9 on documents*)

If you have not attached your arguments to your notice, do not delay in sending your notice. (See *section 9*)

SECTION 7

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 8

Other applications

If you want to apply for an extension of time for filing your respondent's notice, you must make this application in Part A of this section. 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 FP244). This form can be obtained from the court or online from hmctscourtfinder.justice.gov.uk 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.);
- 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 appellant be ordered to pay a sum of money into court sufficient to cover any costs the appellant may be ordered to pay in the appeal.

You, or your solicitor if you are legally represented, 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 an honest belief in its truth, for which you can be fined, have your assets seized or be sentenced to a term of imprisonment.

The notice **MUST** be signed by you or your solicitor if legally represented. Unsigned forms will be returned by the court which could lead to the appeal being dismissed as it is out of time.

SECTION 9

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 in support of any application included in Sections 5 or 9 of your notice or in a separate application notice;
- any other witness statement filed in support of your arguments; and
- any other documents directed by the court to be filed in the appeal.

Do not file any other documents other than those directed by the court without first obtaining permission from the court to do so. Additional documents will not be read by the judge.

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 Family Division Appeals Office with the appropriate fee at the address set out at the bottom of this leaflet. The court can tell you how much this is.

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.

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.

It is your responsibility to serve all the documents filed on the appellant and any other respondents. The court will give you a document (certificate of service) to return to the court once you have served the documents on the appellant and any other respondents.

Any separate skeleton argument (see the notes to Section 7 above) must be served with the respondent's notice where possible or within 14 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 appellant and other respondents will have the right to attend the hearing of your application.

Please send completed notices to:

Family Division Appeals Office, Floor 1M, Queen's Building, Royal Courts of Justice, Strand, London WC2A 2LL
DX 44450 Strand Phone: 020 7947 7192