

PRACTICE DIRECTION – APPEALS

This practice direction supplements Part 20 of the Court of Protection Rules 2007

PRACTICE DIRECTION A – APPEALS

1. This practice direction applies to appeal proceedings within the Court of Protection pursuant to Part 20 (except where Part 22 makes different provision). Where an appeal lies to the Court of Appeal, the Civil Procedure Rules 1998 apply to such an appeal.

Permission

2. Rules 171B, 172 and 173 set out the procedure for seeking the court's permission to appeal.
3. Unless the appeal is against an order of committal to prison, the court's permission is required to appeal. An application for permission may be made either to the judge at the hearing at which the decision being appealed was made (the first instance judge), or to an appeal judge.¹

APPELLANT

Appellant's Notice

4. Rule 175 sets out the procedure and time limits for filing and serving an appellant's notice. This is summarised in the following table:

Permission given by the first instance judge	Permission not given by a first instance judge	Permission not needed
Appellant's notice to be filed within the time directed by the first instance judge; OR Where no time directed, within 21 days of the decision being appealed/ permission decision.	Appellant's notice including application for permission to be filed within 21 days of the decision being appealed.	Appellant's notice to be filed within 21 days of the decision being appealed.
Appellant's notice to be served on all respondents as soon as	Appellant's notice to be served on all respondents	Appellant's notice to be served on all respondents

¹ But see rule 182, which sets out certain requirements in relation to second appeals.

practicable, and no later than 21 days after it is issued.	as soon as practicable, and no later than 21 days after it is issued.	as soon as practicable, and no later than 21 days after it is issued.
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5. Where the first instance judge announces his decision and reserves the reasons for his judgment until a later date, he should, in the exercise of his powers under rule 175(2)(a), fix a period for filing the appellant's notice that takes this into account.
6. Except where the appeal judge orders otherwise, a sealed copy of the appellant's notice must be served on all respondents in accordance with the time limits prescribed by rule 175(3). At this time the appellant should also serve a skeleton argument on all respondents if permission was granted by the first instance judge.
7. The appellant must, within 7 days beginning on the date on which the copy of the appellant's notice was served, file a certificate of service in relation to service of the appellant's notice.²

(Part 6 sets out the rules relating to service and Part 7 sets out the rules relating to notification of P, including the requirement to notify P that an appellant's notice has been issued by the court.)

Extension of time for filing appellant's notice

8. Where the time for filing an appellant's notice has expired, the appellant must:
 - (a) file an appellant's notice; and
 - (b) include in that appellant's notice an application for an extension of time.
9. The appellant's notice should state the reason(s) for the delay and the steps taken prior to the application being made.
10. Where the appellant's notice includes an application for an extension of time and permission to appeal has been given or is not required, the respondent has the right to be heard on that application.

Documents to be filed and served with appellant's notice

11. The appellant must file the following documents with his appellant's notice:
 - (a) one additional copy of the appellant's notice for the court;
 - (b) one copy of his skeleton argument;
 - (c) a sealed copy of the order being appealed;
 - (d) 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;
 - (e) any witness statements or affidavits in support of any application included in the appellant's notice;
 - (f) the application form and any application notice or response (where relevant to the subject of the appeal);
 - (g) any other documents which the appellant reasonably considers necessary to enable the court to reach its decision on the hearing of the application or appeal;
 - (h) a suitable record of the judgment of the first instance judge; and
 - (i) such other documents as the court may direct.

12. Where it is not possible to file all of the above documents with the appellant's notice, the appellant must indicate which documents have not yet been filed and the reasons why they are not currently available. The appellant must then provide a reasonable estimate of when the missing document or documents can be filed and file and serve them as soon as reasonably practicable.

13. Notice of an application to be made to the court for a remedy incidental to the appeal (e.g. an interim remedy under rule 82) may be included in the appellant's notice, or in an application notice using form COP9 (which is to be attached to the appellant's notice).

14. The appellant should consider what other information the court will need. This may include a list of persons who feature in the case or glossaries of technical terms. A chronology of relevant events will be necessary in most appeals.

² Rule 175(4).

15. The information set out in paragraph 11 must be served on each respondent when the appellant's notice is served.

Skeleton arguments

16. The appellant's notice must, subject to paragraph 17, be accompanied by a skeleton argument using, or attached to, a skeleton argument COP37 form.

17. Where the appellant is unable to provide a skeleton argument to accompany the appellant's notice it must be filed and served on all respondents within 21 days of filing the notice.

18. A skeleton argument must contain a numbered list of the points which the party wishes to make. These should both define and confine the areas of controversy. Each point should be stated as concisely as the nature of the case allows.

19. A numbered point must be followed by a reference to any document on which the appellant wishes to rely.

20. A skeleton argument must state, in respect of each authority cited:

- (a) the proposition of law that the authority demonstrates; and
- (b) the parts of the authority (identified by page or paragraph references) that support the proposition.

21. If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state the reason for taking that course. This statement should not materially add to the length of the skeleton argument but should be sufficient to demonstrate, in the context of the argument:

- (a) the relevance of the authority or authorities to that argument; and
- (b) that the citation is necessary for a proper presentation of that argument.

Suitable record of the judgment

22. Where the judgment to be appealed has been officially recorded by the court, an approved transcript of that record should accompany the appellant's notice. Photocopies will not be accepted for this purpose. However, where there is no officially recorded judgment, the following will be acceptable:

Written judgments

23. Where the judgment was given in writing, a copy of that judgment endorsed with the judge's signature.

Note of judgment

24. When the judgment was not officially recorded or given in writing, a note of the judgment (agreed between the appellant's and respondent's advocates) should be submitted for approval to the first instance judge. If the parties cannot agree on a single note of the judgment, both versions should be provided to that judge with an explanatory letter. For the purpose of an application for permission to appeal the note need not be approved by the respondent or the first instance judge.

Advocates' notes of judgments where appellant is unrepresented

25. When the appellant was unrepresented before the first instance judge it is the duty of any advocate for the respondent to make his note of the judgment promptly available, free of charge, to the appellant where there is no officially recorded judgment or if the court so directs. Where the appellant was represented before the first instance judge, it is the duty of his own former advocate to make his note available in these circumstances. The appellant should submit the note of the judgment to the appeal judge.

Transcripts or notes of evidence

26. When the evidence is relevant to the appeal an official transcript of the relevant evidence must be obtained. Transcripts or notes of evidence are generally not needed for the purpose of determining an application for permission to appeal.

27. If evidence relevant to the appeal was not officially recorded, a typed version of the judge's notes of evidence must be obtained.

28. Where the first instance judge or the appeal judge is satisfied that:

- (a) an unrepresented appellant; or
- (b) an appellant whose legal representation is provided free of charge to the appellant and who is not in receipt of civil Legal Aid,

is in such poor financial circumstances that the cost of a transcript would be an excessive burden the court may certify that the cost of obtaining one official transcript should be borne at public expense.

29. In the case of a request for an official transcript of evidence or proceedings to be paid for at public expense, the court must also be satisfied that there are reasonable grounds for appeal. Whenever possible a request for a transcript at public expense should be made to the first instance judge when asking for permission to appeal.

RESPONDENT

30. A person who has been named as a respondent in appeal proceedings and who wishes only to request that the appeal judge upholds the judgment or order of the first instance judge, whether for the reasons given by the first instance judge or otherwise, does not make an appeal and does not therefore require permission to appeal in accordance with rules 171B and 172.

31. A person who has been named as a respondent in appeal proceedings, and who also wishes to seek permission to appeal must do so in accordance with rules 171B and 172.

32. Unless the court otherwise directs, a respondent need not take any action when served with an appellant's notice until such time as notification is given to him that permission to appeal has been granted (unless paragraph 31 applies).

Respondent's notice

33. A respondent who wishes to appeal or who wishes to ask the appeal judge to uphold the order of the first instance judge for reasons different from or additional to those given by the first instance judge must file a respondent's notice.

34. If the respondent does not file a respondent's notice, he will not be entitled, except with the permission of the court, to rely on any reasons for upholding the decision which are different from or additional to those relied on by the first instance judge.

35. Rule 176 sets out the procedure and time limits for filing and serving a respondent's notice.
36. Where the first instance judge announces his decision and reserves the reasons for his judgment until a later date, he should, in the exercise of his powers under rule 176(3)(a) fix a period for filing the respondent's notice that takes this into account.
37. Except where the appeal judge orders otherwise, a sealed copy of the respondent's notice must be served on all parties to the appeal proceedings in accordance with the time limits prescribed by rule 176(5), along with any other material required to be served in accordance with paragraphs 40 to 43 below.
38. The respondent must, within 7 days beginning with the date on which the copy of the respondent's notice was served, file a certificate of service in relation to service of the respondent's notice.

(Part 6 sets out the rules relating to service.)

39. Paragraphs 8 to 10 apply in respect of a respondent's notice as they apply to an appellant's notice.

Documents to be filed and served with respondent's notice

40. The respondent must file the following documents with his respondent's notice:
- (a) one additional copy of the respondent's notice for the court;
 - (b) one copy of his skeleton argument;
 - (c) a sealed copy of the order being appealed;
 - (d) 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; and
 - (e) any witness statements or affidavits in support of any application included in the respondent's notice.
 - (f) any other documents which the respondent reasonably considers necessary to enable the court to reach its decision on the hearing of the application or appeal; and
 - (g) such other documents as the court may direct.

41. A respondent may include an application for a remedy incidental to the appeal as set out in paragraph 13.
42. The respondent should consider what other information the appeal judge will need. This may include a list of persons who feature in the case or glossaries of technical terms. A chronology of relevant events will be necessary in most appeals.
43. The information set out in paragraph 40 must be served on the appellant and any other respondent when the respondent's notice is served.

Skeleton argument

44. The respondent must file and serve a skeleton argument in all cases where he proposes to address arguments to the court.
45. The respondent's notice must, subject to paragraph 46, be accompanied by a skeleton argument using, or attached to, a skeleton argument COP37 form.
46. Where the respondent is unable to provide a skeleton argument to accompany the respondent's notice it must be filed and served on all respondents within 21 days of filing the notice.
47. A respondent who does not file a respondent's notice but who files a skeleton argument must file and serve that skeleton argument at least 7 days before the appeal hearing.
48. A respondent's skeleton argument must conform to the requirements at paragraphs 18 to 21 with any necessary modifications. It should, where appropriate, answer the arguments set out in the appellant's skeleton argument.
49. Where a respondent's skeleton argument is not served with the respondent's notice, the respondent must serve his skeleton argument on all parties to the proceedings at the same time as he files it at the court, and must file a certificate of service.

APPEAL HEARING

50. The court will send the parties notification of the date of the hearing of the appeal, together with any other directions given by the court.