



JUDICIARY OF  
ENGLAND AND WALES

**THE HONOURABLE MR JUSTICE HAYDEN**  
VICE PRESIDENT OF THE COURT OF PROTECTION

### **Administration of appeal procedure in the Court of Protection**

1. I am very pleased to say that it has been possible to rationalise and clarify the administration of appeals in Court of Protection cases.

#### Legal framework

2. Section 53(2) of the Mental Capacity Act 2005 allows for provision to be made for appeals in the Court of Protection Rules.
3. Part 20 of the Court of Protection Rules 2017 sets out the Rules in respect of appeals. The provisions of the Rules are supplemented by Practice Direction 20A.
4. Rule 20.4 provides for the destination of appeals:
  - i. where the first instance judge was a Tier 1 judge, any appeal shall be heard by a Tier 2 judge;
  - ii. where the first instance judge was a Tier 2 judge, any appeal shall be heard by a Tier 3 judge;
  - iii. an appeal lies to the Court of Appeal where the first instance judge was a Tier 3 judge, or where it is a second appeal.
5. Pursuant to Rule 20.5(4), where an appeal lies to the Court of Appeal, the Civil Procedure Rules 1998 apply.
6. Rules 20.5, 20.6 and 20.7 address requirements for permission to appeal. Unless the appeal is against an order for committal to prison, permission is required. An application for permission to appeal may be made to the first instance judge. Additionally, where the decision sought to be appealed is a decision of a Tier 1 judge, permission may be granted or refused by a Tier 2

or a Tier 3 judge; and where the decision sought to be appealed is a decision of a Tier 2 judge, permission may be granted or refused by a Tier 3 judge. Where an appeal to the Court of Appeal is a second appeal, permission may only be granted by the Court of Appeal.

7. Rule 20.10 sets out the procedure and time limits for filing and serving an Appellant's Notice.

#### Administration

8. Appeals/applications for permission to appeal should be issued in the relevant regional hub court (the central registry of the Court of Protection at First Avenue House being the hub court for London.)
9. Where the appeal/application for permission lies to a Tier 3 judge, it should be issued in the regional hub court and from there sent to the Appeals Co-ordinator, Ms. Sinead Aherne, at [sinead.aherne@justice.gov](mailto:sinead.aherne@justice.gov):
  - i. For the avoidance of doubt, cases will be allocated a Court of Protection appeal number;
  - ii. The papers will then be considered by the Vice President or, in his absence, a Tier 3 Judge of the Court of Protection (usually, Mrs Justice Lieven).
  - iii. Directions, including transcripts and allocation, will be considered at this stage.
  - iv. Efforts will be made, wherever possible, to accommodate an appeal before a High Court Judge on the circuit from which the appeal arises. Manifestly, that will not always be possible, either because the appeal is urgent or because there is no High Court Judge on circuit or no High Court Judge on circuit with court time to hear the case.
10. This system has been tested over the past few months. It is working efficiently and has considerably expedited the appeal procedure.

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