

**THE GOOD APPEAL GUIDE: APPEALING AGAINST FINAL CARE AND
PLACEMENT ORDERS MADE IN THE COUNTY COURT**

An Appeal is a last resort. Naturally it is vital to consider carefully the welfare of the child. Additionally, public funding is a precious resource to be used only where necessary.

WHAT PROVISION IS MADE FOR APPEALS?

The Children Act 1989 s.94 provides for appeals against / the failure to make both Care and Placement Orders.

WHO DO I APPEAL TO?

If you are appealing against an order or decision of a District Judge of a county court, your appeal should be made to a Circuit Judge.

If you are appealing against an order or decision of a Circuit Judge, your appeal should be made to the Court of Appeal. (Practice Direction 30A, 2.1).

DO I NEED PERMISSION?

Yes. When deciding whether to grant permission to appeal, the court will consider whether there is a “real prospect of success” *AV v RM (Appeal) [2012] 2 FLR 709*.

An application for permission to appeal should be made orally at the hearing at which the decision to be appealed against is made (Practice Direction 30A, 4.2).

Where no application for permission to appeal is made at the hearing, or the lower court refuses permission to appeal, an application for permission to appeal may be made to the appeal court (Practice Direction 30A, 4.3).

HOW MUCH TIME DO I HAVE TO APPEAL?

The appellant’s notice must be filed with the appeal court within such period as may be directed by the lower court, or where the court makes no such direction, 21 days after the date of the decision which the appellant wishes to appeal (FPR 2010, r30.4). The Court of Appeal indicated in *Re M & H [2006] EWCA Civ 499* that a shorter time period than the standard 21 days might be more appropriate in family cases involving children, where time is of the essence.

© Martin Downs
© Richard Ager
© Sophie Evans

martin.downs@1cor.com
richard.ager@1cor.com
sophie.evans@1cor.com

It is possible to apply to extend time to appeal with grounds: *Barder v Barder [1987] 2 FLR 480.*

WHAT ARE THE GROUNDS OF APPEAL?

For a determination of whether the threshold is crossed and/or whether a care order should be made, the test is whether the decision of the judge was “wrong”: *In the Matter of B (a Child), [2013] UKSC 33.* The test of “wrong” applies to the result as well as the process.

CAN I APPEAL AN OMISSION FROM A JUDGMENT?

Not immediately. Before launching an application for permission to appeal, the applicant should seek clarification of the judgment or amplification of the findings from the trial judge per Munby LJ in *Re A & L* [2011] EWCA Civ 1205

HOW WILL MY APPEAL BE DEALT WITH?

These Appeals are dealt with by way of a review, unless the court considers it in the interests of justice to hold a re-hearing. Unless the appeal court orders otherwise, the court will not receive oral evidence. In appeals at the Court of Appeal, the court *may* receive fresh evidence or order a new trial or hearing.

HOW MUCH WILL IT COST ME?

Form EX50 – Civil and Family Court Fees, published on 1 July 2013 lists costs. The cost of filing a Notice of Appeal of any decision in family proceedings made by a District Judge in a County Court is £125.

The fees for an appeal to the Court of Appeal are set out at Fee 13.1 of the Civil Proceedings Fees Order 2008. Where in an appeal notice permission to appeal is applied for, the current fee is £235 on filing an appellant’s notice. Where permission to appeal is not required or has been granted by the lower court, the fee is £435.

AM I ENTITLED TO PUBLIC FUNDING?

Means tested legal aid is available subject to Regulation 66(2) of the Civil Legal Aid (Merits Criteria) Regulations 2013:

- 66.(2) An individual may qualify for full representation in a public law children case only if the Director is satisfied that—
- (a) it is reasonable for full representation to be provided, having regard to the importance of the case to the individual; and

© Martin Downs
© Richard Ager
© Sophie Evans

martin.downs@1cor.com
richard.ager@1cor.com
sophie.evans@1cor.com

(b)if the individual is making or supporting an appeal or application, the prospects of success of that appeal or application are very good, good, moderate or borderline.

DO I NEED TO OBTAIN A TRANSCRIPT?

Practice Direction 30A, 5.31 states:

“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”.

An unrepresented appellant, or an appellant whose legal representation is provided free of charge and not funded by the Community Legal Service may obtain a copy of the transcript at public expense, if the court is satisfied that there are reasonable grounds for appeal.

WILL AN APPEAL OPERATE AS A STAY?

Unless the appeal court or the lower court orders otherwise, an appeal does not operate as a stay of any order or decision of the lower court (FPR 2010, r30.8).

An application for a stay of the order should be made in the appeal notice (Form N161).

The existence of an “arguable appeal with reasonable prospects of success” was the minimum requirement before a court could even consider granting a stay in *NB v Haringey LBC [2012] 2 FLR 125*.

CAN AN ORDER BE MADE PENDING MY APPEAL?

Under section 40(5) of the Children Act 1989, where an appeal or an application to appeal against a decision is made, the appellate court may extend the period for which an interim care or supervision order is to have effect, but not so as to extend it beyond the determination of the appeal or the period during which an appeal may be made against the lower court’s decision.

**Martin Downs
Richard Ager
Sophie Evans
One Crown Office Row
January 2014**

© Martin Downs
© Richard Ager
© Sophie Evans

martin.downs@1cor.com
richard.ager@1cor.com
sophie.evans@1cor.com