

THE SUPREME COURT OF THE UNITED KINGDOM

PRACTICE DIRECTION 6

The Appeal Hearing

General note

6.1.1 The Supreme Court does not wish to impose very detailed requirements as to the manner in which documents are presented to the Court for appeal hearings. Parties may if they wish follow the former practice in House of Lords appeals but are not required to do so. Where parties are in any doubt as to how documents should be presented they should consult the Registrar and discuss the practice which should be adopted. The provisions of paragraph 6.1.2 must, however, be strictly complied with.

6.1.2 All documents placed before the Court must be

- (a) reproduced or printed (both as to font size and otherwise) so as to be easily legible;
- (b) reproduced on paper of A4 size, printed on both sides; and
- (c) (unless this causes great difficulty) presented in bound form, properly labelled and indexed.

Documents must be presented in a form which is robust, manageable and not excessively heavy. **Duplication of material must be avoided particularly where two or more appeals are heard together.** See Practice Direction 5 for the statement of facts and issues and the appendix.

Fixing the hearing date

6.2.1 Within 7 days after the filing of the statement of facts and issues and the appendix (see paragraphs 5.1.3 and 5.2.1 of Practice Direction 5), the parties must notify the Registrar that the appeal is ready to list and...specify the number of hours that their respective counsel estimate to be necessary for their oral submissions: rule 22(3). Time estimates must be as accurate as possible since, subject to the Court's discretion, they are used as the basis for arranging the Court's list. The sittings of the Court (or the 'law terms') are four in each year, that is to say:

- (a) the Michaelmas sittings which begin on 1 October and end on 21 December;
- (b) the Hilary sittings which begin on 11 January and end on the Wednesday before Easter Sunday;
- (c) the Easter sittings which begin on the second Tuesday after Easter Sunday and end on the Friday before the spring holiday; and
- (d) the Trinity sittings which begin on the second Tuesday after the spring holiday and end on 31 July.

The ‘spring holiday’ means the bank holiday falling on the last Monday in May or any day appointed instead of that day under section 1(2) of the Banking and Financial Dealings Act 1971.

6.2.2 Subject to any directions by the Court before or at the hearing, counsel are expected to confine their submissions to the time indicated in their estimates. The Registrar **must** be informed at once of any alteration to the original estimate. Not more than two days are normally allowed for the hearing of an appeal and appeals are listed for hearing on this basis. Estimates of more than two days must be fully explained in writing to the Registrar and may be referred to the presiding Justice.

6.2.3 The Registrar will subsequently inform the parties of the date fixed for the hearing. The appellant and every respondent (and any intervener or advocate to the Court) “must then sequentially exchange their respective written cases and file them”, and every respondent (and any intervener or advocate to the Court) must provide copies of their respective written cases to the appellant for the preparation of the core volumes: rule 22(4). (See paragraph 6.3 for cases).

Requests for expedition

6.2.4 Any request for an expedited hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

Directions hearings

6.2.5 Where it considers it to be appropriate, the Court may decide that a directions hearing should be held. A directions hearing will normally be held before 3 Justices. Any request for a directions hearing should be made to the Registrar. Wherever possible the views of all parties should be obtained before a request is made.

Appellants’ and Respondents’ cases

6.3.1 The case is the statement of a party’s argument in the appeal. The Court does not prescribe any maximum length but the Court favours brevity and a case should be a concise summary of the submissions to be developed.

6.3.2 The case should be confined to the heads of argument that counsel propose to submit at the hearing and omit material contained in the statement of facts and issues (see paragraph 5.1.3 of Practice Direction 5).

6.3.3 If either party is abandoning any point taken in the courts below, this should be made plain in their case. If they intend to apply in the course of the hearing for permission to introduce a new point not taken below, this should also be indicated in their case and the Registrar informed. If such a point involves the introduction of fresh evidence, application for permission must be made either in the case or by filing an application for permission to adduce the fresh evidence (see paragraph 7.1 of Practice Direction 7 for applications).

6.3.4 If a party intends to invite the Court to depart from one of its own decisions or from a decision of the House of Lords, this intention must be clearly stated in a separate paragraph of their case, to which special attention must be drawn. A respondent who wishes to contend that a decision of the court below should be affirmed on grounds other than those relied on by that court must set out the grounds for that contention in their case.

6.3.5 Transcripts of unreported judgments should only be cited when they contain an authoritative statement of a relevant principle of law not to be found in a reported case or when they are necessary for the understanding of some other authority.

6.3.6 All cases must conclude with a numbered summary of the reasons upon which the argument is founded, and must bear the signature of at least one counsel for each party to the appeal who has appeared in the court below or who will be briefed for the hearing before the Court.

6.3.7 The filing of a case carries the right to be heard by two counsel. The fees of two counsel only for any party are allowed on assessment unless the Court orders otherwise on application at the hearing. The Costs Officers have no discretion to allow fees for more than two counsel unless the Court has, on application at the hearing, made such an order: see paragraph 16.5 of Practice Direction 13.

Separate cases

6.3.8 Parties whose interests in the appeal are passive (for example, stakeholders, trustees, executors, etc.) are not required to file a separate case but should ensure that their position is explained in one of the cases filed.

Filing and exchange of cases

6.3.9 No later than five weeks before the proposed date of the hearing, the appellants must file at the Registry the original and **7 copies** of their case and serve it on the respondents.

6.3.10 No later than 3 weeks before the proposed date of the hearing, the respondents must serve on the appellants a copy of their case in response and file at the Registry the original and **7 copies** of their case, as must any other party filing a case (for example, an intervener or advocate to the court).

6.3.11 The number of copies of cases exchanged should be enough to meet the requirements of counsel and solicitors and should not usually exceed eight. To enable the appellants to file the core volumes, the respondents and any other party who has filed a case must also provide the appellants with **10** further copies of their case.

6.3.12 Following the exchange of cases, further arguments by either side may not without permission be submitted in advance of the hearing.

Form of cases

6.3.13 Cases must be produced on A4 paper, securely bound on the left, using both sides of the paper with:

- (a) numbered paragraphs; and
- (b) signatures of counsel at the end, above their printed names.

The core volumes and authorities volumes

6.4.1 As soon as the parties' cases have been exchanged and in any event not later than 14 days before the date fixed for the hearing the appellant must file core volumes in accordance with paragraph 6.4.3 and (if necessary) additional volumes containing further parts of the appendix.

6.4.2 Copies of all authorities that may be referred to during the hearing must be filed by the appellant at the same time as the core volumes. See paragraph 6.5.1- 6.5.8.

6.4.3 In addition to the documents already filed, the appellant must file **10** bound core volumes. Each core volume must contain in the following order:

- (a) Form 1 – a copy of the notice of appeal or the re-sealed application for permission to appeal;
- (b) notice of cross-appeal (if any);
- (c) statement of facts and issues;
- (d) appellants' and respondents' cases, with cross-references to the Appendix and authorities volume(s);
- (e) case of the advocate to the court or intervener, if any;
- (f) Part 1 of the appendix; and
- (g) index to the authorities volume(s).

Form of core volumes

6.4.4 The core volumes:

- (a) should be bound, preferably with plastic comb binding and with blue (or, for criminal appeals, red) card covers;
- (b) should include tabs for each of the documents set out in paragraph 6.4.3, preferably with the name of the document on the tab;
- (c) should show on the front cover a list of the contents and the names and addresses of the solicitors for all parties;
- (d) must indicate (by e.g. a label (printed in landscape) attached to the plastic spine) the volume number (in roman numerals) and the short title of the appeal.

For volumes in electronic form see Practice Direction 14.

Provision of documents

6.4.5 To enable the appellants to produce the core volumes, the respondents must provide the appellants' solicitors with a further 10 copies of the respondents' case in addition to the cases already exchanged.

6.4.6 Respondents should arrange with the appellants' solicitors for the delivery to them of such core volumes as the respondents' counsel and agents require.

Authorities

6.5.1 **A joint set of authorities, jointly produced, should be compiled for the appeal. Ten copies of the joint set of authorities** must be filed at the same time as the core volumes. The appellants have the initial responsibility for producing the authorities volumes and for filing them at the Registry but, to enable the appellants to file the volumes, the respondents must provide the appellants with 10 copies of any authorities which the respondents require but which the appellants do not, or arrange with the appellants for their photocopying. Respondents should arrange with the appellants for the delivery to them of such authorities volumes as the respondents' counsel and agents require. **Supplemental or additional volumes of authorities should be avoided.**

Form and content of authorities volumes

6.5.2 The authorities should be collected together into one or more volumes or folders. The volumes of authorities should have a separate index and authorities should appear in alphabetical order. Authorities should (where appropriate) be further divided into the categories: domestic, Strasbourg, foreign and academic material. The volumes of authorities should

- (a) be A4 size reproduced as one page per view (with any authorities smaller than A4 being enlarged);
- (b) separate each authority by numbered dividers;
- (c) contain an index to that volume; the first volume must also contain an index to all the volumes;
- (d) be numbered consecutively on the cover and spine with numerals at least point 72 in size for swift identification of different volumes during the hearing;
- (e) have printed clearly on the front cover the title of the appeal and the names of the solicitors for all parties;
- (f) have affixed to the spine a sticker indicating clearly the volume number and short title of the appeal.

6.5.3 In an appeal where there is a large number of volumes of authorities, it is helpful to produce an index of indexes, separate from the index contained in the first authorities volume.

6.5.4 The volumes of authorities should be filed in the Registry preferably in separate containers from the core volumes.

6.5.5 Where a case is not reported in the Law Reports or Session Cases, references to other recognised reports may be given. In Revenue appeals, Tax Cases or Simon's Tax Cases may be cited but, wherever possible, references to the case in the Law Reports or Session Cases should also be given.

6.5.6 In order to produce the volumes of authorities, parties may download text from electronic sources; but the volumes of authorities must be filed in paper form. See Practice Direction 14 for provisions in relation to electronic volumes.

6.5.7 In certain circumstances (for example, when during the hearing it becomes apparent that a particular authority is needed but is not in the volumes of authorities), the Supreme Court Library can arrange for copies of authorities to be made available at the hearing. Parties must themselves provide ten copies of any other authority or of unreported cases. They must similarly provide copies of any authority of which notice has not been given.

6.5.8 The cost of preparing the volumes of authorities falls to the appellants, but is ultimately subject to the decision of the Court as to the costs of the appeal.

The hearing

6.6.1 The Registrar lists appeals taking into account the convenience of all the parties. Provisional dates are agreed with the parties well in advance of the hearing and every effort is made to keep to these dates. Counsel, solicitors and parties are, however, advised to hold themselves in readiness during the week before and the week following the provisional date given. Solicitors receive formal notification shortly before the hearing.

6.6.2 Parties should inform the Registry as early as possible of the names of counsel they have briefed.

6.6.3 The Court usually hears appeals on Mondays from 11.00am to 1pm and from 2pm to 4pm and on Tuesdays to Thursdays from 10.30am to 1pm and from 2 to 4pm.

6.6.4 Only in wholly exceptional circumstances will the Court consider sitting in private. Any request for the Court to sit in private should be addressed to the Registrar and should be copied to the other parties. The request should set out fully the reasons why it is made and the request together with any objections filed by the other parties will normally be referred to the presiding Justice.

6.6.5 No more than two counsel will be heard on behalf of a party (or a single counsel on behalf of an intervener permitted to make oral submissions).

6.6.6 If a party wishes to have a stenographer present at the hearing or to obtain a full transcript of the hearing, he must notify the Registrar not less than 7 days before the hearing. Any costs of the stenographer or of transcription must be borne by the party making such a request.

6.6.7 The Registrar will on request inform the parties of the intended constitution of the Court for the hearing of a forthcoming appeal; this will be subject to possible alteration. Counsel should assume that the Court will have read the printed cases and the judgment under appeal but not all the papers which have been filed.

6.6.8 The Justices should be addressed as ‘My Lord’ or ‘My Lady’ as the case may be.

6.6.9 Some hearings will be filmed and broadcast on television. See paragraph 8.17.1 of Practice Direction 8.

Costs

6.7.1 Rule 46 deals with orders for costs. If counsel seek an order other than that costs should be awarded to the successful party, they may make written submissions in accordance with rule 47 if the Court so directs. If a party wishes to defer making submissions as to costs until after judgment, the Court must be informed of this not later than at the close of the oral argument. If the Court “*accedes to the request it will give such directions as appear appropriate and it may, in particular, give directions* —

- (a) *for the hearing of oral submissions as to costs immediately after judgment;*
- (b) *for the simultaneous or sequential filing of written submissions as to costs within a specified period after judgment;*
- (c) *for the hearing of oral submissions after the filing of written submissions”:* rule 47(2).

The original and 7 copies of any written submissions must be filed at the Registry. Copies should also be sent to the other parties to the appeal. Costs submissions are considered on paper.

Conditional fee agreements

6.7.2 Conditional fee agreements may properly be made by parties to appeals before the Supreme Court¹. It is open to the officer assessing costs to reduce the percentage uplift recoverable under a conditional fee agreement if he considers it to be excessive. The costs officer decides questions of percentage uplift in accordance with the principles set out in *Designers Guild Limited v. Russell Williams (Textiles) Limited (trading as Washington DC)* [2003] 2 Costs LR 204. If a party appearing before the Court seeks a ruling that the percentage uplift provided for in a conditional fee agreement should be wholly disallowed on legal grounds, such a ruling should (unless otherwise ordered) be expressly sought from the Court before the end of the hearing. *This paragraph does not apply to appeals from Scotland or Northern Ireland.*

Judgment

Place and time of judgment

6.8.1 Judgments are given on a day notified in advance. One week’s notice is normally given. If judgment is to be handed down on a Wednesday, copies will be released on the previous Thursday. All corrections are to be submitted by midday on the following Monday.

¹ Conditional fee agreements are sanctioned by the Courts and Legal Services Act 1990, as amended by the Access to Justice Act 1999.

Attendance of counsel

6.8.2 One junior counsel for each party or group of parties who have filed a case may attend when judgment is delivered in open court, but the attendance of counsel is not required. If counsel do attend, they should be familiar with the subject matter of the appeal and with the options for its disposal. Where judgment is to be promulgated by the Registrar, copies will be made available for collection by counsel or a solicitor at the Registry on a day notified in advance.

Conditions under which judgments are released in advance

6.8.3 The judgment of the Court is made available to certain persons before judgment is given. When, for example, judgment is given on a Wednesday morning, it is made available to counsel from 10.30 am on the previous Thursday morning. In releasing the judgment, the Court gives permission for the contents to be disclosed to counsel, solicitors (including solicitors outside London who have appointed London agents) and in-house legal advisers in a client Government department. The contents of the judgment and the result of the appeal may be disclosed to the client parties themselves 24 hours before the judgment is to be given unless the Court or the Registrar directs otherwise. A direction will be given where there is reason to suppose that disclosure to the parties would not be in the public interest.

6.8.4 It is the duty of counsel to check the judgment for typographical errors and minor inaccuracies. In the case of apparent error or ambiguity in the judgment, counsel are requested to inform the Head of Judicial Support as soon as possible. This should be done by e-mail to judicialsupport@supremecourt.gsi.gov.uk, no later than two working days before the date judgment is to be given. The purpose of disclosing the judgment is not to allow counsel to re-argue the case and attention is drawn to the opinions of Lord Hoffmann and Lord Hope in *R (Edwards) v Environment Agency* [2008] UKHL 22, [2008] 1WLR 1587.

6.8.5 Accredited members of the media may also be given a copy of the judgment in advance. The contents of this document are subject to a strict embargo, and are not for publication, broadcast or use on club tapes before judgment has been delivered. The documents are issued in advance on the strict understanding that no approach is made to any person or organisation about their contents before judgment is given.

Intervention

6.9.1 A person who is not a party to an appeal may apply in accordance with rule 26 for permission to intervene in the appeal. An intervener under rule 15 who wishes to intervene in the appeal must make a formal application under rule 26.

6.9.2 An application should be made in the general form of application, Form 2, (see paragraph 7.1 of Practice Direction 7 for applications) and should state whether permission is sought for both oral and written interventions or for written intervention only. The application should be filed with the prescribed fee and confirmation of the consent of the appellants and respondents in the appeal. If their consent is refused, the application must be endorsed with a certificate of service on them, with a brief explanation of the reasons for the refusal.

6.9.3 Applications for permission to intervene should be filed at least 6 weeks before the date of hearing of the appeal. If permission is given, written submissions must be filed and also given to the appellants and respondents for incorporation into the core volumes at least 3 weeks before the hearing. Failure to meet these deadlines increases the burden on the parties in preparing their cases and the core volumes, and may delay the hearing of the appeal.

6.9.4 All counsel instructed on behalf of an intervener with permission to address the Court should attend the hearing unless specifically excused.

6.9.5 Subject to the discretion of the Court, interveners bear their own costs and any additional costs to the appellants and respondents resulting from an intervention are costs in the appeal. Orders for costs “*will not normally be made either in favour of or against interveners but such orders may be made if the Court considers it just to do so (in particular if an intervener has in substance acted as the sole or principal appellant or respondent)*”: rule 46(3).

Specialist advisers and advocates to the Court

6.10.1 For a request for a specialist adviser or an advocate to the Court to be appointed in an appeal see paragraphs 8.13.1 and 8.13.2 of Practice Direction 8.