

# How to appeal family court decisions

This guide will give you information about when you can appeal a family court decision and how to do it.

The language used in appeal cases:

**Lower or first instance court** – this is the court whose decision you are appealing

**Appeal court** – this is the court that is hearing your appeal. It may be the Family Court, High Court or Court of Appeal

**Appellant** – the person who is appealing the court's decision

**Respondent** – all the other parties in the case will be respondents in the appeal

**First instance or trial judge** – the judge that made the decision you are appealing

**Appeal judge** – the judge that will decide your appeal

**Judgment or reasons** – when the court makes an order, they must explain why. This may be done in writing or explained orally by the judge in the hearing. This is called the judgment or reasons. They should explain why they made the order they did. Sometimes, the reasons may be explained very briefly during the hearing especially when the judge has made a case management decision.

**Case management decision** – when the judge makes decisions about what evidence is needed, what directions to make, how hearings are going to go ahead, these are called case management decisions.

### **Family Procedure Rules, Part 30**

The Family Procedure Rules set out the way the Family Court must deal with cases. It is divided into different parts for different types of case. The rules about appeals are in Part 30. You can find these online at [www.justice.gov.uk/courts/procedure-rules/family/parts/part\\_30](http://www.justice.gov.uk/courts/procedure-rules/family/parts/part_30)

You must comply with these rules even if you are representing yourself.

You can find the rules online as explained above. You can also find guidance on completing the forms and guidance on appeals from the Court. You can ask the court to give you copies of the correct appeal form and the guidance notes. You should read these carefully before completing the form.

### **Civil Procedure Rules, Part 52**

If you appeal to the Court of Appeal, you must follow the rules set out in the Civil Procedure Rules. These rules work in the same way as the Family Procedure Rules but apply to all civil cases.

The rules about appealing are in Part 52 and you must comply with them.

You can find these rules at [www.justice.gov.uk/courts/procedure-rules/civil/rules/part52](http://www.justice.gov.uk/courts/procedure-rules/civil/rules/part52)

## Has there been a material omission from the reasons?

The reason why the court made the order that it did is important. When you think about appealing, remember that it is the order the court made that you are appealing. If the reasons the court made the order are not very clear or there is a lack of information, this is called a material omission. Instead of appealing straightaway, you should ask the court for a fuller explanation.

The judge does not have to list all of the evidence that they have relied on to come to their decision. It is generally the case that if evidence was available during the hearing, the judge will have thought about it when they made their decision. However, if you are worried that there was evidence that clearly contradicts something the judge has said and are worried that they are not aware, then you can ask them about this.

The best way to ask for a fuller explanation is to write down a list of questions about the judgment.

### Example

The judge has made a finding that an incident of violence with your ex-partner did not happen. You are worried that the judge did not know that there was a police record in the court papers about the incident. The police recorded that when they came to your address, they saw a bruise on your arm from the assault. The judge has not made any mention of this in their judgment and has not explained why they do not believe this was from the assault. You can ask the judge to respond to questions about the judgment and include a question about whether they were aware of the police record and how it is reflected in their decision about the incident.

You should send your questions to the court explaining that you are asking them to address a material omission in the judgment. You should do this as soon as possible after the decision has been made, ideally within 7 days.



The court should respond promptly but if you have not received a response by the deadline to appeal, then you should appeal anyway and explain that you have asked for further information. Include evidence of your attempts to obtain a fuller explanation in your appeal.

If you believe that you still have a good reason to appeal after you have been given the court's fuller explanation, you can appeal as normal. The time limit runs from when the decision you are appealing was made.

## When can a decision be appealed?

You have a right to appeal any decision of the lower court. However, you should think about whether you are likely to succeed before deciding to appeal a decision.

To be successful on an appeal, you must prove to the appeal court that the decision of the lower court was:

- a. wrong, or
- b. unjust because of a serious procedural or other problem with the proceedings in the lower court.

The reasons why you think the lower court was wrong are called the grounds of appeal. You must explain these when you make your application.

The appeal court will not grant your appeal simply because they disagree with the original judge's opinion. To succeed on an appeal, you will need to show that the first judge did not apply the law correctly, or did not follow the correct procedure, or that there are other strong reasons why the decision was wrong or unfair.

The appeal court will not decide your case from scratch, they will only review the decision you appeal. They assume that if there are other decisions in the case you are not appealing, those decisions were made correctly.

Some decisions are very difficult to appeal.

### Example

At the end of a fact-finding hearing, the judge makes findings against you that you do not agree with. The judge said that she believed the other side in the case and found your evidence confusing. If the judge's decision is based on their assessment of the evidence of witnesses in court, or who the judge felt was being more truthful, it is very unlikely that an appeal will be successful.

## Is an appeal the best thing to do?

You should think very carefully about the costs of appealing before you start. See the section in this guide about Costs.

If the reason you want to appeal is because the situation has changed since the order was made or something has happened, then you may want to apply to vary (which means change) or discharge (which means end) the order instead.

### Example

The court orders that the father of your child should have overnight contact every other weekend from Saturday to Sunday. Shortly after the order is made, you find out that the father of your child was arrested for assaulting his new partner during his contact. You do not need to appeal the order, you can apply to vary or discharge the order if you want to change the contact arrangements. You can find information on how to apply to vary or change a child arrangements order in *Children and the law: the Family Court process*

## Setting aside financial orders

In some circumstances, it may be appropriate to apply to set aside a financial order instead of appealing it. If the financial order is wrong but the reason it is wrong is not because of an error the court has made, then you may be able to apply to set aside the order instead. This means it is no longer in place.

The situations where you may be able to do this are where you discover that your spouse failed to disclose a financial interest which would have made a difference to the order the court made, where a genuine mistake was made by one of the parties which would have an effect on the order or where an unforeseen event has taken place shortly after the order was made.

These cases are not appeals against the order because the court was not in error when they made the order based on the information they had. Instead, you can apply to the same court that made the order for it to be set aside, and consider making a new order

These are difficult applications to make and you may find it helpful to speak to someone about whether you have a good reason to ask the court to set aside the order.

## Do I need to comply with the order I am appealing?

Yes. It is important to remember that making an appeal does not stop the order that you are appealing. It is expected that you will comply with the court order until the appeal is decided.

If you want to stop what has been ordered while you are appealing, then you should also apply for a stay of the order. This is when the court pauses the order while the appeal is decided. If your appeal is unsuccessful, the order will become effective again. You can do this in your application to appeal.

## What can the appeal court do?

If you are successful in your appeal, the appeal court can do one of the following:

- Vary (change) the order you are appealing
- Discharge (end) the order you are appealing
- Send the case back to the lower court for a re-hearing

The appeal court will not normally see new evidence that was not available in the lower court. This covers evidence in writing and verbally during the hearing.

## Permission to appeal

In most cases, you will need permission to appeal from the lower court or from the appeal court. The only time you do not need permission to appeal is if you are appealing one of the following decisions:

- Any decision made by magistrates;
- A committal order (this is an order that states a party is to be sent to prison)
- A secure accommodation order (Social Services can ask for these orders and you should speak to a solicitor)
- A refusal to grant the release of a child who has been detained (known as a habeas corpus application)

If you are appealing a decision that does not need permission to appeal, you can make your application straight to the appeal court.



For any other decisions, you can ask the lower court for permission to appeal at the time that the decision is made. You can do this simply by asking the judge to give you permission to appeal during the hearing in court. Alternatively, you can ask the court for permission to appeal at a hearing if there is one coming up before the deadline for the appeal to be made.

If you have not asked for permission to appeal from the lower court or they refused your request for permission, you can still make the application to appeal but you must also ask the appeal court for permission. When you are completing your appeal application there is an option on the form to say that you are asking for permission to appeal.

The court will consider your application for permission to appeal on the papers. This means they will read the documents you have sent and decide your application without you going to court. If the court refuses your permission to appeal, you can apply for an oral hearing that you can attend to argue why you should be given permission to appeal. If you want to request an oral hearing you must do so within 7 days, or the refusal of permission to appeal will become final.

If the court refuses your permission to appeal application and states that your reasons for appealing are totally without merit, then you cannot ask for an oral hearing and it is not possible to appeal further. The court should send you an order that explains this.

Alternatively, the court may decide that your application for permission to appeal will be decided at the same time as your appeal. This means the court will have one hearing where you will go to court and you will have to argue, firstly, whether you should be given permission to appeal and then make your arguments about why your appeal should be successful. The judge will then give one judgment about your permission and, if the appeal judge gives you permission, they will also decide your appeal.

*'...the court may decide that your application for permission to appeal will be decided at the same time as your appeal...'*

## How will the court decide whether to give permission to appeal?

The fact that you disagree with the decision the judge made is not enough, by itself, to succeed in getting permission to appeal. The legal test the court applies when they decide whether to grant permission to appeal is whether there is a real prospect of success or some other compelling reason why you should be given permission to appeal.

The court is not deciding the issues in your appeal, but they will consider whether they think you have a real prospect of success. This will involve them considering the points you want to make in your appeal which is why it is important that you spend time preparing your appeal documents well.

## Timescales

If you are appealing against a case management decision or interim care order, you must appeal within 7 days of the decision.

If you are appealing against a final decision, you must appeal within 21 days.

In limited circumstances, the first judge will give you a different timescale for when you have to appeal by. If this has happened, then you must appeal within that time.

The time is counted differently in the 2 situations. If you are appealing against a case management decision or interim care order, you must include the day the decision was made when you count 7 days.

If you are appealing against a final decision or the judge has given you a different timescale, you start counting 21 days on the day after the decision was made.

Appeal a case management decision or interim care order within 7 days:

MON	TUES	WED	THURS	FRI	SAT	SUN
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Appeal a final decision within 21 days:

MON	TUES	WED	THURS	FRI	SAT	SUN
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

If the time limit has run out and you still want to appeal, you can appeal as normal but will also have to ask the court for permission to appeal out of time. You can do this on the application to appeal. You will have to explain to the Court in detail why you did not appeal on time and the steps you took before filing your application. You may wish to attach evidence of what you did to try and get your application in on time. The court will consider the reasons for the delay and the effect of the delay on the case. The court will consider, in all the circumstances of the case, whether it is fair to grant permission to appeal out of time. If there is no good reason why you delayed your application to appeal, you are unlikely to be given permission to appeal out of time.

If your application is delayed because you are waiting to receive documents, such as a transcript of the judgment you are appealing, it is better to file your appeal application on time and make clear on the application that you are waiting to receive additional documents and when you expect to be able to file them.

## Where do I appeal to?

The type of judge that will decide the appeal will depend on what judge made the decision you are appealing. The table below sets out where you should appeal to depending on what judge made the decision you are appealing.

Sometimes, if your appeal raises an important point of law or is unusual in some way, a judge can decide that the case will be heard by a more senior judge than is set out above. They should explain this in the papers they send to you.

Judge you are appealing	Appeal Judge	Is permission required?
Magistrates	Circuit Judge	<b>no</b>
District Judge in the Family Court	Circuit Judge	<b>yes</b>
District Judge in the Central Family Court in financial order cases	High Court Judge	<b>yes</b>
Circuit Judge or Recorder in children disputes between family members	High Court Judge	<b>yes</b>
District Judge of the High Court or Senior District Judge in the Family Court	High Court Judge	<b>yes</b>
Circuit Judge or Recorder in children disputes where the Local Authority is a party	Court of Appeal	<b>yes</b>
High Court Judge	Court of Appeal	<b>yes</b>

## Documents

The application to appeal is called the appellant's notice. If you are appealing to the High Court, this is a Form FP161. If you are appealing to any other court, it is a Form N161. You can find these forms online here: <https://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

You need to send your grounds of appeal with the appellant's notice. These are the reasons why you think the decision was wrong. You should also be clear about what it is you are appealing. Is it a finding of fact, a case management decision or a final order? You can tell the court what decision you want them to make. The grounds of appeal should be set out in bullet points, so it is clear to read.

If you are unrepresented you do not have to prepare a skeleton argument, but you may find it helpful and the court will benefit from having your arguments in writing. This is a more detailed document which explains why you believe the decision you are appealing was wrong or unjust in some way. It should cover all the points you want to make to the court when you are arguing your case. It should not make any additional points that are not in your grounds of appeal. Instead, it should provide a fuller explanation for each of the bullet points in your grounds of appeal.

Skeleton arguments are longer and more detailed than the grounds of appeal, but should not be more than 25 pages long. Most people will send it within 14 days of sending their appellant's notice and grounds of appeal to make sure they do not miss the timescales to lodge their appellant's notice.

When you send your appellant's notice to the court, there are other documents you must also send. These are listed in the form. Make sure you send all the documents requested or explain when you will send it if you do not have it yet.

### Example

You must send a sealed copy of the order you are appealing. If you have not received a copy of the order from the lower court, you can put in the form that you will send it within a set time frame.

It will be helpful for the court if you prepare a chronology. This is a document that sets out the dates of important events. It will start with dates of birth for you and the other party, include when you met, the dates of birth of any children, when you separated, if there were incidents of violence, when these occurred. It should also include important dates for the case, such as dates for all applications, all hearings, any important evidence or reports and any dates that you believe are important for your appeal. The dates should be set out in the order they happened starting with the earliest.

## New evidence

Normally, the appeal court will not look at new evidence as part of the appeal.

If you would like the court to see new evidence that was not available in the lower court, you have to make an application for permission to adduce new evidence. You will have to provide the evidence to the other parties in the case and the court. The court will need to know the reason why the evidence was not available before, whether it would have an important influence on the decision and whether it is credible.

## Transcripts

A transcript is a written record of everything that was said during the hearing. The court records all hearings including the oral evidence. The appeal court will want to see the transcript, so they know what happened during the hearing.

You are responsible for applying for a transcript. You should use form EX107 to apply for a transcript. You need to decide what parts of the hearing you want. You can ask for a transcript of the whole hearing, the evidence or the judgment or both. You do not need to get a transcript of the whole hearing or the evidence unless something was said that you think is important for your appeal. You have to pay to get the transcript. The more of the hearing you ask for, the more expensive it will be. You can find information about different transcription companies in the Guidance Notes for form EX107.

If you are on a low income, you can ask the court to pay for the transcript instead. You can do this on form EX105. You should complete this form at the same time as form EX107, requesting the transcript.

You can find the forms and guidance notes here: [www.hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do](http://www.hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do)

## What if I can't get a transcript?

If you are struggling to get a transcript on time, you can still make the application to appeal and inform the court that you will send the transcript as soon as you have it.

If it is not possible to get a transcript at all, the appeal can still go ahead with a note of the judgment. If you were represented during the hearing, you can ask your lawyer to provide a note of the judgment or evidence. You can ask the other parties' lawyers to provide one or try to use your own notes taken during the hearing. If possible, you should try to agree the note of what was said with the other parties in the case.

If it is not possible to get a note because you were unrepresented and were not able to make notes at the time, you can ask the court to provide the notes taken by the legal advisor (if the hearing was in front of magistrates) or the judge's notes.

The appeal can go ahead without a transcript although you should try to get a transcript if possible.

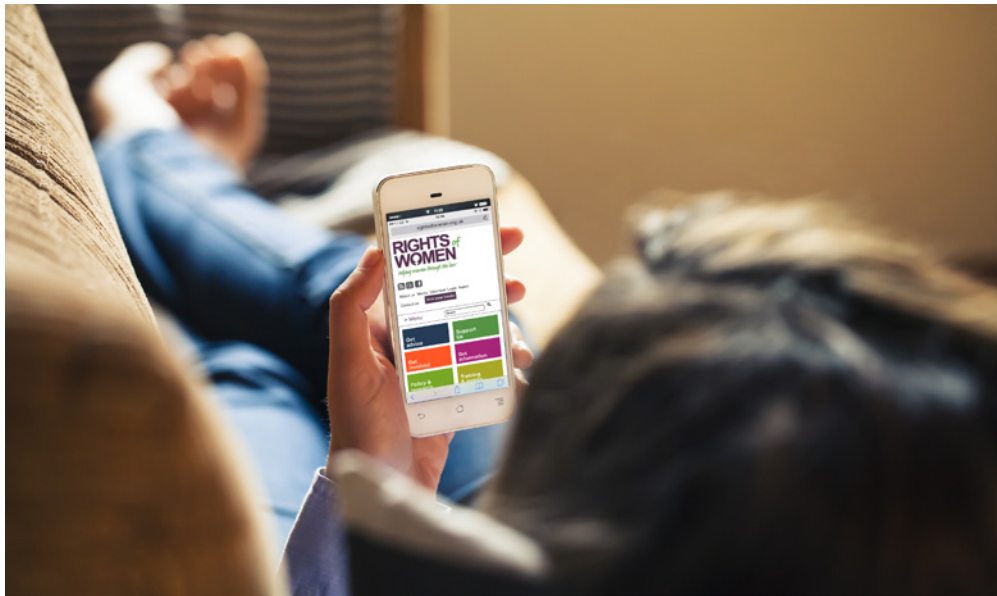
## Costs

A costs order is an order that states one party to the case must pay the legal costs of the other party.

If you lose your appeal, it is possible that the court will order you to pay the legal costs of the other side in the case. You need to consider this when you decide whether to appeal. This is particularly the case if you are also represented because you will then have to pay your own legal costs and the costs of the other party. If you are represented, your solicitor should provide you with regular updates about how much their legal fees are. If you have not been given this information, you should ask for it.

If you are thinking about appealing a financial order, you need to think about the costs of the appeal, including the legal costs of the other party in the case if you are ordered to pay their legal costs. You should weigh this against how much you think you may gain from the appeal. If you would end up losing any extra financial assets you gained from the appeal in legal costs, it may not be worth pursuing the appeal.





The law is complex and may have changed since this guide was produced. This guide is designed to provide general information only for the law in England and Wales. You should seek up-to-date, independent legal advice.

Rights of Women does not accept responsibility for any reliance placed on the legal information contained in this guide.

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For free, confidential, legal advice on family law including domestic violence, divorce and relationship breakdown and issues relating to children call the following:

Women living and working in London: call **020 7608 1137** the advice line is open **Mon 11am–1pm, and Tues–Thurs 2-4pm.**

For all women: call **020 7251 6577** the advice line is open **Tues-Thurs 7-9pm and Fri 12-2pm.**

For free, confidential, legal advice on immigration and asylum law or criminal and sexual violence law visit **[www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)** for our advice line details.

## Useful contacts

### Emergency contacts

#### Police (emergency)

999

#### 24 hour domestic violence helpline

0808 200 0247

[www.nationaldomesticviolencehelpline.org.uk](http://www.nationaldomesticviolencehelpline.org.uk)

### Finding a solicitor

#### The Law Society

0207 320 5650

[www.lawsociety.org.uk/find-a-solicitor](http://www.lawsociety.org.uk/find-a-solicitor)

#### Resolution

01689 820272

[www.resolution.org.uk](http://www.resolution.org.uk)

#### Ministry of Justice

020 3334 3555

[www.find-legal-advice.justice.gov.uk](http://www.find-legal-advice.justice.gov.uk)

### Legal advice and support

#### Citizens Advice

[www.citizensadvice.org.uk/index/getadvice.htm](http://www.citizensadvice.org.uk/index/getadvice.htm)

#### Personal Support Unit

020 7947 7701

[www.thepsu.org](http://www.thepsu.org)

#### Law Centres Network

020 7749 9120

[www.lawcentres.org.uk](http://www.lawcentres.org.uk)

#### Disability Law Service

020 7791 9800

[www.dls.org.uk](http://www.dls.org.uk)

#### Law Works Clinic Network

[www.lawworks.org.uk](http://www.lawworks.org.uk)

#### Advocate

**(previously Bar Pro Bono Unit)**

[www.weareadvocate.org.uk](http://www.weareadvocate.org.uk)



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