


Preparing and Presenting Homelessness Appeals in the County Court: *Tips and Traps*



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Tip: Remember that there are two and only two) forms of homelessness appeal

- ▶ (1) Appeal after *requesting* a review decision: brought under Housing Act 1996 section 204 (a "section 204 appeal").
- ▶ (2) Appeal from a *decision* following a request under section 204(4) for accommodation pending a section 204 appeal (a "section 204A appeal").
- ▶ Both appeals are in the exclusive jurisdiction of the County Court.
- ▶ In theory, both appeals can be made in a single Appellant's Notice: CPR PD 52D para 28.1(1) & (2)

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Trap: Not every type of decision in a homeless case can be appealed

- ▶ (1) The only decisions that can be subject of a section 204 appeal are those which give rise to the right to seek a review under section 202.
- ▶ Only the following decisions can be the subject of a section 204A appeal:
 - (a) not to exercise the power under section 204(4);
 - (b) to exercise that power for a limited period ending before the final determination of an appeal under section 204; or
 - (c) to cease exercising that power before that time.

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Traps: Each form of homelessness appeal has its own time limit

- ▶ There are two alternative time limits for a section 204 appeal, depending on whether a review decision has been notified or not:
 - ▶ (a) an appeal must be brought within 21 days of notification of the review decision; or
 - ▶ (b) within 21 days of the date on which the applicant should have been notified of a review decision.
- ▶ There is a longstop time limit for a section 204A appeal (that it cannot be brought later than the final determination of the related section 204 appeal).

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Tip: There is a very limited power to extend time for a section 204 appeal

- ▶ The court may give permission for an appeal to be brought, after the end of the normally applicable period, but only if it is satisfied
 - (a) where permission is sought before the end of that period, that there is a good reason for the applicant to be unable to bring the appeal in time; or
 - (b) where permission is sought after that time, that there was a good reason for the applicant's failure to bring the appeal in time and for any delay in applying for permission to extend time.
- Note those cumulative requirements in section 204(2A).

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Tip: If applying to extend time...

That application should be made in the Appellant's Notice (Form N161 in the box at section 10B) and should be supported by a witness statement explaining the good reason for the failure to bring the appeal in time and for any delay since the time limit expired: CPR 52 and PD 52B, paras 3.1-3.3.

The leading case on section 204(2A) time extensions is: *Al Ahmed v Tower Hamlets* [2020] EWCA Civ 51, [2020] 1 WLR 1546, [2020] HLR 16,

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Tip: Ensure you know (or have access to) the relevant procedural rules

- ▶ "True it is that the right of appeal is conferred by section 204 of the HA 1996, but that section has nothing to say about the way in which the appeal is to be brought, and, thereafter, pursued and case managed. All of that is to be done in accordance with the CPR..." *Fertre* [2024] EWHC 112(KB) at [35]
- ▶ So, there is no substitute for familiarity with the CPR including, at very least:
 - ▶ Part 52 - Appeals
 - ▶ Practice Direction 52A - Appeals: General provisions
 - ▶ Practice Direction 52B - Appeals in the county courts...
 - ▶ Practice Direction 52D - Statutory appeals

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Traps: In the process of "bringing" an appeal

- ▶ An appeal is brought by filing an Appellant's Notice in the County Court (i.e. at any county court hearing centre).
- ▶ The Appellant's Notice should be in Form N161. The latest version (as at January 2025) has the date "06.22" at the lower left of each page. The latest version of the Guidance Notes for completing the N161 (N161A) was issued in September 2023 ("09.23") and repays reading.
- ▶ The Court Fee (see the latest form EX50 for the correct fee) should be paid at the filing of the Appellant's Notice. It is possible to apply for Help with Fees but almost all appeals are brought with Legal Aid. In those cases, the fee should be paid by the provider and reclaimed as a disbursement.
- ▶ If you are going to file by Email, ensure you are familiar with the requirements of CPR PD 5B, especially para 2.3 (relating to the county court).

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Tip: Serving the Respondent

- ▶ The Court will seal the Appellant's Notice and then (if sufficient copies have been provided and the N161 has not been rejected by the Court) serve the Respondent local housing authority.
- ▶ BUT this will only be effective if a proper address for service on the authority has been given in the Form N161 itself (unlikely to be the address at the letterhead of the reviewing officer's decision).
- ▶ I have extra-judicially encouraged reviewing officers to conclude a review decision with an address for service of any appeal: *Known Unknowns: Dispute Resolution in Homelessness* at [108].
- ▶ Strictly, the CPR appear to require the Appellant to serve the sealed N161 on the Respondent (see CPR PD 52D at 3.4(1)) and that is best done (not least as a matter of caution).
- ▶ Amendment of the rule on service of a sealed copy is presently (as at January 2025) out for consultation by the Civil Procedure Rule Committee. [CPR 52.12(3)]
- ▶ "Service" should be the start of a continuing communication process with the Respondent.

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Trap: Ignoring the rules on Grounds of Appeal

- ▶ CPR 52B para 4.2(d) provides (in respect of most county court appeals) that Grounds of Appeal must be set out on a separate sheet attached to the Appellant's Notice and must be expressed clearly and concisely in simple language. That guidance should be followed.
- ▶ So this is **not** an opportunity to "tell the story" by: giving the Appellant's account of the history; setting out the relevant legal principles; or arguing the merits.
- ▶ It simply requires the expression, in short numbered grounds, of the alleged errors in the decision challenged.
- ▶ For a section 204 appeal, the grounds should set out the "point of law" arising from the challenged decision.
- ▶ For a section 204A appeal, there is no express limitation to "points of law" but the Court will apply judicial review principles in deciding the appeal: s204A(4).

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Tip: Comply with the obligations on providing case management directions

- ▶ CPR PD 52D para 28 requires that:
 - ▶ (5) *Unless the court orders otherwise -*
 - ▶ (a) *the appellant shall file and serve its proposed case management directions for the appeal together with the appellant's notice; [and]*
 - ▶ (b) *the respondent shall within 14 days thereafter either agree those directions or file and serve alternative proposed directions.*
- ▶ Because the Court will not have "ordered otherwise" before the appeal is filed, these obligations will apply in every case.
- ▶ Best practice would be to agree proposed directions with regular respondents in advance.
- ▶ The Court may, despite these requirements, simply promulgate its own directions for the conduct of the appeal.

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Tip: The requirements for disclosure and amendment of Grounds in homeless cases are already in the CPR

- ▶ CPR PD 52D para 28 expressly makes provision as follows:
 - ▶ (c) *within 14 days after service of the appellant's notice the respondent must disclose any documents relevant to the decision under appeal, in so far as not previously disclosed.*
- ▶ Note that the obligation arises on "service" (another reason why the Appellant should serve and not rely on the Court).
 - ▶ (d) *within 14 days after receipt of any documents disclosed under sub-paragraph (c) the appellant may make any amendments to its grounds of appeal which arise out of those documents.*
- ▶ Note that these amendments do not appear to require permission of the Court.

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Traps: Applications in homelessness appeals (1)

- ▶ Any applications (e.g. for extension of time, expedition, anonymity, fresh evidence, special case management directions, etc) should be made in the Appellant's Notice at Section 10 and be supported by evidence set out in Section 11 (or in an accompanying witness statement).
- ▶ Any later or separate applications will be made in Form N244 (and will incur additional court fees).
- ▶ The most common trap (exhibiting inexperience, or worse) is the making of an application in a section 204 appeal for an injunction to provide accommodation. The county court has no such jurisdiction.

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Traps: Applications in homelessness appeals (2)

- ▶ An application for a mandatory accommodation order may only be made in a section 204A appeal. Note the two different types of injunction available: 204A(4)(a) [interim] and 204A(5) [final].
- ▶ On interim injunctions, CPR PD 52D para 28 provides:
- ▶ (3) An appeal under section 204A may include an application for an order under section 204A(4)(a) requiring the authority to secure that accommodation is available for the applicant's occupation.
- ▶ (4) If, exceptionally, the court makes an order under section 204A(4)(a) without notice, the appellant's notice must be served on the authority together with the order. Such an order will normally require the authority to secure that accommodation is available until a hearing date when the authority can make representations as to whether the order under section 204A(4)(a) should be continued.

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Trap: "Settling an appeal" in the wrong way

- ▶ The Court will always encourage the parties to resolve proceedings by agreement rather than adjudication.
- ▶ If terms can be agreed, a proper process is needed to bring the appeal to an end.
- ▶ An appeal cannot be "withdrawn" or "discontinued".
- ▶ For that reason, CPR PD 52A para 6 sets out a mechanism for obtaining the dismissal of the appeal or it being allowed by consent.
- ▶ Note that:
- ▶ (a) if the agreement provides for a decision to be withdrawn by the Respondent, an agreed process and deadline for a replacement decision should be included in the draft order; and
- ▶ (b) the agreement should provide for costs (avoiding hearings or written representations on costs whenever possible). For costs in settled homelessness appeals see *M v Croydon* [2012] EWCA Civ 595, [2012] 1 WLR

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Tips: Preparing the Appeal Bundle

- ▶ The Appellant must prepare, file and serve the Appeal Bundle.
- ▶ The content should be discussed with, and agreed by, the Respondent, well in advance. Two competing or overlapping bundles, should be avoided at all costs.
- ▶ The Bundle should not be a dumping on the Court of the “entire housing file”. Simply, a sensibly organised collection of the relevant documents (NOT in separately numbered sections A,B,C but rather with single pagination running from page 1 to the end).
- ▶ Case law should not be included in the Appeal Bundle
- ▶ For more detailed guidance on assembling bundles (including Appeal Bundles) see CPR PD 52B paras 6.3 to 6.6 and CPR PD 32 para 27

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Trap: Skeleton Arguments (PD52A section V)

- ▶ The purpose of a skeleton argument is to assist the court by setting out as concisely as practicable the arguments upon which a party intends to rely.
- ▶ A skeleton argument must-
 - ▶ be concise; both define and confine the areas of controversy;
 - ▶ be set out in numbered paragraphs; be cross-referenced to any relevant document in the bundle;
 - ▶ be self-contained and not incorporate by reference material from previous skeleton arguments;
 - ▶ not include extensive quotations from documents or authorities.
- ▶ Documents to be relied on must be identified.
- ▶ Where it is necessary to refer to an authority, a skeleton argument must state the proposition of law the authority demonstrates; and identify the parts of the authority that support the proposition. If more than one authority is cited in support of a given proposition, the skeleton argument must briefly state why.
- ▶ The cost of preparing a skeleton argument which does not comply with the requirements set out in this paragraph or was not filed within the time limits provided by this Practice Direction (or any further time granted by the court) will not be allowed on assessment.

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Tips: Preparation for the hearing

- ▶ Copy the Notice of Hearing to the Respondent’s representative on receipt.
- ▶ Book specialist counsel and notify the Respondent’s representative of the name and contact detail of your counsel (and ask for theirs!)
- ▶ Work on the assumption that documents sent to the Court may not have arrived (or if arrived, may not have joined the file or been seen by the Judge) so bring spare soft and hard copies to the hearing.
- ▶ Brief counsel on the up-to-date factual position of the Appellant immediately before the hearing
- ▶ Use the two textbooks (both solicitors and counsel!) to help yourselves and to help the Judge.
- ▶ Ensure counsel have liaised and produced (and your counsel has filed) an agreed bundle of authorities using the best possible versions of the statutory and case materials.
- ▶ Bar Council guidance, last reviewed on 21/07/2020, provides for counsel to be *robed* in section 204 and 204A appeals.

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Tips: Following the final hearing

- ▶ In a section 204 appeal, the court may confirm, quash or vary the decision under appeal.
 - ▶ In a *quashing* case it may be sensible for the parties to agree (and have recorded in the order) a recital as to the agreed extended period for the completion of the new decision-making.
- ▶ In a section 204A appeal, the court may only quash or confirm the decision under appeal.
 - ▶ In a *quashing* case (subject to the conditions in s204A(6)) the court may make an order directing the Respondent to exercise its power to accommodate.
- ▶ In any case, offer to provide the Judge with an agreed minute (in WORD) of the order s/he has made.

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Tip: Further Appeal

- ▶ On the final disposal of an appeal, any further appeal would be a second appeal. Such appeal is to the Court of Appeal and only that Court can give permission to appeal.
- ▶ From any other order in the appeal process, appeal is to the High Court and permission to appeal can be obtained from the County Court or the High Court (gently remind the County Court Judge to complete and supply a completed for N460).

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Thank you for listening!



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