

The Judicial Committee of the Privy Council

Practice Direction 3

Applications for Permission to Appeal

Form of application for permission to appeal

3.1.1 Applications for permission to appeal are considered by an Appeal Panel of the Judicial Committee. Applications are generally decided on paper, without a hearing and it is essential that the application is in the correct form and that the basis on which and the relevant provision(s) under which the Judicial Committee is said to have jurisdiction are set out.

3.1.2 An application for permission to appeal should be produced in Form 1 on A4 paper, securely bound on the left, using both sides of the paper. (See Annex 1 to Practice Direction 7 for Form 1.) The application should set out briefly the facts and points of law; and include a brief summary of the reasons why permission should be granted. The information required by section 5 of Form 1 must be provided but the Board favours brevity and clarity.¹ The grounds of appeal should not normally exceed 10 pages of A4 size, bearing in mind that the judgments of the courts below will be available to the Board. The Board deprecates the practice of annexing to Form 1 a “long, discursive recital of facts and legal argument Grounds of appeal should be succinctly stated. They should not rehearse facts nor should they contain legal argument”: *Lesage v Mauritius Commercial Bank Ltd.* [2012] UKPC 41 at paragraph 20.² The Registrar will reject any application where the grounds appear without adequate explanation from counsel to be excessive in length or where the application fails to identify the relevant issues³.

Applications which are not legible or which are not produced in the required form will not be accepted. Parties may consult the Registry at any stage of preparation of the application, and may submit applications in draft for approval. Amendments to applications are allowed where the Registrar is satisfied that this will assist the Appeal Panel and will not unfairly prejudice the respondents or cause undue delay. Any amendments must be served on the respondents (see paragraph 3.1.5).

3.1.3 If an application for permission to appeal invites the Judicial Committee to depart from one of its own decisions or from one made by the House of Lords or the UK Supreme Court, this should be stated clearly in the application.

(The Supreme Court has not re-issued the House of Lords’ Practice Statement of 26 July 1966 (Practice Statement (Judicial Precedent) [1966] 1 WLR 1234) which stated that the House of Lords would treat former decisions of the House as normally binding but that it would depart from a previous decision when it appeared right to do so. The Practice Statement is “part of the established jurisprudence relating to the conduct of appeals” and “has as much effect in [the Supreme] Court as it did before the Appellate Committee

¹ Amended April 2013

² Amended January 2013

³ Amended April 2015 In the Supreme Court, an Appeal Panel has directed that, irrespective of the outcome of the appeal, the costs of preparing the permission application should not be recoverable in a case where it considered that a very long application did not assist the Panel.

in the House of Lords’’: *Austin v Mayor and Burgesses of the London Borough of Southwark* [2010] UKSC 28 at paragraphs 24, 25.)

3.1.4 An application for permission to appeal must be signed by the appellant or his agent. Where an appellant is unable to file his **application** within the time limit prescribed by the rules, an explanation must be provided either in Form 1 or as an attachment to the form. The longer the delay in filing, the more convincing and weighty the explanation will need to be and the Board will need to be satisfied that, having regard to all the circumstances, it is in the interests of justice that the time limit should be extended: see *Carlos Hamilton and Jason Lewis v The Queen* [2012] UKPC 31. In criminal cases, the prosecuting authorities should be notified as soon as a prisoner has indicated an intention to **apply for permission to appeal** to the Judicial Committee and a copy of that notification should be produced to the Registrar of the Privy Council when the **application** is filed.⁴

Service

3.1.5 A copy of the application (and any amendment to it) must be served on the respondents or their agents in accordance with rule 6, before it is filed. A certificate of service (giving the full name and address of the respondents or their agents) must be included in the original application and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.21 of Practice Direction 2. Additional supporting documents other than those set out in paragraphs 3.1.6 and 3.2.1 (additional papers) are not normally accepted.

Supporting documents

3.1.6 **In order to comply with rule 14(1), the original application together with 3 copies** must be filed at the Registry together with the prescribed fee, a copy of the order appealed against and, if separate, a copy of the order of the court below refusing permission to appeal. If the substantive order appealed against is not immediately available, the application should be filed within the required time limit, and the order filed as soon it is available. For the relevant time limits for filing an application for permission to appeal see paragraphs 2.1.12-2.1.15 of Practice Direction 2. The respondent’s views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. The application for an extension of time will be referred to the Registrar. An appellant must file with his application a certificate of value as required by rule 7(6) and (7).⁵ When an application for permission to appeal is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

Objections by respondents

3.1.7 Each “*respondent who wishes to object to the application must, within 28⁶ days after service, file notice of objection*” in Form 3 together with a certificate of service: rule 13(1). (See Annex 1 to Practice Direction 7 for Form 3.). **The original notice together with 3 copies** must be filed at the Registry together with the prescribed fee. When a notice of objection is filed, it will be sealed by a member of staff in the Registry: rule 7(4).

⁴ Amended January 2013

⁵ Amended April 2013

⁶ Amended April 2013

3.1.8 Before filing, a respondent must serve a copy of the notice on the appellant and any other respondent: rule 13(2). A certificate of service (giving the full name and address of the persons served) must be included in Form 3 and signed or a separate certificate of service must be provided. See rule 6(4) and paragraph 2.1.21 of Practice Direction 2.

3.1.9 A respondent who files notice will be permitted to participate in the application and will be given notice of its progress: rule 13(3). An order for costs will not be made in favour of a respondent who has not given notice.

Additional papers

3.2.1 **To comply with rule 14(2), the following additional papers** must be filed by the appellant for use by the Appeal Panel within 21 days after the filing of the application:

- a. **four** copies of the application;
- b. **four** copies of the order appealed against;
- c. if separate from the order at (b) above, **four** copies of the order of the court below refusing permission to appeal to the Judicial Committee;
- d. **four** copies of the official or approved transcript of the judgment of the court below;
- e. **four** copies of the final order(s) of all other courts below;
- f. **four** copies of the official or approved transcript of the final judgment(s) of all other courts below;
- g. **four** copies of any unreported judgment(s) cited in the application or judgment of a court below;
- h. **four** copies of a document which sets out the history of the proceedings. (See rule 14.)

No other papers are required and documents other than those listed above will not be accepted unless requested by the Appeal Panel. An appellant who wishes to provide documents other than those listed above must give a detailed explanation. Documents which are not clearly legible or which are not in the required style or form (see paragraph 3.1.2) will not be accepted.

3.2.2 The additional papers must be presented in the form required by paragraph 5.1.1 of Practice Direction 5.

3.2.3 Where the required papers are not filed within 8 weeks after the filing of the application and no good reason is given for the delay, the Registrar may

- (a) refer the application to an Appeal Panel without the required accompanying papers;
- (b) dismiss the application, or
- (c) give such other directions as appear appropriate under rule 8.

Consideration on paper

3.3.1 The Appeal Panel decides first whether an application for permission to appeal is admissible (that is, whether the Judicial Committee has jurisdiction to entertain an appeal). If the Appeal Panel determines that an application is inadmissible, it will refuse permission on that ground alone and not consider the content of the application. The Appeal Panel gives a reason for deciding that the application is inadmissible.

3.3.2 If the Appeal Panel decides that an application is admissible, rule 15 provides that the Panel may then:

- a. refuse permission (see paragraph 3.3.4);
- b. give permission (see paragraph 3.3.5);
- c. invite the parties to file written submissions as to the grant of permission on terms whether as to costs or otherwise (see paragraphs 3.3.6 - 3.3.11);
- d. direct an oral hearing (see paragraphs 3.3.12 – 3.3.16).

3.3.3 Permission to appeal is granted

- a. in civil cases for applications that, in the opinion of the Appeal Panel, raise an arguable point of law of general public importance which ought to be considered by the Judicial Committee at that time, bearing in mind that the matter will already have been the subject of judicial decision and may have already been reviewed on appeal; an application which in the opinion of the Appeal Panel does not raise such a point of law is refused on that ground;
- b. in criminal cases for applications where, in the opinion of the Appeal Panel, there is a risk that a serious miscarriage of justice may have occurred;
- c. in cases in which the appellant had an appeal as of right but the court appealed below refused to grant final leave, where in the opinion of the Appeal Panel the appeal has a reasonable prospect of succeeding.

The Appeal Panel gives brief reasons for refusing permission to appeal.

Permission refused

3.3.4 If the Appeal Panel decides that permission should be refused, the parties are notified that the application is refused and they are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Permission given outright

3.3.5 If the Appeal Panel decides that an appeal should be entertained without further proceedings, it grants permission outright and the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Respondents' objections

3.3.6 Respondents may submit written objections giving their reasons why permission to appeal should be refused when they file notice of objection in accordance with rule 13.

Exceptionally a respondent could seek to file more fully reasoned objections or might be asked to do so by the Appeal Panel. In such circumstances further objections should be filed

- a. within 14 days of any invitation by the Appeal Panel to do so; or
- b. within 14 days of an application for permission to appeal being referred for an oral hearing.

3.3.7 Respondents' objections should set out briefly the reasons why the application should be refused or make submissions as to the terms upon which permission should be granted (for example, on costs). **The original and 4 copies** of the respondents' written objections must be filed in the Registry. The objections must be produced on A4 paper, securely fastened, using both sides of the paper.

3.3.8 A copy of the respondents' objections should be sent to the agents for the other parties. In certain circumstances the Appeal Panel may invite further submissions from the appellant in the light of the respondents' objections, but appellants do not have a right to comment on respondents' objections and further submissions are not encouraged⁷. Where the Appeal Panel does not require further submissions to make its decision, the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision. Where the Appeal Panel proposes terms for granting permission, paragraph 3.3.11 applies.

3.3.9 For the costs of respondents' objections, see paragraph 3.5.

3.3.10 Respondents who are unable to meet the deadlines set out in paragraph 3.3.6 must write to the Registrar requesting an extension of time for filing their written objections.

Permission given on terms

3.3.11 If the Appeal Panel is considering granting permission to appeal on terms:

- (a) the Panel proposes the terms and the parties have the right to make submissions on the proposed terms within 14 days of the date of the Panel's proposal;
- (b) the Panel will then decide whether to grant permission (unconditionally or on terms);
- (c) prospective appellants who are granted permission to appeal subject to terms that they are unwilling to accept may decline to pursue the appeal.

Application referred for oral hearing

3.3.12 In all cases where further argument is required, an application for permission to appeal is referred for an oral hearing.

⁷ Amended April 2015

3.3.13 Respondents may seek to file more fully reasoned objections within 14 days of being informed that the application has been referred for a hearing (see paragraph 3.3.6(b)).

3.3.14 When an application is referred for an oral hearing, the appellant and all respondents who have filed notice of objection under rule 13 are notified of the date of the hearing before the Appeal Panel. Parties may be heard before the Appeal Panel by counsel, by agent, or in person. If counsel are briefed, agents should ensure that the Registry is notified of their names.

3.3.15 Oral permission hearings usually last for 30 minutes. The panel will normally give its decision orally at the end of the hearing.

3.3.16 All the parties are sent a copy of the order sealed by the Registrar which records the Panel's decision.

Filing notice to proceed

3.3.17 Where permission to appeal is granted, the application for permission to appeal will stand as the notice of appeal and the grounds of appeal are limited to those on which permission has been granted. The appellant must, within 14 days of the grant of permission to appeal, file notice under rule 17 that he wishes to proceed with his appeal. When the notice is filed, the application for permission to appeal will be re-sealed and, **in order to comply with rule 17(2)**, the appellant must then serve a copy on each respondent and file the 7 copies.

3.3.18 Where an appellant is unable to file notice under rule 17 within the time limit of 14 days, a formal application for an extension of time must be made on Form 2: see paragraph 7.1 of Practice Direction 7 for applications. The respondent's views on the extension of time should be sought and, if possible, those views should be communicated to the Registry. The application will be referred to the Registrar and, if it is granted, the appellant must then comply with rule 17(2) and paragraph 3.3.17.

Expedition

3.3.19 In cases involving the liberty or life of the subject, urgent medical intervention or the well-being of children, a request for expedition may be made in writing to the Registrar.

Counsel

3.4. Appellants and respondents to an application for permission to appeal may instruct leading or junior counsel.

Costs

3.5.1 Where an application for permission to appeal is referred for an oral hearing and is dismissed, any application for costs must be made by the respondent at the end of the hearing. No order for costs will be made unless a request is made at that time.

3.5.2 Where permission to appeal is granted, costs of the application for permission become costs in the appeal.

3.5.3 The reasonable costs of objecting to an unsuccessful application for permission to appeal will normally be awarded to the respondent, subject to any order for costs made by the Appeal Panel.

- a. If permission to appeal is granted, the costs of respondent's objections become costs in the appeal.
- b. Where an unsuccessful application for permission to appeal is determined without a hearing, those costs necessarily incurred in attending the client, attending the appellant's agents, considering the application for permission to appeal, filing notice of objection under rule 13 and, where applicable, preparing respondent's objections to the application may be awarded to a respondent.

Where costs are sought under (b) above, the application may be made by letter addressed to the Registrar or may be included in a bill of costs filed in the Registry conditional upon the application being granted.

3.5.4 Bills of costs must be filed within 3 months from the date of the decision of the Appeal Panel or from the date on which an application for permission to appeal is withdrawn in accordance with rule 33 (see paragraph 7.16 of Practice Direction 7). If an extension of the three month period is desired, application must be made in writing to the Registrar and copies of all such correspondence sent to all interested parties. In deciding whether to grant an application for an extension of time made after the expiry of the 3 month period, the Registrar takes into account the circumstances set out in paragraph 6 of Practice Direction 8.

3.5.5 For the fees payable on the assessment of a bill of costs, see Annex 2 to Practice Direction 7. For the assessment of costs, see rules 46-51 and Practice Direction 8.

3.5.6 For security for costs see paragraph 7.9.1 of Practice Direction 7.