

CPR PART 52 – A LESS APPEALING PROSPECT?

The Civil Procedure (Amendment No.3) Rules 2016 came into force on 3rd October 2016. The rules govern the changes to the new appeals procedure, mainly in respect of the process of obtaining permission to appeal.

Further, The Access to Justice Act 1999 (Destination of Appeals) Order 2016 makes changes to the destination of appeals, largely doing away with 'leap-frog' appeals.

Background & Scope

The new rules apply to appeals issued after that date, but do not retrospectively apply to any appeal issued before that date.

The increase in workload directed towards the Court of Appeal has led to pressure to deal with meritless appeals in particular, swiftly and decisively.

The key changes to CPR part 52 are:-

- Taking away an appellant's automatic right to an oral hearing in circumstances when permission to appeal has been refused on paper;
- Changing the wording in respect of '2nd appeals' to that now contained in CPR 52.7(2)(a)(i) – 'a real prospect of success';
- A general reorganisation of Part 52.

The key points to take from CPR 52A are:-

- An appeal from a Circuit Judge will now be heard by the High Court;
- In most County Court cases, an appeal will be to the Circuit Judge;
- Appeals from Masters, Registrars and District Judges of the High Court will carry on being an appeal to the High Court.

Automatic Right to Renew Orally

Whilst the appellant's automatic right to renew their appeal at an oral hearing has been removed from Part 52, there remain powers contained within CPR 52.5(2) for the judge considering the application to invite the parties to provide oral representations in circumstances when 'the judge is of the opinion that the application cannot be fairly determined on paper without an oral hearing'.

The rules go on to provide scope (and seemingly actively encourage) judges to highlight any issues that the party seeking permission to appeal should focus upon in its submissions. The Court may also direct that the applying party provide written submissions in advance of any oral hearing (CPR 52.5(4)(b)).

It should be noted also that the rules regarding permission hearings in appeals, also applies to decisions made by the Court of Appeal in any other application which is before them, e.g. a decision of an ancillary nature made in the Civil Appeals Office.

A Real Prospect of Success

Changes to the wording of CPR 52.7 in respect of second appeals may not be considered 'ground breaking' stuff as it simply mirrors the requirements for first appeals and had seemingly been taken as an unwritten requirement anyway. It is therefore now a formal consideration along with the requirement that the appeal deals with an important point of principle or practice.

The changes to CPR 52.7 have stopped short of applying the suggested threshold changes as proposed by Briggs LJ in Civil Courts Structure Review, whereupon any future appellant would need to show 'substantial' prospects (as opposed to simply 'real') before their case would be allowed to proceed to full appeal.

The rationale for the decision not to implement this significant change in threshold may simply be to allow more time for discussion surrounding its possible impact, but rest assured our lawmakers are thinking along these lines. Such a change is quite likely to have the desired effect of reducing the number of cases which reach full appeal status, however access to justice is likely to be significantly diminished if the would be appellant has to show not only that he has a point on appeal, but also that it has a high likelihood of success – a pill which many litigants having already lost at trial and first appeal, may find too much to stomach.

Destination of Appeals

The table below shows the new destination for appeals:-

| COURT | DECIDING JUDGE | DECISION APPEALED | DESTINATION |
|--|------------------|---|------------------|
| County | District | Any, save for a decision in non-insolvency proceedings brought pursuant to the Companies Acts | Circuit |
| | Circuit | Non-insolvency proceedings pursuant to Companies Acts | High Court |
| High | Master | Any | High Court |
| | High Court | Any | Court of Appeal |
| Intellectual Property Enterprise Court | District | Any | Enterprise Judge |
| | Enterprise Judge | Any | Court of Appeal |

Summary

The ever-increasing workload of the higher Courts appear to be the driving force behind the recent changes to CPR 52. Practitioners should now take extra care in preparing their paperwork for permission, as, is likely, this may be the only opportunity the litigant has to present their case to the senior Courts.

Changes to the appeal destinations are also in line with current thinking about the spreading the workload of appeals lower down the judiciary and those litigants considering embarking on an appeal would be well advised to 'double check' the location before filing and potentially running into difficulties with time limits.

By virtue of changes to procedure, destination and possible future reform it is clear that CPR 52 has become and is likely to continue to be a less appealing prospect...

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Scott joined Chambers in 2011 after 5 years practising within a solicitors firm as part of the litigation team. At the heart of his practice is a common sense approach and a practical attitude.

Scott is a member of the Devon Chambers Civil Team. Practitioners in this team are able to offer highly skilled advocacy and advice in all areas of Civil and Common Law including Contract disputes, Consumer Credit, Insolvency, Equity and Trusts, Inheritance, Intellectual Property, Planning and Holiday Claims.

Scott welcomes instruction in areas of commercial or contractual disputes, property and housing disputes, personal injury cases, credit hire disputes, possession claims, regulatory crime and anti-social behaviour actions. He is also an ADR accredited civil/commercial and workplace mediator and is happy to undertake mediations and arbitrations.

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