

**THE GOOD APPEAL GUIDE: APPEALING AGAINST FINAL CARE AND PLACEMENT ORDERS
MADE IN THE FAMILY PROCEEDINGS COURT**

An Appeal is a last resort. Naturally it is vital to consider carefully the welfare of the child. Additionally, public funding is a precious resource to be used only where necessary.

WHAT PROVISION IS MADE FOR APPEALS?

The Children Act 1989 s. 94 provides for appeals against/the failure to make both Care and Placement Orders. The leading case is *Re M (Section 94 Appeals)* [1995] 1FLR 546.

WHO DO I APPEAL TO?

To a Circuit Judge.

DO I NEED PERMISSION?

You do not require permission.

HOW MUCH TIME DO I HAVE TO APPEAL?

The appellant's notice must be filed with the appeal court within such period as may be directed by the lower court, or where the court makes no such direction, 21 days after the date of the decision which the appellant wishes to appeal (FPR 2010, r30.4).

The Court of Appeal indicated in *Re M & H* [2006] EWCA Civ 499 that a shorter time period might be more appropriate in family cases involving children, where time is of the essence.

It is possible to apply to extend time to appeal with grounds: *Barder v Barder* [1987] 2 FLR 480.

WHAT ARE THE GROUNDS OF APPEAL?

For a determination of whether the threshold is crossed and/or whether a care order should be made the test is whether the decision of the judge was "wrong" *In the Matter of B (a Child)*, [2013] UKSC 33.

WHAT IF THE REASONS ARE INADEQUATE? CAN THE FPC EXPAND/ AMEND THEM?

A Judge's failure to give adequate reasons for their determination is fundamental and is likely to lead to the Judgment being set aside as being unjust within the meaning of FPR 30.12 (3)(b)[per Lord Wilson in *Re B [2013] UKSC 33; [2013] 2 FLR 1075* at para 46.

There is a problem in seeking clarification: in their civil jurisdiction magistrates have no jurisdiction provided by statute to review or set aside their own orders save by consent *R v (Ota Mathialagan) v London Borough of Southwark [2004] EWCA 1689*.

WHAT IF THE LA DOESN'T AGREE WITH THE ASSESSMENT OF RISK BY THE FPC?

"If the local authority disagree with the judge's risk evaluation they must in a case where it is wrong appeal it. The appellate court will be able to consider such an appeal, where that is integral to the order or judgment of the court." In *Re W [2013] EWCA 1227* [para 85] Ryder LJ.

HOW WILL MY APPEAL BE DEALT WITH?

Appeals are dealt with by way of a review (unless the County Court considers it in the interests of justice to hold a re-hearing).

HOW MUCH WILL IT COST ME?

An appeal against a care or supervision order from the FPC is £180.

AM I ENTITLED TO PUBLIC FUNDING?

Means tested legal aid is available subject to Regulation 66(2) of the Civil Legal Aid (Merits Criteria) Regulations 2013 which states:

- 66 (2) An individual may qualify for full representation in a public law children case only if the Director is satisfied that—
- (a) it is reasonable for full representation to be provided, having regard to the importance of the case to the individual; and
 - (b) if the individual is making or supporting an appeal or application, the prospects of success of that appeal or application are very good, good, moderate or borderline.

ARE THE CLERK'S NOTES SUFFICIENT?

The appellant must include the written reasons for the court's decision and the typed notes of the hearing made by the Justices' clerk. FPR, Practice Direction 30A 5.32.

WILL AN APPEAL OPERATE AS A STAY?

Unless the appeal court orders otherwise, an appeal does not operate as a stay of any order or decision of the lower court (FPR 2010, r30.8).

The Family Proceedings Court itself has no power to grant a stay (*Re O (a Minor) (Care Order: Education: Procedure)* [1992] 2 FLR 7). However, following *Re J (a minor) (residence)* [1993] 2 FCR 636 the Family Proceedings Court can give directions pursuant to section 11 of the Children Act 1989 as to when the order should come into force.

An application for a stay of the order should be made in the appeal notice (Form N161).

The existence of an “arguable appeal with reasonable prospects of success” was the minimum requirement before a court could even consider granting a stay in *NB v Haringey LBC* [2012] 2 FLR 125.

CAN AN ORDER BE MADE PENDING MY APPEAL?

Under section 40(5) of the Children Act 1989, where an appeal or an application to appeal against a decision is made, the County Court may extend the period for which an interim care or supervision order is to have effect, but not so as to extend it beyond the determination of the appeal or the period during which an appeal may be made against the lower court’s decision.

SECOND APPEALS

Permission is required for an appeal from the County Court to the Court of Appeal. This is a second appeal and engages the enhanced test in CPR 1998 rule 52.13(2). See *Re G* [2013] EWCA Civ 965.

The Court of Appeal will not give permission to appeal unless it considers that:

- a. The appeal would raise an important point of principle or practice; or
- b. There is some other compelling reason for the Court of Appeal to hear it.

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