

## Appeals : what to do when it all goes wrong

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1



## Appeals

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2

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- FPR 30.12 (3)
- The appeal court will allow an appeal where the decision of the lower court was
- (a) wrong or
- (b) unjust because of serious procedural or other irregularity in the proceedings in the lower court

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5



PD 30 A

The grounds of appeal should


- (a) Set out clearly the reasons why rule 30.12 (3) (a) or (b) is said to apply and
- (b) Specify in respect of each ground whether the ground raises an appeal on a point of law or is an appeal against a finding of fact

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- Some examples
- The magistrates faced with a decision between a residence order (as then was) between father and a mother made an order in favour of a witness, the grandmother.



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- JH v MF 2020 [EWHC] 86, Ms Justice Russell “decision unjust because of serious procedural irregularity and multiple errors of law”
- F V H & Anor [2017] EWHC 3358, Russell J found that the judge had been wrong to rely on guardian’s conclusions and to effectively reverse her own decision on “flimsy evidence”

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8



- Potential for appeals at this time possibly in relation to hearings conducted remotely
- Inserted in version 3 of The Remote Access Family Court, Mr Justice Macdonald
- “Can I stress, however, that we must not lose sight of our primary purpose as a Family Justice System, which is to enable courts to deal with cases justly, having regard to the welfare issues involved

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[FPR 2010, r1.1 ‘the overriding objective’], part of which is to ensure that parties are ‘on an equal footing’ [FPR 2010, r 1.2]. In pushing forward to achieve Remote Hearings, this must not be at the expense of a fair and just process”

President of the Family Division 27 March 2020

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10




Macdonald J para 2.2

“It is important to note however, that feedback provided by a lay party in the proceedings provides a significant counterweight to the foregoing positive assessments and points up important matters to which those conducting remote hearings, and those participating in remote hearings should pay careful regard..

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11



- See <http://www.transparencyproject.org.uk/remote-justice-a>- family- perspective
- In addition, the ALC have highlighted issues of social and economic inequality which can prevent lay clients from properly participating in remote hearings concerning important decisions being made about their children”

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12



- Which level of court do you appeal to?
- From Magistrates to Circuit Judge, no permission to appeal required
- From District Judge (Magistrates) permission to appeal required

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- From District Judge to Circuit Judge, permission to appeal required
- From Circuit Judge to High Court Judge in private law, otherwise to Court of Appeal, permission to appeal required
- Permission not required following a committal order or secure accommodation order

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14



- 21 days unless the lower court has indicated a different time
- In public law cases would suggest as soon as able to do so
- An application for permission to appeal and if granted the appeal, does not operate as a stay
- A stay should be sought if appropriate
- For example a removal case

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15



- FPR 2010 R30.3
- R30.3 (7) Permission to appeal may be given only where
- (a) the court considers that the appeal would have a real prospect of success or
- (b) there is some other compelling reason why the appeal should be heard

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- What does “real prospect of success mean”?
- Mostyn J
- Meant it was more likely than not that the appeal would be allowed at the substantive hearing
- “Anything less than a 50/50 threshold could only mean a real prospect of failure”

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- Moor J
- Is one that is realistic as opposed to fanciful and does not mean a greater than 50/50 chance of success

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A portrait of a man wearing a traditional white wig, likely a barrister, standing in front of a bookshelf. The image is framed within a slide template.

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20



- And the winner is...
- Moor J
- What should you do if you are a respondent to a permission application?
- Encouraged to set out in a position statement why permission to appeal should not be granted

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(b) Some other compelling reason why the appeal should be heard

Example:

- Re B (A child) (Post-adoption contact) [2019] EWCA Civ 29
- Following the implementation of section 51A of the Adoption and Children Act 2002 (inserted by the Children and Families Act 2014)

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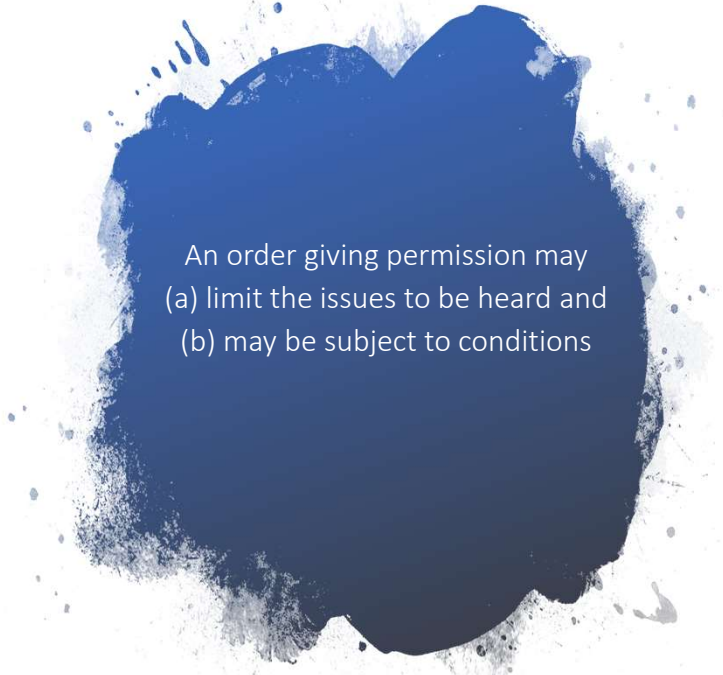
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- First opportunity for the Court of Appeal to consider the issue of post adoption contact following the implementation of the new section
- Essentially the message was no real change

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An order giving permission may  
(a) limit the issues to be heard and  
(b) may be subject to conditions

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- Rule 30.3(3)
- An application for permission to appeal may be made
- (a) to the lower court at the hearing at which the decision to be appealed was made or
- (b) to the appeal court in an appeal notice

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- Material omission
- As Dawn Penn said... “No, no, no”



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- Should be drawn to the lower court's attention
- If not, appeal court must consider whether there is a material omission from the judgment and if it concludes that that there is, it may remit the matter to the lower court with an invitation to provide additions to the judgment (Re A & L [2011] EWCA Civ 1205)

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- Re I [2019] EWCA CIV 898
- Not an “invitation to treat”
- King LJ scathing of a practice in which requests for clarification had become routine where “regarded as nothing other than an attempt to reargue the case, or as here, water down the judge’s judgement”

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“No,  
No  
,No”

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- Some judgments are so fundamentally flawed they are not capable of being rectified by way of a clarification request
- Jackson LJ in SL (Children adjournment) EWCA Civ 1571 described,
- “serious procedural irregularity in the complete inadequacy of judgment”

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30

"No attempt to analyse the evidence or issues.  
Instead the decision was announced without  
context or coherent explanation"

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- W (a child) [2019] EWCA Civ 1966
- CA unanimously allowed the appeal against care and placement orders on the basis of an inadequately reasoned judgment. Judgment amounted to eight pages, did not include much background, a record of evidence, lack of mention of the LA's change in position

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32





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No, No, No

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- Detailed requirements as to what needs to be filed and when
- You want to be able to receive ...



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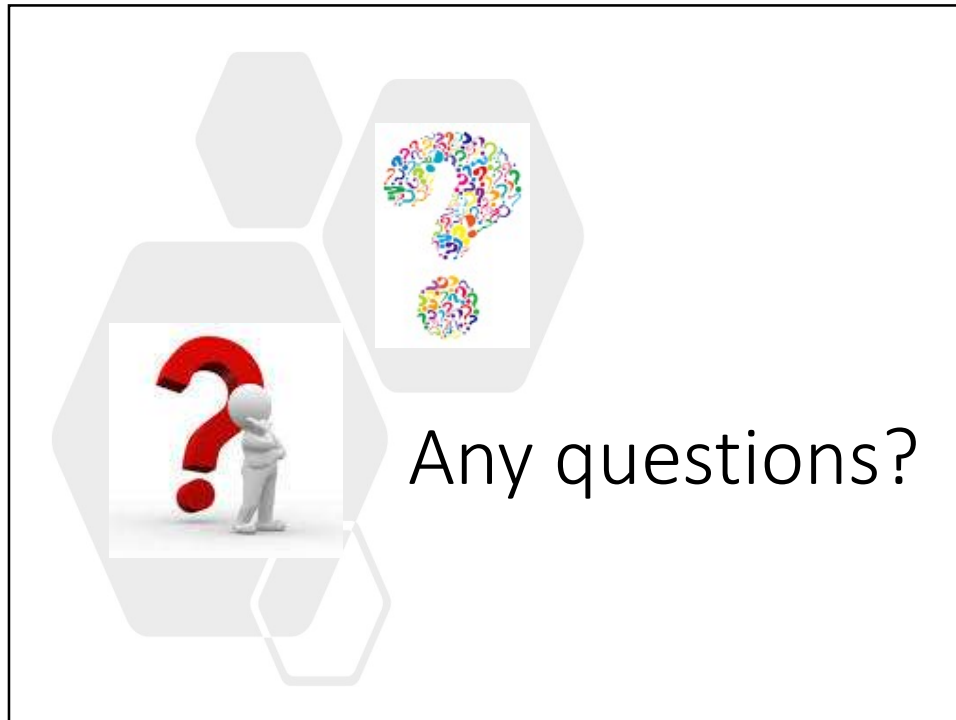
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And not being sent to the  
back of class

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37



38