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Evaluation of appellate work in the High Court and the county courts

Lexicon Limited
Joyce Plotnikoff and Richard Woolfson
Consultants in Management, ICT and the Law

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The Research Unit, Department for Constitutional Affairs, was formed in April 1996. Its aim is to develop and focus the use of research so that it informs the various stages of policy-making and the implementation and evaluation of policy.

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Executive summary

Purpose of the study

- This research complements the previous study by the authors entitled 'Evaluation of the Impact of the Reforms in the Court of Appeal (Civil Division)' published in July 2003. That identified problems experienced by the High Court at the Royal Courts of Justice (RCJ) in coping with the appellate work it inherited as a result of the changes introduced by the Access to Justice Act 1999 and Part 52 of the Civil Procedure Rules. As a result, the current study was commissioned to look at how the High Court and county courts are coping with their expanded appellate role.

Methodology

- The methodology involved a combination of approaches:
  - examination of statistics on appellate work in the High Court and county courts;
  - 'shadowing' staff in the High Court Appeals Office at the RCJ;
  - a counter survey and examination of correspondence to analyse problems with paperwork lodged by appellants;
  - around 40 interviews with a range of judges, administrators and policy makers involved in the appeals process and with a lawyer at the Citizen's Advice Bureau at the RCJ who assists unrepresented litigants in preparing their appeal;
  - surveys of Designated Civil Judges (13 responses), unrepresented appellants (12 responses) and solicitors (19 responses) who represent appellants or respondents; and
  - examination of court files relating to 150 recently closed appeals at the three busiest regional appeal centres.

Comparison of study courts

- The High Court at the RCJ dealt with larger appellate volumes than regional appeal centres. In 2003, the number of applications for permission and appeals set down there was more than three times that at Birmingham, five times that at Manchester and six times that at Leeds.

- The High Court Appeals Office was better resourced than regional appeal centres. Its complement of six staff compared with only one staff member dedicated to appeals at Birmingham and Manchester. Appellate work at Leeds was distributed between all seven staff in the diary manager's office. Staff at the RCJ could consult

a lawyer in the Civil Appeals Office for advice on procedural questions. In the regions, all such questions were referred to the Designated Civil Judge (DCJ) or a deputy. A cut-down version of the RECAP computer system, originally designed to support the work of the Civil Appeals Office, had been installed in the High Court Appeals Office. It allowed appeals to be tracked and most enquiries to be responded to without reference to paper records. None of the regional appeal centres had a computerised tracking system for appeals.

- Regional appeal centres were less demanding than the High Court Appeals Office when deciding whether to accept an appellant's notice that was deficient in some respect. The High Court at the RCJ also adopted a different approach to disciplining appellants who failed to lodge documents by the prescribed date, requiring such litigants to appear at a dismissal hearing to explain the reasons to the judge or have their appeal struck out. In contrast, regional appeal centres issued defaulting appellants with an 'unless' order, requiring the litigant to take action by a specified date or lose their appeal.

- Study courts differed in their attitude to making a decision on the papers about whether to grant an application for permission to appeal from an unrepresented litigant. At the RCJ, such applications were listed directly for an oral hearing unless the litigant explicitly requested otherwise. Paper decisions were also uncommon at Birmingham. In Leeds, the DCJ sometimes granted permission but seldom refused permission on paper. Some of his judicial colleagues made greater use of paper decisions, both to grant and refuse permission. The DCJ in Manchester routinely made a decision on paper in the applications for permission he reviewed.

- Differences in caseload and procedural approach made it hard to compare processing times at courts in the study. In general, times in the High Court at the RCJ tended to be longer, probably a reflection of the seriousness of the appeals they deal with. In the sample of cases we examined at regional appeal centres, Leeds was faster than Manchester in producing a paper decision on an application for permission to appeal and fastest to hold an oral hearing on permission. However, once permission had been granted by an appellate judge, Leeds took longest to dispose of the appeal, taking twice as long as Manchester and two and a half times as long as Birmingham. In those cases where permission was granted or not required, Leeds was the slowest of the regional appeal centres, taking on average 127 days from set down to disposal compared with 82 days at Birmingham and 95 days at Manchester.

- All courts including the RCJ operated an expedited procedure for urgent appeals, dispensing with the usual requirements for supporting documentation, even though there is no provision for this in CPR 52.

Resource issues

- DCJs responding to our survey spent on average seven hours a week on appellate work. Some DCJs thought that the resources assigned to processing and hearing appeals were adequate, at least in the context of the meagre resources available for civil justice as a whole. Resource problems were most acute at larger centres and at the High Court at the RCJ. At the three regional appeal centres visited during the study, one DCJ was 'reasonably content' with the resources provided but the other two were less satisfied. Presiding Judges felt that resources were in short supply for civil work in general but that appellate work was no worse off in this respect than other areas of court business.

- The Business Management System (BMS), a computer system used by the Court Service to assist in resource allocation, was regarded as wholly inadequate for assessing the effort involved in dealing with appeals. Most Presiding Judges and Lords Justices said they would find it helpful to have available statistics on appellate work such as those produced from the RECAP system.

Problems with the appellant's notice and supporting documents

- Staff in the High Court Appeals Office at the RCJ recorded on our behalf problems with appellants' and respondents' notices lodged there over a period of 25 days. A total of 73 notices were lodged, of which 39 (53%) were lodged by litigants in person. There were no problems with the papers lodged by 26 (67%) of the litigants in person and by 25 (74%) of the legal representatives. The most common problem with papers lodged by litigants in person was the absence of a copy of the order being appealed. Among appeals lodged on behalf of represented litigants, four were mistaken about jurisdiction. Three of these should have been in the Court of Appeal. Two had made an error relating to the fee.

- A complementary examination of correspondence with litigants during 2003 revealed problems relating to 46 appeals. Mistakes about appellate jurisdiction were by far the most common; there were 26 of these, 19 involving an unrepresented litigant.

- Unrepresented litigants were overwhelmingly of the view that the 14 days allowed for lodging an appeal was too short. Appellants' notices had been lodged out of time in 37% of the case files examined at regional appeal centres. Only 15% of these out of time notices contained an application to extend the time allowed.

- Eighty-six files contained information about the fee paid by the appellant. In 26 of these (30%), the wrong fee had been paid on the first occasion.

- Appellants generally had difficulty in completing the appellant's notice. The section asking for details of the order being appealed caused particular problems. Some appellants confused the date the order was made with the date it was drawn up by the court. Many entered track allocation information incorrectly and there was scant understanding of whether the order being appealed was a case management order.

- The greatest problem encountered by would-be appellants was providing the supporting documents required with the appellant's notice. Judges and court staff acknowledged that obtaining a transcript of the judgment of the lower court takes longer than 14 days, even though appellants are required to submit a transcript with their appellant's notice. Some judges wanted more discretion to dispense with the need for a transcript, or to accept a note of judgment instead, on a case-by-case basis.

The impact of procedural changes

- Judges were asked if the intended benefits from changes to appellate procedure as set out in the Bowman report had been delivered in respect of appellate work in the High Court and the county courts. The results can be summarised as follows:
  - ▷ judges were divided as to whether waiting times had fallen;
  - ▷ most thought that any impact on the length of hearings was small;
  - ▷ there was general confidence that the quality of decision-making had not suffered;
  - ▷ procedures had not been made simpler. Forms were too complicated for many appeals, particularly those relating to small claims. Appellate routes were too complex;
  - ▷ some thought that costs to the parties had reduced but appeal costs were still thought to be disproportionately high in small claims cases. Respondents' costs were increased when they were required to attend an oral permission hearing; and
  - ▷ the changes had resulted in an increased workload for appellate judges.

- Fourteen out of 16 DCJs considered that the introduction of a nearly universal requirement for permission to appeal had been effective at filtering out unmeritorious appeals at an early stage. High Court judges were less enthusiastic and one expressed opposition to the permission requirement.

- DCJs adopted different practices when reviewing on paper an application for permission to appeal to a circuit judge from an unrepresented appellant. Eleven said they would decide whether to make a paper decision on a case-by-case basis. Three said they always made a paper decision; and one always listed for an oral hearing without a paper decision.

- Eight DCJs were from centres where appeals to a High Court judge were heard. Of these, five routinely referred an application for permission to a High Court judge for a decision on the papers. Two others referred some cases for a paper decision while the remaining court listed the case directly for an oral hearing. Three DCJs reported difficulty in obtaining the time of a High Court judge to review a permission application on paper or to preside at an oral permission hearing.

- High Court judges doubted the value of making a paper decision if the appellant was unrepresented. However, a Presiding Judge warned that the practice of listing directly for an oral hearing without a paper decision should not become embedded in the local legal culture.

- Despite a common belief that unrepresented litigants always renew at an oral hearing an application for permission refused on paper, only six out of 16 did so in study cases. This was a slightly smaller percentage than for represented litigants, among whom seven out of 18 renewed.

- Nine DCJs said that, whenever possible, they would preside at the oral permission hearing themselves if they had reviewed the application on paper. The other six spread such hearings among fellow circuit judges although three would endeavour to hear certain kinds of application themselves. The reliance on visiting High Court judges meant that regional appeal centres seldom listed the oral hearing before the same High Court judge who refused permission on paper.

- The High Court at the RCJ tried to list hearings of renewed applications before the same judge that refused permission on the papers. This was easier where the

judge sat in the Chancery Division as High Court judges in the Queen's Bench Division spend much of their time on circuit. In 2002 and 2003, the judge refusing permission on paper presided at the oral renewal in 36 per cent and 22 per cent of such hearings respectively.

- DCJs were asked about the circumstances in which they would list an oral permission hearing 'with appeal to follow if granted'. Respondents are likely to be represented, and the costs of doing so allowed, if a hearing is listed in this way. One DCJ had never ordered that a case should be listed in this way. Six said they would do so if the permission application was likely to be granted. Five DCJs listed in this way if they wanted to hear from the respondent before deciding on permission. If permission was granted, the matter could then be resolved without the need for an additional hearing. Other reasons given were to save time and costs, if the value of the appeal was small or if hearing the case for permission would involve hearing all about the appeal.

- A High Court judge said he occasionally listed an oral permission hearing with an appeal to follow if granted if the permission was likely to be granted or if the appellant was unrepresented and it was important to get assistance from the other side.

- Four of the 19 solicitors who responded to our survey said they would always, or almost always, attend an oral permission hearing when representing a respondent. Others cited the circumstances in which they would attend, including:
  - if the appellant was legally aided;
  - to oppose the application for permission or to seek permission to cross appeal;
  - where the purported grounds for appeal were uncertain or ambiguous;
  - where there was a concern that the appellant might not present the case fairly;
  - in a complex matter;
  - where the application hung in the balance; or
  - if the client was keen to hear the outcome.

The quality of information for litigants

- Most unrepresented litigants who responded to our survey said the quality of written guidance on the appeals process was poor. Thirteen responding solicitors felt the quality of the written guidance was adequate or better while five were critical of the quality in varying degrees.

- Judges' views about the help provided to litigants by court staff were mixed. Seven of the 12 unrepresented litigants in our survey had asked court staff by phone for help on appeals procedures; seven had done so at the public counter in the court building; and one had sought advice by letter. Three described the service provided as 'excellent', three praised the service but with reservations and five were wholly critical of the help they had received. Eight solicitors had asked court staff for help on appeal procedures. Most had received a good response and were pleased with the service they received.

- When asked about how the service provided to appellants by court staff could be improved, most litigants wanted more accessible personal help.

The judicial role

- Some senior judges felt unable to comment on the consistency of approach to appellate work. Others attached little importance to such consistency but some acknowledged that inconsistency could create problems, for instance in relation to giving reasons for decisions. There was more concern about differences of approach between tiers of appellate court but here also some spoke in defence of tailoring practice according the nature of the appellate caseload.

- Civil restraint orders aimed at restricting the activity of vexatious litigants had only been recently introduced at the time of the research. Nevertheless, 13 out of 16 DCJs had already made such an order and most welcomed them as a much-needed measure to curb the activities of a small number of litigants who abuse the system. However, the work entailed in making an order and the fact that restrictions related only to the court or courts specified in the order had already been identified as weaknesses.

- The Judicial Studies Board does not deal specifically with civil appellate work in its courses and the section on appeals in the Civil Bench Book is not yet available. Judicial opinion was divided on the need for training relating to appeals. There was most support for the idea among senior judges, especially in relation to dealing with unrepresented litigants. A DCJ felt there was a need for judicial training in the management of appeals.

- The provision of feedback to lower court judges on the outcome of appeals was not systematic. Only the Court of Appeal and the High Court at the RCJ routinely

provided feedback on the outcome of permission applications. The provision of feedback on substantive appeals was least likely where the appeal lay to a High Court judge.

Conclusions

- The changes to appellate rules were intended to create a uniform approach to appeals, irrespective of appellate court. However, courts in our study had developed pragmatic ways of working in light of the nature of their caseload and the resources at their disposal. This meant that compliance with appellate requirements was enforced in spirit but not in detail. However, senior judges considered that judges already had sufficient discretion to abridge procedure and were against any further amendment to the Rules and Practice Directions. They acknowledged that procedure in respect of small claims needed simplification and work to bring this about was already underway. This includes designing a simplified appellant's notice for such appeals. Future reviews should look at:
  - ▷ introducing an expedited procedure in the rules to deal with urgent appeals, for instance those challenging an eviction order
  - ▷ modifying requirements in respect of transcripts.

- Confusion among litigants about appellate routes and requirements was common in this and in our previous study. Our previous report made a number of suggestions about how the quality of information available on the appeals process might be improved. The most radical proposal was to include on orders information about whether they were appealable and, if so, whether permission was required (or granted by the lower court) and the court to which an appeal would lie. Although the Court Service indicates that it is looking at the issues, to date these suggestions have not been adopted and we urge their adoption in light of the findings in the current study.

- Many of the differences of approach highlighted in this study stem from the limited resources available for appellate work in the High Court and the county courts compared with the Civil Appeals Office. The restricted budget available for civil work in general makes it unlikely that significant extra resources will become available in the near future. Even so, some measures could be taken to ease or spread the burden on court staff. At two of the three regional appeal centres in the study, only a single member of staff, in one case a part-timer, had detailed knowledge of appellate work. This created difficulties when the person was not available. A system in which a range of staff learns to deal with appeals is more

robust, even though it may not produce the same depth of appellate knowledge in any single individual.

- The RECAP computer system developed to support the work of the Civil Appeals Office has been provided in a cut-down version to the High Court Appeals Office at the RCJ. It has not been provided to regional appeal centres, which rely instead on spreadsheets and paper records. Regional implementation of RECAP presents various technical challenges, but the Head of Technology at the *e*Delivery Group within the DCA has suggested ways in which these could be overcome. Although there would be costs involved in implementing RECAP in the regions, these could well be justified in terms of the business benefits especially as the software already exists. A feasibility study could quantify these benefits and establish whether a business case exists for regional implementation.

- Practice in respect of permission applications from unrepresented appellants varied between appeal centres. Some made a decision on paper while others listed directly for an oral hearing. Such differences are unsatisfactory for litigants, who regard the paper decision process as a separate opportunity to have the merits of their appeal considered. They are entitled to know that the availability of this procedure is the same, irrespective of the appeal centre at which their appeal is lodged. Guidance aimed at unifying practice in this respect would be welcome.

- The operation of the recently introduced system of civil restraint orders needs to be monitored and evaluated during its early stages. Judges should be made aware of the existence of databases recording the names of litigants against whom such an order has been made or whose claim has been ruled totally devoid of merit.

- Existing JSB seminar sessions on how to deal with unrepresented litigants could be expanded and put in the specific context of appeals. There is also scope for a session dealing with strategies and techniques for appeals management. This would be of particular benefit to new recruits to the DCJ role.

- The provision of feedback to lower court judges on the outcome of appeals against their decisions should be put on a more systematic footing. A copy of written appeal judgments and orders should be provided automatically to the judge whose order is being appealed. In the interests of speed and efficiency, the information should be delivered by e-mail wherever possible. The new LINK infrastructure being installed in all courts provides a means by which this could happen.

1 Introduction

1.1 Aims and objectives

This study was commissioned by the Research Unit within the Department for Constitutional Affairs (DCA). The impact of changes to appellate rules and procedure on the Court of Appeal (Civil Division) was explored in depth in previous research undertaken by the authors on behalf of the Lord Chancellor's Department (Plotnikoff and Woolfson, 2003). That study touched on the difficulties encountered by the High Court at the Royal Courts of Justice (RCJ) in coping with the extra appellate work it acquired as a result of the changed appellate routes.[1] Subsequent enquiries suggested that regional centres face similar problems. The purpose of this study was to quantify the appellate work undertaken by the High Court and the county courts and to examine how different centres were meeting the challenge of their new appellate role, particularly in relation to unrepresented appellants.[2]

Specific study objectives were:

- to establish baselines relating to appellate work handled in the High Court and county courts. These cover the volume, nature, speed of processing and outcome of appeals and applications for permission to appeal, and whether parties were legally represented;
- to evaluate the operation of judicial case management in respect of appeals, in particular the early setting of a realistic timetable;
- to consider the administrative functions of court staff processing appeals and the use of automated systems to support their work;
- to examine issues relating to unrepresented appellants, including their views on the quality of available information on appeals and the assistance provided by Citizens' Advice Bureaux;
- to obtain the views of judges and court staff as to the appropriateness and effectiveness of appellate procedures; and
- to survey lawyers acting on behalf of appellants as to the quality of appellate justice available in the High Court and county courts.

1.2 Background to the evaluation

Wide-ranging changes to appellate procedure were introduced on 2 May 2000 when Part 52 of the Civil Procedure Rules (CPR) was implemented. The backdrop to these changes was

1 Chapter 8.
2 Throughout this report, the term 'appellant' is used to refer both to someone applying for permission to appeal and for someone granted permission who is pursuing an actual appeal.

the new appellate regime set out in sections 54 to 57 of the Access to Justice Act 1999 which, in turn, drew on the findings of Lord Woolf's enquiry into civil justice (The Right Honourable the Lord Woolf, 1996) and Sir Jeffery Bowman's review of the work of the Civil Division of the Court of Appeal (Bowman, 1997; referred to throughout as 'The Bowman report').

Section 56 of the Access to Justice Act 1999 allowed the Lord Chancellor to specify appellate routes. The current position in relation to decisions of the High Court or a county court is set out in the Access to Justice (Destination of Appeals) Order 2000 (SI 2000/1071).[3] On introduction, this diverted to the High Court many county court appeals in non-family cases that would previously have been heard in the Court of Appeal. The order stipulated that:

- an appeal against a final decision in multi-track cases lies to the Court of Appeal, irrespective of the court of first instance[4];
- otherwise,
  - in the county court, an appeal against a decision of a district judge (or deputy district judge) lies to a circuit judge and an appeal against a decision of a circuit judge (or recorder) lies to a High Court judge;
  - in the High Court, an appeal against a decision of a district judge or master lies to a High Court judge, and an appeal against a decision of a High Court judge lies to the Court of Appeal.

A final decision is defined as one that would finally determine the entire proceedings, subject to any possible appeal or detailed assessment of costs, whichever way the court decided the issues before it.[5] A decision is treated as final for routes of appeal purposes where it:

- is made at the conclusion of part of a hearing or trial which has been split into parts; and
- would, if it had been made at the conclusion of that hearing or trial, have been a final decision.[6]

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[3] As amended from 1 April 2003 by the Civil Procedure (Modification of Enactments) Order 2003 (SI 2003/490).
[4] An exception to this is claims made using the Part 8 procedure and the Part 8 claim form. Such claims are treated as allocated to the multi-track under CPR 8.9(c) but article 4 of the Access to Justice (Destination of Appeals) Order 2000 does not apply to them. In such cases article 3(2) of the Order applies, hence all appeals, including final appeals, from a district judge are made to a circuit judge and from a circuit judge to a High Court judge. Permission to appeal is required. However, paragraph 2A.6 of CPR PD 52 advises that in the case of a final appeal, the court to which the permission application is made should, if permission is given, and unless the appeal would lie to the Court of Appeal in any event, consider whether to order the appeal to be transferred to the Court of Appeal under rule 52.14.
[5] Access to Justice (Destination of Appeals) Order 2000 (SI 2000/1071), article 1(2)(c).
[6] Article 1(3).

Decisions made on an application for strike-out[7] or for summary judgment[8] are not final decisions within the meaning of the order.[9] The Practice Direction that accompanies CPR 52 gives the following two further examples of decisions that are not final:

- an order made on a summary or detailed assessment of costs; or
- an order made on an application to enforce a final decision.[10]

Section 54 of the Act allowed rules of court to provide, for all levels of court, that the permission of the court is needed to exercise a right of appeal against a court order in a civil case.[11] No appeal was allowed against a decision of the court to give or refuse permission, but this did not affect any right under rules of court to make a further application for permission to the same or another court.

Other changes introduced by the Act included a provision that all second appeals should lie, with permission, to the Court of Appeal (section 55) and that appeals raising questions of particular significance could be heard by the Court of Appeal, even though the normal route would suggest that a lower court should hear the case (section 57).

The rule changes which gave force to these provisions were introduced in the Court of Appeal in January 1999. The old rules were superseded when CPR 52 came into force for all courts in May 2000.[12] Part 52 and its associated Practice Direction[13] also made changes to the procedures for lodging an appeal. These included:

- shortening to 14 days the time allowed for an application to seek to appeal an order[14];
- introducing a single form (N161) known as the appellant's notice[15] which must be filed

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[7] Striking out means the court ordering written material to be deleted so that it may no longer be relied upon.
[8] See CPR 24. Summary judgment is a procedure by which the court may decide a claim or a particular issue without a trial.
[9] See *Tanfern v Cameron-MacDonald* [2000] 2 All ER 801, para. 18. Further discussion of what constitutes a final decision can be found in *Roerig v Valiant Trawlers Ltd* [2002] EWCA Civ 21, paras 43-47.
[10] CPR PD 52, para. 2A.5.
[11] Previously, permission was required for most cases going to the Court of Appeal (Civil Division), but not elsewhere. Explicit exceptions to the new permission requirement were orders affecting the liberty of the individual, namely appeals against committal to prison, refusal to grant habeas corpus, and the making of secure accommodation orders under section 25 of the Children Act 1989. There are also other exceptions: Schedule 15, Part III of the Access to Justice Act 1999 amended the Insolvency Act 1986, section 375(2) to the effect that an appeal from a decision made in exercise of bankruptcy or insolvency jurisdiction by a district judge or circuit judge in a county court or a registrar in bankruptcy of the High Court lies to a High Court judge, without a permission requirement. The Court of Appeal has indicated that CPR Part 52 does not impose a requirement for permission to appeal on statutory appeals where otherwise the right to appeal was unrestricted, *Colley v Council for Licensed Conveyancers* [2001] EWCA Civ 1137 (17th July, 2001).
[12] RSC Order 59 r.1B(1)(a)-(c), superseded by CPR 52.3.
[13] References to the Rules and Practice Direction in this report are to the 36th update, published on 27 August 2004. Most of the amendments introduced came into force on 1 October 2004. The 37th update is expected in December 2004.
[14] Unless the lower court directs a different period, which should not normally exceed 28 days. CPR PD 52, para. 5.19.

and served in all cases by those seeking to appeal or applying for permission to appeal, irrespective of the court to which the application is made; and

- introducing a requirement to produce all the documents required for any hearing at the outset.[16]

In addition, CPR 52 specified that every appeal would be limited to a review of the decision of the lower court unless the court expressly ordered otherwise[17] and that the order appealed against was not automatically stayed[18], except in the case of an appeal from the Immigration Appeals Tribunal.[19]

The Practice Direction stipulated that in the case of an appeal to a circuit judge in the county court from a decision of a district judge, 'The Designated Civil Judge in consultation with his Presiding Judges has responsibility for allocating appeals from decisions of district judges to circuit judges'.[20] In the case of appeals to the High Court, the Practice Direction set out venues in each of the six circuits where appeals may be heard. These are of two types: 'appeal centres' where appeals may be managed and heard; and 'hearing only centres' where appeals may be heard by order made at an appeal centre. The Practice Direction listed a total of 23 appeal centres and eight hearing only centres.[21] The appellant's notice must normally be filed within 14 days of the decision being appealed[22] in the district registry at an appeal centre on the circuit in which the lower court is situated.[23] The appeal court may transfer an appeal to another appeal centre in the same or a different circuit. A transfer to another circuit requires the consent of a Presiding Judge of that circuit.[24]

CPR 52 applies in family proceedings to appeals to the Court of Appeal.[25] It does not apply to such appeals in the county courts and the High Court. Although the Bowman review looked at appeal routes in family cases, it considered them so complex that a special committee was required to examine them and recommend how they might be simplified

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[15]15 CPR PD 52, para. 5.1. A slightly amended version is available for use in insolvency proceedings.
[16]CPR PD 52, paras. 5.6 and 5.6A.
[17] CPR 52.11(1). Previously, appeal was generally by way of re-hearing except in certain specified situations.
[18] A stay imposes a halt on proceedings, apart from taking any steps allowed by the Rules or the terms of the stay. Proceedings can be continued if a stay is lifted.
[19] CPR 52.7.
[20] CPR PD 52, para, 8A.1.
[21] CPR PD 52, para. 8.2. In an amendment introduced on 6 October 2003 in the 33rd update, para. 8.7 provided that all appeals filed at appeal centres across the South Eastern Circuit were to be managed and heard at the Royal Courts of Justice unless the appeal court ordered otherwise.
[22] CPR 52.4(2)(b).
[23] CPR PD 52, para. 8.4.
[24] CPR PD 52, para. 8.9.
[25] CPR 52, para. 2.2.

and rationalised. As a result, the Family Appeals Review Group was set up under the chairmanship of Lord Justice Thorpe and its report was delivered to the Lord Chancellor in July 1998 (Family Appeals Review Group, 1998). In March 2000, the Lord Chancellor's Department issued a consultation paper setting out its plans for reform of the family appeals system (Lord Chancellor's Department, 2000). Lord Justice Thorpe has indicated that the government 'has now reached the point of implementing the Group's proposals. The Department [for Constitutional Affairs] has in draft an order under the Access to Justice Act 1999 as well as family proceedings amendment rules. I am authorised to say that these statutory instruments are intended to bear a 2004 date'.[26]

Bowman also considered that the complexity and diversity of the tribunals structure merited separate consideration. Following his recommendation, the Lord Chancellor asked Sir Andrew Leggatt to undertake such a review and his report was published in August 2001 (Leggatt, 2001). Chapter 6 considered in detail the position relating to appeals from decisions of tribunals, including the role of the courts and the place of judicial review. Following a public consultation on the changes proposed in the Leggatt report, the government announced in March 2003 its intention to establish a new Tribunals Service and to introduce sweeping reforms to the organisation and procedure of tribunals. Details were set out in a White Paper published in July 2004 (DCA, 2004a). The proposed changes to the appeals process[27] envisaged a new administrative appeals tribunal which would 'take on appeals from tribunals in England and Wales where the appeal would otherwise lie to the High Court'.[28] The creation of the new appellate tribunal will require legislation and it is not expected to become operational until April 2007. In the meantime, the existing complex appellate routes from tribunals to the courts will continue.[29]

1.3 Policy relevance of the study

The intention of the changes to appeals contained in Part IV of the Access to Justice Act 1999 was described in the Explanatory Notes (Great Britain, 1999a) as follows:

> '…to ensure that the appellate system reflects the principle, which underlies the Government's wider programme of civil justice reforms, that cases should be dealt with in a way that is proportionate to the issue at stake'.[30]

The appellate system created by the Act would ensure:

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[26] Letter to the researchers, 7 July 2004.
[27] These are set out in paras 7.14 to 7.28.
[28] Para. 7.17.
[29] The details are set out in Sections II and III of the Practice Direction to CPR 52. These sections also address the rules governing other kinds of statutory appeal and appeals by way of case stated.
[30] Para. 15.

> 'that appeals are heard at the right level, and dealt with in a way which is proportionate to their weight and complexity; that the appeals system can adapt quickly to other developments in the civil justice system; and that existing resources are used efficiently'.[31]

The strategic objective for the civil courts reiterates these messages (Court Service, 2002):

> 'To enable all people to exercise their rights by providing an environment for resolving disputes justly in a manner and at a cost which is proportionate to the issues at stake'.

This study complements previous research in the Court of Appeal (Plotnikoff and Woolfson, 2003) by describing how this challenge is being met in respect of appellate work in the High Court and county courts. It should also assist in assessing achievement of three of the DCA's six strategic objectives (DCA, 2004), namely:

Objective 1 *To ensure the effective delivery of justice*

Objective 2 *To ensure a fair and effective system of civil and administrative law*

Objective 6 *To deliver justice in partnership with the independent judiciary.*

1.4 Structure of the report

Chapter 2 describes the methodology adopted in carrying out the research. Chapter 3 contrasts the appellate caseloads and procedural approach adopted by the courts visited during the study, drawing on the detailed description at Appendix 1. Chapter 3 discusses the adequacy of resources assigned to appeals at the fieldwork courts and elsewhere. Issues associated with the paperwork lodged by appellants are explored in Chapter 5, including a detailed examination of the appellant's notice and the problems of obtaining a transcript of the judgment of the lower court.

Chapters 6 and 7 concentrate on the changes to appellate procedure and the views of participants on whether these have produced the desired improvements. Chapter 8 deals with the availability and quality of appeals information for litigants. Some aspects of the judicial role are considered in Chapter 10, including judicial experience with recently introduced civil restraint orders. The conclusions of the research are presented in Chapter 11.

[31] Para. 205.

2 Methodology

2.1 Introduction

This chapter describes the methodology used in carrying out the research, which took place between February and September 2004. The main focus was on appeals against court orders in non-family civil matters but some issues concerning statutory appeals are also covered.

A combination of approaches was used:

- a short period in which members of the research team 'shadowed' staff in the High Court Appeals Office in the RCJ to become familiar with working practices and the kinds of problems encountered in processing applications;
- a counter survey and examination of correspondence to establish the frequency and nature of problems with the paperwork submitted by appellants when lodging an appeal at the High Court Appeals Office in the RCJ;
- examination of available statistics on appellate work in the High Court and county courts, including data available from the RECAP system used in the High Court Appeals Office in the RCJ and that produced by the Court Service Image Team using data from the CASEMAN system in the county courts and district registries;
- interviews with a range of personnel, including administrative staff in the High Court Appeals Office in the RCJ and in three of the busiest appeal centres throughout the country, Lords Justices with an interest in appeals in the High Court and county courts, Presiding Judges of the three circuits in which the regional appeal centres were situated, High Court and circuit judges who consider permission applications and preside at appeal hearings and a lawyer within the Citizen's Advice Bureau at the RCJ who assists unrepresented litigants in preparing their appeal;
- surveys of unrepresented appellants, solicitors who had recently represented appellants or respondents at the three regional appeal centres and Designated Civil Judges (DCJs) throughout England and Wales; and
- data collection from files on recently closed appeals at the three regional appeal centres to obtain quantitative data on specific aspects of appellate work.

These various approaches aimed to provide both qualitative and quantitative information on the nature of appellate work. Insights into the problems encountered by staff in processing appeals were provided by the shadowing exercise and interviews with court staff. The information was complemented by quantitative data obtained from the counter survey and

examination of correspondence; the analysis of information held on RECAP, CASEMAN and on systems maintained by regional appeals centres; and data collected from files. The comprehensiveness of RECAP data made it unnecessary to examine files in the High Court at the RCJ.

The judicial perspective on appeals was captured in interview and through surveys of DCJs. The attitudes of the other main participants in the process – the legal profession and unrepresented litigants – were also explored through survey. All these exercises allowed information to be gathered on both the perceived efficiency of the appeals process and quality of justice issues.

2.2 "Shadowing" staff

At the start of the study, around five days were spent in the High Court Appeals Office at the RCJ observing the daily tasks undertaken by the six administrative staff, including the section manager, who deal with enquiries and process applications for permission to appeal and appeals. Each member of staff described to us the steps they went through in progressing cases from receipt to hearing, including recording case events on the RECAP computer system. We also spoke to the listing officers responsible for scheduling hearings on appeals in the Queen's Bench and Chancery Divisions of the High Court at the RCJ and observed a dismissal list[32] presided over by a High Court judge.

During our visits, we examined files of correspondence with appellants to establish the nature and frequency of problems encountered. This was complemented with similar information about paperwork lodged at the public counter. On our behalf, staff maintained a log showing any problems with appellants' or respondents' notices received at the counter during March 2004.

2.3 Examining available statistics on appeals

The High Court Appeals Office uses a 'cut-down' version of the RECAP computer system[33] which was developed to assist the Civil Appeals Office in tracking appeals to the Court of Appeal (Civil Division). Cases inputted to the system are assigned a unique reference number at set down[34] and the information is updated and added to during the life of the

[32] A list of cases in which the applicant or appellant failed to take the action prescribed by the court or the Rules within the time allotted. The defaulting party is required to appear at an oral hearing to explain the reasons why their appeal or application should not be dismissed without further order.
[33] Although the High Court Appeals Office began work in May 2000 when the new appellate provisions were introduced, it did not receive the RECAP system until a year later.
[34] Set down occurs when the appellant's notice is accepted by the court.

appeal. The system can be programmed to produce a variety of statistical reports and the team that maintains and supports RECAP kindly agreed to provide, at our request, a range of statistical information about appellate work in the High Court.

RECAP is not available in regional appeal centres. Some figures on appellate work in the county courts and district registries are available from the CASEMAN computer system. These list appellate work by case number, date and a code that identifies the level of judge whose order is being appealed. However, the quality of the data is acknowledged to be poor: some of the data is incomplete and some entries are apparently duplicated. Some aspects of interest are not covered, for instance whether the appellant was legally represented, whether permission to appeal was granted by the lower court, the outcome of a permission application considered on paper, whether a permission application refused on paper was renewed at an oral hearing and the outcome of the appeal. Information on these issues was obtained instead through an examination of files at each regional appeal centre. We were also given access to manual logs and spreadsheets and to statistical reports produced on an *ad hoc* basis by staff and judges at the regional appeal centres we visited.

2.4 Selection of fieldwork courts

The appellate statistics from CASEMAN indicated that the three busiest regional appeal centres were Birmingham, Manchester and Leeds.[35] After discussion with the Senior Presiding Judge, the Deputy Head of Civil Justice and the Head of Civil Business within the Court Service, it was agreed that fieldwork should be conducted at these three courts. On our behalf, the Deputy Head of Civil Justice wrote to Presiding Judges of the circuits to which the chosen courts belong to inform them of the research and request their cooperation. The resident judges at the three courts also gave their permission for the research to take place.

2.5 Interviews

A wide range of personnel concerned with the operation of the appellate system were interviewed. They included:

- Lords Justices of Appeal (4);
- High Court judges, including Presiding Judges of the circuits in which fieldwork courts were located (5);
- DCJs and other circuit judges who hear appeals in regional appeal centres (6);
- the Director of the Supreme Court Group;

[35] Although the CASEMAN figures show only the first instance court, not where the appeal was heard.

- the court manager of the Clerk of the Lists Department ;
- group managers responsible for the three fieldwork courts (3);
- Court Service staff involved in processing appeals and scheduling hearings at the RCJ and at regional appeal centres (17);
- the Head of Technology at the *e*Delivery Group within the DCA; and
- a lawyer who assists appellants at the Citizens' Advice Bureau located in the RCJ.

Some of the discussions took place in groups. Most were in person but a few were telephone interviews. The total number of interviewees was around 40. The list of topics for discussion was produced and provided to interviewees beforehand. Judicial interviews were typed up and the note returned for review and approval by the interviewee. Accounts of procedure were also checked by the courts concerned.

2.6 Surveys

We prepared postal questionnaires for solicitors' firms and for litigants in person to obtain feedback on their experience of appealing to the High Court or county courts. A reply-paid envelope was included and firms could also respond by fax or electronically.

For each of the four fieldwork courts, we distributed our questionnaire to 20 firms of solicitors, 80 in total, that had recently represented an appellant or respondent in an appeal. A total of 19 replies were received, a response rate of 24 per cent. The number of appeals in which responding firms had been involved in the last year varied from one to more than ten. Three had represented clients in appeals at the RCJ, six at Birmingham, five at Manchester and four at Leeds.

Each of the three regional appeal centres provided contact details of 15 litigants who had lodged a recently completed appeal without legal representation. The Citizens' Advice Bureau at the RCJ also distributed questionnaires on our behalf to unrepresented appellants who sought their advice. In total, around 60 questionnaires with reply-paid envelopes were distributed to litigants in person. Twelve replied, a response rate of 20 per cent. One litigant refused to complete the questionnaire but submitted instead a letter detailing problems encountered in obtaining information from court staff.

In our original study plan, we had only intended to seek the views of DCJs at the three fieldwork courts. However, we became aware that DCJs in other parts of the country also

held strong views on the issue of appellate work. With the kind assistance of the Leeds DCJ, we therefore circulated a questionnaire for DCJs on FELIX, the judges' electronic conferencing system, and received 13 replies, one of which was from a DCJ at an appeal centre in the study. Adding to these the interview responses from the two other DCJs in the study and a paper on appeals from a further DCJ, we were able to draw on the views of 16 (55%) of the 29 DCJs in England and Wales.

All survey responses were analysed on computer using the statistical package *SPSS 12.0 for Windows.*

2.7 Data collection

Because only limited statistical data is available on appeals heard in the county courts and regional appeal centres, we compiled more detailed information by examining court files relating to recently completed applications for permission to appeal and appeals in the three regional appeal centres. At each court, we looked at 50 files divided as follows:

Table 1: Files examined in each appeal centre by appeal court

Appeal centre	Number of files where appeal lay to a circuit judge in the county court	Number of files where appeal lay to a High Court judge
Birmingham	29	21
Leeds	30	20
Manchester	32	18
Total	91	59

The sample included cases originating at county courts other than the appeal centre. The choice was mostly driven by the availability of files but we tried to select those cases that had been disposed of most recently. In practice, 12 of the files provided to us related to live cases (nine at Leeds, two at Manchester and one at Birmingham).

The availability of the data from the file was variable. Specific problems with information provided to the court in appellants' notices and accompanying documents are discussed in chapter 5.

3 Comparison of appellate work at study courts

3.1 Introduction

A detailed description of how each of the four study courts processed its appellate workload can be found at Appendix 1. In this chapter, we contrast those aspects of the approach, including the availability of resources, that differ significantly between courts in the study.

3.2 Workload

The High Court at the RCJ deals with larger appellate volumes than regional appeal centres, even though it does not hear appeals to a circuit judge from the order of a district judge. In 2003, the number of applications for permission and appeals set down was more than three times that at Birmingham, five times that at Manchester and six times that at Leeds.

No great reliance can be placed on our figures for the proportion of cases involving unrepresented litigants at regional appeal centres. The samples on which the figures are based were small and not randomly selected. With that proviso, the aggregate proportion of unrepresented appellants at the three regional appeal centres was just under a third, compared with around a half at the High Court at the RCJ.

3.3 Resources

Even taking the size of its caseload into account, the High Court Appeals Office is better resourced than regional appeal centres. Its complement of six staff compares with only one part-time staff member dedicated to appeals at Birmingham. Manchester also has a single clerk dealing with most appeals. In contrast, in Leeds such appellate work is distributed between all seven staff in the diary manager's office.

Staff at the RCJ have the benefit of access to legal advice. Where procedural questions arise that they cannot resolve, for instance whether an appeal properly lies to the High Court, they can consult a lawyer in the Civil Appeals Office rather than referring the matter to a judge. In the regions, all such questions are referred to the DCJ or a deputy.

A cut-down version of the RECAP computer system, originally designed to support the work of the Civil Appeals Office, has been installed in the High Court Appeals Office. It allows appeals to be tracked and most enquiries to be responded to without reference to paper records. In contrast, none of the regional appeal centres had a computerised

tracking system for appeals. Some use was made of the CASEMAN system for this purpose but it is not designed for appellate work and was of limited help to staff. It is also unsuitable for tracking appeals that originate from courts not co-located with the appeal centre.

The services of a High Court judge were naturally in greatest supply at the RCJ. Both Birmingham and Leeds are visited by High Court judges specifically for civil work and Birmingham also has a permanent High Court family judge. Manchester always has two High Court judges sitting in the Crown Court and directs civil appeals to them.

3.4 Lodging and processing appeals

Differences in approach between the RCJ and the regions may be linked to the issue of resources. The High Court Appeals Office carefully checked new appellants' notices to ensure that extensions of time had been applied for where required and the correct fee had been paid. Applications were not referred to a judge for review until the order being appealed and a transcript or note of judgment had been provided. Regional appeal centres were less demanding in this respect. Appellants' notices were accepted despite flaws, which were addressed separately. Where necessary, fee discrepancies were remedied and extension of time applications were added after the appeal had been lodged. Cases were referred to the DCJ for review and directions in the absence of a transcript or other supporting documentation. This was seen as a pragmatic approach to ensure that applications without merit were identified and other applications progressed with minimum delay.

All courts including the RCJ operated an expedited procedure for urgent appeals, dispensing with the usual requirements for supporting documentation, even though there is no provision for this in CPR 52.[36]

At the RCJ, appellate work was distributed among all High Court judges for review once the required documents had been lodged. At Birmingham and Manchester, the DCJ took responsibility for reviewing and issuing directions, even where the appeal lay to a High Court judge.[37] At Leeds, the DCJ reviewed all appeals to the county court while those to the High Court were sent to a High Court judge, provided one was available. Otherwise,

[36] Two appeals in our study sample against an eviction order made by a deputy district judge were expedited and wrongly treated as if permission to appeal was not required.
[37] All DCJs in the study could sit as section 9 judges.

the DCJ would review. All three DCJs in the study made use of an electronic template to issue directions in the cases they reviewed.

There was a contrast between study courts in their attitude to making a decision on the papers about whether to grant an application for permission to appeal from an unrepresented litigant. At the RCJ, such applications were listed directly for an oral hearing unless the litigant explicitly requested otherwise. Paper decisions were also uncommon at Birmingham. In Leeds, the DCJ sometimes granted permission but seldom refused permission on paper. Some of his judicial colleagues made greater use of paper decisions, both to grant and refuse permission. The DCJ in Manchester routinely made a decision on paper in the applications for permission he reviewed (provided he had the authority to do so).

The High Court at the RCJ adopted a different approach from the regions to disciplining appellants who failed to lodge documents by the prescribed date. Following practice in the Court of Appeal, such litigants in the High Court at the RCJ were required to appear at a dismissal hearing to explain the reasons to the judge or have their appeal struck out. In contrast, the DCJ or other reviewing judge at regional appeal centres issued such defaulting appellants with an ‘unless’ order, requiring them to take action by a specified date or lose their appeal.

Differences in caseload and procedural approach make it hard to compare processing times at courts in the study. The High Court Appeals Office generated plentiful statistics from RECAP but for regional appeal centres, we had to rely on data from the (non-random) study sample of 50 cases per court in calculating time intervals. In general, times in the High Court at the RCJ tended to be longer but this is due in part to the fact that regional appellate work is heavily weighted towards appeals to a circuit judge. Such appeals tend to involve less weighty issues than appeals to a High Court judge and do not form part of the caseload at the RCJ.

With the above caveats on the reliability of the data, Leeds was faster than Manchester in producing a paper decision on an application for permission to appeal (Birmingham made little use of this procedure). Leeds was also fastest to hold an oral hearing on permission. However, once permission had been granted by an appellate judge, Leeds took longest to dispose of the appeal, taking twice as long as Manchester and two and a half times as long as Birmingham. In those cases where permission was granted or not required, Leeds

again was the slowest of the regional appeal centres, taking on average 127 days from set down to disposal[38] compared with 82 days at Birmingham and 95 days at Manchester.

[38] Disposal occurs when the appeal or application ends, either as the result of a court decision allowing or refusing the appeal, or if the application for permission was refused (and, in the case of a paper decision, the application was not renewed at an oral hearing) or because the case was struck out with no application to reinstate or following withdrawal or settlement out of court.

4 Resourcing issues

4.1 Introduction

This chapter reports estimates by DCJs of the demands that appellate work makes on their time and presents the views of a range of judges on the adequacy of resources available for appeals.

4.2 The demands of appellate work on the time of DCJs

During fieldwork and in our survey, 14 DCJs provided estimates of the time they spent on appellate work in and out of court. Eleven of these sat at appeal centres, including three in the South Eastern circuit whose appeals to the High Court are managed and heard at the Royal Courts of Justice.

Table 2: Hours per week spent by DCJs on appellate work

	Minimum	Maximum	Average
Time in court	1	10	3.3
Time out of court	1	8	3.6
Time both in & out of court	2.5	15	7.0

One DCJ had detected an increase in appellate workload:

> *'It has become obvious that there is a significant volume of appellate work. I now have three appeals hearing days per month with a reading day in advance. Consideration of permission without a hearing and producing the order I find time for each day as necessary'.*

Another commented that no allowance was made for out-of-court work in assigning the time of DCJs:

> *'Since no time is set aside for DCJ paperwork, I have to do it as and when I can, together with the other paperwork, which is substantial, so there may be some days' delay'.*

4.3 The adequacy of available resources

There was a wide range of views among DCJs about the adequacy of resources assigned to processing and hearing appeals, possibly reflecting differences in the size of their appellate caseload. There were contrasting views even among the DCJs at the three regional appeal centres in the study. One was 'reasonably content' with the resources provided. The other two were less satisfied:

> *'I would like thought to be given to the provision of real help at appeal centres. Part 52 was just sprung onto the system, and appeal centres left without any real help or guidance; we had to make it up as we went along without the resources to do the job properly'.*

The Business Management System (BMS), a computer system used by the Court Service to assist in resource allocation, came in for particular criticism:

> *'No resources were transferred when the new appeals work was transferred to appeal centres. The BMS system does not account adequately for time spent in processing all the documentation, even where the appellant is legally represented and even assuming the papers are in order, which sometimes they are not'*

> *'There is wholly inadequate provision. The work involved barely features within the BMS system of counting work. We struggle on with one part-time appeal clerk aided and abetted by the DCJ. There can be huge difficulties in getting appeals listed before a High Court judge'.*

Some DCJs in our survey regarded the resources available for appeals as adequate. However, some had reservations:

> *'[Resource provision is] generally good, though the 10 day target for dealing with incoming and outgoing paperwork in the office does cause problems'*

> *'They are not adequate, but then neither are the resources available for any other aspect of civil work'*

> *'I aim to do all the appeals myself. There are no staff or accommodation implications. There are listing implications because there has to be time in the list for me to do the work'*

> *'There are sufficient judges but not enough staff; those I have work very hard. IT is adequate but there is no dedicated fax machine'.*

Another DCJ agreed that the main burden fell on staff, particularly those dealing with unrepresented litigants:

> *'Litigants in person put relatively high demands on court staff when it comes to appeal procedure and documentation. This depends, however, upon the willingness of court staff to assist. Whilst there are significant demands on DCJs in dealing with applications for permission to appeal 'on paper', this is generally regarded as part of the job, even though it usually demands considerable work out of normal court hours. The volume of appeals which go to oral hearings (for permission) or full hearings is not, in my experience, particularly demanding of court time and thus not detrimental to the general listing burden'.*

Presiding Judges took the view that resources were in short supply for civil work in general but that appellate work was no worse off in this respect than other areas of court business. However, larger centres such as those where study fieldwork took place suffered most from the general shortage of resources. This applied to judicial resources as well as staff:

> *'Appeals do not take up a high proportion of High Court judge time. Birmingham is visited by a civil High Court judge twice a year and he can deal with the appeals allocated to him. However, the general level of judicial resourcing is inadequate for the volume of appeals generated. DCJs at smaller centres do not see resources as*

a problem. They hear all appeals to a circuit judge themselves. This would not be possible in Birmingham'.

The resource shortage was considered to be most severe in the High Court at the RCJ. It had taken the brunt of the work diverted from the Court of Appeal, especially since the decision that all appeals to a High Court judge in the South Eastern circuit should be heard there. Unlike Lords Justices, High Court judges had no assistance in preparing for hearings or reading time built into their schedule. Differences between the Court of Appeal and the High Court were ascribed to inadequate resourcing:

'The differences of approach to appellate work between the Court of Appeal and the High Court in the RCJ are all down to resources. The resource problems also affect regional appeal centres. Files are often in a terrible state but sorting out the file requires skilled staff that are hard to find in big cities. A High Court judge should not be presented with the problem of sorting out the file' ***(Lord Justice)***

However, there were different views as to how any additional resources that might become available should be used.

'Office staff are not qualified to sort the file in the way that the judge would like. It would be very helpful to have someone with legal training who could do this and write a short memo explaining what the case was about. It is not good use of a High Court judge's time to trawl through the file trying to do this' ***(HCJ)***

'The files are often in a mess when they are delivered to the judge but if there were extra resources for staff available then having someone with legal training prepare bundles would be a low priority compared, for instance, to manning the public counter' ***(Presiding Judge)***

'There is a good argument in favour of providing support, even if this was limited to having someone go through and sort out the papers. It would be better for both the litigant and the judge if a lawyer could be provided on a pro bono basis for the hearing … It would be Article 6 compliant to say that litigants should not appear unrepresented' ***(Lord Justice)****.*

4.4 Availability of statistics

As noted above, while the RECAP system in the RCJ can produce various statistical reports, little statistical information is available about appellate work in county courts or regional appeal centres. Presiding Judges and Lords Justices were asked whether they would find such information useful. Most thought they would:

'It would be helpful to get statistical reports on appellate work on a regular basis. At the moment I get nothing except DCJ reports which only deal with specific problems' ***(Presiding Judge)***

'[I get] nothing at all. It would be helpful to have RECAP type statistics … Statistics are illuminating because they can disturb people's natural assumptions ... Another

advantage of having statistics would be to support a bid for more resources. The BMS system is hopeless for that purpose' ***(Presiding Judge)***

'It would be desirable to have some statistics. DCJs and Presiders should be able to see if appeals are coming disproportionately from the orders of particular judges' ***(Lord Justice)****.*

But one Presiding Judge disagreed:

'I don't get statistics on appellate work and I have not felt the need for them thus far. It is important to trust DCJs and I do not see it as useful to do a statistical check on their work. The statistics produced by the RECAP system are not relevant to the work of a Presiding Judge'.

A Lord Justice observed that improved statistics could help to resolve some procedural questions:

'The two stage permission requirement (paper stage followed, in event of refusal, by an oral hearing) is only justified if a significant proportion of those turned down at the paper stage do not renew their application at an oral hearing. If statistics indicate that most of those refused permission on paper go on to an oral hearing then the question is how long is the permission hearing compared with a hearing of the appeal'.

5 The appellant's notice and supporting documents

5.1 Introduction

Our previous research on the work of the Court of the Court of Appeal (Civil Division) found that both unrepresented litigants and legal representatives had difficulty in understanding and complying with the requirements for lodging an appeal. This chapter explores the same issue in relation to appeals to the High Court and county courts. In light of the problems, the design of the appellant's notice, guidance on its completion and the provision of accompanying documentation are discussed.

5.2 The High Court at the RCJ

In order to gauge the level of problems with papers lodged by litigants, staff were asked to record on a specially designed form each time an appellant's or respondent's notice (staff were not asked to distinguish the type of notice) was received at the public counter. The exercise took place between 1 March and 5 April 2004, a period of 25 working days, and a note was made of whether the lodging party was legally represented and the nature of any problems with the paperwork.

A total of 73 notices were lodged. Of these, 39 (53%) were by litigants in person and 34 (47%) by legal representatives. On four days, no notices were lodged. A single set of papers was lodged on a further five days. The highest number lodged on a single day during the period of the survey was eight.

There were no problems with the papers lodged by 26 (67%) of the litigants in person and by 25 (74%) of the legal representatives. The most common problem with papers lodged by litigants in person was the absence of a copy of the order being appealed. There were six such instances. No other single problem was recorded more than twice.

Among appeals lodged on behalf of represented litigants, four were mistaken about jurisdiction. Three of these should have been in the Court of Appeal. Two had made an error relating to the fee. No other problem occurred more than once.

To complement the public counter survey, we examined the office's correspondence file for 2003. This contained information about problems relating to 46 applications. The nature of the difficulties was as follows:

Table 3: Problems giving rise to correspondence in 2003

Nature of problem	Number involving a litigant in person	Number involving a solicitor	Total
Wrong jurisdiction	19	7	26
Not an appeal	6	1	7
No further right of appeal	5	0	5
Appellant's notice missing	3	0	3
Error on part of lower court	1	1	2
Other problem	3	0	3
TOTAL	37	9	46

5.3 Regional appeal centres

Appeals lodged out of time

Eleven out of 12 responding litigants in person in our survey said the 14 days allowed for lodging an appeal was too short. Unlike the High Court Appeals Office at the RCJ, the regional appeal centres we visited took a more relaxed attitude to appeals lodged a few days out of time. An application for an extension of time was often added by the court where none was included on the appellant's notice. In our examination of case files, we noted the date on the order being appealed and the date the appeal was lodged. Sometimes the information was not available because there was no order on file or the appellant's notice was undated. The following table shows the number of cases with data in which the appeal was filed out of time.

Table 4: Appeals lodged out of time

Appeal centre	Number of cases with data	Number where appeal was lodged out of time	Percentage lodged out of time
Birmingham	46	15	33%
Leeds	50	25	50%
Manchester	50	14	28%
TOTAL	146	54	37%

In only eight (15%) of these 54 appeals lodged out of time was an application to extend the time allowed included in the appellant's notice.

Other problems with the appellant's notice

There was some confusion among litigants about the fee payable when lodging an appeal. This may be due in part to changes to the fee structure introduced in April 2003 which, for